



Internal Policy

Regarding: **Using the results of the IWT supported projects**

1. Introduction

Various IWT schemes provide for cooperation between enterprises and knowledge centres. In order to valorise these results, a common option is for the business sector to use these results. With transfer or user licence, the issue often raised is to what extent exclusive licences or transfer agreements with exclusivity aspects can be acceptable (or not).

The modalities for the use of the results are determined by the scheme objectives and by the regulatory framework in which the support is given.

The most important determining factor is the objective. All these schemes in the long-term work towards a mutual policy objective, but each one occupies a different niche. The expectations with regard to the interaction between enterprises and knowledge centres in a specific scheme are determined to a large extent by the niche that accommodates a scheme or a group of schemes.

In addition, the modalities for the use and transfer are also strongly influenced by the regulatory framework. In general, IWT schemes fit in within three types of support mechanisms: direct government support to enterprises, indirect government support to enterprises, and non-economic support to research organisations.

Based on the combination of objectives and the framework regulation in which the scheme is situated, guidelines for the individual schemes could be set up for interaction between knowledge centres and enterprises and for the transfer modalities. This has implications for the evaluation of the project proposals and the implementation phase, which means that mutual understandings must be formulated.

Point 2 in the current memorandum explains a general objective and a scheme-transgressing approach with respect to the interaction between knowledge centres. Afterwards, point 3 explains the three support mechanisms. Finally, point 4 summarises the objectives for all individual schemes including the impact that they have on the relationship between enterprises and knowledge centres. Based on the combination of regulations and objectives, point 4 also includes a proposal for use and transfer guidelines that can be used for the individual schemes.

2. Support of Objectives and Guideline for Transfer

Means versus goal

- IWT manages various support schemes; the aim of all these is to contribute to innovations via science and technology. Research usually plays a large role in this. In order to achieve innovation, research and development is supported or facilitated in many schemes. A key element in the way that IWT operates is that support of research is a means and not a goal: research is the means and innovation is the goal.
- The term innovation here refers foremost to economic innovation, which results in better products, processes and services in the business community. In addition, there are also a number of schemes that focus on innovation with a social purpose, while the key element still remains that the research is a means, and the utilisation or application is the goal.

Cooperation

- Stimulating better products, processes and services can work exceedingly well by approaching individual enterprises. In most schemes, IWT also looks for spill-over effects that exceed the interest of an individual enterprise, because this achieves a greater impact on the economic activities in Flanders.
- With direct support to an enterprise, it is possible to achieve the individual development of that enterprise, but a bonus is granted for cooperation among enterprises and for cooperation with knowledge centres.
- For support to knowledge centres and joint projects, cooperation is an obvious factor. In this case, preference is given to applications that will be useful to multiple enterprises, but which still retain a balance between the likelihood that the research will effectively lead to an application and to wide usage. Wide usage of the application can be selected, but it will only be effective for results in which valorisation will be achieved.
- When research is carried out close to the market, the chance of obtaining valorisation is quite high. Here the emphasis is laid strongly on its wider use. With far-off-the-market research the chance of achieving valorisation becomes far less certain. Paradoxically, the more the research is solidly oriented to a specific application, the chance for achieving valorisation increases and – as a result – it targets a limited number of enterprises. These are two dimensions that create an area of tension that varies for the different schemes.

3. Overview of the Support Mechanisms

Based on the limitations set down by European and Flemish regulations, there are three different support mechanisms offered in the IWT schemes.

3.1. Direct Government Support to Enterprises

- Support under the Research & Development decree¹ is support to enterprises and this is direct government support according to European guidelines. The limitations of the framework regulation² apply to these. The implementation decree was submitted to the European Union and approved. This decree was recently updated to bring it in line with the new framework regulation.
 - The major limitation from the EU is the level of the maximum support. For industrial research in a large company, maximum 50% support can be extended; for experimental development the maximum is 25%. These percentages can be increased by 10% for a small and medium enterprise (SME) and 20% for a small enterprise. There is also the possibility of paying an allowance for cooperation³ or for wide dissemination of results, but still within a maximum of 80%.
 - This regulation is oriented towards enterprises. Research organisations can participate if they cooperate with an enterprise in such a way that they act as a contractual entrepreneur.
- ⇒ This regulation covers the R&D business projects, R&D feasibility studies, SME innovation projects, SME feasibility studies, cooperative research supported via centres of excellence, and the Baekeland mandates.

3.2. Support to Research Organisations

- This support is not considered government support. It is available on condition that:
 - o The support is granted to entities that are classified as research organisations according to the definition of the framework regulation⁴,
 - o In the annual accounts, the support can be separated from any other possible economic activities.
- If there is cooperation with enterprises, this is not considered an indirect government support on the condition that:
 - o The research organisation is the owner of the results,
 - o In case of transfer of the Intellectual Property Rights (IPR) to an enterprise, the research organisation receives a compensation in line with the market value of the intellectual property rights transfer⁵.

¹ Decree of the Flemish Government of 12 December 2008 regarding a regulation for support to Research & Development projects in the Flemish business sector.

² Framework Regulation 2006/C 323/01

³ According to at least a 70/30 ratio in which the cooperation includes at least one SME or an enterprise from another EU member state.

⁴ Framework Regulation point 2.2d

⁵ “Compensation in line with the market value of the intellectual property rights transfer” is the compensation for the complete, economic use of these rights. Given the inherent difficulties to determine the market value for intellectual property rights, the Committee considers this condition fulfilled if the research organisation negotiates as a seller for the purpose of gaining maximum profits with signing the agreement.

- If there are activities related to technological transfer, these are not considered economic activities on the condition that:
 - o It concerns internal activities,
 - o The income is invested in primary activities of the research organisations.

- In the case of transfer to enterprises, all EU enterprises are treated equally. This implies that – from the perspective of the regulation – there are no limiting measures based on the location of the enterprise in the EU. This does not imply that a transfer must occur via an open tendering procedure in which all companies can submit an offer.

- ⇒ The regulation contains various schemes:
 - o Strategic Basic Research (Dutch: SBO): far off the market and is 100% supported.
 - o Applied Biomedical Research (Dutch: TBM) has a clear social purpose and it is 100% supported.
 - o Technology Transfer (TETRA) and agriculture are located close to the market (dissemination). In this case, the Flemish government requests co-financing of 7.5% by the users. This applies as an indicator of the engagement and involvement of potential users and has no relation to the maximum support level determined by the EU. With regard to TETRA and agriculture, there is a requirement of collectiveness included in the decree⁶.
 - o Research mandates and doctoral grants are 100% supported and concern support received by researchers employed by a research organisation. The difference with support to classical projects is that the projects concern a single person. The operational costs are paid to the research organisation, which is comparable with classical project financing. The staff costs are reimbursed by awarding a grant to the mandate holder.

3.3. Support to the Flemish Innovation Partnership (Dutch: VIS)

- The VIS decree⁷ provides project-based support to structured partnerships between Flemish enterprises – mainly – and one or more organisations or knowledge centres for the purpose of activities carried out by the knowledge centres for the benefit of the enterprises in the target group at the initiative of the partnership.

- Flemish Innovation Partnerships receive direct subsidies (in the form of a working grant) that are intended for specific, predetermined and designated projects for the benefit of enterprises in the target group. The aim of all the activities managed by the Flemish Innovation Partnership is to stimulate innovation in the enterprises of the target group.

- The support is considered government support, because the partnership, which chiefly consists of enterprises, acts as a contracting party and owner of the results. Therefore, this support cannot be granted on the basis of support to non-economic activities in research organisations.

⁶ The decree stipulates that the results must be valorised vis-à-vis as many enterprises as possible.

⁷ Decree of the Flemish Government of 20 July 2006 regarding a regulation to support projects that concern innovation stimulation, technological advice and collective research at the request of the Flemish Innovation Partnership (VIS), amended in the Flemish Government Decree of 12 December 2006

- Since all resources that the Flemish Innovation Partnership receives from the Flemish government are intended for supplying certain services to the enterprises in the target group, this is not considered direct government support, but rather indirect government support to these enterprises (these are the enterprises that participate in the partnership and other enterprises that receive services via the partnership).
 - The support is granted as an indirect government support to enterprises in the target group in which a *de minimis* rule⁸ is used. This is a regulation that stipulates that a maximum ceiling of support to enterprises is determined without the requirement to report this. The reasoning is that the support is too limited to have an effect on the trade relationships between the member states. This ceiling is €200,000 per three years⁹. When applying the *de minimis* rule, the support per enterprise in the target group must remain limited to the stated ceiling¹⁰. In order to calculate the indirect support per enterprise in the target group, the subsidy is divided by the number of enterprises in the target group. In the case of a project with 50 enterprises in a target group, the support of 10 million euros per 3 years remains thus under the ceiling of the *de minimis* rule, without the need to report¹¹.
 - For individual projects the target group can be greater than the enterprises associated with the partnership.
 - The Flemish government sets a requirement for 20% co-financing by members of the partnership. This requirement serves as an indicator for the interest and engagement of the business sector and is unrelated with the maximum support level stipulated by the EU.
- ⇒ There are various derived schemes or project types, such as collective research, technological services, thematic innovation stimulation, sub-regional innovation stimulation, feasibility studies, joint ventures and programme support for centres of excellence.

3.4. Mixed Forms

- In addition to collective research projects, centres of excellence can opt to support a limited number of cooperative research & development projects. The stipulations of section 3.3 apply to collective research projects; the modalities of section 3.1 apply to support to cooperative R&D projects.
- In the Strategic Basic Research (Dutch: SBO) scheme, enterprises can become part of a consortium of implementers (in this case the applicants), and can receive support for implementation. In this situation each implementer is the owner of his own results and the support to the enterprise is based on the stipulations of section 3.1, and for the research organisation based on the stipulations of section 3.2.
- A unique mixed form is known as ICON projects (=Interdisciplinary Collaborative Research). These projects are based on combined support of a donation of a SOC as well as the IWT enterprise support, and their purpose is cooperation between research groups and

⁸ Regulation 1998/2006

⁹ The *de minimis* support is limited to €200,000 over a period of three fiscal years per enterprise and cannot be accumulated with other government support insofar that this concerns equally eligible support expenses and if the accumulation shall result in a support level above the permitted ceiling within the existing regulations. These limitations are included in the guideline and the support agreement for projects supported under the VIS decree. Specific *de minimis* rules apply to the sectors of road transport, agricultural production and fishery.

¹⁰ The ceiling of the *de minimis* is lower for specific sectors such as agriculture and transport.

¹¹ When determining the ceiling per enterprise, the support in which the *de minimis* is used must be taken into account, also support granted outside of the IWT schemes. A list of the most common measures is found in the FAQs about the VIS scheme on the website of IWT.

enterprises. The implementation by a research partner is supported by a donation from the SOC. This is not an economic support according to the modalities of section 3.2. In the event of a transfer, compensation in line with the market value is demanded. The support for the enterprises is via the IWT enterprise support and it is a direct government support that complies with the modalities of section 3.1.

4. The Objective and Transfer Guideline for the Individual Schemes

4.1. Enterprise Support

4.1.1. Objective

- Enterprise support entails direct financing to enterprises via a subsidy and takes into consideration the logic of market failure¹².
- In the case of government support for market failure, the focus is on a stimulating effect by means of support. This is not necessarily on project level, but can also occur on a portfolio level.
- The combination of market failure and additionality entails the sharing of risks: the government shares the risk of an activity with an enterprise via direct financing in order to stimulate business within that enterprise, which otherwise would not occur or would occur to a lesser degree. The idea is to support long-term competition in the region.
- Risk should always be viewed relatively to normal business operations. For enterprises with little or no R&D tradition, the business support is deployed via a low-threshold scheme, such as the SME scheme. Here the support takes on an innovation-stimulating character.

4.1.2. Interaction of knowledge centres and enterprises

- Only enterprises can be party to a contract in the R&D decree. Knowledge centres can collaborate with an enterprise; the knowledge centre then acts as a research partner¹³. There is no restriction on the legal form or nature of the entities that are eligible for being research partners.
- It is not mandatory to collaborate with a knowledge centre. Projects in collaboration with a knowledge centre receive a higher percentage of support. In the selection process, preference is also given to projects that collaborate with a knowledge centre via a bonus in the ranking.

4.1.3. Modalities in connection with using the results

- The IWT demands that clear agreements be set down about IPR and user rights between the research partner and the contracting party, but it sets no additional restrictions with regard to the content of these agreements.

¹² A market failure is defined as a situation in which the market itself does not lead to effective economic results. In such situations, government intervention (including government support) can improve the market results. The issue of market failure is very common in R&D; the risks are very high and - due to the low likelihood of a guaranteed return - an enterprise, which finds itself under pressure to perform well commercially in the short-term, will not always invest spontaneously in R&D. Such investments in the short or medium term are usually not profitable (or bear little profit) for a company. There is however a long-term added value for a country or region, which is considered essential for competition. However, to stimulate enterprises to carry out these activities, the government assists by means of financing.

¹³ A research partner does not have a contractual relationship with IWT. The research partner is entirely reimbursed by the contracting party and the two sign a mutual cooperation agreement. A research partner engages in building up the strategic and knowledge aspects of the research and in that sense it operates quite differently than the classical subcontractors who supply clearly defined services at cost price.

Agreements with knowledge centres about IPR must always comply with the decree-based provisions regarding this issue.

4.2. Strategic Basic Research (SBO) with an Economic Purpose

4.2.1. Objective

- The SBO scheme concerns innovative high-quality research that in the case of scientific success will offer good prospects for economic applications in the future.
- SBO to a large extent entails research, which is carried out by research organisations. The implementation of the economic application occurs by means of collaboration with enterprises and the transfer of the knowledge to these companies. The purpose is to contribute to an influx of new ideas and concepts that at a later stage will be the basis for a new generation of products, processes or services in the business community.
- SBO is located far off the market. SBO does not aim at distribution of knowledge, but rather at building up new knowledge in which the purpose of the scheme is to facilitate a dialogue between the research organisations that conduct the research and the enterprises. Valorisation can be initiated out of this dialogue. Due to its fair distance from the market, a successful SBO project in the first place will result in follow-up research & development projects, which perhaps could be supported again by the IWT as industrial research.

4.2.2. Interaction between knowledge centres and enterprises

- SBO projects can adopt two approaches for translating results into economic applications: use of the results by existing enterprises (whether or not via transfer of knowledge) or setting up a new company.

1. Using the results by existing enterprises

Using the results by existing enterprises is the most common way to achieve valorisation. To bring about interaction with the business community, the implementer could set up an industrial advisory committee in which several enterprises are willing to act as soundboards for a dialogue about the application possibilities of the results.

An industrial advisory committee is not officially required. It is essential that the applicant can show that in case of scientific success, the results could reach the market. The advisory committee in a certain sense acts as a selection modality in the evaluation phase in order to corroborate the engagement of the business sector and to estimate the feasibility of the valorisation. In the implementation phase, it offers a soundboard for facilitating the start-up of collaboration.

Enterprises in this committee have no specific or selective right to utilisation and they have no managing authority concerning the implementation. The advisory committee is not a closed circle. Any possible transfer is not confined to the members of this committee. In the event of a transfer, compensation in line with normal market conditions is required¹⁴.

During the selection of projects, preference is given to projects that benefit several enterprises because this increases the added value for the Flemish economy. Projects that are completely embedded in the R&D of a *single* company and offer little opportunities for others are not included in the SBO and they have to seek enterprise support.

¹⁴ If an enterprise is an implementer, then the same modalities apply to the transfer of property rights on results achieved by the research organisation(s) to the enterprise.

Due to the far distance of SBOs from the market, the balance between feasibility of the application and a wide usage is very vital. Even though an application in multiple enterprises offers added value for the Flemish economy, it will only come about if the project – in the case of scientific success – also results effectively in valorisation. The primary goal therefore remains that same: to support projects that – in the case of scientific success – will result in valorisation. From among the group of projects that comply with this, a selective advantage is given to projects that benefit multiple enterprises.

2. Establishing new enterprises

Concepts and subjects that the industrial sector cannot adequately absorb at the present time can still receive the opportunity to reach valorisation by the establishment of a new enterprise. In this portfolio maximum 20% of the budget is allocated for such projects with a primary spin-off focus. During evaluation the emphasis is on the added value of developing new industrial activities (not on the volume of the profits made by transfer or user licences).

A supervising committee is not needed in case of valorisation via the establishment of a new enterprise, because existing enterprises that are active in the specific niche are often competitors of the intended spin-off. In projects with a primary goal of setting up a new enterprise, the largest part of the project will often go to a *single* (future) enterprise. This is not an indirect support as long as when establishing the enterprise, the profits are invested in the primary activities of the research organisation.

Also in projects focused on establishing new enterprises, preference is given to projects with a wider valorisation that will benefit many enterprises in Flanders. Here too however, the initial priority is the feasibility of the business plan and the predetermined valorisation track. The big difference with transfer to existing enterprises is that the chance of succeeding in valorisation is inheritably smaller so that the feasibility of the valorisation track becomes the decisive factor during the project selection. Valorisation for multiple enterprises provides a bonus point during the selection process, but it is not a strict requirement for getting a support grant.

Collaboration with an existing spin-off is treated on equal footing as collaboration with an existing enterprise and therefore, it follows the modalities of a transfer to existing enterprises (item 1 in section 4.2.2).

- The purpose of SBO remains influx of new ideas and concepts that at a later stage will be the basis for a new generation of products, processes or services in the business world. During the selection process the project is evaluated based on its potential contribution to new industrial activity, not on the basis of revenue that could be realised by the knowledge centre via a transfer or licence. This applies to both the use of the results by existing enterprises and for setting up new enterprises.

4.2.3. Modalities in connection with using the results

- Due to the remoteness from the market and the requirement for extensive investments by an enterprise in order to achieve results that can be commercially marketed, the demand for exclusivity in case of transfer or licensing is not unusual. As long as the transfer occurs in accordance with normal market conditions, there are neither formal restrictions on transfers or exclusivity aspects within the European framework regulation nor formal restrictions within the Flemish regulations.
- In view of the objective of the programme, however, it is essential to maintain appropriate dynamics with the various parties, in particular with enterprises that are members of a supervising committee. It is also important that the execution of the project stays in accordance with the conditions on which support was granted. These two aspects (which are rather elements relating to content than legal limitations)

determine to a large extent the limitation whether or not to permit exclusivity in case of transfer or licensing.

- The differences between valorisation via existing enterprises and valorisation via planned start-ups are mainly in the selection and the conditions on which the support was granted. When starting a new enterprise, the project will for the most part and in the long term go to a single (prospective) enterprise, but this is discerned in the evaluation. The feasibility of valorisation in such a project is determined by the likelihood that a spin-off will be established and that this spin-off can develop into a business. The applicant cannot find support in the interaction with existing enterprises and has to 'prove' valorisation through the establishment of a spin-off. This is a vital element in the evaluation and the granting of support. In case of existing enterprises using the results, the direct involvement of the implementer of the valorisation trajectory is smaller than the one in the previous option. The feasibility to penetrate the market completely is determined by the likelihood to achieve cooperation with enterprises that will guarantee the further valorisation and the introduction to the market. Contrary to the spin-off path, a strong valorisation strategy of the implementer towards the development of a feasible business carries less weight; the important thing is mainly a good dialogue with a number of enterprises that have access to the intended market and are prepared to enter into cooperation. Therefore, different emphasises in the evaluation apply to both options.
- In case of transfer to existing enterprises, an applicant obtains support for a project on the basis of prospects for cooperation with a number of enterprises in which the relevance and quality of these enterprises with respect to the intended market can play a role in the decision. In that case it may be expected at the very least that the applicant remains respectful of the dialogue with and the dynamics of these enterprises.
- In order to let the supervising committee play its role as a sounding board, a non-exclusive access to the results is preferred. However, this is not feasible in a number of sectors. Therefore, an exclusive licensing or transfer is not precluded *a priori* as long as this does not disturb good dynamics with the supervising committee. An exclusive licensing or transfer does not necessarily contravene a good dialogue, because users in a proper functioning supervising committee usually have complementary valorisation niches. A situation in which an enterprise obtains exclusivity in its own valorisation niche does not constitute a major impediment for other enterprises. Situations in which transfers are granted that render further dialogue with other members meaningless do not comply with the objective of the scheme.
- The extent in which an exclusive agreement might disturb the dynamics of the supervising committee is intrinsic to the composition of the supervising committee and the mutual agreements that are made at the start of a project. In the future – more than nowadays – this will be a point of attention in the evaluation of an application. It is important that an applicant can substantiate vis-à-vis the supervising committee why certain enterprises were selected and why this composition does not have a hindering effect in case of possible later agreements about transfer. An advisory committee for enterprises with overlapping valorisation niches are no obstacle if the intention is to valorise via non-exclusive agreements. In sectors in which exclusivity is the prevailing standard, advisory committees with overlapping valorisation niches can constitute a problem. The clear vision of the applicant about this is desirable.
- In the implementation phase, it is normal that many conditions will be modified, but it seems reasonable that the applicant tries at the very least to accommodate the intentions that he/she proposed. If the application for support was made in

cooperation with a number of enterprises, which were selected based on the free choice of the applicant, then a situation in which the applicant makes no effort to try to cooperate with these enterprises is not in compliance with the conditions under which the applicant applied for support.

- Agreements about using the results, which violate the conditions under which the applicant applied for support, will be taken into account in the evaluation of the track record of the applicants in future project applications. In situations in which there is evidence of a flagrant violation of the conditions under which the applicant applied for support, action can be taken within the contractual agreements about reporting obligation and valorisation.

4.3. Flemish Innovation Partnerships (Dutch: VIS)

4.3.1. Objective

- VIS concerns mainly support to partnerships of Flemish enterprises. This represents support to enterprises because the partnership, which mainly consists of enterprises, acts as contracting party and is the owner of the results. As a result, the stipulations of government support apply.
- Contrary to enterprise support (R&D), support that is granted under the VIS decree is not geared to individual enterprises.
- The objective is to stimulate innovation via support of activities with a collective character that exceed the individual business interest and can be valorised to a group of enterprises that is as large as possible.
There are three modalities to achieve the general objective:
 - Distributing knowledge and stimulating collective research that will benefit a large group of enterprises
The partnership is a manner to organise the demand from the industry and subsequently, to ‘order’ the research from knowledge centres.
 - Stimulating innovation via direct service provision
The purpose is to present solutions of knowledge centres to enterprises and to publish the results, which were achieved via various support schemes, and to make these results available to as many enterprises as possible; this contributes to bridge the innovation gap.
 - Stimulating networking
The purpose is to organise interaction around specific themes between various parties; the result is the creation of strong networks and demand is organised from specific joint issues and themes.
- The organisation of partnerships results in the fact that enterprises, which have none or little R&D capacity, also get involved in the innovation process via access to results that are widely applicable for a large group of enterprises.

4.3.2. Interaction between knowledge centres and enterprises

- Cooperation between enterprises among each other *and* cooperation between knowledge centres and enterprises are pivotal in the VIS scheme. Partnerships can call on knowledge centres for various activities, from collective research to service provision. An important aspect of collective research is that the results are not limited to the members of the partnership, but are available to as large a group of enterprises as possible.
- In granting support, the government asks the business community for 20% co-financing of the project costs. Therefore, various members of the target group pay themselves a part of the project costs and – of course – will expect access to the results.
- In project selection, the emphasis is on the collective nature of the intended results. If the results remain restricted to a limited number of enterprises, there is evidence of cooperative research. Then the rules of enterprise support apply.

4.3.3. Modalities in connection with using the results

- The situation in which support is granted under the VIS decree is drastically different from situations in which support is granted to research centres such as SBO support. Since the support under the VIS decree is granted as indirect government support under the *de minimis* rule, there are no limitations of intellectual property or licences. There is no requirement for transfer in line with market values, because the support is already government support and complies the European limitations, in this case by invoking the *de minimis* rule.
- Since the support is granted under the *de minimis* rule, the support divided by the number of beneficiaries of the support can never exceed €200,000 per 3 years. By granting exclusivity to one or more enterprises in case of transfer, the number of beneficiaries of the support obviously decreases. A situation in which complete exclusivity is granted to one enterprise would be acceptable to the European Commission as long as the support is limited to €200,000 per 3 years. In practise, such a situation will occur very rarely and the combination of granting exclusivity to one enterprise and the *de minimis* limit is hardly attainable.

A number of scenarios, which seem to be acceptable to the European regulations, were submitted to the solicitor's office Eubelius.

1. Exclusive agreement with respect to a partial aspect of the results within the limitations of the *de minimis* regulation
The major part of the results remain freely accessible for a large group of enterprises.
 2. Exclusion of a limited number of enterprises
The target group is decreased from n to $n-1$ or $n-2$ so that the *de minimis* limit is respected.
 3. Exclusive agreement in which the *de minimis* limit is exceeded but in which the enterprise pays a price in line with the market
The logic is that the results that are transferred according to market conditions are lifted out of the project so that the limiting conditions no longer apply to this.
- In their response dated 20 January 2009, Eubelius stated that none of the three scenarios constitute a problem from the European legal viewpoint for government support. However, all three scenarios violate the Flemish stipulations that state that the support can only be granted for collective research, which is understood to mean '*research and studies ... that are focussed on obtaining, bundling and translating knowledge into usable innovative applications for the benefit of a large collective of enterprises in which the results ... should be valorised to as large a group of enterprises as possible*'. A situation of granting exclusivity to one enterprise or a group of a few enterprises (even if this remains within the *de minimis* limit) violates the stipulations of the Flemish decree.
 - In light of this, it is important that Eubelius notes that it is unclear whether the EU will still be willing to accept the application of the *de minimis* regulation in case of granting exclusivity in the VIS decree. The acceptance of the EU to invoke the *de minimis* is based on the Flemish decree emphasising collectiveness as declared to the EU. In case of a potential complaint to the EU, the EU would also consider a violation of the Flemish decree as an infringement.
 - As a result, exclusivity from results, which are obtained from projects supported under the VIS decree, cannot be granted. If nevertheless an implementer wishes to grant exclusivity to an enterprise, the only option is dissolution of the agreement and restitution of the subsidy to the IWT. This results in the cancellation of the stipulations with respect to collectiveness connected to the support.

- Absolute exclusivity is at odds with the collectiveness concept. But, it should not be forgotten that the enterprises provide co-financing and the restrictions may not be implemented in such a way that cooperation/partnerships is nipped in the bud. The essence is and will be that projects result in *'innovative applications for the benefit of a large collective of enterprises in which the results ... should be valorised to as large a group of enterprises as possible'*. A potential alternative is the model in which a non-exclusive operating licence is granted to a number of involved enterprises, which up to 12 months have the option to cast a veto against granting an operating licence to direct competitors. Beyond these 12 months, there is no restriction and competitors will also be able to get a licence. This compromise offers partial comfort to the parties concerned, while the results will still be valorised to as large a group of enterprises as possible'.

4.4. Technology Transfer (TETRA) and Agricultural & Horticultural Research

4.4.1. Objective

- Support that is granted under the TETRA decree and the decree for agricultural & horticultural research is support granted to knowledge centres.
- In both schemes, research activities with a collective character are supported with the objective to achieve knowledge distribution and technology transfer from knowledge centres to enterprises. According to their mechanisms, these schemes are comparable to SBO. According to their content and objectives, these schemes have more in common with the VIS collective research.

4.4.2. Interaction between knowledge centres and enterprises

- Both TETRA and agricultural research are close to the market. A key objective of the scheme is the use of the results by enterprises. After transfer or licenses, there are limits to the development risks for the enterprise and to the required investment in order to achieve a product (or service, process) that can be valorised.
- As a result of its positioning close to the market, the granting of support approaches trajectories that are usually considered enterprise support, and the collectiveness is an important element in order to avoid improper enterprise support. The collective support aims at clear aspects that exceed the individual interest of an individual enterprise and offer a joint added value for as large a group of enterprises as possible.
- In case of evaluation, the presence of a user group of enterprises is mandatory.
- In case of granting support, the user group has to achieve co-financing of 7.5%. This does not entail that the user group obtains rights to the results. As explained in the support mechanism (Section 3.2), the knowledge centre stays the owner and transfer should occur in line with market values. In case of a transfer, the contribution that was already paid can be deducted from a compensation according to the market level.

4.4.3. Modalities in connection with using the results

- In both decrees, the objective is an explicit collectiveness in the transfer as included in the VIS decree with an identical definition. Since the exclusion of exclusivity in VIS is mainly based on the definition of the collective character, the restriction that is relevant for VIS appears to be applicable automatically for TETRA and agricultural & horticultural research. Therefore, the modalities for both schemes follow the modalities that apply to the VIS decree.

4.5. Strategic Basic Research (Dutch: SBO) with a Social Purpose

4.5.1. Objective

- A scheme component with a primary social purpose exists within the SBO scheme. The support mechanism is identical to the SBO with an economic purpose.
- Just like the scheme component with an economic purpose, the objective is stimulating research in knowledge centres that is – on the one hand – qualitative very high and explicitly innovative but – on the other hand – offers prospects for future applications in case of scientific success. However, the emphasis is on applications with a social purpose.

4.5.2. Interaction between knowledge centres and enterprises

- Just like in projects with an economic purpose, the applicants surround themselves with an advisory committee that acts as a sounding board. The members of this advisory committee are social parties that can guarantee the utilisation of the results by their involvement in various social application areas.
- It is also possible that enterprises are involved in the utilisation of projects with a social purpose. Therefore, transfer of results to enterprises can occur in such projects.
- There is no objection against transfer to enterprises. This could even be required in many situations in order to achieve a social effect.

4.5.3. Modalities in connection with using the results

- Just like in projects with an economic purpose, the rule is that agreements about using the results should be in accordance with the conditions under which the support was granted. The primary objective of granting the support is to achieve a social impact as a result of using the results by social parties.
- The demand for potential exclusivity in case of transfer or licensing is comparable with the situation of projects with an economic purpose. In particular, there should be no objection against potential exclusivity as long as this does not hinder the dynamics of the advisory committee.
- A complication vis-à-vis projects with an economic purpose is that the social parties will often act as customers of the enterprise that guarantees the transfer. This intermediate step is often required in order to provide a service that has sufficient guarantee of Quality Assurance and maintenance. In such a situation, an exclusive transfer or licensing of a part of the results does not violate the objective and it is normal that an enterprise will be compensated for supplying the services at the prevailing market price.
- An important aspect with such agreements is that these agreements should stay in accordance with the conditions under which the support was granted. The knowledge centres should always be reimbursed for the use of the results. This is inherently connected to the support mechanism and does not deviate from a SBO with an economic purpose. If a social party, which has promised its cooperation to a SBO project, will only get indirect access to a part of the results via an intermediate party (usually an enterprise) in the follow-up trajectory, and will have to pay a commercial price for this to this entity (this enterprise), the parties should have a clear understanding of this principle at the start of the consortium. Just like in

projects with an economic purpose, a choice is not only made on the basis of the implementers, but the quality and the interaction with the advisory committee is also taken into account in the granting of support. Therefore, the members of the advisory committee should be well informed about the preconditions in which they will get access to the results later.

4.6. Applied Biomedical Research (Dutch: TBM)

4.6.1. Objective

- In this scheme, support is granted to knowledge centres for biomedical research. The purpose is to support activities that are already far advanced in the trajectory from discovery to application and – in this sense – are different from a SBO with a social purpose whose purpose is the early stages (discovery).
- The objective is to enable the translation from the research phase to applications for subjects that do not raise industrial interest, but that can generate interesting applications for therapy and diagnosis of patients. TBM is in a stage in which research results are usually transferred to enterprises but – due to the lack of marketing opportunities – this is impossible. In order to enable the translation to the patient yet, the government provides a solution via direct financing towards the knowledge centres.

4.6.2. Interaction between knowledge centres and enterprises

- Cooperation with enterprises is unusual because the explicit purpose of the scheme is subjects that do not raise industrial interest. There is no supervising committee. TBM aims a wider distribution of the results towards potential social users via open presentations during conferences.

4.6.3. Modalities in connection with using the results

- Transfers for the purpose of utilisation do not occur in most situations, because the purpose is of no interest of the business community. Just like in a SBO with a social purpose, it is however possible that a limited number of parts are transferred or licensed to an enterprise to enable the social impact. Such a transfer is possible even with potential aspects of exclusivity. Just like in a SBO with a social purpose, such a transfer to an enterprise may even be required to achieve the social impact. Therefore, all this is not by definition a negative issue. However, the primary purpose remains guaranteeing the development of a biomedical application (for which the industry has insufficient interest). If a transfer to an enterprise would hinder this objective, the project has in fact an economic purpose. As a result, granting support via TBM is impossible.
- Another applicable rule (just like in SBO) is that agreements about using the results should be in accordance with the conditions under which the support was granted. Transfers of results, which are not in accordance with the conditions under which the applicant requested support, are treated as a SBO.
- A transfer or licensing of the integral project results for further development to a single enterprise normally contradicts the niche of the scheme in which *only* projects that generate insufficient interest for transfer and further development in the business community receives support. Just like in a SBO, the essence remains that agreements about transfer in the follow-up trajectory should remain in accordance with the conditions under which the support was granted.
- In a SBO with a social purpose *and* a TBM, it stays important to distinguish between projects with a primary economic purpose and projects with a primary social purpose. Initially this occurs on the basis of the nature of the users and later, on the basis of the motive. A primary economical development that also provides a social added value should be supported via schemes with an economic purpose.

4.7. Research Mandates

4.7.1. Objective

- Research mandates offer support to advanced researchers for a project carried out at a research organisation, in liaison with an enterprise, which functions as a supervisor. The objective of the scheme is to bridge between the academic world and the business world and to offer young researchers, who are connected to a research centre, the opportunity to get acquainted with industrial valorisation. This also contributes to the training of researchers in valorisation.

4.7.2. Interaction between knowledge centres and enterprises

- An enterprise is expected to be involved in research mandates. An industrial mentor who is active in the business world does the guidance for valorisation. Therefore three parties are always involved: a research organisation, a mandate holder and an enterprise. The research organisation is the owner of the results as laid down in the contract.
- The enterprise partner is a logical choice for future valorisation, but does not have a priori rights on utilisation of the results. Transfer of the Intellectual Property Rights (IPR) to the involved enterprise or to another enterprise will be done in line with market values. Just like in Technology Transfer, already made compensations can be reduced from the market-based price, but ultimately the transfer has to be in line with market values.
- Research mandates are not directly linked to the market. A potential transfer or licensing will usually require a significant follow-up trajectory to reach commercialisation.
- Just like in SBO, here also a balance has to be maintained between feasibility of the valorisation and wide utilisation. Application in several enterprises is always preferred, but this requires consideration for the limited scope of the projects. The primary objective remains creating results that may result in a transfer. Within the group of projects that meet these demands, a selective advantage will be granted to projects that can benefit several enterprises. Nevertheless, the wide utilisation is not a strict condition for receiving support.
- However, it remains essential to make sure that the 100% subsidised support of research mandates do not become an improper enterprise support. A project, which is entirely embedded in the management of one enterprise and normally could be a part of the R&D portfolio of an enterprise, is better supported as a business research. If on a functioning level there is no longer a difference between functioning as a research mandate holder and functioning as an employee of the enterprise, then there is little reason for a specific scheme. In such a case recruitment and support in the form of enterprise support seems to be the right choice. The general rule is that a project for a research mandate should maintain a research focus with a certain amount of independence towards the industrial mentor. Strong management by the enterprise is not acceptable.

4.7.3. Modalities in connection with using the results

- The stipulations of section 3.2 should be respected in case of a transfer. There are no formal limitations with regard to transfer. The European regulation does not restrict exclusivity as long as the stipulations of section 3.2 are respected. The objectives of the scheme do not rule out exclusivity, but in situations in which normally the

project would be a part of the R&D portfolio of an enterprise preference is given to enterprise support.

4.8. Doctoral Grants

4.8.1. Objective

- The objective of doctoral grants is to offer young researchers the opportunity to achieve a doctorate while carrying out a strategic basic research. This is innovative and doctoral worthy research but which – in case of academic success – can be reason for future applications. Valorisation of the results is not the only added value of the application aspect of the doctoral grants. Researchers also learn to think from a strategic framework and to position their research in a wider application framework.

4.8.2. Interaction between knowledge centres and enterprises

- With regard to intellectual property rights of the scholarship student's findings for the period of a doctoral grant, the contract refers to the decree concerning universities of the Flemish community as of 12 June 1991. This implies that the intellectual rights belong to the universities.
- No formal interaction with enterprises is expected during doctoral grants. Doctoral research with a potential for enterprise application is seen as strategic basic research. In the long-term this can be reason for applications, which are typically picked up by enterprises. Research, which is strongly embedded in the existing R&D activities of an individual enterprise, relies on support via enterprise support in which the enterprise co-finances the research. The recently launched Baekeland mandates are an appropriate alternative for doctoral projects that are carried out in close collaboration with an individual enterprise. The modalities mentioned in section 3.2 should be respected if collaboration with an enterprise takes place.

4.8.3. Modalities in connection with using the results

- Formal collaboration with an enterprise is not expected while carrying out research for doctoral grants. The stipulations of section 3.2 should still be respected during a transfer if such collaboration is expected to take place.

4.9. Baekeland Mandates

4.9.1. Objective

- The objective of the Baekeland mandates is to offer young researchers the opportunity to do their doctorate in close collaboration with the business community. Baekeland mandates provide financing of staff expenses and operational expenses for one mandate holder. Baekeland mandates are carried out in collaboration with an enterprise and a knowledge centre.
- Financing is granted as direct governmental support under the stipulations of the R&D decree. The enterprise functions as a contractor and makes an agreement with the knowledge centre. The mandate holder can be employed by the enterprise or by the knowledge centre.
- The mechanism of support is closely linked to enterprise support and is granted under the same decree. The objective differs from classic enterprise support: it emphasises achieving a doctorate, which carries a clear educational component, as is the case with the doctoral grant.

4.9.2. Interaction between knowledge centres and enterprises

- The enterprise and the knowledge centre should make clear agreements about the IPR. There are three models that can be followed: IPR at the knowledge centre, IPR at the enterprise or divided over the knowledge centre and the enterprise. During the evaluation it is required to submit a mutual agreement according to one of these models. The model is chosen in mutual agreement between the enterprise and the knowledge centre.

4.9.3. Modalities in connection with using the results

- The IWT requests that clear agreements are made about the IPR and the user rights between the subcontractor and the beneficiary, but does not set additional restrictions with regard to the content of these agreements.

4.10. Centres of Excellence

4.10.1. Objective

- Centres of excellence are initiatives that expect Flemish innovation partnerships. Centres of excellence are organised thematically. Their objective is to stimulate innovations at the enterprises in the target group by bridging between knowledge centres and the business world, with an emphasis on creating and transferring knowledge in a specific thematic specialisation.
- In order to realize a concentration of forces in a thematic target group/sector, the enterprises in the target group organise themselves as an innovation partnership, which receives subsidy from the government. The innovation partnership can pass on this subsidy to various projects on a project basis, with the central objective of practically applying knowledge in the business community.

4.10.2. Interaction between knowledge centres and enterprises

- The subsidy can provide support to projects with a collective character, but can also provide support to R&D projects with a cooperative character.
- In the case of collective support, the modalities of the Flemish Innovation Partnership decree are followed. In this case 80% of the support can be awarded through the use of the *de minimis* regulation. By definition, collective research is valorised to as many enterprises as possible, in which the enterprises in the target group are not a closed circle. The aforementioned stipulations for project support of the FIP decree also apply to the cooperation between knowledge centres and enterprises.
- Projects with a cooperative character are directed towards a small number of enterprises. In such a case support is granted based on the R&D resolution. This means it is seen as an enterprise project, carried out by various contractors. This is direct support from the government in which the modalities of the direct governmental support should be followed. With regard to the division of the knowledge, agreements are made that provide the centres of excellence with sufficient opportunity to distribute the gained knowledge, or a relevant part of this knowledge, to a wider target group (non-confidential results).

4.10.3. Modalities in connection with using the results

- With regard to licenses, the provisions of the FIP decree (section 3.3) are followed in case of collective research and the provisions of the R&D resolution (section 3.1) in case of cooperative research.

5. Contractual Period

If support is granted, a support agreement is formulated per project for the aforementioned schemes. The support agreement regulates the contractual rights and obligations during the execution of the project as well as during the valorisation of the project results. The contractual validity period after the end of the project varies depending on the scheme, with a maximum of 10 years. The implementer will no longer be bound by the contractual agreements, and the judicial restrictions explained in the previous sections will no longer apply, if the period that is anticipated for the realisation of the valorisation ends or if the agreement is dissolved.

Usually a sufficiently long period is provided between the finalisation of the project and the automatic ending of the agreement in order to provide the contractors with the maximum amount of time to achieve the valorisation. It is possible that a minimum expected valorisation is achieved sooner than expected and that the active status of the contractual conditions creates uncertainties about the possibilities for achieving alternative forms of valorisation.

In the case of projects with valorisation outside Flanders, sufficient valorisation within Flanders is described as achieving an economical added value that amounts to at least tenfold of the support, within in a period of maximum 10 years. In such a situation it is possible that the minimum expected valorisation is achieved sooner than anticipated.

Also in the case of other schemes it may occur that the valorisation expectations for which the project was supported have been met before the end of the provided period of time and that the applicant sees an opportunity for alternative ways of valorisation. In the future the applicants of these schemes will be offered the possibility to request the IWT for an ad-hoc decision in such situations.

If the applicant can prove that

- (1) the valorisation as presented in the project selection has been realized, or in a reasonable amount of time all the possible efforts were made to valorise the results according to the assumed users, and
- (2) there is a clear case of a possible alternative valorisation that normally would not be according to the valorisation expectations of a specific scheme (for example it does not have a collective nature),

the support beneficiary can – excluding the duty to report – request from the IWT a confirmation that the valorisation expectation laid down in the contract has been sufficiently met, in which case the IWT can approve the alternative valorisation for the specific case.

Only in cases that a request for deviation is substantiated can an applicant, who wants to deviate from the valorisation modalities as determined in the contract, file his/her request.

The applicant always has to initiate this request and to indicate a clear reason. Without an explicit reason, such a request will not be dealt with.