

State aid rules applied to ERDF funded R&D&I infrastructure projects

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Structure

1. Concept and logic behind State aid rules

2. The EC's R&D&I policy and its reflection in the GBER and the Framework for SA for R&D&I

3. State aid procedures

4. Existence of State aid in R&D infrastructure projects

5. Assessment of the compatibility of State aid

6. Conclusions

1. Concept and logic behind State aid rules

Art.107.1 TFEU

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources [...] 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”

1. Aid must be granted by a Member State or through State resources
2. It must confer an economic advantage to certain undertakings or economic activities
3. It must distort competition at EU level
4. It must affect trade between the Member States

The measure constitutes State aid

1. Notification requirement to DG COMP unless exemption
2. Compatibility assessment by DG COMP/ self-assessment if exempted

1. Concept and logic behind State aid rules

- Art.107.1 TFEU

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources [...] which distorts or threatens to distort competition by favoring 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”

- Objective of State aid rules:

Prevent State resources from **distorting competition** in the internal market and affecting trade between Member States in a manner contrary to the common interest.

→ Streamline State resources towards the tackling of **market failures**.

Limits: aid has to be **proportional** and not distort the internal market **in excess**.

- SA rules do not prohibit the financing of economic activities.

Financing eco. (and non-eco) activities if compatible with functioning of internal market

→ positively assessed under SA rules.

If project's sustainability (operation phase) demands **maximizing** eco. activities,

best approach: find **accommodation** of the project **within SA rules**,

instead of reducing the scope of eco. activities endangering its financial sustainability

1. Concept and logic behind State aid rules

- Objective of EU State aid rules:

To prevent State resources from distorting competition in the internal market and affecting trade between Member States in a manner contrary to the common interest.

- Objectives of EU's regional policy

Article 174 TFEU

“In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.”

1. Support job creation, business competitiveness, economic growth, sustainable development, and improve citizens' quality of life.

2. Regional Policy provides the necessary investment framework to meet the goals of the **Europe 2020 Strategy** for smart, sustainable and inclusive growth in the EU.

- Both set of rules: different objectives, requirements, procedures → potential conflicts.

Compliance with ESIF rules does not ensure compliance with SA rules

But in principle there are no contradictions (ex. calculation of amount of grant under CPR)
+ if market failure and aid does not go beyond needs, project should be approved

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2. EC's policies and priorities

- **State aid modernization package in the context of the EU's R&D&I policy**

- **Article 179 TFEU:**

'[t]he Union shall have the objective of strengthening the scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary (...)'.

- **Europe 2020 strategy:**

R&D&I key driver for achieving the objectives of smart, sustainable and inclusive growth.

Headline target: 3 % of the EU's GDP should be invested in R&D&I by 2020.

'Innovation Union' flagship initiative': improve framework conditions and access to finance for R&D&I → innovative ideas can be turned into products and services that create growth and jobs.

Communication from the Commission to the EP, the Council, the European Economic and Social Committee and the CoR, 'European 2020 Flagship Initiative — Innovation Union', COM(2010) 546 final, 6.10.2010.

- State aid rules have been subject to a **modernisation process** in order, among other objectives, to put them in line with the Europe 2020 strategy.

2. EC's policies and priorities

EU State aid Modernization (SAM)

– **Reform programme launched in 2012:** *Communication from the Commission to the EP, the Council, the ECSC and the CoR (/* COM/2012/0209 final */)*

– **Main objectives:**

1. Foster growth in a strengthened, dynamic and competitive internal market
2. Focus enforcement on cases with the biggest impact on the internal market
3. Streamlined rules and faster decisions

“Modernised State aid control should facilitate the treatment of aid which is well-designed, targeted at identified market failures and objectives of common interest, and least distortive (“good aid”)... underpinning the Europe 2020 flagships”.

- **Main instrument:** Revision of existing Guidelines and procedures:
R&D&I Guidelines and GBER, both adopted on 21.05.2014

2. EC's policies and priorities

Impact of EU State aid Modernization on R&D&I

- The SAM's impact on the R&D&I sector has taken place through the adoption of a new Framework for State aid for research and development and innovation and the amendment of the General Block Exemption Regulation.
- Main modifications:
 1. Inclusion of specific rules for R&D&I infrastructures [clarify applicable rules]
 2. Inclusion of specific rules for indirect aid to undertakings collaborating with RI/RO
 3. Explicit definition of ancillary activities
 4. Larger thresholds for applying GBER [focus enforcement]
 5. More straightforward assessment of schemes, as compared to individually notified projects [focus enforcement]
 6. Taken into account EU funding for loosening up rules in some cases, e.g. identification of objective of common interest, qualification of grant as an appropriate instrument...

Higher legal certainty, higher allowance of aid
(either exempted or notified), more coherent rules

2. JASPERS assistance

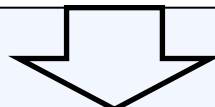
- Assistance on State aid part of JASPERS’ general project preparation support activities. JASPERS **does not carry out notifications** (exclusive competence of MS), but might assist reviewing notification forms/self-assessment documents.
- *“JASPERS can request **informal feedback** on specific points which might raise SA interpretation issues. Such informal contacts should take place at [the preparation stage of the project], in order to tackle any SA issues as early as possible...both DG COMP and DG REGIO advocate for the early involvement of [DG COMP] in case SA issues need to be clarified.”* (internal document of DG COMP *Dealing with State aid in infrastructure projects*)
- **JASPERS Networking Platform:** complements JASPERS’ project advisory operations providing capacity building activities and cross-sector specialist advice through the organization of seminars and workshops on issues of horizontal nature, enhancing knowledge sharing activities, dissemination of best practices and exchange of experiences.
- **JASPERS Independent Quality Review functions:**
CPR 1303/2013: more efficient approval process of major projects, through appraisal by independent experts.
JASPERS IQR services are open to all MS and provides its opinion on the appraised major projects (including State aid) independently from the project preparation divisions.

Structure

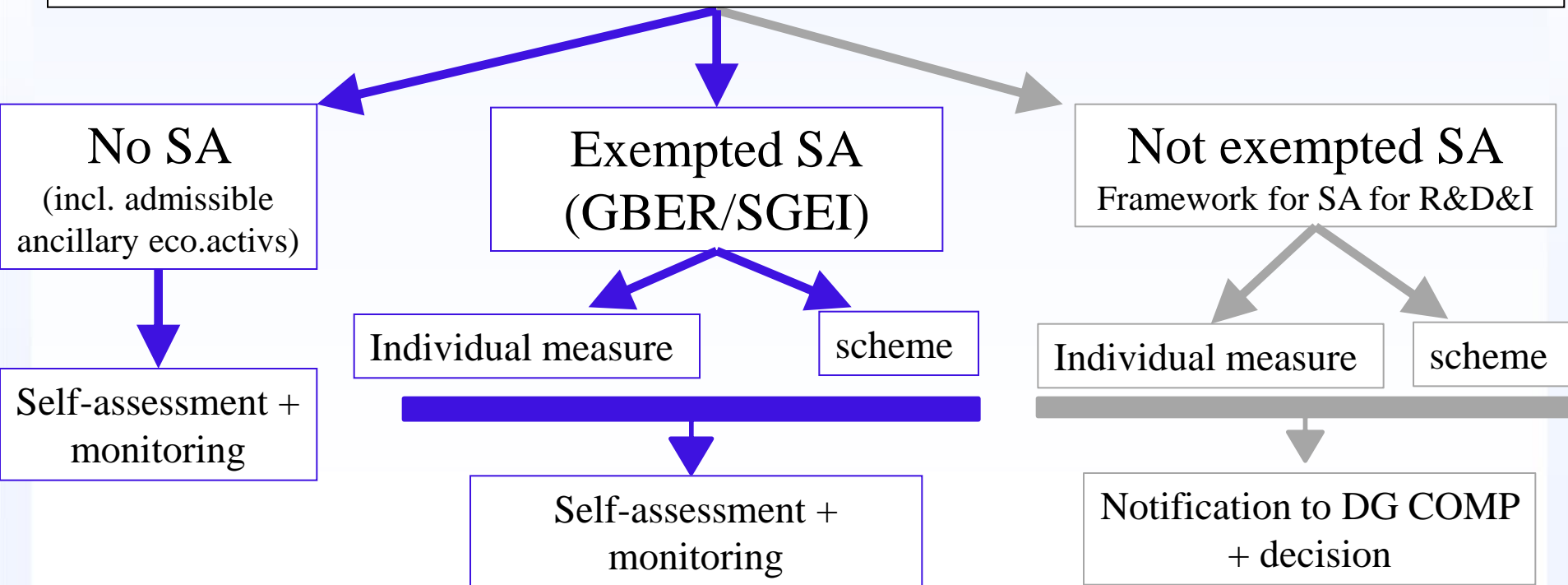
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3. State aid Procedures (1/6)

Identification and design of R&D infrastructure project
 (identification of the market failure and of SA as the most appropriate instrument...)



Result: (pre-)feasibility study → potential to maximise revenues/
 eco.activity respecting the politically guided aim+scope of the project

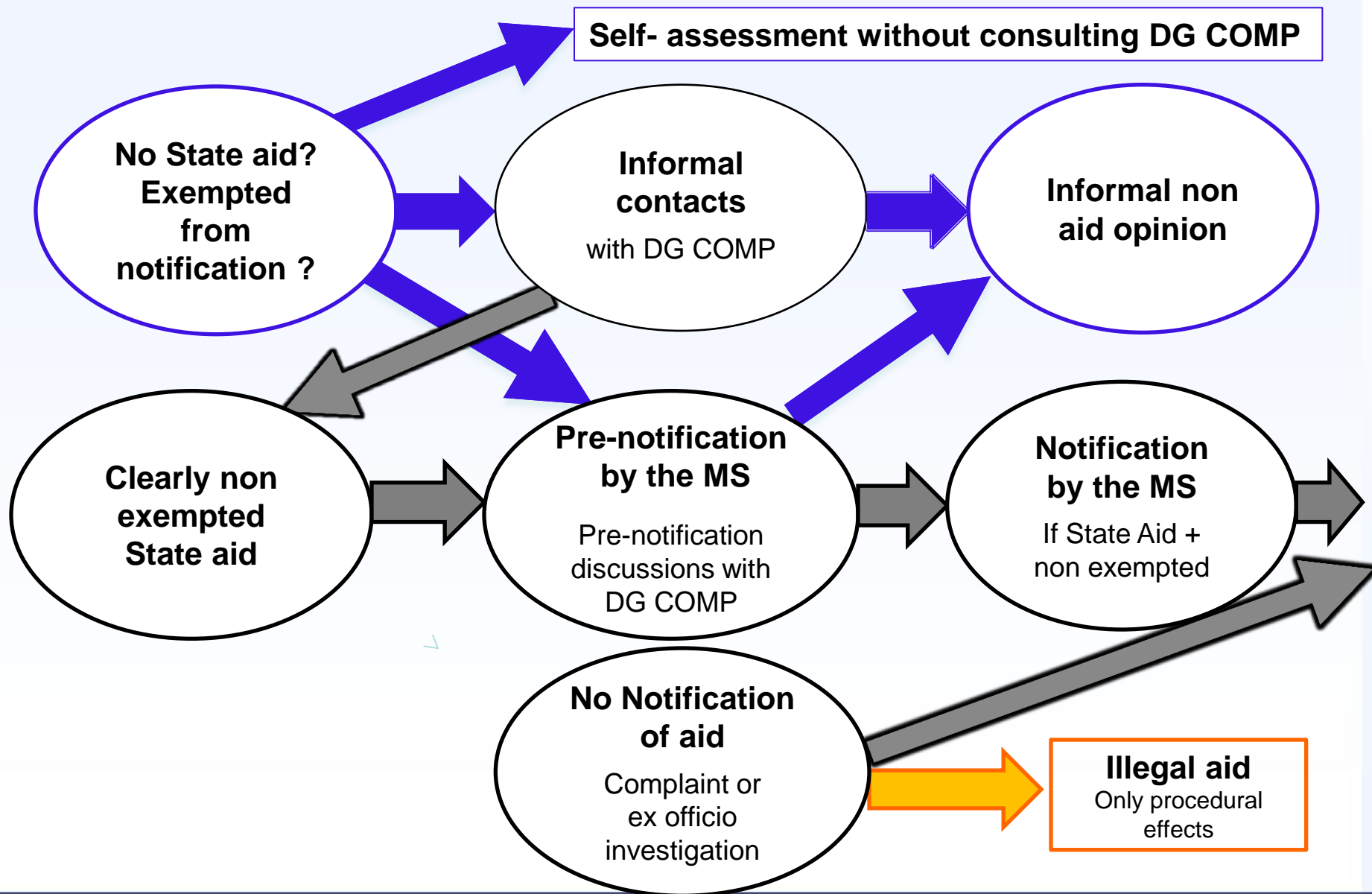


3. State aid Procedures (2/6)

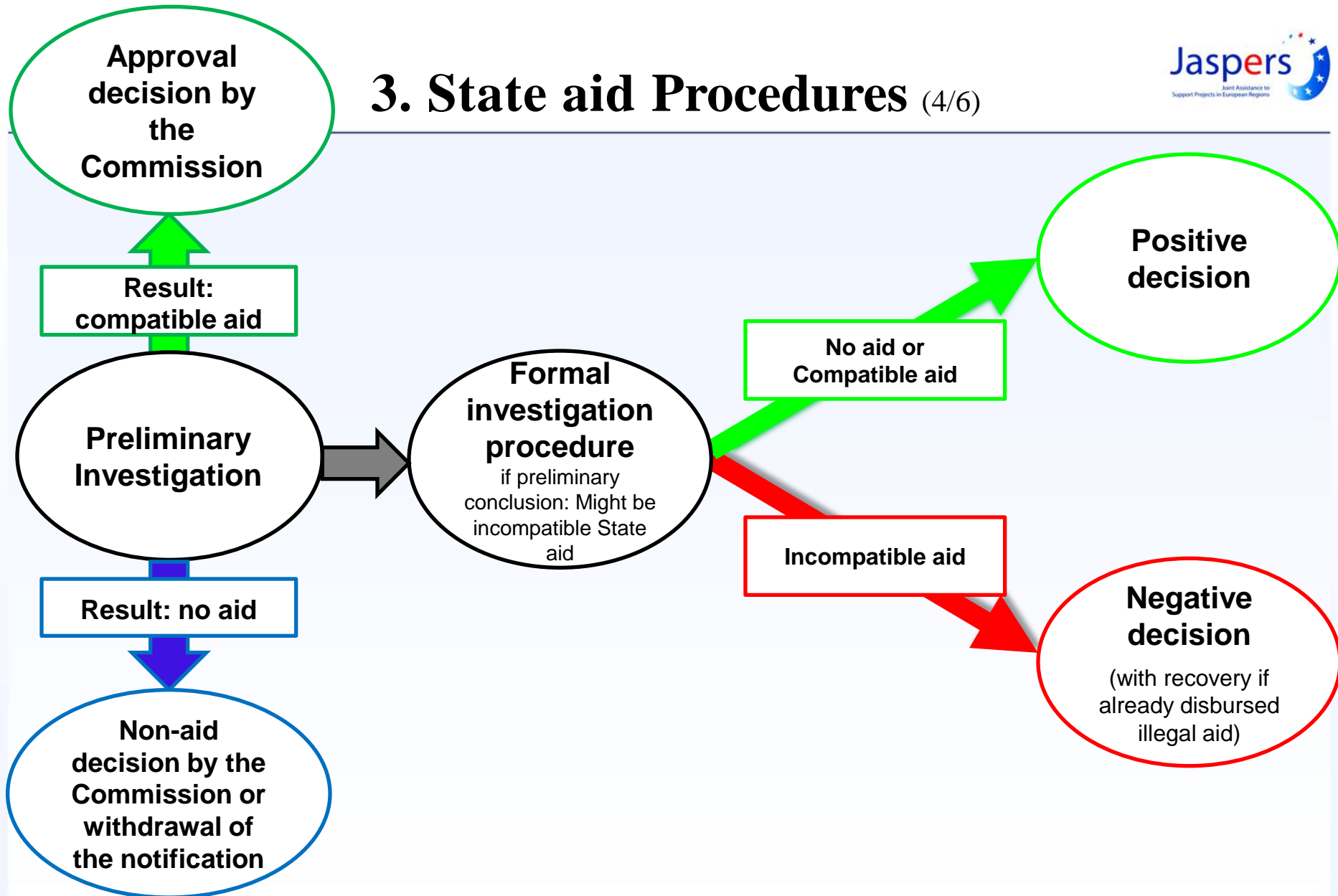
State aid schemes

- ‘**aid scheme**’: Act, either notified or exempted under the GBER, which defines in an abstract manner the conditions for implementing **several** – normally an undetermined number of – State aid measures. Provided the conditions defined in the approved or exempted scheme are met, individual State aid measures (**individual awards**) can be granted **without** requiring an **individual notification** to DG COMP.
- **Information** to be provided to DG COMP (non-exempted schemes):
 Budget, type and estimated number of beneficiaries and information on the compliance with the applicable rules contained in *Framework for SA for R&D* (maximum aid calculation, guarantee on transparent and non-discriminatory access to the benefitted infrastructures, etc)
- **Advantage**: Once the scheme is approved/adopted under the GBER indiv. aid can be granted w/out notification/individual assessments, except on the compliance with the conditions of the scheme

3. State aid Procedures (3/6)



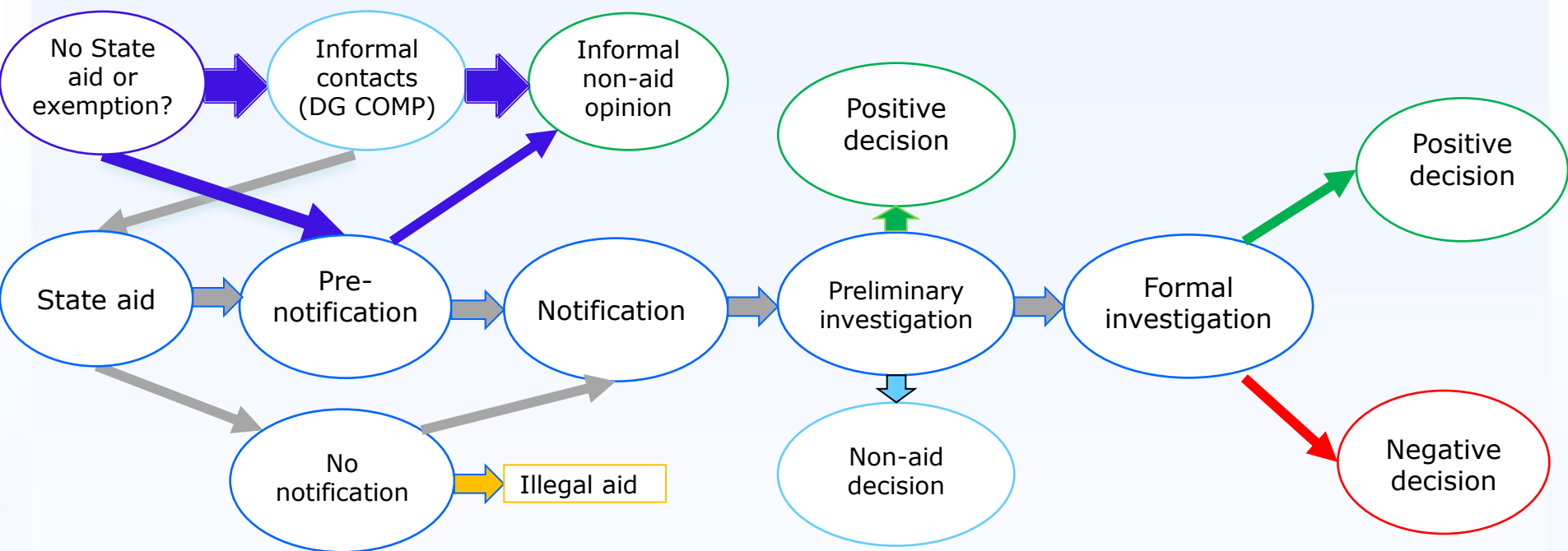
3. State aid Procedures (4/6)



State aid manual of procedures:

http://ec.europa.eu/competition/state_aid/studies_reports/sa_manproc_en.pdf

3. State aid Procedures (5/6)



Project preparation

- Self assessment (Grids)
- Informal contact Prenotification Notification

Project assessment and approval

- Interservice consultation (DG COMP)
- Also during IQR assessment

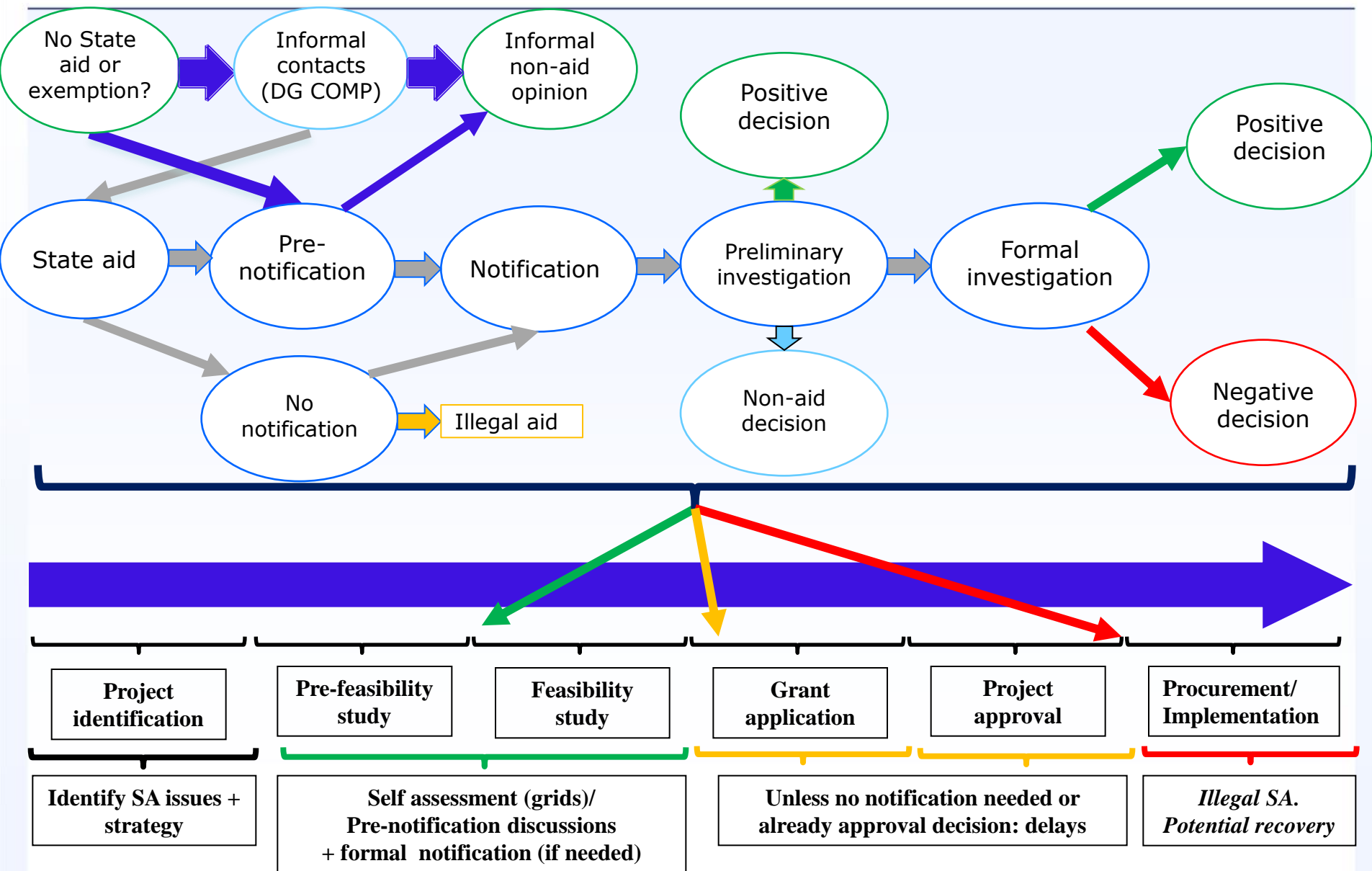
After project approval

- Still possible that State Aid investigation if no prior decision (complaint/ad-hoc investigation, Court of Auditors...)

“If expenditure is declared, the MS assume the risk that in case of incompatible aid, the declared expenditure will have to be withdrawn from the payment claim submitted after decision on SA is taken, and MS will have to recover the incompatible aid from the beneficiary”

Guidance Note to the COCOF, Verification of compliance with State aid rules in infrastructure cases, COCOF_12-0059-01 (21.11.2012)

3. State aid Procedures (6/6)



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4. Assessment of the existence of State aid

Art.107.1 TFEU

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4. Assessment of the existence of State aid

4.1. State resources

- Regardless of the form or aim of the measure
 (sufficient if burden on public finances. Thus also guarantees, capital injections...
 provided they are not allocated under normal market terms: seeking profit)
- EU funds, decisive element: Effective transfer of the funds onto the beneficiaries:
 By the Member State or by EU?

ERDF, ESF and Cohesion Fund (shared management)

- ERDF funds are transferred to the national budgets of the Member States
- Selection of the individual projects by the Member State's managing authority

**STATE
 RESOURCES**



Centrally managed funds [Horizon 2020 Framework/LIFE programs]

- Direct management: Commission receives applications for projects, carries the selection process and awards grants directly to the beneficiaries.
- EU resources paid from the EU budget to the beneficiary
- Member States: limited role if any (support the correct technical and financial implementation of the projects selected by the EU legislator)



But para.83 Framework for SA for R&D&I:

“Where such Union funding is combined with SA, the total amount of public funding ... in relation to the same eligible costs must... not exceed the most favourable funding rate laid down in the applicable rules of EU law”

4. Assessment of the existence of State aid

4.1. State resources

- Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 ANNEX II Format for submission of the information on a major project

C.2. Verification of compliance with State aid rules

Do you consider that this project involves the granting of State aid? <type='C' input='M'>

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If yes, please fill in the table below ⁽¹⁸⁾:

	Amount of aid (EUR) in GGE ⁽¹⁹⁾	Total amount of eligible cost (EUR) ⁽²⁰⁾	Aid intensity (in %)	State aid number/registry number for block-exempted aid
Approved aid scheme or approved individual aid	<type='N' input='M'>	<type='N' input='M'>	<type='P' input='M'>	<type='N' input='M'>
Aid falling under a block exemption regulation	<type='N' input='M'>	<type='N' input='M'>	<type='P' input='M'>	<type='N' input='M'>
Aid in line with the SGEI decision ⁽²¹⁾ or the regulation on public land passenger traffic ⁽²²⁾	<type='N' input='M'>	<type='N' input='M'>	<type='P' input='M'>	<type='N' input='M'>
Total aid granted	<type='N' input='G'>	Not applicable	Not applicable	Not applicable

If no, please explain in detail the basis for establishing that the project does not involve state aid ⁽²³⁾. Please provide this information for all groups of potential State aid recipients, for example, in case of infrastructures, for the owner, the constructors, the operator and for the users of an infrastructure. If applicable, please indicate whether the reason why you consider that the project does not involve State aid is that (i) the project does not concern any economic activity (including activities in the public remit) or that (ii) the recipient(s) of support enjoy a legal monopoly for the relevant activities and are not active in any other liberalised sector (or will keep separate accounts in case the recipient(s) are active in additional sectors).

4. Assessment of the existence of State aid

4.2. Selective economic advantage to an undertaking

4.2.1 Qualification of owner/operator of a research infrastructure as an undertaking

- **Undertaking:** Entity performing eco. activities (offer goods/services in competitive market)
Regardless of ownership(public/private), legal status(non-for profit...), way it is financed
- “Generally” **non-eco.activities** (Section 2.1.1 R&D Framework, Section 2.5 notice on notion of SA):
 1. education for more and better skilled human resources (standard school/university education)
 2. independent R&D for more knowledge and better understanding
(i.e. not contract research/ research services on behalf of an undertaking.
Collaborative R&D also if effective collaboration* *jointly def. scope, share results and risks)
 3. non-exclusive, non-discriminatory and wide dissemination of research results
(teaching/open-access databases, open publications/software)
 4. knowledge transfer activities* conducted by RI, if profits reinvested in non-eco. activities
*any process which aims at acquiring + sharing explicit and tacit knowledge, including skills + competence
(research collaborations, consultancy, licensing, spin-off creation, publication and mobility of researchers)
- “Generally” **eco.activities:** Renting out equipment/laboratories, supplying research services, contract research, ...

4. Assessment of the existence of State aid

4.2. Selective economic advantage to an undertaking

4.2.1 Qualification of owner/operator of a research infrastructure as an undertaking

- If both **eco. and non-eco.** Activities are performed in the infrastructure
[para.18 Framework for SA for R&D&I]

1. Costs, funding and revenues of both types of activities cannot/are **not separated**

→ overall funding of the infrastructure considered as **SA**

2. Costs, funding and revenues of both types of activities are **separated**

functional separation [cf. principles of **Transparency Directive 2006/111/EC**]

+ there are guarantees of **no cross-subsidisation** from non-eco. to eco. activities

→ **only** funding of **eco.activities** with state resources considered **SA**

3. Eco. activities considered **ancillary**

→ overall funding entirely falls **outside SA rules**

4. Assessment of the existence of State aid

4.2. Selective economic advantage to an undertaking

4.2.1 Qualification of owner/operator of a research infrastructure as an undertaking

- Ancillary activities:

a) Capacity allocated to eco.activities: $\leq 20\%$ overall annual **capacity**.

Capacity-share can be determined in several ways, e.g. number of working hours/days taking into account features of work done (continuous – interrupted, in shifts – independent of shifts), input-volumes, but “*revenues are typically not appropriate for measuring capacity*”.

Separation: functional following the principles of the Transparency Directive 2006/111/EC

Assessment done ex ante → important to have realistic and reasonable prognosis on use of the RI

b) **Same inputs** used for eco. and non-eco. activities (equipment, staff)

-If 20% threshold of eco. activity **exceeded** during operation, two options:

1. Apply a **claw-back mechanism** (recover amount of aid benefitting eco. activities, which have to cover their operating costs + pro-rata depreciation costs of the infrastructure)
2. Treat the funding (of eco.activities) as **SA** → apply GBER or Framework on SA for R&D
Should be the preferred option, in particular if recovering revenues could jeopardize meeting the project indicators.

4. Assessment of the existence of State aid

4.2. Selective economic advantage to an undertaking

4.2.1 Qualification of owner/operator of a research infrastructure as an undertaking

	A	B	D	E	F	J	K
	Instrument name	Nameplate capacity (hrs / year)	Price (thousands)	Expected use of instrument for commercial contracts		Share of instrument on commercial use	
1							
2				2016	2017	2016	2017
3	CVCAP - HR STEM	400	100	20%	20%	1.01%	0.82%
4	CVCAP - Sample preparation	600	5	20%	20%	0.10%	0.08%
5	CVCAP - SEM-FIB	400	2,400	20%	20%	0.65%	0.53%
6	CVCAP - SIMS	400	4,17	10%	15%	0.55%	0.67%
7	GEO - Anaerobic boxes	760	400	50%	50%	0.37%	0.30%
8	HELCZA - electron gun for high heat flow testing	5000	4,00	0%	60%	0.00%	8.07%
9	Hot chambers - microanalysis	400	9,500	0%	5%	0.00%	0.12%
10	Hot chambers - machining and ZT preparation	300	6,150	0%	0%	0.00%	0.00%
11	Hot chambers - RnD	300	5,000	0%	0%	0.00%	0.00%
12	Hot chambers - complex	760	30,00	0%	10%	0.00%	2.30%
13	HTHL-2 High temperature reactor helium loop	300	6,000	5%	10%	0.13%	0.21%
14	Laboratory for instrument analysis of solid substances	300	4,000	20%	20%	0.28%	0.23%
15	Laboratory for metallography and fractographic analysis	300	500	20%	20%	0.37%	0.30%
16	Laboratory for border states of materials	300	3,000	20%	20%	1.27%	1.03%
17	Laboratory of neutron generators	300	3,000	0%	0%	0.00%	0.00%
18	TEM laboratory	500	5,000	20%	20%	0.50%	0.41%
19	LOCA	300	2,000		10%		0.34%
20	NDT - Elektromechanical laboratory	300	3,600	50%	50%	0.43%	0.35%
21	NDT - measurement	700	9,000	50%	50%	0.96%	0.78%
22	NDT - ZT manufacturing	300	3,000	90%	50%	0.45%	0.21%
23	Radiation area	100	3,000		10%		0.07%
30	ETL-MSO	000	0,000		10%		0.41%
31	FQT	000	0,000		0%		0.00%
32	FLiBe	000	2,000		0%		0.00%
33							
34	Total		8,825			7.51%	18.10%

4. Assessment of the existence of State aid

4.2. Selective economic advantage to an undertaking

- Has to be examined at all possible levels: owner, operator, end users (including undertakings which use the infrastructure through contract research/renting out...)
- **Research on behalf of undertakings** (contract research or research services) which typically specifies the terms and conditions of the contract, owns the results of the research activities and carries the risk of failure.

No State aid if the RI receives market price/full-cost plus reasonable profit price/price is the result of negotiation between RO – which covers at least its marginal costs – and the undertaking. (Take into account who will own IPR)

- **Collaboration with undertakings** [jointly def. scope, share results and risks]

No State aid if:

1. The undertaking bears full costs of the project, or
2. Results of collaboration which do not give rise to IPR are widely disseminated and IPR which results from the collaboration are fully allocated to the RI, or
3. IPR and related access rights resulting from the project allocated to the partners according to their work packages, contributions and respective interests, or
4. Undertaking pays a market price for the IPR which result from the activities

4. Assessment of the existence of State aid

4.3. Effect on trade and competition at EU level

- *“When State aid strengthens the position of an undertaking compared with other undertakings competing in intra-community trade, the latter must be regarded as affected by that aid”.*

ECJ, 17 September 1980, Case 730/79 *Philip Morris*

→ *Considering EU/global dimension of market for R&D, this condition will be met except:*

- *Commission Regulation (EU) No 1407/2013 (de minimis Regulation)*

Def. de minimis: aid that does not exceed a certain fixed amount, and is thus deemed not to meet all the criteria laid down in Article 107(1) TFEU (no effect on trade at EU level)

Threshold: ≤ EUR 200 000 over any period of three fiscal years to a single undertaking

Taken into account any other de minimis aid, even if different eligible costs/

other aid with same eligible costs (up to highest relevant aid intensity or aid amount)

Monitoring: 1. Central register for de minimis aid or

2. Inform the beneficiary about character of de minimis aid and

obtain a declaration from the beneficiary about any other de minimis aid.

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5. Assessment of the compatibility of State aid

Art. 107.1 TFEU

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources [...] 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”

Art.107.3 TFEU

“ The following may be considered to be compatible with the internal market:

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

5. Assessment of the compatibility of State aid

Aim of analysis of compatibility: assess whether the measure does *not adversely affect trading conditions to an extent contrary to the common interest*

Balancing Test (GBER or Framework for SA for R&D)

1. The measure pursues an objective of common interest

2. The public intervention has to be necessary to attain the objective

3. The measure has to be proportional

4. No other elements shall affect trading conditions and competition to an extent that is contrary to the common interest

5. Assessment of the compatibility of State aid

5.1 Application of the GBER

- **Art.109 TFEU**: “The Council, ... may determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure”.
 - **Art.108.4 TFEU**: “The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the [notification] procedure”
 - **Regulation 651/2014** declaring certain categories of aid compatible with the internal market in application of Arts.107 and 108 TFEU [**General Block Exemption Regulation**]
 - **Exemption from notification** → **Self assessment of incentive effect, monitoring** (publish summary info+send to DG COMP) **proportionality**
 - **Under what conditions is the project exempted?** If all conditions of the GBER are met.
 1. The aid amount allocated to the project is below the notification thresholds of Art.4 GBER
 - (j) Investment aid for research infrastructures: **EUR 20 million* aid** per infrastructure
 - (k) Aid for innovation clusters: **EUR 7,5 million aid*** per cluster
- * Total amount of aid (ESIF+national state resources), not the eligible/overall investment costs.

Schemes with budget >EUR 150 mln: Only up to 6m.. Exceptionally extended subject to evaluation plan

5. Assessment of the compatibility of State aid

5.1 Application of the GBER

2. General conditions under GBER [Arts.1-12]

- Only applies to **transparent** aid [calculation of GGE possible w/out a risk assessment]
- Existence of an **incentive effect**
- **Publication** within 6 months of summary information on a comprehensive SA website [including Annex III information for individual aid > EUR 500 000]
- **Reporting** duties: via SANI summary info. about each measure exempted [Annex II]
Annual report on the application of the GBER
- **Monitoring** duties: Keep document records for 10 y.

3. Specific conditions for R&D infrastructures under GBER [Art.26]

- Separate accounting** for eco. and non-eco. activities [Transparency Directive 2006/111/EC]
- Monitoring** and clawback mechanism [applied if eco.activity goes beyond allowed level]
- Price** charged for **use** of the infrastructure by undertakings: **market price**
- Access**: open to several users [transparent + non-discriminatory] Also applicable to clusters
Undertakings which finance ≥ 10 % of infrastructure investment costs may be granted preferential access under more favorable conditions – to be made public – if proportional to its contribution.

5. Assessment of the compatibility of State aid

5.1 Application of the GBER

2. Maximum State aid (ESIF grant + national state resources) to be granted under the GBER:

- **Investment aid for research infrastructures (Art.26)**

construction/upgrade of RI that perform eco.activities

1. Eligible costs: investment costs in tangible and intangible assets [dedicated to eco.activs.]

‘tangible assets’ means assets consisting of land, buildings and plant, machinery and equipment;
‘intangible assets’ means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property; [not feasibility studies]

2. Aid intensity: $\leq 50\%$ of the eligible costs

- **Investment aid for innovation clusters (Art.27)**

construction/upgrade of innovation clusters. Only to be granted to operator of the cluster

1. Eligible costs: investment costs in tangible and intangible assets

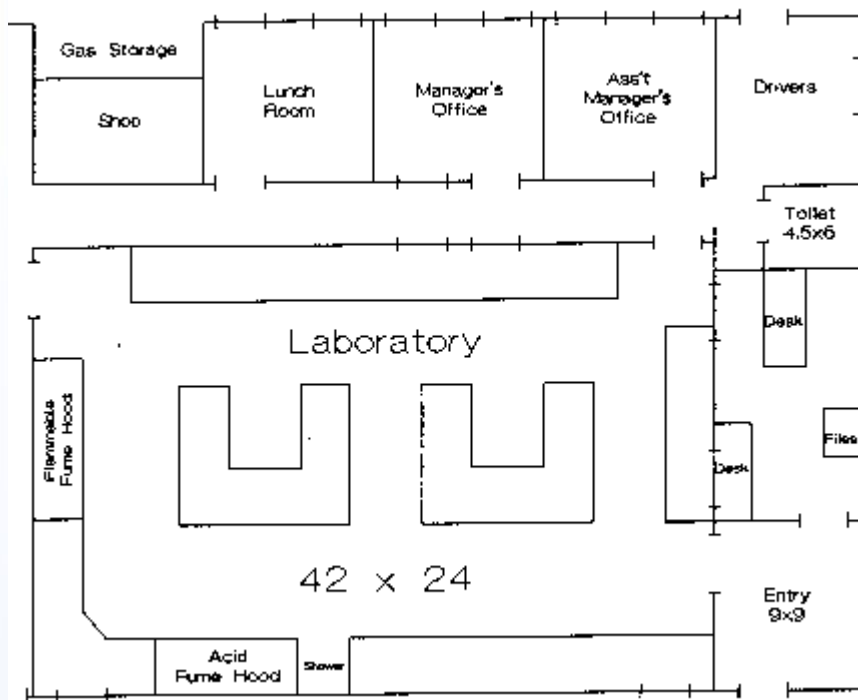
2. Aid intensity: $\leq 50\%$ of the eligible costs [+15% if cluster in Art.107(3)(a) area]

Operating aid for innovation clusters: For maximum 10 y.

Eligible costs: personnel + administrative costs related to animation of cluster to facilitate collaboration, marketing, management of facilities, organizing conferences for knowledge sharing

Aid intensity: $\leq 50\%$ of the eligible costs

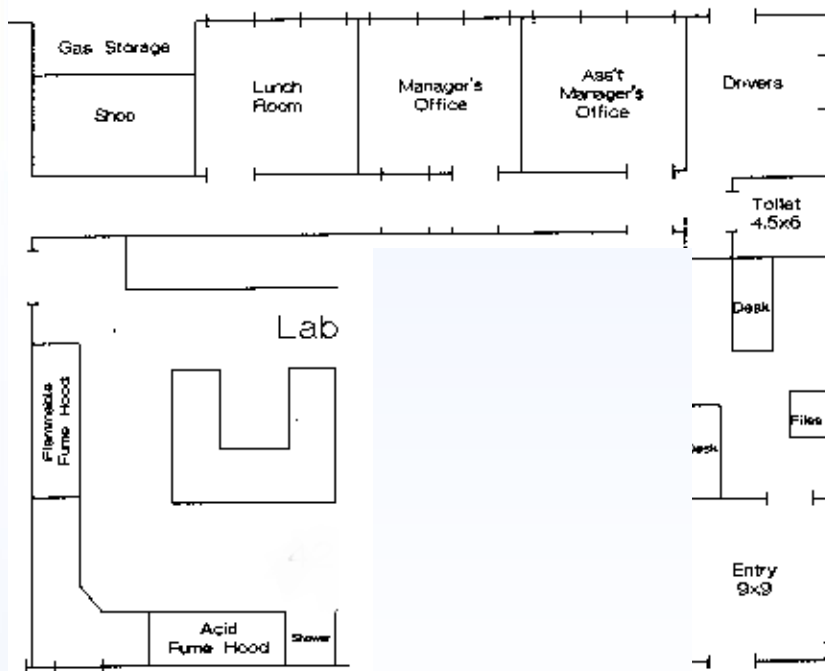
5. Assessment of the compatibility of State aid



- **Total costs:** EUR 10 million
- Infrastructure used for non-eco.activities (graduate and post-graduate teaching) **and** eco.activities (renting out of part of the laboratory)
- **Distribution:** Calculated as share of nameplate capacity (number of hours which can realistically be presumed that instrument will be used – net of maintenance etc.)
 - 60% - non economic
 - 40% - economic

- Costs, funding and revenues of both types of activities are **separated** + **no cross-subsidisation**.
- **Separation:** functional following the principles of Transparency Directive 2006/111/EC
 1. Internal accounts corresponding to different activities are separate;
 2. All costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;

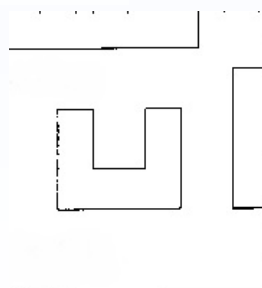
5. Assessment of the compatibility of State aid



Following the rules of Section 2.1.1 of the Framework for State aid for R&D&I (cf. also Art. 26.2 and 7 of GBER)

Eligible costs: 100% of parts of infrastructure used for non-eco. activities

EUR 6 million



Additional eligible costs: % of costs of parts of the infrastructure dedicated to eco. activities allowed under SA rules: 50%

EUR 10 million x 40% x 50% = **EUR 2 million**

Overall amount of State aid which can be allocated to the project: EUR 6 + 2 million = EUR 8 million

5. Assessment of the compatibility of State aid

5.2 Application of the Framework for SA for R&D&I

- To be applied in case the **GBER thresholds are exceeded**:
 > EUR 20 mln research infrastructure / > EUR 7,5 mln clusters
- Requires a notification to DG COMP and its clearance [positive or non-aid decision]
 → Follow + comply with rules contained in the Framework for SA for R&D&I
- More strict rules applied to measures individually notified, as opposed to measures covered by a notified and approved State aid scheme [w/out effects on amount of aid]
- **Measures covered:**
 1. Aid for R&D projects
 2. Aid for feasibility studies
 3. Aid for construction and upgrade of research infrastructures
 4. Aid for innovation activities
 5. Aid for innovation clusters

5. Assessment of the compatibility of State aid

5.2 Application of the Framework for R&D&I

1. Common assessment principles (General conditions)

1.1 Contribution to a well-defined objective of common interest

Description of objective pursued. If ESIF funded, MS may rely on the reasoning of the OP.
 If EU centrally managed funds allocated [Horizon 2020]: given for granted
 For ‘notifiable individual aid’: show net increase of R&D activs.in the sector/EU

1.2 Need for State intervention

Explain how the measure mitigates the market failure addressed, in order to attain the objective of common interest pursued [knowledge spillovers/positive externalities, imperfect/asymmetric info, coordination and network failures]

1.3 Appropriateness among alternative policy/aid instruments

There may be other, better placed and less distortive instruments to tackle the market failure
 Why State aid in form of grant, instead of fiscal measures/loan/...
 If EU centrally managed funds allocated [Horizon 2020]: given for granted

1.4 Avoid undue negative effects on competition and trade [Section 4.6]

5. Assessment of the compatibility of State aid

5.2 Application of the Framework for R&D&I

1.4 Existence of an incentive effect

- **Incentive effect:** Beneficiary should, as a result of the aid, engage in activities that it would not carry out w/out the aid at all or carry out only in a restricted or different manner
- **Prove that the aid will trigger increased activity** (feasibility studies, option analysis...)
- For ‘notifiable individual aid’: include info. on counterfactual scenario (i.e. project/activity w/out aid)
- **Start of works and submission of application for aid**
[Para.63 Framework for R&D&I and Art.6 GBER]

If works **already commenced** prior to the aid application by the beneficiary to the national authorities the aid does not present an incentive for the beneficiary

Start of works: ‘means the **start of construction work** or the **first firm commitment to order equipment**, excluding preliminary feasibility studies

Application’s minimum content: applicant’s name and size, description of the project (incl. location, start and end dates), list of eligible costs and SA needed for carrying it out

5. Assessment of the compatibility of State aid

5.2 Application of the Framework for R&D&I

2. Proportionality of the aid

- Amount of aid must be limited to the **minimum necessary** for the activity to take place
If Guidelines applicable, usually expressed as % (intensity) of eligible costs
- **Investment aid for research infrastructures** (Section 4.5, annexes I and II)

1. **Eligible costs:** investment costs in tangible and intangible assets [dedicated to eco.activs.]

‘tangible assets’ means assets consisting of land, buildings and plant, machinery and equipment;
‘intangible assets’ means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property; [not feasibility studies]

2. **Aid intensity:** ≤50% of the eligible costs

- For **notifiable individual aid** [Paras.86-93] compliance with aid intensity: not sufficient
DG COMP will assess whether **profitability** of the project does not exceed its needs

Normally: by reference to IRR over lifetime of project, comparing it to other R&D projects, but also funding-gap calculation, for example.

If the result shows that higher intensities do not lead to excessive profit, increased intensity is allowed:

Up to **60% of the eligible costs** [only for RI, not for clusters/feasibility studies]

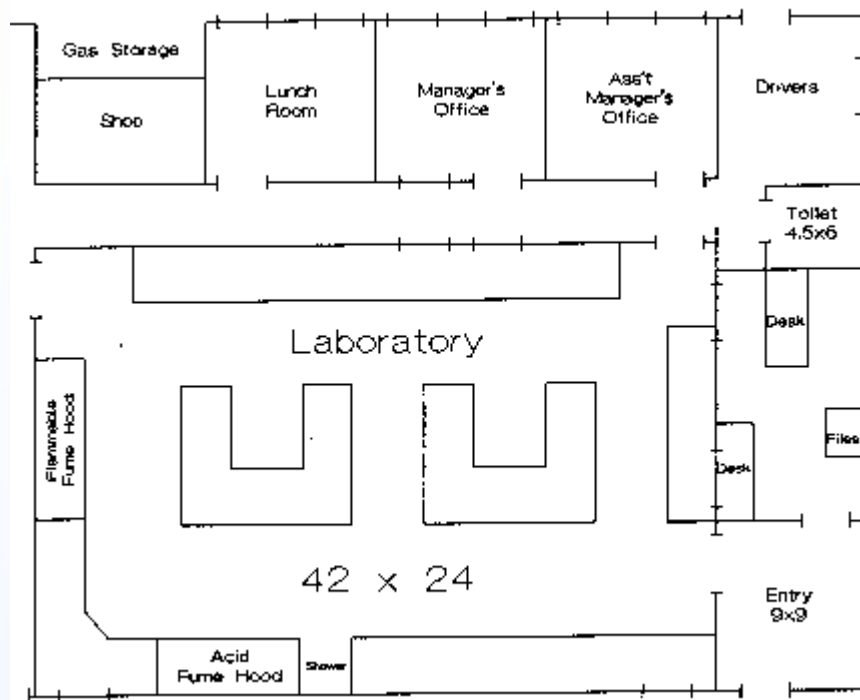
5. Assessment of the compatibility of State aid

5.2 Application of the Framework for R&D&I

2. Proportionality of the aid

- **Investment aid for innovation clusters** (Section 4.5, annexes I and II)
 1. **Eligible costs:** investment costs in tangible and intangible assets [dedicated to eco.activs.]
 2. **Aid intensity:** $\leq 65\%$ of the eligible costs [50%+15% for Art.107.3(a) region]
- **Operating aid for innovation clusters** (Section 4.5, annexes I and II)
 1. **Eligible costs:** personnel + administrative costs (same as for GBER)
 2. **Aid intensity:** $\leq 50\%$ of the eligible costs
- **Aid for feasibility studies** (Section 4.5, annexes I and II)
 1. **Eligible costs:** costs of the study
 2. **Aid intensity:** **70%** small enterprise; **60%** medium enterprise; **50%** large enterprise
 - For **notifiable individual aid** [Paras.86-93] compliance with aid intensity: not sufficient
DG COMP will assess whether **profitability** of the project does not exceed its needs
Normally: by reference to IRR over lifetime of project, comparing it to other R&D projects, but also funding-gap calculation, for example.

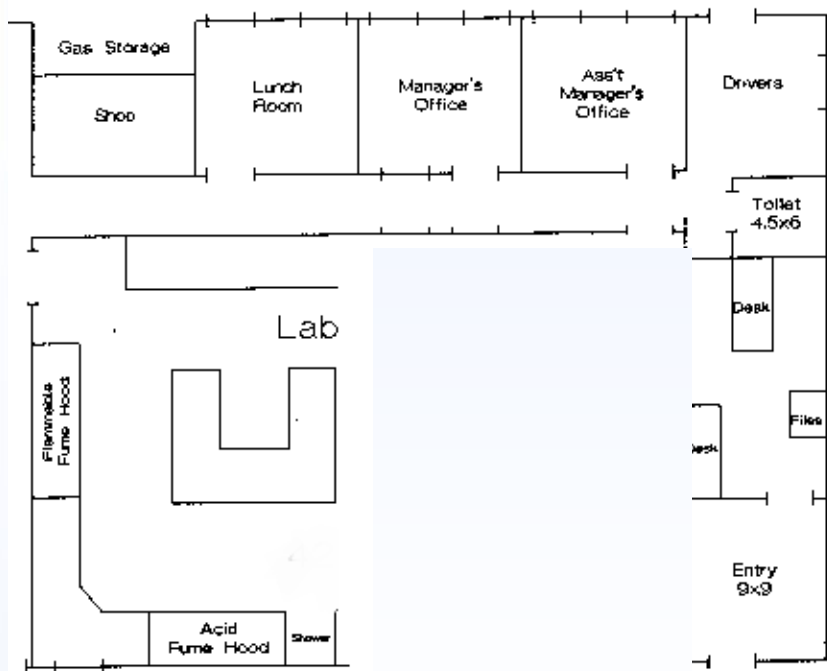
5. Assessment of the compatibility of State aid



- Total costs: EUR 100 million
- Infrastructure used for non-eco.activities (graduate and post-graduate teaching) **and** eco.activities (renting out of part of the laboratory)
- Distribution: Calculated as share of nameplate capacity (number of hours which can realistically be presumed that instrument will be used – net of maintenance etc.)
 - 60% - non economic
 - 40% - economic

- Costs, funding and revenues of both types of activities are separated + no cross-subsidisation.
- Separation: functional following the principles of the Transparency Directive 2006/111/EC
 1. Internal accounts corresponding to different activities are separate;
 2. All costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;

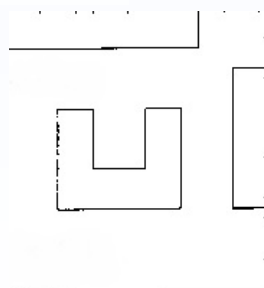
5. Assessment of the compatibility of State aid



Following the rules of Section 2.1.1 of the Framework for State aid for R&D&I

Eligible costs: 100% of parts of infrastructure used for non-eco. activities

EUR 60 million



Additional eligible costs:
 % of costs of infrastructure parts dedicated to eco. activities allowed under SA rules:
 50% [unless financing needs bigger/lower]

EUR 100 million x 40% x 50% = **EUR 20 million**

Overall amount of State aid which can be allocated to the project: EUR 60 + 20 million = EUR 80 million

5. Assessment of the compatibility of State aid

5.2 Application of the Framework for R&D&I

3. Maximum aid calculation under SA rules and Art.61.8 CPR

- **Art.61.8 CPR:** Funding gap does not apply *to operations for which support constitutes:*
 - (a) *de minimis aid*
 - (b) *compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to SA;*
 - (c) *compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out.*

- Not enough if simply identification of eligible costs and aid intensity (except SMEs).
 If project is **block exempted** or if it is covered by a **scheme**, there will be no individual verification of financing needs [only application of eligible costs + aid intensity method]
 EU grant shall respect funding-gap **and** eligible costs + maximum aid intensity calculations, whichever gives a lower result applies.

- If beneficiary is an SME or if the project is individually notified to DG COMP the Framework for SA for R&D&I [paras.86-93] apply: IRR/funding-gap or other.
 This would be considered as an **individual verification of the financing needs** of the project, and the funding gap calculation would not be applicable, unless the MA so decides

Structure

- 1. Concept and logic behind State aid rules**
- 2. The EC's R&D&I policy and its reflection in the GBER and the Framework for SA for R&D&I**
- 3. State aid procedures**
- 4. Existence of State aid in R&D infrastructure projects**
- 5. Assessment of the compatibility of State aid**
- 6. Conclusions**

6. Conclusions

1. **First and foremost consider how RI/cluster will be best design to attain the objective**
Only afterwards think which option of those offered by State aid rules allows to implement the project with no or minor modifications.

Various options:

1. Individual measure/ State aid scheme (if several similar projects planned)
2. Applying GBER if under the applicable maximum thresholds/
notifying the measure/scheme and complying with rules from Framework for R&D
3. Role of third-party undertakings (contract research, research services, Collaboration with undertakings, under GBER: preferential access if co-financed $\geq 10\%$)

2. Do **not avoid notifications** if it is necessary for the optimal design of the project.

It is possible through the pre-notification process to clarify aspects with DG COMP

Count also on **JASPERS assistance** for preparing State aid notification processes/ for carrying out a self-assessment of non-existence of State aid/compliance with GBER

3. Remember that any limitations on SA amounts (eligible costs + maximum SA intensity) apply **only to** (the % of the infrastructure used for) **economic activities**
4. If below 20% of economic activities in terms of capacity, ensure **monitoring** of the project and apply **clawback** mechanism, or rather apply **GBER/notify** project if exceeded.



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