



ASD position on the revision of the Communication on Important Projects of Common European Interest (IPCEI)

The IPCEI instrument has proven to allow and incentivize EU Member States to make a difference by working together and along key EU priorities. It **must however be greatly strengthened and simplified and concern more projects up and downstream, and of different sizes**. It must support the **EU industrial sovereignty and technological leadership, while taking into account EU priorities and respecting the rules of competition and of the internal market, in the context of a global level playing field**.

IPCEIs should allow to launch EU scale projects to support a strong Aerospace, Security and Defence ecosystem, especially in areas where no EU Member State alone can respond to the strategic challenges adequately.

Elements below may also touch upon some practical elements encountered in the national structuring of IPCEIs.

Reduce significantly administrative burdens and speed-up decision-making:

The draft IPCEI Communication introduces provisions requiring, save exception, co-funding by at least **4 participating Member States**. Within ASD, members consider that this requirement is not entirely justified, and that the former Communication's requirement should be maintained (more than 2 participating Member States). A higher number of States could constitute a positive indicator under Section 3.2.2 of the Communication, but not a condition to the characterization of an IPCEI. This position is considered consistent with the fact that IPCEIs should not concern very wide projects only but should also concern smaller and less "exceptional" projects, to the extent that these would also bring very significant and tangible contributions and EU benefits, even if at a smaller scale. This would constitute a strong and relevant incentive for States to invest jointly rather than separately.

At the same time, significant additional administrative burden and conditions would apply under the new draft Communication, which could become a refrain to the involvement and development of IPCEIs. Notably, the newly introduced requirement that all States should be given an "adequate opportunity to participate" is excessive and could be used to slow down or even endanger the development of IPCEIs. This could be seen as a positive indicator only and not a condition, also considering that it could apply to confidential projects.

The points that we previously set out with respect to administrative burden and decision making were as follows and remain valid:

- Allow a single overall approval of the IPCEI, covering all subsequent public funding without further process, leaving remaining control with the concerned EU Member States. A simplification of the procedure with one notification for all participating actors appears appropriate.
- Encourage, better coordinate and complement national (e.g. through Resilience and Recovery funding) and EU-managed funding.

- Harmonize national selection processes. Assessing the feasibility of cooperation between stakeholders from various countries in compliance with the principles of competition law should be possible very early.
- Flexibility should be available to adapt monitoring mechanisms, KPIs and roadmaps to changing economic and technology conditions. Agile, fast-track procedures are needed for IPCEIs to deliver on time, in line with market needs.
- Furthermore, IPCEIs contribution to EU strategies must be reinforced by making sure that the process for designing such projects is genuinely transparent.

Increase industrial and economic interest of IPCEI

- We welcome the fact that draft Communication is updated to include **the "new objectives of the Union"**: Green Deal (climate neutrality), digitalization (including cybersecurity) and industrial strategy.
- **Extend the application of the IPCEI instrument to downstream sectoral projects as well as to smaller projects**: this would greatly increase the incentive for EU Member States to invest jointly, even for smaller scale but extremely useful projects, and to channel their support on higher TRL R&D projects, bringing strong contributions to EU objectives: this would be made impossible if the new 4 Member States requirements in the draft Communication and invitation to all were maintained, cf. above.
- **Support received by non-EU competitors** from their home States and their corresponding time-to-market should be fully taken into account in the context of the compatibility analysis: the draft Communication here makes a welcomed reference to the upcoming instrument on international subsidies and level playing field. The wording at para. 39 (matching clause) has not been modified but this appears as a satisfactory basis and can be maintained.
- **Co-funding**: paragraph 37 and 42 of the draft Communication insist on the importance of the level of co-funding by private beneficiaries, and even refer specifically to a claw-back mechanism. Although ASD does not question the appropriateness of co-funding as such, we believe that the importance of this element should not be stressed as much, in particular at a time where the Covid crisis has left companies in our sector with a far lower ability to co-fund activities, notably in RDI, despite the fact that such activities will be indispensable to successfully achieve the green and digital transitions. In this perspective, a clarification of the terms "*significant co-funding*" (criterion for measurement and validation) seems appropriate. In parallel, it is worthwhile to consider the "aid reach 100% of funding gap" as the aid intensity rule. Finally, the level of support brought to our competitors outside the EU should here as well be fully taken into account.
- **Conditions of compatibility relating to spill-over effects and dissemination of the results of the research (IPRs) are often excessive and play against EU companies' competitiveness**. They should be waived or reduced, for instance by balancing them with the preservation of the EU industrial and technological leadership and competitiveness, in support of the fight against climate change and digitalization. However, it seems that the draft Communication does not contain any modified wording in this respect. At the very least, the text should explicitly acknowledge, beside the benefits that access rights to IPR or positive spill-overs can induce, the importance of IPRs protection in the EU companies competitiveness, their ability and incentive to innovate and the fact therefore that the balance between openness and protection should be found in view of the specific context at stake.
- It is also necessary to **clarify the legal framework applicable to cooperation between companies under antitrust rules**, to avoid excessive IPR dissemination and allow necessary exchanges of information and coordination: this element has emerged as a key one throughout the earlier IPCEIs and will only become more important for the implementation of the Green Deal and the digital agenda. It is fundamental that companies can find, for instance, through dedicated guidelines, guidance as to what would be legitimate and what would be less accepted from an antitrust perspective (covering both exchanges of information

and joint decision making for instance). This would increase legal certainty and favour the development of IPCEIs.

- The analysis of **counterfactual scenarios** is by nature complex; this is even truer concerning projects involving important numbers of participants, such as IPCEIs. We stress that the draft Commission communication acknowledges the existence of a presumption of important market or systemic failure, as it justifies aid measures without which the project could not be pursued.
- The **methodology to calculate the available funding should be harmonized and simplified**. Net extra costs calculations are complex and cannot be anticipated, they should be avoided: with regard to both aspects (counterfactual scenarios and cost calculation), the proposed draft Communication does not deviate from the existing wording. We believe that this should be modified and simplified. We continue to believe that avoiding complexities, artificial analysis and providing a better ability to anticipate the funding levels without having to perform complex and uncertain analysis would be extremely useful.
- **Confirm as a standard the scope of eligible costs**, in particular the coverage of **“first industrial deployment”**. Eligible costs in the context of the first industrial deployment must go beyond R&D and **pre-industrialization**: we welcome the explicit reference to the first industrial deployment and the FOAK (First-of-A-Kind) equipment. We note that in previous cases the Commission adopted a pragmatic and flexible approach on a case-by-case basis and considered the parties’ input in the determination of the cut-off criterion between the R&D&I and First Industrial Deployment phases with pre-production prototypes and commercial activities¹. This approach should be maintained in the Communication. The fact that prototypes for operational demonstration would be later sold, as is the usual practice in certain parts of our industry or when prototypes correspond to the final product, should not exclude the ability to obtain normal funding (as such sale remains isolated and should not be regarded as a mass production or normal commercial activities). It seems useful to recall that in aerospace/defence R&D phases are typically not linear (spiral R&D), where the phases overlap with continuous technology insertions along the life-cycle of a product. Note also the Frascati definition: defence prototypes may be considered R&D if “primary objective is to make improvements”.
- SMEs should be incentivized to participate, with reduced administrative burden, reduced Financial Viability fast-track processes, and specific assistance mechanisms. Synergies with other SME-specific schemes should be established. SMEs and start-ups are an integral part of innovation chains federated around large companies. We note in this respect a positive reference to cooperation with SMEs in the positive indicators in Section 3.2.2.

Signed by Jan Pie, ASD Secretary General, on 20 April 2021

¹ DG COMP Decision Brussels, 13.12.2018 C(2018) 8864 final. (294). Insofar as the IPCEI Communication allows higher aid intensities and a wider scope of eligible costs for activities, including for FID which is not covered by the RDI State aid rules, the efforts required under the IPCEI Communication should in principle go further than those required under the general RDI rules. Furthermore, spill-over effects can be generated not only by the RDI activities, but also by the FID activities.