

## GUIDANCE ON STATE AID FOR APPLICANTS TO, AND RECIPIENTS OF, SFI GRANT FUNDING

### 1. State aid and SFI funding

The State aid guidance presented below is relevant to all applicants to, and recipients of, Grant funding from Science Foundation Ireland (SFI)<sup>1</sup>, which is underpinned by State monies, and particularly to any recipients who collaborate with industry as part of the programme of research supported under the Grant. We encourage applicants to, and recipients of, Grant funding to actively engage with their Technology Transfer Offices where required.

As per SFI's Grant Conditions (inclusive of SFI's General Terms & Conditions, Letters of Offer and SFI Policy documents), all SFI funding granted is subject to, and must be compliant with, State aid legislation based on Article 107(1) of the Treaty of the Functioning of the European Union (TFEU)<sup>2</sup>.

**Unless otherwise advised**, applicants to, and recipients of, Grant funding from SFI should be aware, as advised in the Programme Call documentation and Letter of Offer, that there is no reliance on a State aid Decision(s), such as the de minimis Regulation or the General Block Exemption Regulation<sup>3</sup>. In other words, the activities undertaken as part of the proposed research programme and agreed to subject to SFI's Grant Conditions must be "non-economic" in nature and / or comply with the definition of an "effective collaboration" where a project involves collaboration with an industry party or "undertaking"<sup>4</sup>, as per the Framework for State aid for research, development and innovation (2014/C 198/01) (the "Framework")<sup>5</sup>.

Recipients of Grant funding must therefore ensure that any funding received from SFI does not, directly or indirectly, give rise to the granting of State aid and otherwise satisfies the conditions of Section 2 of the Framework. Applicants should also familiarise themselves with all relevant guidance to ensure that State aid concerns do not apply to their proposed programme of research / project. To reiterate, we encourage all applicants to actively consult with their Technology Transfer Offices where required.

SFI has drawn on guidance that is widely available (see "Resources" section below) and furthermore, has developed an Industry Collaboration Form to support recipients of Grant funding (individuals and their respective research bodies) in strengthening their compliance with the definition of "effective collaboration", where relevant.

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<sup>1</sup> Grants awarded under the SFI Discover Programme must be used to fund non-economic activities within the meaning of paragraph 19 of the Framework, thus ensuring that the granting of State aid does not arise. Further guidance will follow.

<sup>2</sup> [Commission Notice on the notion of State aid as referred to in Article 107\(1\) of the Treaty on the Functioning of the European Union](#)[TABLE OF CONTENTS \(europa.eu\)](#)

<sup>3</sup> Commission Regulation No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

<sup>4</sup> 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.

<sup>5</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0627\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0627(01)&from=EN)

For those Grants not involving a research programme per se, or where a collaboration with an “undertaking”<sup>6</sup> or industry party does not arise, the Grant must still be used to fund non-economic activities within the meaning of paragraph 19 of the Framework, thus ensuring that the granting of State aid does not arise.

In addition to the guidance set out below, applicants to, and recipients of, Grant funding from SFI are advised to seek their own independent legal advice. SFI cannot provide bespoke guidance on individual programmes of research or projects as it is not responsible for recipients of grant funding being compliant with State aid legislation.

Recipients of Grant funding from SFI will be required to demonstrate compliance with State aid legislation, as part of SFI’s State aid verifications process (as described in SFI’s Grant Conditions; further details below).

## **2. Intellectual Property Management or Rights**

SFI 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**<sup>7</sup> and must comply with conditions 28 and 29 (as appropriate) of the Framework.

The compliance of all IPR arrangements with State aid legislation are the responsibility of 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 compliance with State aid Regulations. Further guidance is provided below; useful links can also be found on the Additional Resources section of the [SFI Website](#).

## **3. Compliance of Grants with the Framework**

Where a collaboration with an “undertaking”<sup>8</sup> or industry party exists for part or all of the term of the Grant, or where a collaboration arises with an industry party that is attributed to the programme of research, the Grant is awarded on the understanding that:

- a) the Research Body will be engaging in “effective collaboration” within the meaning of paragraph 15(h) of the Framework;
- b) the Research Body will ensure that its implementation of the Research Programme complies with the provisions of sections 2.2 and 2.3 of the Framework;
- c) the Research Body and any other entity in receipt of Grant funding, that carries out activities of both an economic and non-economic nature, has in place appropriate accounting separation processes (including in relation to the operation of "research infrastructures"), in accordance with paragraph 18 of the

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<sup>6</sup> 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.

<sup>7</sup> [Ireland-s-National-IP-Protocol-2019-.pdf \(knowledgetransferireland.com\)](#)

<sup>8</sup> 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.

Framework, such that 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; and

d) where the Research Body and any other entity in receipt of Grant funding (including in relation to "research infrastructures") is engaged in both economic and non-economic activities, that those economic activities remain purely ancillary 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 accordance with paragraph 20 of the Framework. This will be considered to be the case where the economic activities consume exactly 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 activities does not exceed 20% of the Research Body's overall annual capacity.

Potential applicants are referred to the guidance provided by the European Commission in Section 2 of the Framework. As communicated earlier, applicants are also advised to seek independent legal advice in advance of applying to SFI for funding, where further clarification is sought.

#### **4. Putting 'Effective Collaboration' into practice in the programme of research or project.**

SFI has set out the following guidance to support how the programme of research or project is developed and undertaken in accordance with the conditions of "effective collaboration" as defined under the Framework. "Effective collaboration" also requires that one of the conditions as defined in paragraphs 28 and 29 (as appropriate) of the Framework is fulfilled. Recipients of Grant funding from SFI are required to demonstrate compliance with the conditions of "effective collaboration" and to support this, SFI has developed an [Industry Collaboration Form](#). This form will also support SFI in undertaking ex-ante and ex-post State aid verifications, as has recently been prescribed following the outcome of an audit of ERDF co-funded activities.

All projects involving collaboration with undertakings / industry parties **must** comply with the following characteristics:

*"A project is considered to be carried out through effective collaboration where at least two independent parties pursue a common objective based on the division of labour and jointly define its scope, participate in its design, contribute to its implementation and share its financial, technological, scientific and other 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. The terms and conditions of a collaboration project, in particular as regards contributions to its costs, the sharing of risks and results, the dissemination of results, access to and rules for allocation of IPR, must be concluded prior to the start of the project (this does not include definite agreements on the market value of resulting IPR and the value of contributions to the project). Contract research and provision of research services are not considered to be forms of collaboration."*

Furthermore, the project must fulfil one of the following conditions:

- a) the third party bears the full cost of the project;
- b) the results of the collaboration which do not give rise to IPR may be widely disseminated and any IPR resulting from the activities of Research Bodies are fully allocated to those entities;

- c) any IPR resulting from the project, as well as related access rights are allocated to the different collaboration partners in a manner which adequately reflects their work packages, contributions and respective interests; or
- d) the Research Bodies receive compensation equivalent to the market price for the IPR which result from their activities and are assigned to the participating undertakings, or to which participating undertakings are allocated access rights. The absolute amount of the value of any contribution, both financial and non-financial, of the participating undertakings to the costs of the Research Bodies' activities that resulted in the IPR concerned, may be deducted from that compensation.

For the purposes of point (d) above, the compensation received by the Research Bodies will be considered equivalent to the market price if it enables the Research Bodies concerned to enjoy the full economic benefit of those rights, where one of the following conditions is fulfilled:

- a) the amount of the compensation has been established by means of an open, transparent and non-discriminatory competitive sale procedure;
- b) an independent expert valuation confirms that the amount of the compensation is at least equal to the market price;
- c) the Research Bodies, as seller, can demonstrate that it effectively negotiated the compensation, at arm's length conditions, in order to obtain the maximum economic benefit at the moment when the contract is concluded, while considering its statutory objectives; or
- d) in cases where the collaboration agreement provides the collaborating undertaking with a right of first refusal as regards IPR generated by the collaborating Research Bodies, where those entities exercise a reciprocal right to solicit more economically advantageous offers from third parties so that the collaborating undertaking has to match its offer accordingly.

Please note that in accepting SFI's Grant Conditions by signing the Letter of Offer, successful applicants undertake that any funds received from SFI will not, directly or indirectly, give rise to a granting of State aid. This is the first step in SFI's **ex-ante State aid verification checks** (i.e., upfront checks prior to the granting of funds/partial funds). The Industry Collaboration Form, described below, comprises the second part of these verification checks, with the Collaborative Research Agreement (CRA), being the third.

## **5. SFI's Industry Collaboration Form (ICF)**

The Industry Collaboration Form or ICF has been designed to support researchers in engaging with industry partners and to assist in defining the relationship between the parties, their respective responsibilities, governance and regulatory matters, IPR, access to infrastructure and other materials before a project starts so as to ensure compliance with State aid legislation. From January 2021, SFI will require that this form is completed and returned to SFI on or before the date that the Collaborative Research (or Intellectual Property Rights) Agreement has been 'agreed' with, or signed by, the relevant partner(s).

This form contains a checklist of requirements which should be completed to ensure that the project undertaken with the relevant industry partner is and will be compliant with the definition of "effective collaboration" as per the Framework (and as outlined above).

Moreover, the ICF will help to ensure that there is a record available of how the collaboration was developed, thus informing future audits which may be undertaken by SFI's auditors.

SFI strongly encourages the Principal Investigator to engage with the Research Body's TTO and legal advisors if necessary, to support their understanding of the definitions referred to therein.

To reiterate, from January 2021, the ICF **must** be returned by the Principal Investigator by email to the relevant programme inbox on or before the 'completion'<sup>9</sup> of the respective Collaborative Research Agreement, **or** within the timeframe specified in the Letter of Offer, if that differs. Please note that this date may vary depending on whether the Grant awarded is part of a Strategic Partnership, Spoke or Research Centre. Please contact the programme call inbox if you need further assistance with timelines.

## 6. The role of the Collaborative Research Agreement

For all successful applications with undertakings / industry party involvement, a Collaborative Research Agreement (**CRA**) must be signed by the Research Body and the respective industry partner(s). The CRA should clearly outline arrangements for Intellectual property (IP), insurance, liability and warranties. It will typically contain a detailed statement of work for the research to be undertaken and should include a clause describing how the results of the project will be disseminated. Moreover, for all SFI Grants, this agreement must comply with the Framework's definition of "effective collaboration" or "no State aid". Please note that SFI does not provide template CRAs, however, some links to guidance on CRA templates are included in the 'Additional Recourses' section of the [SFI website](#). The CRA must be signed by all relevant parties before the (relevant) programme of research / project can commence. This timeframe is typically specified in the Letter of Offer.

## 7. Ex-post State aid verification checks

Since January 2020, SFI has been guiding recipients of Grant funding that its advisors (namely SFI appointed auditors) will be undertaking a review of compliance with State aid regulations.

As part of this review, termed SFI's **ex-post State aid verification checks** (i.e., on-going checks after the granting of funds / partial funds), a completed copy of the Industry Collaborator Form **must** be returned to SFI on or before the date that the CRA has been agreed with (signed by) the relevant (industry) partner. A copy of each CRA arising from the Grant must be held on file by the relevant Research Body. SFI 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 SFI's advisors, along with the corresponding completed ICFs. The ICF will always be held on file by SFI and must be submitted to SFI as per the timelines advised above.

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<sup>9</sup> Completion reflects the fact that the CRA has been **agreed by all parties** and the requisite **signatures have been obtained** to reflect this agreement.

This ex-post process may be supplemented by other on-going verification processes in order to ensure compliance with State aid regulations during and beyond the lifetime of the Grant.

Where State aid is found to be a concern or where it materialises that undertakings / industry party involvement fails to meet the conditions of “effective collaboration” and conditions relating to IPR under the Framework, approval of an application or the granting of funds/partial funds will be withheld pending receipt of a revised arrangement between the collaborators to the satisfaction of SFI’s advisors. Where a Grant is active, SFI may consider withholding continued payments until the concerns identified are resolved to the satisfaction of SFI’s advisors.

SFI recommends that in considering a collaborative programme of research / project, Research Bodies, their Principal investigators and prospective undertakings / industry parties should assess whether they believe State aid is potentially a factor before applying for funding and should agree draft terms prior to submission. Research bodies (as part of an application to SFI for funding) may be required to highlight in their Cover Letter (Letter of Support, where required) why they believe State aid will not apply to a project (i.e., as it is to be an “effective collaboration”, “no State aid”), where this is requested by SFI.

## **8. SFI Research and Innovation GBER Scheme**

During December 2020, Science Foundation Ireland (SFI) made a submission to the EU Commission of its intent to avail of the General Block Exemption Regulation (GBER). Although the scheme has not yet been implemented into SFI Programme Calls, SFI may do so during 2021 and this will be made apparent to prospective applicants and Research Bodies in the call documentation and application processes described. The objective of this scheme is to provide aid for research and development projects that align with SFI’s mandate to promote and assist the development and competitiveness of industry, enterprise and employment in Ireland.

Further details can be found at the following [link](#)