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Submission to the public consultation

with respect to the proposed targeted revision of the

Communication on State aid rules for Important Projects of Common European Interest (the "IPCEI Communication")

We welcome the plan to review and revise as necessary the current Communication on Important Projects of Common European Interest (IPCEI) to support the EU Commission's priorities, such as the European Green Deal, the Industrial Strategy, the Digital Strategy, and the Commission's plan for the post COVID-19 recovery of the European economy. The twin Green and Digital transformation require huge investments and a high degree of coordination within and across sectors. IPCEIs are a key instrument to address these challenges.

An IPCEI can be an important instrument to help overcome important market or systemic failures and trigger investments that would otherwise not be feasible. This is particularly important in industries with high R&D intensity and significant upfront investments that are at the heart of innovation and future value chains. The global nature and competitive dynamics of these industries mean that the incentive schemes provided by governments across the world are a key factor for investment decisions and, consequently, the future geographic distribution of these industries.

For these reasons, IPCEIs will play a key role for Europe's ambition to strengthen its footprint in the key industries of the future.

The revision is mainly addressing 3 areas:

- to **clarify certain notions** (for example, the definition of "integrated project") **and provide further guidance** on certain criteria set out in the Communication, such as the rules applicable when public support from different sources, including EU funds, is combined to fund an IPCEI;
- to **facilitate the direct and indirect involvement in IPCEIs of small and medium-sized enterprises (SMEs)**, in line with the Commission's Industrial Strategy and the SME Strategy.
- to **further enhance the open character of IPCEIs** (by, for example, providing that all Member States must be given a genuine opportunity to participate in an emerging project) **and their consistency with EU policies**, notably enabling the green and digital transformation.

We welcome the overall scope of the review and the suggested focus areas but would point out that one key objective of the review should be to ensure that IPCEIs can be as impactful as possible in supporting Europe's long-term competitiveness especially in strategically important industries of the future. The EU Commission's state aid control must reflect the realities of global competitive dynamics and investment trends, taking into account the industrial policies in support of key industries in markets across the world from Asia to the United States. The key factors for this are a smart design of criteria for eligibility in order to be able to achieve a sustainable impact and timeliness and speed of the process (as innovation cycles are increasing).

Specifically, we would like to comment to the following points of the draft communication:

1. Definition of first industrial deployment

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[1)]. 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.

1) Limited atypical sales related to the testing phase, including sample or feedback or certification sales, are excluded from the notion of "commercial activities".

IPCEIs should enable industry to bridge the gap between R&D&I and economically viable production (scaling, not just feasibility) and therefore include first industrial deployment at scale. As the commission states, First industrial deployment covers the phase between pilot/demo line and before start of mass production for developing a new product with high R&D&I content and/or a fundamentally innovative production process. We therefore appreciate the clarification with respect to FID in the communication to include the upscaling of pilot facilities, of demonstration plants or of the first-in-kind equipment and facilities covering the steps subsequent to the pilot lines. However, the reference to 'commercial activities' is still too restrictive and confusing as each activity of a company /business represents generally a commercial activity and is initiated for commercial reasons. In addition, the definition of allowed sales is too restrictive, as during the FID phase at scale it should also include sales required for yield learning. We would suggest to delete the word 'atypical' in the footnote and to replace the word testing phase with the word FID.

Furthermore, we believe that the general exclusion of investments relating to **early** industrial deployment could undermine the "effet utile" of IPCEI funding. In order to create the momentum, which is necessary to enable the European industry to become a significant force on a world-wide scale, this definition of eligible costs seems overly restrictive. We therefore encourage the Commission to reflect about the possibility to fund, at least partly, activities related to the **early** production phase of an investment. The fact that such activities are somewhat "closer to the market" and may therefore have a greater effect on competition than the support of pure R&D&I and FID related funding, could be reflected in lower aid intensities for this part of an IPCEI. However, the outright exclusion of production-related activities appears is likely to render the tool unfit for addressing systematic market failures caused by geographical interests or unfair national trade policies.

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2. Definition of eligible costs

ANNEX - ELIGIBLE COSTS

…

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.*

...

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.

The specific criteria with respect to the definition of eligible costs in case of investments (only depreciation according to project lifetime) makes it unattractive to undertake such investments in Europe. Costs for equipment are higher in the semiconductor industry than in any other industry. Therefore support should be provided on an expenditure basis (instead of cost basis for capital expenditure (property, plants, buildings). Especially investments in a new building/cleanroom with a depreciation life time of more than 20 years or investments in the second half of the project would result in only very marginal funding compared to similar investments outside Europe.

Alternatively, we suggest to amend the wording in item b) as follows to give national authorities flexibility in using imputed depreciation:

b)…. 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 until entering volume production, as calculated on the basis of good accounting practice or in accordance with the methodology prescribed by the national authorities****, are considered as eligible.*

3. Claw-Back mechanism

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 maximize their investment and project performance. Member States are not prevented from implementing additional or stricter claw-back mechanisms.

For industry, reliable funding commitments are absolutely essential. Any potential claw-back provisions must be very carefully considered to provide for legal certainty and prevent counter incentives:

- Recovery if funding must only be based on proven eligibility violations based on clear and predefined funding rules and continuously assessed during and at the end of the project.
- Financial returns from early qualification samples and low volume manufacturing must not impact the funding, as long as included in the funding gap analysis.
- Financial returns from an IPCEI due to a faster market uptake of the product/ technology then expected at the time the funding gap was calculated, should be exempted from repayment obligations. Any faster uptake only serves to accelerate the intended project goals of enforcing the intended EU policies, maintaining/establishing technological leadership, industrial deployment and securing of highly qualified employment in Europe.