**Latvian comments on draft COMMUNICATION FROM THE COMMISSION Framework for State aid for research and development and innovation**

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| **No.** | **Place in the document text** | **Comments/Proposals** |
|  | **Point 17.** For the purposes of this framework, the following definitions apply:  (a) ***'ad hoc* aid'** means aid not awarded on the basis of an aid scheme;  (q) **'individual aid'** means aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme; | In **Point 17.** (**a)** a definition for ‘ad hoc aid’ is included and in **Point 17.** (**q)** a definition for ‘individual aid’ is included. These definitions overlap. For example, we draw attention to the fact that ‘ad hoc aid’ is mentioned only in **point 89** regarding cumulation of aid and it is not clear to which aid it applies, because cumulation of aid may be possible also with individual aid. Please, review the necessity for clarifying point 89 – adding also reference to individual aid. For clarification reasons, we recommend using the definition for “individual aid” as defined in Council Regulation (EU) 2015/1589 of July 13 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, and delete the definition of the ‘ad hoc aid’.  Another example: Sections 3.1.2.2. and 3.2.6.1.1. provide addition clarifications for individual aid; please review the text, since here in essence reference to ad hoc aid should be used, meaning additional clarifications for aid not awarded on the basis of an aid scheme should be provided under these points. |
|  | **Point 17**. For the purposes of this framework, the following definitions apply:  (h) **'digitalisation'** means the introduction of innovative digital technologies and/or solutions to improve and/or upgrade processes, products or service functionalities; | We consider that a definition for “digitalisation” should include also reference to the introduction/creation of new related services as very often digitalisation *per se* serves as a means to create new solutions. Currently, it is not entirely clear if the reference in the ‘digitalisation’ definition to new innovative technologies includes also new digital services developed based on the existing technologies. This would also correspond to the intention of the state aid as described in point No 4 of the “Introduction” where reference is made to creation of incentives for the development of innovative technological solutions. The proposed wording might be “digitalisation” means the introduction of innovative digital technologies and/or solutions to introduce new services and/or to improve and/or upgrade existing processes, products or service functionalities”.”  In addition, we would advise to align the definition of “digitalisation” in all state aid documents. |
|  | **Point 17.** For the purposes of this framework, the following definitions apply:  (w) '**knowledge transfer**' means any process which has the aim of acquiring, collecting and sharing explicit and tacit knowledge, including skills and competence in both economic and non-economic activities such as research collaborations, consultancy, licensing, spin-off creation, publication and mobility of researchers and other personnel involved in those activities. Besides scientific and technological knowledge, it includes other kinds of knowledge such as knowledge on the use of standards and regulations embedding them and on conditions of real life operating environments and methods for organisational innovation, as well as management of knowledge related to identifying, acquiring, protecting, defending and exploiting intangible assets; | Taking into account that from the definition (w) '**knowledge transfer**' is not clear whether knowledge transfer also includes higher education organization activities in the education field, please specify the definition or include in footnote explanation on the matter. |
|  | **Point 17.** For the purposes of this framework, the following definitions apply:  (ff) 'research and knowledge dissemination organisation' or 'research organisation' means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities, the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, for example in the quality of shareholders or members, may not enjoy a preferential access to the results generated by it; | From the definition (ff) 'research and knowledge dissemination organisation' or 'research organisation' (hereafter – RO) is not clear how to set RO primary goal and whether it could be, for example, higher education organization activities in the education field or health improvement in the case of a clinical university hospital. In addition, for better understanding, please specify, whether RO is still qualified as RO if it carries out also economic activities.  Please review the definition or include in footnote an explanation on both issues. |
|  | **Point 22.** Where a research organisation or research infrastructure is used for both economic and non-economic activities, public funding falls under State aid rules only insofar as it covers costs linked to the economic activities33. Where the research organisation or research infrastructure is used almost exclusively for a non-economic activity, its funding may fall outside state aid rules in its entirety34, provided that the economic use remains purely ancillary, that is to say corresponds to an activity which is directly related to and necessary for the operation of the research organisation or research infrastructure or intrinsically linked to its main non-economic use, and which is limited in scope. For the purposes of this framework, the Commission will consider this to be the case where the economic activities consume exactly the same inputs (such as material, equipment, labour and fixed capital) as the non-economic activities and the capacity allocated each year to such economic activities does not exceed 20 % of the relevant entity's overall annual capacity. The monitoring of the ancillary character of the economic activity shall apply for at least 10 years from the start of operations of the research organisation or the research infrastructure. In case the research infrastructure or the research organisation increases its economic activity so that it cannot be considered as ancillary, the public funding of the whole economic activity will fall under State aid rules. | From the wording it is not clear how the 20 % of the relevant entity's overall annual capacity should be calculated. Previously, the Commission has clarified, that such criteria as time or space, or financing could be used as the main parameters for determining whether the 20% threshold is respected. Please add this clarification in the Guidelines.  It is not clear from the sentence “The complementary nature of economic activity will be monitored for at least 10 years after the beginning of the research organisation or research infrastructure.” – which moment is the starting period for the monitoring. Does it start from each additional project or investment into infrastructure? What exactly will be monitored, particularly if there is no link to the use of infrastructure (operation costs)?  Latvian authorities kindly ask the Commission to assess the possibility in paragraph 22 to replace the word "at least" with the word "up to", providing that the complementary nature of the economic activity will be monitored up to 10 years or the depreciation period of the assets, whichever comes first. It should be taken into account that the depreciation period of the hardware, for instance, is less than 10 years. We would also like to draw attention to the fact that reducing the monitoring period of infrastructure development projects in case of construction of research infrastructure will significantly reduce the administrative and financial burden for the cooperation institution and beneficiaries. |
|  | Point 27. Where a research organisation or research infrastructure is used to perform contract research or provide a research service to an undertaking, which typically specifies the terms and conditions of the contract, owns the results of the research activities and carries the risk of failure, no State aid will usually be passed to the undertaking if the research organisation or research infrastructure receive payment of an adequate remuneration for its services, particularly where one of the following conditions is fulfilled:  (b) where there is no market price, the research organisation or research infrastructure provides its research service or contract research at a price which:  - **reflects the full costs of the service and generally includes a margin established by reference to those commonly applied by undertakings active in the sector of the service concerned**, or  - is the result of arm's length negotiations where the research organisation or research infrastructure, in its capacity as service provider, negotiates in order to obtain the maximum economic benefit at the moment when the contract is concluded and covers at least its marginal costs. | Please clarify whether “the full costs of the service” reflects the full costs including amortization costs. Please add this clarification in the Guidelines. |
|  | Point 44. The Commission considers that aid does not present an incentive for the beneficiary wherever work on the relevant R&D&I activity44 has already started prior to the aid application by the beneficiary to the national authorities45. Where start of works takes place before the aid application is submitted by the beneficiary to the national authorities, the project will not be eligible for aid. | Taking into consideration Commission’s previously provided guidance, Latvia suggests to add to Point 44 that the incentive effect in case of notifications to the Commission is fulfilled and the start of work can take place only after the Commission’s decision. Point 44 is clear in case GBER is applied that does not ask for a notification to the Commission. In the meanwhile, the Commission had clarified that if after the notification there were no positive Commission’s decision adopted then in case the aid recipient had already started the works the aid then should have been considered as not fulfilling the incentive effect. Please, be informed that this guidance was provided in case SA.46408 where the Aviation Guidelines were applied that have the same approach (wording) on the incentive effect as draft RDI Guidelines. Even though Aviation guidelines don’t restrict Member States to start works and sign an aid award agreement before Commission’s decision, in case SA.46408 the aid recipient could only start works after the Commission’s decision. |
| Taking into consideration that the Commission has provided guidance on the incentive effect test for Seal of Excellence projects in a Staff Working Document, available [HERE](https://ec.europa.eu/regional_policy/sources/docgener/guidelines/2017/application_of_state_aid_rules.pdf), please add in point 44 the exception that if an application has been made for centrally managed EU funding, for example, under the Horizon 2020 SME-instrument, the incentive effect is fulfilled when later applying in the nationally managed programme with the project that had received Seal of Excellence. |
|  | 81. The eligible costs shall be supported by the most recently available documentary evidence which shall be clear and specific. Indirect R&D project costs may also be calculated on the basis of a simplified cost approach in the form of a flat-rate of up to 15%, applied to total eligible direct R&D project costs. In the latter case, both categories of direct and indirect costs should be established on the basis of normal accounting practices, must comprise only eligible R&D project costs listed in Annex I, and must be duly justified. | Latvian authorities kindly ask the Commission to assess the possibility to increase the flat rate of indirect costs from 15 % to 25 %: (a) justified by the practices applied in European universities and programme „Horizon 2020, or (b) to apply the approach planned under programme „Horizon Europe”, which provides possibility to accept actual indirect costs allocated via beneficiary’s usual key drivers in the unit cost calculation (paragraph 81). |
|  | Point 89. Aid may be awarded concurrently under several aid schemes or cumulated with *ad hoc* aid, provided that the total amount of State aid for an activity or project does not exceed the aid ceilings laid down in this framework. As noted in point 11, Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of Member States does not constitute State aid and should not be taken into account. Where such Union funding is combined with State aid, the total amount of public funding awarded in relation to the same eligible costs must however not exceed the most favourable funding rate laid down in the applicable rules of Union law. | In order to ensure that state aid rules are correctly respected in the practice, including cumulation and the maximum aid intensity, Latvia suggests to define that works on the project should only be started after all the granting authorities have taken all decisions on the granting of aid. |
|  | Point 101. With the exception of individual aid awards below EUR 100,000, Member States must publish on a comprehensive State aid website, at national or regional level, at least the following information on notified State aid measures: the full text of the aid scheme and its implementing provisions or legal basis for individual aid, or a link to it; the identity of the aid awarding authority; the identity of individual beneficiaries; the form and amount of aid awarded to each beneficiary; the date of award; the type of beneficiary (SME or large enterprise); the region in which the beneficiary is located (at NUTS level II); and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such information must be published within six months after the awarding decision has been taken or, for fiscal measures, within one year from the date  of the tax declaration, must be kept for at least ten years and must be available to the general public without restrictions. | Member states use the IT platform established by the European Commission (Transparency Award module). In order to ensure common approach to transparency requirements in the State aid regulations we propose to use the wording, e.g., as in Temporary framework regulation Article 88:  “1. [..] the Member States must publish on a comprehensive State aid website, at national or regional level, or Commission’s IT tool[1] [..]”. |
| The initial concept of the transparency requirement covered individual grants above the threshold of EUR 500 000. In the case of RDI aid, there is a disproportionate administrative burden foreseen here on the provision of transparency requirements for each aid award granted, regardless of its threshold. Therefore, Latvian authorities insist on keeping the initial concept that the transparency requirement applies to individual grants above the threshold of EUR 500 000. |
|  | Point 145. In the case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility solely on the basis of the evaluation plan. | For legal certainty, please clarify whether in case of aid schemes excluded from the scope of a block exemption Regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility based on the evaluation plan and block exemption Regulation or based on the evaluation plan and RDI Guidelines. Please add this clarification in the Guidelines. |
|  | Point 147. In accordance with Council Regulation (EC) No 659/199964 and Commission Regulation (EC) No 794/200465 Member States must submit annual reports to the Commission. | Technical comment:  Please, take note that in point 147 and also in footnote No. 58, 64, and 65 the Council Regulation (EC) No 659/1999 is mentioned, however it is no longer in force and are replaced by the Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union. |