



ROYAL NORWEGIAN MINISTRY OF  
TRADE, INDUSTRY AND FISHERIES

Europakommisjonen/European Commission  
Directorate-General for Competition,  
Unit H1  
State aid Registry  
1049 Bruxelles /Brussel  
Belgique /België

Your ref  
HT.5967

Our ref  
21/3402-19

Date  
3 June 2021

**Comments from Norway - Review of the Communication on the  
Framework for State aid for research and development and innovation  
Ref: HT.5967**

The Norwegian authorities would like to thank the Commission for the opportunity to provide comments on the draft Communication on the Framework for State aid for research and development and innovation (draft RDI Framework). The Norwegian authorities agree with the Commission that some targeted adjustments of the existing rules are necessary to reflect the latest regulatory, economic and technological developments. We also believe that it is necessary to both clarify and simplify the RDI Framework, in order to make it easier for Member States/EEA states to support research, development and innovation.

**Need for clarifying the application of the rules**

According to the explanatory note accompanying the consultation on the draft RDI Framework, the fitness check evaluation showed that a number of targeted technical revisions aimed at further simplifying and clarifying the application of the rules, laid down both in the RDI Framework and in the relevant articles in the GBER, are necessary. We agree that clarifications are needed. In addition to the amendments to the RDI Framework suggested by the Commission, we would comment on parts of the draft RDI Framework that are particularly important to Norway, and where we have encountered challenges.

*Categorisation of R&D activities - draft RDI Framework para 14 (a)*

The Commission considers that it is useful to maintain different categories of R&D activities regardless of the fact that those activities may follow an interactive model rather than a linear model (footnote 12). We would point out that the distinction between industrial research and experimental development is in practice challenging to draw, and quite frequently both categories appear in the same innovation projects. One solution would be to introduce

Postal address  
Postboks 8090 Dep  
0032 Oslo  
postmottak@nfd.dep.no

Office address  
Kongens gate 8  
www.nfd.dep.no

Telephone  
+47 22 24 90 90  
Org. nr.  
912 660 680

Department  
Department of  
Competition Policy,  
Company Law and  
Economic Analysis

Reference  
Nina Gjerde Nettum  
+47 22 24 67 85

“Applied research” in addition to the existing R&D categories, with a grant rate between the maximum grant rates for experimental development and industrial research for these kinds of projects (e.g., 35 % or 40 %), plus SME- and/or collaboration/dissemination bonuses where applicable.

*The definition of research infrastructure* - draft RDI Framework para 17 (gg) and para 20

In our opinion, both point 49 of the preamble to the GBER and para 20 of the RDI Framework are unclear regarding investment aid for research infrastructures. We are aware that granting authorities have experienced challenges related to the calculation of the overall yearly capacity of the infrastructure and how much of this capacity should be allocated to economic activity. We believe that the RDI Framework should provide more detailed guidance on this point.

*The definition of knowledge transfer* - draft RDI Framework para 17(w)

The definition in the draft RDI Framework para 17(w) is very broad and it can be difficult to understand the boundaries. We believe that the RDI Framework should provide more detailed guidance on this point.

*The definition of research organisation* - draft RDI Framework para 17(ff)

There is some uncertainty regarding how much economic activity, in the form of for instance contract research, an organisation may have and still be considered to have independent research as its primary goal. Is the limit 50 %, or it is possible to have more than 50 % of the income from economic activity? If so, what would the upper limit be? We would appreciate more clarification on this point.

We assume that the requirement for the activity to be independent also applies where the primary goal of the organisation in question is wide dissemination of the results of research activities through, for instance, knowledge transfer. With a generally broad definition of research organisation and where organisational form is not important, the requirement for independence often becomes decisive. However, it is not always evident what are the requirements for an activity to be independent. Further explanations of what this entails would be useful.

*Research and knowledge dissemination organisations and research infrastructures as recipients of state aid* - draft RDI Framework section 2.1

The research infrastructures for the maritime and marine sectors can play a pivotal role in developing offshore renewable energy. It can also play an essential role in developing new environmentally friendly technology for shipping and food production from the oceans. The infrastructures tend to be large, as they are dependent on pools for testing new innovations and structures in a controlled environment. The market for such infrastructures is exposed to coordination failure, as there are few or none entirely private actors on the European markets. Infrastructures have therefore, to a large degree, been publicly funded. In addition, there will frequently be considerable knowledge externalities, especially when education,

non-economic research and contract research across multiple disciplines are located together. Increasingly, European infrastructures in the marine and maritime sectors are exposed to considerable competition from State funded infrastructures globally. For these reasons we are of the opinion there is a need for more and better opportunities for State aid for such infrastructures. We would suggest the following:

1. The ancillary exemption as described in para 20 should be expanded to increase spill over effects and encourage cooperation between academia and business. We suggest that the threshold for considering such infrastructures State aid relevant to be 40 % economic activity. Further, with regard to the renting out of equipment/laboratories, we believe that the de-facto requirement, when it comes to renting out to be intra-state if it is rented out to the non-economic activities of other research organisations or universities, to be counter-productive. If such renting out is assessed to be of economic character, it is contrary to the idea of splitting activities in economic and non-economic activities. This could limit European cooperation, the use and the value of such infrastructures and increase the price for non-economic research. That is contrary to what Europe needs. It is even more unfortunate that this condition is not stated explicitly in the RDI Framework. We believe that other criteria than the percentage should be abolished. The assessment necessary today leaves too much uncertainty. The assessment should be done over a five-year period, in order to cater for changes in demand in individual years. "Ancillary" could be subject to a separate definition. We support that the clarification that the monitoring of the ancillary character of the economic activities, as defined in para 20 of the RDI Framework, shall apply for a 10-year period. However more guidance in the RDI Framework on how to set up a sufficient monitoring mechanism would be useful.
2. Further clarification of para 22 and 23 as to when an infrastructure is a "mere intermediary", as the direct profit from the use of infrastructure is frequently at the level of final recipients.
3. Due to the considerable competition from outside the EEA and the negative effects this could have for European knowledge and value creation, we suggest that para 92 is made clearer regarding aid level and requirements for evidence. The three years should be extended to at least ten years.

Norway also is of the opinion that there is a need for further clarifications in the RDI Framework. This includes what constitutes one research infrastructure, especially where there are several laboratories in one entity and how to calculate the capacity of the infrastructure. Furthermore, the requirement of a claw-back mechanism must be made explicitly in the RDI Framework. This should include how to decide what is the correct scope and structure of the monitoring and claw-back mechanism.

Norway furthermore welcomes the establishment of rules on simplified methodology to calculate indirect costs of R&D projects.

### *Non-economic activities of research organisations and research infrastructures*

As many granting authorities to a large extent also provide support to the non-economic activities of research organisations, it is important to know what constitutes non-economic activity. This is explained in para 19 of the existing RDI Framework, and the explanation there is more detailed than it was in the previous version of the Framework. Nevertheless, as regards knowledge transfer activities it is still somewhat unclear for us how far for instance a Technology Transfer Office (TTO) may go when setting up a start-up company or a license agreement without crossing the line of entering into economic activity. We would find some clarification on this point to be very helpful.

In Norway's opinion, the wording of para 21 (b) is also somewhat unclear where the research organisation is a TTO. According to the definition of a research and knowledge dissemination organisation, a TTO may be such an organisation. The requirement that all profits from knowledge transfer activities must be reinvested in the primary activities of the research organisation or research infrastructure seems to be related to the description of primary activities in para 21 (a). For a TTO or a similar kind of organisation these will not be the primary activities. This raises several questions. Will it be acceptable if the profits are reinvested in the primary activities of the TTO itself? Or must the profits be reinvested in the primary activities of the university or a similar organisation to which they are affiliated? If the latter is the case, then only the kind of TTOs and other innovation intermediaries that are affiliated to a university or a similar organisation may have knowledge transfer as a non-economic activity. These are important issues, as several granting authorities are being challenged by new types of entities who consider themselves as research and knowledge dissemination organisations in the sense of state aid legislation. The wording of para 21 (b) should be adjusted to reflect this development.

### *Indirect state aid from research organisation to undertaking through R&D performed in effective collaboration* - draft RDIF Framework section 2.2.2

Para 28 of the existing RDI Framework (para 30 in the draft RDI Framework) describes four different ways to make sure that no indirect state aid is awarded to the participating undertakings through the research organisation or research infrastructure due to favourable conditions of the collaboration. Although the existing Framework is improved in this regard compared to earlier versions, it is still, in practice, often difficult to assess whether the conditions are met or not. We particularly find para 30 (c) of the draft RDI Framework to be unclear, and it can be challenging to understand all aspects of the relationship between alternatives c) and d). Further clarification would be highly appreciated.

### **On the scope of Experimental Development, with reference to relevance for the Green Deal**

The draft RDI Framework states in in para 124 on the assessment of whether aid contributes to maintaining inefficient market structures that (our emphasis):

"In its analysis of market structures, the Commission will consider whether the aid is awarded in markets featuring overcapacity or in declining industries. However, in situations where the market is growing *or where State aid for R&D&I is likely to change the overall growth dynamics or in particular the GHG emissions' footprint of the sector (in accordance with the European Green Deal and European Digital Strategy Communications), notably as a result of introducing new technologies, for example to achieve decarbonisation or the digitalisation of the production, or both, without an increase in capacities, such aid is not likely to raise concerns.*"

This is in line with the dual market failure concerning new energy- and climate technologies, where both spill over effects and the failure to fully internalise the societal cost of greenhouse emissions on the part of the emitter leads to under-investment in research, development and scaling of innovative, climate friendly technologies.

Enova, as a Norwegian state-owned enterprise promoting investments in climate friendly technologies, thus has notified and gained ESA approval for the DEMO aid scheme<sup>1</sup>, supporting demonstration projects that are beyond the stage of RDI (i.e. do not fulfil the criteria for classifying as RDI), but where the novelty of the technology and the risks involved also do not fulfil the logic for environmentally friendly investments under the EEAG - seeing as there is no relevant counterfactual investment and one main purpose of the demonstration project is the first industrial deployment of a novel technology or process. The commercial value of the demonstration project may be limited, and dependent on successful demonstration and often on further deployment of the technology/product that is demonstrated.

The draft RDI Framework defines "experimental development" (17 (k)) as (our emphasis):

"experimental development" means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services, including new or improved digital products, processes or services, in any area, industry or sector. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. *This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.* Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and

---

<sup>1</sup> <https://www.eftasurv.int/cms/sites/default/files/documents/decision-234-16-COL.pdf>

other operations in progress, even if those changes may represent improvements;"

It is Norway's opinion that demonstration projects, and particularly where novel, environmentally friendly production processes are concerned, face market failures that are not sufficiently addressed through the current RDI Guidelines and the EEAG. Such market failures are also acknowledged in the IPCEI Consolidated Guidelines<sup>2</sup>, where para 22 includes:

*"Projects comprising of first industrial deployment must allow for the development of a new product or service with high research and innovation content and/or the deployment of a fundamentally innovative production process. Regular upgrades without an innovative dimension of existing facilities and the development of newer versions of existing products do not qualify as first industrial deployment."*

The draft revision of the IPCEI Guidelines further explain in para 25 that:

*"For the purpose of this Communication, first industrial deployment means the upscaling of pilot facilities, demonstration plants or of the first-in-kind equipment and facilities covering the steps subsequent to the pilot line including the testing phase, but neither mass production nor commercial activities. First industrial deployment activities can be financed with State aid as long as the first industrial deployment follows on from an R&D&I activity and itself contains a very important R&D&I component which constitutes an integral and necessary element for the successful implementation of the project. The first industrial deployment does not need to be carried out by the same entity that carried out the R&D&I activity, as long as the former acquires the rights to use the results from the previous R&D&I activity, and the R&D&I activity and the first industrial deployment are both covered by the project."*

Norway is of the opinion that the RDI-guidelines should extend to also include "First Industrial Deployment", as defined in the IPCEI Communication. Maximum aid intensities should be similar to "Experimental Development", and there should be sufficient safeguards in terms of claw-back mechanisms to ensure that the State aid for First Industrial Deployment remains proportionate and limited to the necessary. Aid for First Industrial Deployment could, if deemed necessary be limited to projects contributing to objectives of common European Interest<sup>3</sup>, e.g. promoting *"the GHG emissions' footprint of the sector (in accordance with the European Green Deal and European Digital Strategy Communications), notably as a result of*

---

<sup>2</sup> <https://www.eftasurv.int/cms/sites/default/files/documents/Consolidated-version--Criteria%20for%20projects%20of%20common%20European%20interest.pdf>

<sup>3</sup> We do, however, realise that this condition might be difficult, due to Case T-356/15 Hinkley Point para 85-86, where the Court states that "It cannot be concluded that Article 107(3)(c) TFEU limits the objectives capable of being pursued by Member States to those that are in the interest of all or the majority of the Member States of the European Union. In referring to a 'common' interest in paragraph 125 of the judgment of 15 June 2010, Mediaset v Commission (T-177/07, EU:T:2010:233), the Court was merely indicating that the interest had to be a public interest and not just a private interest of the beneficiary of the aid measure."

*introducing new technologies, for example to achieve decarbonisation or the digitalisation of the production” (cf. para 124 of the draft RDI Framework).*

### **On the cumulation of aid with the ETS Innovation Fund**

In para 89, on the cumulation of aid, it is stated that:

*“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 the case of the ETS Innovation Fund, which could potentially be a source of co-funding for late stage RDI projects, "the same eligible costs" are not necessarily readily identifiable. The ETS Innovation Fund uses an entirely different methodology for calculation of the eligible costs and can include additional costs of innovation and environmental protection, regardless if such costs are investment costs (CAPEX) or operational costs (OPEX). Guidance on the assessment on cumulation based on differing methodologies, and in particular on the cumulation of aid with the ETS Innovation Fund, would be welcome. Note that this comment also extends to the EEAG and environmental aid provided under GBER.

### **Digital innovation hubs**

This is more a question than a recommendation. Why are digital innovation hubs only seen as relevant for investment aid when they are part of clusters? Would it perhaps be relevant to consider establishing a separate measure for digital innovation hubs, in addition to the measures for research infrastructure and technology infrastructure?

### **Maximum aid intensities - Research infrastructure and technology infrastructure**

The grant rates for research infrastructure and technology infrastructure are in the draft RDI Framework annex II maximum aid intensities set to be 50 % and 25 % respectively, while the grant rate for both types of infrastructure made by innovation clusters is set to be 50 %, plus regional bonuses where applicable.

Independent of whether the infrastructure is defined to be within a cluster or not, there is a risk that different grant rates for similar infrastructure investments will trigger discussions of whether the infrastructure is defined as a part of a cluster or not. For further simplification, grant rates should be the same for research infrastructure and technology infrastructure and harmonized with investment aid for innovation clusters. To be consistent the grant rate should be 50 % plus regional bonuses for all or based on an individual assessment compliant with para 92.

The argument for different grant rates is due to differences in degrees of market failures. Traditionally, the market failures regarding RDI are, seen from the supply side (here the government), are related to the distance/time to market realisation. Norway's experience, however, is that we need to consider also market failures on the demand side (here the

enterprises). We observe that the enterprises in need of research infrastructures normally are larger, more mature and more resourceful than enterprises in need of technology infrastructure. The differences in market failure on the demand side should be used as an argument for levelling the total market failures.

Yours sincerely

Carsten Borgersrud Nielsen  
Acting Deputy Director General

Nina Gjerde Nettum  
Senior Adviser

*This document is signed electronically and has therefore no handwritten signature*