BUSINESSEUROPE

POSITION PAPER

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Revision of the Communication on State aid rules for Important Projects of Common European Interest

Commission Consultation

Introduction

More should be done to encourage public and private investment in research and innovation to increase growth, jobs, and EU global competitiveness overall while fundamentally safeguarding a market and company driven European economy. This must be done in a transparent manner to avoid "picking winners" and fill the funding gap and correct significant market failures because the high risks involved with such projects daunt private investors or because there are positive R&D&I spill-over effects. Public investment should primarily be done through broad and open research programs like Horizon Europe to avoid unnecessarily high aid intensities and subsidising activities which are closer to markets. Improved IPCEI rules would be an important complement to such broad and open research financing programs.

IPCEIs play an important complementary role to strengthen European competitiveness. Following the launch of both the microelectronics and batteries IPCEI, they have shown to be an important alternative tool to strengthen key industrial sectors and promote European key technologies and strategic value chains. Further strategic technological fields and value chains identified by the Commission should be considered in a transparent and inclusive way.

Administrative burdens should be reduced and decision-making speeded-up, especially in fields where innovation cycles are very short. Procedures required to activate the instrument should also be simplified. Once an IPCEI is approved, the funding must be disbursed according to a predictable schedule including synchronized funding decisions in the participating Member States to ensure investment security for private partners.

Hereunder, we set out these points in more detail.

Scope/Objective

The Commission should clarify that the policy areas listed in the Communication are not exhaustive. For example, cross-border transport projects, energy infrastructure projects, research infrastructures or pan-European investments in the development of key technologies are all considered as possible important projects and that should be reflected in the rules.

Transparency

BusinessEurope supports increasing transparency such as proposed for instance in paragraph 18. However, we suggest that transparency should be further improved. This could be done by the Commission hosting a dedicated webpage where all upcoming and ongoing IPCEIs are to be reported and described. This would improve transparency both

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for Member States and the business community, making it easier for companies to know what is going on and coming up, and consider whether they could be involved in a project. As to the aid recipients, it would make sense to use the Commission's current aid transparency register.

The Commission should also require an evaluation for big projects with large public funding in the notification to get more knowledge on the effectiveness of the project, the way public money is used and how the project should be set up. Without such an evaluation from the beginning, it will be hard to acquire such knowledge for the future and assess whether projects should be prolonged and/or expanded.

Participation of SMEs

BusinessEurope welcomes the initiative to involve SMEs more in IPCEI even though the inclusion of SMEs should not result in other larger applicants being excluded. Paragraphs 5 and 22 are however mostly describing how inclusion of SMEs can benefit the projects prospects of being granted an approval by the Commission, not how it can be easier to include SMEs. The rules for getting involved in a project are complex and burdensome and the Commission should address this so that the bureaucratic effort for participation is kept as low as possible. The main criterion for any participation must be its usefulness for the overall goal and the realization of the IPCEI.

In addition, the Commission and Member States should make SMEs more aware of an IPCEI, for example by setting up a dedicated website as suggested above, support them in drafting applications and by making the claw back clause easier to ensure the proportionality of the aid which should be limited to large projects with a significant amount of authorized aid (see also below).

Common interest

The current Communication requires that "more than one" Member State shall participate to assume a common interest agreement provided that the project serves and promotes a common European interest. BusinessEurope supports the proposal that at least four Member States should participate to assure the European interest of a project. It should, however, still remain possible to have an IPCEI with less Member States in exceptional cases as the Commission proposes in para 17.

Co-financing

BusinessEurope agrees that there should be significant co-financing from the private sector as this is part of the instruments' legitimacy as a catalyst for private investment, but the concept of significant co-financing as proposed in paragraph 20 of the draft Communication should be further clarified. For example, it should be clarified until what extent the concept of "significant co-financing" in paragraph 20 and "significant contribution" in paragraph 42 are identical or whether they differ in content.

It seems contradictory to require significant co-financing as a basic requirement on the one hand and then grant preferential treatment to applicants with significant own contributions in the context of an adequacy check, on the other. It also remains unclear which services fall under the co-financing contribution, e.g. whether the co-financing can also be provided (in part) through the provision of goods or real estate and how to assess the actual contribution of this kind of contribution whilst ensuring the comparability and equality between the Member States.

As regards co-financing by EU Funds, it is necessary that the combination of the various types of available financing is fostered through greater alignment of rules and procedures to support the project not only through national resources, but also through funding by European Institutions (Commission, EIB, etc.), both directly managed (such as, for example, those of Horizon Europe) and indirectly (such as those of the structural funds).

Relocation of production activities

BusinessEurope believes that aid should not be granted if the aid is made conditional on the relocation of production activities. The Commission proposes in paragraph 49 to take account of such conditions but in our view the inclusion of such a condition should always lead to a rejection of the aid.

Counterfactual scenario

Current requirements to provide a comprehensive description of a counterfactual scenario which corresponds to the situation where no aid is awarded should be improved. BusinessEurope believes that confidential internal project-related documents should not be made available to other Member States than the one granting the aid. Only commonly available information and best practice data should be shared with other EU stakeholders. Trade secrets should be protected and requirements to share project-related documents should always be proportionate and be limited to what is necessary. Paragraph 34 on the determination of the funding gap should be further clarified. It is not clear from the proposal how technical, regulatory, and financial risks can be effectively considered in determining the funding gap.

Clawback mechanism

Considering that the aid is proportionate and limited to what is necessary, BusinessEurope supports claw-back mechanisms that continue to incentivise aid recipients to maximise their investments and the performance of their projects. It is however also important that claw-back mechanisms are predictable and provide sufficient legal certainty. A limitation of the claw-back mechanism in the case of financial returns from an IPCEI due to faster market acceptance of the product than expected at the time the funding gap was calculated, should be weighed against possible negative incentives to artificially prolong projects as a faster market acceptance accelerates the project goals, namely the implementation of the desired EU policy.

Matching clause

Distortions of competition stemming from foreign subsidies in third countries should primarily be dealt with through trade defence measures and possibly the new tool described in the earlier White Paper on foreign subsidies. Meeting the requirements of the matching clause is very difficult for companies. For example, it is very hard for companies to demonstrate what aid a global competitor has received. Limiting the period of consideration of aid received by a competitor outside the EU to three years might not be sufficient in individual cases to avert distortions of competition in international trade considering that such distortions often occur only in a later period, which can easily exceed three years. In such cases, the period of consideration should be extended accordingly bearing in mind the incentive effect and proportionality of the aid.

Entry into force, validity and revision

BusinessEurope suggests that the new Communication includes provisions regarding validity and revision as is currently the case. The validity could, for example, be five - six years after the entry into force, mirroring the existing Communication.

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