State aid for R&D&I

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DG COMPETITION – Unit H2
D. Spatharis – Head of Unit
Summary

I. Presence of State aid in typical R&D&I situations
II. Aid for R&D&I projects
III. Aid for R&D Infrastructures
IV. Innovation Aid
I. Presence of State aid in typical R&D&I situations
I. Presence of State aid in 3 typical R&D&I situations

1. Public funding for economic activities of research organisations (ROs) and research infrastructures (RIs)

2. R&D services/contract research supplied to industry by publicly financed ROs/RIs

3. R&D-collaboration between publicly financed ROs/RIs and industry
I.1 Public funding of ROs/RIs

- **Non-economic activities** (point 19 RDI Framework):
  - **Primary activities**: (i) Public education organised within the national educational system; (ii) independent R&D including 'collaborative R&D'; (iii) wide dissemination of research results on a non-exclusive and non-discriminatory basis
  - **Knowledge transfer** conducted by ROs/RIs when all profits reinvested in primary activities.

- **Economic activities**:
  - **Cross-subsidisation of economic activities must be avoided**: separation of accounts (clear reporting in annual financial statements)
  - **If no clear separation of accounts**, all the ROs/RIs' activities are subject to State aid rules
I.1 Public funding of ROs/RIs (continue)

- 'Ancillary economic activities' (point 20 RDI Framework) not subject to State-aid rules if
  - directly related to and necessary for the operation of the RO/RI or intrinsically linked to RO/RI main non-economic use => Consuming the same inputs as non-economic activities
  - Must be limited in scope => allocated capacity being ≤ 20% of the entity's overall annual capacity
  - If the 20% ceiling is exceeded:
    - Full cost of economic activities (including pro rata depreciation costs of the infrastructure) must be covered solely by commercial revenues ('claw back'), OR
    - Assessment under State aid rules (e.g. Article 25 and 26 GBER)
I.1 Public funding of ROs/RIs (continue)

- No economic advantage if the investment complies with the Market Economy Operator Principle (MEOP); therefore no state aid involved

- Two cumulative conditions:
  - Significant *pari passu* co-investments of commercial operators, i.e. on the same terms and conditions as the public authorities; and/or
  - Presence (*ex ante*) of a sound business plan (preferably validated by external experts) demonstrating that the investment provides a rate of return for the investors in line with market benchmarks

- the application of MOEP may be doubtful in case of:
  - accompanying or prior State aid for the same project
  - substantial capital investments that can only be recovered in the very long term and might therefore not be undertaken on the basis of purely economic considerations
I.2 Contract research and research services by ROs/RIs

- Assessment of aid at the ROs/RIs level:
  - No aid if
    - separation of accounts for economic and non-economic activities,
    - no cross-subsidisation,
    - self-sustainability of economic activities => use of "own resources"
  - Otherwise => assessment under standard State aid rules

- Indirect State aid to undertakings is avoided if:
  a. Research services or contract research sold at market price, or
  b. if no reliable benchmark for market price:
    - full costs + margin as commonly applied in the sector for the service concerned, or
    - arm's length negotiations where ROs/RIs negotiate to obtain maximum economic benefit and cover at least their marginal costs
I.3 Collaborative research between ROs/RIs and industry

- **Assessment of aid at the ROs/RIs level:**
  - **No-aid only if**
    - 'independent R&D' (non-economic), or
    - separation of accounts, no cross-subsidisation and self-sustainability of economic activities (use of "own resources")
  - **Otherwise** => assessment under standard State aid rules

- **Indirect State aid to undertakings is avoided if**
  - undertakings bear the **full project costs**, or
  - knowledge is widely disseminated and **ROs/RIs retain the exclusive use** of any IPR generated by them, or
  - IPRs allocation between public and private partner is **proportionate** (reflects respective contributions and interests), or
  - ROs/RIs receive a ‘**compensation equivalent to market price**’ in case of assignment of IPRs to the private partners
I.3 Collaborative research between ROs/RIs and industry (continue)

- ‘Compensation equivalent to the market price’ means that ROs/RIs enjoy the full economic benefit of IPR by assigning them; therefore no indirect aid to collaborating undertaking!
  - Through an open, transparent and non-discriminatory competitive procedure, or
  - Via an independent expert valuation, or
  - Following arm's length negotiations, or
  - By applying a mechanism where the private partner retains a right of first refusal following an open call for competing bids

- If none of above conditions is met => full value of the contribution of the ROs/RIs is considered as an advantage for the collaborating undertakings => State aid rules apply at their level
II. Aid for R&D&I projects
II. Aid for R&D&I projects (Article 25 GBER)

- 3 research categories subject to higher notification thresholds
  - **fundamental research**: € 40 M
  - **industrial research**: € 20 M
  - **experimental development**: € 15 M
  - Doubled for Eureka and JU projects
  - Increased by 50% if aid disbursed in the form of repayable advances

- 'Industrial research' now includes laboratory-scale prototypes and small scale pilot lines.
  - higher aid intensity than for experimental development
  - no *ex-post* deduction of commercial revenues generated by prototypes and pilots from eligible costs

- Eligible costs include expenditure for land, buildings, instruments and equipment
  - Only to the extent and for the period used for the project
II. 2017 GBER amendments

- **Amendment to Art 7**: The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 (CPR Regulation), provided that the operation is at least partly financed through a Union fund (EFSI) that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision.

- **Recital 14**: Under the Horizon 2020 SME-instrument as referred in Article 22(2) of Regulation (EU) No 1291/2013 of the European Parliament and of the Council, projects can receive a Commission Seal of Excellence quality label. Such projects, given their limited aid amounts of maximum EUR 2,5 million per project and the fact that they are targeting exclusively SMEs, can be exempted from the notification requirement in accordance with the rules of the GBER Regulation (EU) No 651/2014.
## II. R&D-projects: aid intensities

<table>
<thead>
<tr>
<th>R&amp;D projects</th>
<th>Large enterprise</th>
<th>Medium-sized</th>
<th>Small</th>
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</thead>
<tbody>
<tr>
<td>- Fundamental research</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>- Industrial research - 'GBER'</td>
<td>50-65%*</td>
<td>60-75%</td>
<td>70-80%</td>
</tr>
<tr>
<td>- Applied research - 'RDI Framework'</td>
<td>60-70%*</td>
<td>70-80%</td>
<td>80-90%</td>
</tr>
<tr>
<td>- Experimental development - 'GBER'</td>
<td>25-40%</td>
<td>35-50%</td>
<td>45-60%</td>
</tr>
<tr>
<td>- Applied research - 'RDI Framework'</td>
<td>60-70%</td>
<td>70-80%</td>
<td>80-90%</td>
</tr>
<tr>
<td>- Feasibility studies</td>
<td>50%</td>
<td>60%</td>
<td>70%</td>
</tr>
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* Includes dissemination/collaboration bonus
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<th>Assessment principle</th>
<th>Assessment approach under the RDI Framework (Notified projects)</th>
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| Contribution to increased R&D&I and need for State intervention (market failure) | Systematic identification of objective of common interest  
Demonstration of general/specific market failure by MS for all notified cases, e.g. through sector-specific comparisons  
Presumption of absence of market failure where there are similar projects in the market. Presumption of presence of market failure for EU funded projects |
| Appropriateness                                           | To be demonstrated (alternative policy instruments?; choice of aid instrument?); presumed for EU-funded project                                                                                                                                                                       |
| Incentive effect                                           | Aid application before start of works  
For large individual aid, MS to support counterfactual analysis of incentive effect with company- and industry-specific elements. Comparisons of NPV, IRR, risk exposure between the counterfactual and the nominal scenarios with and without aid. No counterfactual in the absence of an alternative project. |
| Proportionality                                            | Aid must not exceed the minimum necessary to make the project sufficiently profitable. This is the case if the internal rate of return (IRR) is brought to a level that corresponds to sector or firm specific hurdle rates.  
Where a counterfactual project exists: Aid must not exceed the **net extra costs** established by comparing the expected net present values of both alternative investments.  
NB: All relevant expected costs and benefits must be considered over the lifetime of the project |
| Negative effects                                           | Analysis of distorting dynamic incentives, creation of market power and maintaining inefficient market structures. Analysis of choice of location. Analysis of manifest negative effects, in particular if violation of EU law (such as free movement of goods and services) |
III. Aid for R&D Infrastructures
III. Aid for Research Infrastructures

- **Definition**: see Article 2(91) GBER and point 15(ff) RDI Framework

- **Investment aid for the construction and upgrade of research infrastructure (Article 26 GBER)**
  - Only public financing for *economic activities* taken into account
  - Open, transparent and non-discriminatory access at market terms; preferential access for private investors (with contributions >10%) is allowed (conditions: proportional, transparent)
  - **Eligible costs**: investment costs in intangible and tangible assets
  - **Aid intensity**: up to 50% of eligible costs
  - **Notification threshold**: 20 million EUR/infrastructure

- **Above the threshold** => notification and assessment under the RDI Framework: public funds may cover all the "net extra costs" (up to a maximum 60% of the eligible costs)
IV. Innovation Aid
IV. Innovation aid

- Article 27 GBER: Aid for innovation clusters

  - **Definition:** see Article 2(92) GBER and point 15(s) RDI Framework

  - Aid can be granted **only to the legal entity operating the cluster organisation**

  - **Open, transparent and non-discriminatory access** at market terms; preferential access for private investors (with contributions >10%) is allowed (conditions: proportional, transparent)

  - **Investment aid:** costs in intangible and tangible assets are eligible and aid can cover up to 50% of eligible costs (plus regional bonuses)

  - **Operating aid:** costs for animation, marketing and management of the cluster are eligible and aid can cover up to 50% of such eligible costs for a maximum of 10 years

  - **Notification threshold:** 7.5 million EUR/cluster
IV. Innovation aid

- **Article 28 GBER: Innovation aid for SMEs**
  - Costs for **innovation advisory services**
  - Costs for **support services** (including provision of office space, data banks, libraries, market research, laboratories, quality labelling, testing and certification for the purposes of developing new products/services or processes)
  - Costs for obtaining validating and defending **IPRs**
  - Costs for **secondment of highly qualified personnel** from ROs working on R&D&I activities in a newly created function

- **Aid intensity**: up to 50%
- **Notification threshold**: 5 million EUR/undertaking/project
IV. Innovation aid

- Art. 29 – Aid for process and organisation innovation

- **New organisation method** in an undertakings’ business practice

- **New or significantly improved production or delivery** method (incl. significant changes in techniques, equipment and software)

- **Eligible costs**: similar as for RDI projects

- **Aid intensity**: 50% for SMEs

- **Aid to LE**: 15% of aid intensity - only if effective collaboration with SMEs and 30% of total eligible costs
Thank you for your attention!