**Question:**

In relation to a question by CZ published on eState Aid WIKI on 20 February 2020 and the Commission’s reply provided on 17 February 2021*,* could you please clarify the following:

What conditions should be met to be in a situation of **“intra-state transfer of resources”** in the context of providing access to the unused capacity of a research infrastructure (RI) from one research organization (owner RO) to another research organisation (user RO)? Is it enough that the user RO will use the RI only for non-economic activities within the meaning of point 19 of the RDI Framework and safeguards are in place to avoid double state financing of the same costs?

What differentiates “**intra-state transfer of resources**” (non-economic activity for owner RO) from typical rent agreement (economic activity for owner RO)?

Is it still possible to classify the situation as “**intra-state transfer of resources**” when the user RO pays to the owner RO only compensation for the direct costs attributed to the use of the RI such as: electricity costs, consumables, cost for equipment maintenance and other similar costs in proportion to the use of the equipment? Could the following be safeguards to avoid double state financing of the same costs:

The user RO will pay this compensation with public resources provided to it from the national budget (e.g. own funds or grants provided within the framework of research projects/programmes funded by the National Science Fund, the Ministry of Education and Science, etc.); safeguards will be in place to prevent double state financing of the same costs.

The owner RO will not be able to demand reimbursement of the above attributable costs as part of the main public funding received for the RI. However, these costs will be taken into account when calculating the annual capacity of the RI in order to determine the share of the non-economic activity of the owner RO.

The depreciation costs for the RI will remain for the owner RO and will not be shared with the user RO (these costs will not be included in the structure of the compensation) since the purchase of the RI has been already financed with public resources. Depreciation costs will be taken into account when calculating the annual capacity of the RI in order to determine the share of the non-economic activity of the owner RO.

If the answer of question 3 is affirmative, is it correct to charge VAT and to issue a tax invoice for the compensation owed by the user RO when the owner RO is VAT registered?

**Reply:**

Please note that interpretation questions provide guidance on State aid principles and they are not meant to answer a question concerning a specific project. Should you have a specific project in mind, you are invited to pre-notify the measure to the Commission.

An intra-State transfer of resources concerns a situation where a RO owning the RI and a RO using RI services are both predominantly involved in non-economic activities and the owner RO provides services as intra-State transfer for non-economic activities to another RO (thus it can be presumed that the intra-State transfer of resources is limited to RO activities carried out as part of the national public research system). In this situation, there also need to be safeguards in place to avoid double state financing for the same costs.

In the case of intra-state transfer of resources, both the owner and the user ROs are carrying out predominantly non-economic activities as part of the statutory activities assigned to them by the State as part of the national research system.

If the activity is non-economic in nature (i.e. within the meaning of point 19 and point 20 of the RDI Framework and thus not subject to State aid rules), all necessary costs linked to it may benefit from public financing.

In this case any price arrangement between the RO/RI in question and other RO (involved in non-economic activities and assumingly financed through public money) should not result in a situation where the costs of the RO/RI in question would in fact be double-financed (from public resources):

- from the public funding granted directly to the RO/RI on the one hand; and

- through the transfer of public resources resulting from the (market) prices charged to the RO using it on the other (whose non-economic activities are also financed through public resources).

Rather, when the RI is used to provide services to other RO (for their non-economic activity), the RO/RI should only be required to charge/recover those costs which are not already financed by public money/budget allocated to the RO/RI.

Furthermore, in the intra-state transfer scenario it is in fact presumed that RO will use public resources to cover the costs of using the RI operated by another public RO (ensuring however that this transfer of public resources does not lead to double funding from public resources of the same costs).

Without knowing the case specificities the 3 assumptions presented in question 3 seem to be correct.

The e-State aid Wiki tool for Interpretation questions provides guidance on State aid principles and does not address specific issues going beyond State aid context. Rather your question seems to refer to issues regulated by national legislation (incl. national tax legislation and legislation applicable to the national/public budget).

*Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.*