

Guidance on State Aid for Applicants to, and Recipients of, Research Ireland Grant Funding

Overview: This guidance is intended as an introductory overview to help researchers identify when State aid considerations may be relevant to their Research Ireland-funded activities, particularly when working with external partners. It is not a substitute for legal advice or institutional processes, and Research Ireland does not assess or approve individual project structures for State aid compliance.

At a glance:

- In most circumstances grant funding that Research Ireland awards to Research Bodies are not considered State aid.
- State aid considerations usually arise only when working with industry or other undertakings.
- You are not expected to assess State aid rules yourself.
- Your institution is responsible for structuring collaborations appropriately.
- For advice on particular projects or institutional processes, please contact your Technology Transfer Office or Research Office

1. Introduction

The State aid guidance presented below is relevant to all applicants and recipients of Grant funding from Research Ireland, especially those collaborating with industry. It aims to assist grant recipients in understanding their responsibilities and obligations. The following topics are addressed:

- What is State aid and how does it relate to Research Ireland funding?
- What is “effective collaboration” and how can it be used to structure collaboration with industry?
- How does Research Ireland conduct State aid verification checks?
- What are State aid exemptions and how do I know if one applies to my programme?
- How are Intellectual Property Management or Rights managed?

A number of case studies are included to provide additional information¹. As Research Ireland cannot provide bespoke guidance on individual grants or projects, applicants and recipients are encouraged to engage with their Technology Transfer Offices who may seek independent legal advice on your behalf.

2. What is State aid and how does it relate to Research Ireland funding?

Simply put, State aid is when public money gives a business an advantage it couldn't get on the open market. This must be given selectively i.e. not all businesses receive it. Examples of advantages include:

- Free or discounted access to equipment
- Grants or loans on better-than-market terms
- Exclusive access to research results
- Use of publicly funded staff or facilities for free

State aid is regulated to keep competition fair across the EU. As Research Ireland's grants are derived from public money, all funding granted is subject to, and must be compliant with, State aid legislation.²

Most publicly funded academic research activities do not constitute State aid, particularly where results are openly disseminated and no undertaking (typically a company³) receives a selective advantage.

2.1. Research Bodies and State Aid

The primary activities of a Research Body i.e. education, independent research for more knowledge and better understanding, wide dissemination of research results, are non-economic. However, Research Bodies can also carry out economic activities i.e. offering products or services on a market. This can include renting out equipment or laboratories to companies, or contract research. In practice, this means that routine academic research and teaching activities are normally non-economic, while services provided directly to companies usually require closer consideration.

Any Research Body in receipt of Research Ireland funding that carries out activities of both an economic and non-economic nature must ensure that appropriate accounting

¹ Adapted from the KTI Practical Guide to State Aid Considerations in Research, Development & Innovation for RPOs and Industry, available here: <https://www.knowledgetransferireland.com/Model-Agreements/Practical-Guides/Practical-Guide-to-State-Aid-Considerations-in-Research-Development-and-Innovation-for-RPOs-and-Industry.pdf>

² Based on Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)

³ The concept of an "undertaking" under EU competition rules is an entity that is engaged in an "economic activity" (offering a good or service on a market) regardless of its legal status or the way that it is financed. This means that an undertaking could be a company but also an entity such as a charity.

separation processes are in place such that no cross-subsidisation of economic activities occurs. Research Bodies must also ensure that economic activities remain purely ancillary⁴ and directly related to and necessary for the operation of the Research Body or are intrinsically linked to the Research Body's main non-economic use in line with the requirements of the State Aid Framework for Research, Development and Innovation ([RD&I Framework](#)).

Responsibility for determining compliance, structuring collaborations, and valuing contributions sits with the relevant Research Body, typically supported by technology transfer, contracts, or legal teams.

2.2. No involvement of industry

For those Grants not involving a programme of research per se, or where a collaboration with an undertaking or industry party does not arise, the Grant must still be used to fund non-economic activities within the meaning of paragraphs 19 and 20 of the [RD&I Framework](#), e.g. education, independent research for more knowledge and better understanding, wide dissemination of research results, thus ensuring that the granting of State aid does not arise.

If in doubt, always consult your Research Body's Technology Transfer Office or Research Office.

2.3. Working with industry

Unless otherwise advised, e.g. if an exemption applies (see below), all activities **must** be non-economic in nature or comply with the definition of Effective Collaboration outlined in the RD&I Framework. Recipients may need to demonstrate compliance with State aid legislation as part of Research Ireland's State aid verification process. Additional information is provided in [Section 6](#) below.

Example: RPO providing consultancy advice to companies

Scenario: A university's Business School has established a programme advising companies on lean thinking methodologies. The programme involves academics analysing companies' production processes and providing recommendations. This does not constitute research but will demonstrate the impact of the university's research and provide case studies to support the University's research and innovation activities.

Comment: Both the university and the company may be recipients of State aid:

⁴ This means that 1) The economic activities must consume the same as the non-economic activities, and 2) The capacity allocated each year to such economic activities must not exceed 20% of the relevant entity's overall annual capacity.

- **Aid to the university:** The university is state funded so in engaging in an economic activity such as consultancy, care needs to be taken to ensure that it is ancillary (as defined above) to the Business School's non-economic activities and does not exceed more than 20% of its capacity. Accounting separation must also be in place.
 - **Aid to the companies:** A market price must be charged to ensure the company does not receive State Aid (and therefore an unfair advantage) through the university report.
- Key takeaway:** Consultancy services are generally economic activities and should be priced at market rates.

3. What is effective collaboration and how can it be used to structure collaboration with industry?

Effective collaboration describes the way in which a Research Body and company come together to work on a project in a manner which is not considered State aid. Certain criteria must be met, including:

- Independent parties
- Shared goals
- Shared risks and results
- Fair contributions from each partner

In addition, one of the following must hold:

- Undertaking pays full cost
- Results which do not give rise to IPR may be widely disseminated, and Research Bodies are fully allocated any IPR resulting from their activities.
- Any IPR and related access rights are allocated in a manner that reflects each party's contribution
- Research Bodies are compensated the market price⁵ where a participating undertaking is allocated, or given access rights to, IPR that arises from the Research Body's activities – the value of undertakings' contributions can be deducted.

The full requirements are detailed in paragraphs 28, 29, and 30 of the RD&I Framework.

More on the practical application of effective collaboration in the Research Ireland context is provided in section 6.

⁵ The RD&I Framework sets out four possible mechanisms for when the compensation is equivalent to the market price. As these are well explained in the Framework, they are not reiterated here.

4. What are State aid exemptions and how do I know if one applies to my programme?

Most Research Ireland grants must be used to fund non-economic activities, i.e. where there is no involvement with industry or where any industry collaboration takes place under the rules of effective collaboration. Research Ireland awards some grants under the rules of the General Block Exemption Regulation (GBER) or the de Minimis Regulation. These are described in brief below:

- **De Minimis Regulation:** This allows the granting of aid to undertakings where the amount is deemed to be too small to distort competition. The permitted amount is up to €300k over a 3-year period.
- **General Block Exemption Regulation (GBER):** A set of pre-approved rules that allow for the funding of research projects involving undertakings under specific conditions, including restrictions on the percentage of the total cost that can be covered (aid intensity) and a requirement for an incentive effect i.e. the research wouldn't have been conducted without the aid.⁶

Researchers are not expected to independently assess whether an exemption applies. Only the funder can permit use of an exemption and where an exemption applies, it will be clearly detailed in the Programme Call documents and Letter of Offer. Current programmes operated under the Research Ireland GBER Scheme include the Research Ireland Discover Programme, the Research Ireland Industry RD&I Fellowship Programme and the Research Ireland ARC Hubs Programme. If further programmes are added, this will be detailed in the Programme Call and Letter of Offer.

Example: PhD Training and State aid

Scenario: As part of a PhD programme supported by a research funder, students can undertake a short-term industry placement or a full industrial PhD. The researcher is seconded to the company from the university with academic supervision through the university and public funding covers the student's stipend and fees.

Comment: As the researcher is undertaking research within the company environment, there is a risk of State aid. For short-term placements,⁷ this risk is low, however for longer-term placements where the PhD student is contributing to a commercially focused project, this may be considered to be the provision of a research service and thereby a form of indirect State aid. For short term research, the project may involve effective collaboration, and an ICF may be required. For longer-term placements, the placement would have to be

⁶ During December 2020, Research Ireland made a submission to the EU Commission of its intent to avail of the GBER under the Research Ireland GBER Scheme 2021-2026. Further details are available [here](#).

⁷ Up to three months full time in duration or equivalent pro-rata.

structured under the GBER or a notified scheme. If GBER applies, Aid intensities must be respected, the company must make an appropriate financial contribution, IP arrangements must be compliant and collaboration must be genuine, with clear supervision and research objectives

Key takeaway: If an industry placement is directly related to a researcher's project and the results can be widely disseminated, the project can often be structured under Effective Collaboration. Longer term projects require the use of GBER or a notified scheme. Research Ireland will clearly specify where a programme is being run under the GBER.

A high-level decision tree on identifying and managing potential State aid issues is included in the [Appendix](#).

5. How are Intellectual Property Management or Rights managed?

Research Ireland requires that Intellectual Property rights (IPR) arising from its Grants must be managed according to the policies set out in the Government publication: [Ireland's National IP Protocol 2019](#)⁸ and must comply with paragraphs 29 and 30 (as appropriate) of the RD&I Framework. Responsibility for compliance of IPR arrangements with State aid legislation lies with the Research Body and shall reflect the collaborative nature of the project, the level of cash and in-kind commitment made by the Industry Partner and align with State aid Regulations.

Example: Licensing RPO IP to a spin-out company

Scenario: An exclusive licence of patented technology is granted by the RPO to a spin-out company. The technology was developed by the Department of Engineering and was funded from a mixture of sources, including government derived research and proof of concept funding.

Comment: If the licence to the spin-out is provided on terms that are favourable to the company and do not reflect a market price, i.e. no fees or royalties are payable, the spin-out company will be a recipient of State aid.

It is unlikely that an independent company which was interested in acquiring the rights to use the technology would be granted a licence on terms which were as favourable as those agreed with the spin-out.

Outside investors in the spin-out company would also receive an indirect advantage and State aid, as the value of the company will be enhanced by the generous licence terms.

⁸ Note an updated version is currently available. For the avoidance of doubt, the most recent version should be used as reference.

Key takeaway: IP arrangements require careful management to ensure that no State aid is given. When in doubt, always check with your Technology Transfer Office early.

6. How does Research Ireland conduct State aid verification checks?

6.1. State aid checks when the project runs under Effective Collaboration

Research Ireland conducts ex-post State aid verification checks which are intended to confirm that agreed arrangements have been implemented appropriately, not to re-assess scientific or commercial decisions. As part of this process, two key documents are required:

- **Industry Collaboration Form:** The Industry Collaboration Form (ICF) has been designed to support industry engagement. The ICF contains a checklist of requirements which should be completed to ensure compliance with the definition of “effective collaboration”. The ICF will support the project lead or PI in documenting how a collaboration has been structured and agreed. Maintaining a clear record at an early stage can help avoid uncertainty later in the project lifecycle^{9,10}.
- **Collaborative Research Agreement:** A Collaborative Research Agreement (CRA) must be signed by the Research Body and industry partners, outlining arrangements for IP, insurance, liability, and warranties.

The completed ICF must be provided to Research Ireland on or before the date that the CRA has been agreed with (signed by) the industry partner. A copy of each CRA arising from the Grant must be held on file by the relevant Research Body. Research Ireland will not undertake a review of the CRA itself; however, it may be requested to be provided (as advised in the Grant Terms & Conditions) and held on file for audit purposes only. In the event of an audit, the Research Body should make the relevant CRAs available to Research Ireland’s advisors, along with the corresponding completed ICFs. If State aid concerns are identified, Research Ireland may withhold funds or take other actions to resolve the matter.

6.2. State aid checks when the project runs under the GBER

When a programme is being run under the GBER, the researcher and their Research Body are responsible for selecting the appropriate category of research (Fundamental Research, Industrial Research or Experimental Development), as part of the application process. The chosen category determines the applicable aid intensity. As part of the final reporting process, Research Ireland will calculate the State aid intensity based on actual costs

⁹ Further guidance on the ICF, along with the ICF itself, can be found on Research Ireland’s website [here](#).

¹⁰ For the avoidance of doubt, an ICF is required for any collaboration with an undertaking unless the project is being run under an appropriate State aid exemption. As stated previously, where a programme is being run under an exemption, this will be clearly communicated in the call documentation.

incurred. This is compared with the requested aid intensities to ensure that the requested percentage aid intensity has not been exceeded. Where aid intensities have been exceeded, this must be clawed back.

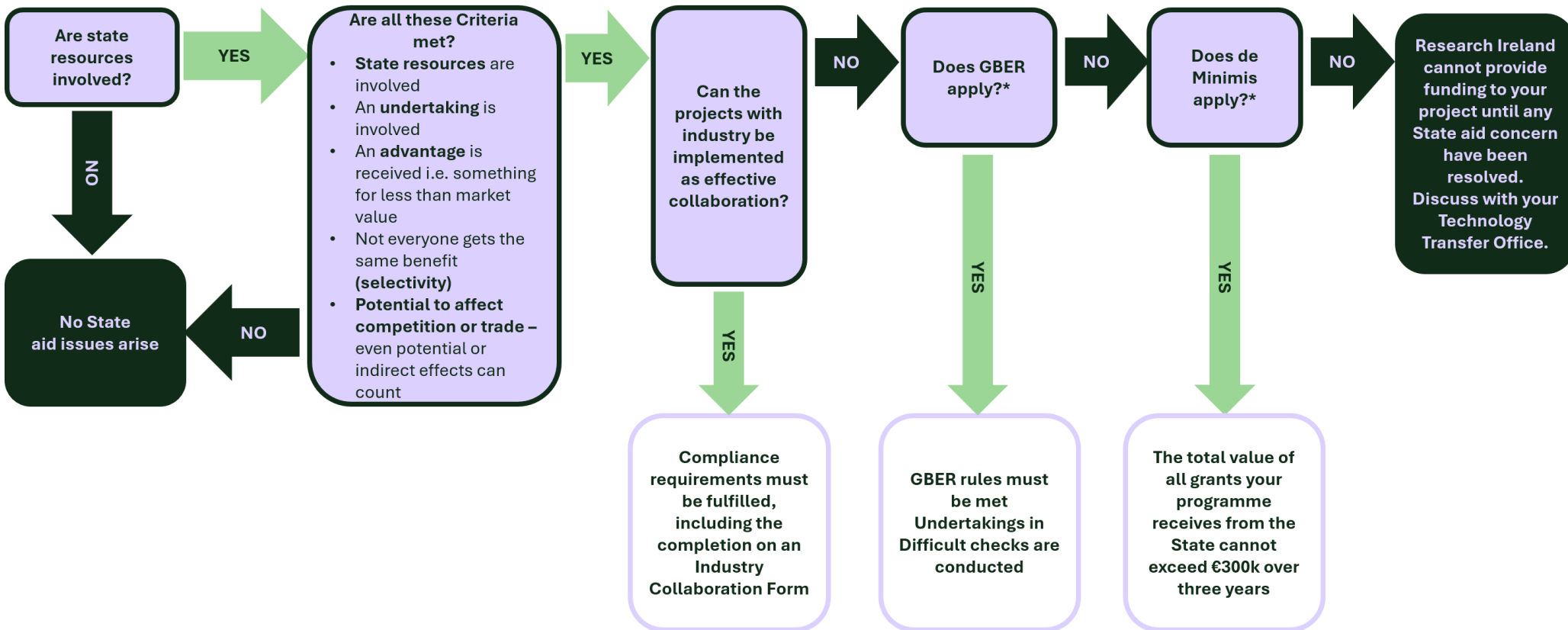
7. What should I do if my project involves an undertaking?

- Let your Research Office or TTO know early – Research Ireland cannot provide project-specific guidance.
- Understand if your programme is run under an exemption or under effective collaboration.
- If the programme is run under effective collaboration, expect to complete an Industry Collaboration Form. If it is run under GBER, expect Undertakings in Difficulty checks.
- Use your institution's standard collaboration agreements.

8. Key messages

- Research Ireland provides grants using Irish State resources. The management of those resources are subject to EU State aid regulations.
- Research Ireland funds Research Bodies and in most circumstances Research Bodies are not considered undertakings under EU State aid regulations and so grants Research Ireland awards to Research Bodies are not deemed to be State aid.
- State aid considerations can arise when a Research Body works with industry. Where this is the case, any involvement should be structured under the rules of 'Effective Collaboration'. The ICF has been designed as a guide to support this.
- Research Ireland awards some grants under the rules of the GBER the de Minimis Regulation. Where this is the case, it will be clearly detailed in the Programme Call and Letter of Offer and the specific requirements of GBER should be followed.

Appendix: State Aid Decision Tree



*Where an exemption such as GBER or De minimis applies, this will be clearly stated in the call documentation.