

\_\_\_\_\_  
Name and address of the Unit

\_\_\_\_\_  
(place and date)

### **DECLARATION ON THE ABSENCE OF STATE AID**

*Before completing this Declaration, please complete the attached Questionnaire on the absence of state aid.*

In relation to the decision to grant (*name of the Unit*) ..... financing under the programme [...]: from the European Regional Development Fund under the Smart Growth Operational Programme 2014-2020 (SG OP), Axis IV: Increasing the research potential, Measure 4.4: Increasing the human potential in the R&D sector for the implementation of the Project (*Project name*).....(hereinafter referred to as the "Project")..... (*name of the Unit*)..... declares that the amount requested in the grant application for the implementation of the project does not constitute for the Unit state aid referred to in Article 107 paragraph 1 of the Treaty on the Functioning of the European Union (consolidated text, EU OJ 2010 C 83, p. 1).

*Signature/s of the person/s*

*eligible to represent the Unit*

## *INSTRUCTIONS FOR THE QUESTIONNAIRE*

Pursuant to Article 107 paragraph 1 of the Treaty on the Functioning of the European Union (TFEU) 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, insofar as it affects trade between Member States, be incompatible with the internal market.

There are exceptions to such a prohibition to grant state aid, including the possibility of granting public aid for research, development and innovation.

Public aid refers to carrying out business activity. If a beneficiary does not carry out such activity, or its economic activity is not related to the received support, it cannot be treated as public aid within the meaning of Article 107 paragraph 1 of the TFEU. In EU law, business activity is carried out by an enterprise.

Therefore an enterprise is any entity engaged in any economic activity, i.e. offering goods and services on the market, regardless of the legal form and financing method, including entities that do not operate for profit<sup>1</sup>.

An enterprise, under the law of the European Union, may be a public sector entity, including a research and knowledge dissemination organisation, insofar as it carries out its economic activity.

Extensive explanations in this regard have been presented by the European Commission in the Framework for state aid for research, development and innovation<sup>2</sup> (hereinafter referred to as **the "Framework"**) – see points 18-20 thereto.

As defined in point 15 letter ee) of the Framework, a research and knowledge dissemination organisation is "(a)n entity (such as a university or research institute, technology transfer agency, innovation intermediary, research-oriented physical or virtual collaborative entity), irrespective of its legal status (organised under public or private law) or funding method, 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 unit also pursues economic activities, the financing, the costs and the revenues of those economic activities must be accounted for separately. Undertakings that can exert a decisive influence on such an entity, for example as its shareholders/stockholders or members, may not enjoy a preferential access to the results generated by it".

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<sup>1</sup> Judgment of CJ of 12 September 2000 in combined cases C-180/98 – C-184/98 Pavel Pavlov and others v. Stichting Pensioenfonds Medische Specialisten, ECR 2000, p. I-06451, paragraph 74; judgment of CJ of 25 October 2001 in case C-475/99 Ambulanz Glöckner Company v. Landkreis Südwestpfalz, ECR 2001, p. I-08089 and judgment of CJ of 1 July 2008 in case C-49/07 Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio, Ecr. Orz. 2008, p. I-04863, paragraph 27-28.

<sup>2</sup> EU OJ C 198, 27.6.2014, p. 1-<http://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=OJ:C:2014:198:FULL&from=EN>.



In the Framework, the European Commission identified the types of activities which it considers to be non-economic and economic in nature for research and knowledge dissemination organisations”.

The Commission is of the opinion that the fundamental activities of the research and knowledge dissemination organisation are usually non-economic in nature, in particular:

- education for more and better trained human resources,
- independent R&D activities aimed at expanding knowledge resources and improving understanding, including activities carried out in cooperation,
- a wide dissemination of research results on a non-exclusive and non-discriminatory basis, for example. by teaching, the available databases, open publishing and open-source software.

Furthermore, the nature of non-economic activities related to knowledge transfer, if they are carried out by a research organisation (including their departments or subsidiaries) or jointly with other units of this type or on behalf of other units of this type, and any profits from these activities are reinvested in principal activities of the research organisations. Contracting the provision of specific services to third parties by way of open procedure shall be without prejudice to the non-economic nature of such activities.

However, the Commission primarily regards renting equipment or laboratories to companies, providing services to companies or commissioned research as economic activity of the research and knowledge dissemination organisation.

If the same entity carries out both economic and non-economic activities, the public financing of non-economic activities shall not be considered state aid, provided that the two types of activities and their costs, financing and revenue can be clearly separated in order to avoid cross-subsidisation of economic activity. Annual financial statements of the given entity may be the proof of the appropriate allocation of costs, financing and revenue.

In addition, if the research organisation is used both to carry out economic and non-economic activities, state aid rules shall be applied to those public funds which are related to economic activity.

However, if the research organisation carries out almost exclusively non-economic activities, its funding may not be fully covered by state aid rules, provided that its economic activity is purely secondary, i.e. it corresponds to the activity that is directly related to the functioning of the given research organisation and infrastructure and necessary for its operation or inherently associated with its principal non-economic activity and that has a limited range. This occurs when, in the course of economic activities, exactly the same expenditures (e.g., materials, equipment, manpower and assets) are used as in the case of non-economic activities, and when the resources allocated annually to economic activities do not exceed 20% of the total annual resources of that entity.

In order to confirm the absence of the status of an enterprise, please complete the following questionnaire<sup>3</sup>.

### QUESTIONNAIRE ON THE ABSENCE OF STATE AID

<b>1</b>	Does the Unit carry out economic activity within the meaning of the EU competition law (e.g. does it provide services or goods on the market)?	<b>YES<sup>1</sup></b>	
		<b>NO<sup>2</sup></b>	

<sup>1</sup> If you select "YES", go to question no. 2.

<sup>2</sup> If you select "NO", stop completing the form and complete the declaration. Your response indicates that the aid obtained from the ERDF under SG OP Measure 4.4, will not constitute state aid referred to in Article 107 paragraph 1 of the TFEU. You must take into account that carrying out economic activity which is only secondary in character does not affect the recognition that the Unit is not an enterprise (does not carry out economic activities).

<b>2</b>	Will the requested grant for the Project provide financing exclusively for non-economic activities of the entity (i.e. the Project does not involve economic activities)?	<b>YES<sup>4</sup></b>	
		<b>NO<sup>5</sup></b>	

<sup>4</sup> If you select "YES", go to question No. 3.

<sup>5</sup> If you select "NO", stop completing the questionnaire. In this case, signing the Declaration is not possible.

<b>3</b>	In the case of carrying out economic and non-economic activities, can the two types of activities, their costs, financing and revenues be separated?  (Annual financial statements of the Unit may be a proof of the appropriate allocation of costs, financing and revenue).	<b>YES<sup>6</sup></b>	
		<b>NO<sup>7</sup></b>	

<sup>6</sup> If you select "YES", stop completing the form and complete the Declaration. Your responses indicate that the aid obtained from the ERDF will not constitute state aid referred to in Article 107 paragraph 1 of the TFEU.

<sup>7</sup> If you select "NO", stop completing the form. In this case, signing the Declaration is not possible.

<sup>3</sup> The absence of the status of an enterprise means that the support does not constitute state aid within the meaning of Article 107 paragraph 1 of the TFEU.

I declare that the above information is true, complete and reliable and has been provided to the best of my knowledge and with due diligence.

*Signature/s of the person/s  
eligible to represent the Unit*