

PROOF OF INNOVATIVE CONCEPT PROGRAM - PoC

GUIDELINES FOR BENEFICIARIES REGARDING THE APPLICATION OF STATE AID RULES

This Annex aims to inform potential applicants about the state aid rules related to the field of research, development and innovation.

Applicants are invited to study these Guidelines in order to understand the concept of state aid, economic and non-economic activities, and to be able to determine whether their projects include economic activities, i.e., whether they are eligible for financing within the framework of this Call for submission of project proposals for the Proof of Innovative Concept Program for scientific research organizations.

The call for proposals " Proof of Innovative Concept Program - PoC for scientific research organizations" refers to projects that **do not include state aid**.

The guidelines are based on the provisions of the Community Framework for State Aid for Research and Development and Innovation ¹(2022/C 414/01) (hereinafter: the Community Framework) adopted by the European Commission - it establishes detailed rules related to the existence of state aid in projects in research and development.

The state aid concept requires that the following four criteria are cumulatively met ²:

1. that the funds were allocated by the State i.e., from state funds in any form,
2. that the aid represents a selective economic advantage by placing certain companies or the production of certain goods in a more favourable position,
3. that the aid distorts or threatens to distort competition on the market,
4. affects trade between member states.

Applicants must undertake that the allocated funds will not be used for economic activities (Applicant's statement on non-economic activities).

¹ [https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:52022XC1028\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:52022XC1028(03)&from=EN)

² The first paragraph of Article 107 of the Treaty on the Functioning of the European Union defines the elements of state aid, stating that "any aid granted by a Member State or granted through state funds in any form which distorts or threatens to distort competition on the market by placing certain enterprises or production certain goods to a more favorable position, is incompatible with the internal market to the extent that it affects trade between member states", Treaty on the Functioning of the European Union (TFEU, consolidated version, OJ C 115/47, 9.5.2008).

Applicants

1. This Call for Applications refers to Projects that will be implemented by applicants/Beneficiaries, scientific research organizations that meet the criteria for a research organization according to the provisions of the Community Framework.
2. The Community Framework defines a research organization as follows:

Scientific/research organization or organization for research and dissemination of knowledge means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, individuals or virtual collaborative research-oriented entities), regardless of their legal status (organization on the basis of public or private law), i.e. a method of financing, the primary goal of which is to independently conduct fundamental research, industrial research or experimental development, or to acquaint the general public with the results of these activities, through lectures, publications or transfer of knowledge. If that entity also performs economic activities, the financing, costs and income of those economic activities must be calculated separately. Companies that have a decisive influence on such an entity, for example as owners of shares in it or as its members, do not have preferential access to the results that the entity produces. (See chapter 1.3 of the Community Framework).

Proof that the applicant is a scientific research organization according to the Community Framework will be verified based on the statute or other act of the applicant, the applicant's statement or another document from which the competent authority will be able to determine the above definition.

Economic and non-economic activity

3. Applicants are obliged to declare that the funds that will be allocated to them on the basis of this Call **will not be used for economic activities.**

Consequently, this means that these funds are not state aid. Therefore, it will be explained below what the term economic or non-economic activity refers to according to European legislation.

4. State aid is granted only for the economic activity of a subject. Funds allocated for non-economic activities are not considered state aid.

5. An enterprise is defined as an entity that carries out economic activity, regardless of its legal status, i.e., whether it was established in accordance with public or private law, or by way of financing. Therefore, the classification of a certain entity as an enterprise depends on the nature of its activities. Therefore, it can be concluded that:

- The status of the subject under national legislation is not decisive. The only relevant criterion in this regard is whether it performs economic activity,
- The application of the state aid rules does not depend on whether the entity was established for the purpose of making a profit,
- The classification of an entity as an enterprise always refers to its specific activity. An entity that carries out both economic and non-economic activities should be viewed as an enterprise only in the segment related to economic activities.

6. What is decisive for fulfilling the requirements from the definition of an enterprise is the fact that it engages in economic activity consisting of offering products or services on a specific market.

7. According to the Community Framework, the Commission considers that the following activities of scientific research organizations are generally non-economic:

a) Primary activities of research organizations:

- education for the purpose of more qualified human resources. In accordance with the judicial and decision-making practice of the Commission and as explained in the Notice on the state aid concept and the Communication on services of general economic interest, public education organized within the national education system, which is mainly or entirely financed by the state and under the supervision of the state, is considered a non-economic activity;
- independent IR for more knowledge and better understanding, including collaborative IR in which research organizations or research infrastructure cooperate effectively;
- non-exclusive and non-discriminatory dissemination of research results, for example through teaching, open access databases, open publications or open-source computer programs;

b) **transfer of knowledge activities**, if they are carried out by a research organization or research infrastructure (including their departments or subsidiaries) or are carried out together with such bodies or on behalf of such entities, whereby all income from such activities is reinvested in the primary activities of the research organization or research infrastructures. The non-economic nature of such activities is not questioned even if third parties are contracted to provide appropriate services through open tenders.

8. If research organizations or research infrastructures are used to perform economic activities, for example by renting equipment or laboratories to companies, providing services to companies or conducting contracted research, public funding of such economic activities is generally considered state aid.

9. If the research organization or research infrastructure is used for economic and non-economic activities, the state aid rules are applied to public funding only if it covers costs related to economic activities. If a certain research organization or research infrastructure is used almost exclusively for non-economic activity, its financing may be completely excluded from the scope of application of the state aid rules, provided that its economic activity is exclusively auxiliary, i.e. activity directly related to the work of the research organization or research infrastructure and necessary for that work or inseparably connected with its main non-economic use, and its scope of application is limited. For the purposes of this framework, the Commission will consider this to be the case if economic activities consume exactly the same inputs (for example, materials, equipment, labour and fixed capital) as non-economic activities, and the capacities allocated each year to those economic activities do not exceed 20% of the total annual capacity of the subject.

10. If research organizations or research infrastructures are used to perform economic activities, for example renting equipment or laboratories to companies, providing services to companies or conducting contracted research, public funding of such economic activities is generally considered state aid.

11. A research organization or research infrastructure is not considered a state aid beneficiary if it acts only as an intermediary that transfers the total amount of public funding and the benefit gained from such funding to the final recipients. This generally applies in the following cases:

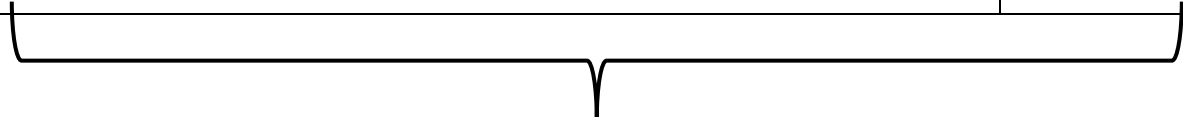
- (a) when public funding and the benefits gained from such funding can be measured and proven and there is an appropriate mechanism to ensure that they are fully passed on to end-users, for example through reduced prices; and
- (b) when no further benefit is conferred on the intermediary because it is chosen on the basis of an open tender or because public funding is available to all entities that meet the necessary objective conditions, which means that the beneficiaries, as final recipients, have the right to receive identical services from any appropriate intermediary.

12. In case that the same entity engages in both economic and non-economic activities, public financing of non-economic activities will not be considered state aid, if it is possible to unequivocally separate the two types of activities, their costs, financing and revenues in order to effectively avoid cross-subsidization of economic activities.

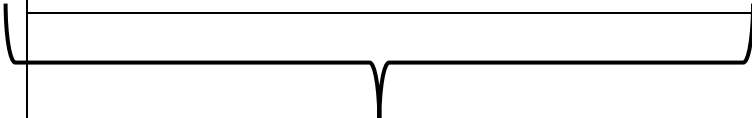
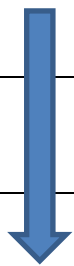
13. In that case and for that purpose, the applicant/Beneficiary declares (Statement on non-economic activities) that he will introduce the separation of economic and non-economic activities (distribution of costs, sources of financial resources and income), which must further be visible in the annual financial statements of the competent entity, which are done according to the current accounting provisions.

14. On the basis of the above, in order to clearly determine the conditions for financing non-economic activity, which is not subject to the state aid rules and in that case a maximum aid in the amount of 90% is possible, we indicate how certain scientific and research organizations operate:

Scientific and research organization - type 1

material, equipment, labour and fixed capital	
80% NON-ECONOMIC ACTIVITIES	20% Economic activity
	
NOT STATE AID	

Scientific and research organization - type 2

material, equipment, labour and fixed capital	
60% NON-ECONOMIC ACTIVITIES	40% Economic activity
	
NOT STATE AID	STATE AID (NOT FINANCED WITHIN THIS CALL)
	

15. When applying, the applicant states in his Statement that he will comply with the conditions of these Guidelines as follows:

- that the funds obtained on the basis of this Call will be used exclusively for non-economic activities of the applicant, including the rules from point 11, which refer to auxiliary economic activities,
- that the funds are intended for financing the primary activities of the scientific research organization or for the activities of knowledge and technology transfer (see point 7),

- in the case of engaging in both economic and non-economic activities, separate management of the two types of activities, their costs, financing and income after the completion of the project until the deadline for depreciation of the acquired equipment, in order to effectively avoid cross-subsidization of the economic activity,
- that they will submit **the annual Report on the use of capacities** (hereinafter: the Report) according to the instructions from point 16 of these Guidelines.

Control and refunds

16. The stated conditions on the financing of non-economic activities of scientific and research organizations are subject to control. The control includes the review of the Capacity Utilization Report (Report) in the period after the completion of the project implementation until the expiration date for depreciation of the newly acquired equipment.

In the annual Report, the beneficiary will have to describe how many working hours of the subject entity equipped within the project (e.g., laboratory, centre, organizational unit) in the form of using scientific and research equipment, were spent on non-economic and auxiliary economic activities. Along with the Report, the beneficiary will have to submit the register of use of the entity in question, which will show the number of working hours used annually for non-economic and auxiliary economic activities. In case that the project is equipped with several entities, the Report will include all units, and registers for each unit will be attached.

The reporting period starts from the day the implementation of the project is completed and lasts until the depreciation of the newly acquired equipment expiry date.

The report is submitted to the Fund once a year after the completion of the project implementation. In case that applicants engage in both economic and non-economic activities, they have to manage the two types of activities separately, their costs, financing and income, and the applicant submits annual financial reports along with the Reports within the same deadline.

17. If it happens that the beneficiary uses more than 20% of the capacity of the entity in question (e.g., laboratory, centre, organizational unit) annually for economic activities, a part of the funds must be returned in an amount that is in accordance with the scale of those economic activities.

In case that a scientific-research organization has equipped the same entity through several contracts within the framework of this Call, we note that in that case the total capacity of the entity will be considered, and that it must not exceed 20% of the capacity for economic activities in order to avoid refunds.

In case that the project is equipped with several entities, exceeding the capacity utilization for economic activities on only one, activates the refund mechanism for that entity.

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18. Non-compliance with the state aid rules during and after the implementation of the project leads to material and criminal liability of the beneficiary and will be the reason for action by the competent authorities.