

Conditions for awarding state aid

The state aid rules set the guidelines for how much funding the Research Council can allocate to companies.

As a general rule, it is prohibited to provide funding support to companies on the grounds that this will distort competition. This is the case regardless of the company's organisational form, whether it has a financial surplus, etc.

Project support from the Research Council is normally considered to constitute state aid if it is awarded to a company, or "undertaking". An "undertaking" is defined as an actor that carries out economic activity consisting of offering goods or services on a given market.

Exemptions

There are many exemptions from this general prohibition, however, and these are set out in the state aid rules. When support from the Research Council of Norway is defined as state aid, it must be awarded in compliance with the EU state aid rules. These rules stipulate what types of activities are eligible for support, which costs relating to these activities may be covered in part or in full, and the maximum aid intensity that may be granted for the various activities.

A call for proposals will clearly state whether it is possible for companies to seek funding. Here you will find information about the state aid rules that is important to know when you are applying for funding from the Research Council.

Who needs to know more about the state aid rules

- Project Owners seeking funding under a call for proposals where companies are eligible to receive support;
- partner companies that will be receiving a share of the Research Council's allocation to a project;
- research organisations that pursue economic activity in addition to their non-economic, primary activity.

The state aid rules

- describe the types of activity eligible for support, the costs relating to these activities that may be covered in part or in full, and the maximum aid intensities for the various activities. A grant application must meet all the requirements and guidelines set out in the text of the call, as well as satisfy the stipulations set out in the state aid rules.
- require a clear, formal separation of accounts for economic and non-economic activities, so that an organisation or company may legally receive support for non-economic activity without this comprising state aid.

This means that

- The Research Council will ask all applicants who receive a funding pledge to provide supplementary information in order to ensure that support is awarded in compliance with the state aid rules.
- Any support that is in violation of the provisions of state aid rules may be required to be repaid, with interest.

The following provides a more detailed description with information about the provisions of the state aid rules used by the Research Council when allocating funding, some important definitions and links to related documents. The text of the relevant call for proposals will clarify which provision of the state aid rules applies in connection with the allocation of funding.

Economic and non-economic activity

For calls for proposals where research organisations and research infrastructures are eligible to receive support, please note the following:

Paragraph 19 (see fact box below) of the EFTA Surveillance Authority's (ESA) guidelines on state aid for research and development and innovation defines what constitutes non-economic activity at research organisations:

Research organisations and research infrastructures: economic and non-economic activity (EFTA paragraph 19)

Paragraph 19. The Authority considers that the following activities are generally of a non-economic character:

A. Primary activities of research organisations and research infrastructures, in particular:

Education for more and better skilled human resources. In line with case-law and decisional practice of Authority and the Commission, and as explained by the Authority in its state aid communications, public education organised within the national educational system, predominantly or entirely funded by the State and supervised by the State is considered as a non-economic activity;

Independent R&D for more knowledge and better understanding, including collaborative R&D where the research organisation or research infrastructure engages in effective collaboration;

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.

B. Knowledge transfer activities, where they are conducted either by the research organisation or research infrastructure (including their departments or subsidiaries) or jointly with, or on behalf of other such entities, and where all profits from those activities are reinvested in the primary activities of the research organisation or research infrastructure. The non-economic nature of those activities is not prejudiced by contracting the provision of corresponding services to third parties by way of open tenders.

In a footnote to paragraph 19, the EFTA Surveillance Authority specifies that the provision of R&D services and R&D carried out on behalf of undertakings (contract research) are not considered as independent R&D.

Paragraph 21 of the guidelines clarifies that in cases where research organisations or research infrastructures are used to perform economic activities, such as renting out equipment or laboratories to undertakings, supplying services to undertakings or performing contract research, public funding of those economic activities will generally be considered state aid.

Requirements relating to clear separation between the economic and non-economic activities of research organisations

Support from the Research Council that is defined as state aid must be awarded in compliance with the provisions of the state aid rules relating to, among other things, maximum aid intensity.

In order for the Research Council to award support for research organisations' non-economic activities without it constituting state aid, the research organisations must establish a proper, consistent and transparent separation between their non-economic activities and their economic activities.

Three requirements from the ESA

The EFTA Surveillance Authority stipulates three requirements in this connection, all of which must be satisfied.

1. First, there must be a formal separation between the economic activities and the non-economic activities. This may be achieved by either organising the economic activities as a separate legal entity or by keeping separate accounts for the economic activities and the non-economic activities. This formal separation between economic and non-economic activities is a mechanism to verify that cross-subsidisation is not taking place. The factor determining whether a research organisation is in fact receiving state aid for its economic activities is whether the support awarded for its non-economic activities is in reality going to economic activities.
2. Second, there must be a system to ensure that the economic activities of the research organisation pay market price for all relevant inputs. The economic activities of the research organisation must cover all relevant variable costs and an appropriate contribution to fixed costs.
3. Third, there must be an adequate system of control enabling the Norwegian authorities to monitor that cross-subsidisation between the two types of activities is not taking place. Access to adequately separated and detailed accounts is a key component of such a control system.

Declaration forms

When awarding state aid to a company defined as an “undertaking”, the Research Council must know the size of the company receiving support.

The Research Council cannot award support to an enterprise that is defined as an “undertaking in difficulty” under the state aid rules (see the “Definition of ‘undertaking in difficulty’” below).

Nor can we award support to an undertaking which is subject to an outstanding recovery order for state aid that must be repaid.

We have drawn up a [declaration form \(docx\)](#) that each company must fill in to confirm that it is not an “undertaking in difficulty” and is not subject to an outstanding recovery order for state aid.

This declaration serves as confirmation that the enterprise is qualified to receive project funding that constitutes state aid. A declaration document must be submitted for each partner that will be a recipient of state aid under a project and this must be done before a contract can be drawn up.

This means that all enterprises benefitting from the Research Council allocation as the recipient of funding for a portion of their own project costs, or of their share of shared project costs via the Project Owner, must fill in a declaration form.

The Project Owner is responsible for ensuring that the declaration forms are submitted together with the revised grant application.

The Research Council will take the final decision regarding grant allocations based on the supplementary information obtained with the revised grant application.

It is not possible to draw up a contract for a project if one of the funding recipients is a company that cannot submit a declaration form.

The Research Council will carry out random checks, and the undertaking must be able, upon request, to document that it is not in difficulty according to the definition of the state aid regulations. This also applies to companies that do not have an accounting obligation.

- refer to the European Commission's [definition of Small and medium-sized enterprises \(SMEs\)](#);
- the criteria are also laid down in Annex I under the [General Block Exemption Regulation for state aid \(pdf\)](#).

With regard to the declaration that an enterprise is not an “undertaking in difficulty”, the definition under the state aid rules applies:

Definition of “undertaking in difficulty”

An “undertaking in difficulty” means an undertaking in respect of which at least one of the following circumstances occurs:

a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and ‘share capital’ includes, where relevant, any share premium.

b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, “a company where at least some members have unlimited liability for the debt of the company” refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.

e) In the case of an undertaking that is not an SME, where, for the past two years:

1. the undertaking's book debt to equity ratio has been greater than 7.5 and
2. the undertaking's EBITDA interest coverage ratio has been below 1.0.

Articles of the Block Exemption Regulation

Different articles apply to different application types

Article 25 is the provision for state aid awarded in the form of funding for Innovation Projects and Collaborative and Knowledge-building Projects.

Article 26 is the provision for support for investment in research infrastructure.

Article 22 (3) (c) and **Article 22** (5) are the provisions for aid for start-ups under the Programme for Commercialising R&D Results (FORNY2020).

Allocations to enterprises under the application type Coordination and support activities take the form of De minimis aid.

Most of the state aid awarded by the Research Council is granted under the [EU General Block Exemption Regulation for state aid \(pdf\)](#). Various articles under the regulation will apply to different Research Council application types (see fact box above). The text of the call for proposals will clarify which provision is relevant for a specific grant application type or grant award.

Article 25 of the Block Exemption

Article 25: Aid for research and development projects

1. Aid for research and development projects shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty provided that the conditions laid down in this Article and in Chapter I are fulfilled.
2. The aided part of the research and development project shall completely fall within one or more of the following categories:
 - a) fundamental research;
 - b) industrial research;
 - c) experimental development;
 - d) feasibility studies.
3. The eligible costs of research and development projects shall be allocated to a specific category of research and development and shall be the following:
 - a) personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
 - b) costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible;
 - c) costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
 - d) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
 - e) additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project.
4. The eligible costs for feasibility studies shall be the costs of the study.
5. The aid intensity for each beneficiary shall not exceed:
 - a) 100 % of the eligible costs for fundamental research;
 - b) 50 % of the eligible costs for industrial research;
 - c) 25 % of the eligible costs for experimental development;
 - d) 50 % of the eligible costs for feasibility studies.
6. The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as follows:
 - a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
 - b) by 15 percentage points if one of the following conditions is fulfilled.
 - i) the project involves effective collaboration:
 - between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or

- between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results.
- ii) the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.
7. The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

Important definitions for Article 25:

‘Fundamental research’ means experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view.

‘Industrial research’ means the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts of complex systems, and may include the construction of prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems as well as of pilot lines, when necessary for the industrial research and notably for generic technology validation.

‘Experimental development’ means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements.

‘Feasibility study’ means the evaluation and analysis of the potential of a project, which aims at supporting the process of decision-making by objectively and rationally uncovering its strengths and weaknesses, opportunities and threats, as well as identifying the resources required to carry it through and ultimately its prospects for success.

‘Effective collaboration’ means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of its financial risks. Contract research and provision of research services are not considered forms of collaboration.

Additional specifications may be given in the call for proposals.

Article 25 describes the types of activity eligible for support, the costs relating to these activities that may be covered in part or in full, and the maximum aid intensities for the various activities.

To be eligible, all project costs must be allocated to activity that falls within one of the four categories of research and development set out in Article 25(2). Support cannot be awarded for activities that do not fall within one of those categories and the costs for those activities must not be included in the part of the project funded by the Research Council.

If activities under the project extend across several of the categories, for instance both industrial research and experimental development, the Project Owner must maintain an overview to ensure that the costs for each activity are placed in their correct respective categories. This is necessary because the maximum aid intensity for a given activity will depend on the category it encompasses, and the Research Council will specify in the contract for R&D funding that the Project Owner is responsible for ensuring that the correct framework for support is adhered to.

See: [Significance of the state aid rules for Innovation Projects for the Industrial Sector \(pdf in Norwegian only\)](#).

Article 26 of the Block Exemption

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1. Aid for the construction or upgrade of research infrastructures that perform economic activities shall be compatible with the

internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided that the conditions laid down in this Article and in Chapter I are fulfilled.

2. Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.
3. The price charged for the operation or use of the infrastructure shall correspond to a market price.
4. Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.
5. The eligible costs shall be the investment costs in intangible and tangible assets.
6. The aid intensity shall not exceed 50 % of the eligible costs.
7. Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

Important definitions for Article 26

'Research infrastructure' means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments, knowledge-based resources such as collections, archives or structured scientific information, enabling information and communication technology-based infrastructures such as grid, computing, software and communication, or any other entity of a unique nature essential to conduct research.

Such infrastructures may be 'single-sited' or 'distributed' (an organised network of resources) in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (1).

When the Research Council awards support for investment in research infrastructure via the application type "Research infrastructure", it is important to note the following:

Support for investment in research infrastructure constitutes state aid when a research infrastructure is used to pursue economic activities. In the context of research infrastructure, economic activities include activities such as renting out of equipment and laboratories, supplying services to business undertakings and performing contract research.

Support for investment in research infrastructure that is used to pursue only non-economic activities does not constitute state aid. The primary activities of the research infrastructure are considered non-economic activities.

These include use of the research infrastructure for education, independent R&D, wide dissemination of research results and knowledge transfer activities, subject to the conditions set out in paragraph 19 of the EFTA Surveillance Authority's guidelines on state aid for research and development and innovation.

When a research infrastructure is used to pursue both economic and non-economic activities, it is only the support for investment linked to the economic activities that constitutes state aid and must consequently be awarded in compliance with the state aid rules.

When the economic activities consume the same inputs (such as material, equipment, labour and fixed capital) as the non-economic activities and the capacity allocated each year to such economic activity does not exceed 20 % of the research infrastructure's overall annual capacity, the funding may fall outside the state aid rules in its entirety.

See paragraph 49 of the preamble to the General Block Exemption Regulation for further information.

The portion of the support for infrastructure awarded by the Research Council that constitutes state aid is granted under Article 26 of the General Block Exemption Regulation for state aid.

Article 22 of the Block Exemption

Only Article 22(3)(c) and Article 22(5) are currently applied by the Research Council, for funding of projects under the Programme for Commercialising R&D Results (FORNY2020).

Article 22 of the Block Exemption: Aid for start-ups ▼

1. Start-up aid schemes shall be compatible with the internal market within the meaning of Article 107(3) of the Treaty and shall be exempted from the notification requirement of Article 108(3) of the Treaty, provided the conditions laid down in this Article and in Chapter I are fulfilled.
2. Eligible undertakings shall be unlisted small enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger. For eligible undertakings that are not subject to registration the five years eligibility period may be considered to start from the moment when the enterprise either starts its economic activity or is liable to tax for its economic activity.
3. Start-up aid shall take the form of:
...
c) grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR 0,4 million gross grant equivalent or EUR 0,6 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty, or EUR 0,8 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty.
...
5. For small and innovative enterprises, the maximum amounts set out in paragraph 3 may be doubled.

Important definitions for Article 22 ▼

'**Innovative enterprise**' means an enterprise:

- a) that can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, or
- b) the research and development costs of which represent at least 10 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.

De minimis aid

De minimis aid is an exemption from the prohibition on state aid in which funding providers **may grant small amounts** without having to notify the EFTA Surveillance Authority (which monitors compliance with European Economic Area rules).

The main grounds for this exemption are that the amount awarded is so small that it is deemed not to have any effect on trade and/or to distort or threaten to distort competition.

The Research Council makes only limited use of the de minimis aid exemption. It is awarded primarily when funding does not fall with the purview of the General Block Exemption Regulation, under which the Council normally awards state aid.

Ceiling amount

The amount of de minimis aid that may be awarded to a single undertaking is maximum EUR 200 000 over a period of three fiscal years. Thus to be eligible for financial support, the applicant may not have received more than a total of EUR 200 000 in de minimis aid during a period of three fiscal years (i.e. the year the aid was disbursed and the two preceding years). The disbursement of de minimis aid by the Research Council must not lead awardees to exceed this ceiling.

The currency exchange rate in effect on the date when the funding pledge is granted serves as the basis for calculating the ceiling amount.

What constitutes a single undertaking?

The ceiling amount of EUR 200 000 applies to a single undertaking. For enterprises that are a part of a group of linked enterprises, the ceiling amount generally applies to the group as a whole.

To determine whether an enterprise is considered a single undertaking, see the definition in Article 2(2) of the Commission Regulation (EU) No 1407/2013 below:

Definition of "single undertaking" ▼

'**Single undertaking**': includes, for the purposes of this Regulation, all enterprises having at least one of the following

relationships with each other:

- a. one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- b. one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- c. one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- d. one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.

Procedures for awarding financial support

The Research Council and other public bodies that award de minimis aid have an explicit obligation to inform recipients in writing that the financial support will be given as de minimis aid and must specify the amount of support to be awarded and refer expressly to the above regulation.

In all funding announcements under which support may potentially be awarded as de minimis aid the Research Council will provide clear information about this and what this entails for the recipient. Prior to disbursement of any de minimis aid, the Research Council will request written confirmation and an overview of all other de minimis aid that the undertaking has received in the course of the three fiscal years in question. For enterprises that are a part of a group of linked enterprises, the ceiling amount generally applies to the group as a whole.

Legal authority de minimis aid ▼

De minimis aid is regulated in Commission Regulation (EU) No 1407/2013 of 18 December 2013.

The regulation is included in the EEA Agreement (Annex XV, State Aid, Item 1ea.) and implemented in Norwegian law through the Regulations of 14 November 2008 No 1213 concerning exemption from the notification requirement for state aid, Section 2.

[The Commission regulation on de minimis aid \(pdf\)](#).