



EUROPEAN COMMISSION

Brussels, 17.I.2008
C(2008)276

**Subject: State aid No N 373/2007 – United Kingdom
Northern Ireland Spinouts (NISPO): the Young Innovative Enterprise
(YIE) Scheme**

Sir,

1. PROCEDURE

- (1) By letter dated 3 July 2007, registered at the Commission on the same date, the UK authorities notified, according to Article 88(3) of the EC Treaty, the above-mentioned measure, on the basis of the Community Framework for State aid for research and development and innovation¹ (hereinafter: the R&D&I Framework).
- (2) After a first assessment of the information received, the Commission considered the notification to be incomplete and by letter of 20 July 2007 asked the UK authorities for additional information, to which the UK authorities responded on 8 October 2007. The Commission asked for additional information on 29 October 2007, to which the UK authorities responded on 19 November 2007. The UK authorities submitted additional information on 7 January 2008.

2. DESCRIPTION OF THE AID SCHEME

2.1. Objective

- (3) The objective of the notified measure is to encourage growth of early-stage young innovative enterprises in Northern Ireland and facilitate the commercialisation of research and development (hereinafter: R&D) by universities and companies.

¹ OJ C 323, 30.12.2006, page 1

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2.2. Granting and managing authority

- (4) Invest NI, the economic development agency of Northern Ireland, will provide funding to three legal entities, established jointly by Invest NI, the Queens University and the University of Ulster (hereinafter: the Universities): the Queens University Fund (QUB), the University of Ulster (UU) Fund and NITECH 2 Fund (hereinafter: the Funds). The only purpose of the public Funds is to transfer funding to eligible SMEs. The Funds will not be engaged in any other economic activities.
- (5) The Funds will be managed by one independent commercial fund manager, authorised by the Financial Service Authority and selected through an open competition, in accordance with accepted procurement guidelines. The management company will carry out due diligence of potential SMEs and provide support to the Investment Committee of the Funds and will receive market-based remuneration.

2.3. Legal basis, duration and budget

- (6) The national legal basis is the Industrial Development Order 1082 as amended by the 2002 ID Act.
- (7) The duration of the scheme is from the date of the Commission approval until 1 October 2017.
- (8) The total budget of the scheme is estimated at GBP 12 million.
- (9) Aid under the scheme cannot be granted before the approval by the European Commission. The aided activity shall not commence prior to the aid application by the beneficiary.

2.4. Beneficiaries

- (10) The measure targets small enterprises² in Northern Ireland. The beneficiaries shall have been of existence for less than 6 years at the time when the aid is granted.
- (11) The R&D expenses of the beneficiary shall represent at least 15% of the total operating expenses in at least one of the three years preceding the granting of the aid. In the case of a start-up enterprise without any financial history, its R&D expenses shall be certified by an external auditor in the audit of its current fiscal period.
- (12) The scheme is not sector specific. Aid to undertakings in difficulty within the meaning of the Community Guidelines on State aid for rescue and restructuring undertakings in difficulty³ is excluded from the scope of the scheme.

2.5. Maximum amounts and form of aid

- (13) The maximum aid amount is up to EUR 1.25 million per beneficiary. The beneficiary may receive the aid only once during the period in which it qualifies as a young

² As defined in Commission Recommendation concerning the definitions of SMEs, OJ L 124, 20.05.2003, p. 36.

³ OJ C 244, 1.10.2004, p. 2.

innovative enterprise. The aid may be disbursed in several instalments, subject to specific milestones.

- (14) In most cases, the aid will be given in the form of equity investments. The aid may also be granted in the form of a repayable advance and a soft loan. Realisations from investments will either be re-invested in young innovative enterprises under the conditions of the notified scheme or returned to Invest NI and the Universities to carry out their non-economic activities.
- (15) The maximum amount of an equity investment and a repayable advance is limited to EUR 1.25 million per beneficiary, which corresponds to a grant amount. As for debt financing, attempts will be made to provide secured loans at commercial rates. However, unsecured loans with an interest rate subsidy are not excluded. The UK authorities confirmed that the aid element of a soft loan will not exceed EUR 1.25 million per beneficiary.
- (16) The aid element of a soft loan will be calculated as the difference between the market interest rate and the interest rates charged to the beneficiary. A loan payable in several instalments shall be discounted to its value. The interest rate (the base rate and the risk premium) to be used for discounting purposes and for calculating the aid amount of a soft loan will be defined according to the applicable Commission definition of the reference and discount rates⁴. The risk premium shall correspond to the market premium for similar types of unsecured loans for young innovative enterprises.

2.6. Cumulation

- (17) The UK authorities confirmed that the scheme complies with the cumulation provisions of the R&D&I Framework. Aid received under the scheme may be cumulated with aid under the R&D&I Framework, R&D&I aid exempted by Regulation (EC) No 364/2004 and risk capital aid. The beneficiary may receive State aid other than R&D&I aid and risk capital only 3 years after the granting of the young innovative enterprise aid. Cumulation with other aid is subject to the most favourable ceiling under the applicable rules.

2.7. Reporting and monitoring

- (18) The UK authorities confirmed compliance with the reporting and monitoring requirements of section 10 of the R&D&I Framework. The UK authorities undertook to submit annual reports on the implementation of the notified aid scheme. The annual reports will contain information on the name of the beneficiary, the aid amount per beneficiary, the aid intensity and the sectors in which the aided projects are undertaken. The UK authorities committed to communicate the internet address to the Commission where the full text of the scheme will be published. The scheme will not be implemented until the information has been published on the internet.

⁴ The Commission notice on the Method for Setting the Reference and Discount Rates, OJ C 273 of 9.9.1997, p. 3.

3. EXISTENCE OF AID

3.1. Elements of Aid

(19) The Commission has assessed the existence of aid in relation to Art.87 and Article 61 (1) of the EEA Agreement. In order for a measure to fall within the scope of Article 87(1) EC Treaty, the following four cumulative criteria must be met in order to establish that the notified scheme constitutes state aid:

- measure must involve the use of State resources;
- measure must distort or threaten to distort competition by conferring an advantage on the beneficiary;
- advantage must be selective in that it is limited to certain undertakings or the production of certain goods;
- measure must affect trade between Member States.

(20) Insofar as support is provided to enterprises engaged in an economic activity, the proposed scheme falls under Art.87 (1) EC Treaty. The notified scheme is funded from Invest NI and therefore through State resources. By providing the aid to certain small innovative enterprises the notified scheme gives a selective advantage to these undertakings. The undertakings concerned may operate on markets subject to intra-community competition. The scheme improves the position of the recipients in relation to their competitors in the EU. Consequently, the scheme affects the trade between Member States. Insofar as support is provided to enterprises engaged in an economic activity, the scheme therefore constitutes state aid within the meaning of Article 87 (1) of the EC Treaty.

3.2. Lawfulness of the aid

(21) By notifying the measure before its implementation, the UK authorities have fulfilled their obligations under article 88(3) of the EC Treaty.

4. ASSESSMENT

(22) The notified scheme provides aid for young innovative enterprises, which is subject to the R&D&I Framework. Pursuant to section 2.1 of the R&D&I Framework, it does not apply to aid for undertakings in difficulty within the meaning of the Community Guidelines on State aid for rescue and restructuring undertakings in difficulty⁵. As indicated above (point 2.4, paragraph 12), such undertakings will be excluded from the scope of the scheme.

4.1. Beneficiaries

(23) According to point 5.4 of the R&D&I Framework, the beneficiary must be a small enterprise⁶ that has been in existence for less than 6 years. The beneficiary may receive

⁵ OJ C 244, 1.10.2004, p. 2.

⁶ OJ L 124, 20.05.2003, p.36.

the aid only once during the period in which it qualifies as a young innovative enterprise.

- (24) Point 5.4 of the R&D&I Framework further stipulates that the beneficiary is an innovative enterprise, on the basis that it plans to develop products, services or processes which are technologically new or substantially improved, as approved by an external expert, or on the basis that the R&D expenses of the beneficiary represent at least 15% of its total operating expenses in at least one of the three years preceding the granting of the aid.
- (25) The eligible beneficiaries, the definition of an innovative enterprise (point 2.4) and the restriction to grant aid only once (point 2.5, paragraph 13) comply with the provisions of point 5.4 of the R&D&I Framework.

4.2. Maximum aid amount

- (26) According to point 5.4 of the R&D&I Framework, the aid shall not exceed EUR 1 million per beneficiary. This aid may not exceed ER 1.5 million in regions eligible for the derogation in Article 87(3)(a) of the EC Treaty, and EUR 1.25 million in regions eligible for the derogation in Article 87(3)(c) of the EC Treaty. Considering that Northern Ireland is eligible for the derogation in Article 87(3)(c) of the EC Treaty⁷, the maximum aid amount under the scheme may not exceed EUR 1.25 million per beneficiary.
- (27) As indicated above (point 2.5, paragraph 13), the amount of an equity investment and/or a repayable advance will not exceed EUR 1.25 million per beneficiary. This amount corresponds to the maximum grant amount eligible under the scheme. Therefore, aid in the form of equity and/or a repayable advance is in compliance with point 5.4 (c) of the R&D&I Framework.
- (28) Pursuant to point 2.2(c) of the R&D&I Framework, where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. The aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount of a soft loan shall be the reference rate, calculated in accordance with the Commission notice on the method for setting the reference and discount rates⁸. According to the notice, in situations involving a particular risk the base rate may be increased. In such cases, the premium may amount to 400 basis points or more if no private bank would have agreed to grant the relevant loan. The aid element of a soft loan (point 2.5, paragraph 16) is calculated in line with the provisions of point 2.2(c) of the R&D&I Framework and the Commission notice on Reference and Discount Rates.
- (29) The Commission can therefore conclude that the scheme does not exceed the maximum aid ceilings set forth in point 5.4 of the R&D&I Framework.

⁷ Commission decision N 673/2006, National regional aid map: UK. OJ C55, 10.3.2007, p. 2.

⁸ The Commission notice on the Method for Setting the Reference and Discount Rates, OJ C 273 of 9.9.1997, p. 3.

4.3. Cumulation

- (30) Section 8 of the R&D&I Framework stipulates that, where the expenditure eligible for aid for R&D&I is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the applicable rules. This limitation does however not apply to aid granted in accordance with the Community guidelines on State aid to promote risk capital investments in SME⁹. R&D&I aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in the R&D&I Framework. In addition, under point 5.4 of the R&D&I Framework, the young innovative enterprises aid cannot be cumulated with any other State aid other than R&D&I aid and risk capital aid until 3 years after the granting of the young innovative enterprise aid.
- (31) The cumulation rules of state aid under the scheme, as indicated above (point 2.6), are in compliance with section 8 of the R&D&I Framework.

4.4. Incentive effect and individual notification requirements

- (32) As required by section 6 of the R&D&I Framework, State aid must have an incentive effect, i.e. result in the recipient changing its behaviour so that it increases its level of R&D&I activity. As for aid schemes, where the aid is for young innovative enterprises the incentive effect is automatically met, provided the aided activity has not commenced prior to the aid application by the beneficiary. The aid shall not be granted prior to the application, as indicated above (point 2.3, paragraph 9). Therefore, the scheme complies with point 6 of the R&D&I Framework.
- (33) Point 7.1 of the R&D&I Framework sets forth the individual notification thresholds in the range from EUR 7.5 million to EUR 20 million per undertaking per project. The maximum aid amount under the scheme is EUR 1.25 million per beneficiary, which does not exceed the individual notification thresholds under point 7.1 of the R&D&I Framework.
- (34) The Commission can therefore conclude that the scheme complies with the incentive effect and individual notification requirements of the R&D&I Framework.

4.5. Transparency

- (35) Pursuant to point 10.1.1 of the R&D&I Framework, annual reports must be submitted to the Commission, specifying the name of the beneficiary, the aid amount per beneficiary, the aid intensity, the sectors of activity where the aided projects are undertaken. Point 10.1.2 of the R&D&I Framework requires the full text of all final aid schemes to be published on the internet and the internet address of the publication to be communicated to the Commission. The scheme must not be applied before the information is published on the internet. Point 10.1.3 of the R&D&I Framework stipulates that detailed records regarding the granting of aid for all R&D&I measures must be maintained for 10 years.
- (36) The reporting and monitoring provisions of the scheme (point 2.7), are in line with point 10.1 of the R&D&I Framework. The Commission can therefore conclude that the scheme complies with the transparency requirements of the R&D&I Framework.

⁹ OJ C 194, 18.8.2006, p. 2.

4.6. Conclusion

- (37) The Commission therefore concludes that the measure is eligible for compatibility under Article 87(3) (c) of the EC Treaty given that the measure is in line with the Community Framework for State aid for Research and Development and Innovation.

5. DECISION

- (38) The Commission finds that the aid granted on the basis of the notified scheme Northern Ireland Spinouts (NISPO): the Young Innovative Enterprise (YIE) Scheme is compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement and has accordingly decided not to raise objections to the notified measure.
- (39) The Commission reminds the UK Government that, in accordance with Article 88 (3) of the EC Treaty, all plans to refinance and change this aid scheme have to be notified to the Commission.
- (40) Prior to implementing the scheme, the UK Government shall publish the full text of the final aid scheme on the internet and communicate it to the Commission.
- (41) The Commission further reminds the UK Government to submit annual reports on the implementation of the notified scheme.
- (42) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B – 1049 Brussels
Fax No.: +32 2 296 12 42

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission