**Comments of the Czech Republic on the draft revision of Framework for State aid for research and development and innovation (RDI Framework)**

1. SCOPE OF APPLICATION AND DEFINITIONS
   1. Definitions

(q) **'individual aid'**

We suggest to keep the current definition: **'individual aid'** means aid awarded to a specific undertaking and includes ad hoc aid and aid awarded on the basis of an aid scheme;

(gg) '**research infrastructure**'

We propose to update the definition of the research infrastructure to explicitly include also human resources which are necessary for proper operation of this infrastructure (e.g., technicians, service etc.). Human resources are inseparable part of the research infrastructure which cannot operate without these resources. The absence of human resources in the definition of the research infrastructure could cause problem especially in case where the infrastructure exceeds the share thresholds for ancillary economic activities as only investment costs could benefit from aid for research infrastructure under Art. 26 of GBER.

(ii) **'small and medium-sized enterprises'**

The SMEs definition should be linked rather to Annex I GBER and not to soft law recommendation.

1. STATE AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TREATY

**2.1. Research and knowledge dissemination organisations and research infrastructures as recipients of State aid**

*2.1.1. Public funding of non-economic activities*

Article 21. (a)

We suggest to add one more item (iv):

(iv) research which can be called ‘inspired’, done not in collaboration with an undertaking but in a manner similar to independent research and done on the basis of inspiration coming from an application partner, typically within an innovation cluster.

This kind of research is neglected by the definitions while it is the most valuable form of collaboration between undertakings and research organizations. It cannot be clearly called independent but it is not collaborative or applied research. It is surely a non-economic activity.

Article 22.

We propose to add a term **new technology infrastructures** at the beginning of the article and to remove the new proposed text concerning the ancillary character of economic activities and their monitoring. We find this new part redundant and confusing. In case the removal is not possible we would like to present following suggestions/comments:

Summary:

As regards how the monitoring of the ancillary character more clarity should be done; What is meant by a 10 year period? Does it mean that after 10 years there is no need to monitor the character of the economic activity? It should be clarified when this 10 years monitoring period starts, especially if that financing of a research organization as a university is done by different providers in various times. It is also not clear whether the monitoring should be done by a research organization or by a public authority, a public provider. To a certain extent a freedom in how to evaluate the capacity allocated to ancillary activities and within which frame should be given to the entities.

There is a need to clarify: “i) which economic activity shall fall under State aid rules, ii) for which period and iii) how to calculate it.” “The recovery shall be applied only for the actual year when the threshold is breached.” It should be clarified if the recovery shall be related to i) total aid, ii) aid for particular year or iii) expenses which were supported. We propose to establish a claw-back mechanism for ancillary economic activities, similarly to the Article 26 par. 7 of the GBER for the research organisations.

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*More details to above summary on* ***ancillary economic activities:***

An application mechanism of the additional rule for monitoring seems unclear to us as both terms; research organisation and research infrastructure are used. In case of research organisation, it appears unclear when the mentioned monitoring should start.

If the new text means monitoring generally from the beginning of operational existence of research organisation, we cannot see any connection to a specific supported project or state aid financing provided under this R&D state aid framework or its timing.

It is also not clear how to apply the mechanism for research organisation existing and operating over 10 years. The financing of research organisation as a university is typically carried out by many different providers in various time, for various specific projects or purposes or for specific relevant entities (e.g. faculties of the university). The supported projects themselves could be also different in terms of duration (e.g., up to 3 – 5 years) or in terms of subject of support (e.g., ongoing institutional aid for non-economic activities, one-time investment aid for equipment or buildings or initiating staff-operating costs). For this reason, it is unclear who/which provider shall monitor ancillary activities for 10 years. If all different providers shall monitor ancillary activities for at least 10 years it would cause huge administrative burden for both beneficiaries and providers of aid.

In addition, what seems unclear is the case of the research organisation that once increased its economic activity above the limit in the past, but at the relevant time of the new support the organisation has been under the limit again and its economic activity can be considered as ancillary.

Additionally, we have following comments on wording (sentences) of point 22 which summaries our experiences with application of this mechanism.

1. *“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.”*

The definition of the start of the monitoring is unclear as different terms “research organisation or the research infrastructure” are used instead of “relevant entity”.

The notion of relevant entity is dynamic and is attached to the specific project (provided by a specific provider in a specific time). Contrary the notion of research organisation/infrastructure can include all various relevant entities (with specific projects) in the given research organisation/infrastructure.

For this reason, the monitoring of ancillary economic activity shall be carried out at the level of relevant entity (as it is defined in Point 22), and also monitoring shall be started from the start of operations of the relevant entity or start of specific supported project or financing.

1. *“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.”*

The financing of research organisation/infrastructure is typically carried out by several different providers in various time, for specific projects/purposes and for specific relevant entities. The supported projects themselves could be also different in terms of duration (e.g., short projects up to 3 years, long term projects) or in terms of subject of support (e.g., ongoing institutional aid for non-economic activities, one-time investment aid for equipment, buildings or labour costs). For this reason, it is unclear why provider of the short-term support shall monitor ancillary activities for 10 years (when the supported costs for salaries and short-term equipment are already consumed and aid is not provided anymore for this project).

Therefore, we propose **the monitoring shall be limited for the period of providing of the aid for operational costs and/or the depreciation period of supported investment costs,** i.e., even for a shorter period than proposed 10 years. For projects which included aid for buildings or equipment with long depreciation periods we propose to make possible using of minimum 10 years monitoring period. The longer monitoring period would cause huge administrative burden for both beneficiaries and providers of aid (e.g., claw-back for 30 years in some cases) and is not proportional.

We also propose **to clarify which provider shall monitor** ancillary economic activity. Is it an obligation of a provider of aid (e.g., ministry of education) or monitoring shall be carried out centrally by a designated public authority (e.g., government office)? Note: providers of aid are usually different public authorities which have authorization and control mechanism only for aid provided by this provider (e.g., supported project).

1. *“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.”*

As we mentioned above, the monitoring of ancillary economic activity shall be carried out at the level of the relevant entity as it is defined in Point 22. Also, **an increase of economic activity shall be related to the particular relevant entity** and not to the research organisation/infrastructure as a whole.

Otherwise, an increase of economic activity in different relevant entities (e.g., projects or departments, which are carried out in the same research organisation but not related to supported project) could have negative consequences for a supported relevant entity. For example, a project of a relevant entity A (provided in 2020 by Ministry of Education) which is all the time fully in line with conditions for ancillary economic activity could be in future jeopardized by economic activity of a different relevant entity B (provided in 2025 by Ministry of Industry) in the same research organisation.

1. *“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****.”*

Although according to the highlighted wording of Point 22 whole economic activity shall fall under State aid rules, there is a need to clarify: i) which economic activity shall fall under State aid rules, ii) for which period and iii) how to calculate it.

We can demonstrate these problems with a simple example of a relevant entity which has various percentage shares of economic activity within 5 years.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Year** | | | | |
| **1.** | **2.** | **3.** | **4.** | **5.** |
| **Share of economic activity** | 10 % | 5 % | 30 % | 15 % | 20 % |
| **Ancillary** | yes | yes | no | yes | yes |

According to the proposed definition it is clear the state aid rules shall be applied for year 3. (for this year beneficiary shall recover whole financing for 30 % of economic activity). However, it is not clear whether the State aid rules shall be applied also for years 1. and 2., i.e., for years when the activities were fully ancillary (bellow 20 %).

We are of an opinion that **the recovery shall be applied only for the actual year when the threshold was breached (i.e., only year 3.)** andshall not include period when a beneficiary was fully in line with the State aid rules (i.e., years 1. and 2.)**.** The recovery shall also not apply following years (years 4. and 5.) as the economic activities are again ancillary (below 20 %) these years.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Year** | | | | |
| **1.** | **2.** | **3.** | **4.** | **5.** |
| **Share of economic activity** | 10 % | 5 % | 30 % | 15 % | 20 % |
| **Ancillary** | yes | yes | no | yes | yes |
| **Recovery** | no | no | 30 % | no | no |

The application of recovery for previous years (i.e., before the threshold was breached) would be unnecessary strict for beneficiary (often the share of economic activity depends on factors which are outside of control of beneficiary – e.g., decreasing public budget due to COVID-19 would cause also a drop in subsidies for non-economic activities or their postponement from current to next year etc.).

The application of recovery for following years (i.e., after the threshold is breached) would cause extraordinary burden for beneficiaries and providers as every one percent of economic activity will need to be recovered. This could have **two very negative effects** – the beneficiary will be motivated to have zero economic activity (e.g., not providing research infrastructure to any undertakings as any such activity will inevitably lead to recovery of provided aid!) and we can also expect possible legal disputes with beneficiary for each next year of duration of the project.

For these reasons we are of an opinion that **the recovery shall be applied only for the actual year when the threshold is breached** (only year 3. in the example)

We would also like to ask for a clarification **how to calculate the amount** which shall be recovered, especially for the aid which is provided for a one-time investment at the beginning of the project. It is not clear whether the recovery shall be related to i) total aid, ii) aid for particular year or iii) expenses which were supported.

Again, we could demonstrate this question with the example of investment aid (a project shall be carried out for 10 years, a grant was 1.000 EUR, investment costs were 1.000 EUR and depreciation period was 20 years).

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Year** | | | | |
| **1.** | **2.** | **3.** | **4.** | **5.** |
| Share of economic activity | 10 % | 5 % | 30 % | 15 % | 20 % |
| Ancillary | yes | yes | no | yes | yes |
| Recovery | no | no | 30 % | no | no |
| i) of total aid (1.000) | 0 | 0 | 300 | 0 | 0 |
| ii) of aid for particular year  (100 = 1.000 / 10 years) | 0 | 0 | 30 | 0 | 0 |
| iii) of depreciation costs  (50 = 1.000 / 20 years)\* | 0 | 0 | 15 | 0 | 0 |

\* In this example we suppose the depreciation period is 20 years, i.e., depreciation for each year is 50.

Note: we are of an opinion the recovery of 30 % of total aid (case i) will be in breach of State aid rules as the recovery covers also funding of non-economic activities (please notice that the total recovery is 30 % of investment costs but average of total economic activity of the investment for five years is only 16 %). Thus, the difference (14%) is apparently recovered from non-economic activity and shall not be recovered.

1. **point 22 – claw-back mechanism for ancillary economic activities**

We propose to establish claw-back mechanism for the financing of research organisations/infrastructures as it is already in the Article 26 par. 7 of the GBER for the research infrastructure. The current claw-back mechanism in the GBER can be used only for research infrastructure and is limited only for cases which are provided under the GBER. Contrary, the financing of the research organisations is usually provided outside of the State aid rules (non-economic activities) and no GBER is applied at the time of granting.

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*More details to a freedom in how to evaluate the capacity of ancillary activities:*

Where a research organization 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 activities. Where the research organization or research infrastructure is used almost exclusively for a non-economic activity, its funding may fall outside state aid rules in its entirety, 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 organization 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, labor and fixed capital) as the non-economic activities and the capacity allocated each year to such economic activities does not exceed approx. 20 % of the relevant entity's overall annual capacity where it should decide on its own how to evaluate its capacity and within which time scale. In case the research infrastructure or the research organization 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.

The monitoring of the 20% limit is one of the greatest sources of monitoring and bureaucracy burden inflicted on the research organizations by the authorities. It has to be simplified and more freedom has to be given to the research organizations on how to evaluate the relevant entity. And the limit must not be strict.

We agree with the general limit of the public support limit of 20%. However, after the experience of the pandemic, when academic institutions were significantly involved in testing, we think that there should be at least some temporary relaxation of the 20% limit in favor of public health. The research infrastructure could thus be used on a temporary basis to help resolve the crisis situation and would not have to worry about subsequent financial penalties if it accidentally exceeds the limit of 20 %.

*2.1.2. Public funding of economic activities of research organisations and research infrastructures*

Article 24

We propose to extend the application of this article also for other providers of services in area of research, development, and innovation. The mechanism of point 24 could exclude the aid also for innovation clusters and technology infrastructures.

We suggest to remove the letter b which is redundant from the logic of state aid point of view. If the advantage is fully passed on to the final recipients (letter a) it is sufficient to ensure the absence of the state aid at the level of intermediary. We also suggest to change the wording „open tender procedure “to „open tender procedure or any other open public call“, because now it seems only linked to public tenders or public procurement.

**2.2. Indirect State aid to undertakings through public funded research and knowledge dissemination organisations and research infrastructures**

*2.2.2. Collaboration with undertakings*

31 + 32*.* Reference is wrongly made to to points 31 (d) and 31 instead of 30 (d) and 30

**3.2.2 Appropriateness of the aid measure**

*3.2.2.1. Appropriateness among alternative policy instruments*

Article 74

In the last sentence it is expected that the Member States should demonstrate that the State aid for the assessed project or activity would create synergies with any funding or co-financing from Union programmes. Even though the synergies between regional, national and European funding and co-financing are important and we believe that providers see synergies as an opportunity, the need to demonstrate a synergy to demonstrate its appropriateness among alternative policy instruments, especially with a Union programme only, seems to be quite strict. Therefore we recommend to alleviate the condition this way: *„Member States should* ***seek the possibility*** *that the State aid for the assessed project or activity could create synergies with any funding or co-financing from Union* ***or national or regional*** *programmes. “*

**3.2.3 Proportionality of the aid**

3.2.3.1. General conditions

Article 81

This point allows to use also indirect R&D project costs calculated on the basis of a simplified cost approach. Unfortunately, the point specifies the only method of simplified cost methods how to calculate the indirect R&D project costs, which is in the form of a flat-rate of up to 15%, applied to total eligible direct R&D project costs. State aid applies also to programmes of shared management, where projects in R&D financed from ERDF and ESF+ can be also financed using simplified cost options. However, in that case there are more methods that can be used, including the same method the Framework programme for research and innovation (Horizon Europe) is using. Setting only one method in the Framework for state aid narrows too much the possibilities given to programmes under the shared management by their regulations. Therefore, we suggest to amend paragraph 81 as follows: The eligible costs shall be supported by the most recently available documentary evidence which shall be clear and specific. **All simplified cost options (SCOs), such as flat rates, unit costs and lump sums can be applied.** In the latter case, the categories of direct 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.

In addition, we propose to increase the limit Indirect R&D project costs from 15 % to at least 20 % or 25 %.

*3.2.3.2. Additional conditions for individual aid*

Article 95

We suggest the following modification of the table

It follows the previous recommendations, especially the abolition of the terms ‘effective’ collaboration’ and ‘contract research’. Thus, one line is omitted here. More, we suggest introducing one column with Public research organizations with 100% funding. It is unjust to ask public research organizations, that are fully publicly funded, to contribute to the project and if the industrial partner is asked to co-finance the project for the research institution it puts the research institution into unfavorable position e.g. in negotiations on terms in IPR.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Public research organization | Small enterprise | Medium-sized enterprise | Large enterprise |
| Aid for R&D projects |  |  |  |  |
| Fundamental research | 100% | 100% | 100% | 100% |
| Applied research | 100% | 90% | 80% | 70% |
| Aid for the construction and upgrade of research infrastructures | 100% | 60% | | |
| Aid for the construction and upgrade of technology infrastructures | [35%] | | | |
| Subject to at least two Member States providing the public funding, or . Subject to the technology infrastructure providing services predominantly to SMEs (at least allocating 80% of its capacity for that purpose) | [40%] | | | |

The aid for the construction and upgrade of technology infrastructures shall be set to 40 %. This higher level could increase providing of R&D&I services which could have positive effects for competitiveness and growth of European union. For the same reason we also propose to increase the level of aid for research infrastructure up to 65 %, resp. 55 %.

1. COMPATIBILITY ASSESSMENT OF R&D&I AID

3.2.4 Transparency

Article 101

We disagree to transparency threshold of EUR 100 000. The amount should stay in line with the threshold that is already well established in the general State aid framework, i.e. EUR 500 000 for individual aid awards. From our perspective, coherence of the EU State aid rules should be maintained. We understand the lower threshold of EUR 100 000 was introduced by the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, indeed, purely as a temporary exception for the limited time when dealing with negative impacts of the coronavirus crisis. Lowering the transparency threshold permanently from EUR 500 000 to EUR 100 000 within the RDI Framework would only significantly increase the administrative burden for the granting authorities. We see no benefit in this step.

1. REPORTING AND MONITORING

Article 147

We propose to update link to current Council Regulation (EC) No 2015/1589 instead of Council Regulation (EC) No 659/1999.

1. APPLICABILITY

Article 150

We would like to be confirmed in opinion, that the modified version of the R&D state aid framework shall not be applied retroactively and shall be applied only for aid measures provided after the new framework will come into force.

Moreover, we would like to ask for clarification whether compliance with this Framework shall include also monitoring of the ancillary character of economic activity envisaged in point 22. We are of an opinion that the monitoring shall not be applied retroactively and shall be applied only for aid measures provided after the new framework will come into the force.

In addition to all the comments above, we would like to highlight a key problem: the effort to force research institutions to generate income from non-public sources. It is often seen as a way how to evaluate the scale of research collaboration between the public and private sector. Especially among the EU13 countries there is a greatly widespread meaning that the collaboration is not intense enough. Thus the research institutions are evaluated on the basis of this monitoring indicator or there are public funding schemes where this amount of income is a precondition. This means that the research organizations sometimes have to do activities for prices that do not fulfill these conditions. Otherwise they would be punished. This results in hard decision-making what evil is greater – this punishment or breaking of the State Aid Rules. The best way would be either to omit these two paragraphs or to state clearly here that research organizations MUST not be forced to do these activities.