UNICE
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COMMENTS

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COMMUNITY FRAMEWORK FOR STATE AID FOR RESEARCH AND DEVELOPMENT AND INNOVATION – DG COMP STAFF PAPER

1. INTRODUCTION

Following the State Aid Action Plan and the Communication on State Aid for Innovation, the Commission is considering creating a Framework for R&D and Innovation. According to DG Comp, the staff paper is a draft of the Framework which indicates a possible future approach in the area of state aid for R&D and innovation.

The Commission believes that state aid policy can contribute to a more innovative economy, both by preserving product market competition as a driver of innovation, and by putting forward a framework of rules that facilitates the design of effective state aid for innovation by Member States. It is set out in the staff paper that in the context of the Lisbon strategy, the level of R&D and innovation is considered not to be optimal for the EU economy, which implies that an increase in the level of R&D and innovation would lead to higher growth in the EU. The Commission considers that the existing rules for state aid for R&D have to be modernised and enhanced to meet this challenge.

UNICE wholly agrees and ever since 2001 it stated on numerous occasions that a review of the state aid rules for R&D should be a priority. UNICE has put forward detailed suggestions for such a review in its response to the State Aid Action Plan and the Communication on State Aid for Innovation.

Regrettably, after having assessed the draft new rules for state aid for R&D, UNICE is now worried that the proposed future approach in the area of state aid for R&D and innovation will not resolve current underinvestment in R&D. On the contrary, in many respects, the proposed new rules will not make it easier for Member States to devise effective state aid measures for R&D and innovation and UNICE thus strongly doubts whether the new approach as set out in the staff paper is appropriate for meeting the challenge of achieving the Lisbon and Barcelona objectives, especially in view of the fact that our competitors who are located outside the EU are not facing similar R&D subsidies constraints.

Having said this, UNICE understands that in addition to the Framework, the Commission envisages devising an expanded part on R&D and innovation in a forthcoming general block exemption regulation. The Framework will apply to all measures notified to the Commission, for example because the measures are not covered by the block exemption regulation, or because a Member State decides to notify a measure which could have been block-exempted anyway.

Given the strong inter-relationship between the Framework and the future block exemption regulation, UNICE urges the Commission to closely involve it in the further development of the Framework and give it the opportunity to comment on subsequent Commission proposals in this area.

UNICE's comments on the staff paper are set out below.

2. PRINCIPLES GOVERNING CONTROL OF STATE AID FOR R&D AND INNOVATION

The linear innovation model

It is set out in the staff paper that it is considered useful to maintain different categories of R&D and innovation activities regardless of the fact that these activities in reality may follow an interactive model of innovation rather than a linear model. Consequently, different (and in the case of experimental development lower) aid intensities are proposed for fundamental research, industrial research and experimental development.

UNICE is disappointed that the linear innovation model is maintained although it welcomes the inclusion in the new category 'experimental development' of the development of commercially available prototypes and pilot projects. The linear innovation model is incompatible with strict time-to-market requirements and should be updated to reflect today's concurrent, iterative and interactive industrial innovation process with constant market feedback. Maintaining the outdated linear model will not change the current situation of Member States adopting different interpretations with respect to hypothetical categories that bear no relation to reality. Nor will it to a satisfactory extent resolve current under-investment in R&D and innovation. One of the main reasons for modernising the old framework for State Aid for R&D is the scrapping of obsolete categories and the updating of rules to reflect the realities of the modern innovation process.

UNICE thus suggests abolishing the distinction between industrial research and pre-competitive development activity and creating a single category "industrial RTD". As a general rule, the gross aid intensity for all "industrial RTD" should not exceed 50% of the eligible costs of the project. As said above, UNICE welcomes the inclusion of the development of commercially available prototypes and it is also pleased that the OECD guidelines for the classification of scientific and technological activities (Frascati Manual) will be used for the classification of the different activities, although UNICE notes that undesirable ambiguity in the definitions is created by also referring to Commission practices in this context.

Incentive effect

The staff paper sets out that state aid for R&D and innovation must induce undertakings to pursue research that they would not otherwise have pursued. In order to prove such an effect, the Member States must provide quantitative information regarding the changes in R&D and innovation spending of an undertaking, the changes in the number of people assigned to R&D and innovation activities, and the changes in R&D and innovation spending as a proportion of total turnover, and this for all individual aid measures.

Previously, UNICE pointed out that it is in practice very difficult to prove that aid for R&D and innovation has a clear incentive effect and that the Commission should therefore indicate that it will not be too strict when requesting evidence in relation to the requirement that certain R&D and innovation activities are carried out in addition to normal day-to-day operations, also in view of the fact that a strict interpretation would put European companies at a competitive disadvantage vis-à-vis their competitors located outside the EU, which do not suffer from comparable constraints.

UNICE now regrets to note that the very specific and detailed quantitative information which the staff paper requires would not make it easier for companies to demonstrate that the aid significantly changed its behaviour so that it increased the level of its R&D and innovation activity. Fulfilling this requirement will be extremely difficult and burdensome for companies and Member States, when, for example, multiple R&D projects run simultaneously or the firm's contribution to a single project is relatively small compared to the firm's overall R&D budget.

UNICE fears that the requirements of the staff paper in relation to the incentive effect could lead to Member States refraining from encouraging companies to carry out more R&D and innovation to the detriment of European competitiveness. Also, the uncertainty in relation to the outcome of the evaluation process will discourage companies to invest in R&D and innovation.

Detailed assessment

The staff paper sets out that the Commission will require Member States to provide comprehensive information regarding the economic justification for individual aid measures for R&D and innovation where the aid amount exceeds €5 million. The Commission intends to individually assess all such notifications in a detailed manner in order to determine whether the aid can be declared compatible with the Treaty because the positive impact of the aid measure in terms of achieving more growth and jobs outbalances the potentially negative side effects.

In this context, Member States are required to provide detailed information regarding the existence of a market failure and the characteristics of the relevant market. In addition, even more far-reaching and specific requirements are necessary to demonstrate an incentive effect, such as the use of counterfactual analysis to demonstrate the level of intended R&D and innovation activity with and without aid, the use of evaluation methodologies to evaluate the overall profitability of a project, and the use of risk assessments to determine the level of risk of commercial failure or other risks to the undertaking.

Whilst endorsing the principle of the Commission using economic analysis to determine whether a measure is state aid and whether state aid can be declared compatible with the Treaty because the positive impact of the aid outbalances the negative effects, UNICE, in its comments to the State Aid Action Plan, also insisted that the economic approach should not increase legal uncertainty or administrative burdens in the approval of state aid schemes. In fact, one of the aims of the State Aid Action Plan is to reduce burdens and increase legal certainty in order to encourage companies to carry out activities which contribute directly to the achievement of Community objectives, such as promotion of R&D and innovation. This is why UNICE pointed out that R&D and innovation should be considered as a general case where market failures apply and a role for government intervention exists.

UNICE now has great concerns that the concrete implementation of the economic approach as set out in the staff paper will not reduce burdens and lead to more R&D and innovation but that it might, on the contrary, lead to less investment in R&D and innovation given the fact that the Member States may become wary about devising specific aid schemes given the daunting prospect of having to submit very comprehensive economic information for each notification. The required information about relevant markets and companies' strategies will be very difficult and costly to obtain and, if at all available, likely to be based on numerous speculative assumptions. UNICE fears that the detailed assessment which the staff paper prescribes for a large number of individual notifications may increase legal uncertainty, boost costs and administrative burdens significantly, and ultimately discourage Member States from stimulating companies to carry out more R&D and innovation.

Public private partnerships and aid for innovation clusters

UNICE is pleased that the staff paper proposes that the framework for state aid for R&D and innovation should also take account of the growing importance of public-private partnerships and innovation clusters in the R&D field. UNICE is also pleased that new rules authorising state aid for collaboration and clustering cover both small and large firms, although it regrets that large enterprises would only be entitled to lower aid intensities. Considering that SMEs often flourish in the slipstream of large companies, in particular in regional clusters, UNICE firmly believes that aid intensities should be similar for large firms and SMEs alike.

UNICE is also pleased that the staff paper makes a distinction between research on behalf of undertakings (contract research or research services) and collaboration of undertakings and not-for-profit research organisations. UNICE agrees that if a not-for-profit research organisation carries out a contract, there will normally be no state aid passed to the undertaking through the not-for-profit research organisation, if the latter provides its service at market price or at a price which reflects its full costs plus a reasonable margin if there is no market price. UNICE notes though that the restrictions on commercial activities of not-for-profit research organisations are too tight. Many not-for-profit organisations do in fact have to make profits to cross-subsidise their non-profitable activities and do not exclusively rely on public support to survive.

UNICE also generally supports the conditions set out in the staff paper for the assessment of collaborative research, although it notes that where the participating undertakings bear the full cost of the project, the research is actually carried out on behalf of the undertaking (contract research). UNICE would also like to point out that if the research institute receives all the intellectual property rights and the project output is not shared, there is no real collaboration. UNICE suggests that the Commission elaborates under which conditions collaboration which involves elements of indirect state aid can nevertheless be declared compatible.

Derogation for an important project of common European interest

UNICE believes that the Commission should always grant derogation under Article 87 (3) (b) when the Commission concludes that the purpose of the aid in question is to promote the execution of an important project of common European interest. In this context, UNICE regrets that the staff paper does not explicitly suggest that such derogation may be granted for major trans-national R&D projects, such as those carried out in the context of European Technology Platforms, Joint Technology Initiatives and EUREKA.

Aid for young innovative enterprises

The staff paper proposes to support the funding of young (less than five years) small innovative companies which produce products and processes that are technologically new or substantially improved and that carry a risk of technological or industrial failure, or whose R&D expenses represent a minimum of 15% of its total operating expenses, by granting these companies aid of up to €1 million provided the company receives the aid only once.

UNICE doubts whether the criteria for defining young innovative enterprises as set out in the staff paper are appropriate given the widespread differences that exist between different sectors, for example regarding time-to-market and product development cycles. UNICE therefore suggests that the Commission adopts a more sector-based approach, although it would like to stress that separate rules should not hamper cooperation resulting from converging technologies and markets (*e.g.* ICT-nano-bio-cogno) since this multi- or cross-disciplinary cooperation often leads to very interesting innovations.

Aid for innovation advisory services and aid for innovation support services

UNICE welcomes the staff paper proposing to stimulate consumption of innovation advisory services and innovation support services provided by innovation intermediaries by allowing SMEs to receive state aid of a maximum of €200,000 over a three year period with which they can buy a set of well-defined services (such as consultancy) or facilities (such as office space) from registered qualified innovation intermediaries. UNICE is also pleased that it is no longer suggested to allow aid to be directly available to the service providers.

Support SMEs to recruit and train employees

UNICE also welcomes the staff paper proposing that aid up to 50% of the personnel costs for borrowing and employing researchers, engineers and marketing managers from a not-for-profit research organisation or a large undertaking to an SME shall be allowed provided the borrowed personnel is not replacing other personnel, although it regrets that the temporary loan and exchange of researchers between not-for-profit research organisations and large companies is not encouraged in a similar way. Mobility of researchers between not-for-profit research organisation and industry (large and small firms alike) is key for the transfer of knowledge and it should be encouraged for SMEs and large firms alike, similar to the Marie Curie Fellowship under the Framework Programme.