HT. 618 - Swedish comments on the draft for a revised Community Framework for state aid for research and development and innovation (“the R&D&I Framework”)

Overall, the Swedish Government welcomes the new draft for a revised Community Framework for state aid for R&D&I. The expanded definition of research organisation is positive, as is the possibility to give aid for innovation also to larger companies.

The Commission’s stated intention is to focus on the cases that affect the internal market the most. This will be done through the new GBER, which will increase the share of aid that can be granted on the basis of pre-defined criteria for compatibility with the internal market without the needs notified to the Commission. The Framework will of course still be important as it defines how the compatibility assessment of larger R&D&I measures will be performed. As will be described below, the Swedish Government would like some further clarifications on some of the contents in the draft at hand.

General observations

It is clear from the draft Framework that there will be comprehensive demands when it comes to proving the compatibility of the measure, through various studies, evaluations and other documentation, proving the proportionality, appropriateness, incentive effect etcetera. What implications this may have for the possibility to, aside of using the GBER, design and implement various aid measures in the different member states is difficult foresee. The general impression is however that the possibility to get the Commission’s approval - and this within a reasonable timeframe - may very well deteriorate because of the expanded compatibility assessment. Possibly there is in this context also likely that member states and aid giving authorities with limited administrative and other resources, as well as smaller companies as beneficiaries, may have relatively less possibilities to cope with the
Commission's proposed assessment system for notifiable state aid. We urge the Commission to keep this in mind in designing the compatibility assessment, especially in the separate communication that is cited in section 4 in the draft Framework.

The Framework could be supplemented with an expressed opportunity to provide support for what could be termed *innovation networks*. The main purpose of this type of aid would be to facilitate strategic networking between companies, but unlike pure SME collaborations, innovation networks could also include larger companies and different kinds of knowledge organisations and promotion actors.

The support for such network formations should be done in a simple and non-bureaucratic manner compared to the conditions required for innovation clusters. Supporting innovation networks would allow start-up and operating in a reasonably long establishment phase, with a suggested maximum period of 3 years. Amounts up to a maximum of EUR 1 million should be granted without any distorting impact of competition and, unlike the cluster provisions the aid intensity would not be regulated in any specific manner. "Co-financing" from participating companies consists instead in the form of pure in-kind contributions in the form of time, labour, knowledge etc. Eligible expenses are limited entirely to such expenses incurred by the innovation network's "coordinator" function, i.e. expenses for personnel, premises and administration etc. of the legal entity that is used by the network for the implementation of activities of their common interest. Given the importance of promoting networking activities focusing especially on small businesses, a condition of support for innovation networks should be that a majority of participants consists of SMEs. We hope the Commission find this suggestion interesting and includes a similar regulation in the Framework.

It would be desirable that royalty financing would be included in the framework, which has been used in Sweden on several occasions in the field of R&D&I. There should in such case be included an explanation how the value of the financing should be calculated. The starting point should be that the value of the financing is the difference between what the recipient has gained and what could have been obtained on the open market.

As indicated below, there seem to be some discrepancies in definitions between the draft GBER and the draft Framework, for instance the terms “innovation cluster”, “aid intensity” and “individual aid”. It is desirable that an identical terminology is used as much as possible to avoid confusion.
Specific observations

**Point 6 b**
Translation to Swedish version: Please replace “mest påverkar” to “har störst påverkan på”.

**Point 12 a**
Please consider whether the wording "aid for R&D projects where the aided part of the research project falls within the categories of fundamental research and applied research, of which the latter can be divided into industrial research and experimental development" is appropriate. The wording regarding applied research is a bit outdated and too strict to the static classification from 1963 (Frascati). Whether this classification can be considered based on a strong scientific foundation can be debated.

**Point 12 c**
Types of research infrastructure are described as essential for IT och "key enabling technologies" (KET). It should be written that this is just examples and that other research infrastructures can be relevant, for instance within traffic safety, fire prevention etc.

"High-quality research infrastructures are increasingly necessary for ground-breaking research and innovation, as they attract global talent and are essential for, for instance, information and communication technologies and key enabling technologies”

**Point 12 e**
We suggest a minor addition to emphasise the importance of innovation clusters for collaboration across cluster- and nation borders.

*aid for innovation clusters, which aims at tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within and between clusters. State aid could contribute to solve this problem, first by supporting the investment in open and shared infrastructures for innovation clusters, and second by supporting the operation of clusters for the enhancement of collaboration, networking and learning.*

**Point 15**
In the Swedish translation, the numeration is extended beyond the letter "z" to the Swedish letters "å, ä and ö”. This leads to the points with double letters "aa”, "bb" etcetera referring to different texts in the
English and Swedish version. We suggest that, for consistency, the numeration should end at "z" also in the Swedish version. The numeration in this memorandum is based on the English one.

**Points 15 e and f**

It should be considered whether the term *industrial research* really is optimal, as the connection to the industry might be too narrow, taking into account the diverse areas that research are taking place within nowadays.

**Point 15 f**

It should be clarified whether a call for applications for a certain aid measure could qualify as an open, transparent and unconditional tender procedure. It would also be valuable if the term "unconditional" could be further clarified in this context.

**Point 15 n**

We have no objection against the definition of gross grant equivalent. The use of this calculation method should however be limited to aid above a certain threshold. In many cases of aid for R&D&I, the aid amount is so small that using discounted values only has a marginal impact as the variations over time is negligibly small. Additionally, the discounting of both the aid and the eligible costs should more or less correlate, making the relevance of this exercise even less meaningful. The obligatory of discounting could thus be seen as unproportionate when it comes to smaller aid amounts, and introducing a threshold under which discounting is not necessary would be a desirable reduction in administrative burden.

**Point 15 s**

The definition in the proposed GBER is slightly different than in the proposed R&D&I-framework. We find no reason to narrow the definition of the framework. Rather, the definitions in both places needs to be further developed since, amongst other, not all innovation clusters must share common facilities. Further, the definition reflects an overly strict notion of what a cluster is and hinders possible development in this respect. The key issue here is well explained in the definition of aid to innovation clusters in paragraph 12(e) of the draft framework, namely: “tackling market failures linked with coordination problems hampering the development of clusters, or limiting the interactions and knowledge flows within clusters”.

The underlying idea should be something like "clustering" or similar, which refers to dynamism and movement – i.e. the activities and developments conducted within the cluster, not as an organization
viewed from a static perspective. We therefore suggest a more
dynamic wording:

"'innovation clusters' means structures or organised groups of
independent undertakings (such as innovative start-ups, small,
medium and large undertakings, as well as research and
knowledge dissemination organisations, non-for-profit
organisations and other related economic actors) designed to
that continuously stimulate innovative activity by
promoting the sharing of physical or non-
physical facilities and or exchange of knowledge and expertise
and by contributing effectively to knowledge transfer,
networking, information dissemination and collaboration among
the undertakings and other organisations in the cluster;"

15 u
Intangible assets are initially generated by someone, for instance and
aid beneficiary, and there is in our view no reason to exclude this fact
from the definition. We therefore suggest the following wording:

"'intangible assets' means assets generated, or assets acquired
through a transfer of technology, such as patent rights, licences,
know-how or other intellectual property"

Point 15 v
We suggest the following amendment:

"'knowledge transfer' means any process which has the aim of
acquiring, collecting or sharing explicit and tacit knowledge,
including skills and competence in both economic and non-
economic
activities such as research collaborations, consultancy, licensing,
spinoff creation, publication and mobility of researchers and
other
personnel involved in those activities. Besides scientific and
technological knowledge, knowledge transfer includes other
kinds of
knowledge such as knowledge on the use of standards and
regulations
embedding them and on conditions of real life operating
environments and methods for organisational innovation, as well
as management of knowledge related to identifying, acquiring,
protecting, defending and exploiting intangible assets;"
We suggest the following amendment, to first and last sentence more coherent with the:

“‘R&D project’ means an operation that includes activities spanning over one or several categories of research and development defined in this framework, and that is intended to accomplish an indivisible task of a precise economic, scientific or technical nature with clearly predefined goals. A R&D project may consist of several work packages, activities or services, and includes clear objectives, activities to be carried out to achieve those objectives (including their expected costs), and concrete deliverables to identify the outcomes of those activities and compare them with the relevant objectives. When two or more R&D projects are not clearly separable from each other and in particular when they do not have independent probabilities of technological, scientific or economic success, they are considered as a single project.”

Points 15 ee and 18
The wordings in the points 15 ee and 18 are not identical when it comes to describing how economic and non-economic activities shall be separated. In 15 ee it says “...the financing, the costs and the revenues of those economic activities must be accounted for separately”. In point 18, it says that “...the two kinds of activities and their costs, funding and revenues can be clearly separated”. In point 18, the word “activities” are included, which makes the definition a bit unclear.

Point 15 ff
We have no objection against the definition of the term research infrastructure in this point. However, the term is used in several instances later in the document as if the research infrastructure is considered an actor that can perform economic activities on its own. We believe this is not correct – an actor can however be considered performing economic activities using a certain research infrastructure (see for instance point 21).

Point 15 ee
We welcome this new definition. It is a clear step in the right direction, and we are especially pleased with the introduction of the new term innovation intermediary, which as such then also needs to be defined (see new point below). Point 97 could, however, also benefit from clarifications:
“research and knowledge-dissemination organisation’ means an entity (such as universities or research institutes, technology transfer agencies, innovation intermediaries, research-oriented physical or virtual collaborative entities), irrespective of its legal status (organised under public or private law) or way of financing, whose primary goal is to independently conduct (or as for innovation intermediaries, mediate, coordinate, stimulate or otherwise promote such activities) fundamental research, industrial research, or experimental development or feasibility studies, or to widely disseminate the results of such activities by way of teaching, publication or knowledge transfer. (…)"
**Point 25 b**
Here seems to be a contradiction related to the term *market price*. The conditions are that there is no market price. In the first indent, it is then stated that the conditions are fulfilled when the price reflects the full costs of the service plus a margin established by reference to margins commonly applied by undertakings for the service concerned. It seems logical that if there is data on margins that other companies apply, then there indeed exists a market and a market price can be established.

**Point 26**
It is not clearly stated whether the term *market value* in this point corresponds to the definition in point 29. Please clarify.

**Points 25 and 26**
In Sweden, the individual teachers/scientists at the universities retain the rights of their research, instead of the university itself as is common in most other member states. It would be valuable to get a clarification from the Commission in what situations an individual teacher/scientist may be considered being given a direct or an indirect aid and when this is allowed.

**Point 27**
It should not be mandatory that the terms and conditions of a collaboration project must be concluded prior to the start of the project. Even though it is appropriate and usually the case, it should be up to the aid giving authority to decide what is appropriate in the specific case. It is sometimes impossible to complete a comprehensive agreement before some parts of the project is being launched.

**Points 28 – 30**
The comment referring to points 17-22 are relevant here as well.

**Point 28 b**
Translation to Swedish version: We believe "those entities" should be translated to "dessa organisationer" rather than "dessa företag".

**Points 28 c and d**
The term "IPR" should be replaced with "intangible asset" as we assume that all kinds of intangible assets which might have an economic value are referred to, not only those which are legally protected.

**Point 29 c**
Please clarify the meaning of the wording “while considering of its overall objectives”.
**Point 32**
Footnote 32 refers to product, process or organisational innovation. As far as we can see, product innovation is not listed in the definitions in point 15, which perhaps it should at least for the sake of completeness.

**Point 33 d**
Translation to Swedish version: "Den tjänsteleverantör som tilldelas resultat som ger upphov till immateriella rättigheter tilldelas är skyldig..."

**Point 36**
Translation to Swedish version: Replace “vart och ett” with “samtliga”.

**Point 49**
Translation to Swedish version: Replace ”ett stort antal samarbete partner om vissa av dem har särgående intressen” with ”ett stort antal samarbetspartners om vissa av dem har skiljaktiga intressen”, and replace ”sprids” with ”delas”.

**Point 53**
Regarding aid which are covered by the new GBER regulation but are for some reason notified, must these criteria be fulfilled on top of the innovation cluster criterias in the GBER?

**Point 57**
The text refers to article 107.3(c) in the Treaty and that “R&D&I can be authorised when it is necessary to achieve an objective of common interest”. It seems however that this refers to article 107.3(b), while article 107.3(c) refers to aid to facilitate the development of certain economic activities or of certain economic areas.

**Point 59**
It would be much appreciated if the Commission could clarify when this point is fulfilled when it comes to the structural funds.

**Point 80 c**
It says that the repayment should be proportional to the degree of success achieved. Does this implies that repayable advances to a project which later turns out to be a total and complete failure does not have to be repaid at all? Please clarify.

**Point 89**
In this point, the member states are given the possibility to, in case of individual aid, apply substantially higher aid intensity levels than normally allowed. For instance it is indicated that large enterprises can be given aid up to 60% for so called applied research which could consist of experimental research and thus research and development close to the market.

It can be questioned whether there is need to clarify and specify the scope of raised aid intensity levels for aid to R&D&I in this way. It can also be questioned how the Commission has reasoned in establishing these aid intensity levels for each respective category. It can for instance be argued that high aid intensity levels are more appropriate when it comes to aid for projects relating to research infrastructure, rather than to applied research. There is also the fact, as mentioned in the preamble, that resourceful member states and enterprises has better possibilities to fulfil the comprehensive compatibility criterias and put up a convincing case why their very project should be given this favourable treatment. This paragraph should be considered also with point 92 (addressing international competition) in mind, which might constitute additional arguments for increased aid levels, and also the draft Communication on State aid to promote Important Projects of Common European Interest. The Swedish Government emphasize that a strict state aid regime is an important foundation, also in the field of R&D&I. This must not be diverged from in a way that compromises the function of the internal market and might give smaller member states a disadvantage.

**Point 117**

Sweden opposes the obligation of publishing all notified aid measures on a single website as it constitutes too administrative burdens on the member states.

**Point 118**

We suspect that the reference to point 48 in fact should be to point 47.

**Point 119**

Could the Commission give guidance regarding what constitutes “large aid budgets” in this context? Has it for instance the same meaning as “large schemes” in the Commission memo “State aid: Transparency and Evaluation in the draft General Block-Exemption Regulation, European Commission – Memo/13/1175”?

**Annex I. "Eligible costs"**
It would be preferable if the definitions of eligible costs would have identical wordings in the R&D&I Framework and in the GBER, to avoid confusion.

Annex II. "Maximum aid intensities"

We welcome the inclusion of innovation clusters into the GBER, as well as the possibility to provide aid up to 50% of eligible costs and the increased flexibility facilitating payment of cluster aid over time. For clarity reasons, we suggest an amendment which clarifies that Member States’ are free to pay the aid for innovation clusters in the time-frame they see fit.

“*The Member States may decide the more precise conditions pertaining to the distribution of investment aid and operating aid for innovation clusters, including distribution over time, under which the aid shall be paid to the cluster organisation.*”