Below is the feedback from Trinity College Dublin, the University of Dublin, compiled from feedback from several colleagues.

With respect to the Framework for State aid for Research and development and Innovation (C2014/C 198/01) and specifically for *aid for projects covering fundamental and industrial research and experimental development* the conditions where no indirect state aid is granted to an undertaking is reasonably clear in C/198/10 except in relation to Paragraph 28 (c) and to some extend 28(b).

**2014/C 198/01 2.2.2 Collaboration with undertakings**

*Paragraph 28 (b): the results of the collaboration which does not give rise to IPR may be widely disseminated and any IPR resulting from the activities of the research organisation or research infrastructure are fully allocated to those entities, or*

*Paragraph 28 (c): any IPR resulting from the project, as well as related access rights are allocated to the different collaboration partners in a manner that adequately reflects their work packages, contributions and respective interests.*

As a practitioner putting in contractual agreements with Industry partners, Paragraph 28 (c) is often used by the collaborating industry partner as a point of negotiation to leverage more favourable terms then normally contemplated by National templates e.g. joint-ownership of IPR, ownership of non-severable improvements to industry partner Background IP, non-exclusive royalty free (NERF) access terms, requests for commercial freedom to operate (FTO). Industry partners tend to push for these types of terms upfront and ahead of any valuation of the developed IP, effectively avoiding the requirement to pay market price for the IRP as contemplated in Paragraph 28 (d) (or indirectly through 28(b)). It is difficult for the University to disagree with these types of provisions in the agreement when the Framework (Paragraph 28) is open to such interpretation. For example, it is clear from the wording of 28(c) that IPR may be allocated to both collaborating partners, so joint ownership or sole ownership to specific categories of IPR are possible.

Paragraph 28(b) would suggest that if the IPR is fully allocated to the research institution and any subsequent transfer to the collaborating industry partner should be made on market terms. However, this is not clearly defined in the definition of ‘**full allocation**’.

Requests for improvement is the following:

* regarding Paragraph 28(b) - amend the definition of ‘full allocation’ to include *‘..., including licensing them to a collaboration partner (respectively, undertakings)* ***at fair market rates****’*.
* regarding Paragraph 28(c) – to give more clarity around whether jointly-owned IPR is compliant and whether pre-agreed automatic NERF and automatic FTO is allowable under this clause without causing indirect State Aid.

**Input on EU - Framework for State aid for research and development and innovation**

The framework does provide improved guidance on what constitutes and does not constitute state aid under article 107 (1,2,3) of the Treaty. It should be recognised however that the overall application of state aid in this context is fundamentally flawed and contrary to effective academic-industry engagements.  It is founded on pre-identifying the nature and direction of research and will lead to subjective and confusing decisions.  It should be focussed on assessing state aid contributions following completion of work and how that work is disseminated or exploited.

The interpretation of how RD&I programmes are compliant with state aid can vary across funding agencies, university TTO offices and research institutions. There seems to be a reluctance within research funding agencies to give clear guidance with the preference to transfer accountability and liability to the individual University and research institute. While the roll out of this document should help standardise this interpretation, dissemination through relevant seminars and training will be required to ensure consistency of knowledge, expertise and interpretation of all stakeholders within the RD&I ecosystem.

For ease or reading and comprehension it would be helpful to include the definition of Article 107 and other Articles referenced in the document as a footnote or appendix.

It is unclear whether large scale R&D&I investments to bring about the positive effects such as deployment and demonstration of new technologies to enable the green deal are exempt from State Aid rules (under Article 107 (3d). Including examples which highlighted what circumstances does this apply would be helpful.

Regarding the use of State Aid to RD&I to improve European competitiveness, it needs to be recognised that European universities are competing globally for Industry investment particularly for projects focused on low TRL, high risk fundamental science. Our experience is that the rigour of ensuring state aid compliance is driving a risk adverse behaviour with the legal departments of universities. This results in extensive project delays that can precipitate eventual non-completion of the negotiation phase. It adds complexity and ambiguity for companies in relation to the final cost of the project for the company arising from uncertainty of the potential costs of licencing Foreground IP resulting from the programme. Rather than assisting European competitiveness this is acting as a disincentive for global companies to engage in preference to other jurisdictions such as US, China and Singapore where the model is more straightforward. A sliding scale of max aid intensity relative to market stage and risk of the research being undertaken in the collaborative programme would remove some of this ambiguity and help universities avoid any potential exposure to a state aid non-compliance.

Additional guidance on the calculation of market price for IPR which more closely aligned with the definition of maximum aid intensity would be very beneficial in the case of collaborative research activities involving Universities and Industry. This should take into account the closeness of the IP to market as a proxy for the additional investment and risk which the industry collaborator must take on to commercialise.

There is significant overlap in the definitions for Industrial research, Experimental development and feasibility studies which is confusing. For many University – Industry collaborations a single project may actually span a number of these including fundamental research. As there are significant differences in the maximum aid eligible for each category better definition is needed. Deciding which ‘boxes’ a research project may be defined under is going to be problematical and open to interpretation.

The inclusion of aid for innovation activities for SME in the framework is welcome, it is not clear whether the definition of innovation activities also includes access fees for research infrastructures. While this is explicitly called out in the innovation clusters clause, the case where an SME requires access to a specific research infrastructure for its R&D activities such as a national microscopy, materials characterisation or cell and tissue culture labs does not appear to be covered by the framework. The inclusion of research infrastructure access as an eligible cost for SME will be important both to improve the innovation capacity of the sector and ensure better utilisation and return on investment for the research infrastructure. This is particularly relevant for SMEs engaging in physical, engineering and life Sciences research. The US Department of Energy Funded Molecular Foundry has a highly successful programme operating on a similar principle.

While various elements of the report can be critiqued and analysed for effectiveness, and obvious limitations highlighted, it is perhaps the approach that needs appraisal.  This seems critically flawed because it is opposite to how research is carried out as it is framed around early analysis and assessment of the research’s outcomes.  Whether research is at low TRL or high TRL it is always an unpredictable journey.  It often fails; even the most well-planned, well-funded, and intensively worked projects simply fail.  Should these be assessed for state aid?  Similarly, the most esoteric, high risk, fundamental research can yield incredibly commercially valuable results.  State aid can and should only be assessed following the termination of a project.  It should only be assessed if the company intends to a) exploit the results AND b) prevent other research scientists (academic and industry) accessing data and findings.  In any other circumstances state aid should not be considered, the work has effectively been carried out, at the companies expense, for the public good.  The current national rules already allow for fair and proper exploitation of collaborative research by partner companies and academic institutions.  It is the licenses that derive from collaborative work that need to reflect the State’s contribution.  Providing this framework where research is analysed and allocated to various forms is contrary to how research works and is adding a potentially damaging barrier to Irish research and threatening the developing relationship of academic-industry engagement.  It is also contrary to the tenant and intention of the EU directive.  Our strong direction is to reconsider this to focus on the outputs of collaborative research such that Ireland promotes joint-innovation where the commercial rewards are properly assessed once the value of research and the state’s contribution can be properly determined.