

**REVIEW OF THE COMMUNITY FRAMEWORK FOR  
STATE AID FOR RESEARCH AND DEVELOPMENT****UNICE COMMENTS****1. INTRODUCTION**

Before the end of 2005, the Commission is scheduled to review the Community framework for state aid for research and development (R&D) that has been in force since 1996. In reply to a wide consultation initiated by the Commission prior to deciding on the framework's renewal in 2002, UNICE in 2001 put forward its views as regards issues to be taken into consideration in modernising the framework. As a contribution to the debate on the 2005 review, UNICE now wishes to present an updated and extended version of its submission in the 2001 consultation.

In view of the Union's Lisbon strategy of becoming the world's most competitive and dynamic knowledge-based economy by 2010 and particularly the Barcelona objective of increasing R&D expenditure to approach 3 % of GDP by 2010, of which 2/3 should be funded by the private sector, boosting investment in business R&D is one of the Union's key challenges if it wants to catch up with its global competitors. As pointed out in the Commission's Communication "Investing in research: an action plan for Europe" (COM(2003)226), reviewing the Community framework for state aid for R&D is therefore of great importance, as it sets the boundary conditions for Member States in stimulating private R&D.

As a general point, UNICE notes that current rules on state aid for R&D are often complex and unclear, resulting in Member States adopting different interpretations, legal uncertainty for companies and procedural delays. Also, when assessing R&D aid, the Commission's definition of permissible R&D aid is often too narrow. This hampers the effectiveness of Member States' measures to encourage R&D. The Commission should therefore improve and simplify current rules.

In addition, the Commission should ensure that European companies are not suffering from a competitive disadvantage vis-à-vis their competitors located outside the EU who are not (or less) affected by R&D subsidies control. The Commission should seek to establish a global level playing field for R&D subsidies through the WTO.

In the context of establishing the European Research Area, UNICE also encourages the Commission to grant more often derogation for important projects of common European interest (Article 87 (3) (b) of the Treaty) for transnational R&D projects in the context of European Technology Platforms, intergovernmental programmes or of national programmes fully open to participation from other Member States. Preferably, such derogations should be granted at the level of such programmes or schemes, rather than at the level of individual projects therein.

UNICE will elaborate further on these and other issues below.

## 2. THE FRAMEWORK

### ***Fundamental research, industrial research and precompetitive development activity***

In order to determine the proximity to the market of aided R&D, the Commission currently makes a distinction between fundamental research, industrial research and precompetitive development activity. Fundamental research and industrial research may qualify for higher levels of aid than precompetitive development activities, which are closer to the market.

In practice, however, this distinction between separate, sequential R&D stages in industry has become obsolete, as boundaries are blurred: precompetitive development activity (defined in the framework as the shaping of the results of industrial research into a plan or design for new products) and the industrial research itself are usually carried out concurrently, with close interaction between knowledge creation and application. At present, markets are increasingly global, dynamic and competitive; speed is therefore essential for obtaining new products, processes and services and for introducing these rapidly and successfully to the market.

The current framework for assessing R&D projects on the basis of the separate, sequential R&D stages from the outdated linear innovation model is incompatible with strict time-to-market requirements and should therefore be updated to reflect today's concurrent, iterative and interactive industrial innovation processes with constant market feedback. In UNICE's view the Commission should therefore abolish the distinction between industrial research and precompetitive development activity and create a single category "industrial Research and Technological Development (RTD)".

As a general rule, the gross aid intensity for all "industrial RTD" should not exceed 50% of the eligible costs of the project. The new category "industrial RTD" should also include prototypes (as long as the primary objective is to make further improvements) and computer software (if its completion depends on the development of a scientific and/or technical advance and its aim is the resolution of a scientific and/or technological uncertainty on a systematic basis). Routine or periodic changes made to products, processes and services, on the other hand, should be excluded. This would also be in line with the broader definitions of R&D as provided in the Commission Regulation on the application of Article 81 (3) EC to categories of research and development agreements, and the OECD guidelines for the classification of scientific and technological activities (Frascati Manual). UNICE suggest that the Commission investigates whether these broader definitions could be used for distinguishing industrial RTD and closely related innovation-oriented activities qualifying for R&D aid from business activities disqualifying for such aid.

### ***Incentive effect of R&D aid***

Current rules on state aid for R&D stipulate that aid for R&D has a clear incentive effect and leads to R&D activities in addition to a firm's normal day-to-day operations.

UNICE considers that the Commission's interpretation of this requirement should not put European companies at a competitive disadvantage vis-à-vis their competitors located outside the EU, who are not suffering from comparable constraints. In practice, it is very difficult to prove that certain R&D activities are carried out in addition to normal day-to-day operations. In any case, the Commission should not *a priori* disqualify aid for R&D projects that fall within a firm's core business or which have clear market potential.

### ***Public-private partnerships***

To address the “European Paradox”, which refers to Europe’s notoriously poor track record in translating the results from its strong public research base into successful innovative products and services in the market place, the links between industry and public research need to be strengthened, for example by means of public-private R&D partnerships. Unfortunately, the framework’s provisions for “R&D carried out by public non-profit making higher education or research establishments on behalf of or in collaboration with industry” (section 2.4) are insufficiently attractive to industry. They are ambiguous and imprecise, and therefore prone to interpretation problems, particularly regarding IPR issues.

For example, one of the alternative situations of permitted state aid is “where the public non-profit-making establishment receives from the industrial participants compensation equivalent to the market price for the intellectual property rights which result from the research project and which are held by those industrial participants, and where the results which do not give rise to intellectual property rights may be widely disseminated to interested third parties”. In this case, it is not clear whether and how such compensation would take account of the contributions that the industrial participants may make to the project by means of their own R&D activities, financial payments, non-financial (‘in-kind’) support or pre-existing know-how.

To stimulate public-private partnerships in R&D and clarify the relevant section in the framework, UNICE submits the following recommendations:

- Make a clear distinction between the roles of universities and public institutes as vehicles of indirect aid to industry and as recipients of direct aid.
- Make a clear distinction between collaborative research (i.e. universities or public institutes working *with* industry as their partner, e.g. in an R&D aid scheme) and contract research (i.e. universities or public institutes working *for* industry as their principal);
- In the case of collaborative research, apply the same IPR provisions as in the EU Sixth RTD Framework Programme, so that no compensation would have to be paid for access and use of IPR (pre-existing know-how and knowledge resulting from the project) where the FP rules allow them royalty-free, unless otherwise agreed before the collaboration contract is signed.
- In the case of contract research, State aid in the meaning of Article 92(1) of the EU Treaty is not involved where industry bears the full cost of the project. In case part of the cost is publicly financed, due account should be taken of industry’s contributions to the project in the form of financial payments, non-financial (‘in-kind’) support or pre-existing know-how when determining the fair compensation to be paid to the university or public institute for the resulting IPR.

To illustrate the above, UNICE is willing to provide the Commission with examples of public-private R&D partnerships with appropriate IPR arrangements.

### 3. OPTIONS FOR A FUTURE TEXT CONCERNING STATE AID FOR R&D

The Commission has the option either to adopt a block exemption regulation for R&D aid or to adopt revised rules. UNICE has consistently held that strict control of state aid, on the basis of clearly defined criteria, is necessary to prevent distortions of competition in the internal market and has repeatedly called on the Commission to define these criteria

through guidelines and block exemption regulations, while at the same time urging the Commission to ensure that any new specific block exemption regulations do not undermine the efficiency of state aid controls. Decentralisation of state aid control by means of block exemption regulations, which rely heavily on self-assessment and monitoring by the Member States themselves, should not detract from the uniform application of Community law.

Decentralisation clearly amplifies the risk of inconsistencies within the system. Consequently, and considering the complexity of R&D aid schemes, UNICE believes that the Member States should continue being compelled to notify their R&D aid measures to the Commission. However, the thresholds for notification to the Commission of individual projects under an approved R&D scheme should be increased, so as to allow the Commission to focus on assessing large individual projects.

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