

Basic set of questions of the Czech Republic for the area of RDI

1. Par. 20 of the new Framework says that where a research organisation or research infrastructure is used almost exclusively for a non-economic activity, all of it may fall outside state aid rules, even if it is also partially (in scope of 20 %) used for a purely ancillary economic activity. How should we understand the suggested scope of conduct of economic activities by a research organisation or research infrastructure? **(Question No.1)** **The 20% threshold applies with regard to the capacity allocated each year to economic activities in relation to overall annual capacity.**

a) Could you confirm that even if a subject exceeds the 20 % scope of economic activity (it will be e.g. 30 %) the subject in question would be still considered a research organisation (if it fulfils the conditions for GBER/Framework)? **(Question No.2)** **Yes, provided indeed that the requirements of the relevant definition are fulfilled.**

In such case it would mean that a research organisation can conduct more than 20 % of an economic activity (and still remains a research organization) – but in such a case it has to be distinguished for which purpose (activity) the state/public funds are provided. If the funds are provided for its economic activity – state aid is involved; if the funds are provided for its non-economic activity – there is no State Aid. Is our understanding of this matter correct? **(Question No. 3)** **Yes, but the costs and revenues of each type of activities (economic and non-economic) must always be accounted for separately (otherwise, the proportion of economic activities is not known and cross-subsidisation can never be excluded).**

b) In the above mentioned context, could it be clearly and unequivocally said that **public funding of economic activities (e.g. contractual research) conducted in limited scope** (that does not exceed 20 %) by a research organisation or research infrastructure **does or does not constitute state aid?** (in the sense of the art. 20 of the new Framework - *may fall outside state aid rules, even if it is also partially (in scope of 20 %) used for a purely ancillary economic activity.*) **(Question No. 4)** **As provided by the Framework, that will normally be the case if "the economic activities consume exactly the same inputs (such as material, equipment, labour and fixed capital) as the non-economic activities and the capacity allocated each year to such economic activities does not exceed 20 % of the relevant entity's overall annual capacity". However, the language used "may fall outside" is meant to preserve the competence of the Court of Justice (see point 16 of the Framework).**

c) How will be the 20 % limit for economic activity assessed in case of a research organisation that owns a few research infrastructures? Will the limit be connected only to the organisation as a whole or will it be measured for each single research infrastructure owned by the organisation? How could we interpret the "infrastructure"? Is it possible to assess (i) separate equipment or (ii) the technological units as a whole in accordance with its function on an individual basis? **(Question No. 5)** **The 20%**

threshold will be assessed at the level of the "relevant entity", that is to say every individual entity (such as a laboratory or department) that, with the organisational structure, capital, material and workforce that it effectively has at its disposal, could alone perform the activity concerned.

- d) For the purposes of control of state aid under the Operational Programme Research and Development for Innovations 2007-2013, we would like to have it confirmed that we may apply Article 20 of the new Framework for State Aid for Research and Development and Innovation with the tolerable 20% level of economic use of capacity of the subject also to projects with respect to which a Grant Award Decision was issued prior to 30 June 2014, that is in the effective period of the previous Community Framework for State Aid for Research and Development and Innovation (2006/C 323/01) which did not clearly define the tolerable volume of economic activity. We are aware of the inadmissibility of retroactivity and of the wording of Article 126 of the new Framework for State Aid for Research and Development and Innovation; nevertheless, we believe that the wording of Article 20 of the new Framework may be used as an interpretation tool because of the clearer definition of rules. Legal security would thus be gained not only by us, as providers, but also by our beneficiaries. Failure to clearly define a limit for the tolerable economic activity in the period between 2007 and 2013 causes significant problems in the monitoring of the grant beneficiaries. **(Question No. 6)** First of all, remaining within the 20% threshold alone is not sufficient to elude the applicability of state aid rules; the qualitative criteria (directly related/necessary/linked) must be met, too (see also question 4 above). Given that retroactivity indeed does not apply, the concept described in point 20 of the Framework (qualitative criteria in conjunction with the quantitative criteria) applies from 1 July 2014. As regards the preceding period when the 2006 Framework applied, we note that Member States by end 2009 should have established adequate methods for identifying economic and non-economic activities and separating them. Thereby, Member States should already be able to monitor beneficiaries and avoid cross-subsidisation of economic activities, respectively to see to that any such state aid is compatible.
- e) In the case of carrying out of 20% of economic activities per a research infrastructure/organisation, which are primarily intended for non-economic activity – what will happen if there will be a year to year excess? (E.g. there could be an extraordinary one-year loss of public funding for the non-economic activity or on the other hand there could be an extraordinary income). **(Question No. 7)** Point 20 of the Framework applies the 'annual capacity' as a standard. The overall 'monitoring period' (which is usually multiannual) should therefore be subdivided in one-year phases where capacity utilisation must be monitored and the 20% threshold observed. The Framework leaves no margin to apply averages during multiannual monitoring periods - otherwise a predominant economic activity and its corresponding impact in e.g. 3 consecutive years could be arithmetically reduced (in particular the longer the monitoring period is).

How should we proceed if certain activity is reclassified as economic? (e.g. the question of life-long learning and other paid courses) **(Question No. 8)** The classification of an activity as economic or non-economic depends on whether or not it consists in offering products or

services on a given market. Thus being, there should be no reason for reclassifying any activities. In particular, public education organised within the national education system is considered as a non-economic activity regardless of whether or not there are paid courses.

- f) Footnote 6 (to par. 20) - Is it possible to provide subsidy in the proportion of beneficiary's non-economic activity under the new Framework basis without risk of unlawful state aid? (Beneficiary's economic activity would be financed separately by his own sources). **(Question No. 9)** Yes, the purpose of footnote 6 is precisely to clarify this.
- g) At a seminar on state aid which was held in Prague on 3 June 2014, Mr Bernhard von Wendland (DG COMP) stated that the term "relevant entity" within the meaning of Article 20 of the Framework for State Aid for Research and Development and Innovation C(2014) 3282/2 might also be understood as a part of a subject established for the purpose of carrying out research, development and innovation (such as a research infrastructure, laboratory, branch, department or institute). One subject might thus contain several entities evaluated separately with respect to state aid. The 20% limit for the total annual capacity for secondary, ancillary economic activity with a direct link to non-economic activities would then apply only to a part of a RO (= relevant entity), not to the entire RO. The de jure subject would remain the grant beneficiary. Do we understand the issue correctly?" **(Question No. 10)** Yes (see also question 5 above).
2. Term „a purely ancillary economic activity“ - How should be the term „a purely ancillary economic activity“ interpreted in case of a research organisation? E.g. a University that apart from teaching and research activities also can offers accommodation (in halls of residence) and meals/canteens (not only for students and school personnel but also for third persons). Could these activities, which perhaps may be considered as economic, be consider as ancillary economic activities and do they need to be included in the 20 % limit? **(Question No. 11)** All types of economic activities can be included for the purpose of the 20% threshold, insofar as the qualitative criteria for being considered as "purely ancillary" are also fulfilled (see also questions 4 and 6 above).
3. Art. 28 and parts 2.2.1 and 2.2.2 - What is the factual difference between the "research on behalf of undertakings" and the "collaboration with undertakings"? Especially, when the condition under art. 28 a) is fulfilled. **(Question No. 12)** The Framework refers to, and defines "effective collaboration" with a view to make clear that this concept refers to a situation where all parties in a project fully participate in its joint definition and implementation, and share its risk and rewards. The only possible exception, which is therefore reflected in point 28.a), is that one or several partners may bear the full cost of the project without compromising its "effective collaboration" nature.
4. Is it possible to provide a public university with funds for publishing of a scientific journal and yet not to constitute state aid? **(Question No. 13)** Yes, in particular if such publication is meant to disseminate the results of it research activities.

5. Could an entity that conducts research in majority/predominantly commercially be considered research organisation? **(Question No. 14)** In principle yes, provided the requirements of the relevant definition are met. However, it would seem difficult to consider that the primary goal of an entity that predominantly conducts e.g. contract research is to independently conduct research or widely disseminate its results.
6. In case when the infrastructure (financed outside of state aid - 2.1.1) is exploited for economic activity even though it might be only ancillary activity, is it possible to use the income generated by the ancillary economic activity for further development of the economic activity which will remain ancillary and its main focus will be to decrease the losses from the non-economic activity? **(Question No. 15)** Yes, since apart from the specific case of knowledge transfer activities (see point 19.b) of the Framework) there are no restrictions to the use of such income.
7. Could we assess education of employees of research organisations as an activity that does not constitute state aid? **(Question No. 16)** Public funding of the education of employees of research organisations does not constitute state aid if such education is not an economic activity, in particular if it is organised within the national education system (see also question 8 above) or if such education is limited to the acquisition of those knowledge and skills that are required for carrying out the non-economic activities of the relevant research organisations. Otherwise, such public funding may constitute state aid for training activities and would need to comply with the relevant rules (see Article 31 of the GBER).

If so what are the condition for such an assessment (e.g. education purely for noneconomic activities)? **(Question No. 17)** Public funding of education purely for non-economic activities would indeed not constitute state aid (see also question 16 above).

In case when there would be partly involved economic activity and partly non-economic activity could the expenses for the education be divided between the two? **(Question No. 18)** Yes, that should indeed be the rule (see also question 16 above).

8. Number of facilities operated by state funded organisations fulfill the definition of research infrastructure e.g. collections and archives. Does the definition of research infrastructure actually say that as the activity of research infrastructure could be financed only „facilities, resources and related services“ (excluding personnel costs)? **(Question No.19)** The new provisions on state aid for research infrastructures are limited to investment aid (construction or upgrade of research infrastructures) and the eligible costs are therefore limited to investment costs in tangible and intangible assets, which means that personnel costs are indeed excluded from this category of aid. Personnel costs can however be eligible for aid under other provisions, such as aid for R&D projects undertaken by research infrastructures in compliance with the applicable rules (see Article 25 of the GBER).
9. Is it possible to apply the provision of Art. 127 of the new Framework (to amend existing RDI aid schemes in order to bring them into line with the (new) Framework no later than 1st January 2015) on RDI scheme that is (under the Framework 2007-2014) state aid free because of the

nature of the beneficiaries and their activities (only research organization and non-economic activities are supported or de minimis rules are applied)? It means to provide grants not constitute state aid (in period 1.7.-31.12.2014) within the existing RDI scheme under the conditions of the Framework 2007-2014. **(Question No.20)** *If a specific R&D&I scheme does not entail state aid, it is not concerned by the appropriate measures.*

10. In accordance with the previous EC oral statements (*State Aid in RDI 18. 07. 2013 organized by Technology Agency of the Czech Republic, EC Paolo Cesarini Head of Unit, DG Competition, State aid for R&D&I and risk capital and EC consultations in Prague 27.3.2014, specific consultations with the EC – meetings with OP RDI representatives in spring 2013*) it is possible to measure the amount of a beneficiary economic activity not only of the entity's overall annual capacity, but also of the use of infrastructure paid from the scheme. Could you confirm the statement, please? **(Question No. 21)** *First of all, it should be noticed that any clarifications provided before the adoption of the Framework necessarily related to possibilities or options that were being explored at the time, and which may not have been retained in the final text. For the purpose of establishing whether or not the 20% threshold for ancillary economic activities is complied with, their importance needs to be established by reference to the relevant entity's overall annual capacity (see also question 5 above).*

In case the answer is positive, could you also confirm that the use of infrastructure might be measured by the equipment operational time (it means the economic use in proportion to the total capacity of the infrastructure)? **(Question No. 22)** *In principle yes, insofar as the equipment operational time for economic activities is compared with its potential annual use for all purposes as a measure of overall annual capacity.*