

# EU rules on state aid

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**ervo**  
european research vessel operators

# Treaty on the Functioning of the EU (Rome 1957)

Art. 107. part I

Prohibition to support private companies.

A country can apply for an EC approval of planned state aid. EC will evaluate if the aid is not unifiable with the EU internal market (standstill procedure).

Exemptions are possible (GBER)

Section 4, Chapter III RDI

# Conflict with EU internal market

1. Measure of a country financed with national budgets & attributable to that country
2. Provide an economic selective advantage to one or more companies.
3. Distortion or falsification of competition within the EU market
4. Influencing trade between EU member states

# What is a 'company'

Every entity that executes a economic activity regardless its legal status or the financing methods

Economic activity = all activities that offer goods & services on the market for remuneration

A governmental entity is in principle not a company yet this only applies to typical governmental tasks like police, army, air traffic control, public hospitals,.....

If activities are only partially economic the entity will be regarded as a company with respect to these.

# De-Minimis rule

1. Application =
  - Support to fishery, aquaculture & agriculture
  - Export
  - Support activity depending on use of national goods
2. Financial threshold
  - 200k€ 1 company over 3 yrs

Notification to companies & vice versa compulsory

# Examples of possible state aid support

Subsidies

Tax benefits

Provide facilities for free or below market price

Supply data for free

The effect is important not the format or the objective

# Research Organisations / Infrastructures

Deemed not to be undertakings, so outside scope of Art. 107(3)(c) TFEU

RO & RI are recipients of state aid

Ancillary activities

= economic activity linked to the non-economic activities, using the same input (labor, equipment, budgets, facilities,...)

<20% of the capacity to maintain 100% public funding

# Article 26 GBER

- RI can be used for economic & non-economic purposes. Renting/chartering = economic activity
- Price charged = market price
- Separate accounting
- 20% threshold is in terms of capacity, not revenue or budget. Capacity = sum of all inputs used by both the non-economic & economic activities.
- Even below 20% capacity economic activities to be charged at market price



# EU funded RI (ESI)

- All EU funding is in conformity with the spirit of state aid rules
- ESIF funds are state resources since they are managed by national authorities
- Funds managed by EU institutions (eg. ESA) fall outside the scope but terms of funding may apply

# Economic advantage RDI

- Contract research for industry ; transfer of IP below market price
- Cooperation if
  - company does not bare all costs of project
  - results/data are not open acces
  - IP is not shared relative to tasks
  - RI gets no market price for IP
- Contract research to industry : tender without open & equal procedure, no preference, open acces to results/data or free for RI.

# RECOMMENDATIONS

Is an entity a company?

charge market price (20% rule)

keep documentation on negotiations

avoid selectivity

separate bookkeeping non-/economic activities

does de-minimis apply?

Exemptions from EC rules on state aid?

# RECOMMENDATIONS

## RDI cooperation

have all results open access

balanced distribution of IP

unbalanced : market price for IP : 20% rule!

re-invests profits in (new) own RDI activities