



# **Industry-Academia Collaboration – the State Aid Perspective**

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**A.3 – State Aid Strategy**

# Disclaimer

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# Knowledge, Innovation and Competitiveness

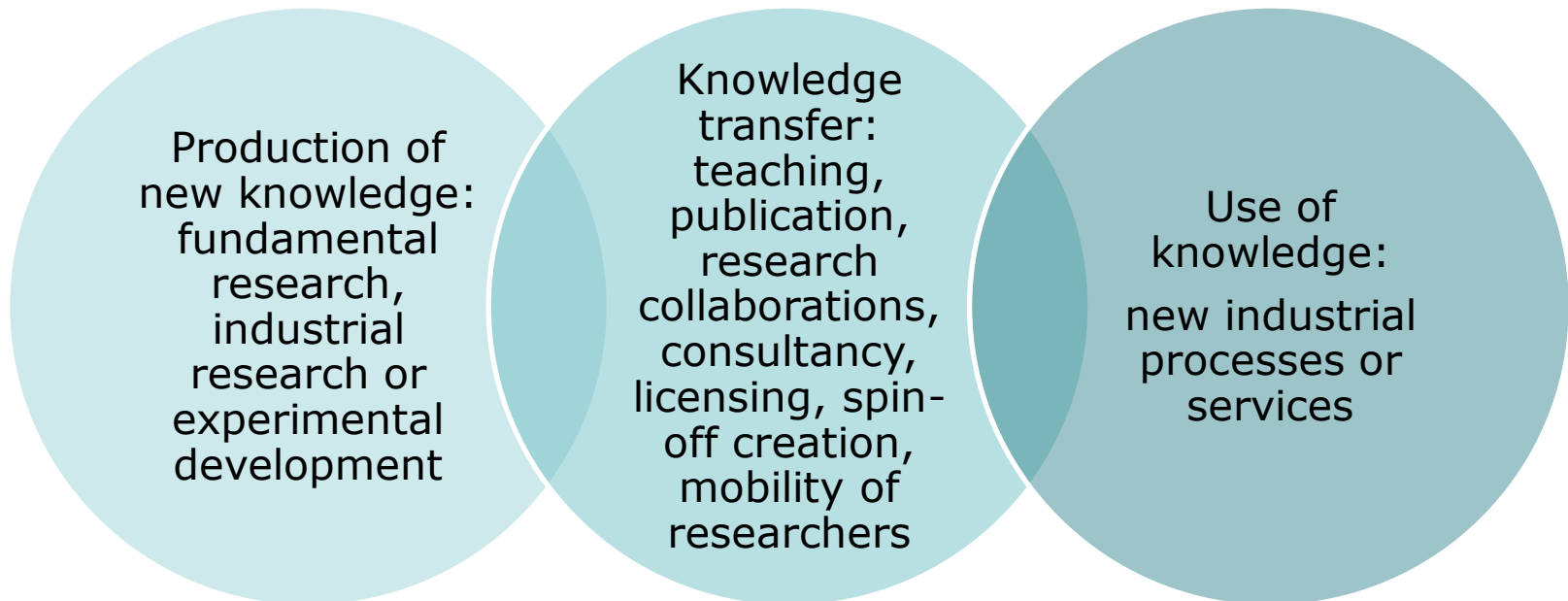
## Situation

- Increasing complexity of technological challenges
- Strong global competition
- Rising cost of innovation
- Limited public funding
- Growth and competitiveness depend on the production and dissemination of new knowledge
- Industry 'open innovation' combines in-house and external resources – public research as a strategic resource!

## Challenges

- How to orient academic research towards the needs of society?
- How to ensure better dissemination and exploitation of new knowledge?
- How to achieve adequate and sustainable incomes for universities?
- How to avoid negative effects on competition from public-private R&D cooperation?

# Knowledge production and dissemination



- Universities/research organisations take part in all these processes
- **Co-operation between universities and industry ensures better dissemination and exploitation of new knowledge**

# Cooperation between Research Organisations and Industry

## Forms of R&D-cooperation

- Contract research or research services on behalf of undertakings
- R&D-collaboration with undertakings
- Renting out equipment or R&D-infrastructure
- Consultancy services

**R&D-cooperation may involve the transfer of State resources to industry – indirect ,State Aid`!**

## Cooperation between Research Organisations and Industry

Possible  
indirect  
State aid to  
industry...if

- Conditions of contract R&D, services, renting out etc. more favourable than market conditions
- Favourable allocation of collaboration results

→ **Is this a problem?**

# Innovation, competition and State intervention

Functioning  
markets with  
vibrant  
competition

- Contribute to the competitiveness of European Industry
- Foster innovation and efficiency
- Create incentives for industry to increase productivity

...but State aid  
has the potential  
to

- Distort product markets ,
- Create location effects
- Reduce dynamic incentives to innovate
- Slow down productivity increases

→ **concept of ,State Aid`?**

## The concept of 'State aid' – Article 107 (1) of the Treaty on the Functioning of the European Union

***"Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."***

***→ so State aid is in principle prohibited but can be declared compatible e.g. R&D&I-aid***

- ✓ **State resources** = transfer of government funds; measure is imputable to the State
- ✓ **Favouring** = economic advantage outside market conditions
- ✓ **Certain** undertakings = selective favour
- ✓ **Undertaking** = Any entity engaged in economic activity (= offering goods/services on a given market), regardless of legal status (organised under public or private law) and economic nature (profit-seeking or non-profit).
- ✓ **Impact on competition and trade** between two or more Member States





# Innovation and functioning competition – Two important objectives in the common interest

Facilitate industry-academia collaboration

- R&D-collaboration as an important knowledge transfer and innovation process

Protect competition from undue distortions

- Functioning competition as an incentive to innovate

→ **State aid rules reconcile these objectives!**

## Avoidance/presence of State aid

**Communication on the Notion of State Aid clarifies the constituent elements of the notion of State aid:**

- 'undertaking/economic activity', 'imputability to the State', 'State resources', 'advantage', 'selectivity', 'effect on competition and trade'

**Framework for State Aid for Research, Development and Innovation 2014 (R&D&I-Framework) clarifies the existence of State aid in the R&D&I-context**

- Public funding for economic activities of research organisations
- R&D-services on behalf of industry
- R&D-collaboration with industry

**State aid rules provide legal certainty**

**→ Legal certainty facilitates R&D-collaboration and protects competition as an important innovation factor!**

## R&D&I-Framework: Public funding for research organisations/infrastructure

### Public funding of non-economic activities does not constitute State aid

- **Primary activities:** Public education organised within the national educational system; independent R&D; wide dissemination of research results on a non-exclusive and non-discriminatory basis;
- **Knowledge transfer** conducted by the research organisation/infrastructure or jointly with/on behalf of other such entities; all profits reinvested in primary activities.

### Public funding of economic activities can constitute State aid

- e.g. renting out equipment or laboratories to undertakings, R&D services, contract research for industry.

**Cross-subsidisation of economic activities is avoided by separating the costs, revenues and financing of economic from non-economic activities.**

**Lack of clear separation → Entire research organisation and its funding are subject to State aid rules!**

## R&D&I-Framework: Contract-R&D, R&D-services – How to avoid indirect State aid to undertakings?

Contract-R&D, R&D-services at market price

**or**, where there is **no** market price

- **full costs of the service + margin** commonly applied in the sector of the service concerned, **or**
- **arm's length negotiations** where research organisation/infrastructure negotiates to obtain maximum economic benefit at the moment when the contract is concluded and covers at least its marginal costs

Market value of IP-ownership or IP access may be deducted from the price if these remain with the research organisation/ infrastructure.

Specific research service/contract research for the first time on behalf of a given undertaking, on a trial basis and during a clearly limited period of time  
→ Price charged is considered as market price if service/contract research is unique and no market for it.

## **R&D&I-Framework: R&D-collaboration**

### **– How to avoid indirect State aid to undertakings?**

The participating undertakings bear the full cost of the project, **or**

Resulting Non-IPR may be widely disseminated and any IPR generated by research organisations/ infrastructure are fully allocated to those entities, **or**

any resulting IPR resulting as well as related access rights are allocated to collaboration partners in a manner which adequately reflects work packages, contributions and respective interests, **or**

'Compensation equivalent to market price' for transfer of/access to IPR generated by research organisation/ infrastructure. Financial and non-financial contributions of undertakings to the costs of the research organisations/infrastructures' activities that resulted in the IPR concerned may be deducted from that compensation.

# **Academia-industry R&D-collaboration – applicable EU State aid rules**

Framework for State Aid for Research, Development and Innovation 2014 (R&D&I-Framework):

- **Explanations on the existence of State aid in public-private R&D-cooperation**
- **Rules for the compatibility of State aid with the internal market**
- **If all GBER-conditions are met → Aid is exempt from notification obligation → can be implemented without prior Commission approval**
- **Otherwise → Aid to be notified to the Commission for assessment under the R&D&I-Framework → Commission decision**

## ...what if State aid is involved in R&D-collaboration?

- **Very small aid amounts not considered to be State aid** in the sense of Art. 107 (1): *De-minimis* Regulation EC 1998/2006
- **Member States are in principle obliged to notify** the Commission of new State aid measures - Art. 108(3) TFEU
- **"Standstill-principle"** – Member States must not grant any State aid unless the Commission has authorized it.
- **Exemption from the notification obligation** – General Block Exemption Regulation 2014-2020 (GBER) exempts aid measures within certain limits, also R&D&I-aid. Automatic Commission approval!
- **Aid that is not 'block-exempted' must be notified to the Commission.** Commission declares aid compatible with the internal market *if* the measure meets the compatibility criteria set out in the R&D&I Framework. Individual assessment and Commission decision.

## Facilitating R&D-collaboration – Best practice example

Germany: Model agreements for research and development cooperation/  
Mustervereinbarungen für Forschungs- und Entwicklungskooperationen

- ✓ contract research (with IP-assignment)
- ✓ contract research (with IP-licencing)
- ✓ research cooperation
- +
- ✓ Interpretational guidance ('Fibel')



available in DE and soon also in EN!

<https://www.bmwi.de/Redaktion/DE/Publikationen/Technologie/mustervereinbarungen-fuer-forschungs-und-entwicklungskooperationen.html>





# **Industry-Academia Collaboration – the State Aid Perspective**

*Thank you for your attention!*

## EU State aid rules in the area of R&D&I

- **Commission Notice on the notion of State aid**, C/2016/2946, OJ C 262, 19.7.2016, p.1.
- **R&D&I-Framework**: Communication from the Commission — Framework for State aid for research and development and innovation, OJ C 198, 27.6.2014, p. 1.
- **De-minimis aid**: Commission Regulation (EU) No 1407/2013 of 18.12.2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1.
- **GBER**: Commission Regulation (EU) No 651/2014 of 17.6.2014 declaring certain categories of aid compatible with the internal market, OJ L 187, 26.6.2014, p. 1; amended by Commission Regulation (EU) 2017/1084 of 14.6. 2017, OJ L 156, 20.6.2017, p. 1.
- **Practical GBER-Guide** (updated March 2016)  
[http://ec.europa.eu/competition/state\\_aid/legislation/practical\\_guide\\_gber\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf)
- **State aid procedures** in a nutshell:  
[http://ec.europa.eu/competition/publications/factsheets/state\\_aid\\_procedures\\_en.pdf](http://ec.europa.eu/competition/publications/factsheets/state_aid_procedures_en.pdf)



## Further reading

- *Frederik Becker*, Staatliche Refinanzierung privater Hochschulen und europäisches Beihilfenrecht – Zum Anwendungsbereich des Unionsrahmens für Forschung, Entwicklung und Innovation, EuR 2017, 616.
- *Gert Schwendinger*, State Aid and Intellectual Property in Contract Research and R&D&I Collaboration, European State Aid Law Quarterly (EStAL) 4/2013, 685
- *Bernhard von Wendland*, Das Auftreten staatlicher Beihilfe in Forschung, Entwicklung und Innovation, Zeitschrift für Beihilfenrecht (BRZ) 4/2015, 203.