Revision of the EU R&D&I Framework
Enterprise Ireland Submission to Consultation
June 2021

1. Introduction and Overview

On 8 April 2021, the European Commission published the text of the draft new State aid Framework for research and development and innovation and launched a public consultation inviting all interested parties to comment on the proposed revisions.

Enterprise Ireland welcomes the opportunity to contribute to this consultation. This document has been developed in response to the consultation, and sets out a number of proposals for consideration, which seek to ensure that the RDI Framework continues to effectively enable Member States to support innovative, disruptive projects that will contribute to a sustainable future for all.

2. Proposals for Amendment to the draft RDI Framework

The proposals are set out are as follows.

2.1 Revision to Restrictions on Firms/Undertakings in Difficulty
2.2 Exemption from Firm/Undertaking in Difficulty Definition for Seal of Excellence Recipients
2.3 Review of Aid Intensities for Large Company Supports Including Increased Aid Intensities for Small Mid-Cap and Mid-Cap Enterprises
2.4 Increased Aid Intensity for Technology Infrastructures
2.5 Clarity on the Definition of Additional Overheads and Other Operating Expenses
2.6 Retrospection of Certain Supports
2.7 Increased Clarity on Aid for Innovation Clusters
2.8 Increase Aid Intensities for Innovation Clusters

2.1 Revision to Restrictions on Firms/Undertaking in Difficulty

Context

Article 1.1, Paragraph 12 of the draft RDI Framework excludes "firms in difficulty" (as defined in Community Guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p. 2.) from aid for R&D&I.

Issues

We note that there are slight differences in the definition of Undertaking in Difficulty utilised in GBER, as opposed to that utilised in the Guidelines on Rescue and Restructuring. GBER currently allows companies in their first three years to be eligible for State aid funding regardless of their Balance Sheet figures.

A particular challenge in the context of providing timely and adequate support for enterprises dealing with the ongoing negative impact of Covid-19 is the definition of Firms in Difficulty and the definition of Undertaking in Difficulty, as set out in Article 2(18) of Commission Regulation (EU) No 651/2014 (GBER). While Enterprise Ireland fully endorses the underlying position that State funding should not be directed towards businesses that are likely to fail, it is our experience that, in certain circumstances, application of the current definition is leading to the exclusion of viable businesses with real growth potential from much needed support – in essence, many high-growth companies' Balance Sheets continue to fail the undertaking in difficulty Balance Sheet test for a number of years beyond three years from incorporation, for the very reason that these R&D intensive companies are investing in the future and have the highest chance to scale ambitiously and provide sustainable employment underpinned by deep disruptive proprietary knowledge gained through investment for a number of years.

This experience is particularly true for start-up enterprises and those in high tech sectors whose business model depends on the creation of valuable proprietary R&D in their early years. Such businesses are not dependant on State support for their survival; however, intervention by the State can be the necessary catalyst to accelerate their development.

International analysis of high growth companies that would have been deemed Undertakings in Difficulty a number of years ago demonstrates that a significant number of these enterprises are still viable today, with a significant portion of them being outstanding drivers of economic growth and job creation. In 2018, a group of development agencies from different European countries performed an analysis on the RDI support portfolio of one Member State in the period 2011-2016. This scheme was selected as support was granted using a scheme based a full notification procedure with approval from the Commission rather than GBER. When the conditions of the present GBER were applied to this portfolio in a simulation study, 10% of the companies that were supported in the period under analysis fell under the UID definition. Compared to the control group, this group contains mainly young companies and a high number of cash burners. Around 90% in this group was still active in 2018, indicating that these companies, although qualified as 'undertaking in difficulty', were in fact economically viable.

Proposal

To ensure consistency between aid awarded under the RDI Framework and aid awarded under GBER, which offers a more dynamic definition, it is proposed that the Article 1.2 Paragraph 12 is amended to reflect:

Aid may not be granted to undertakings that are in difficulty (within the meaning of the General Block Exemption Regulation).

Also, based on actual patterns of company growth in certain sectors, we believe that the extension of the three-year timeframe to ten years for R&D intensive companies should be given serious consideration. In the high tech and med tech industries it is unusual for ultimately successful companies to generate meaningful sales figures within seven years.

Additionally, we are proposing that the Framework is altered to allow support to undertakings classed as undertakings in difficulty between 1 January 2020 and 31 December 2021 if they were not in difficulty on 31 December 2019. While the newly extended GBER Regulation, which came into effect on 27 July 2020, provided that undertakings classed as undertakings in difficulty between 1 January 2020 and 30 June 2021, can still receive aid if they were not in difficulty on 31 December 2019 it is now clear that the disruption to economic activity will not have subsided by June 2021 and will continue into Q3 and Q4 2021.

2.2 Exemption from Firm/Undertaking in Difficulty Definition for Seal of Excellence Recipients

Context

The Seal of Excellence is a quality label awarded to project proposals submitted to Horizon Europe, the EU's research and innovation funding programme until 2027 and the previous programme, Horizon 2020, to help these proposals find alternative funding.

Projects, which were judged to deserve funding but ultimately did not receive EU supports due to budget limits, receive the Seal of Excellence. The label recognises the value of the proposal and helps other funding bodies take advantage of the Horizon 2020 / Horizon Europe evaluation process.

Issue

Proposals that have received the Seal of Excellence label have been deemed to be highly innovative, have significant business potential and could disrupt existing markets. However, under the current RDI Framework and GBER, enterprises that have received the Seal of Excellence are blocked from receiving aid for R&D&I if they are “undertakings in difficulty” as defined in Article 2.1 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2.) And Article 2(18) of Commission Regulation (EU) No 651/2014 (GBER).

Proposal

It is proposed that the draft RDI Framework and GBER are amended so that proposals that have received the Seal of Excellence quality label can receive Member State aid funding for R&D&I even if the enterprise carrying out the project falls under the “undertaking in difficulty” definition. It would also be helpful if it was noted that the award of Seal of Excellence does not guarantee successful outcomes from applications for Member State funding.

2.3 Review of Aid Intensities for Large Company Supports Including Increased Aid Intensities for Small Mid-Cap and Mid-Cap Enterprises

Context

When allocating maximum aid intensities, the proposed RDI Framework treats small and medium sized undertakings favourably in comparison to large undertakings, recognising the advantages that large enterprises have over SMEs. However, several anomalies have arisen over the past 7 years in relation to the treatment of large enterprises under the RDI Framework.

Issues

• **Equal treatment of all large companies does not distinguish between marginally large enterprises and truly large MNCs:** Treating enterprises with 250 employees the same as those with 10,000 employees fails to recognise the relative disadvantage that relatively small enterprises that are categorised as large enterprises face when compared to truly large multi-national corporations. Smaller large companies have less resources at their disposal, are more affected by market failures, and are more in need of State support to incentivise research, development, and innovation activities. Increasing the maximum aid intensity for smaller large companies would result in more ground-breaking RDI being undertaken, having the potential to improve the quality of life of all Europeans whilst not necessarily being so large to result in the distortion of EU competition. It would also provide a more level-playing field for smaller large companies who compete with truly large MNCs.

• **Aid for process and organisational innovation:** The maximum aid intensity for large companies for process and organisational innovation is particularly restrictive – the aid intensity for eligible costs is 15% for large companies compared to 50% for SMEs. Additionally, aid to large undertakings is only eligible if they effectively collaborate with SMEs. Large companies seeking to update their processes in line with the EU's Green Deal and Digital Europe Communication face significant costs which they might not be able to address meaningfully without increased State support. It is also worth noting that smaller large companies face a constant pressure to become more efficient to compete with large multi-national corporations from within and outside the EU who have considerably more resources at their disposal – in this instance, the equal treatment of all large companies potentially does more harm for EU competitiveness than good.

Proposal

It is proposed that consideration is given to increasing RDI support for certain large companies. In particular, it is proposed that small mid-cap undertakings (those with up to 499 employees) and mid-cap undertakings (those with up to 1,500 employees[1]) are allowed preferable maximum aid intensities by distinguishing them as a separate type of enterprise to large companies in Annex II of the RDI Framework. Where the maximum aid intensity that can be granted to an enterprise is differentiated by size it is proposed that:

- Aid for small mid-cap sized enterprises is 7.5 percentage points higher than aid for large enterprises.
- Aid for mid-cap sized enterprises is 5 percentage points higher than aid for large enterprises.

Additionally, it is proposed that the maximum aid intensity that can be awarded to large enterprises for process and organisational innovation is increased to 25%, with small mid-cap and mid-cap sizes

[1] Guidelines on State aid to promote risk finance investment https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0122(04)&from=EN

enterprises having a maximum aid intensity of 40% and 35% respectfully. It is also proposed that the requirement for effective collaboration between large undertakings and SMEs is removed.

2.4 Increased Aid Intensity for Technology Infrastructures

Context

The draft RDI Framework provides a useful definition of technology infrastructures (Article 1.3, Paragraph 17 (ll)) and clarifies that aid for the construction and upgrade of technology infrastructures is covered by the RDI Framework. Enterprise Ireland welcomes the inclusion of these provisions; technology infrastructures are a vital resource for enterprises looking to develop innovative technologies and products. In Enterprise Ireland’s experience, technological developments can be as impactful as research infrastructures in driving Europe’s international competitiveness and delivering on growth ambitions, particularly in the areas of digitalisation and green technologies.

Issue

Technology infrastructures require large scale investment to establish and maintain alignment with the latest technological developments. For various reasons, including the lack of immediate commercialisation opportunities, the market does not reliably provide the necessary investment. While the draft RDI Framework provides for aid for the construction and upgrade of technology infrastructures, the relevant maximum aid intensity set out in Annex II is 25% (compared to 50% for aid for the construction and upgrade of research infrastructures). This is a relatively low intensity rate and does not distinguish between technology infrastructures that are at different stages of their development.

Proposal

It is proposed that the 25% aid intensity for the construction and upgrade of technology infrastructures is reviewed. Enterprise Ireland is of the opinion that an aid intensity of between 35-50% would be more effective in addressing market failures and ensuring that technology infrastructures are as effective as possible in delivering the EU’s ambitious digital and green objectives.

It is also proposed that the Commission distinguish between investment aid for the construction of technology infrastructures and investment aid for the upgrade of technology infrastructures, providing for a more favourable aid intensity at the initial construction stage. Allowing a more favourable aid intensity for the construction of technology infrastructures addresses evident market failures and ought to facilitate infrastructures that face significant challenges to establishment.

2.5 Clarity on the Definition of Additional Overheads and Other Operating Expenses

Context

Annex I of the draft RDI Framework sets out the eligible costs for aid for R&D projects. “Additional overheads incurred directly as a result of the project” and “other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the project” are included.

Issue

A lack of clarity exists surrounding what exactly does and does not constitute an "additional overhead" and "other operating expenses" i.e. how exactly can a cost be demonstrated to have been incurred directly as a result of a project. This ambiguity may result in Member States granting aid that is incompatible with the RDI Framework despite their best efforts to follow the rules, or, indeed, failing to offer appropriately high levels of aid against appropriate eligible costs, thereby reducing the effectiveness of the measure in driving behaviours. It is possible that this uncertainty has led to inconsistent application of the rules between Member States.

Proposal

It is proposed that the Commission include an expansive definition of "incurred directly as a result of the project" in the RDI Framework and provide guidance on how a cost can be considered to have incurred directly as a result of a project.

It is also suggested that the Commission provide a list of "typical examples" of what can be considered additional overheads and other operating expenses either in the new RDI Framework, an amended version of GBER or in an official explanatory note/FAQs.

2.6 Retrospection of Certain Supports

Context

The draft RDI Framework does not allow for the retrospective funding of projects.

Issue

It is important for State aid to have an incentive effect. However, circumstances may arise such as a public health emergency where accelerated research is needed.

Proposal

The Temporary Framework for State Aid Measures to Support the Economy in the Current Covid-19 Outbreak introduced some specific measures, under Section 3.6, that allowed for a limited degree of retrospective funding of projects in particular circumstances. The flexibility afforded by this measure ensured the acceleration of some research projects which were fundamental to advancing research into Coivd-19. It would be useful if the RDI Framework was designed to allow similar flexibility in circumstances where it is warranted.

A potential way to do this could be to limit the amount of funding that is eligible for retrospection to 20% of eligible costs of an RDI project that have occurred in the previous six-eight months from the date of granting.

2.7 Increased Clarity on Aid for Innovation Clusters

Context

Enterprise Ireland welcomes the change to the definition of “innovation clusters” as provided in Article 1.3, Paragraph 17(t) of the draft RDI Framework, and in particular the inclusion of Digital Innovation Hubs within this definition.

Issue

Article 1.2, Paragraph 14 (f) sets out what constitutes “aid for innovation clusters”. It states:

The fees charged for using the innovation cluster's facilities and for participating in the innovation cluster's activities shall correspond to the market price or reflect their costs (including a reasonable margin). To facilitate access to the innovation cluster facilities or participation in the innovation cluster’s activities, access can be offered at reduced prices in compliance with State aid rules as applicable to the users of the services provided by the innovation cluster.

In separate EU Commission commentary on the operation of European Digital Innovation Hubs, it is noted that “from a State aid perspective, the total amount of Member State financing/grants needs to be passed on.” Additional clarity in the practical application of these principles within the context of funding and structuring innovation clusters would be useful.

Proposal

It is proposed that additional clarity is provided in relation to how State aid could be passed on by European Digital Innovation Hubs which operate via innovation clusters.

2.8 Increase Aid Intensities for Innovation Clusters

Context

The draft RDI Framework sets the maximum aid intensity for innovation clusters at 50% for investment aid (with increased provisions for clusters in assisted areas) and 50% for operating aid.

Issue

The aid intensities set out for aid for innovation clusters do not appear to be sufficiently high to incentivise behaviors to a significant extent. Growing and supporting innovation clusters have been proven to increased collaboration at sectoral and regional level between SMEs, large companies and research institutions, leveraging greater economies of scale and enhancing the skills levels of SMEs than would be achieved by enterprises operating by themselves. Overall, increasing the visibility of, engagement with, and utilisation of, clustering structures will lead to a strengthened European SME and entrepreneurship base. However, there are significant investment and operating costs associated with cluster formation and development. In particular an issue that has arisen is the difficulty SMEs face in paying membership subscriptions to co-funded innovation clusters.

Proposal

It is proposed that the maximum aid intensity for investment aid for innovation clusters in non-assisted areas is increased from 50% to 65% with higher intensities available in assisted areas.

It is also proposed that the aid intensity for operating aid for innovation clusters is amended as follows, allowing for higher aid intensities to innovation clusters at early stages of their development:

- 100% aid intensity available for innovation clusters in their first year of operation.
- 80% aid intensity available for innovation clusters in their second and third year of operation.
- 50% aid intensity for all innovation clusters older than three years.

3. Conclusion

Enterprise Ireland is broadly supportive of the Commission's proposed amendments to the RDI Framework. In this document we have made a number of proposals that ought to increase the effectiveness of the RDI Framework in assisting Member States rebuild their economies following the long economic shock caused by the Covid-19 outbreak, while also helping Member States offer appropriate incentives and support to entrepreneurs and SMEs to engage in R&D&I, ensuring the building blocks for the future economy will be put in place

It is the belief of Enterprise Ireland that the amendments proposed will better enable Member States to positively support disruptive R&D&I that will benefit all of Europe and support the Green and Digital Objectives.