



# ■ **Community Framework for State Aid for R&D and innovation**

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# Agenda



- **Background**
- The new Framework
- Research organisations
- Compatible aid measures
- *The economic approach (not covered)*

# Article 87.1 EC Treaty



“ Save as otherwise provided in this Treaty, any **aid** granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be **incompatible** with the common market. ”

# Article 87.3 EC Treaty



“ The following **may be considered to be compatible** with the common market:

...

- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

”

...

# Article 88.3 EC Treaty



“ The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision. ”

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# State aid for R&D&I



- New Community framework for State Aid for Research and Development and Innovation (OJ C323, 30.12.2006)
- What about Community money?
  - FP7, CIP, EIF are not considered as State resources, Structural funds are
- What about public procurement of R&D?
  - No aid if it complies with the applicable directives on public procurement (2004/17/EC & 2004/18/EC - OJ L137, 30.4.2004)
  - New Communication on pre-commercial procurement (COM (2007) 799, 14.12.2007)

# What is new?



- Clarifications regarding art. 87.1 (cf. chapter 3):
  - Public funding of research organisations and innovation intermediaries (non-economic and economic activities)
  - Indirect State aid in case of contract research or collaborative research
- New measures on innovation
- New architecture of rules and introduction of a detailed assessment for cases including large aid amount (for one beneficiary)
- Confirmation of external dimension: 87.3b); matching clause

# Economic efficiency



- Refined economic approach announced in the State Aid Action Plan (COM(2005)107 final)
- Competitive markets should in principle provide dynamic incentives for R&D&I
- However, low levels of R&D&I in Europe are due to structural barriers + market failures
- State aids may play a role in counter-weighting inefficiencies due to market failures
- Reminder: State aids for innovation was not authorised in the previous framework

# Form-based vs. effects-based analysis



- Form-based analysis looks at conformity with criteria. If the criteria are met, aid is presumed compatible.
  - => Guidelines must provide predictability of result
- Effects-based analysis looks at the economic impact of the aid. No presumption but an assessment of each step in the balancing test to weight positive and negative effects.
  - => Guidelines must provide predictability of method

# External dimension



- Matching clause:
  - already present in the previous R&D framework.
  - kept in the new R&D&I framework but more visible
- Article 87.3b):
  - already present in the existing R&D framework.
  - conditions are clarified in the new R&D&I framework

# Better administration



- Until 2008, only State aids in favour of R&D projects, feasibility studies and IPR costs carried out by SMEs were exempted from notification (EC Regulation N° 364/2004, OJ L63, 28.2.2004)
- The Commission has decided to exempt other non-problematic measures through the General Block Exemption Regulation (GBER – EC Regulation N° 800/2008, OJ L214, 9.8.2008)
- The GBER covers all types of enterprises and most of the new measures on innovation

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# Definition



- Goal = conduct R&D and disseminate the results through teaching, publication or technology transfer
- Non lucrative, all profits are reinvested in these activities
- Any legal status or way of financing
- No preferential access to the R&D capacities or results for any undertaking
- A research organisation can carry out activities of both economic and non-economic nature
  - Non economic = independent and collaborative R&D, dissemination, education
  - Economic = contract R&D, renting out infrastructures, innovation services

# Direct State aid



- Public funding of research organisation can entail State aid:
  - Funding of non-economic activities: No aid if these activities and their costs are clearly separated from any economic activity
  - Funding of economic activities: No aid at the level of the research organisation if the State funding is passed on to the final client (organisation = intermediary)
  - Otherwise, the research organisation is recipient of State aid. Is it compatible?

# Indirect State aid



Indirect aid can be granted to an undertaking through a public funded research organisation:

- The organisation conducts R&D on behalf of an undertaking: No aid if the service is provided at market price (or cost plus)
- The organisation collaborates with an undertaking: No aid if the intellectual property rights (IPR) and access rights to the results are adequately attributed to the partners to reflect their respective contributions to the project (widening possibilities of previous framework)
- Otherwise, 100% of the contribution of the organisation to the project constitutes aid to the undertaking → Watch the cumulation with direct aid!

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- Background
- The economic approach
- Research organisations
- **Compatible measures**

# Compatibility assessment



## Standard assessment (mainly schemes):

- Limited risk of distortion of competition
- Some elements are not investigated in-depth but presumed (market failure, limited effects on competition and trade)
- Exclusion of companies in difficulty, as of discriminatory and location conditions
- (plus) incentive effect analysed for large firms, clusters and process and organisational innovation

## Detailed assessment for higher aid amount:

- Higher risk of distortion of competition
- Looking at all elements of the balancing test
- Burden of proof is more important for Member States

# Standard assessment



2. Aid for R&D projects
3. Aid for technical feasibility studies
4. Aid for IPR costs (SMEs)
5. Aid for young innovative enterprises (SMEs)
6. Aid for process and organisational innovation in services
7. Aid for innovation advisory and innovation support services (SMEs)
8. Aid for the loan of highly qualified personnel (SMEs)
9. Aid for innovation clusters

# Detailed assessment



- R&D&I projects + technical feasibility studies:
  - Aid per undertaking > €20 M for fundamental research
  - Aid per undertaking > €10 M for industrial research
  - Aid per undertaking > €7.5 M for experimental development
  - (doubled thresholds for Eureka projects)
- Process and organisational innovation in services:
  - Aid per undertaking > €5 M
- Innovation clusters:
  - Aid per cluster > €5 M

# R&D projects (1)



## Research categories (not chronological):

- Fundamental research  
= acquisition of new knowledge
- Industrial research  
= acquisition of new knowledge aiming at the creation of new products, processes or services
- Experimental development  
= use of knowledge to develop new products, processes or services. Commercially usable prototypes are eligible in certain circumstances  
(Wider than previous pre-competitive development)

# R&D projects (2)



- 100% for fundamental research, 50% for industrial research, 25% for experimental development
  - + 10% for medium-sized enterprises or 20% for small enterprises
  - + 15% for effective collaboration (up to 80%):
    - between enterprises : each enterprise bears < 70% of the costs and large companies collaborate cross-border or with one SME,
    - with one research organisation: organisation bears > 10 % of the costs and it has the right to publish its results, or in case of wide dissemination of results stemming from industrial research

# R&D projects (3)



## Eligible costs:

- Personnel
- Instruments and equipment
- Building and land
- Contractual research, patents bought or licensed
- Additional overheads
- Other operating expenses (materials, supplies)
- (Depreciation corresponding to the life of the research project)

# R&D projects (4)



## Specific rules:

- Repayable advance: methodology for calculation of gross grant equivalent or detailed provisions on the repayment in case of success
- Fiscal measures: aid calculated at the level of either the project or the company (in this case, R&D expenditure up to 3 years), simpler reports and incentive effect assessed by means of studies
- Matching clause: outsider competitors having received or going to receive aid

# IPR costs



Costs preceding the grant of the right in the first legal jurisdiction, translation and other costs incurred to obtain or validate the right in other jurisdictions, costs incurred in defending the validity of the right during the proceedings

- Not only patents (wider than previous framework) but excluding renewal (operating aid)
- Aid intensity corresponding to the research activities having led to the IPR concerned

# Young innovative enterprises



Definition: small enterprise, existing < 6 years before granting of the aid,

- which will in the foreseeable future develop products, processes or services technologically new or improved compared to the state of the art in the Community and which carry a risk of failure (evaluation by an external expert),
- or which spends in R&D  $\geq 15\%$  of its total operating expenses.

Aid (only once): €1 M in general, €1.25 M in 87.3.c regions, €1.5 M in 87.3.a regions

Cumulation only with R&D&I and risk-capital aid for 3 years

# Process and organisational innovation in services



## Intensities:

- 35% for small enterprises
- 25% for medium-sized enterprises
- 15% for large companies collaborating with SME (SME bears  $\geq$  30% of the costs)
- Not only in service sectors

## Conditions :

- Organisational innovation related to the use of ICT
- Project management by a project manager
- Development of a model which can be reproduced
- Substantial improvement compared to the state of the art in the Community
- Clear degree of risk

# Innovation advisory and innovation support services



- Aid: Up to €200.000 / SME over 3 years
- Advisory services: technology transfer, technological assistance, consultancy for IPR, management, standards
- Support services: office space, data banks, market research, laboratory, labelling, testing, certification
- Providers certified at national or European certification, or aid limited to 75% of eligible costs
- Services must be offered at market price
- Non-for-profit providers can behave as intermediaries: the aid may be given to SMEs in the form of reduced prices. Transparency about costs and prices must be ensured.

# Loan of highly qualified personnel



Definition: Researchers, engineers, designers and marketing managers, with tertiary education degree, and > 5 years of relevant professional experience

Beneficiary: SME employing personnel seconded by a research organisation or large company

Conditions:

- Personnel employed in a newly created function,
- have been employed for > 2 years in the research organisation or large company,
- work on R&D&I activities

Aid: 50% of the eligible costs per person for < 3 years

Eligible costs: Personnel costs, recruitment costs, mobility allowance

# Innovation clusters (1)



## Definition:

- Groupings of SME, large companies and research organisations
- Operating in a particular sector and region, designed to stimulate innovation by promoting interactions, sharing of facilities and exchange of knowledge

## Beneficiary:

- Legal entity operating the cluster

# Innovation clusters (2)



## Investment aid:

- 15% in non-assisted regions + SME bonuses (higher in assisted regions)
- For facilities for training and research centre, open-access research infrastructures and broadband network infrastructures

## Operating aid for cluster animation:

- Limited duration of 5 years (exc. 10 years) and degressive
- Globally covering up to 50% of personnel and administrative costs related to the marketing of the cluster to recruit new companies, management of the open-access facilities and organisation of conferences supporting knowledge sharing and networking

# Incentive effect (1)



R&D aid must lead to change in the recipient's behaviour

- No incentive effect in case the project has started prior to the aid application
- The incentive effect must be demonstrated for:
  - RDI projects and feasibility studies undertaken by large companies or receiving aid  $\geq 7.5$  M€
  - Process and organisational innovation in services
  - Innovation clusters

# Incentive effect (2)



- Incentive effect has to be shown ex ante that the aid will impact positively on:
  - The size, scope or speed of the project
  - The total amount spent on R&D&I by the recipient.
- Main responsibility of Member States for schemes, to be communicated through reporting
- Other elements are taken in consideration for the detailed assessment: counterfactual analysis, level of profitability of the project, time path of cash flows, level of risk involved...

# Monitoring



- Measure published on Internet
- Annual reports including:
  - List of beneficiaries and description of aid (fiscal aid: only list of beneficiaries receiving tax relief over 200 000 € / year)
  - Incentive effect for large companies
  - Activity of innovation clusters
- Reports published on Internet
- Information sheets:
  - Aids > 3 M€ per company and project