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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

COMMUNICATION FROM THE COMMISSION

Framework for state aid for research and development and innovation

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Framework for state aid for research and development and innovation

1. PROBLEM DEFINITION

1.1. Policy context

Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) lays down a general prohibition of state aid. However, state aid for research and development and innovation (R&D&I) may be compatible with the internal market where it is expected to alleviate a market failure in facilitating the development of certain economic activities and the ensuing distortion of competition and trade is not contrary to the common interest, or where it is granted for the promotion of the execution of an important project of common European interest (IPCEI) (respectively, Articles 107(3)(c) and (107(3)(b) of the TFEU).

The Community Framework for state aid for R&D&I (the Framework), adopted in 2006, and Section 7 of the General Block Exemption Regulation (the GBER), adopted in 2008, set the rules under which Member States can grant aid to support R&D&I activities. Both sets of rules expire on 30 June 2014. The Commission has therefore undertaken to revise them.

The revision of R&D&I state aid rules must consider the following major developments:

- the launch of the State Aid Modernisation (SAM), which aims at fostering sustainable, smart and inclusive growth in a competitive internal market in line with the Europe-2020 strategy, as well as simplifying and rationalising state aid rules and concentrating state aid enforcement on the most distortive cases;
- the need to ensure coherence and develop possible synergies with EU policy initiatives that aim at promoting R&D investments with a view to reaching the headline target of 3% of the EU's GDP by 2020, in particular with Horizon 2020, which is the EU's main financial instrument for implementing the Innovation Union Flagship Initiative.

1.2. General policy problems

Since the entry into force of the current Framework in January 2007, EU policies in the areas of state aid, growth and R&D&I have evolved. In this context, the general policy goal of R&D&I state aid control will be to ensure that the applicable rules continue to:

- bring about a higher level of R&D&I activities in the common interest than would occur without state aid, while ensuring that the positive effects of state aid outweigh its potential negative effects in terms of distortions of competition in the internal market;
- take sufficiently into account other EU policies, in particular with a view to ensuring continued interaction and coherence with EU R&D&I policy in the context of the priority themes of the Europe 2020 strategy.

The aforementioned headline target of 3% of the EU's GDP is anything but attained. It is true that R&D expenditure in relation to GDP has increased within the EU. Nevertheless, statistics show that this increase has been sluggish at best; the relevant ratio was only 2.06% by the end of 2012.

Therefore, the design, scope and implementation of future R&D&I state aid rules should support the abovementioned objectives by catering for 'good' aid, i.e. aid that is well-designed, targeted at identified market failures and objectives of common interest, and that is proportionate and least distortive.

1.3. Problems linked to the design and implementation of the rules

In addition to the potential mismatch between the present R&D&I state aid rules and the EU's growth strategy, R&D&I and SAM policies, it emerges from the Commission case practice and the public consultations that, in its practical implementation, the current regime for R&D&I aid has encountered several problems:

- first, there appears to be a lack of clarity regarding the existence of state aid in certain situations (e.g. where subcontracting and collaborations between research organisations and industry are involved, where centrally managed EU-funding is provided and where public procurement is used). Such lack of clarity creates legal uncertainty and can therefore hinder the achievement of R&D&I objectives;
- second, the scope of the R&D&I state aid rules may be too restrictive to cater sufficiently for EU policies in the fields of aid for research infrastructure, innovation aid and aid for prototypes and pilot plants;
- third, in line with the SAM initiative, which aims *inter alia* at focusing enforcement on cases with the biggest impact on the internal market and enabling faster decisions, it seems that more R&D&I state aid could be exempted from the notification requirement (in 2012, ca. 30% of all R&D&I state aid was granted under the GBER);
- fourth, it appears that the rules on assessment of large individual aid are not sufficiently clear and predictable. This can cause uncertainty among aid granting authorities and beneficiaries, and may lead to relatively long durations in the Commission's decision-making process (since additional information has to be requested of the Member State);
- fifth, the compatibility criteria relating to IPCEI has never been used under the present Framework, even if aid for IPCEI has been authorised in areas other than R&D&I. It appears thus that the present rules may need to become more operational and predictable and possibly widened to cover also other areas in a consistent manner;
- finally, to the extent that the current 'matching clause', which allows exceeding regular aid ceilings to counter distortions of global competition, has never been used so far, it could be explored how to better cater for the international dimension in the detailed assessment of aid for large R&D projects.

2. ANALYSIS OF SUBSIDIARITY

State aid is an exclusive competence of the Commission. The Commission must assess the compatibility with the internal market of state aid granted by Member States to promote R&D&I either directly on the basis of Article 107(3)(c) of the TFEU (or Article 107(3)(b), where relevant) or on the basis of guidelines in which it lays down the applicable procedural and substantive rules.

3. OBJECTIVES

The general objective of the present revision is, on the one hand, to ensure an effective contribution of the R&D&I state aid rules to the EU growth and R&D&I policies, while, on the other hand, preventing undue distortions of competition and trade. In line with the SAM initiative, the revision thus aims at fostering growth by encouraging effective and efficient design of aid measures, focusing enforcement on cases with the biggest impact, streamlining rules and ensuring faster Commission decisions.

This general objective can be further detailed into the following specific objectives:

- ensuring that the R&D&I State aid rules provide for sufficient explanations on the presence of aid in R&D&I situations. An increased legal certainty in this area will e.g. encourage subcontracting and collaboration between research organisations and industry;
- streamlining and increasing predictability of common assessment principles. An increase in predictability should make stakeholders more aware of what information is needed for the Commission's assessment, which should also speed up the treatment of cases.

Moreover, the revision should address problems linked to the design and implementation of the current R&D&I state aid rules (see section 1.3 above).

4. POLICY OPTIONS

Three policy options can be envisaged and summarized as follows:

- The baseline scenario (Option 1) is equivalent to continuing the current policy and means prolonging the current R&D&I state aid rules with only very limited amendments to address some interpretational issues;
- Option 2 consists in limited changes to the current rules. Guidance on the presence of state aid in R&D&I situations would be further elaborated, notification thresholds would be increased, and compatibility rules for aid to research infrastructures, pilot and demonstration projects and innovation would be revised. Without any substantial modification of the structure and principles of the rules, the new Framework would still contain criteria for both the standard assessment and the individual assessment of aid;
- Option 3 consists in a more far-reaching reform of the current rules, both as regards their scope and the design of the appropriate compatibility criteria. The future Framework would provide new, respectively more elaborate explanations on the presence of aid, including with regard to pre-commercial procurement and the ancillary nature of some economic activities. It would moreover provide assessment criteria applicable only to aid that is not eligible for block-exemption, and thus allow for increased maximum aid intensities for individually notifiable aid. Also, under this option, criteria for the assessment of aid for IPCEI under Article 107(3)(b) of the TFEU would be 'spun out' into a self-standing Communication, allowing in particular for the possibility to grant aid up to 100% of the projects' funding gap on the basis of a large set of eligible costs.

5. ASSESSMENT OF IMPACTS

Options were assessed with regard to their potential economic and social impacts as well as to their impact on EU policies and administrative burden. In particular, the various options were assessed with regard to:

- their ability to improve economic efficiency by stimulating competition and mobilising R&D&I investments without any undue crowding-out effects;
- their contribution to competitiveness (development of new or improved products and services, including with regard to an increased level of R&D collaboration and knowledge transfer) and employment creation;
- their coherence with the overall EU's growth policy (in particular R&D&I policy) as well as with the general objectives of state aid control policy (to ensure that government interventions do not unduly distort competition and trade in the internal market).

At the same time, their impact on the administrative burden arising from the quality and amount of information needed for a notification to be complete, as well as from reporting obligations and appropriate measures was also taken into account.

Following the identification and assessment of the impact of each option, the table below provides an overview of their main features.

	Option 1 Baseline scenario ¹	Option 2	Option 3
Economic impact (overall)	-	+	++
- on R&D&I-investment	0	+	++
- on the potential to enable the development of new or improved products and services	0	0	++
- on R&D-collaboration and knowledge transfer	-	-	+
Social impact	-	+	++
Impacts on EU-policies	0	+	++
Administrative burden (overall)	-	+	+
- arising from the quality and amount of information needed for a notification to be complete	0	+	++
- arising from reporting obligations and appropriate measures	0	+	++
- simplification and better regulation	--	+	++

Legend: -- markedly negative impact; - limited negative impact; 0 no impact; + limited positive impact; ++ markedly positive impact.

The three options have also been reviewed to assess their effectiveness (the extent to which they contribute to achieving the objectives), efficiency (the extent to which the objectives can be achieved with a given level of resources / at least cost) and coherence with the objectives identified (the extent to which they are coherent with the objectives of EU policy). The following table summarises the main features of each option in this regard.

	Effectiveness	Efficiency	Coherence
Option 1	<ul style="list-style-type: none"> - State aid objective (coherence and integration of policy objectives) not attained - Targeting aid at objectives of common interest (research infrastructure objective; innovation aid; pilot and demonstration projects) partially attained - State aid as an appropriate policy instrument attained - Incentive effect of aid attained - Proportionality partially attained (net-extra costs approach not provided for; aid intensities not increased) - Limiting negative effects attained 	No impact on resources needed to achieve the objectives described	<p>Consistency with other EU-policies (EU 2020, Horizon 2020) not attained</p> <p>Coherence with overall EU-State aid rules based on common assessment principles not attained.</p>
Option 2	<ul style="list-style-type: none"> - State aid objective attained - Targeting aid at objectives of common interest attained - State aid as an appropriate policy instrument attained - Incentive effect of aid attained - Proportionality partially attained (net-extra costs approach not provided for; aid intensities not increased) - Limiting negative effects attained 	Limited positive impact on resources needed to achieve the objectives described	<p>Consistency with other EU-policies (EU 2020, Horizon 2020) partially attained</p> <p>Coherence with overall EU-State aid rules based on common assessment principles partially attained.</p>
Option 3	<ul style="list-style-type: none"> - State aid objective attained - Targeting aid at objectives of common interest attained - State aid as an appropriate policy instrument attained - Incentive effect of aid attained - Proportionality attained (net-extra costs approach; aid intensities increased) - Limiting negative effects attained 	Limited overall positive impact on resources needed to achieve the objectives described.	<p>Consistency with other EU-policies (Europe-2020, Horizon 2020) attained</p> <p>Coherence with overall EU-State aid rules based on common assessment principles fully attained.</p>

¹ Since the baseline scenario involves some minor changes, its estimated impact is not always set to zero.

6. COMPARISON OF THE OPTIONS

Following the identification and assessment of the impact of each option, it becomes clear that only options 2 and 3 present economic and social positive impacts. Likewise, they are the only options that present a positive impact on EU policies and administrative burden.

Option 3 however presents the strongest economic and social impacts (also with regard to other EU policies) and therefore has the expected most significant positive impact on mobilisation of R&D&I investments and competitiveness by:

- ensuring the greatest alignment and complementarity of both sets of R&D&I state aid rules (Framework and GBER);
- fully addressing the need for explanations on the presence of aid;
- introducing new or streamlined compatibility criteria for a set of aid categories;
- providing the highest level of legal certainty without higher adaptation costs.

Option 3 moreover provides for better consideration of global competition and ensures a consistent and flexible approach under which aid for IPCEI may be provided in all areas (and not only for R&D&I activities).

The assessment of the impacts thus shows that option 3 (complete revision of the R&D&I state aid rules including their structure and principles) is the only one that fully addresses all problems and objectives of the revision. Option 3 is therefore the preferred option.

7. MONITORING, TRANSPARENCY AND EVALUATION

Monitoring, transparency and evaluation are important elements of the common principles on which the compatibility of aid is based and are applicable to all constituent parts of the SAM initiative.

Pursuant to Article 108 of the TFEU, the Commission shall keep under constant review all systems of existing aid. For this purpose, the Framework and the GBER impose certain reporting obligations (e.g. annual reporting and record keeping) on Member States. As summarised above, none of the three options include a dramatic change in this regard. The Commission is already monitoring aid, and will continue doing so regardless of which one of the three options is pursued. In addition, such monitoring is being and will be done on the basis of annual random *ex post* control of existing aid schemes. Moreover, the Commission maintains a State aid scoreboard where the overall state aid situation in each Member State is summarised.

In line with the SAM objectives, the revised state aid rules will provide for a general transparency obligation under which Member States will be required to publish information on aids granted.

The current state aid rules focus rather on the *ex ante* authorisation of aid than on the evaluation of its actual, measured impact. In order to enable an assessment of the effectiveness and efficiency of aid measures and facilitate the design of appropriate modifications where necessary, the Commission will, under the umbrella of SAM, call for *ex post* evaluation of large aid schemes.

In turn, the results of those evaluations are expected to provide valuable input for the monitoring and evaluation of the R&D&I Framework rules themselves, which the Commission may decide to review or amend at any time.