Verband der Chemische Industrie e.V. Wirgestung Zukunft (Association of Chemical Industry).

VCI OPINION

European Commission consultation on the EU framework for state aid for research and development and innovation

The VCI has already participated in the Roadmap consultation on the revision of the EU Framework for State aid for Research and Development and Innovation (2014/C 198/01).The points raised in the previous position have not been taken up in the present draft, and the VCI therefore calls for the following points to be taken up again.

Chapter 2.2 of the Union Framework regulates the admissibility and limits of indirect State aid granted to undertakings through publicly funded research and knowledge dissemination organisations and research infrastructures.The geographical breakdown distinguishes between:

1. Contract research or research service provided by a research organisation or research infrastructure (Chapter 2.2.1).In contract research, the company usually sets the terms of the contract, owns the results of the research activity and bears the risk of failure.
2. Cooperation between a research organisation or research infrastructure and undertakings (Chapter 2.2.2).In the context­of research cooperation, the partners shall pursue a common objective, define jointly the subject matter of the project, contribute to its design, contribute to its implementation and share the financial, technical, knowledge­and other risks associated with it, as well as the results achieved.

The EU framework is therefore of considerable importance for the cooperation of companies in the chemical-pharmaceutical industry with the scientific community.In practice, there have been some serious problems that make it difficult for industry and academia to work together.Identify:

* Different interpretations of the terms “contract research” and “cooperation” in Chapter 2.2.
* The amount of overhead flat rates applied by the scientific community in the context of the overall cost calculation for research contracts required under the State aid framework.
* “Insufficient” incentives for research and development activities due to the too low thresholds in the GBER under which support is exempted.



In addition, the Union framework is of major importance for the international competitiveness of the European research landscape and for the opening up of new markets.Therefore, the following rules should be adapted:

* Revision of the correlation clause (Chapter 4.5.2, point 92)
* Relaxing the rules for opening up new markets
* Introduction of Regulatory Sandboxes

Delineation of research assignments and research collaborations

Possible interpretations of the­distinction to be made between contract research and research services under the current State aid framework, on the one hand, and research cooperation on the other, give rise to legal uncertainty, as a result of which it is observed that some of the university leaders and directorates of­non-university research institutions tend to treat joint projects with undertakings legally and in terms of costs as ‘contract research’, even if it is a ‘cooperation’ within the meaning of Chapter 2.2.2 of the Union framework for research and innovation.The financial flows to the scientific institutions on the basis of “full cost accounting” are higher, which is likely to be in the interest of the management of universities/research institutions.

The interpretation described seems to be favoured by the fact that some tax administrations or governments of some Länder expect (or from the point of view of university/research institutions’ management) to consider forms of cooperation with industry rather than contract research.This relieves the state budget and is also subject to VAT.

In the view of the VCI, in addition to actual contract research or research services within the meaning of Chapter 2.2.1 of the EU Framework for Research, Development and Innovation, there are many joint research projects between science and companies in the chemical-pharmaceutical industry, which under State aid law should be regarded as ‘cooperation’ (research cooperation under Chapter 2.2.2.) and should be treated accordingly.The allocation of project costs and the exploitation of intellectual property must then be negotiated on a case-by-case basis.

On the other hand, it is also observed, conversely, that in the case of contract research or research services within the meaning of Chapter 2.2.1, some universities and research institutions interpret these projects as research cooperation funded by the industrial partner, with the corresponding consequences for the rules on the ownership and exploitation of work results.



It should also be noted that the interpretation of the State aid framework is uneven across the EU Member States.Different criteria appear to be applied here, in particular as to what is to be regarded as contract research and what is to be regarded as research cooperation.From the point of view of the VCI, it would be desirable to have a more legally secure definition of the terms, for example in the form of an aid to interpretation.

Overhead fixed amounts for research contracts

In general, the application of the concept of market price, as used several times in Chapter 2.2 of the Commission Communication, raises problems.This is mainly due to the fact that the term is not clearly described, thus making it difficult for the parties to agree on a widely differing understanding of the market price.There is sometimes little realistic assessment of the market price or the research partner wants to negotiate only when an invention is used in the market.However, this is difficult for the industrial partner to demonstrate, inter alia because it is difficult to assess whether the results of the research can be commercialised at all on realistic commercial terms.

In addition, the overhead flat rates applied by university management for research assignments to be paid in addition to the project costs (mainly for PhD) now reach a flat rate within a range of 30 % to 230 %.This makes business cooperation with science unprofitable in an increasing number of cases.Moreover, the range of 30 % to 230 % of overhead flat rates for non-fundamentally different scientific institutions in the cost structure suggests that many scientific institutions have developed their own approach on how to calculate the flat rates.It is necessary to consider whether a ceiling of 30 % should be set here.

According to the VCI’s assessment, when calculating the overhead flat rates for cooperation with industry, the university management seems to use the basis of assessment for a ‘full cost calculation’ very broadly.

From the VCI’s point of view, the overhead flat rates should relate to the project in question (e.g. rent, maintenance, HR) and include1 > 2.

A comparison of the overhead flat rate for research contracts with the DFG programme flat rate should be helpful here.As of 2016 22 % of the project budget spent, this clearly reflects the needs of the scientific institutions.

1. The EU framework refers to ‘the total cost of the service’ or ‘ the cost of the project’, and not to use the total budget of a university or academic institution as the basis for calculating the overhead flat rate.
2. Consequently, the overhead flat rate should then also be paid to the specialist department.

Increase of GBER thresholds

The thresholds in the General Block Exemption Regulation (GBER) under which support is exempted should be raised:EUR 50 million for fundamental research, EUR 25 million for industrial research, EUR 20 million for experimental development.Consideration could also be given to the possibility of introducing a single cap for all types of R & D projects.

This would strengthen incentives for research and development activities and focus State aid control on essential aid.An additional increase could be considered for key enabling technologies or for the development of new climate-neutral technologies.In addition, the maximum aid intensities should be increased, in particular for industrial research and experimental development.It does not seem perfectly appropriate to place industrial and experimental research so clearly at a disadvantage compared with fundamental research.

International competitiveness of EU state aid rules for R & D

The correlation clause is impracticable in its current form and should be revised.The Union framework should in future provide a workable solution to unjustified subsidy races, which can actually be used in justified individual cases.It is simply not possible for businesses to meet the requirements of the current matching clause, because they cannot prove what aid their global competitors have received.The reality is that European industry is placed at a disadvantage in global competition by often full state support in regions around the world.While the Union should not weaken its state aid control, it should step up its efforts to introduce a system of State aid control in other regions as well.

Rules for opening up new markets and regulatory sandboxes

The Union framework should also support undertakings operating in new markets beyond the pre-competitive research stage by relaxing the rules on aid in the competitive environment in order to open up new markets.When it comes to creating new markets through the introduction of entirely novel products, without a fully trained market, the rules should not prevent companies from taking on an early market leadership.In such cases, the EU should do everything possible to absorb a share of the global value chain.

In order to develop novel technologies, the Regulatory Sandboxes framework could provide for exemptions from State aid rules within a clearly defined and time-limited framework.



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* Register number of the EU Transparency Register:15423437054-40
* The VCI is registered in the German Bundestag’s public list on the registration of associations and their representatives.

The VCI represents the economic interests of more than 1.700 German chemical and pharmaceutical companies and German subsidiaries of foreign companies vis-à-vis politicians, public authorities, other sectors of the economy, academia and the media.In 2020, the sector absorbed almost EUR 190 billion and employed around 464.000 employees.