

LEGAL ALERT

THE COURT OF JUSTICE OF THE EUROPEAN UNION CLARIFIES STATE AID RULES APPLICABLE TO RESEARCH AND KNOWLEDGE DISSEMINATION ORGANISATIONS

By judgment delivered on the 13th of October 2022, in Joined Cases [C-164/21 e C-318/21](#), the Court of Justice of the European Union had the opportunity to interpret the rules on State aid to research and knowledge dissemination organisations.

First, the Court recalls that, within the meaning of the [General Block Exemption Regulation](#), a ‘research and knowledge dissemination organisation’ is defined as “an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities) irrespective of its legal status (organized under public or private law) or way of financing, 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”.

Second, it provides that where such an entity also pursues economic activities, the financing, costs and revenues of those economic activities **must be accounted for separately by the entity**, and that undertakings that can exercise a decisive influence upon such an entity, in their capacity as, for example, shareholders or members, **may not enjoy any preferential access to the results generated by it**.

It adds that the key criterion for classifying an entity as a ‘research and knowledge-dissemination organisation’ is **the primary objective it pursues**, which must consist of either conducting, in complete independence, a fundamental research, industrial research or experimental development, or widely disseminating the results of such activities by way of teaching, publication or knowledge transfer.

Third, it further states that a ‘research and knowledge-dissemination organisation’ may pursue a number of goals and different types of activities, provided that, among those different goals, **the pursuit of independent research activities or the wide dissemination of the results of those activities** constitutes the **primary objective**, which prevails over any other objectives pursued by that organisation.

In this regard, the Court states that a ‘research and knowledge-dissemination organisation’ may also carry out other activities, which may be of an economic nature, such as remunerated educational activities, provided that **those activities remain secondary** and non-preponderant in relation to its primary activities, which are generally of a non-economic nature.

It therefore concludes **that establishments devoted exclusively to teaching and training activities** that disseminate, in a general manner, the current state of science, **cannot be qualified as ‘research and knowledge-dissemination organisations’**, when they are not linked to research activities.

Similarly, the Court holds that in order to assess an entity’s primary goal, all relevant criteria, including the applicable regulatory framework or the statutes of the entity concerned, should be considered when assessing its main purpose.

Fourth, regarding the question on whether a body, which derives **more than half of its revenue from economic activities can be classified as a ‘research and knowledge dissemination organisation’**, the Court makes it clear that that classification must be made without regard to the

way in which the body is financed or its legal status under public or private law, and that the **requirement for separate accounting** imposed by the General Block Exemption Regulation confirms that a 'research and knowledge-dissemination organisation' **may also pursue activities of an economic nature which generate revenue.**

The Court further explains that the criterion of the structure of an entity's turnover and of the proportion of that turnover represented by the revenue from its economic activities, if taken in isolation, is likely to **give a distorted picture of an entity's actual activities** and of its main purpose, for example, **by underestimating the real importance of an activity which generates only limited income.**

Thus, it underlines that the **criterion of the structure of an entity's turnover** and of the proportion of that turnover represented by the revenue from its economic activities **cannot be used as the sole determining criterion for assessing the primary objective of that entity for the purposes of its possible qualification as a 'research and knowledge dissemination organisation'**, even though it may be taken into consideration as an indication, among others, of the primary goal pursued by an entity.

Fifth, and in what regards the question on whether, for an entity to be considered as a 'research and knowledge dissemination organisation' within the meaning of the General Block Exemption Regulation, it is necessary that the entity reinvests revenues generated by its core activity in that same activity, the Court clarifies that, beyond the obligation to account separately for the financing, costs and revenue of any economic activities conducted by an entity, **the General Block Exemption Regulation does not impose, for the purposes of its qualification as a 'research and knowledge dissemination organisation', any requirement regarding the use and possible reinvestment by that entity of its revenue.**

Finally, the Court holds that the General Block Exemption Regulation does not entail any restriction regarding the legal status of any members or shareholders of an entity classified as a 'research and

knowledge dissemination organisation', and the profit or non-profit nature of their activities or their objectives – **those criteria not being decisive for the purpose of classifying such entity as a 'research and knowledge dissemination organisation'**.

COMMENT

In summary, within the framework of the General Block Exemption Regulation, applicable to 'research and knowledge dissemination organisations', the Court of Justice clarifies that:

- An entity organised under private law which carries out several activities, including research, but the majority of whose revenue comes from economic activities, such as the provision of teaching services for consideration, may be regarded as being a 'research and knowledge-dissemination organisation', provided that it can be established, in the light of all the relevant circumstances of the case, that its primary goal is to conduct, in complete independence, activities of fundamental research, industrial research or experimental development, possibly supplemented by activities for the dissemination of the results of those research activities, by means of teaching, publications or transfers of knowledge. In that context, such an entity cannot be required to earn a certain proportion of its revenue from its non-economic activities of research and dissemination of knowledge;
- In order for an entity to be regarded as a 'research and knowledge-dissemination organisation', it is not necessary that that entity reinvests the revenue generated by its primary activity in that same primary activity; and
- The legal status of the shareholders and members of an entity and the possible profit-making nature of the activities carried out by them and of the objectives which they pursue do not constitute decisive criteria for the purposes of classifying that entity as a 'research and knowledge-dissemination organisation'.

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