



Brussels, **XXX**  
**[...]**(2021) **XXX** draft

## **COMMUNICATION FROM THE COMMISSION**

**Criteria for the analysis of the compatibility with the internal market of State aid to  
promote the execution of important projects of common European interest**

## 1. INTRODUCTION

1. This Communication gives guidance on assessing the public financing of important projects of common European interest (IPCEIs) under State aid rules.
2. IPCEIs may represent a very important contribution to sustainable economic growth, jobs and competitiveness for industry and the economy in the EU in view of their positive spillover effects on the internal market and the society as a whole.
3. IPCEIs make it possible to bring together knowledge, expertise, financial resources and economic actors from across the EU, in a bid to address important market or systemic failures and societal challenges that could not otherwise be addressed. They are designed to bring together the public and private sectors to undertake large-scale projects of significant benefits to the EU and its citizens.
4. IPCEIs can underpin all policies and actions that achieve common European objectives, in particular the European Green Deal<sup>1</sup>, the Digital Strategy<sup>2</sup>, the New Industrial Strategy for Europe<sup>3</sup> and Next Generation EU<sup>4</sup>. IPCEIs can also contribute to a sustainable recovery following serious economic disturbances such as those caused by the COVID-19 pandemic and support efforts to strengthen the EU social and economic resilience.
5. Taking into account the Small and Medium-sized Enterprise (SME) Strategy<sup>5</sup>, it is important that SMEs can participate in IPCEIs and benefit from them. The Commission will take into account in its assessment circumstances in which the aid notified is less likely to unduly distort competition, for example due to its amount.
6. The deployment of IPCEIs often requires a significant participation from public authorities since the market would not otherwise finance such projects. Where public financing of such projects constitutes State aid, this Communication sets out the rules that apply in order to ensure that the level playing field in the internal market is preserved.

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<sup>1</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘The European Green Deal’, COM(2019) 640 final, 11 December 2019.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘Shaping Europe's digital future’, COM(2020) 67 final, 19 February 2020.

<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A New Industrial Strategy for Europe’, COM(2020) 102 final, 10 March 2020.

<sup>4</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘Europe's moment: Repair and Prepare for the Next Generation’, COM(2020) 456 final, 27 May 2020.

<sup>5</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘An SME Strategy for a sustainable and digital Europe’, COM(2020) 103 final, 10 March 2020.

7. Article 107(3)(b) of the TFEU provides that aid to promote the execution of an important project of common European interest may be considered to be compatible with the internal market. Accordingly, this Communication sets out guidance on the criteria the Commission will apply for assessing State aid granted to promote the execution of IPCEIs. It first sets out its scope and then provides a list of criteria the Commission will use to assess the nature and the importance of IPCEIs for the purposes of applying Article 107(3)(b) of the TFEU. It then explains how the Commission will assess the compatibility of the public financing of IPCEIs with State aid rules.
8. This Communication does not exclude the possibility that aid to promote the execution of IPCEIs may also be found compatible with the internal market on the basis of other TFEU provisions, notably Article 107(3)(c) of the TFEU, and their implementing rules. However, those provisions may not fully address the relevance, specificities and features of IPCEIs. These may require specific eligibility, compatibility and procedural provisions, as set out in this Communication.

## 2. SCOPE OF APPLICATION

9. The Commission will apply the principles of this Communication to IPCEIs in all sectors of economic activity.
10. This Communication does not apply to:
  - a) Measures consisting of aid for undertakings in difficulty, as defined in the rescue and restructuring guidelines<sup>6</sup> or any successor guidelines, as amended or replaced, with the exception of undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 and as long as the Temporary Framework is applied;
  - b) Measures consisting of aid for undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market;
  - c) Aid measures that constitute by themselves, by virtue of the conditions attached to them or of their financing method, a non-severable violation of EU law<sup>7</sup>, in particular:
    - i. aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to have its headquarters in the Member State concerned or be predominantly established in that Member State,

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<sup>6</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1). As explained in paragraph 23 of those guidelines, given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

<sup>7</sup> See for instance Case C-156/98 *Germany v Commission* [2000] ECLI:EU:C:2000:467, paragraph 78 and Case C-333/07 *Régie Networks v Rhone Alpes Bourgogne* [2008] ECLI:EU:C:2008:764, paragraphs 94-116.

- ii. aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services,
- iii. aid measures restricting the possibility for the beneficiary to use the obtained research, development and innovation results in other Member States.

### **3. ELIGIBILITY CRITERIA**

- 11. In determining whether or not a project falls within the scope of Article 107(3)(b) of the TFEU, the Commission will apply the criteria set out in sections 3.1, 3.2 and 3.3.

#### **3.1. Definition of a project**

- 12. The aid proposal must concern a single project, which is clearly defined in respect of its objectives as well as the terms of its implementation, including its participants and its funding<sup>8</sup>.
- 13. The Commission may also consider eligible an ‘integrated project’, that is to say, a group of single projects inserted in a common structure, roadmap or programme aiming at the same objective and based on a coherent systemic approach. The individual components of the integrated project may relate to separate levels of the supply chain but must be complementary and significantly add value in their contribution towards the achievement of the European objective<sup>9</sup>.

#### **3.2. Common European interest**

##### *3.2.1. General cumulative criteria*

- 14. The project must contribute in a concrete, clear and identifiable manner to one or more EU objectives or strategies and must have a significant impact on sustainable growth, addressing societal challenges or value creation across the EU.
- 15. The project must represent an important contribution to the EU’s objectives, for example by being of major importance for the European Green Deal<sup>10</sup>, the Digital Strategy<sup>11</sup> and European Strategy for Data<sup>12</sup>, the New Industrial

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<sup>8</sup> In the case of research and development, when two or more projects are not clearly separable from each other and, in particular when they do not have independent probabilities of technological success, they must be considered as a single project.

<sup>9</sup> Hereafter a single project and an integrated project are referred to as a ‘project’.

<sup>10</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘The European Green Deal’, COM(2019) 640 final, 11 December 2019.

<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘Shaping Europe's digital future’, COM(2020) 67 final, 19 February 2020.

<sup>12</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A European strategy for data’, COM(2020) 66 final, 19 February 2020.

Strategy for Europe<sup>13</sup>, Next Generation EU<sup>14</sup>, the new European Research Area for research and innovation<sup>15</sup>, the new Circular Economy Action Plan<sup>16</sup>, or the EU's objective to become climate neutral by 2050, among others.

16. The project should demonstrate that it is designed to overcome important market or systemic failures, preventing the project from being carried out to the same extent or in the same manner in the absence of the aid, or societal challenges, which could not otherwise be addressed or remedied.
17. Unless a smaller number is justified by the nature of the project<sup>17</sup>, the project must involve at least four Member States and its benefits must not be confined to the financing Member States, but extend to a wide part of the EU. The benefits of the project must be clearly defined in a concrete and identifiable manner<sup>18</sup>.
18. All Member States must be given a genuine opportunity to participate in an emerging project. Unless justified by the nature of the project, notifying Member States must demonstrate that all Member States were informed of the possible emergence of a project, including by way of contacts, alliances, meetings, or match-making events, and given adequate opportunity to participate.
19. The benefits of the project must not be limited to the undertakings or to the sector concerned but must be of wider relevance and application to the EU economy or society through positive spillover effects (such as having systemic effects on multiple levels of the value chain, or up- or downstream markets, or having alternative uses in other sectors or modal shift) which are clearly defined in a concrete and identifiable manner.

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<sup>13</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A New Industrial Strategy for Europe’, COM(2020) 102 final, 10 March 2020.

<sup>14</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘Europe's moment: Repair and Prepare for the Next Generation’, COM(2020) 456 final, 27 May 2020.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A new ERA for Research and Innovation’, COM(2020) 628 final, 30 September 2020.

<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘A new Circular Economy Action Plan For a cleaner and more competitive Europe’, COM(2020) 98 final, 11 March 2020.

<sup>17</sup> A smaller number of Member States may be justified, for example, if the project concerns interconnected research infrastructures and TEN-T projects that are of fundamentally transnational importance because they are part of a physically connected cross-border network or are essential to enhance cross-border traffic management or interoperability.

<sup>18</sup> The mere fact that the project is carried out by undertakings in different countries, or that a research infrastructure is subsequently used by undertakings established in different Member States, is not sufficient for a project to qualify as an IPCEI. The Court has upheld the Commission's policy to consider that a project may be described as being of common European interest for the purposes of Article 107(3)(b) when it forms part of a transnational European programme supported jointly by a number of governments of the Member States, or arises from concerted action by a number of Member States to combat a common threat. Joined Cases C-62/87 and 72/87 *Exécutif régional wallon and SA Glaverbel v Commission* [1988] ECLI:EU:C:1988:132, paragraph 22.

20. The project must involve significant co-financing by the beneficiary.
21. The project must respect the ‘do no significant harm’ principle and ensure the phasing out of environmentally harmful subsidies, as recalled by the European Green Deal<sup>19</sup>.

### 3.2.2. *General positive indicators*

22. In addition to the cumulative criteria in Section 3.2.1, the Commission will take a more favourable approach where:
  - a) The design of the project involves the Commission or any legal body to which the Commission has delegated its powers, such as the European Investment Bank and the European Investment Fund;
  - b) The selection of the project involves the Commission or any legal body to which the Commission has delegated its power, provided that that body is acting in that purpose as an implementing structure;
  - c) The governance structure of the project involves the Commission — or any legal body to which the Commission has delegated its powers — and the participating Member States;
  - d) The project involves important collaborative interactions in terms of number of partners, involvement of organisations from different sectors, or the involvement of undertakings of different sizes and, in particular, collaborations between large enterprises and small and medium-sized enterprises in different Member States;
  - e) The project involves co-funding from an EU fund<sup>20</sup> in direct, indirect or shared management;
  - f) The project takes into account the Taxonomy Regulation<sup>21</sup>.

### 3.2.3. *Specific criteria*

23. Research & Development & Innovation (“R&D&I”) projects must be of a major innovative nature or constitute an important added value in terms of R&D&I in the light of the state of the art in the sector concerned.
24. Projects comprising of first industrial deployment must allow for the development of a new product or service with high research and innovation content and/or the deployment of a fundamentally innovative production process. Regular upgrades without an innovative dimension of existing facilities and the development of newer versions of existing products do not qualify as first industrial deployment.

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<sup>19</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – ‘The European Green Deal’, COM(2019) 640 final, 11 December 2019.

<sup>20</sup> EU funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the EU that is not directly or indirectly under the control of the Member State does not constitute State aid. State aid can be cumulated with financing from an EU fund provided that the condition in point 36 is complied with.

<sup>21</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, OJ L 198, 22.6.2020, p. 13.

25. For the purpose of this Communication, first industrial deployment means the upscaling of pilot facilities, demonstration plants or of the first-in-kind equipment and facilities covering the steps subsequent to the pilot line including the testing phase, but neither mass production nor commercial activities<sup>22</sup>. First industrial deployment activities can be financed with State aid as long as the first industrial deployment follows on from an R&D&I activity and itself contains a very important R&D&I component which constitutes an integral and necessary element for the successful implementation of the project. The first industrial deployment does not need to be carried out by the same entity that carried out the R&D&I activity, as long as the former acquires the rights to use the results from the previous R&D&I activity, and the R&D&I activity and the first industrial deployment are both covered by the project.
26. Environmental, energy, transport, health or digital projects, to the extent that they are not covered by points 23 and 24, must be of great importance for the environmental, climate, energy (including security of energy supply), transport, health or digital strategies of the EU or contribute significantly to the internal market, including, but not limited to those specific sectors.

### **3.3. Importance of the project**

27. In order to qualify as an IPCEI, a project must be important quantitatively or qualitatively. It should be particularly important in size or scope and/or imply a very considerable level of technological or financial risk.

## **4. COMPATIBILITY CRITERIA**

28. When assessing the compatibility with the internal market of aid to promote the execution of an IPCEI on the basis of Article 107(3)(b) of the TFEU, the Commission will take into account the criteria<sup>23</sup> set out in sections 4.1, 4.2 and 4.3.
29. The Commission will carry out a balancing test to assess whether the expected positive effects outweigh the possible negative effects.
30. In view of the nature of the project, the Commission may consider that the presence of important market or systemic failures or societal challenges, as well as the contribution to a common European interest, is presumed for the individual components of an integrated project where the project fulfils the eligibility criteria set out in Section 3 above.

### **4.1. Necessity and proportionality of the aid**

31. The aid must not subsidise the costs of a project that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity. Without the aid the project's realisation should be

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<sup>22</sup> Limited atypical sales related to the testing phase, including sample or feedback or certification sales, are excluded from the notion of "commercial activities".

<sup>23</sup> According to the Court of Justice, the Commission enjoys discretion as regards the assessment of the compatibility of IPCEIs. Joined Cases C-62/87 and 72/87 *Exécutif régional wallon and SA Glaverbel v Commission* [1988] ECLI:EU:C:1988:132, paragraph 21.

impossible, or it should be realised on a smaller scale or scope or in a different manner that would significantly restrict its expected benefits<sup>24</sup>. Aid will only be considered proportionate if the same result could not be achieved with less aid.

32. The Member State must provide the Commission with adequate information concerning the aided project as well as a comprehensive description of the counterfactual scenario, which corresponds to the situation where no aid is awarded by any Member State. The counterfactual scenario may consist in the absence of an alternative project or in an alternative project considered by the beneficiary in its internal decision-making, and may relate to an alternative project that is wholly or partly carried out outside the EU. To demonstrate the credibility of the counterfactual scenario presented by the beneficiary, the notifying Member State is invited to provide relevant internal documents of the beneficiary, such as board presentations, analyses, reports and studies discussing such alternative projects.
33. In the absence of an alternative project, the Commission will verify that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable, for example by making possible to achieve an internal rate of return corresponding to the sector or firm specific benchmark or hurdle rate. Normal rates of return required by the beneficiary in other investment projects of a similar kind, its cost of capital as a whole or returns commonly observed in the industry concerned may also be used for this purpose. All relevant expected costs and benefits must be considered over the lifetime of the project.
34. The maximum aid level will be determined with regard to the identified funding gap in relation to the eligible costs. If justified by the funding gap analysis, the aid intensity could cover all of the eligible costs. The funding gap refers to the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value on the basis of an appropriate discount factor reflecting the rate of return necessary for the beneficiary to carry out the project notably in view of the risks involved. The eligible costs are those laid down in the Annex<sup>25</sup>.
35. Where it is shown, for example by means of internal company documents, that the aid beneficiary faces a clear choice between carrying out either an aided project or an alternative one without aid, the Commission will compare the expected net present values of the investment in the aided project and the counterfactual project, account being taken of the probabilities of the different business scenarios occurring.
36. State aid to promote the execution of IPCEIs may be cumulated with EU funding or other State aid, provided that the total amount of public funding

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<sup>24</sup> The aid application must precede the starts of the works, which is either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

<sup>25</sup> In case of an integrated project, the eligible costs must be detailed at the level of each individual project.



granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of EU law.

37. As an additional safeguard to ensure that the State aid remains proportionate and limited to the necessary, the Commission may request the notifying Member State to implement a claw-back mechanism. The claw-back mechanism should ensure a balanced sharing of gains when the project is more profitable than forecasted in the funding gap analysis. Such mechanism should be designed in such a way to maintain incentives for beneficiaries to maximise their investment and project performance. Member States are not prevented from implementing additional or stricter claw-back mechanisms.
38. In its analysis, the Commission will take into consideration the following elements:
- a) Specification of intended change: the change in behaviour which is expected to result from the State aid, that is to say whether a new project is triggered, or the size, scope or speed of a project is enhanced, has to be well specified by the Member State. The change of behaviour has to be identified by comparing the expected outcome and level of intended activity with and without aid. The difference between the two scenarios shows the impact of the aid measure and its incentive effect;
  - b) Level of profitability: where a project would not in itself be sufficiently profitable for a private undertaking to undertake, but would generate important benefits for society, it is more likely that the aid has an incentive effect.
39. In order to address actual or potential direct or indirect distortions of international trade, the Commission may take account of the fact that, directly or indirectly, competitors located outside the EU have received (in the last three years) or are going to receive, aid of an equivalent intensity for similar projects. However, where distortions of international trade are likely to occur after more than three years, given the particular nature of the sector in question, the reference period may be extended accordingly. If at all possible, the Member State concerned will provide the Commission with sufficient information to enable it to assess the situation, in particular the need to take account of the competitive advantage enjoyed by a third country competitor. If the Commission does not have evidence concerning the awarded or proposed aid, it may also base its decision on circumstantial evidence. The Commission may also take appropriate action to address competition distortions arising from subsidies received outside the EU.
40. When gathering evidence, the Commission may use its investigative powers<sup>26</sup>.
41. The choice of the aid instrument must be made with a view to the market failure or other important systemic failures which it seeks to address. For

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<sup>26</sup> See Article 1(3) of Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 204, 31.7.2013, p. 15).

instance, where the underlying problem is lack of access to finance, Member States should normally resort to aid in the form of liquidity support, such as a loan or guarantee<sup>27</sup>. Where it is also necessary to provide the undertaking with a certain degree of risk-sharing, a repayable advance should normally be the aid instrument of choice. Repayable aid instruments will generally be considered as a positive indicator.

- 42. The Commission will consider more favourably projects that include a very significant contribution by the beneficiaries themselves or a significant contribution by independent private investors. Contribution of tangible and intangible assets, as well as land, must be accounted at market price.
- 43. The selection of beneficiaries through a competitive, transparent and non-discriminatory procedure will be considered as a positive indicator.

#### **4.2. Prevention of undue distortions of competition and balancing test**

- 44. The Member State should provide evidence that the proposed aid measure constitutes the appropriate policy instrument to address the objective of the project. An aid measure will not be considered appropriate if other less distortive policy instruments or other less distortive types of aid instruments make it possible to achieve the same result.
- 45. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common European interest.
- 46. In assessing the negative effects of the aid measure, the Commission will focus its analysis on the foreseeable impact the aid may have on competition between undertakings in the product markets concerned, including up- or downstream markets, and on the risk of overcapacity.
- 47. The Commission will assess the risk of market foreclosure and dominance, in particular in case of absence of, or limited dissemination, of the research results. Projects involving the construction of an infrastructure<sup>28</sup> must comply with principles of open and non-discriminatory access to the infrastructure and non-discriminatory pricing and network operation, including those laid down in EU law<sup>29</sup>.
- 48. The Commission will assess the potential negative effects on trade including the risk of a subsidy race between Member States, which may arise in particular with respect to the choice of a location.
- 49. In its assessment of the potential negative effects on trade, the Commission will consider whether aid is conditional on the relocation of a production activity or any other activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. Such condition

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<sup>27</sup> Aid in the form of guarantees must be limited in time, and aid in the form of loans must be subject to repayment periods.

<sup>28</sup> For avoidance of doubt, pilot lines are not considered as infrastructures.

<sup>29</sup> Where the project involves an energy infrastructure, it shall be subject to the tariff and access regulation and to the unbundling requirements where required by internal market legislation.

would appear to be harmful to the internal market, irrespective of the number of job losses actually incurred in the initial establishment of the beneficiary in the EEA.

#### **4.3. Transparency**

50. Member States must ensure that the following information is published in the Commission's transparency award module or on a comprehensive State aid website, at national or regional level:
- a) The full text of the individual aid granting decision and its implementing provisions, or a link to it;
  - b) The identity of the granting authority or authorities;
  - c) The name and the identifier of each beneficiary, except business secrets and other confidential information in duly justified cases and subject to the Commission's agreement in accordance with Commission communication on professional secrecy in State aid decisions<sup>30</sup>;
  - d) The aid instrument<sup>31</sup>, the aid element and, where different, the nominal amount of aid, expressed as the full amount in national currency granted to each beneficiary;
  - e) The date of granting and the date of publication;
  - f) The type of undertaking (small or medium sized enterprise/large company);
  - g) The region in which the beneficiary is located (at NUTS level II or below);
  - h) The principal economic sector in which the beneficiary has its activities (at NACE group level);
  - i) The objective of the aid.
51. The requirement to publish information applies with respect to individual aid awards exceeding EUR 500 000. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions<sup>32</sup>.

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<sup>30</sup> C(2003) 4582 (OJ C 297, 9.12.2003, p. 6).

<sup>31</sup> Grant/Interest rate subsidy; Loan/Repayable advances/Reimbursable grant; Guarantee; Tax advantage or tax exemption; Risk finance; Other (please specify). If the aid is granted through multiple aid instruments, the aid amount must be provided by instrument.

<sup>32</sup> This information must be published within 6 months from the date of granting. In case of unlawful aid, Member States will be required to ensure the publication of this information ex post within 6 months from the date of the Commission decision. The information must be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

## **5. FINAL PROVISIONS**

### **5.1. Notification obligation**

- 52. According to Article 108(3) of the TFEU, Member States must notify the Commission in advance of any plans to grant or alter State aid including aid for an IPCEI.
- 53. Member States involved in the same IPCEI are invited, whenever possible, to submit to the Commission a common notification including a joint text describing the IPCEI and demonstrating its eligibility.

### **5.2. *Ex post* evaluation and reporting**

- 54. The execution of the project must be subject to regular reporting. Where appropriate, the Commission may ask for an *ex post* evaluation to be conducted.

### **5.3. Application**

- 55. This Communication will be applied from 1 January 2022.
- 56. The Commission will apply the principles set out in this Communication to all notified aid projects in respect of which it is called upon to take a decision after its applicability, even where the projects were notified prior to that date.
- 57. In line with the Notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>33</sup>, in the case of non-notified aid, the Commission will apply this Communication if the aid was granted after its applicability, and the rules in force at the time when the aid was granted in all other cases.

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<sup>33</sup> Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).



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ANNEX 1

## **ANNEX**

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## ANNEX

### ELIGIBLE COSTS

- a) Feasibility studies, including preparatory technical studies, and the costs of obtaining the permissions necessary for the realisation of the project.
- b) Costs of instruments and equipment (including installations and transport vehicles) to the extent and for the period used for the project. If such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of good accounting practice, are considered as eligible.
- c) Costs of the acquisition (or construction) of buildings, infrastructure and land, to the extent and for the period used for the project. Where these costs are determined with regard to the commercial transfer value or the actually incurred capital costs, as opposed to the depreciation costs, the residual value of the land, building or infrastructure should be deducted from the funding gap, either ex ante or ex post.
- d) Costs of other materials, supplies and similar products necessary for the project.
- e) Costs for obtaining, validating and defending patents and other intangible assets. Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project.
- f) Personnel and administrative costs (including overheads) directly incurred for the R&D&I activities, including those R&D&I activities related to first industrial deployment, or in the case of an infrastructure project, incurred during the construction of the infrastructure.
- g) In case of aid to a project of first industrial deployment, the capital and operating expenditures to the extent and for the period used for the project, as long as the industrial deployment follows on from an R&D&I activity and itself contains a very important R&D&I component which constitutes an integral and necessary element for the successful implementation of the project. The operating expenditures must be related to such component of the project.
- h) Other costs may be accepted if justified, and where they are inextricably linked to the realisation of the project, to the exclusion of operating costs not covered by point (g).