UK response to consultation on draft framework for state aid for research and development and innovation

The UK welcomes the Commission’s approach to aid for Research, Development and Innovation. This is an area with strong market failures at all levels, from the need for support for innovative start ups, to funding for large companies developing cutting edge technologies, the UK therefore welcomes the enlarged range of support which can be block exempted.

Our key concerns arising from this draft R&D&I framework relate to the constraints that may be placed on research and knowledge dissemination organisations seeking to work closely with industry. This close working relationship enables technological breakthroughs to be more quickly and easily brought into industrial use. It also allows research organisations to supplement public income with private income – increasing their ability to fund research in a time when public funds are being cut. It is vital that Universities, Innovation intermediaries and others involved in translational research are able to operate freely in this sphere without unnecessary state aid constraints.

Section 1: Aid measures covered by the framework

Definitions

The UK welcomes the changes to the definition of experimental development at 15(j). This is a helpful explanation of what is included and a greater recognition of what is required in practice which is testing at scale within real world environments which may include commercially useable prototypes.

Similarly we welcome the clarification of Industrial research at 15(q) to indicate that it includes ‘prototypes in a laboratory environment or in an environment with simulated interfaces to existing systems’. Given the differences in interpretation of TRLs between sectors, we support the continuation of the current definition based differential of aid intensities.

We would welcome a simplification of the definition of Feasibility Studies at 15(k). Feasibility studies should be able to evaluate and analysis ideas as well as projects, as the preamble to consideration of a project.

In order to ensure that Research Infrastructures encompasses the full range of RDI based facilities for which there is a recognised market failure, we would welcome the extension of the definition at 15(ff) to include facilities used for ‘translational research’ and also the infrastructure requirements for ‘large scale demonstrators’.

We would also welcome recognition that pre-commercial procurement at 15(aa) is largely governed by EU procurement frameworks. Related to this point, we note that at para 33, pre-commercial procurement is referred to as not an open tender process. We do not believe this is correct.
Whilst Pre-commercial procurement does not have to be advertised in the official journal, it does have to be an open procurement for any organisation in the EU to respond to.

The wording from the Commission’s pre-commercial procurement document is as follows - As pre-commercial procurement concerns R&D services, public purchasers can decide case by case on the openness to worldwide offers and on the relevant conditions, taking into account the full potential of the European Research Area.

Whilst we welcome the clarity that this section brings, it is not clear why it is necessary when pre-commercial procurement it is governed by the EU procurement framework.

Aid Intensities

The UK welcomes the increases to the notification threshold for R&D&I projects. We believe this is a sensible increase to the current levels which will allow more aid to be block exempted but will retain sufficient rigour where required.

Whilst we recognise and welcome the simplification regarding Feasibility studies, we are concerned that a single 50% intensity rate will lead to a reduction in SMEs in particular undertaking studies which to date have had an intensity rate of 75% for pre-Industrial research feasibility studies. Our experience is that there is a greater need for pre-industrial feasibility studies as they are important in helping to address a market failure early on in the innovation journey.

It appears that the bonuses for SMEs and collaboration do not extend to feasibility studies. We would therefore suggest that the 75% intensity rate is introduced or the bonuses are applied to feasibility studies.

We welcome the amendments to the text on recoupment of revenue generated from commercial prototypes, which have aided the practical application of this requirement. However, there are two areas where additional clarity would be helpful:

- The previous wording on netting off any revenues from prototypes/pilots arising during the project against eligible costs to be claimed during the project has not been included. We would like additional clarity as to how revenues generated during the project should be treated.

- That applies only to revenue generated which can be attributed directly to the prototype as a standalone entity, either by being used as the sole means of manufacturing finished goods that are sold to customers by the company that develops the prototype, or prototypes that are sold as products to customers. This will exclude prototypes developed as components for use by the company that developed the prototype or prototypes that used as part of a manufacturing process wherein revenue cannot be solely attributed to the prototype.
Innovation clusters

The proposed notification threshold seems to be low for combined capital and operating support given that clusters are likely to be targeted at high potential growth sectors which are by definition high risk and may have high set up and running costs and high failure rates. In some instances it may be necessary to locate the cluster in an area with high capital and high running costs (such as cities). This means that the €7.5m is likely to be quickly reached within the first few years of the innovation cluster putting the success of the cluster at risk. Equally it may be appropriate to locate a cluster in an area that does not have a stock of suitable premises, in which case there may be a high capital cost in establishing a facility to host the cluster, again leaving little for operating aid.

We would therefore seek to increase the notification thresholds to €15m or to split the notification threshold for capital and operating costs of €10m for capital and €5m for operating costs.

We also call for the permitted duration of block exempted operating aid to be extended to a maximum of 10 years in order to give the cluster sufficient time to develop. This is supported by a number of independent sources, including the Dyson report, Hauser report, the TSB Catapult programme etc. all of whom recognise need to invest at least for 5-10 years in these types of collaboration.

Section 2 – State aid within the meaning of Article 107(1) of the Treaty

As noted above, the UK is concerned that this section as currently drafted may deter research and knowledge transfer organisations from working with industrial partners if there is not greater clarity. This would be a regrettable outcome for both sides as it would reduce the expertise available to industry and the sources of income to public organisations. The current drafting also reduces the distinction between for profit and not for profit organisations.

The problem predominately lies with para 20, which appears to limit the amount of contractual research or other economic activity which a research organisation can carry out to 15% of the total resources of the entity. It is the UK’s view, and it would appear from the rest of this section, as well as previous frameworks, that this is also the view of the Commission, that where there is dissemination of the results and / or a market rate paid (as in accordance with para 25) that there should be no state aid implications. We believe that if these requirements are met there is no advantage from state resources to either the research organisation or the industrial partner.

We therefore would welcome clarity that it is not the Commission’s intention to limit the economic activity of research organisations – so long as meet the definition of research and knowledge dissemination organisation as set out in 15 (ee). It is our preference that the text found in recital 49 of the GBER be used instead of para 20 as we believe that this more clearly sets out the Commission’s intention.
Alternatively, as we do acknowledge that there may be occasions when state funding may be used to support economic activities within research organisations, it may be necessary to amend para 20. This may be the case where the research organisation has created a product which may be commercially viable and where some resources may be used to initiate the commercial activities prior to spin out, or where the market may not support full cost recovery (e.g. services for innovative start ups, or taster sessions for companies who may wish to use the facilities). We would welcome the clarity that a small amount of state resources may be used to support these activities. If this is the meaning of para 20, then we would welcome an amendment to the text to make this clear. We suggest:

*For the purposes of this framework, the Commission will consider that economic activities are limited in scope where public resources allocated each year to such activities do not exceed 15% of the entity’s overall annual budget.*

Section 2.1.2 - With regard to economic activities, we would welcome clarity on whether clauses 22(a) and 22(b) should be conjoined by ‘and’ or ‘or’.

Section 2.2.2 - As regards to collaboration projects, it is standard practice within the UK for terms and conditions of a collaboration project prior to it beginning and so we are able to support this change. We would welcome clarity as to whether this requirement applies just to projects where there is considered to be no state aid (as the following paras 28 & 29 relate to collaborations where there is no state aid) or all projects including those supported through notified schemes.

**Sections 3 - 5 Common assessment provisions**

The UK welcomes the additional guidance provided on the detailed assessment. This is very important in helping granting authorities and undertakings to understand the criteria against which the Commission will assess notifications and to speed up the process of approval.

We welcome the stance taken by the Commission with regard to the proportionality of aid. We particularly welcome the decision to allow higher aid intensities where need can be proven, and recognise that this leads to conversely to a ‘net extra cost’ cap where need can not be proven. We welcome the Commission’s decision to apply this to individually notifiable aid only as the additional complication that this entails would not be appropriate for scheme, particularly fiscal schemes which are awarded automatically.

The UK would welcome consideration of an increase in the intensity level, for SME’s especially, for experimental development. This could be achieved through higher SME bonuses for this type of research. The main driver for suggesting an increase in the percentage for experimental development is the financial constraints faced by those developing offshore renewable energy technologies, particularly wave and tidal energy. There is real issue for the sector at the moment raising the finance for testing of full scale prototype devices and their operation in arrays. The ability of the public sector to help
overcome the market failures and accelerate the development of renewable energy deployment is hampered by the State aid rules. The high capital costs of demonstrators are a particularly constraining factor. Stakeholders believe the state aid rules are constraining investment in the technology needed to achieve Europe’s energy, resource efficiency and climate change objectives. An increase in aid intensity for experimental development for SMEs might be a compromise solution, or an inclusion of such demonstrators within the definition of ‘research infrastructure’.

Section 5.7 – Transparency
We note that the GBER requires that information to be published on regional or national databases whilst the framework requires publication on a single website. We request that, if this measure is to be introduced, that a single text should be used for all regulations and frameworks.

Section 6 – Evaluation
The UK supports the Commission’s desire to improve evaluation of state aid measures and increase the evidence available to assess impact on competition. However, we believe that this should not increase administration burdens on notification and the approach should be tailored to the measure in question. We do not agree that proper evaluation can always be produced within four years of a measure being approved and the renewal of a measure should not be constrained by this requirement. We therefore request that the Commission removes the reference to (of normally four years or less) in para 118.