

Revision of the State aid rules for RDI

Explanatory note

The proposed revisions of the Framework for State aid for Research, Development and Innovation are directly linked to the results of the Fitness Check, a comprehensive policy evaluation assessing whether the State aid rules, which were part of the State aid modernisation, are “fit for purpose”. The preliminary results of the Fitness Check are set out in the Staff Working Document on the Fitness Check, published on 30 October 2020¹.

The results of the fitness check evaluation confirmed that overall State aid rules for RDI implemented in 2014 worked well and contributed to promoting RDI activities in the EU without unduly distorting competition. The feedback from stakeholders also acknowledged the importance of keeping the rules stable after a steep learning curve following the State Aid Modernisation revision.

Nevertheless, the fitness check evaluation also showed that a number of targeted technical revisions aimed at further simplifying and clarifying the application of the rules, laid down both in the RDIF and the relevant articles in the GBER are necessary. In addition, it showed a need to update these rules to reflect market and technological developments in a manner to facilitate the twin transition of the European economy.

In fact, the provisions of the Framework for State aid for RDI are complemented by the General Block Exemption Regulation (“GBER”), which lays down ex ante compatibility conditions on the basis of which Member States can implement State aid measures without prior notification to the Commission. The Commission is carrying out, in parallel to the revision of the Framework for State aid for RDI, a targeted revision of the GBER, which will also include a targeted amendment of the RDI-relevant GBER provisions.

To address the above, the revised Framework on State aid rules for Research, Development and Innovation contains the following targeted improvements:

(1) Firstly, clarifications are introduced to the following definitions:

- a) *Definition applicable to **innovation clusters***. The revision aims to clarify that Digital Innovation Hubs including 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 and does not change the scope of application of the current definition. In addition, this clarification also allows to explain how State aid rules already support important Commission priorities, such as the Digital Europe and Horizon Europe Programmes which refer to the need to support such infrastructures as Digital Innovation Hubs, stimulating collaboration, networking and innovative solutions.
- b) Another targeted clarification is introduced to the definitions of **industrial research, experimental development, as well as process and organisational innovation** activities. In fact, the results of the Fitness Check have shown that clarifications were sought on how the definitions apply to IT, software

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance>

development including artificial intelligence and other digital technologies, which will facilitate the implementation of the Commission's Industrial Strategy and Digital Agenda. Even if not expressly referred to in the current definitions, digitalisation related R&D and Innovation activities are already covered implicitly by the existing definitions. Therefore, the envisaged clarifications would only introduce an explicit reference to digitalisation activities to make it clear that activities performed in such areas fall within the scope of the definitions, thereby enhancing the predictability and legal certainty of the rules. These clarifications do not impact the scope of application of the definition or eligible activities covered by it.

- c) With regard to **innovation activities of SMEs**, the evidence collected during the Fitness Check confirms that SMEs continue to face market failures affecting their innovation capacity, due to the low uptake of digitalisation activities and/or difficulties in accessing innovation support services. In that regard, the Fitness Check confirmed that the pertinent State aid rules for RDI applicable to innovation aid for SMEs remain valid and relevant. They only lack sufficient clarity, for some of the stakeholders, with respect to the extent to which innovation aid for SMEs (as already defined and provided for in the existing rules) allows support for digitalisation activities (such as support for services provided by research infrastructures, technology infrastructures, innovation clusters). As a result, the pertinent definition is redacted to explicitly spell out and clarify that the above activities are already eligible for support under the existing measure. This clarification should also contribute to strengthening synergies with Commission's investment priorities identified in its SME and Industrial Strategies.

- (2) **Secondly, a definition and compatibility criteria are introduced to allow support for technology infrastructures to reflect market and technology evolution and to incentivise research, development and innovation investments facilitating the twin transition. The above 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 digitalisation, in line with the Green Deal and the Industrial Strategy objectives.**

Under the revised rules, and contrary to research infrastructures, technology infrastructures are intended to be predominantly used by industry, in particular SMEs to address the lack of relevant closer to market testing facilities of new untried technologies to finalise their development before market introduction.

The targeted revision is based on existing SA compatibility rules for RDI, more specifically those governing i) R&D project support for experimental development activities (relevant for technology infrastructures' testing and scaling up activities) and ii) investment aid for research infrastructure.

More specifically, the compatibility conditions for technology infrastructures have been established in the following manner:

- i) The applicable definition is based on the one developed in the Commission Staff Working paper on Technology infrastructures². The definition has been elaborated by DG RTD based on experience acquired under the H2020 programme (the definition corresponds to testing and upscaling activities at experimental development stage). This allows to ensure terminology consistency between State aid and Horizon programme rules (often advocated by our stakeholders)
- ii) Technology infrastructures will be supported in the same manner as research infrastructures limiting the support to investment costs.
- iii) As regards the level of aid (aid intensity), the basic aid intensity will be based on that applicable to experimental development activities (25%), since technology infrastructures are involved in technology testing and upscaling activities at an experimental development stage³. In this manner, the Member States will no longer be forced to allocate investment aid for each experimental development project carried out by specific users of a technology infrastructure (causing important administrative burden), but instead will be able to support investment into a technology infrastructure in one go.

(3) Thirdly, the following revisions will address disproportionate administrative burden that Member States have encountered when implementing support under the Framework for State aid for research, development and innovation :

a) The revised RDI Framework establishes rules on simplified methodology to calculate indirect costs of R&D projects.

In this regard, under the revision proposal, a simplification is introduced to calculate eligible costs for R&D projects by allowing for the application of a simplified methodology for the calculation of indirect costs. At present, the rules of the GBER allow Member States to use simplified cost options only when the project or activity is at least partially financed through a Union fund (e.g. Horizon – ESIF). The results of the Fitness Check revealed the need for a wider application of simplified cost options for calculating the eligible costs. As actual indirect eligible costs are often difficult to verify and demonstrate, the use of a simplified cost option for indirect costs simplifies significantly the granting of aid for R&D projects by managing authorities. In addition, the Fitness Check points to the lack of rationale for excluding R&D projects funded through purely national resources (including RRF funds) from this possibility. While in a number of previously notified R&D cases the simplified cost methodology in relation to indirect costs was accepted, this practice has not been formalised so far.

b) Clarification is also introduced that the monitoring of the ancillary character of the economic activities as defined in par 20 of the RDI Framework shall apply for a 10 year period.

This is needed to be coherent with the 10 year prescription period laid down in the Procedural Regulationⁱ, i.e. the period beyond which the Commission has no legal means

² <https://op.europa.eu/en/publication-detail/-/publication/0df85f8b-7b72-11e9-9f05-01aa75ed71a1>

³ if a detailed assessment is conducted, the regular aid intensity can be increased for individual notifications up to 40%

to request recovery of aid granted and to avoid having to carry out monitoring indeterminately taking into account that after 10 years the most expensive R&D lab equipment would be almost fully depreciated.

It is unquestionable that straightforward State aid rules for RDI are even more necessary today. We anticipate that the targeted technical changes of the rules will guide Member States in implementing public support programmes (leveraging private investment) without any undue delay and help companies, as well as research organisations, develop new technologies. These new technologies in turn will be the basis on which green and digital products and services will arrive on the market transforming the European economy in line with the Green Deal/Digital Europe for 2030/2050. With clearer rules, Member States will also be able to reduce the time between the application and actual grant of money.

ⁱ [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](#) , OJ L 248, 24.9.2015, p. 9