



ASD position on the revision of the Communication on Research, Development and Innovation State aid

ASD welcomes the new draft RDI State aid framework and would like to provide its contribution to the finalization of these rules by setting out the following elements.

1. As a first point, we would like to stress our **key concern, which relates to the coverage of indirect costs** (para. 81 of the draft framework). The 2014 Framework did not contain to our knowledge any provision on the admissible level of indirect costs (cf. para. 75). We consider that this approach was the right one and should be maintained. Indeed:

- As has been the case under all previous versions of the Framework, Member States should remain free to determine the methodology and thresholds that they consider relevant and want to apply in relation to the calculation of indirect costs.
- Although the introduction of such a threshold is presented as an alternative option, it is likely that it will become over time the applied standard as opting for the real cost approach will need to be supported by specific evidence and information, which will most probably result in long and complex discussion with the European Commission that will slow down or even block the review of the aid project.
- If confirmed, this 15% flat rate proposal would be extremely low, even when compared to existing standards, including at the EU level. The Commission is rightly focusing its efforts on trying to restore a level playing field with competitors supported outside of the EU. It is clear that the introduction of such cap will deepen the gap to the detriment of EU players, as our competitors do not face any such type of constraint or complexity in their Home States.
- This would unduly constrain the access to national funding of EU companies, introduce unnecessary complexities and completely ignore the present situation of these companies. In particular, the Covid crisis has left companies in our sector with a far lower ability to co-fund activities, notably in RDI, despite the fact that such activities will be indispensable to successfully achieve the green and digital transitions.
- Introducing such fundamental change in the ability of all Member States to determine the funding conditions of companies through a non-legislative communication does not appear appropriate.

We therefore consider that the proposed paragraph should be redrafted as follows:

"the eligible costs shall be supported by the most recently available documentary evidence which shall be clear and specific. They should be established on the basis of normal accounting practices, must comprise only eligible R&D project costs listed in Annex I, and must be duly justified."

2. Generally speaking, RDI State aid rules will significantly contribute to the achievement of the **EU industrial sovereignty and technological leadership**, while taking into account EU priorities and respecting the rules of competition and of the internal market, in the context of a global level playing field.

In this perspective, paragraphs 1 to 10 introduce very welcomed references to other policies and EU priorities, providing a good basis for an **improved transversality in implementation of EU policies**. For the same reasons, paragraph 124 is welcomed. Here, however, mentioning the contribution to the digital revolution should be done at the same level as the reference to reduction of GHG emissions. A reference to the **EU industrial strategy** would be very relevant and consistent.

3. **Co-funding**: it is important to take fully into account the fact that the Covid crisis has left companies in our sector with a **far lower ability to co-fund capacity**, notably for RDI, despite the fact that such activities will be indispensable to successfully achieve the green and digital transitions. One could for instance consider the inclusion in the RDI framework of a **specific green bonus**, which could be made available in cases where the degree of risk and of contribution to the Green Deal agenda would be particularly significant.

4. This will be all the more important as **support received by non-EU competitors** from their home States and their corresponding time-to-market is enormous¹ should be fully taken into account in the context of the compatibility analysis: the draft Communication here makes a **welcomed reference to the upcoming instrument on international subsidies and level playing field**.

What could be of interest would be to go **beyond the 3 years** period, to reach up to 5 years or even to take into account the life cycle of the product concerned. Providing for a practical process to allow communication by industry of sensitive confidential information elements to the Commission would help in collecting the relevant evidence.

5. In general, we consider that the **competition impact analysis should be more front and centre**, and not only one element among others in the aid compatibility assessment. This would allow to quickly identify cases which could raise concerns on the market and to treat in a quicker and smoother manner the other cases. It would also be **consistent with other developing tools, such as the proposed regulation**

¹ See the recent announcement of a multi trillion US support plan to the green agenda.

on foreign subsidies, where competition analysis will be the key item.

In addition, we note that the **drafting of the first sentence of paragraph 114²** is too wide on discriminations. This can be excessive and should be better framed.

6. With respect to footnote 12 (**definition of RDI categories³**), we insist on the importance of reaching more favorable compatibility assessments for the research / maturity levels of EU priority technologies **closest to the market**, also with reference to the recently proposed **IPCEI** definitions of "*first industrial deployments, pre-commercial or non-marketable prototypes*". These activities involve high risks for the realization or completion of the activities, the cost of which is so high that it cannot be absorbed by the subsequent serial production and in which the prototype development takes place in the product intended for sale.

6. The analysis of **counterfactual scenarios** is by nature complex; this is even more the case concerning projects involving important numbers of participants, such as RDIs projects. Undue administrative burden should be avoided in this respect, as well as uncertainty as to financing accessible (which can vary based on the counterfactual scenario parameters).

7. The inclusion of new end sentences in para. 22, relating to the **10 years monitoring** and the characterization of the whole funding as State aid have been added. Although we understand that a 10 year requirement may be consistent with existing EU rules, this would create a heavy administrative burden as well as potential uncertainty.

8. Para. 101 (**transparency** and Member State reporting): the threshold is reduced from 500K currently to 100K. Although we are not aware of the reasons underlying this reduction, we fear that this could create undue exposure for our States and EU financing and increase vulnerability towards non-EU stakeholders.

Signed by Jan Pie, ASD Secretary General, on June 1st, 2021

² "In particular, according to the general principles of the Treaty, State aid cannot be considered compatible with the internal market if the aid measure is discriminatory to an extent not justified by its State aid character": this very open language could extend well beyond the traditional nationality/national content/location discriminations, which are targeted in the rest of the paragraph, and could therefore create significant uncertainty.

³ "The Commission considers that it is useful to maintain different categories of R&D activities regardless of the fact that those activities may follow an interactive model rather than a linear model."