Dear Madam

Dear Sir

I write you as director of the Research Department and as acting head of the Technology Transfer Office of Ghent University, Flanders, Belgium. Please find below our answer to the consultation on the draft Union Framework for State aid for Research, Development and Innovation with reference HT. 618 – Consultation on the draft R&D&I-Framework. Our Transparency Register n° is 006043210924-49.

Ghent University welcomes the new definition of 'Research and knowledge-dissemination organisation' on page 11 of the draft Framework, definition (ee). In the previous draft of this definition in the R&D&I Framework, the economic activities of our type of organisation were limited to a "non-essential part of the budget". This was perceived by Ghent University as a major risk as this wording would make the status of a research-organisation dependent on legally ill-defined terms. Part of Ghent University's budget depends on contract research. As a positive externality, this means that the non-economic R&D&I activities of Ghent University keep in line with the needs of industry and other societal stakeholders.

However, we would like to propose a change to the last sentence of the above mentioned definition: "Undertakings that can exert influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy a preferential access to its research capacities or to the results generated by it". This phrase is a carbon copy of the wording used in the 2006 R&D&I Framework. However, due to the legally ill-defined nature of this provision, there are some definite risks involved in maintaining it. Universities can never completely rule out any third party influence on their organisations. Not even from "undertakings". Universities aim for a maximum of societal impact. This requires close contacts with societal stakeholders, e.g. from government and industry. Other than originally suggested, this phrase cannot be moved from the definition to article 20 of the RDI Framework. We need this to separate true R&D&I organisations from corporate R&D&I departments and therefore should maintain similar wording in the definition. This is why we would advise to amend the present criterion to "undertakings that can exert decisive influence upon such an entity".

Please note that we interpret the wording 'must be accounted for separately' within this definition as 'must be analytically accounted for separately'. The reason is that Ghent University can make a clear
distinction between so-called "economic" and "non-economic" activities based on analytical accounts, which are part of Ghent University's single global account system.

Furthermore, the definition of "arm's length", page 8 of the draft Framework, definition (f), strikes us as problematic inasmuch that it is not clear if at arm's length negotiations, as opposed to a tender procedure, can also be considered as meeting the definition. Therefore, Ghent University proposes to adapt the definition as follows: "arm's length' means that the conditions of the transaction between the contracting parties do not differ from those which would be stipulated between independent undertakings and contain no element of collusion. Inter alia, the setting up of an open, transparent and unconditional tender procedure for the transaction is considered as meeting the arm's length principle".

In addition, we would like to inform the European Commission that we welcome the deletion of the restriction that was mentioned in the previous draft of Framework concerning the provision to the effect that a research organisation could only transfer or license its IP non-exclusively to third parties. In most sectors of industry, exclusive licensing of IP or the transfer of ownership of IP, is a prerequisite for engaging into certain research collaborations and certainly for the setting up of spin-off companies. On the topic of the importance of IP for job creation and entrepreneurial activity, we would like to refer to the report on "Intellectual property rights intensive industries: contribution to economic performance and employment in the EU", issued by EPO and OHIM in September 2013.

Another definition we would like to propose you to adapt is the definition of 'full allocation' on page 8 of the Framework, definition (l). We propose the following changes since this will better reflect reality: "full allocation' means that the research organisation, research infrastructure or public purchaser enjoys the full economic benefit of intellectual property rights by retaining the right to dispose of them in the most absolute manner, particularly the right of ownership, transfer of ownership and the right to license. This may also be the case fulfilled where the research organisation or research infrastructure (respectively, public purchaser) decides to conclude further contracts concerning those rights, including licensing them or transferring them against a consideration to a collaboration partner (respectively, undertakings)."

Besides, concerning article 19 (b) on page 12 of the second chapter of the Framework, we would like to emphasise that it must be clear that the wordings "all income from those activities is reinvested in the primary activities of the research organisation" should include the reinvestment in knowledge transfer activities.

We would also like to draw your attention to the possible double interpretation of the provisions on research infrastructures, in article 20 on page 12 of the second chapter of the Framework. This wording is subject to double interpretation. It can be read as if there are two conditions "used almost exclusively for a non-economic activity" and "limited in scope" with for this last condition the ancillary economic activity amounting to maximum 15 % of the research infrastructure's overall annual capacity. Or it can be read, and this is our reading, as if the one and only condition is the 15 % criterion and then the 'used almost exclusively for a non-economic activity' is respected if the 15 % criterion is respected.

Finally, the following condition in article 28(c) on page 15 of the second chapter of the Framework should also considered to be fulfilled if the IPR are transferred to one or more of the collaboration partners against a consideration: "any IPR resulting from the project, as well as related access rights are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests, or transferred against a consideration".
We would appreciate your most careful attention to this matter.

We put the European University Association (EUA) in copy, since we are one of its more than 850 members.

Yours sincerely,

[Signature]

Prof Dr Ignace Lemahieu
Director of the Research Department and acting head of the Technology Transfer Office

Cc Mrs Lidia Borrell-Damian (EUA)