

European Commission  
Directorate-General for Competition Unit H1  
State Aid Registry  
1049 Brussels, Belgium

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## **Proposed revision on State Aid Framework for research, development, and innovation. Comments**

### **1. Introduction**

Confederation of Norwegian Enterprise (NHO) would like to thank the European Commission for the opportunity to comment on the proposed revision on State aid Framework for research, development, and innovation.

NHO is Norway's largest organization for employers. Our current membership of 28,500+ companies range from small family-owned businesses to multinational companies in most sectors. Our main objective is to create and sustain conditions that safeguard the competitiveness and profitability of economic growth and sustainable development. NHO is made up of 16 Sectoral Federations and 10 Regional Offices around Norway. While NHO has a cross-sectoral responsibility for the members' interest, each sectoral federation covers industry-specific issues.

Improving financing for research, development, and innovation (RDI) and ensuring that innovative ideas can be turned into products and services that create growth and jobs are crucial to strengthening Europe's competitiveness. It is therefore important that EU funding, centrally managed by the Commission, either directly or indirectly, and not subject to any discretion by Member States, does not qualify as State resources and hence not constitute State aid, and that the relevant State aid rules are consistent with the different instruments.

One shortcoming of the RDI Framework is the fact that the global dimension is not getting enough attention. In general, other countries do not have comparable constraints on RDI support and the Commission should address this more actively. The Commission should be more flexible with respect to the application of the "*matching clause*" to compensate for the distortive third-country subsidy and address the lack of data regarding aid granted to competitors by third countries. The global situation should also be particularly considered in the context of cluster policy, and especially the fact that other regions of the world, like the US, India and China have very supportive cluster policies.

In this context, it should also be considered to relax State aid rules for the incubation of new markets and businesses provided support is limited to address a market failure to avoid that the State acts as a private investor. When it comes to the generation of new markets through the introduction of radically new products and offerings (e.g., the soon-to-be-expected emergence of a Quantum Computing Industry), State aid rules should not stand in the way of helping companies assume early market leadership. Governments should be allowed to help companies in such emerging fields to overcome the so-called «valley of death».

Overall, the revised guidelines on State aid for research, development and innovation is clarifying several important aspects of the rules. It addresses market failures related to research organizations including knowledge transfer offices (KTO/TTO). This can benefit Norway and Europe through growth of new industries. The logic of economic and non-economic activity resonates well with our thinking, following the principles that state aid should not compete with, or be used to suppress, commercial companies. However, given that most RDI aid is granted through GBER, the significance of the proposed revision seems to be on what does not constitute State aid and how the compatibility of aid is to be assessed rather than its simplifications and new definitions. Moreover, the draft RDI Framework is the first of new generation of guidelines with a different design of the compatibility principles following the judgment of «Hinkely Point C».<sup>1</sup>

## 2. Clarifications and new definitions

NHO welcomes the clarification of definition on *innovation clusters*. The revision aims to clarify that Digital Innovation Hubs included under the Digital Europe Programme may qualify as innovation clusters within the meaning of the relevant definition already provided for in the RDI Framework. This change aims to provide clarity for all Member States and relevant stakeholders, on how to grant national support to Digital Innovation Hubs. This will again stimulate collaboration, networking, and innovation solutions. However, as far as NHO can see this does not change the scope of application of the current definition on State aid rules.

Also, we welcome the clarification on *innovation activities of SMEs* whereby the current definition is extended so that it covers more IT, software development, artificial intelligence, and other digital technologies.

Under the revised rules, a definition on *technology infrastructure* is introduced aiming at reflecting market and technology evolution and to incentivise research, development and innovation investments facilitating the twin transition. This will also facilitate the uptake of innovation activities, especially by SMEs, which by using technology infrastructures may bring innovative solutions to current societal challenges like climate change and the urgent shift towards

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<sup>1</sup> Case C-594/18P, Austria vs Commission

digitalisation, in line with the Green Deal and the Industrial Strategy objectives. Contrary to research infrastructures, technology infrastructures are intended to be predominantly used by industry, in particular SMEs to address the lack of relevant determination of market testing facilities of new untried technologies to finalise their development before market introduction.

However, the lack of clarity between the concepts of «technology infrastructures» and «existing research infrastructures», including possible grey areas between the two renders further guidelines from the Commission necessary. The two concepts could in some ways also be competing. In relation to this, NHO would like to emphasise that the use of the notions «industrial research» and «experimental development» should relate to different maturity in the value chain instead of the level of aid intensities. Deciding infrastructure based on maturity will minimise possible grey areas. Finally, a focus on «technology infrastructure» should be in addition to - not by way of compensation for - «research infrastructure». Major emphasis on research infrastructure is still needed and the division between the two should be as clear cut as possible.

### **3. Economic and Non-economic activities**

NHO welcomes that the threshold (20%) related to *ancillary character* of economic activities as defined in paragraph 20 of the RDI Framework is kept. We also welcome further clarification on the obligation on monitoring of the ancillary character of the economic activity. This is an important signal as further increase of the threshold would have had a bearing on the level playing field between infrastructure mainly performing non-economic activities and those who only perform economic activities. Therefore, infringement of the threshold would result in the public funding of the whole activity falling under the State aid rules.

Nevertheless, it is to some extent unclear what Member States are supposed to do in terms of monitoring e.g., whether to ensure that the ancillary activity is linked to the non-economic activities of the research organisation, or the rationale behind wanting to engage in ancillary activities. In a new footnote (no 34) to the revised Framework, it is stated that «since the research community, when conducting ancillary economic activities, derives improved and enhanced expertise and knowledge that can be used to perform the primary non-economic activities of the research organisation or the research infrastructure to the benefit of the society at large». This could be a possible explanation of the reasoning why research organisations may want to engage in ancillary activities. It suggests that the purpose of an ancillary activity is to test theory through practice rather than for example earning extra income or using spare capacity. Provided this is a correct interpretation of the purpose of ancillary activities, then the aim of the monitoring would be simply to prevent research organisations from setting up commercial consultancy operations under the excuse of carrying out ancillary activities.

In this context, however, the draft RDI Framework lacks further clarifications on the role of consultancy carried out by research organisations. Both the current and the draft Framework include consultancy in the definition of «knowledge transfer». However, knowledge transfer can also be carried out by innovation clusters and innovation advisory<sup>2</sup> services which are economic in nature. Therefore, if consultancy is an economic activity, it is not clear why it is included in knowledge transfer activities which are non-economic in nature. Moreover, consultancy means a service that addresses the needs of a particular client(s) and, therefore, is based on information provided by the client(s). The meaning of knowledge transfer in the case of research organisations is that they disseminate the knowledge they have created themselves for the benefit of society. Therefore, further clarification by the Commission on the distinctions is desirable.

#### **4. Incentive effect**

Regarding the incentive effect, in practice it is very difficult to prove that aid for RDI influences a company to pursue research that it would not otherwise have pursued. The investment decision of an RDI project is based on multiple factors that can hardly be distinguished from each other. The subsidy alone often does not lead to a decision to invest, but reduces risks, speeds-up the process, stimulates collaboration with other companies etc. Fulfilling the requirement in the incentive effect can be extremely difficult and burdensome for companies, for example when multiple RDI project run simultaneously or the firm's contribution to a single project is relatively small compared to the firm's overall RDI budget. There should thus be less strict criteria on evidence related to the requirement that certain RDI activities are carried out in addition to normal day-to-day operations, also since competitors located outside the EU do not suffer from comparable constraints.

Yours sincerely,



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**Confederation of Norwegian Enterprise (NHO)**

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<sup>2</sup> See paragraph 17, litra s) and t) of the revised guidelines

