



Cooperation between Industry and publicly funded Research Organisations: aid or no aid?

30th May 2012, Warsaw

Paolo CESARINI

Head of Unit

European Commission

DG COMPETITION

R&D, innovation and risk capital

** presentation represents the views of the author*

Competition



Research Organisations (ROs) and State aid

Summary

- 1. Overview of the State aid (SA) rules applicable to ROs under the current R&D&I Framework**
- 2. Some issues arising from the application of the Framework**
- 3. Update on the review process of SA rules**



Research Organisations (ROs) and State aid

1.

Overview of the SA regime for ROs under the R&D&I Framework



ROs in the context of the EU strategy for growth and jobs

- **From the Lisbon strategy to the Horizon 2020 programme:**
 - Strengthening cooperation between ROs and industry
 - Deployment of open-access research infrastructures (**RI**s)
- **Public policies geared to the objective of fostering**
 - Teaching and training of skilled labour
 - The creation and dissemination of general knowledge
 - The valorisation of technical knowledge through IPR management in the public interest
 - The development and management of certain RIs
- **and enhancing new forms of cooperation:**
 - Cooperation between ROs and industry for close-to-market innovation activities; PPPs for innovation initiatives, etc.



Public funding of ROs: positive welfare effects and possible distortions of competition

- **RO's activities falling within public remit and outside the economic sphere**
 - Public research in the general interest
 - Creation, follow-on development and maintenance of public research infrastructures (RIs)
- **Possible failures in technology markets and need for enhanced cooperation between ROs and industry:**
 - Knowledge spill-overs, other positive externalities
 - Imperfect or asymmetric information
 - Coordination problems
- **Potential distortive effects:**
 - Crowding out of investments in (actual or potential) technology markets; foreclosure effects in downstream product markets; distortions in the Internal Market



Public funding of ROs: Scope of application of State aid rules

- ROs may qualify as “undertakings” within the meaning of Article 107(1) and be subject to SA rules in respect of all activities which are economic in nature
- Public funding of ROs acting as undertakings requires therefore an assessment at two levels:
 - Possible existence of aid to ROs’ economic activities
 - Indirect aid to industrial partners



Economic v. Non-economic activities under the R&D&I Framework

- **Economic activities: “offering goods or services on a market” regardless of the ROs’ legal status or way of financing**
 - Contract research and other research services
 - Renting out of RIs
 - Consultancy work
- **Non-economic activities:**
 - Education for more and better skilled resources
 - Independent R&D for more knowledge and better understanding
 - Dissemination of research results
- **‘Grey’ activities:**
 - Technology Transfer
 - Collaborative R&D



Definition of ROs pursuant to the R&D&I Framework (point 2.2. d)

- **Non-economic nature of RO's primary activities**

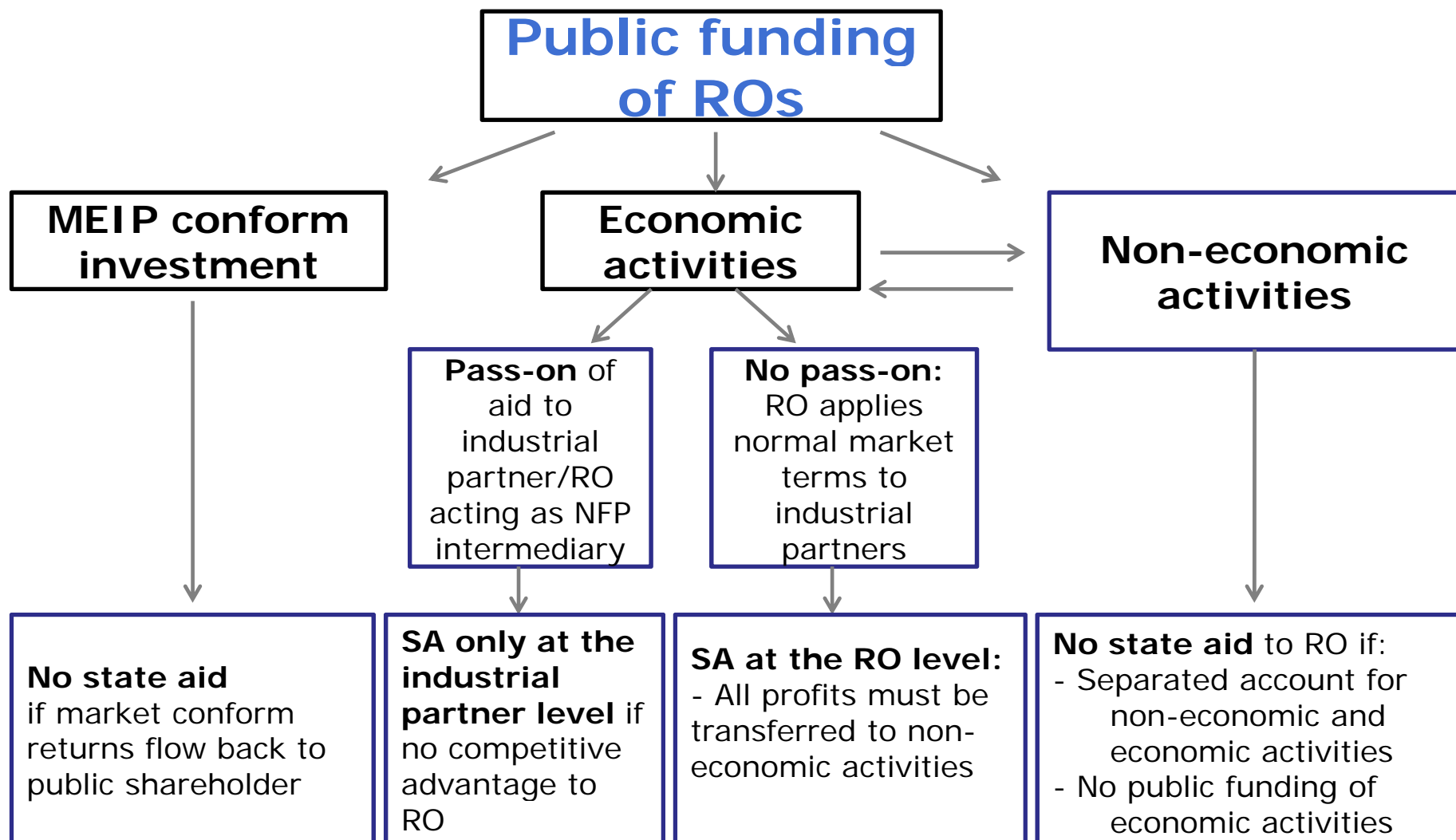
"...an entity, such as a university or a research institute, irrespective of its legal status (organised under public or private law) or ways of financing, whose primary goal is to conduct fundamental research, industrial research or experimental development and to disseminate their results by way of teaching, publication or technology transfer"

- **Primary activities must remain preponderant**

"all profits are reinvested in these activities, the dissemination of their results or teaching"

- **ROs must remain independent from industry**

"undertakings that can exert influence upon such an entity, in the quality of shareholders or members for example, shall enjoy no preferential access to the research capacities of such an entity or to the research results generated by it"





Research Organisations (ROs) and State aid

2.

Main issues arising under the current R&D&I Framework



Main issues arising under the current regime for ROs

- Current criteria generally seen as appropriate by most stakeholders, but calls for better guidance as regards:
 - **possible indirect SA to industry**
 - in case of collaborative R&D
 - through contract research and other RO's research services
 - **the scope for state aid free funding of ROs**
 - In case of collaboration with industry for RO's independent R&D
 - In respect of technology transfer and granting access to RIs
- The consequences of the *Leipzig Halle* case



1. Indirect SA to industrial partners through collaborative R&D

- **Indirect aid is excluded (pursuant to point 3.2.2 of the R&D&I Framework) if:**
 - the industrial partner bears the full cost of the project, **or**
 - IPRs “which result from the activity of the research organisation” are fully allocated to the RO, **or**
 - IPRs are transferred to the industrial partner at market price, **or**
 - IPRs are fairly allocated by the State so as to reflect the parties’ interests, work packages, and financial & other contributions to the project
- **Implementation issues:**
 - Establishing the market price for IPRs may be problematic particularly in case of radical innovations/future markets
 - Allocation of IPRs between the parties may prove difficult and lead to anticompetitive market sharing



2. Indirect SA to industrial partners through RO's research services

- **Indirect aid is excluded** (pursuant to point 3.2.1 of the R&D&I Framework) if the RO provides its service:
 - at market price, **or**
 - at full costs, plus a reasonable margin
- **Implementation issues:**
 - The market price for an R&D service may be difficult to establish absent relevant benchmarks.
 - What is a "reasonable margin"?



3. Collaboration with industrial partner within RO's independent R&D

- **No aid to ROs in case of collaborative research (pursuant to point 3.1.1 of the R&D&I Framework) if targeted to RO's independent R&D**
- **The Framework only refers to "RO's independence":**
 - no privileged access to R&D capacities and results for "undertakings that can exert an influence" on the RO
- **But no criteria for defining "independent research":**
 - Should the requirement be that ROs procure R&D services or facilities from industry at market prices and cover the full cost of the R&D project?
 - Which allocation of IPRs between cost sharing partners?
 - What if RO assigns/grants exclusive license to the industrial partner?



4. Technology Transfer by ROs as non-economic activity

- **No direct aid to ROs (pursuant to point 3.1.1 of the R&D&I Framework) if**
 - Licensing, spin off creation & other forms of knowledge management is “internal” in nature, and
 - All resulting income is reinvested in the RO’s primary activities
- **Are these criteria still adequate or sufficient to ensure SA-free funding?**
 - IPR licensing and granting access to enabling RIs may have similar economic effects both on technology and products markets
 - Providing access to an infrastructure is **as such** an economic activity the public funding of which constitutes SA (ECJ judgment in *Leipzig Halle*, 2011): the pass-on mechanism seems insufficient
 - is IPR licensing subject to the same uncertainty?



Research Organisations (ROs) and State aid

3.

Update on the R&D&I Framework review process



Revision of the R&D&I-Framework Modernisation of EU SA rules

- **The R&D&I-Framework expires on 31.13.2013. It is currently under revision. Main objectives:**
 - Adapting better to EU 2020 objectives
 - Increasing the effectiveness of aid
 - Limiting distortions of competition
- **That revision is embedded in an overall modernisation of EU State aid rules, started in February 2012. The overall objectives are:**
 - Fostering growth in a strengthened, dynamic and competitive internal market
 - Better prioritising State-aid control at EU and national level
 - Streamlining rules; making the decision process faster