

**Statement of Fraunhofer on the revision of the Framework for
State Aid for research and development and innovation
1st consultation of the EC:**

In principle, Fraunhofer welcomes the predominant continuity of the proven regulations of the Framework for State aid for research and development and innovation as well as the retention of important principles such as the separation of accounts or the demarcation of economic and non-economic activities.

The focus on digitalisation, the Green Deal and the importance of SMEs for a sustainable economy are, in our view, important issues that need to be addressed in the state aid regulations.

Notwithstanding this, selective clarifications and amendments are necessary:

- Digitalisation (para. 17, letter h))

Fraunhofer welcomes the fact that a definition of "digitalisation" is now being introduced into the framework. However, in order to ensure consistency within state aid law, this definition should be consistent with the definition of "digitalisation" in the General Block Exemption Regulation (GBER);

- Intangible assets (paragraph 17, letter v))

The term "intellectual property rights" is referred to in the definition of "intangible assets", but without being sufficiently specified. In view of the economic importance of software and databases, especially with regard to digitalisation, and its relevance for the granting of access rights, an explicit definition of the term "intellectual property rights" including **software** and **databases** in addition to patents, licences, know-how, is

necessary. This will lead to greater legal clarity and also avoid inadmissible indirect subsidies with regard to software and databases;

- Research on behalf of companies

In the area of contract research, when assessing funding/awards or applying other methods, competition-compliant conditions should be ensured in comparison to those research institutions that determine their total costs on the basis of a comprehensible performance and cost accounting. This is to exclude indirect subsidies in favour of the companies commissioning them and to secure a level playing field between research institutions competing with each other for research projects. Therefore strict requirements are also to be placed on the calculation of total costs including overhead costs at all research institutions/universities carrying out contract research on behalf of companies. It should be also ensured that a margin rate will be calculated on top in such cases.

- Collaboration with undertakings (paragraph 30)

With the aim of reliable exclusion of indirect state aid in favour of undertakings and to ensure market conditions for the granting of access rights by research institutions, there is a need to adjust the wording of paragraph 30 by resolving the relationship between the alternatives mentioned there. The core provision according to which research institutions grant access rights only in return for a market price must be applicable in general and may not be waived if, in addition to the granting of access rights pursuant to alternative d), one of the other alternatives (letters a), b) or c)) is (partially) met.

- Contracts with research-based start-ups

Research-based start-ups are playing an increasingly important role and take Europe's SME strategy into account. After their foundation, start-ups generally have little capital available and sometimes still have to make

high investments in order to develop technologies to market maturity. Thus, there is often only limited capital left for accessing the necessary resources of the research institution, in particular the use of intellectual property rights and infrastructure required for the technology.

As far as they remain within the scope of the conditions usually agreed with start-ups, research institutions can take this into account when negotiating a contract. However, Fraunhofer suggests to establish guidelines within the framework in order to be able to grant start-up-friendly and liquidity-protecting conditions. To implement this, the following clarification should be added to the Community Framework:

In the case of research-based start-ups, the Commission considers that no indirect State aid is awarded to the start-ups through the favourable conditions of access to infrastructure and intangible assets of the research institutions if a market price has been negotiated with the aim of achieving an appropriate economic benefit for the research institution, taking into account the liquidity situation of the start-up and the statutory objectives of the research institution, and if at least the marginal costs of the research institution are covered in the first years after commencement of business of the start-up.
