Response of TNO, Deltares, ECN, MARIN and NLR on the Draft Framework for state aid for research and development and innovation.

Introduction

Through the Federation TO2, the Dutch major research organizations for applied research work together to deliver added value in the field of applied knowledge. The Federation TO2 consists of the Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek or TNO (Dutch Organization for Applied Scientific Research), together with the research institutes of the Wageningen University and the four Dutch Large Technological Institutes (GTIs): (1) the Energy research Centre of the Netherlands (ECN), (2) the Maritime Research Institute Netherlands (MARIN), (3) Deltares and, (4) the National Aerospace Laboratory (NLR).

These institutes play an important role in maintaining and strengthening the international position of Dutch research and innovation. They have gained extensive experience on the application of the EU state aid rules for research and development and innovation in general and the Community framework for state aid for research, development and innovation (hereinafter: "R&D&I") , more specifically. On the basis of this experience, TNO, Deltares, ECN, MARIN and NLR (hereinafter: "the Institutes") would like to provide the following comments on the Draft Framework for state aid for research and development and innovation.

§ 1 General comments

In addition to direct funding by their - public and private – clients, the Institutes receive subsidy from the government of the Netherlands for their non-economic activities, such as the maintenance, expansion and practical application of their knowledge base. The Institutes would like to stress the importance of such public funding for research and experimental development, which is essential to the Federation TO2's primary aim of making fundamental knowledge applicable to the benefit of government, business and society. The Institutes therefore welcome the importance given in the Draft Framework to promoting R&D&I. The Framework explicitly acknowledges access to finance for research and innovation as a key driver to the objectives of smart, sustainable and inclusive growth in Europe.

However, the Draft Framework states that in order for state aid for R&D&I to be compatible with the internal market, it is required that it can be expected to alleviate a market failure. The Institutes expect that compliance with such a requirement could be difficult to demonstrate in practice and could lead to uncertainty with regard to the strategy pursued by the TO2 institutes. The Institutes would welcome a more case-by-case approach on this matter, in which the importance of this requirement is assessed in relationship to the question to what extent the state aid concerned actually contributes to the goals of the EU2020 policy.

Importantly, the whole idea of applied science is to use existing scientific knowledge to develop more practical applications. Stressing the need for market failure in order to receive public funding could in practice lead to a situation in which a TO2 institute would first have to assess to what extent market
failure exists, before even deciding which research areas it focuses on. The Institutes would like to express their concern that a principled approach towards the requirement of market failure could adversely affect the development of applied research in general and its applicability to the government, business and society, more specifically. Therefore it would be helpful if a market failure can safely be assumed in all cases where the goals of the EU2020 policy are clearly furthered by subsidized activity.

§ 2 Research infrastructures

The Institutes furthermore question the maximum state aid intensity of 50 % for the construction and upgrade of research infrastructures, as laid down in Annex II of the Draft Framework. According to the Institutes, such percentage not only appears arbitrary, but would also in practice be far to severe, especially when taken into account the fact that most research infrastructures in Europe have been constructed with up to (close to) 100% public funding. Especially in the field of applied sciences, research infrastructures are often imperative for (first) gaining important knowledge in several research areas of a more fundamental nature, and to subsequently apply such knowledge for more practical applications. The Institutes would like to express their concern that the envisaged rules on research infrastructures would in practice seriously halter the construction of new research infrastructures in the European Union.

Furthermore, with regard to the use of existing research infrastructures, the Framework requires that undertakings using such infrastructures are required to either pay a market price, or, where there is no market price, a price which reflects the full costs of the service plus a margin established by reference to margins commonly applied by undertakings for the service concerned, or is the result of arm's length negotiations aimed at obtaining the maximum economic benefit at the moment when the contract is concluded and covers at least its marginal costs (para. 25 of the Draft Framework). The Institutes would like to express their concern that these requirements could in practice lead to a serious decline of the use of research infrastructures within the European Union at the benefit of research infrastructures in non-EU countries, especially taken into account the often beneficial rules on research infrastructures in countries such as China (and other Asian countries) and the United States.

More generally, by applying a similar approach towards research organizations and research infrastructures, the Framework essentially ignores the important differences between the two categories. In particular, the Institutes doubt whether the dividing line between public and economic activities, as laid down in the Draft Framework with regard to research organizations, can in practice be similarly applied to research infrastructures. In short, the Institutes would prefer a separate set of norms with regard to research infrastructures, on the one hand taken into account the specific characteristics of research infrastructures, on the other hand acknowledging the importance of a global level playing field on this matter. Please note that it is the policy of the Dutch government that infrastructures of the Dutch research organizations are seen as eliminating market imperfections. This gives business (non-discriminatory) access to applied research infrastructure which they themselves are unable to finance.
§ 3 15 percent criterion

The Draft Framework provides that where a research organization or research infrastructure is used almost exclusively for a non-economic activity, all of it may fall outside state aid rules, even if it is also used for a purely ancillary economic activity. In this context, the Framework provides that economic activities are limited in scope where resources allocated each year to such activities do not exceed 15% of the entity's overall annual budget (para. 20). The Institutes first of all would like to stress that such a (strict) percentage not only appears arbitrary but would also be unworkable in practice. More subsidiary, if this requirement is maintained in the final version of the Framework, albeit with a different percentage, the Institutes would like to ask for further clarification on this rule, especially with regard to the term "annual budget", which is not further defined in para. 12. Moreover, the text is unclear where a research infrastructure is operated by a research organisation. Both are defined as an “entity” and therefore the text here fails to discriminate between the annual budget of the research infrastructure and annual budget of a research organization operating it.

§ 4 Miscellaneous

The Institutes would furthermore like to provide the following specific comments.

- Para. 10 of the Draft Framework excludes from its scope firms in difficulty as defined by the Community Guidelines on state aid for rescuing and restructuring firms in difficulty. However, rather than referring to these Guidelines, the Institutes would prefer a specific definition of "firms in difficulty" in the R&D&I Framework, taken into account the specific nature of research organizations;

- Para. 25: the term "contract research" is not defined, the Institutes would like to propose this term to also include "knowledge transfer".

- Para. 22: it is unclear whether both conditions/situations or only one of the two need be fulfilled.

The Institutes would welcome the opportunity to provide further details on the issues raised in this letter in person.