

Rules governing application for state aid

In order to determine whether the funding of a research project by the National Science Centre (hereinafter: the “NCN”) will constitute state aid for the applicant, analysis should be performed according to the following guidelines:

1. Is the Entity an enterprise within the meaning of EU competition law (e.g. does it trade in goods or services)?

In compliance with judgements of the Court of Justice of the European Union, an economic activity shall be understood as offering goods or services on the market¹. The term applies to both production, distribution, and service activities. An enterprise, i.e. an entity pursuing an economic activity may also be, for example, an association or foundation that does not operate for profit.

2. Will the funding applied for exclusively support a non-economic activity (i.e. the project does not consist of an economic activity, nor is it related to it, nor will its results be used to perform such an activity)?

If the applicant has given a positive answer to the first question, another step will be to review, if the research project involves an economic activity. In the case of commercial entities, such as for example, partnerships, companies and sole traders, it should be assumed that the project will involve an economic activity since such entities, in principle, do not carry out a non-economic activity. Therefore, such applicants should apply for state aid².

In the case of other entities, such as for example universities, research institutes and foundations that carry out both economic and non-economic activities, each case must be analysed under which type of activity the project will be conducted. If a given entity is unable to confirm that the project will actually involve its non-economic activity only (e.g. its results may be used for an economic activity that is pursued or is expected to be pursued), then the applicant should apply for state aid².

3. When carried out by one entity, can commercial and non-commercial type activities be dealt with separately, including their costs, funding and revenue?

If the applicant can confirm that the project is only related to its non-economic activity, it will be necessary to review, whether such activity is properly separated from its economic activity. Annual financial statements of an entity may serve as evidence for proper separation of the costs, funding, and revenues. If the applicant is unable to ensure precise separation of economic from non-economic activities, then it should apply for state aid².

Additional information concerning existence of state aid in research projects

State aid may be provided via the National Science Centre for funding of scientific research carried out in the form of research projects. The terms and mode of granting state aid via the National Science Centre are set forth in the Regulation of the Minister of Science and Higher Education of 9 September 2015 on the terms and mode of granting state aid via the National Science Centre (Journal of Laws of 2015, item 1381).

¹ For example point 19 of Case C-475/99, *Ambulanz Glöckner*, [2001] ECR I-8089 and point 75 of Joint Cases C-180/98 to C-184/98, *Pavlov and Others*, [2000] ECR I-6451..

² In calls for proposal under which it is possible to apply for state aid (i.e. OPUS, PRELUDIUM, SONATA, HARMONIA, and UNISONO). In other calls, entities for which the funding of the project would constitute state aid may not act as applicants or partners of joint entities, e.g. scientific consortia.



State aid may be found in research projects financed from the funds of the NCN. The notion of state aid applies only to an enterprise³, i.e. each entity that is engaged in an economic activity, irrespective of its legal form and the source of funding (private and public entities). It does not matter either if such entity operates for profit or not. Pursuant to the laws of the European Union, an enterprise may also be a foundation, an association, and a public sector entity (e.g. museum), including an organisation that conducts research and disseminates knowledge (hereinafter: a research organisation) to the extent in which it carries out an economic activity.

A research organisation⁴ means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status or way of financing, whose primary goal is to independently conduct fundamental research, industrial research or experimental development or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. Where such entity also pursues economic activities the financing, the costs and the revenues of these economic activities must be accounted for separately. Undertakings that can exert a decisive influence upon such an entity, in the quality of, for example, shareholders or members, may not enjoy preferential access to the results generated by it.

The European Commission in the Framework for state aid for research and development and innovation (2014/C 198/01) (Official Journal of the EU C 198, 27 June 2014, pp. 1-29) has outlined examples of types of economic and non-economic activities of research organisations. The Commission is of the opinion that primary activities of research organisations are generally of a non-economic character, in particular:

- education for more and better skilled human resources,
- independent R&D for more knowledge and better understanding, including collaborative R&D,
- wide dissemination of research results on a non-exclusive and non-discriminatory basis, for example through teaching, open-access databases, open publications or open software.

As an economic activity of research organisations the Commission considers renting out equipment or laboratories to undertakings, supplying services to undertakings or performing contract research.

At the same time, the Commission explains that: “Where the same entity carries out activities of both an economic and non-economic nature, the public funding of the non-economic activities will not fall under Article 107(1) of the Treaty if the two kinds of activities and their costs, funding and revenues can be clearly separated so that cross-subsidisation of the economic activity is effectively avoided. Evidence of due allocation of costs, funding and revenues can consist of annual financial statements of the relevant entity”.

Thus, if the funding of a research project is sought for by a research organisation, and, at the same time, the project will not involve carrying out an economic activity, and its results will not be used for pursuing such activity and the organisation properly separates its economic activity from non-economic activity, then we will not deal with state aid.

In the case of projects involving an economic activity or if it is impossible to separate an economic activity from a non-economic activity, the entity should apply for state aid.

³ An enterprise within the meaning of Article 1 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 (hereinafter: Regulation 651).

⁴ Pursuant to the definition provided for in Article 2 (83) of Regulation 651.