
Fraunhofer-Gesellschaft

Recent Developments in European State-Aid-Policy

Dr. Lorenz Kaiser, May 28th 2008



Community Framework for State Aid for R&D

Art. 87 EC Treaty forms the legal basis for the State Aid Rules, but requires explanations in "Framework":

- **internal administrative provision** of the Commission to define the term of "State Aid" in the field of R&D based on consultations of the European Ministers of Economic Affairs
- **commitment** of the Commission to the R&D State Aid Framework
- only subject to **Commission** and **EUGH control**
- **no formal need** to involve **European Parliament and Council of Europe**
- - normally revised at regular intervals of 5 years
- Framework Programme 2007 adopted after protracted debates
- duration linked to 7th Framework Programme (e.g. 2007 - 2013)



Framework in force since 01.01.07-

Table illustrating the aid intensities

	Small enter- prise	Medium-sized enterprise	Large enterprise
<i>Fundamental Research</i>	100 %	100 %	100 %
<i>Industrial Research</i>	70 %	60 %	50 %
<i>Industrial Research</i> subject to: - collaboration between undertakings; for large undertakings: cross-border or with at least one SME or - collaboration of an undertaking with a research organisation or - dissemination of results	80 %	75 %	65 %
<i>Experimental Development</i>	[45] %	[35] %	[25] %
<i>Experimental Development</i> subject to: - collaboration between undertakings; for large undertakings; with cross-border or at least one SME or - collaboration of an undertaking with a research organisation	[60] %	[50] %	[40] %

Statistic: Comparison of R&D-Expenditures in Europe

Table 1: State aid awarded in the EU Member States, 2006

	Total State aid less railways in billion €	Total State aid for Industry and services (= total State aid less agriculture, fisheries and transport) in billion €	Total State aid less railways as % of GDP	Total State aid for Industry and services (= total State aid less agriculture, fisheries and transport) as % of GDP
EU-25	66.7	47.9	0.58	0.42
EU-15	61.1	44.7	0.56	0.41
EU-10	5.6	3.2	0.91	0.52
Belgium	1.2	0.9	0.39	0.28
Czech Republic	0.8	0.6	0.66	0.51
Denmark	1.3	1.0	0.59	0.46
Germany	20.2	16.0	0.87	0.69
Estonia	0.1	0.0	0.41	0.08
Ireland	1.0	0.5	0.57	0.28
Greece	0.6	0.3	0.26	0.15
Spain	4.9	3.9	0.50	0.39
France	10.4	7.4	0.58	0.41
Italy	5.5	3.8	0.37	0.26
Cyprus	0.1	0.1	0.76	0.48
Latvia	0.3	0.0	1.60	0.15
Lithuania	0.1	0.1	0.54	0.23
Luxembourg	0.1	0.0	0.32	0.13
Hungary	1.4	0.8	1.57	0.93
Malta	0.1	0.1	2.29	1.77
Netherlands	1.9	1.3	0.35	0.24
Austria	2.3	1.6	0.90	0.60
Poland	2.3	1.2	0.85	0.45
Portugal	1.5	1.4	0.93	0.91
Slovenia	0.3	0.1	0.83	0.48
Slovakia	0.2	0.2	0.51	0.45
Finland	2.6	0.6	1.53	0.35
Sweden	3.5	2.9	1.15	0.94
United Kingdom	4.2	3.1	0.22	0.16

Source: Report from the Commission - State Aid Scoreboard - Autumn 2007 Update



The Privilege for R&D in the previous Framework (1996) applicable until 31.12.2006

2.4. Public financing of R&D activities by public non-profit-making higher education or research establishments is normally not covered by Article 92 (1) (equates Art. 87 (1)) of the EC Treaty.

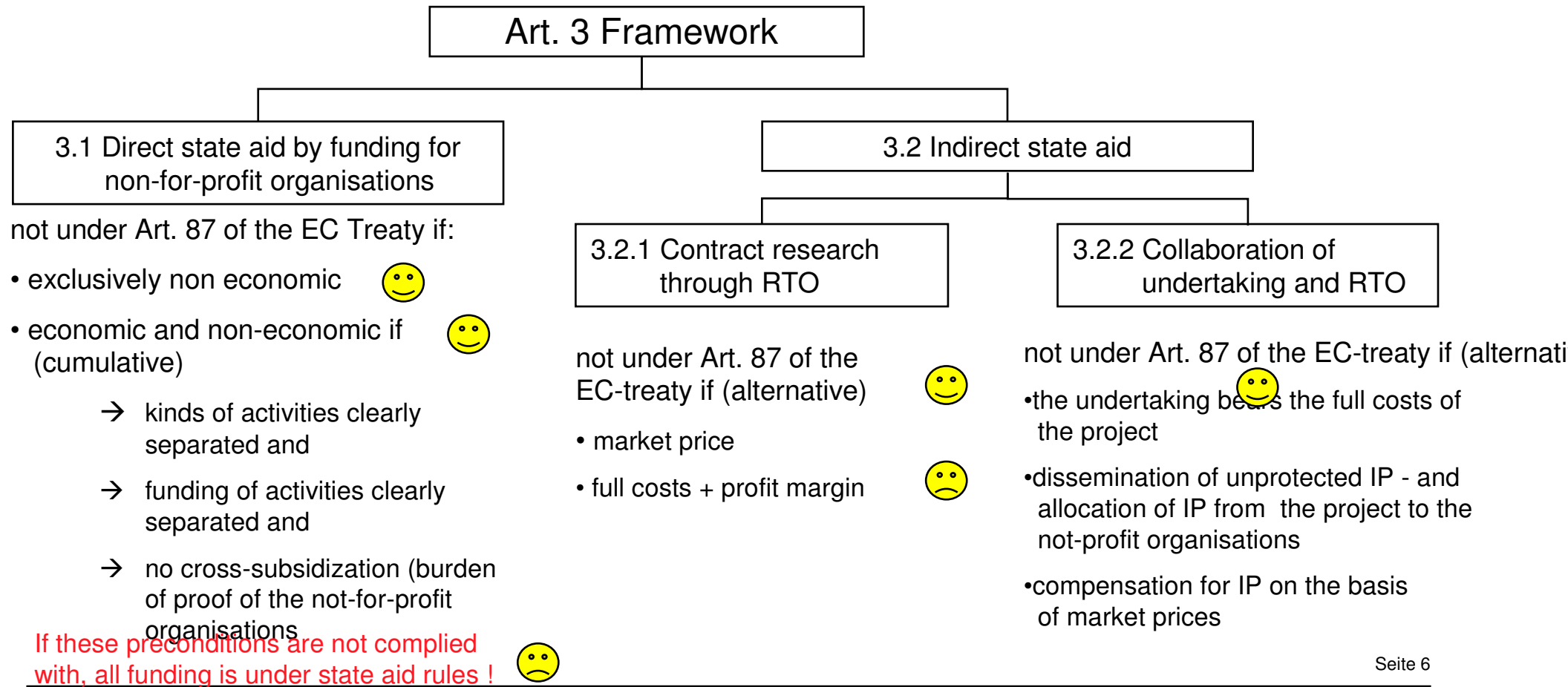
Where R&D is carried out by public non-profit-making, higher-education or research establishments on behalf of or in collaboration with industry, the Commission will assume that the State aid within the meaning of Article 92(1) of the EC Treaty is not involved either:

- (a) where the public non-profit-making, higher education or research establishments contribute to research projects as a commercial firm would, e.g. in return of **payment at the market rate** for the services they provide;
or
- (b) - where the industrial participants in the research bear the **full costs** of the project; or
- where the **results** which do not give rise to intellectual property rights may be **widely disseminated**,
- **and any IP-rights** to the R&D results are **fully allocated to the public non-profit-making establishment**,
- where the public non-profit-making establishment receive from the industrial participants **compensation equivalent to the market price** for IP- rights which result from the research project and which are held by those industrial participants,
- and where the **results** which do not give rise to IP-rights may be **widely disseminated** to interested third parties.



State Aid Rules

Community Framework for State Aid for R.& D.& I.



Compatibility of aid under Article 87 (3) (C) of the EC Treaty

Article 5.1 Research categories

- fundamental
- industrial
- experimental development

classification
based
on Commission
practice
and
Frascati Manual*

Art. 5.1.2 Basic aid intensities

- fundamental research: 100%
- industrial research: 50%
- experimental development: 25%

Combined Aid:

"in the case of State aid for an R&D project being carried out in collaboration between research organisations and undertakings, the combined aid deriving from direct government support for a specific research project and, where they constitute aid (see section "3.2.2*"), contributions from research organisations to that project **may not exceed** the applicable intensities for each benefiting undertaking."

Seite 7

*http://europa.eu.int/estatref/info/sdds/en/rd/rd_frascati_manual_2002.pdf

*speaker's note

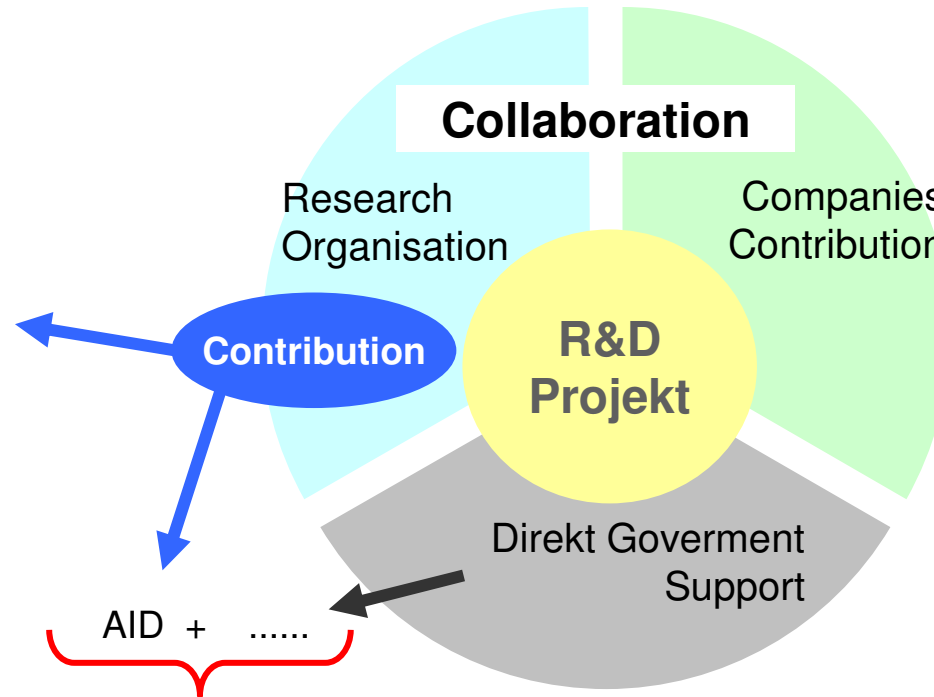


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Section 5.1.2 paragraph 3 Framework for State Aid R&D&I

"no- aid" following Section 3.2.2:

- undertaking bears full costs of the project
- dissemination of unprotected IP and allocation of IP from the project to the R.O.
- compensation for IP on the basis of market price



COMBINED AID → MAY NOT EXCEED THE APPLICABLE AID INTENSITIES FOR EACH BENEFITING UNDERTAKING PROBLEMS:

- How do you calculate "combined aid"?
- How to charge the institutional aid (e.g. Fraunhofer=1/3)? in average?

"Non-Aid" in Collaborative Research

previous version 1996

1. Project costs **completely born** by participating companie(s)
2. **Dissemination** of IP to PRO
3. **Exploitation** aigainst payment

effective version 2007

1. Project costs completely born by participating undertaking
2. **Allocation** of IP to PRO
3. **Transfer of ownership** against payment
4. **Balanced rights**



Structure of the Draft of general block exemptions of the Commission in the State Aid Area*

Chapter I: COMMON PROVISIONS

- Art. 1. Scope
- Art. 2 Definitions
- Art. 3 Conditions for exemptions
- Art. 4 Aid Intensity/ Eligible costs
- Art. 5 Transparency of Aid
- Art. 6 Individual Notification Thresholds
- Art. 7 Cumulation
- Art. 8 Incentive Effect
- Art. 9 Transparency
- Art. 10 Specific Conditions applicable to investment aid

see: Official Journal of the European Union C 210/14 of 08.09.2007

Chapter II: SPECIFIC PROVISIONS FOR THE DIFFERENT CATEGORIES OF AID

- *Section 1: Regional Aid*
- *Section 2: SME Investment and Employment Aid*
- *Section 3: Aid for Environmental Protection*
- *Section 4: Aid for consultancy in favour of SMEs and SME participation in fairs*
- *Section 5: Aid in the form of risk capital*
- *Section 6: Aid for Research and Development*
- *Section 7: Training Aid*
- *Section 8: Aid for disadvantaged and disabled workers*

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Comments on the draft of general block exemptions

Block Exemption would be applicable for Aid in R&D (no definitions of fundamental/industrial research in Article 2, but in Art. 24)

➡ **recommendation:** move the R&D definitions from Art. 24 to Art. 2 where all other relevant definitions can be found

➡ **Art. 25 paragraph 3** determines - as in Section 5.1.2 of the State Aid Framework- when aid for R&D projects is acceptable, **but does not provide an exemption clause/ privilege** similar to Section 3.2.2 State Aid Framework and does **not expressly refer to the provisions** of the Framework for State Aid for R&D&I.



Recommendations to Art. 25 GBE

Section 3.2.2 State Aid R&D&I is applicable to Art. 25 para 3 General Block Exemptions (GBE)

➔ Reasons:

- identical wording of Art. 25 GBE and Section 5.1.2 Framework State Aid R&D&I
- Section 5.1.2 contains a reference to indirect State Aid ("where they constitute aid (see section)") but fails to mention section 3.2.2 expressly

➔ Recommendations:

- reference to Section 5.1.2 State Aid R&D&I in Art. 25 para 3 GBE
- reference to Section 3.2.2 in Section 5.1.2

State Aid Decisions- Impact on drafting of contracts

Example THESEUS (ex QUAERO)

- Abstract (translated - authentic language: german)-

Cooperations: *"The results of joint projects, which do not give rise to intellectual property rights, **may be widely spread**. (...) The ownership of any intellectual property rights on R&D results which result from the activity of the research organisation are fully **allocated to the research organisation**.*

*The collaboration agreements establish that the research organisation receives from the participating undertakings **compensation equivalent to the market price** in the case of an transfer of ownership of the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating undertakings."*

(THESEUS Decision - State aid, nr. N 112/2007, K(2007)3543, Rz (63) f., S. 14)



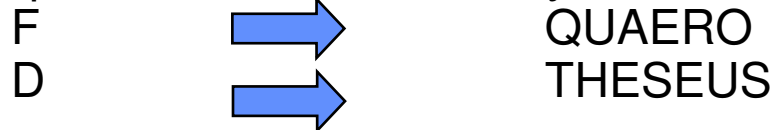
State Aid Decisions (new Framework for State Aid for R&D&I)

Example: THESEUS (ex QUAERO)

- Abstract- (translated)

Beginning: 5th French-German Council of Ministers of 20th April 2005. Schröder/Chirac: *"to set new focus on technological policy (...), in order to strenghten the economic competitiveness of both countries- "Milestone-Project to promote search engines and services for the Internet of the future" --> Google*

- Split: France and Germany at the beginning of 2007. **Seperate Notofication.**



- **Non-aid** Decision for **Research Organisations**

Complaint Procedures reagarding the field of F&E

- No leading cases known in the field of Research and Development
- Market assessment is a critical and almost unfeasable criterion
- Single cases cannot be compared to each other

