

5 Recommendations

This chapter draws on the analysis in the earlier chapters to present a set of recommendations for how the Brandenburg state government and the state's HEIs might address the legal uncertainties they face. In particular, it presents a set of classification tools to be used by HEIs in the design and development of CET programmes to ensure that their classification of programmes meets EU state aid rules. It recommends to the state government the development of a guideline that will help HEIs minimise legal risk while the EU considers the request for a definitive ruling on the status of CET. It also provides proposals to the European Commission (EC) on how to clarify the application of European law to continuing education and training.

Introduction

Continuing education and training (CET) is identified in German law (as well as in the law of the federal state of Brandenburg) as a core task of higher education institutions (HEIs).

The digital transformation of the economy and the increasing digitalisation and automation of work mean that the skills and qualifications required for jobs have changed and are expected to change further (BMAS, 2020^[1]). New skills are required by workers whose jobs will require them to work with new technologies. For example, the OECD predicts that more than 50% of all occupations in the German labour market will undergo fundamental change by 2030 (Nedelkoska and Quintini, 2018^[2]). In particular, the increased use of artificial intelligence, robotics and virtual reality technology means that more and more occupations will require greater and changing skills.

In addition, the ageing of the population and improving health mean that people are expected to spend longer time in employment than in past, with the result that the population will need to make greater use of reskilling and upskilling opportunities. Therefore, providing better qualification and retraining opportunities for workers is an important priority for all governments, including the states of the German federal republic.

At the EU level, CET and other forms of lifelong learning are also seen as strategic political goals. The German Government has set itself the goal of promoting continuing education and training and lifelong learning more effectively (BMAS, 2020^[1]). CET is also of critical importance to Brandenburg as it faces the challenges of demographic and economic change and the need to equip its workforce with more advanced and changing skills.

The OECD recommends lowering the barriers to further education and training, especially for underrepresented groups (OECD, 2021^[3]). Reducing the barriers to CET may entail measures such as creating financial incentives, providing education and training leave for workers and recognising skills acquired in the workplace. In addition, the OECD considers it advisable to make CET more flexible, for example through the use of modular courses.

This makes it all the more important to establish arrangements for the funding of CET in higher education in ways that comply with EU state aid rules, since CET programmes are offered in a wide-ranging market by both public and private providers. As noted above, currently, how EU state aid rules apply to state-funded CET is unclear, despite a number of education-related decisions by the ECJ and the EC. Importantly, the ECJ has yet to hand down a judgment on the circumstances under which CET at HEIs can be classed as a non-economic activity in terms of the notion of an undertaking according to Art. 107(1) TFEU.

Nor do the KMK Guidelines create clarity in all cases and (as described in Chapter 3); they are seen as incomplete and narrowly framed. The Guidelines state:

"The classification of continuing education and training at higher education institutions as an economic activity is viewed in a differentiated manner. In principle, where programmes are in competition with other programmes, especially those offered by private providers, it can be assumed that there is a market and that the activity is therefore economic. Particularly because German law consistently provides for the classification of continuing education as a statutory task of higher education institutions, but European law does not, auditors advise higher education institutions to always report continuing education and training as an economic activity". (KMK, 2017^[4]).

The KMK's narrow approach is supported by the fact that the EC sees competition from private providers as, generally speaking, in favour of economic activity. However, it is not clear why the lack of uniform integration of CET into the state education system throughout Europe should be of decisive importance. The question also arises as to whether the Guidelines' assertion is justified by practice that, if the state funding of a CET programme is less than 50%, this leads it to be classified as an economic activity.

Ultimately, case law is decisive, as it is developed by the ECJ and the EC's administrative practice. Each CET offering must be examined individually on the basis of the criteria of case law and EC practice, as outlined in Chapter 3 of this report. Each offering needs to be assessed and then classified as economic or non-economic. It should be noted that these criteria are always subject to further development and improvement as a result of new decisions. Given that the publication of new decisions can take some time, it cannot be ruled out that isolated court or EC decisions may already have been handed down that contradict the statements made in this report.

To implement CET in conformity with EU state aid rules is the responsibility of the EC, the HEIs that offer CET, and, in Brandenburg, the Ministry for Science, Research and Culture (MWFK). Only the EU bodies have the power to create legal certainty when it comes to interpreting how the EU state aid rules apply to CET. However, a clarification regarding the classification of CET seems questionable, at least in the medium term. HEIs need therefore to take into account the evolving status of case law and the administrative practice of the EC in organising their CET offer so as to comply with state aid rules.

The recommendations in this report call on:

- the EC to clarify the application of the law to CET, thus creating legal certainty;
- Brandenburg's HEIs to follow the approach to classifying and organising their CET programmes based on the legal analysis in this report;
- MWFK to develop a guideline, consistent with the approach suggested in this report, that will help HEIs minimise legal risk while the EU considers the request for a definitive ruling on the status of CET.

Such a guideline would not necessarily be linked to the provision of new funding, but could be aimed at basic funding resources. It could outline the structure of a CET offering that complies with EU state aid rules and could also list the possible exceptions to the prohibition of state aid that may be applicable to CET offerings. It should then be notified to the EC within the framework of a (pre-)notification. The approval of a state aid practice by the EC appears to be a practically achievable way to create the greatest possible legal certainty for Brandenburg's HEIs.

The recommendations in this chapter are therefore addressed not only to the EC and Brandenburg's HEIs, but also to the MWFK. They lay out how the task of funding and implementing CET can be implemented in Brandenburg's higher education system, in compliance with state aid rules.

Proposal to the EC

One way to create legal certainty at the political level is to press the EC to clarify the classification of CET at HEIs¹. This study proposes that EU state aid rules be simplified regarding CET programmes offered by public HEIs. The application of EU state aid rules is difficult to reconcile with the paramount importance of CET and the goal of boosting CET. It is therefore proposed that the possibility of funding CET be made simple and legally secure throughout the EU.

A viable approach could be to specify in the Research & Development (R&D) Framework that CET at HEIs is a non-economic activity, in principle. It would also be desirable to clarify the criteria according to which CET at HEIs is to be classified as economic or non-economic. Finally, higher education institutions would benefit from a revision of the 20% clause – where an economic activity is deemed fundable if it consumes the same inputs as the principal (non-economic) activity and represents no more than 20% of the total activity – leading to a more straightforward applicability. The current R&D Framework states only that the extent of economic operations will be monitored for a period of 10 years (EC, 2021^[5]).

Standardisation of the individual case assessment at HEIs

Given:

- the legal uncertainties in the assessment of the application of the EU state aid rules to CET;
- the fact that the R&D Framework is still in draft;
- the ongoing disputes about the exact criteria for the classification of CET offerings;
- the likelihood that resolution of these problems will be protracted;

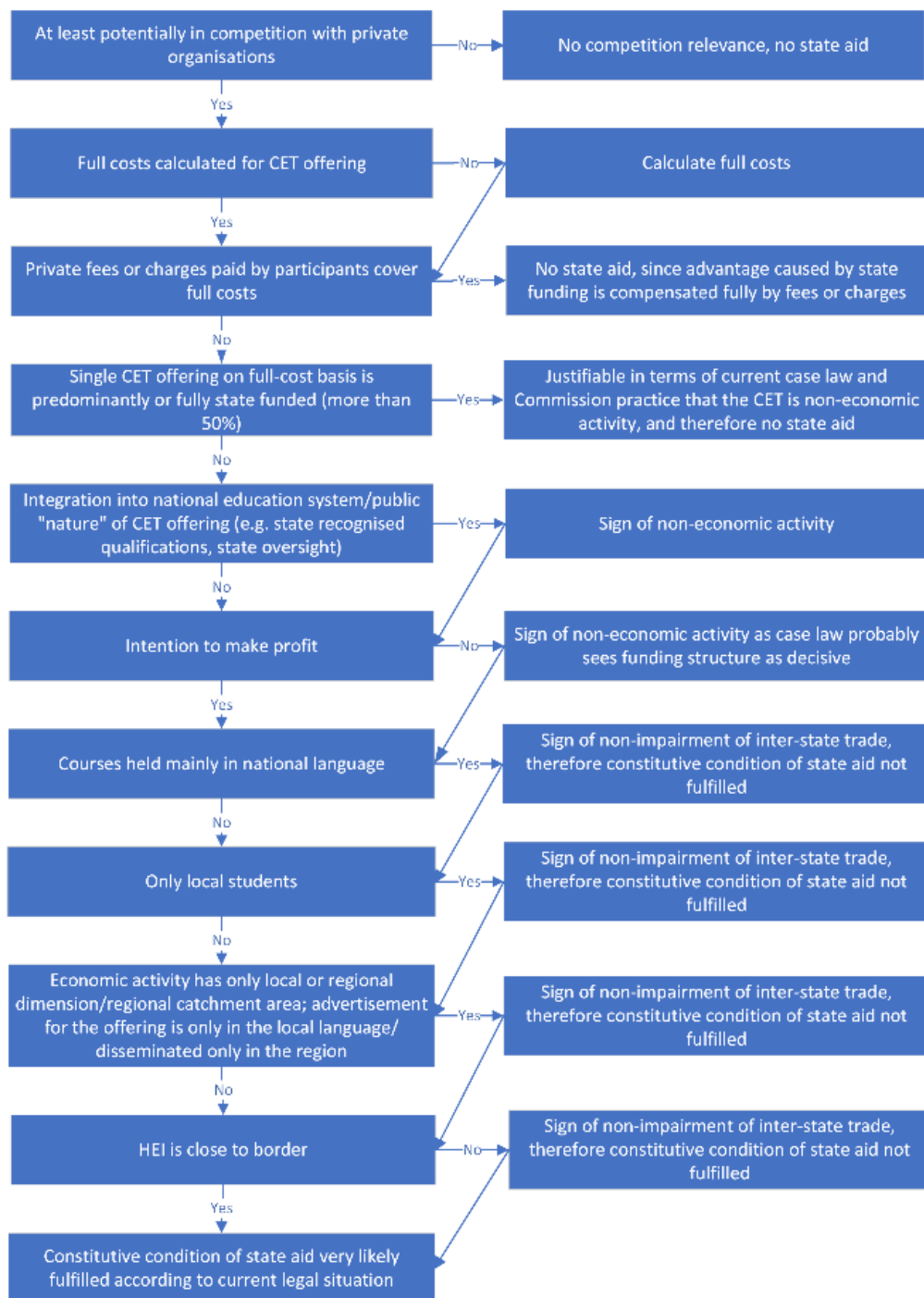
there is a need for an interim solution to the legal issues posed by CET. This report recommends the following steps for the assessment of an individual CET offering in the interest of risk management.

These recommendations are given on the basis of case law and the assessment practice of the EC, as described in Chapter 3 of this report. The constant development of EU state aid rules means that these standards may change, however; case law and assessment practice may differ over time from that cited here, requiring a different evaluation. The result is that every individual CET offering is to be treated as a separate case in terms of state rules standards; the following can only be seen as orientation assistance valid at the time of writing.

Step 1: Assessment of EU state aid rules in terms of constitutive conditions

The following assessment chart (Figure 5.1) is intended to provide guidance on the criteria to be reviewed when classifying a CET offering. It does this by looking, in order, at the elements that constitute compliance with state aid conditions.

Figure 5.1. Assessment chart for HEIs on the criteria to be reviewed when classifying a CET offering



Step 2: If constitutive conditions of state aid are fulfilled, assess the possibility of exception and justification

If the assessment of a CET offering shows that the course does meet the conditions for the receipt of state aid, the prohibition of state aid in Art. 107(1) TFEU does not apply. If this is not the case, exceptions and exemption possibilities may be investigated.

De minimis and SGEI de minimis aid

One exception to the prohibition of state aid frequently applied in practice is *de minimis* aid and Services of General Economic Interest (SGEI) *de minimis aid*. *De minimis* aid is aid that does not exceed a total amount of EUR 200 000 (or EUR 500 000 in the case of SGEI) paid to one undertaking (and its related undertakings) over a three-year period (EC, 2013^[6]). Given these low thresholds, *de minimis* aid is often not likely to cover the entire costs of CET offered by a HEI. Nevertheless, this type of aid can provide funding flexibility for HEIs.

General Block Exemption Regulation

Individual CET offerings could also fall within one of the exemptions listed in the General Block Exemption Regulation (GBER) (Nowak, 2016^[7]) and could be permitted to receive state aid. The offering could be assessed to see if it meets the conditions of training aid (Art. 31 GBER), aid to compensate for the costs of supporting disadvantaged workers (Art. 35 GBER), aid for culture and heritage conservation (Art. 53 GBER) or start-up aid (Art. 22 GBER).

Training aid is aid granted to undertakings to train their own workforce, with the exception of training that is compulsory for the undertaking (such as safety training). If an undertaking uses CET offered by a HEI, 50% of the costs (70% under certain conditions) can be covered by aid, leading to a lower price being charged by the HEI. Note, however, that, in this case, the general requirements of Chapters I and II of the GBER (in particular transparency, Art. 5 GBER and incentive effect, Art. 6 GBER) must be observed.

There is also provision under GBER for aid for training personnel needed to support disadvantaged workers (Art. 35 GBER), as well as for CET courses that deal with cultural heritage, customs and crafts (Art. 53(2)(c) GBER), or with cultural and artistic education, (Art. 53(2)(e) GBER) such as continuing musical education. In the case of cultural aid within the meaning of Art. 53(2)(e) GBER, orientation can be found in the relevant EC decision on a Spanish music school, whose services could be partially publicly funded without being classified as state aid on the basis of Art. 53 GBER.

Start-up aid under Art. 22 GBER could be used in cases where the CET is to be provided by a newly established undertaking. That part of GBER does not, however, apply if the newly founded undertaking was established as a result of a merger. Further, the Brandenburg Higher Education Act (BbgHG) permits only the organisational implementation and marketing of the CET offering to be carried out by a co-operative undertaking; the HEI must always retain a controlling influence over the undertaking. Thus, the HEI and the start-up undertaking are related undertakings (Art. 3(3) Annex I GBER) and funding is precluded.

If a CET offering fulfils the above-mentioned conditions, whether it meets the general and specific requirements of the GBER should be checked.

R&D Framework and the 20% clause

The 20% clause – where an economic activity is deemed fundable if it consumes the same inputs as the principal (non-economic) activity and represents no more than 20% of the total activity – could offer an argument for an exception. The EC is currently revising the clause to make it more manageable and to eliminate legal uncertainties. Based on the 20% clause, all economic activities of the higher education institution can be classified as non-economic activities, provided that the economic activities are only of minor importance, that no additional inputs are required and that the 20% threshold is not exceeded (cf. Point 20 of the R&D Framework).

CET as a Service of General Economic Interest

An exception to the prohibition of state aid may be possible in individual cases if the aid for CET is structured as a Service of General Economic Interest (SGEI). The definition of an SGEI was concretised (among other things) by the EC's decision on the exemption of SGEI aid (2012/21/EU) of 20 December 2011 (SGEI Exemption Decision) (EC, 2012^[8]). The decision is applicable if the annual average compensation does not exceed EUR 15 million (cf. Art. 2(1)(a) SGEI Exemption Decision).

This concerns state aid that is granted to compensate for the loss-making provision of "services of general economic interest" (EC, 2012^[9]) (EC, 2013^[10]) by an undertaking which has been entrusted by the state to provide those services. The existence of an SGEI must be justified on the basis of concrete circumstances. These include that the service may not be in the commercial interest of the undertaking providing the service, but must be in the interest of the general public and therefore would not be provided by the undertaking if it were not entrusted with the provision of the service, or at least not to the same extent or under the same conditions. This can be assumed on a case-by-case basis for CET services – with a comprehensive justification related to the individual case.

The definition of a service as being of "general economic interest" by the Member State is only subject to limited review by the EC. However, the act of entrustment carries legal uncertainty. The act of entrustment is a sovereign act by the Member State; it has the effect of transferring responsibility for provision of a service of general economic interest to an undertaking. The act of entrustment, which usually takes the form of an administrative act or a contract under public law, must according to Art. 4 of the SGEI Exemption Decision in any case contain information on the following elements:

- the subject and duration of the public service obligations;
- the undertaking and, if applicable, the area concerned;
- the nature of any exclusive or special rights granted to the undertaking by the consenting authority;
- description of the compensation mechanism and parameters for the calculation, monitoring and revision of the compensatory payments;
- measures to avoid and recover excess compensation payments.

The calculation of the net additional costs (and thus the permissible amount of aid) requires a detailed description. The act of entrustment must specify the calculations (turnover and income from the SGEI, minus the total costs incurred and a reasonable profit on the capital employed, and the compensatory payments) and statements on how excess compensation will be avoided must be presented.

In addition, the undertaking receiving the SGEI aid must be obliged to keep separate accounts for the SGEI service (in accordance with Art. 5(9) SGEI Exemption Decision). There are also requirements under the SGEI Exemption Decision which must be assessed on a case-by-case basis.

These extensive regulations pose considerable challenges in practice. Nevertheless, the SGEI approach could be considered in those areas that are strongly affected by the ongoing structural changes or in those areas where training a qualified workforce is particularly in the public interest. For example, CET programmes in the social and medical care sectors could be considered. The public interest here could be to train sufficiently qualified personnel at affordable costs in Brandenburg and to bind them to the state as workers in the medium and long term.

Step 3: Set prices in conformity with EU state aid rules

Avoid indirect aid when co-operating with commercial undertakings by setting prices in conformity with EU state aid rules

When a HEI co-operates with a commercial undertaking to offer CET, the prices charged need to be set in conformity with EU state aid rules in order to avoid aid favouring the commercial partner or other enterprises. If the co-operation between the HEI and a commercial undertaking is classified as an economic activity, then the HEI needs to set a price that covers the full costs plus a margin for profit or else it must set the price at a market price (that covers at least the full costs). In this way, the HEI can avoid aid being granted to the commercial undertaking and itself.

The use of overhead costs in calculating full costs

Overhead costs include the costs of administration and usage of central facilities and premises. Depreciation of fixed assets that cannot be clearly allocated to a specific project is considered as well.

The overhead costs are allocated to the individual projects using an overhead surcharge rate. A HEI has some discretion in determining this surcharge rate with regard to the reference value to be selected and the level at which the overhead rates are formed. A survey of HEIs showed that the majority of Brandenburg's HEIs apply the same overhead cost rate for research services and CET. This should be reviewed by each HEI because CET may impose lower costs on institutional facilities and administration than research projects. For example, infrastructure costs account for only a small proportion of CET costs. Horst Rambau, a tax expert (*Steuerberater*) who has expertise in HEI operations, advised the OECD that an overhead cost rate of 25% may be realistic for CET.

Step 4: Documentation

All essential decision-making steps and justifications must be comprehensively documented within the HEI in case of possible administrative proceedings under state aid rules. This applies, above all, to the classification of CET programmes as non-economic or economic activities, but also to the price calculation and the use of exceptions and possible justifications.

Developing a guideline for the Land Brandenburg

The discussion above shows that, in principle, it is possible for CET programmes offered by HEIs to be funded by the state without the funding being classified as prohibited state aid. The difficulties arise from the fact that the application of EU state aid rules to publicly-funded CET programmes lacks clarity, raising legal uncertainty. Expecting complete clarification from the EU bodies appears unrealistic, in the medium term at least, meaning that the HEIs are unable to categorise their CET programmes with legal certainty. In this situation, it is possible for the state of Brandenburg to establish a guideline to clarify when HEIs may use state funding to subsidise CET.

Given the many different forms of CET at HEIs, the content of a guideline can only be sketched here. The guideline should indicate that the use of state funding for non-economic CET is permitted. Secondly, the guideline should set out the circumstances under which state funding can be used for CET that has been classified as an economic activity (see Criteria 1 and 2 below).

In addition, the guideline should specify the cases for which an official administrative decision would need to be issued and those in which a notice by the HEI would be sufficient.

Criterion 1: Non-economic nature of the CET

The guideline could first clarify that CET programmes can be offered using state-funded infrastructure and/or state-funded personnel if the CET programme does not fulfil the criteria for the prohibition on state aid. On the basis of the case law and EC practice described in this report, the Brandenburg state government could make fulfilment of the following three criteria essential:

- The CET programme is integrated into the public higher education system (see below).
- Fees paid cover a maximum of 49.9% of the full costs of the CET programme.
- There is no competition.

A more differentiated approach is also possible, in principle. However, the more differentiated the structure, the more difficult notification might be.

Integration in the public higher education system

The question of how a CET programme is integrated into the state education system is a criterion used by the EC. The KMK Guidelines also use this criterion.

A CET programme to be funded is integrated into the public higher education system if it contributes to fulfilling the state mandate to provide CET by state institutions that are subject to state recognition and state oversight. If applicable, it should also be noted that state degrees are awarded (e.g. master's degrees) and that the higher education institutions in Brandenburg remain responsible for content and examinations even when co-operating with non-university institutions (§ 25(4) BbgHG).

The following wording is suggested:

"The continuing education and training programme to be funded serves the fulfilment of a state mandate for the provision of continuing education and training by state institutions that are subject to state recognition and state oversight."

Funding

As can be seen from the case studies in the KMK Guidelines, another important criterion is the funding structure of the CET programme in question. Case law suggests that funding that is (at least) substantially provided through public resources indicates that the programme can be argued to be a non-economic activity² (although in the absence of sufficiently clear case law, it cannot be ruled out that the economic character can also be present despite substantial state funding).

In order to exclude the possibility of state aid with any legal certainty, a "substantial" level of state funding can be defined for the CET programme. Neither the ECJ nor the EC specify what can be considered as "substantial" state funding. The literature on CET suggests that state funding of more than 50% of the full costs for a particular programme is to be considered "substantial" in the terms of the ECJ case law (Marwedel, 2014_[11])³. This is also in line with the KMK Guidelines.

The following wording is suggested:

"At least 50.1 % of the eligible full costs of the continuing education and training programme to be funded will be provided through public subsidy."

Criterion 2: Exceptions to the prohibition of state aid

In a second step, the guideline could specify the conditions under which state funding can also be used for a CET programme not covered by the prohibition of state aid under Criterion 1. Here, too, all of the exceptions listed in this report can be used. In the interest of simplicity, this report recommends focusing

on selected exceptions: training aid, services of general economic interest (SGEI) aid, *de minimis* aid and the use of the 20% clause appear plausible.

Training aid

Aid exempted under the GBER can be mentioned in the guideline as being in conformity with EU state aid rules. According to Art. 31 GBER, for example, a grant may be awarded as exempted training aid. This can be included in the proposed guideline:

"Under the conditions of Article 31 GBER, the grant may be awarded as exempted training aid. Measures which, according to Article 31(2) GBER, serve to help undertakings comply with mandatory training standards are excluded from exemption under this exception."

SGEI

Continuing education and training programmes that are deemed economically viable under Criterion 1 may be partially funded by the state in isolated cases if they are classified as SGEI. However, only the additional costs incurred by the higher education institution due to the provision of the CET programme are eligible for funding. Provision of an SGEI could be justified, for example, by the fact that the CET is intended to increase the training capacity in the state of Brandenburg.

The following wording could be used in the proposed guideline:

"Continuing education and training measures which cannot be funded in accordance with the aforementioned regulations may be partially funded by the state on a case-by-case basis if the higher education institution is entrusted with the provision of the continuing education and training measure as a "service of general economic interest" (SGEI).

SGEI requires that the applicant is entrusted in writing with the provision of services of general economic interest and that the provision of the CET offering in question is a service of general economic interest. The compensation of losses incurred by the HEIs through the provision of the respective CET programme is then considered free of aid. However, only the additional costs incurred by the HEI due to the provision of the CET programme are eligible for funding."

De Minimis Regulation

The proposed guideline should also make reference to the possibility of funding under the *De Minimis* Regulation.

The following wording is proposed:

"Funding without the above-mentioned conditions is possible on the basis of the De Minimis Regulation. This requires that the sum of the grants does not exceed a cumulative amount of EUR 200 000 over a period of three fiscal years."

Other CET offerings: The 20% rule

Grants for CET measures are, in principle, also permissible under EU state aid rules if existing infrastructure and human resources are only used to 20% of their availability. It is therefore necessary to include a clarifying wording in the proposed guideline. The below proposal is based on the wording of the 20% clause in the R&D guidelines:

"Funding without the above restrictions is possible in accordance with Point 20 R&D Framework if the same inputs (such as materials, equipment, personnel and fixed capital) are used for the CET programme classified as an economic activity as are used for the HEIs' non-economic activities and if the annual capacity allocated to the economic activity in question does not exceed 20% of the total annual capacity of the institution or infrastructure concerned."

It would be advisable to include a set of worked examples of this abstract regulation in the proposed guideline. It would also be advisable to make a corresponding understanding of the clause the subject of the notification.

Pre-notification, notification and registration of the guideline to the EC

In order to achieve the greatest possible legal certainty for a new guideline set up by the state of Brandenburg, the guideline should be pre-notified, notified or registered to the EC.

Art. 108(3) TFEU stipulates that notification to the EC is required only for measures that meet all the criteria of Art. 107(1) TFEU and thus constitute prohibited state aid (Callies/Ruffert, 2016^[12]). However, if the EC declares the aid compatible with the common market in the notification procedure, the aid is permitted.

In view of the serious legal consequences of aid being implemented without the necessary notification, it may make sense in individual cases to notify an intended measure as "not state aid". The notification is made using the same standard form as for notification as aid. The standard form explicitly provides the option for notification as not state aid (EC, 2004^[13]). A notification as not state aid will relate to measures where the state aid character is difficult to determine, such as when there are complex economic considerations with regard to pricing in conformity with EU state aid rules. In practice, the EC often suggests withdrawal of the notification as not state aid if, after a preliminary examination, it does not consider the measure to meet the threshold for the prohibition of state aid. This gives the HEIs only limited legal certainty, but it should at least protect them from a claim for recovery (Bacon, 2017^[14]) (EC, 2011^[15])⁴.

The notification procedure of the guideline to the EC is outlined in Box 5.1.

Box 5.1. Procedure of the notification of the guideline to the EC

The **notification** procedure is governed by Article 108 (3) TFEU in conjunction with the Procedural Regulation issued for this purpose (Regulation 2015/1589 of 13 July 2015, OJ EU L 248) (Council of the European Union, 2015^[16]).

Pre-notification involves presenting the proposal in question, and the assessment of it under state aid rules, to the EC in advance of notification. This usually involves a meeting of all parties involved at the EC's headquarters in Brussels.

Pre-notification is an informal procedural step that is not explicitly provided for in the Procedural Regulation, but it corresponds to the usual procedure. This phase provides the opportunity for discussion of questions about the scope and design of the notification application and questions from the EC about the proposal to be discussed. The basis for the discussion should be a draft of the notification application that has already been substantially drafted, and which can ideally be adjusted without major effort, on the basis of the information gained from the discussion. Therefore, the necessary economic and legal analyses and the notification application (consisting of a proposal and an assessment) should be prepared in draft form in advance of the meeting.

The final notification application, revised on the basis of the information gained from the pre-notification meeting and agreed between the parties, is then submitted to the EC by the German Government through its representation in Brussels. This step marks the beginning of the official notification process.

In the notification process itself, the EC initiates a **preliminary examination procedure** (Art. 4 Procedural Regulation) by examining, on the basis of the notification, whether state aid has been granted and, if so, whether the intended aid is compatible with the single market.

The preliminary examination procedure usually involves one or two requests for further information by the EC (Art. 5 Regulation). For this purpose, questions are sent by the EC to the Permanent Representation of the Federal Republic of Germany to the European Union, which forwards them to the actual parties involved via the responsible department at the federal level.

If the EC affirms compatibility, it can issue an approval decision after the preliminary examination procedure.

If there are serious doubts as to the compatibility of the aid with the common market and if these doubts are not dispelled by the rounds of questions, the EC may initiate a **formal investigation procedure** (Art. 6 Procedural Regulation), which serves the purpose of an in-depth examination, including the views of third parties.

As part of the in-depth examination, the EC publishes the initial decision of the aid recipient and the preliminary assessment by the EC in the Official Journal of the EU and invites other EU Member States and competitors of the aid recipient to comment. The EC may also address further questions to the Member State and request it to submit additional information. At the end of the formal investigation procedure, there is either **an approval resolution** (possibly subject to conditions) **or a resolution** declaring the planned aid incompatible with the common market.

A first response from the EC can, in principle, be expected after two months (cf. Art. 4(5) Procedural Regulation). According to Art. 9(6) Regulation, the maximum duration of the notification procedure should not exceed 18 months. A duration of six months seems realistic.

Sources: Callies/Ruffert (ed.) (2016_[12]), *TEU/TFEU*, 5. Auflage 2016; Council of the European Union (2015_[16]), Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (Text with EEA relevance), OJ L 248, 24.9.2015.

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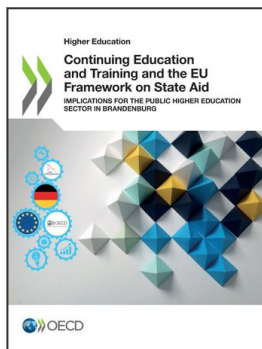
Notes

¹ It should be noted, however, that the European Commission has only limited scope in this area. The European courts are the bodies, which can provide definite clarification on the classification of CET.

² ECJ judgement in the Wirth case – see Box 3.1 in Chapter 3.

³ Marwedel, *Rechtsgutachten zu Vorgaben für die Preisgestaltung der wissenschaftlichen Weiterbildung an der Universität Freiburg unter besonderer Berücksichtigung des europäischen Beihilferechts*, 2014, p. 27.

⁴ See Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.



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