

## EARTO Response to the EC Consultation on GBER

22 April 2026

EARTO, representing over 350 Research and Technology Organisations (RTOs) across 32 countries, welcomes the European Commission (EC)'s [initiative](#) to consult stakeholders on the [draft](#) revised [General Block Exemption Regulation \(GBER\)](#) and values the opportunity to contribute to this important process with its views. Building on our [previous submissions](#), EARTO reiterates and further develops its key recommendations to ensure that the revised GBER and the [RD&I State Aid Framework](#) effectively and equitably support Europe's innovation ecosystem.

EARTO supports the EC's objectives of simplification, including the introduction of the new category of "applied research", better alignment with market and technological developments, and improved legal certainty for granting authorities and beneficiaries. At the same time, EARTO stresses that the revised GBER should ensure consistent and innovation-friendly treatment of RTOs and other Research and Knowledge Dissemination Organisations (RKDOs) across Member States, in particular regarding RD&I State Aid rules and infrastructure provisions.

### EARTO Key Recommendations

EARTO hereby would like to make the following recommendations for the update of the draft revised GBER:

- 1. Explicitly recognise RTOs<sup>1</sup> as RKDOs by default (or introduce an explicit presumption) to reduce divergent national and regional interpretations.**
- 2. Clarify the 20% ancillary economic use rule as a safe harbour and provide practical guidance on its interaction with the separation of activities and accounting. Include specific guidance for Structural Funds (such as the ERDF) managing authorities to avoid a dual regulatory standard.**
- 3. Strengthen the transparency, accessibility and practical usability of interpretative guidance provided by the EC DG COMP to Member States, including through accessible Q&A tools and user-friendly explanatory guidance.**
- 4. Clarify that Technology Infrastructures (TIs) can be treated under SAR:**
  - a. as a whole or in part,**
  - b. depending on their business models and what services and other activities they perform:**
    - i. Or as Research Infrastructures (RIs),**
    - ii. Or as Testing and Experimentation Infrastructures (TEIs).**

**This would ensure that TIs are not inadvertently and automatically treated under SAR as predominantly TEIs by national or regional governments, which would automatically lower the public support possible to the TIs operators, while their share of non-economic activities may not require it under SAR.**

- 5. Re-promote the [EC's updated Decision Tree](#)<sup>2</sup> towards Member States and regional authorities to support consistent application of the SAR, including through targeted training by the EC. While EARTO welcomes the updated Decision Tree, it regrets that the detailed explanation and examples on claw-back mechanisms contained in the previous version have been removed, as those were particularly helpful. Accordingly, given their practical relevance, EARTO encourages the EC to reintegrate them in the Decision Tree. In addition, the Decision Tree could also be referenced in a footnote to the revised GBER.**
- 6. Reassess selected thresholds and access conditions for capital-intensive infrastructures and consider more proportionate preferential access rules.**
- 7. Introduce a clear safe harbour for non-economic RD&I activities to support predictable public funding and avoid distortive over-classification as "economic activity".**

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<sup>1</sup> OECD Definition of RTOs: "Research and Technology Organisations (RTOs) are non-profit organisations whose core mission is to produce, combine and bridge various types of knowledge, skills and infrastructures to deliver a range of research and development activities in collaboration with public and industrial partners of all sizes. These activities aim to result in technological and social innovations and system solutions that contribute to and mutually reinforce their economic, societal and policy impacts." ([OECD-EARTO Joint Study – The contribution of RTOs to socio-economic recovery, resilience and transitions](#), May 2022).

<sup>2</sup> [EC JRC Decision Tree](#) – State Aid Rules in Research, Development & Innovation - Addressing Knowledge and Awareness Gaps among Research and Knowledge Dissemination Organisations, EC DG JRC, November 2020.

8. **Increase the proposed 30% threshold to 45% in Article 32, to ensure sufficient incentives for industrial RD&I investment. This is highly needed to boost private investments effectively. It would better align EU competition policy with the current EU industrial & RD&I policies, aiming at boosting private RD&I investments to increase EU productivity and growth<sup>3</sup>.**
9. **Avoid the systematic use of Article 40 to ensure that RKDOs/RTOs, as intermediaries, are not required to perform the functions and bear the liabilities usually done by the granting authorities. Where Article 40 is applied, responsibility for State aid compliance - including market conformity, aid intensity calculation and beneficiary eligibility - should remain with national or regional funding agencies, which are best placed to ensure compliance and legal certainty.**

### Positive Elements in the draft GBER

EARTO welcomes **several positive developments** in the draft revised GBER:

- **Clearer definition of TEIs:** The draft defines “testing and experimentation infrastructure” as facilities predominantly used by undertakings, in particular SMEs, and subject to transparent and non-discriminatory access on market terms. This contributes to greater legal clarity for predominantly economic infrastructure use.
- **Monitoring and claw-back mechanisms:** The inclusion of monitoring and claw-back mechanisms to address situations where the share of economic activities increases compared to the situation envisaged at the time of aid award is a pragmatic approach to prevent over-compensation, while avoiding unnecessarily rigid caps.
- **EC’s intention to provide guidance and FAQs:** The accompanying explanatory memorandum indicates that illustrative and interpretative elements will be moved to a separate guidance document, including answers to frequently asked questions in an accessible format. EARTO welcomes this direction and encourages strong stakeholder usability.

### Additional Elements to be added to the draft GBER

In addition, EARTO would like to make **additional proposals that could be added** to the draft revised GBER:

- **Recognition of RTOs as RKDOs by default:** While the draft contains the general definition of “Research and Knowledge Dissemination Organisation”, it does not explicitly recognise RTOs as RKDOs by default or introduce a presumption supporting consistent national implementation. In practice, similar RTO models continue to be interpreted differently by national authorities, particularly regarding economic versus non-economic classification, eligibility for full cost coverage, or the use of repayable instruments. This fragmentation undermines the Single Market for RD&I support.  
**EARTO proposal:** EARTO invites the EC to explicitly clarify, in the Regulation and/or accompanying guidance, that RTOs fulfilling the RKDO criteria are considered RKDOs by default, irrespective of legal form or financing model, and to provide practical examples in the guidance document. In addition, EARTO recalls that, in line with EU State aid case law and EC practice, only economic activities fall within the scope of State aid rules, while non-economic R&I activities should remain outside their application. Here, the definition of RTO of the OECD could be used to that extent<sup>4</sup>. EARTO underlines that the burden of proof should be reversed: where an RTO fulfils the RKDO criteria set out in the GBER, it should be presumed to qualify as an RKDO by default, and it should be for the competent national authority (not the RTO) to demonstrate otherwise. This reversal is essential to prevent RTOs from being required to re-establish their non-economic nature on a case-by-case basis before each funding decision, which generates disproportionate administrative burdens and legal uncertainty incompatible with the objectives of the GBER.
- **Introduction of “applied research”:** As stated above, EARTO welcomes the introduction of applied research in the current draft Article 32. However, the complementary option proposed by the European Commission to rely on a single category of applied research for RD&I activities, covering both industrial research and experimental development, raises concerns when looking at the threshold of aid allowed, as summarised by the table below.

Current approach will remain (basic %)	Proposed complementary option (basic %)
Fundamental research: 100 %	Fundamental research: 100 %
Industrial research: 50 %	} Applied research: 30 %
Experimental development: 25 %	

<sup>3</sup> [EC Communication on A Competitiveness Compass for the EU](#), 29 January 2025.

<sup>4</sup> Ibid 1.

In particular, the proposed 30% threshold for applied research is too low for such RD&I activities. It risks failing to attract and sustain meaningful industrial RD&I involvement and ultimately being counterproductive. Public RD&I investments play a crucial role in addressing market failures: it stimulates private RD&I investment by de-risking such investments for the industry. Despite the accelerating global technological race, the EU continues to lag behind its global competitors in both public and private RD&I investment levels. While public funding can only represent a share of total RD&I investment, it should be designed to effectively leverage and crowd in private investment. A threshold set too low would undermine this objective. Furthermore, some national granting authorities may favour this option for simplification and in order to reduce the funding of RD&I projects (including when such projects cover a majority of industrial research activities).

**EARTO proposal:** EARTO invites the EC to increase the threshold to 45%, to ensure sufficient support for industrial RD&I investment, aligning better with the EU's competitiveness ambitions.

- **20% ancillary economic use rule:** The draft does not explicitly clarify the 20% ancillary economic use rule as a safe harbour. In the absence of practical clarification, national authorities may continue to apply divergent and overly cautious interpretations, including de facto prohibitions on economic use or rigid caps without flexibility, which risks reducing infrastructure uptake and hindering knowledge and technology transfer.  
**EARTO proposal:** EARTO invites the EC to explicitly confirm, in guidance and where possible in the Regulation, that the 20% threshold constitutes a safe harbour only. It should be clarified that (i) separation of activities and accounting enables full funding of non-economic activities even where economic activities exceed 20%, and (ii) monitoring and claw-back mechanisms are appropriate and proportionate tools where the share of economic use increases over time.
- **Safe harbour for clearly non-economic RD&I activities:** The draft does not introduce a specific safe harbour for clearly non-economic RD&I activities beyond the general separation-of-accounts approach. Persisting uncertainty regarding what qualifies as non-economic activity continues to hinder predictable public funding and may discourage collaborative applied research and open infrastructure models.  
**EARTO proposal:** EARTO invites the EC to confirm that nationally established, transparent and objective overhead rates and simplified cost options remain valid under the GBER, including beyond the 20% flat-rate reference, where they comply with the principles of the EU Financial Regulation. This is essential to ensure administrative simplicity and consistency between EU and national RD&I funding. In addition, EARTO encourages the EC to introduce, at least through guidance, a clear set of safe-harbour examples for non-economic RD&I activities - such as open dissemination, open and non-discriminatory access policies, and transparent pricing rules - and to clarify how these interact with RKDO status and the separation of accounts.
- **Transparency and practical access to interpretative guidance:** EARTO previously recommended that interpretative guidance issued by the EC DG COMP to national authorities on the application of the GBER should be accessible to RD&I stakeholders. While the explanatory memorandum foresees a guidance document with FAQs, this alone does not fully address the transparency gap affecting day-to-day implementation.  
**EARTO proposal:** EARTO stresses that activities considered non-economic under EU programmes should not be reclassified as economic when co-funded at national level, including project administration and coordination activities, as this would undermine coherence between EU and national funding rules. EARTO therefore encourages the EC to ensure that the EC guidance document contains practical Q&A and illustrative examples reflecting interpretations used in practice by Member States. It should notably have examples on recurring issues such as economic/non-economic separation, ancillary use, access pricing and preferential access, and to consider establishing a publicly accessible repository of Commission clarifications applied in State aid practice.
- **Technology Infrastructures (TIs) vs TEIs:** While we would not welcome a new added definition for TIs within the revised GBER, clarification could be noted that when TIs are predominantly non-economic and operated by RKDOs or RTOs in collaboration with SMEs and industry, they can fall into the RIs category. Today, TIs risk being treated as TEIs solely because they serve industrial users, even when open-access and non-economic conditions are met to be treated as RIs. The definition of TEIs should not lead to a more restrictive interpretation of SAR for TIs.  
**EARTO proposal:** EARTO requests that the EC clarify, in guidance and where appropriate in recitals, that Technology Infrastructures (TIs), depending on their objectives and activities, can be treated under SAR either as Research Infrastructures (RIs) or as Testing and Experimentation Infrastructures (TEIs), depending on their business models. This would ensure that TIs are not inadvertently and automatically treated as predominantly TEIs by national or regional governments due to the mere fact that they perform some economic activities and serve industry users. This would automatically lower the public support possible to the TIs operators, while their share of non-economic activities may not require it under SAR. This could be done using terminology aligned with the [EU Strategy on Research and Technology Infrastructures](#). In addition, EARTO encourages the EC to actively re-promote [its updated Decision Tree](#) to Member States to support a consistent understanding and application of the SAR. This may require dedicated training offered by the EC on how to use and

apply the Decision Tree in practice. The Decision Tree could also be explicitly referenced in a footnote to the revised GBER.

- **Aid to SMEs and SMCs:** In the current draft Article 40, RKDOs would be required to assume significant additional compliance and liability responsibilities when providing services at below-market prices to SMEs and Small Mid-Caps (SMCs), even where no direct commercial or financial advantage is obtained by the RKDO itself. While Article 40 is presented as an optional facilitative instrument, in practice it risks turning RKDOs into quasi-granting authorities, without the legal protections, institutional mandate or infrastructure normally available to Member States and their funding agencies.

In particular, this article would require RKDOs to:

- Establish and apply robust methodologies to determine and document applicable market prices and to quantify the aid element embedded in discounted services.
- Ensure full ex ante transparency through public disclosure of availability, conditions and procedures in a clear, objective and non-discriminatory manner.
- Implement extensive record-keeping and archiving systems to track individual aid measures for a period of ten years.

Beyond these formal obligations, RKDOs would also be required to verify beneficiary eligibility, monitor aid ceilings and cumulation rules, and ensure full auditability of aid passed on to undertakings. Unlike public granting authorities, RKDOs typically do not have access to dedicated State aid expertise, centralised beneficiary databases, or established monitoring and recovery mechanisms. This exposes RKDOs to significant legal and financial risks, including ex post requalification of aid, recovery procedures, and potential litigation by competitors of aid recipients. In practice, Article 40 could also lead to indirect pressure from national funding schemes to apply this mechanism as a condition for public support, thereby altering the institutional positioning of RKDOs vis-à-vis their Member State and subjecting them to increased state control, auditing and compliance obligations. This would clearly add administrative burden on RKDOs in addition to increased risks. This would run counter to the core objective of the GBER, namely, reducing administrative burdens and providing legal certainty.

**EARTO proposal:** EARTO does not support the systematic use of Article 40 and warns against its de facto transformation into a mandatory instrument for RKDOs later on by Member States. Where the mechanism is applied, EARTO strongly recommends that core public-authority functions, such as beneficiary eligibility checks, assessment of market conformity, calculation of the aid element, monitoring of cumulation rules and recovery obligations, should remain with the competent national or regional funding authorities. These bodies are uniquely placed to perform such tasks: they possess the legal mandate, expertise, databases and control mechanisms required under State aid rules. Shifting these responsibilities to RKDOs as intermediaries would create disproportionate administrative burdens, increase legal uncertainty, and risk undermining their ability to effectively support SMEs and SMCs.

- **Thresholds and access conditions:** EARTO previously suggested reassessing thresholds for infrastructure aid and adopting more proportionate preferential access criteria. The draft sets a single threshold of €25 million for both RIs and TEIs and applies a 10% contribution criterion for preferential access. For capital-intensive domains, such as advanced manufacturing pilot lines, these ceilings may be structurally insufficient and may constrain viable mixed public-private financing models.

**EARTO proposal:** EARTO invites the Commission to reassess (i) the €25 million threshold for infrastructure categories where investment needs are structurally higher, and (ii) whether the 10% preferential access threshold should be calibrated for shared infrastructures serving SMEs, including the possibility of proportional preferential access at lower contribution levels when justified and transparent.

EARTO calls on the EC to reflect these recommendations in the revised GBER to support a more innovation-friendly and coherent State aid framework. This would strengthen Europe's RD&I capacity, ensure consistent treatment of RTOs, and support the Single Market. EARTO remains available for further dialogue.

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#### **EARTO - European Association of Research and Technology Organisations**

*Founded in 1999, EARTO promotes RTOs and represents their interest in Europe. EARTO network counts over 350 RTOs in more than 32 countries. EARTO members represent 228,000 highly-skilled researchers and engineers managing a wide range of innovation infrastructures.*

#### **RTOs - Research and Technology Organisations**

*From the lab to your everyday life. RTOs innovate to improve your health and well-being, your safety and security, your mobility and connectivity. RTOs' technologies cover all scientific fields. Their work ranges from basic research to new products and services' development. RTOs are non-profit organisations whose core mission is to produce, combine and bridge various types of knowledge, skills and infrastructures to deliver a range of research and development activities in collaboration with public and industrial partners of all sizes. These activities aim to result in technological and social innovations and system solutions that contribute to and mutually reinforce their economic, societal and policy impacts.*

**EARTO Working Group Legal Experts:** *is composed of 90 corporate legal advisers working within our membership. Established in autumn 2013, this Working Group has also worked on the revision of the State aid rules & the GBER. Our experts also contributed to the setting up of the [DESCA Consortium Agreement model](#) for the Framework Programmes.*

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