

TTO Circle

European Commission Study on State Aid 2019



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The duty is an explanatory report to the basics of State Aid

EXPERT PANEL ON ADDRESSING KNOWLEDGE AND AWARENESS GAPS AMONG RESEARCH AND KNOWLEDGE DISSEMINATION ORGANIZATIONS IN R&D&I STATE AID RULES

Some typical questions:

- How are the various activities in a Research and Knowledge dissemination organizations (RDO) divided and what does that mean under State Aid law?
- Is any cooperation with an undertaking considered as an economic activity?
- How can the economic activities be differentiated from the non-economic, esp. in (effective) cooperation with undertakings?
- What are the peculiarities of Research Infrastructure and what is important to be aware of ?
- In which cases is there an obligation to notify aid to a research activity or a funding measure to the European Commission

What is the rationale and aim of State Aid Law ?

Basic background:

Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings

- Ongoing Check of **existing State Aid measures by the Commission** in the member states
- In case of **incompatible state aid** the member state is requested to **withdraw or change** this measure. Beneficiary has to **refund the Aid** with interests
- Obligation to notifying **any intended State Aid Measures** as far as under State Aid Rules
- **Complaints** about incompatible State Aid **mostly by competitors**, but also possible by public authorities or other member states.
- **No Cross Subsidation** from Public to Private in R&D&I

Research & Development & Innovation (RDI) Framework for State Aid for R&D

- Art. 107 TFEU forms the **legal basis** for the State Aid Rules, but requires explanations in a "Framework":
- **internal administrative provision** of the Commission to define the term of "State Aid" in the field of R&D based on consultations of the European Ministers of Economic Affairs
- **commitment** of the Commission to the R&D&I State Aid Framework
- only subject to **Commission** and **ECJ control**
- **no formal need** to involve **European Parliament and Council of Europe**
- actual version of 2014 in parallel to Horizon 2020

Framework for State aid for research and development and innovation - 2014/C 198/01

Applicability of Art. 107 (1): Four Criteria

Framework for State aid for research and development and innovation
(2014/C 198/01)

1. Aid from public **funds** (granted by Member States) or through state resources to undertakings (not individual or households)
2. Aid confers **advantage** (provides favour)
3. Aid is **selective** (to certain undertakings or production of certain goods)
4. Aid **affects trade & distorts competition** between Member States (potential distortion is sufficient)

! CRITERIA ARE **CUMULATIVE** NOT ALTERNATIVE!

Article 107 (1) Treaty on the Functioning of European Union (TFEU)

Structure of Art. 107 TFEU

(1) : **definition** of "incompatible" State Aid

(2): cases of de iure **derogations** to the incompatibility

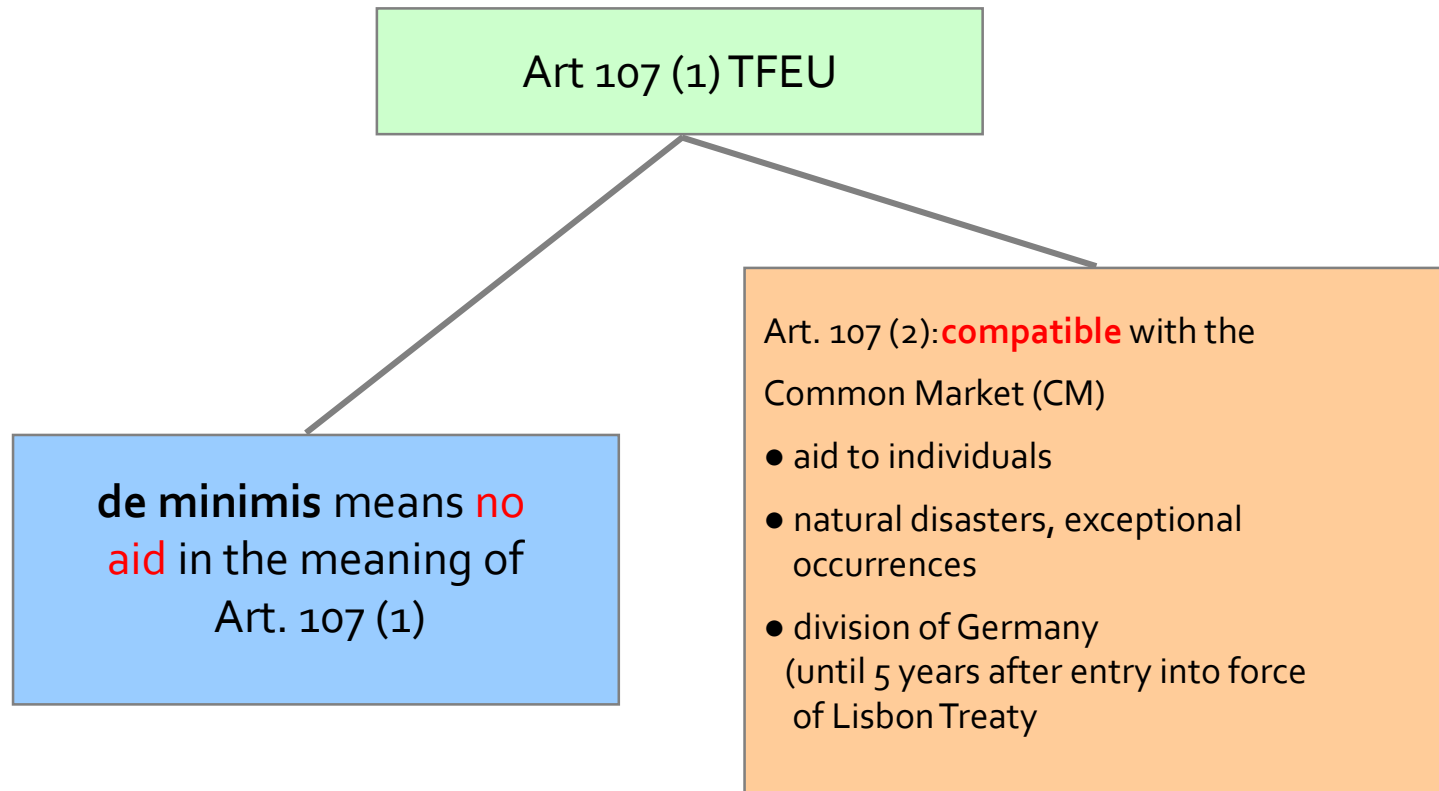
(3): cases of **discretionary derogation** to the incompatibility

Art. 107 (1.) reads as follows:

„Save as otherwise provided in the **Treaties**, **any aid granted by a Member State or through State resources** in any form whatsoever which **distorts or threatens to distort competition** by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be **incompatible with the internal market.**“

Exception I to Art. 107 (1) TFEU

de minimis - Art 107 (2) TFEU



89 RDI Framework – State Aid Intensities

	Small enterprise	Medium-sized enterprise	Large enterprise
Aid for R&D projects			
Fundamental research	100 %	100 %	100 %
Industrial research	70%	60%	50%
Industrial research subject to effective collaboration between undertakings (for large enterprises cross-border or with at least one SME) or between an undertaking and a research organisation, or subject of wide dissemination of results	80	75	65
Experimental development	45%	35%	25%
Experimental development subject to effective collaboration between undertakings (for large enterprises cross-border or with at least one SME) or between an undertaking and a research organisation, or subject of wide dissemination of results	60%	50%	40%

89 RDI Framework gives the possibility to use higher thresholds in certain circumstances (under conditions **87 and 89 RDI Fw**): The table in article 89 of the RDI Framework gives the higher maximum aid intensities than those laid down in Annex II that may be allowed under this article 89

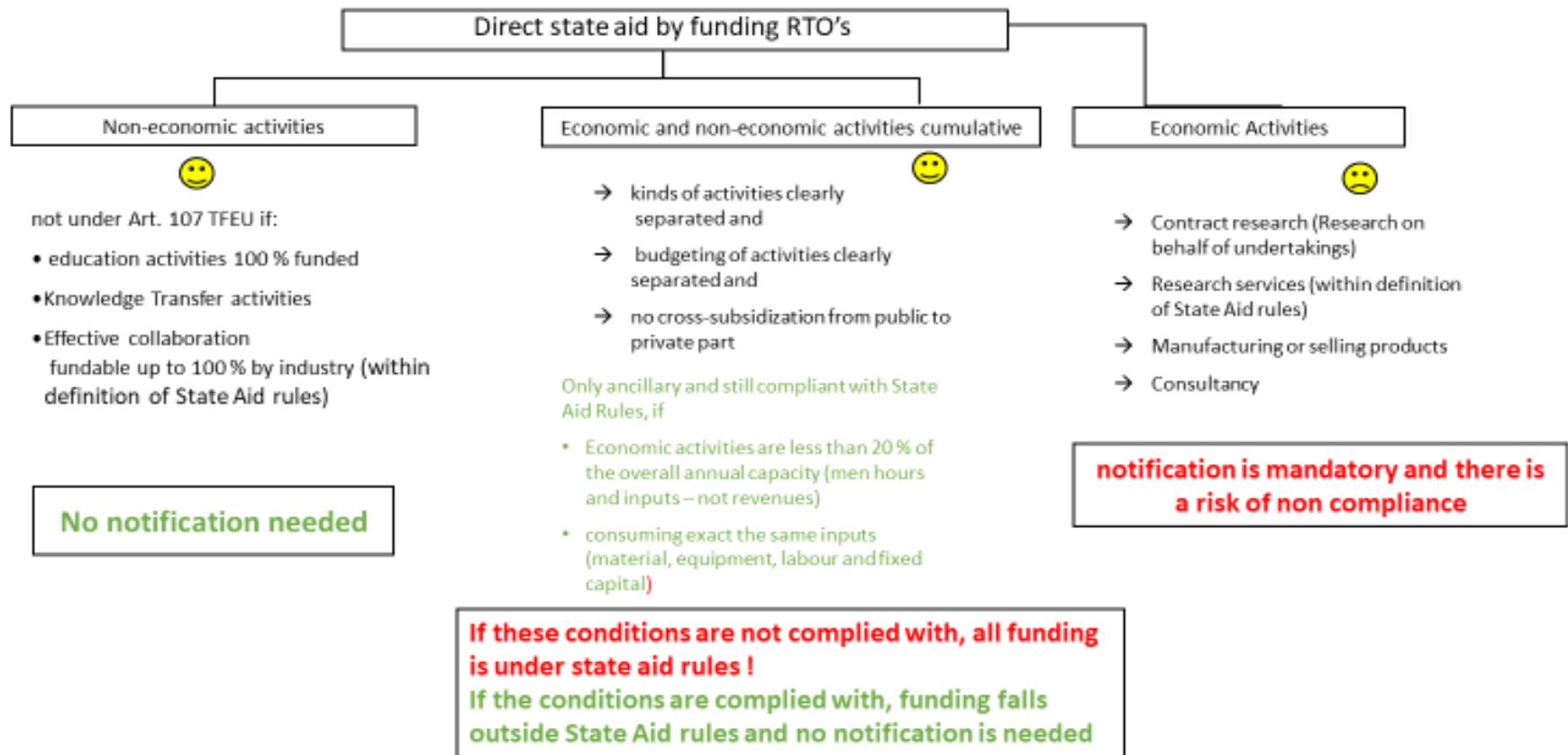
	Small enterprise	Medium-sized enterprise	Large enterprise
Aid for R&D projects			
Fundamental research	100 %	100 %	100 %
Applied research	80 %	70 %	60 %
— subject to effective collaboration between undertakings (for large enterprises cross-border or with at least one SME) or between an undertaking and a research organisation, or	90 %	80 %	70 %
— subject to wide dissemination of results			
Aid for the construction and upgrade of research infrastructures	60 %	60 %	60 %

87: EC is testing whether the aid is limited to the necessary minimum.

88: for assessing what the necessary minimum is, the EC compares the aided project with a comparable project carried out without any aid

Direct State Aid

State Aid Rules – Direct State Aid



What means „ancillary“?

In case economic activities take place in a RDO which would mean incompatible state aid, and they are

- ❖ Under a threshold of 20 % of the overall annual capacity of the RDO (men hours and inputs, no revenues)
- ❖ Consuming the same inputs (material, equipment, labour and fixed capital)

Then they are ancillary (State Aid RDI Framework 2.1.1 Nr. 20).

Not finally answered Questions:

What, if the share of economic activities is higher than 20 %? What if 25, 30 or 40 ? Then it is **not allowed to be predominant** (GBER). When is this the case?

How to assess the percentage of economic activities in an RDO with more than one institute? For example one institute with 15 % (under threshold) the other 70 % (over threshold). Each separate unit or the whole organization?

When a **RDO** is an „**undertaking**“

Indirect State Aid

2.2.1 (Ancillary) Contract research and/or services (under 20 % of capacity and consuming exactly the same inputs)

not under Art. 107 TFEU if (alternative)

market price

OR

full costs + profit margin

If not ancillary – the institution is assessed as an undertaking and all activities fall under State Aid law

2.2.2 Cooperation (without funding from industry to RO)

And

(Effective) Cooperation (with funding from industry)

- the engaged undertaking bears the full costs of the project

OR

- dissemination of unprotected IP - and allocation of IP from the project to the not-profit organisations

OR

- compensation for IP rights dependant on their contribution, labour and interests

OR

- IP rights on the basis of market prices. The value of contribution of coüanies minus value fof RDO contribution may be deducted



Forms of Cooperation related to non-economic / economic activities

Form of RDI activity	Institutional (basic) funding	Cooperation in RDI	Independent <u>Effective</u> collaborative RDI (definition of EC RDI state aid rules; clause 27)	Research on behalf of undertakings (definition of EC RDI state aid rules; clause 25)
Economic or non economic	Non economic (direct annual public subsidy to the research organization) No collaboration with industry	Non economic Only own financing without funding cooperative projects in consortia funded by public agencies (H 2020, Research Ministries, public authorities). No financial flow from Company to RDO	Non economic project funded by industry (for example 50% or full cost or 100% full cost). Financial flow from Company to RDO	Economic Payment from Company to RDO as market price Or (in absence of m.p.) 100% full costs plus Margin i.e. Research services Production Consultancy

Questions for differentiation of **effective collaboration** and **contract research on behalf of undertakings**

Majority of questions is answered

**YES,
probability
for effective
collaboration**

- Is the technical specification defined jointly between the Research Organisation and the contract partner, taking into account the common interest?
- Are the non IPR results widely disseminated (scientific publications or other disseminating activities or trainings)?
- Does the RDO keep ownership (or joint ownership) of its IP created itself in the common project or are the IPR completely transferred?
- Do both partners have their own advantage on the of common interest goals of the project or is it a “one way street”?
- Is there a win-win situation visible
- Is the RDI agreement about obligation of means?

Majority of questions is answered **NO,
probability
for Contract
Research on
behalf of
undertaking**

Research Infrastructure

***research infrastructure** means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or set of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research. Such infrastructures may be 'single-sited' or 'distributed' (an organised network of resources)*

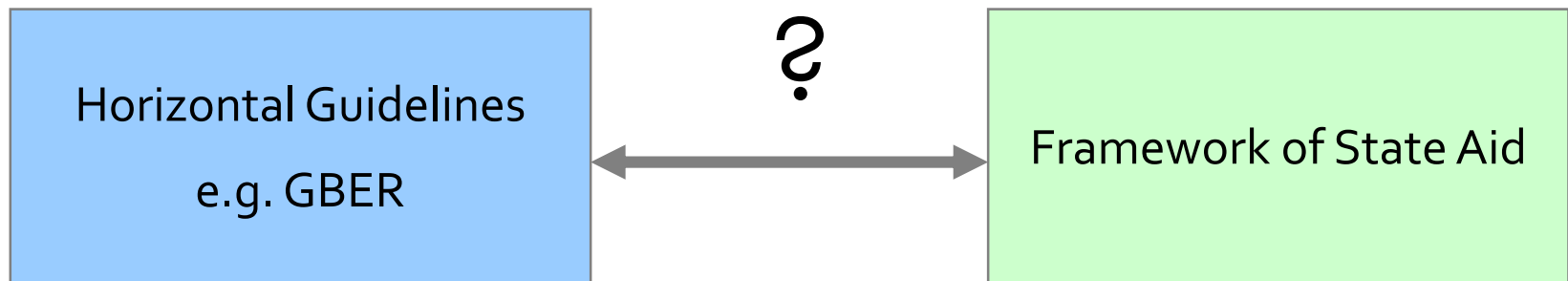
When the use for economic activities is **purely ancillary** (meaning **20% of the annual capacity**)

.....**consume exactly the same inputs**

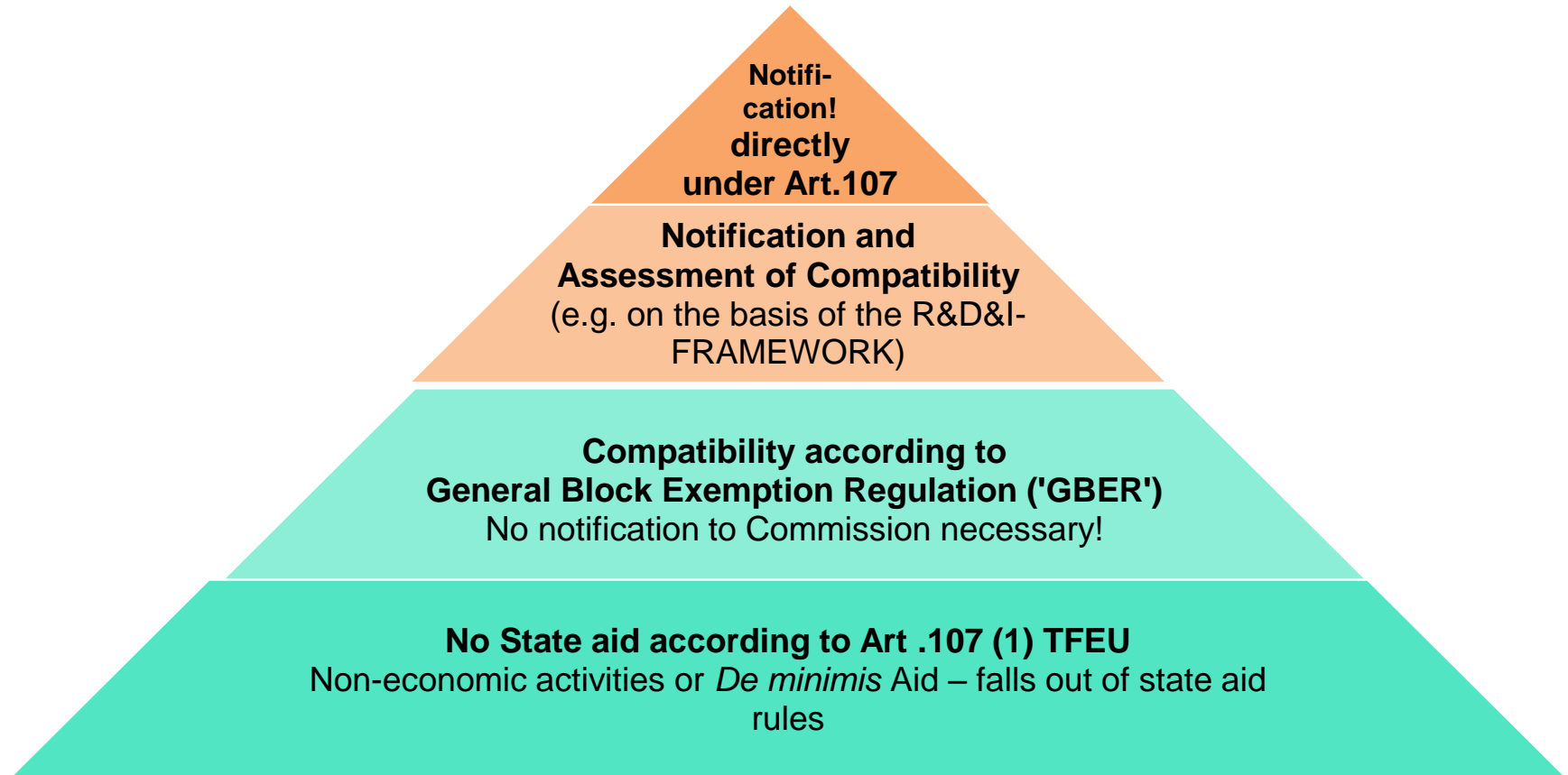
then the entire use is non-economic and **falls outside of state aid rules entirely.**

- The aid is limited to aid for the construction or upgrade of research infrastructures, up to (typically) **50% of the eligible costs**. Eligible costs are limited to investment costs for both tangibles and intangibles such as required patent licences. **Please note that operation or exploitation costs are not considered to be eligible** under the exemption for investment aid to RI's. The aid may be granted up to an overall ceiling of 20 Million Euro's per RI.
- Other requirement, but very similar to general rules of RDI Framework

Relationship between GBER and Framework for State Aid what is applicable?



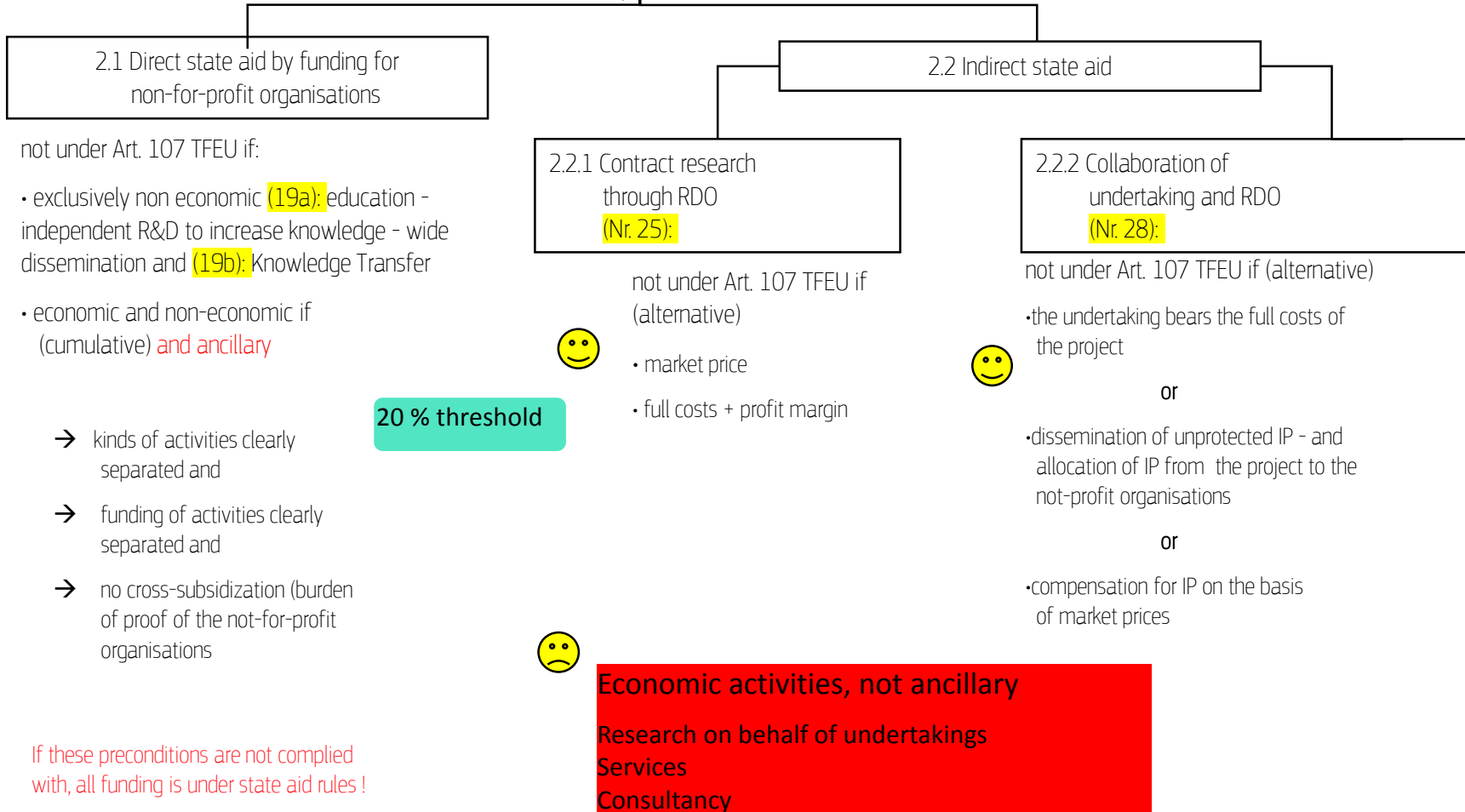
Notification or not? Applicability of GBER



State Aid Rules according to Art. 107 (1) TFEU

Community Framework for State Aid for R.&D.&I.

Art. 2 Framework



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Thank you for attention