

The Research, Development and Innovation Act dated 5 June 2009

July 3, 2009

Luxembourg Parliament just passed new legislation to promote research and innovation in order to encourage businesses to develop their innovation potential. The new legislation is effective 1 July 2009.

The purpose of the Act dated 5 June 2009 is to:

1. Promote research, development and innovation
2. Extend the purview of the Luxembourg Agency for the promotion of innovation and research
3. Create a dedicated Fund for the promotion of research, development and innovation, which amends the Act dated 27 July 1993, whose purpose was to:
 - Promote economic development and diversification
 - Improve the economy's overall structure and regional balance

The objective of the Act dated 5 June 2009 ("the Act") is to ensure that research, development and innovation ("R&D" or "RDI") incentives meet current needs. The Luxembourg government believes that, in the current economic context, businesses should be encouraged to make the most of their innovation potential so that they are prepared when the economy recovers.

RDI policies are not new in Luxembourg. The first R&D incentives were introduced in 1993. They were based on EU legislation but limited the incentives to R&D technology projects conducted in a manufacturing context, which is no longer in line with the current economic situation.

The incentive schemes referred to above are set up within the context of the new Community framework for state aid for research and innovation, which is effective until 31 December 2013 (framework 2006/C323). The incentive schemes cover services, processes, methods or organisations.

Overview and definitions

The hereafter table summarises maximum incentive intensities according to their nature. The maximum incentive intensity refers to the incentive amount expressed as a percent of eligible costs (these include personnel expenses, investments and other expenses connected with the project). Incentives may take the form of capital subsidies or interest reductions (reduced interest rate on the financing).

The following schemes are available for all types of private businesses and ventures, regardless of their size:

- **R&D projects or R&D programmes** (a combination of R&D projects over a given period) covering new products, services, processes, methods or organisations. They are broken down into experimental development (design projects, prototyping or pilot projects), industrial research (fine-tuning objective) and fundamental research (acquisition of new knowledge without providing for a specific practical use);
- **Technical feasibility** studies to be conducted prior to experimental development or industrial research;

- **Process innovation** and **organisational innovation** in services are now encouraged. Organisational innovation covers the implementation of new organisational methods through the use of information and communication technology. Process innovation covers the implementation of new production or distribution methods;
- **Innovation clusters** are encouraged. An innovation cluster is a grouping of research companies or bodies which operate in a given area or region and the purpose of which is to foster innovation by promoting interactions and the sharing of equipment and knowledge;
- **“De minimis”** measures for those enterprises which do not qualify for a specific incentive scheme due to their size or other eligibility criteria. The amount is capped at €200,000 over a three-year period.

Small and medium-sized enterprises (SMEs) - i.e. enterprises, private organisations or even groupings of enterprises having fewer than 250 employees and whose annual turnover does not exceed €50 million or whose annual balance sheet total does not exceed €43 million¹ - are eligible for the following incentives, which are reserved for them only:

- Incentives covering the **protection of technical intellectual property**, including patents, maskworks, designs, models or copyrights on software, in order to help value an increased number of R&D projects;
- **Young, innovative businesses** (small enterprises and private research organisations which employ fewer than 50 people and whose annual turnover or annual balance sheet total does not exceed €10 million¹) which were created less than 6 years before the incentive is granted, are eligible for an incentive of maximum €1 million. “Innovative” means that new products, services or processes or new methods or organisations will be developed in the foreseeable future;
- Incentives for **innovation advisory services** and **innovation support services** of maximum €200,000 over a three-year period;
- **Secondment of highly-qualified personnel** working on RDI activities. The highly-qualified personnel must be seconded temporarily and this must comply with several requirements (e.g. the person must be employed in a newly-created capacity).

Incentive applications must be filed with the Ministry for Economy **before RDI investments are made**, otherwise incentives will not be granted. Aid must have an incentive effect, i.e. result in the recipient changing its behaviour so that it increases its level of RDI activity. The effect those incentives have on the company's research effort should therefore be demonstrated.

The opinion of an advisory committee will be sought for R&D projects or programmes, for incentives for young, innovative enterprises, for incentives for process and organisational innovation in services and for investments in innovation clusters and cluster animation. In other cases, the Economy and Finance Ministers will be able to grant the incentives without seeking the advisory committee's opinion.

¹ Grand-ducal regulation dated 16 March 2005, which adapted the definition of micro-, small and medium-sized enterprises.

| Incentive types | Types of R&D project or programme | Maximum intensity | | | |
|---|---|--|--|---|------------------------|
| | | Large private research company or organization | Mid-size private research company or organization (bonus: 10%) | Small private research company or organization (bonus: 20%) | Public research centre |
| R&D project or program | Experimental development | 25% | 35% | 45% | n/a |
| | Experimental development + cooperation (bonus: 15%) | 40% | 50% | 60% | n/a |
| | Industrial research | 50% | 60% | 70% | n/a |
| | Industrial research + cooperation (bonus: 15%) | 65% | 75% | 80% | n/a |
| | Fundamental research | 100% | 100% | 100% | n/a |
| Technical feasibility study | Prior to an experimental development | 40% | 50% | 50% | n/a |
| | Prior to industrial research | 65% | 75% | 75% | n/a |
| Protection of the IP of research companies or organizations that comply with SME criteria | Following experimental development | n/a | 25% | 25% | n/a |
| | Following experimental development + cooperation (bonus: 15%) | n/a | 40% | 40% | n/a |
| | Following industrial research | n/a | 50% | 50% | n/a |
| | Following industrial research + cooperation (bonus: 15%) | n/a | 65% | 65% | n/a |
| | Following fundamental research | n/a | 100% | 100% | n/a |
| Support to young innovative enterprises | n/a | n/a | n/a | EUR 1 million | n/a |
| Innovation advisory services and innovation support services | n/a | n/a | EUR 200.000 | EUR 200.000 | n/a |
| Process and organisational innovation in services | n/a | 15% | 25% | 35% | n/a |
| Investment in innovation clusters | n/a | 15% | 25% | 35% | 50% |
| Innovation cluster animation | n/a | 50% | 50% | 50% | 75% |
| De minimis measures | EUR 200.000 | | | | n/a |

Other provisions

Extending the purview of the Luxembourg Agency for the promotion of innovation and research

The Act also creates a legal framework for the activities of the Luxembourg Agency for the promotion of research, development and innovation ("Luxinnovation"), whose purpose is to promote RDI, raise companies' awareness and provide them with information and assistance on RDI-related matters. The Act extends Luxinnovation's mission statement to include the coordination and management of Luxembourg's involvement in international R&D cooperation programmes. The measures were also enforced on July 1.

The Fund for the funding of RDI incentives and Luxinnovation activities

The Act provides for the creation of a fund in order to improve budget effectiveness. The fund should cover the expenses incurred by (i) the implementation of the incentive schemes referred to above, (ii) Luxembourg's involvement in international RDI cooperation programmes or projects and (iii) by the assignments conducted by Luxinnovation. The measures regarding this fund will be enforced on January 1, 2010.

In practice

It would seem that the Act is not going to result in grand-ducal regulations or implementing provisions being issued. As a result, the provisions governing each specific project will give rise to numerous questions in order to determine the intensity of the incentives. Seeing the incentives applied in practice will help shed some light on the issue.

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