Dear Madam, Sir,

We would like to thank you for the invitation to comment on the draft R&D&I-Framework.

As a law firm with a team of lawyers specialising in European competition law, in particular state aid law, we regularly advise regional and local authorities with regard to state aid matters. We hope that our comments will contribute to your work.

With regard to the dual use of research infrastructure, public funding falls under state aid rules only insofar as it covers costs linked to the economic activities. When a research organisation uses its infrastructure almost exclusively for a non-economic activity, all of it may fall outside state aid rules, even if it is also used for a purely ancillary economic activity. According to the draft of the R&D&I-Framework, ancillary means that an activity is directly related to and is necessary for its operation or is intrinsically linked to its main non-economic use, and is limited in scope. The draft continues with stating that the Commission will consider an activity as limited in scope when resources allocated each year to such activities do not exceed 15% of the entity’s overall annual budget.

However, it remains unclear what the Commission would consider as ‘directly related to and is necessary for its operation or is intrinsically linked to its main non-economic use’. Must the aforementioned lead to the conclusion that for instance, organising a conference on a scientific theme is an ancillary economic activity linked with the primary objectives of a research organisation such as education (or publication), based on the assumption that the related costs do not exceed 15% of the overall annual budget? And if not, in what circumstances can the organisation of a conference be classified as ancillary in nature?
We think that it would increase practical applicability of the Framework if the Commission provides examples that illustrate what can be classified as an ancillary activity with regard to research and knowledge dissemination organisations.

Yours sincerely,

Mr. C.T. Dekker
Attorney at law