

## **INFRASTRUCTURE ANALYTICAL GRID FOR RESEARCH INFRASTRUCTURE**

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### **I. PRINCIPLES FOR RESEARCH INFRASTRUCTURE**

- (1) This analytical grid covers the financing of the construction, upgrade or extension of research infrastructure<sup>1</sup>.
- (2) Public funding of research infrastructure can favour an economic activity and is hence subject to State aid rules insofar as the infrastructure is in fact intended for the performance of economic activities (such as renting out equipment or laboratories to undertakings, supplying services to undertakings or performing contract research). Public funding of research infrastructures used for non-economic activities, such as independent research for increased knowledge and better understanding, in contrast, does not fall under State aid rules. [§218 NoA]

### **II. INSTANCES IN WHICH THE EXISTENCE OF STATE AID IS EXCLUDED**

- (3) Please note that the following sections present a comprehensive, but not exhaustive, number of separate instances in which the existence of State aid may be excluded. These instances may apply to the owner/developer, operator or user levels, as referred to in the "introduction to the analytical grids", but also to these levels combined (e.g. integrated developer and operator).

#### **1. No economic activity: research infrastructure not meant to be commercially exploited**

- (4) The funding of research infrastructure not meant to be commercially exploited is in principle excluded from the application of State aid rules.
- (5) Public funding for the construction or upgrade of research infrastructure will not be considered as State aid if the infrastructure is used exclusively for non-economic activities as defined in point 19 of the RDI Framework. This is the case where the primary activity of the infrastructure is

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<sup>1</sup> As defined in Article 2(91) of Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), as amended by Regulation (EU) No 2017/1084 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards calculation of eligible costs, (OJ L 156, 20.06.2017, p.1.) ("GBER) and in point 15(ff) of the Framework for State aid for Research and Development and Innovation, OJ C 198, 27.06.2014, p. 1 ("RDI Framework").

- a) education for more and better skilled human resources, such as public education organised within the national educational system, predominantly or entirely funded by the State and supervised by the State,
  - b) the conduct of independent research and development<sup>2</sup> for more knowledge and better understanding, including collaborative R&D (where the research organisation or research infrastructure engages in effective collaboration, i.e. collaboration between at least two independent parties who jointly define the scope of the collaborative project, contribute to its implementation and share its risks and results)<sup>3</sup> ;
  - c) the wide dissemination of R&D results on a non-exclusive and non-discriminatory basis, for example through teaching, open-access databases or open publications of open software. In particular, this may concern the construction of university buildings, lecture halls, libraries, laboratories and equipment used exclusively for teaching and for carrying out independent research.
- (6) Furthermore, knowledge transfer activities (licensing, creation of spin off, or other forms of management knowledge created by the research infrastructure)[§32NoA] conducted by, or jointly with, or on behalf of other research infrastructure (including departments or subsidiaries) [§32NoA] are generally non-economic, provided that all income from those activities is reinvested in the infrastructure's primary, non-economic activities.

## 2. Research infrastructure used for both economic and non-economic activities

- (7) If research infrastructures is used for both economic and non-economic activities, public funding thereof will fall under State aid rules only insofar as it covers the costs linked to the economic activities in question<sup>4</sup>. In such cases, Member States have to ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidise the entity's economic activities. This can notably be ensured by limiting the public funding to the net cost (including the cost of capital) of the non-economic activities, to be identified on the basis of a **clear separation of accounts**.
- (8) Research infrastructures that are primarily used for non-economic activities often also perform some economic activities in order to use their resources efficiently. As long as the economic activities remain ancillary to the non-economic activities, no State aid is deemed to be present. This is the case, for instance, if the infrastructure (e.g. equipment and laboratories) is used for economic activities (for example, rented out to industrial partners or if it is used in part to perform contract research on behalf of industry or to provide a research service), provided that such economic activities resulting from the use of the research infrastructure remain purely ancillary in nature, which means that:

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<sup>2</sup> Provision of R&D services and R&D carried out on behalf of undertakings are not considered as independent R&D.

<sup>3</sup> See point 15 (h) of the RDI Framework for the extended definition of 'effective collaboration'

<sup>4</sup> Where research infrastructure is both publicly and privately funded, the Commission will consider this to be the case where the public funding allocated to the relevant entity for a specific accounting period exceeds the costs of non-economic activities incurred in that period. [ft 22 RDI Framework]

- i. they are directly related to and necessary for the operation of a research infrastructure or are intrinsically linked to its main non-economic use<sup>5</sup>. Ancillary economic activities consume exactly the same inputs as the primary non-economic activities, e.g. material, equipment, labour and fixed capital; and
- ii. they remain limited in scope, i.e. the capacity of the research infrastructure allocated each year for economic activity should not exceed 20% of the overall annual capacity.

### **3. No potential effect on trade between Member States: purely local impact**

- (9) The effect on trade between Member States for the purposes of Article 107(1) TFEU must be established on a case-by-case basis apart from cases covered by the *de minimis* Regulations.
- (10) Support granted under the *de minimis* Regulation is not regarded as State aid if no more than EUR 200 000 is granted to a single undertaking over a period of three years and the other conditions laid down in the *de minimis* Regulation are also respected<sup>6</sup>.

### **4. No economic advantage at the level of the owner/developer**

- (11) If it is proven that the State acted under the same terms and conditions as a private investor in a comparable situation when providing the necessary funding for the development of research infrastructure, then State aid is not involved. This can be assessed on the basis of: (i) significant *pari passu* investments of private operators, i.e. on the same terms and conditions (and therefore with the same level of risks and rewards) as the public authorities who are in a comparable situation<sup>7</sup>; and/or (ii) a (ex ante) sound business plan (preferably validated by external experts) demonstrating that the investment provides an adequate return for the investor(s), in line with the normal market return that would be reasonably expected by commercial operators on similar projects taking into account the level of risk and future expectations<sup>8</sup>. Note, however, that the existence of consecutive State interventions concerning the same research infrastructure project might invalidate the conclusion that a similar measure would also have been undertaken by a market economy investor.<sup>9</sup>

### **5. No economic advantage at the level of the operator:**

#### ***5.1. Selection of the operator through a tender or fees that are otherwise in compliance with the Market Economy Operator Principle***

- (12) Operators who make use of the aided infrastructure to provide services to end-users receive an advantage if the use of the infrastructure provides them with an economic benefit that they would not have obtained under normal market conditions. This normally applies if what they pay for the right to exploit the infrastructure is less than what they would pay for a comparable infrastructure under normal market conditions.

<sup>5</sup> See point 20 of the RDI Framework and recital 49 of the GBER.

<sup>6</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.

<sup>7</sup> For more details, see paragraphs 86 to 88 of the Commission Notice on the Notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union ("NoA"), OJ C 262, 19.7.2016, p. 1.

<sup>8</sup> For more information see in this respect chapter 4.2 and in particular paragraphs 101 to 105 of the NoA.

<sup>9</sup> See in this respect also paragraph 81 of the NoA.

- (13) If the operation of research infrastructure is assigned for a positive price to a third party operator on the basis of a competitive, transparent, non-discriminatory and unconditional tender in line with the principles of the TFEU in public procurement<sup>10</sup>, an advantage can be excluded at this level, as it can be presumed that the fee they pay for the right to exploit the infrastructure is in line with market conditions.
- (14) If the operator has not been selected through a tender in line with the above conditions, it may also be possible to establish that the fees paid by the operator in line with normal market conditions through (i) benchmarking with comparable situations<sup>11</sup>, or (ii) on the basis of a generally-accepted standard assessment methodology<sup>12</sup>.

#### **6. Research infrastructure acting as a mere intermediary**

- (15) The Commission will not consider the research organisation or research infrastructure to be a beneficiary of State aid if it acts as a mere intermediary for passing on to the final recipients the totality of the public funding and any advantage acquired through such funding. This is generally the case where:
- a) both the public funding and any advantage acquired through such funding are quantifiable and demonstrable, and there is an appropriate mechanism which ensures that they are fully passed on to the final recipients, for example through reduced prices, and
  - b) no further advantage is awarded to the intermediary because it is either selected through a competitive, transparent, non-discriminatory and unconditional tender procedure in line with public procurement rules or the public funding is available to all entities which satisfy the necessary objective conditions, so that customers as final recipients are entitled to acquire equivalent services from any relevant intermediary.
- (16) Where these conditions are fulfilled, State aid rules apply at the level of the final users. [§22 RDI Framework.

#### **7. No economic advantage at the level of the user**

- (17) In case the user(s) are undertakings, and the operator of research infrastructure received State aid or its resources constitute State resources, a selective advantage at the level of the user(s) can be excluded if: (i) the research infrastructure is not dedicated to a specific user, (ii) all users enjoy equal and non-discriminatory access to the infrastructure and (iii) the infrastructure is made available to the users on market terms<sup>13</sup>.

### **III. INSTANCES IN WHICH THERE IS NO NEED TO NOTIFY FOR STATE AID CLEARANCE, BUT OTHER REQUIREMENTS COULD APPLY**

- (18) State aid may be considered compatible with the internal market and can be granted without notification in the following two instances:

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<sup>10</sup> As described in paragraphs 89-96 of the NoA.

<sup>11</sup> See paragraphs 97 to 100 of the NoA.

<sup>12</sup> See paragraphs 101 to 105 of the NoA.

<sup>13</sup> See in this respect paragraphs 25 to 34 of the RDI Framework.

## 1. General Block Exemption Regulation (GBER)<sup>14</sup>

- (19) The measure is exempted from notification if it is granted in conformity with the conditions of the GBER. In particular, **Article 26 of the GBER** allowing investment aid for research infrastructures up to EUR 20 million of aid per infrastructure, can apply.
- (20) **Article 27 of the GBER** allowing investment and operating aid for innovation clusters up to EUR 7.5 million of aid per cluster representing maximum of 50 % of the eligible cost, can also apply.
- (21) **Article 14 of the GBER** can also apply, allowing regional investment aid up to the maximum aid intensities established in the regional aid map.
- (22) The provisions of Chapter 1 of the GBER in addition to the specific provisions in Article 26 or 27 or 14 of the GBER must be complied with.

## IV. INSTANCES IN WHICH NOTIFYING FOR STATE AID CLEARANCE IS NECESSARY

- (23) If the measure constitutes State aid and does not meet the conditions allowing an exemption from notification under the GBER, State aid clearance after a notification to the Commission is required.

### 1. Framework for Research Development and Innovation (RDI Framework)<sup>15</sup>

- (24) The compatibility of notifiable State aid for the construction or upgrade of research infrastructures and innovation clusters is normally assessed on the basis of the RDI Framework.

### 2. Regional Aid Guidelines (RAG)<sup>16</sup>

- (25) Research infrastructure projects may also be supported in assisted areas on the basis of the Regional Aid Guidelines (RAG), if not falling under the specific provisions for regional aid under the GBER. In that case, aid to research infrastructure may qualify as aid for an initial investment within the meaning of the RAG and it will be assessed on the basis of the compatibility conditions set out in the RAG.

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## References:

- [Commission Notice on the notion of State aid as referred to in Article 107\(1\) of the Treaty on the Functioning of the European Union](#), OJ C 262, 19.7.2016, p. 1.

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<sup>14</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, as amended by Regulation (EU) No 2017/1084 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards calculation of eligible costs, OJ L 156, 20.06.2017, p.1.

<sup>15</sup> See footnote 2.

<sup>16</sup> Guidelines on regional State aid for 2014-2020, OJ C 209, 23.07.2013, p. 1.

- [Commission Regulation \(EU\) No 651/2014](#) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.
- [Commission Regulation \(EU\) 2017/1084](#) of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, OJ L 156, 20.6.2017.
- [Commission Regulation \(EU\) No 1407/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.
- [Framework for State aid for Research and Development and Innovation](#), OJ C 198, 27.06.2014, p. 1.

*Indicative list of Commission decisions taken under State aid rules concerning research infrastructures*

- SA 41540 – Lithuania - Aid to public legal persons – science and technology parks (STPs):  
[http://ec.europa.eu/competition/state\\_aid/cases/258080/258080\\_1850847\\_195\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/258080/258080_1850847_195_2.pdf)
- SA 37185 – Spain – Aid to ADIF –  
[http://ec.europa.eu/competition/state\\_aid/cases/257779/257779\\_1783220\\_277\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/257779/257779_1783220_277_2.pdf)