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## Comments from the Confederation of Swedish Enterprise to the ongoing consultation on the European Commission's draft revised Communication on State Aid for Important Projects of Common European Interest (IPCEI)

The Confederation of Swedish Enterprise would like to thank the European Commission for the opportunity to submit comments to the ongoing consultation. We would like to make the following observations.

### **The Confederation of Swedish Enterprise's general view of the IPCEI Communication**

This Communication clarifies an existing possibility under the Treaty to grant State Aid to promote the execution of an Important Project of Common European Interest (Art. 107(3)(b)). The Communication is therefore important in clarifying the qualifying criteria for such an assessment by the Commission. The Commission has set up a regulatory framework that imposes high standards on participating Member States and companies in terms of documenting the projects to be supported. In return, it allows for significantly higher levels of State Aid to be granted than under the general R&D&I framework, as well as support for activities that are closer to real world production than would otherwise be the case.

Against this background, the Confederation of Swedish Enterprise shares the Commission's assessment that the Communication generally fulfils its purpose. However, we feel it needs to be developed in certain areas. IPCEI projects as such can play an appropriate role, to the extent that they can address a genuine market failure and where other State Aid rules are insufficient. However, for the time being, the instrument should be considered as a specific measure, and one which should not be applied broadly to a wide range of projects. Despite the existence of the Communication since 2014, there is relatively little experience of the application of the rules, let alone the outcomes they deliver. The high levels of support involved and the possibility of support at a later stage in the commercialisation of the research carried out means that the risk of distortions of competition is significant. High levels of support, and correspondingly lower levels of private funding, may also offer insufficient incentives to the beneficiary and may lead to reduced efficiency at the point of implementation. It is also a fact that, to date, the regulatory framework has led to overly long processes that are administratively burdensome and costly to approve, coupled with a lack of transparency.

All this demonstrates that, even following the revision of the rules, the use of the framework needs to be selective and moderate. Even following this update, the regulatory framework will remain complex, and the interactions between many Member States and companies risks creating extensive administrative and legal work. In most cases, open research programmes, with competitive calls that are not linked to specific Member States, are

therefore preferable. This will also increase the rate of innovation and contribute to more rapid technological development. Targeted support with limited scope under the general block exemption<sup>1</sup> or the R&D framework<sup>2</sup> should be the most frequent method of complementing broader research programmes if it is to stimulate investment and address market failures.

### **On the proposed changes**

The proposed changes are in line with what was previously announced in the roadmap that the Commission produced, and that the Confederation of Swedish Enterprise has previously commented on. It stated that the limited revision would focus primarily on:

- Clarifying certain concepts and providing guidance on certain criteria
- Facilitating participation for SMEs
- Improve project transparency and compliance with EU targets

The Confederation of Swedish Enterprise broadly welcomes the proposed changes. The amendments make the Communication clearer and create the conditions for projects to become more transparent and reduce the risk of distortions to competition.

However, the Confederation has some suggestions and more detailed comments. These are also set out below, where we comment on individual points in the Communication.

- Transparency should be increased, both in the selection of projects that can qualify for IPCEI status in the field of research, in those projects that are already in the pipeline and those projects that are ongoing. This could be achieved, inter alia, by creating a single website for all IPCEIs that describes both ongoing and emerging projects.
- Large IPCEIs - and most IPCEIs are large projects with many companies involved and attracting large amounts of Aid - should be subject to a compulsory evaluation. This could create the conditions for greater efficiency and knowledge of the suitability of the regulatory framework as a policy instrument in the widest sense.
- The Commission states that the participation of SMEs in projects is considered positive, and that the participation of SMEs can be a strong indicator for the Commission in assessing whether the project should be approved as an IPCEI. This certainly appears to be a reasonable approach and may in itself act as an incentive for Member States to also seek the participation of smaller companies. However, it does not address the need to make it easier for smaller enterprises to participate in projects. Therefore, the Commission needs to consider how to increase awareness and understanding of the regulatory framework and the projects. It also needs to support smaller companies in participating, given the complexity of the framework and the administrative costs involved.

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<sup>1</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

<sup>2</sup> Community Framework for State Aid for Research and Development and Innovation (OJ C 323, 30.12.2006, p. 1)

Point 15

This item foresees new objectives that can be referred to in order to designate a project as an IPCEI. Several of these objectives are extremely broad. In particular, there is reference made to the Commission's Industrial Strategy of March 2020. This can be described as a long list of the actions taken or envisaged by the Commission in areas likely to affect industry and business in the broadest sense. This in itself means that the purpose of the objective is not a major limitation on the eligibility for IPCEI status, and the scope of the rules is thus broadened.

Nevertheless, this may be seen as a natural consequence of new policy objectives in areas such as the green transformation and digitalisation. There is also the fact that this will be, to some extent, offset by new requirements on the number of Member States involved (more detail on this below), it may be considered a reasonable change. However, the Confederation of Swedish Enterprise would again point out that the instrument should not be used for a large number of projects, given the many uncertainties and risks involved.

Point 16

This point needs to be clarified and the wording made sharper and less ambiguous. It should be a basic condition that the State Aid provided addresses a market failure. It should lead to the project being carried out on a larger scale than previously; in other words, the Commission's basic requirement of incentive effect should be met.

Point 17

The IPCEI tool should be reserved for large-scale projects spanning a sizeable part of the EU. The introduction of a requirement for a minimum of four Member States to be involved as a starting point is welcome, and is in line with the projects launched to date. There, the number of Member States involved has been four, seven and twelve, respectively. Since the only companies that can be beneficiaries from Member States are those that are part of the projects - and those Member States also contribute funding - it is vitally important that the projects involve a large number of Member States. This leads to a broader range of projects that benefit more companies and reduces the risk of distortions of competition in the internal market. The Confederation of Swedish Enterprise would prefer the wording to be clearer still – i.e., that not only is four Member States a lower limit for an IPCEI but also that a higher number of participating countries is a great advantage for justifying use of this special tool. The Confederation questions the need to include an exception for approving projects with fewer than four Member States.

Point 18

The requirement that all Member States be informed of emerging projects and be given a real opportunity to participate is a very welcome one. This should be further strengthened, in order to facilitate the monitoring of existing and emerging IPCEIs by industry. This should be done by the European Commission developing a single IPCEI website, where each project is required to provide relevant information.

Point 20

It is unclear what 'significant co-financing', as described here, means. The European Commission should be able to propose - on the basis of its existing decision-making practice - some form of baseline requirement to ensure that the instrument acts as a catalyst for increased private investment. This could be, for example, that private investment should at least match the amount of public support.

Point 22

The criteria highlighted as positive for the project's likelihood of approval seem reasonable. It is good that the inclusion of SMEs is given due importance.

Point 23

This paragraph specifies that Research, Development And Innovation (RDI) projects must have a strong innovative character or are able to provide significant added value in terms of RDI in the light of recent developments in the relevant sector. During the consultation on the roadmap, the Confederation of Swedish Enterprise indicated that it would be helpful if the concept of 'strong innovative character' and the other wording were made clearer, preferably by means of providing examples.

It is important that this provides a basis for the selection of projects through an open and non-political process and that it is not linked to any particular economic sector. In this respect, it would be welcome if the European Commission were to provide a more detailed description of, for example, how it intends to assess when a project has this 'strong innovative character'. In addition, it would be helpful if it could develop more-detailed criteria for this description.

Points 24 and 25

The description here of what is meant by 'first industrial use' has been expanded and clarified; this is welcome. The delineation used also appears to be reasonable. Indeed, it is important that the delineation is as clear as possible, both to give companies clear rules and predictability and also to reduce the risk of distortions of competition. It is also valuable that it is made clear what does *not* qualify as 'first industrial use'.

Point 26

Non-research projects can also qualify as IPCEIs. Health and digitisation have been added to the existing objectives of environment, energy and transport. For such projects, it is not essential that the project be of a highly innovative nature as defined in points 23-24. Rather, it is sufficient that such projects have a major impact on the corresponding Union policies or 'contribute significantly' to the internal market. It is somewhat unclear how this relates to paragraph 15, which exemplifies the EU's objectives, and whether this could be better grouped under a single paragraph.

The point indicates the potential breadth of actions that could be subject to an IPCEI. However, projects must also meet the general criteria, which acts as a limiting factor. The Confederation of Swedish Enterprise refers to its previous general view on IPCEI as set out, inter alia, in its comments on paragraph 15.

Point 32

The paragraph clarifies what is required to demonstrate the incentive effect and proportionality, as well as reference to the use of a counterfactual scenario. These aspects are welcome.

Point 34

In this paragraph, the wording has been modified from '100% of eligible costs' to 'all eligible costs'. This reflects both the generosity of the regulatory framework and the potential for distortions of competition. This paragraph should be read in conjunction with the requirement for 'significant co-financing' set out in paragraphs 20 and 42. It would perhaps be appropriate to make a concordance or cross-reference between these elements.

Point 36

This clarifies, in a positive way, how the accumulation of Aid can take place up to the most favourable level. Perhaps it should be made clearer that 'most favourable' actually means the highest level.

Point 37

This section introduces new opportunities for the European Commission to impose clawback requirements. It is positive that there is the possibility of reducing the risk of distortions of competition through this approach. At the same time, it is also good that this not made compulsory, and that there is sufficient flexibility to take the nature of the project into account. The model of sharing windfall profits between public and private investors and participants seems a reasonable approach. However, it is also essential that any recovery mechanism does not undermine or destroy the incentives for private operators to participate in or finance the project.

Point 39

The Commission proposes no changes to this paragraph, which corresponds to paragraph 34 of the existing Communication. This paragraph allows the Commission to take into account the potential existence of Aid for similar projects in countries outside the EU.

It is unclear what impact, if any, support for similar projects in third countries will have on the European Commission's assessment. Aid given in third countries should - as a starting point - be addressed through other tools. These could include the WTO common rules, unilateral trade measures, as well as via the Commission's proposed new framework for preventing foreign subsidies to companies in the internal market. The use of similar matching clauses could lead to an overall increase in subsidies globally as well as increasing competition problems in the internal market. In addition, it is essential that the Commission applies the economically sound principles of incentive effect and proportionality when assessing notified projects. Any Aid outside of the EU should not impact the assessment.

It is therefore preferable to delete this point, and in any case to clarify that the principles of incentive effect and proportionality will continue to apply.

Point 49

This item clarifies that any requirement to relocate activities to an Aid granting Member State is a negative factor in the European Commission's assessment of the compatibility of the project. This concept is a good one, but the wording should be further reinforced and made a stronger condition for the project to be approved. Any requirement to relocate activities to the assisting Member State should, therefore, prevent the project from being approved from the outset. This should also involve the description in paragraph 48.

Points 50 and 51

This paragraph adds the transparency requirements that apply generally to State Aid rules, and ensures that Aid decisions above EUR 500,000 are reported in the European Commission's transparency database. It is expected that these requirements should also apply to IPCEIs. However, as suggested in the commentary on paragraph 18 above, transparency should be further reinforced.

Point 54

This paragraph provides for regular reporting on the implementation of the project. It should be made clearer as to who this is - presumably the European Commission is designated as the recipient. It also states that the Commission may request an ex-post evaluation if appropriate. A mandatory requirement for major projects to be evaluated, similar to that in the Energy and Environment Guidelines, should also apply to IPCEIs. It should then be a requirement that an evaluation plan describing how the project will be assessed is already included in the notification.

Stefan Sagebro