**Dutch response to the consultation on Revision of the State aid rules for RDI**

*This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The ISO is chaired by the Ministry of Economic Affairs and Climate Policy. The Minister of Economic Affairs and Climate Policy is responsible for competition policy in the Netherlands.*

This is the response to the consultation on the revision of Framework on State aid rules for Research, Development and Innovation (hereafter: RDI Framework). In this revision the Commission proposes some targeted improvements to the RDI Framework and indicates that the corresponding RDI-articles in the General Block Exemption Regulation (hereafter: GBER) will also be amended. We welcome these targeted revisions and propose some further improvements, specifically for the GBER.

**Introduction**

Robust State aid control is essential for a level playing field to ensure a well-functioning competitive internal market. At the same time, intervention with State aid may be needed to address certain market failures and/ or to accomplish the goals of European Union interests. It should be regularly verified whether the State aid rules are suitable for the (new) challenges facing the EU Member States. Therefore, the Dutch authorities welcome the initiative by the European Commission to assess the effectiveness, efficiency, coherence, relevance and EU added-value of the State aid rules by means of the fitness checks. This position paper will elaborate on the Dutch view regarding the draft RDI Framework and possible changes to the GBER. For the Dutch authorities this is also one of the key modernizations which are crucial for keeping the EU competitive and a thriving innovative ecosystem. Both the COVID-19 pandemic and geopolitical developments have shown the need for the EU to be at the forefront of new key technologies and to develop the necessary environment for start and especially scale ups.

**1. Funding of innovative SME's and innovative mid-caps in RDI Framework and GBER**

Risk capital is needed for digital innovations and critical technologies. Innovative SME's and innovative mid-caps who develop such innovations and technologies face high financial risks for a long period of time, but the payoff for society will be worth it if the innovation succeeds. The Dutch authorities are currently developing new instruments such as deeptech investment funds to address market failures regarding the scale up of European companies in key technologies. The Dutch authorities notice cash lock ups by Venture Capital funds, the refusal to roll over hybrid loans, a lack of access to risk finance funding as existing funds and investors are retrenching and unwilling to facilitate new funding rounds, especially for innovative SME's and innovative mid-caps which have limited cash income but high R&D expenditures. Therefore, the Dutch authorities consider that in these segments EU Member States should be able to provide "replacement or follow up risk finance" to allow continued development of innovative SME's and innovative midcaps. Increasingly, companies are faced with large amounts of Foreign Direct Investment (FDI) that EU Member States might find undesirable when applied to strategically important sectors and critical value chains. It is important that the EU Member States have the right possibilities to defend their financial participation but also to make it more difficult for an FDI investor to quickly take over the target company. A key development in the Netherlands to deal with FDI risks is the increased use of subordinated debt with conversion possibilities and venture debt. In both cases the possibility and right is introduced to either convert the debt into equity or the right to participate in a next funding round. One of the triggers for conversion or participation is a change of control or new funding round. This allows the EU Member States both to defend their financial participation but also to make it more difficult for an FDI investor to quickly take over the target company.

The current State aid rules do not provide adequate possibilities to provide risk funding for innovative SME's and innovative mid-caps. First, due the high burn rate these companies require high aid amounts in the early stages of a company's life cycle. Maximum State aid amounts under the GBER are capped too low for companies working on digital innovations and critical technologies. Second, the transparency provisions of the GBER are too limiting for funding of these companies. Especially in R&D intensive SME's and innovative mid-caps risk finance is normal market practice to promote investments in such companies. Risk finance (both under MEOP-

conditions and as State aid) at the level of eligible undertakings, may take the form of equity, quasi-equity investments, loans, guarantees, or a mix thereof. However, risk financing is currently only possible under the GBER if all provisions of Article 21 GBER are respected. This poses problems, because there is not enough private funding available for innovative SME's and innovative mid cap due to poorly developed risk capital markets or such private funding might pose FDI risks (see above). For these reasons Article 21 GBER cannot always be used to provide adequate funding for these companies. Due to the transparency provisions of Article 5 GBER risk financing specifically for RDI aid under Article 25 GBER is not allowed without respecting the provisions of Article 21 GBER. Specifically in relation to the COVID- 19 pandemic the Dutch authorities see the need to incorporate in both the RDI Framework and the GBER the possibility for financial support when engaging in clinical trials and follow up research and development and scale up when medical products and vaccines are placed on the market. The key there is the need for a balance between the downsides and upsides for the tax payer and health authorities.

- The Dutch authorities ask the Commission to consider solutions for adequate funding of innovative SME's and innovative mid-caps, such as:
  - A targeted aid category under the GBER for risk financing (equity and hybrid financing) of early stages of a company's life cycle that addresses the needs of startups and scale-ups for digital innovations and critical technologies (including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies). Such a category should also have a higher notification threshold than the current thresholds for aid for risk financing or research and development. Due the high burn rate these companies require high aid amounts in the early stages of a company's life cycle.
  - Changes in Article 5 GBER to allow for risk financing for aid under Article 25 GBER and more flexibility in the definition for 'repayable advances' to provide hybrid financing which is not solely dependent on the result of the project.
- The Dutch authorities would like to point that with regard to paragraph 2.3, point 33 that there are more relevant procurement procedures than exclusive development and pre-commercial procurement. It would be appropriate to also mention the innovation partnership (Article 31 of Directive 2014/24). These procedures can also be relevant in in the field of defense and security technologies.

As the Commission has encouraged the Member States also to give input on the relevant articles in the GBER, the Dutch authorities would like to point out that the GBER should also be available for individual 'ad hoc' aid to SME's, not only on the basis of a scheme but also on the basis of an individual ad hoc aid measure. Therefore, the requirement in Article 21, paragraph 1, of a risk finance scheme for SME's should be deleted.

**2. Undertaking in difficulty**

The definition of 'undertaking in difficulty' in State aid rules poses problems for start ups and scale ups. Many undertakings would have to be excluded from State aid measures due to a low equity ratio in the short-term even if they could be considered viable in the mid- and long-term. Start-ups in their early stages, particularly with a focus on research and development activities in high-technology sectors, usually show losses during several years after being set up and have to undergo a phase, which is called a "valley of death", until they succeed on the market.

In the definition of 'undertaking in difficulty' innovative SME's and innovative mid-caps should also be excluded within the 7 years of their first commercial sale, even when it is not eligible for risk financing under the current strict conditions of Article 21 GBER. If a new aid category for risk financing for innovative SME's and innovative mid-caps is introduced, the definition could refer to eligibility under that new article of the GBER.

***Article 2 GBER***

*(18) '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~~ five 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 or for the purpose of eligibility for aid for research and development and innovation, an SME within 7 years from its first commercial sale), 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 ([4]) 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~~ five 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 or for the purpose of eligibility for aid for research and development and innovation, an SME within 7 years from its first commercial sale), 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.*

*[…]*

### 3. Aid for healthcare and readiness for future health crisis

In the light of the COVID-19 public emergency health crisis, the Commission has considered that specific possibilities for state aid for the acceleration of research and development and testing and upscaling of infrastructure that develop COVID-19 products is necessary to tackle the health emergency crisis. If there are structural weaknesses or challenges that require specific government aid or support, for example with respect to healthcare and readiness for future health crises, the Dutch authorities consider that these should be addressed through the RDI (permanent) state aid framework (rather than a temporary framework).

- Is the Commission considering a special paragraph in the RDI framework for public funding in respect to healthcare and readiness for future health crisis?

### 4. Technology infrastructure in RDI Framework and GBER

The Commission proposes a new definition and compatibility criteria to allow financial support for technology infrastructures to reflect market and technology evolution and to incentivize research, development and innovation investments facilitating the twin transition. The Dutch authorities welcome this new category of aid which will facilitate the uptake of innovation activities, especially by SMEs. It is positive that a new category introduced which also clearly includes field labs and pilot lines.

### 5. Article 25 GBER

*'Effective collaboration'*

Article 25, paragraph 6), sub i) GBER is not consistent with the definition of 'effective collaboration'. It does not recognize that it is possible for research organizations to participate in collaborations with undertakings while conducting independent research. In the definition of 'effective collaboration' in the GBER and in the RDI Framework it is clearly stated that "[o]ne or several parties may bear the full costs of the project and thus relieve other parties of its financial risks". Point 19 in the RDI Framework states that independent R&D for more knowledge and better understanding is a primary activity of research organization (and of a non-economic character), which includes collaborative R&D where the research organization or research infrastructure engages in effective collaboration. Paragraph 2.2.2 of the RDI framework contains the conditions under which no indirect State aid is awarded to the participating undertakings in a collaboration project carried out jointly by undertakings and research organisations or research infrastructures, through those last entities.

However, according to Article 25, paragraph (6), sub i) GBER research organizations have to bear at least 10 % of the eligible costs. This provision does not recognize that it is possible for research organizations to participate in collaborations with undertakings while conducting independent research and having all of their non-economic activities fully subsidized. Also under those circumstances an increase of aid intensities should be possible.

*New aid category for knowledge transfer and information actions*

No aid is allowed under Article 25 GBER for knowledge transfer. It is possible to increase the aid intensity with 15 percentage points if information on the project is widely disseminated. However, because of the conditions of Article 25 paragraph 6b sub ii (companies have to share information, without taking into account IP rights etc. Furthermore, these conditions are difficult to check in practice. For this reason it would be useful to include a new category in Article 25 GBER of knowledge transfer, with an aid intensity of 25 %.

*Aid intensities for medical research*

Specifically for medical research aid intensities are too low. This includes implementation research/studies (within the definition of 'experimental development') and facilitating the use of knowledge for the purpose of legitimately and effectively solving medical and/or social (health) problems. Organizations in healthcare usually do not have their own research budgets. An increase of the aid intensity is therefore necessary. These types of research results are not intended for the own organization but for the sector as a whole, or serve to improve the healthcare (general/public interest). Aid for medical research contributes to the general public interest in improving the quality, affordability and accessibility of healthcare. The great uncertainty of the results of this type of research and the limited protection after a registration process makes it also difficult to such research get off the ground without aid. There is a financial impediment to conducting the research, which lies in the research costs themselves.

As an example for medicine research**:** it is plausible that the manufacturer/owner of the innovation to be investigated has no significant interest in execution of the research because he can continue to sell a (possibly other) profitable intervention without the research or the expected returns for the manufacturer/owner do not sufficiently outweigh the investment in the research. It is also possible that there is no direct manufacturer/owner for the innovation yet. From the perspective of care organizations and care professionals, it is plausible that healthcare organizations and/or healthcare professionals have no own interest in efficiency research with medicines in order to achieve cost control (resulting in appropriate use of healthcare or the absence of interventions) as this benefits society as a whole.

- The Dutch authorities propose the following regarding Article 25 of the GBER:
- to increase the aid intensity for medical research qualified as industrial research with 40 percentage points of the eligible costs;
- to increase the aid intensity for medical research qualified as experimental development with 45 percentage points of the eligible costs;

*Notification thresholds and aid intensities for digital innovations*

The notification thresholds for digital innovation activities under article 25 GBER is too low, takin into account on the structure of the market and the market failure present for European digital innovation activities. Higher notification thresholds and higher aid intensities specifically for research and experimental development with regard to digital innovations would be desirable to create the necessary scale to realize results in such projects.

## 6. Article 27 GBER

The Dutch authorities welcome the clarification of the definition of innovation clusters. However, the conditions in Article 27 GBER still exclude some forms of cooperation that would be very beneficial for innovation. In practice innovation clusters are often formed by a consortium of undertakings and organizations, for whom setting up a different legal entity would be a disproportionate administrative burden. This would include consortiums consisting of undertakings or organizations not necessarily at the same location. Also, cooperation of innovation clusters with

other innovation clusters or with organizations outside of the innovation cluster would be beneficial for innovation as a whole.

- The Dutch authorities propose to expand the possible beneficiaries to expand the eligible costs to include costs made to collaborate or prepare to collaborate with other organizations under Article 27 GBER.

When providing aid to European Digital Innovation Hubs different articles from the GBER are relevant: mainly Article 28 GBER but also Articles 25 and 27 of the GBER. However, providing State aid to such hubs (not only specifically European Digital Innovation Hubs but also similar legal entities for other innovations) based on a combination of these articles leads to a high administrative burden. The provisions of Articles 27 and 28 GBER have a very different character and consequently are difficult to combine. An example is the condition in Article 27 (4) GBER that the fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs. In paragraph 1.3, point 14 (f)of the RDI Framework in the description of aid for innovation clusters it is indicated that "[t]o facilitate access to the innovation cluster facilities or participation in the innovation cluster's activities, access can be offered at reduced prices in compliance with State aid rules as applicable to the users of the services provided by the innovation cluster.".

- The Dutch authorities would like to request the Commission to clarify in the GBER that in case State aid is provided as, for instance, a combination of Article 27 and 28 GBER, Article 27 paragraph 4 GBER is not applicable. Alternatively a solution could be an integral article for aid for innovations hubs which foresees in a possibility to also grant aid to participants in the activities of the hub.

Suggested changes:

***Article 27***

*[…]*

*2. Aid for innovation clusters shall be granted exclusively to the legal ~~entity~~ entities operating the innovation cluster (cluster organisation).*

*[…]*

*4. The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs. To facilitate access to the innovation cluster facilities or participation in the innovation cluster's activities, access can be offered at reduced prices in compliance with State aid rules as applicable to the users of the services provided by the innovation cluster.*

*[…]*

*8. […]*
*(d) costs to facilitate collaboration and information sharing with organizations outside of the cluster to increase synergy with these organizations for the purpose of stimulating innovative activity or to enhance the effectiveness of the cluster. Eligible costs include costs for feasibility studies regarding the collaboration, coordination costs, communication costs, process management costs and costs for other activities contributing to the collaboration.*

## 7. Article 28 GBER

- To minimize the administrative burden a clarification with regard to the three year period of article 28 (4) GBER would be welcomed.
- The Dutch authorities would also like to ask the Commission to confirm that this maximum amount of EUR 200 000 per undertaking within a three year period does not limit the amount of de minimis aid the same undertaking would be eligible for.

Suggested changes:

***Article 28 GBER***

*[…]*

*4. In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking ~~within any~~ in the three year ~~period~~ previous to the granting of the aid.*

## 8. Non-economic activities by intermediaries, innovation hubs and clusters

As stated in paragraph 2.1.2 of the draft RDI Framework, the Commission will not consider a research organization or research infrastructure to be a beneficiary of State aid if it acts as a mere intermediary for passing on to the final recipients the totality of the public funding and any advantage acquired through such funding. It would be useful if the Commission could clarify that even if intermediaries or special purpose vehicles would receive public funding , activities by the intermediaries could also qualify as non-economic activities, as long as their activities and public funding are only used to cover the operating costs of the socio-economic, coordination and regulatory activities. In that role an intermediary or special purpose vehicle can disseminate knowledge and research results (without research consortia members having preferential access to the results), without engaging in economic activities as this intermediary or special purpose vehicle does not carry out herself research or innovation activities.

The same holds true for innovation hubs or clusters. Such entities can be responsible for the coordination of the programming of public private partnerships which are non-economic activities. This task is necessary for programming public private partnerships on innovation and entails no direct support to undertakings. These activities differ in nature of the economic activities of an innovation clusters, as these activities do not consist of managing or operating facilities or infrastructures.

## 9. Definitions in RDI Framework and GBER

The Commission proposes clarifications to the definitions of innovation clusters, industrial research, experimental development, as well as process and organisational innovation activities and aid for innovation activities to mostly explicitly include digital and social innovations. It would be useful if the Commission could further clarify some other definitions in the RDI Framework and GBER as well.

*Research and knowledge dissemination organization*

The Dutch authorities would like to ask the Commission to further clarify the definition of a research and knowledge dissemination organization, as referred to in the draft RDI Framework (paragraph 1.3, point 15 (sub ff)) and as also included in the GBER (Article 2, paragraph 83).

- For legal certainty it is important that it is clear what, according to this definition, should be understood by the phrase 'whose primary goal is to (…)'. The Dutch authorities would also welcome clarification that based on this definition it is possible for undertaking to create a specific (joint) entity for research activities, which as such can qualify as a research and knowledge dissemination organization. This as long as the other conditions, such as actual non-economic activities and separate accounts, are met. In that way an entity which does not have the possibility to have separate accounts for the economic activities and non economic research activities can create a special (purpose) entity which only engages in independent research and knowledge transfer activities.
- It would be useful if the Commission could also clarify in the case of more entities - within one group of entities engaging in (independent) research and knowledge transfer activities - how the 80-20% rule should be applied.

*Industrial research and experimental development*

In point 80 of the draft RDI Framework reference is made to the Frascati Manual. In that manual the definitions for applied research and experimental development are wider than the definitions in the RDI Framework, which could lead to confusion in the State aid practice and discussions with companies. Social and economic research that is not specifically aimed at new products, processes

or services, can be conducted by companies in connection to their technological research. The footnote (number?) that is added to the definition of process and organizational innovation describes that these definitions include social innovation. According to the Dutch authorities this is a too limited interpretation of the scope of research and development in ,for example, the social and economic sciences.

- Could the Commission bring the definitions of the RDI Framework more in line with the Frascati Manual, for example by introducing ''directed primarily towards a specific, practical aim or objective' into those definitions?
- For this purpose an additional paragraph in the definitions of industrial research and experimental development would also be useful. Social and economic R&D should be included if it is necessary for or supports technology development that can be expected to have a significant social impact or where social or economic considerations can be decisive for successful implementation. In nature, this research must be clearly distinguishable from market research aimed at the commercial implementation of a specific product, process or service.

In the definition of industrial research and experimental development reference is made to pilot lines respectively piloting. Also in the Staff Working Document pilot lines are mentioned as an example of technology infrastructure. In the experience of the Dutch authorities pilot lines and validation of generic technology can only be associated with test-set ups in an environment at a research institute. Therefore, the Dutch authorities would welcome an addition to the definition of industrial research that the pilot lines are meant to be pilot lines in a lab.

- Can the Commission clarify in which cases pilot lines fall under industrial research or experimental development?
- Can the Commission clarify what is meant by "or in an environment with simulated interfaces to existing systems" in the definition of industrial research?

In the definition of experimental development reference is made to demonstrations. If it is used as a synonym to piloting, testing and validation, it would be more clear if the word 'demonstrating' was deleted.

- Can the Commission clarify what is meant by 'demonstrating' in the definition of experimental development?

The definitions of 'industrial research' and 'experimental development' are very technology-oriented. However, for the important transitions relating to energy and climate also innovative solutions that are not primarily technical, for instance because they aim at services and new business models, but to which it is necessary to demonstrate their functioning in large scale and in real life context prior to commercial exploitation. The same holds true for digital innovations. Clarification of the wording "in an environment with simulated interfaces to existing systems" in the definition of industrial research would also be welcomed. Suggested changes to the definitions for this purpose:

> Paragraph 1.3, point 17, sub k draft RDI Framework: *"**Experimental development** […] 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. […]"*
>
> Paragraph. 1.3, point 17, sub r draft RDI Framework: *"**'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, including new or improved digital products, processes or services, in any area, industry or sector. It comprises the creation of components parts to 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 small scale pilot lines to test and validate the ~~manufacturing method~~*

*performance, when necessary for the industrial research and notably for generic ~~technology~~ validation;"*

Identical changes and clarifications would be useful in the corresponding definitions in the GBER.

**10. Administrative burden**

The Commission proposes two revisions that will address disproportionate administrative burden that EU Member States have encountered when implementing support under the RDI Framework.

*Flat rate for indirect costs*

In point 81 of the draft RDI Framework the Commission proposes to introduce the possibility of calculating the indirect R&D project costs by using a flat-rate of up to 15% applied to total eligible direct R&D project costs. Depending on the type of project the amount of indirect project costs might differ.

- The Dutch authorities ask the Commission to clarify whether indirect loan costs also fall under the indirect costs referred to in point 81 of the draft RDI Framework.

*Ancillary character of the economic activities*

The clarification that monitoring of the ancillary character of the economic activities as defined in paragraph 22 of the draft RDI Framework shall apply for *at least* a 10 year period leads in some cases to a disproportionate administrative burden. Based on the current text monitoring was mandatory during the lifetime of the investment or the period of the public funding of operational costs. In the situation of public funding for operational costs for a period of 5 years it is unnecessary and disproportionate to demand monitoring of the activities for at least 10 years.

- The Dutch authorities request the Commission to differentiate the situation of public funding of investment and operational costs in paragraph 22 of the RDI Framework to clarify that in the case of public funding of operational costs only during the period of the public funding monitoring is mandatory.

*Threshold for publication of aid*

In addition to the revisions mentioned by the Commission in the explanatory note, a new threshold for publication of aid on a State aid website is introduced in point 101 of the draft RDI Framework. The threshold is lowered from 500,000 EUR to 100,000 EUR.

- The Dutch authorities consider that this new threshold would lead to a disproportionate administrative burden for Member States and consider this highly undesirable. The Dutch authorities request the Commission to maintain the threshold of 500,000 EUR as this threshold will ensure enough transparency.