

## **Review of the Communication on important projects of common European Interest (IPCEI) – Statement by Austria**

### **Background**

Following the first IPCEI Communication of 2014<sup>1</sup>, the Commission launched an evaluation of the IPCEI Communication in 2019 to assess whether these rules are still fit for purpose. According to the findings of this evaluation, the rules were generally seen as still valid. Nevertheless, some targeted adjustments were recommended. The current IPCEI Communication will expire at the end of 2021, with **a new IPCEI Communication to be adopted in the second half of 2021**. The revision of the IPCEI Communication is largely based on the results of the evaluation of the current Communication and the evidence and data collected in the process, including the public consultation launched on 23 February 2021.

To develop a **coordinated Austrian position** in the European revision process of the IPCEI Communication, an **accompanying process was set up** in which the relevant needs, proposals and recommendations of the Austrian stakeholders for the further development of the instrument were recorded, processed, summarised and will subsequently be introduced into European and national discussions.

This accompanying process included an **online survey** (with answers by 62 stakeholders), **focus groups and interviews** as well as a **dedicated workshop** with 65 participants in which the results of the survey and previous feedback were discussed and additional questions, requests and suggestions for adaptations of the IPCEI draft communication were gathered.

The whole process was characterized by **high levels of engagement and commitment** on the side of the Austrian stakeholders reflecting **the perceived importance of IPCEI in Austria**. This statement reflects both **stakeholders' opinions** as received in before mentioned formats as well as results of discussions and reflections of **experts in two Austrian Ministries**.

### **Summary of main areas of concern**

- Many Austrian stakeholders interviewed emphasized that the **terms and definitions** are still **not sufficiently precise** and leave a lot of room for interpretation. We regard clarifications (for instance) in the following articles as necessary: **Definition of single and integrated projects** (Art. 12, 13), market- and systemic failure (Art. 16), **opportunities for member states to participate** (Art. 18), **spill-over effects** (Art. 19), **significant co-financing contribution** (Art. 20), **the term of “major innovation”** (Art. 23), **lifetime of investment** (Art. 34) as well as **infrastructure** (Art. 47).
- Moreover, concerning the **participation of SMEs** (Art. 22) we reckon that there is still a considerable need for clarification for SMEs to low-threshold granted or less burdensome access to IPCEI. We kindly ask the Commission to examine whether **alternative, simplified notification paths**, i.e. a fast-track or second accession window for SMEs which exempts SMEs from certain procedural burdens could be considered.

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<sup>1</sup> In which the Commission set out the conditions under which State aid for the execution of important projects of common European interest can be considered compatible with the internal market under Article 107(3)(b) of the TFEU

- As for FID (Art. 25), we recommend to **reconsider the definitional base of "First Industrial Deployment"**: We suggest that – **only in critical areas of high importance and when duly justified (e.g. pharmaceuticals)** – the eligibility of innovative production processes and economic activities leading up to full market deployment shall be included.
- As for Art. 26, we recommend to add **the overarching goal of "strategical industrial autonomy" for the EU** in order to take into account recent discussions on autonomy and sovereignty.
- As for the **claw-back-mechanism** (Art. 37), we argue that such a mechanism should follow a balanced approach. Framework conditions need to be consistent and standardized for all future IPCEI projects. Information on implementation (i.e. on thresholds, maximum reimbursement, etc.) shall be conveyed in a clear and transparent manner.
- As one overarching issue, we reckon that the **burden of information provision and of assessment** is shifted largely onto the submitting companies, although companies inevitably do not or cannot have sufficient data and capabilities for this. This concerns, among other things, the economic analysis and measurement of spill-over effects (Art. 19) or the avoidance of distortion of international trade (Art. 39).
- As for the notification process, many stakeholders state that there is still a lack of information, clarity as well as speed. We therefore recommend that the **European Commission develops reliable and coherent procedural guidelines** which elaborate in greater detail important IPCEI criteria mentioned in the communication and **implements process management standards and tools** in order to provide member states and companies with reliable information.

## Suggestions for improvement in detail:

In the following, we develop suggestions for adaptations in the IPCEI communication – presented in chronological order:

### Chapter 1: Introduction

#### Art. 4, 14 resp. Art. 15: "Make a significant contribution to EU objectives"

According to the intention of the Communication, IPCEI should be consistent with other EU policies, in particular the European Green Deal and the Digital Transformation Strategy. Therefore, it seems **necessary to include references to more recent relevant initiatives** (see paragraphs 4, 14 and 15 of the draft Communication). This is very relevant from the point of view of most stakeholders consulted in the process (67%) and formulated accordingly. This point was raised several times (especially by political departments and agencies) that strategies on societal challenges are also taken into account.

- In the current draft communication, not all relevant strategies and agendas representing the EU objectives are covered, e.g. the **strategy for Corporate Social Responsibility**<sup>2</sup>, the **Commission regulation on technology transfer**<sup>3</sup>, the **Pharmaceutical Strategy for Europe**<sup>4</sup>, the **opinion of the European Economic and Social Committee to the Reshoring of EU Industries**<sup>5</sup>,

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<sup>2</sup> Communication from the Commissions to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2011) A renewed EU strategy 2011-14 for Corporate Social Responsibility (COM(2011) 681 final)

<sup>3</sup> Commission regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements

<sup>4</sup> Communication from the Commissions to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2020) Pharmaceutical Strategy for Europe (COM(2020) 761 final)

<sup>5</sup> Opinion of the European Economic and Social Committee on the 'Reshoring of EU industries in the framework of reindustrialisation' (2014/C 311/03)

the compliance with the **recommendations of the independent Ethic Committee of the European Commission**<sup>6</sup>.

- We therefore **recommend to review and supplement the list of references** provided as well as to **point to the possibility of flexibly incorporating future European strategies**.

## Chapter 3: Eligibility Criteria

### Art. 12, 13: Definition of a project

The **distinction between ,single projects‘ and ,integrated projects‘ is not made sufficiently clear** in the text. Whereas ‘single project’ would most likely refer to single projects by beneficiaries, the term ‘integrated project’ leaves ample room for interpretation, which could lead to misunderstandings. For instance, it remains unclear whether an ‘integrated project’ could already form an IPCEI itself. Moreover, would a consortium with multiple single projects submitted by one single company (but through different subsidiaries in different member states) also qualify as an ‘integrated project’?

- We opt for a **better definition of the two types of projects** and a better explanation of the implications of one and the other in order to avoid misunderstandings.

### Art. 16: "market and systemic failure"

Overcoming important market- or systemic failures are considered a criteria for an IPCEI. Stakeholders lack an understanding of how to measure/assess such failures.

- We suggest **clarifying the notion of important market- or systemic failures** and thus facilitating the procedure or, alternatively, elaborating a definition **in the context of the process-defining guidelines**.

### Art. 17: "The project must involve at least four Member States"

72% of stakeholders consulted in our process regard a **significant number of member states as a desirable and important prerequisite of a European scope and involvement**, as it fully exploits the potential to create European value chains. A comprehensive and transnational emphasis on the open nature and knowledge sharing creates a clearer picture on the business side about the initiative and the "philosophy" of IPCEI at the outset.

However, for most of the interviewed stakeholders **the minimum number of countries** involved in a project (currently four envisaged, point 17 of the new draft Communication) **seems too high and arbitrarily set**. A reason for this can be seen in the complexities that come along with larger number of participants and member states. Stakeholders warned that the requirement of involving several countries must not lead to such projects ultimately failing in implementation due to their complex set-up.

- The **mandatory minimum number of participating member states should not be set at a fixed and arbitrary number**, but should rather be defined alongside a ‘minimum efficient scale’ of a project. This could be achieved by applying a wider definition of the clause in FN17 ("when justified by the nature of the project"), as e.g. with TEN-E.

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<sup>6</sup> Commission Decision (2018) on a Code of Conduct for the Members of the European Commission (2018/C 65/06); Article 12

**Art. 18: "All Member States must be offered a genuine opportunity to participate in an emerging project"**

Art. 18 of the new draft Communication provides **for all Member States to be informed of the possible structuring of an IPCEI and to be given an opportunity to join the initiative**. This article is important for the early and timely initiation of consortia and partnerships and sufficient preparation of international partners.

The wording of this paragraph could be misinterpreted. Following this rather weak wording, a simple public information of the Member States during the preparation of the project could suffice. Furthermore, the timing of this flow of information is not clearly defined.

- We suggest **clarifying this paragraph in order to grant an effective flow of information** and thus guarantee openness and transparency.
- One way to do so would be to **shift the responsibility to adequately inform member states** from the coordinating state **to the European Commission**. This flow of information could be implemented easily i.e. via an IPCEI platform or website.

**Art. 19: "Positive spill-over effects" in other economic sectors**

The intention to maximise spill-over effects requires a more detailed wording due to their importance.

- Generally speaking, **the identification of spill-over effects** should primarily be **the task of the European Commission**, as an estimate of these effects is beyond the means of companies.
- In the same vein, a **specification of which activities and indicators would count as efforts on the side of the enterprises to support spill-overs**.
- As for the communication, it is recommended that **a more detailed definition of spill-over effects** (with examples in the footnotes) is provided. Alternatively, a reference to a comprehensive overview/list of spill-over effects could be made in the communication.

**Art. 20: The beneficiary must make a "significant" co-financing contribution to the project.**

In Article 20, the **wording "significant" leaves room for interpretation and uncertainty**. European countries have different funding frameworks, which dictate correspondingly different co-financing conditions.

- We therefore recommend to consider an **alternative wording** which **captures the need for own contributions by the beneficiaries** and takes into account the different funding rules and flexibility to access different sources of public funding.

**Art. 22d: Involvement of SMEs**

Provided that all the cumulative criteria of section 3.2.1 are met, the Commission will give **a more positive assessment** of the project if the project is characterised by one of the following: A high degree of cooperation in terms of the number of partners, involvement of organisations from different sectors or the involvement of enterprises of different sizes and, in particular, cooperation between large enterprises and SMEs in different member states.

Despite the great potential seen in the participation of SMEs, a large proportion of **Austrian stakeholders** (and here above all participating companies) **see the involvement of SMEs in the present draft as in need of improvement**.

- Given the special role that SMEs play in the European economy, it is important that SMEs can participate in and benefit from IPCEI. As undue distortions of competition are in principle less

likely with lower amounts of aid (e.g. for SMEs), the **adequacy criterion should be explicitly introduced as part of the Communication** (see paragraph 5 of the draft Communication).

- We recommend to consider **alternative, simplified notification paths, e.g. a fast-track or second accession window later in the process for SMEs** which exempts SMEs from certain procedural burdens.

#### **Art. 23: "Research, development and innovation ("R&D&I") projects must of major innovative nature"**

Art. 23 states: "Research, development and innovation ("R&D&I") projects shall be highly innovative". In our eyes, it is **important to clarify the term "major innovative"** (preferably by giving examples). It is important that this will provide a basis for selecting projects via an open process which is not tied to a specific economic sector. We therefore suggest to clarify which indications point to the nature of a major innovation.

- It is recommended that **this clarification be made either in the context of Article 23 or, alternatively, in the context of the process-defining guidelines.**

#### **Art. 25: Adapted definitions such as "first industrial deployment (FID)"**

The term "first industrial deployment" (FID) in Art. 25 is defined as *"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"*. The term "first industrial deployment (FID)" is not without ambiguity, as Article 25 states that **FID should not cover "mass production" or "commercial use"**, while FID – in the perception of many stakeholders – goes beyond the pilot stage and includes early phases of scale up of production. Especially in certain critical areas, we see the need to extend the scope of FID in order to allow beneficiaries to facilitate the scale-up of highly innovative and important products/services.

- We recommend to **reconsider the definitional base of "First Industrial Deployment"**: We suggest that – **only in critical areas of high importance and when duly justified (e.g. pharmaceuticals)** – the eligibility of innovative production processes and economic activities leading up to full market deployment shall be included.

#### **Art. 26: Importance to the strategies of the EU**

Art. 26 reads: *"Environmental, energy, transport, health or digital projects [...] 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"*.

- Recently, and against the background of increasing international competition and crises jeopardizing global value chains, the **goals of industrial 'sovereignty' and strategic 'autonomy'** have been strongly emphasized. Hence, the **contribution of IPCEI to achieving the overarching goal of 'strategical industrial autonomy' for the EU** should be explicitly added.

## Chapter 4: Compatibility Criteria

### Art. 32: Counterfactual scenario

Our experience from past notification processes makes us believe that it is **very burdensome for private sector partners** to calculate ex ante net extra costs which would have arisen in a non-funding situation and **to hand in a counterfactual (non-aid) scenario**. This is even more difficult when a greater number of project partners is involved.

- Recognising the basic intention of Article 32 and the need for clarification identified, we therefore **recommend to specify this article**.
- Alternatively, **procedural guidelines could assist beneficiaries to adequately present counterfactual scenarios**.

### Art. 34: "The maximum aid level"

Art. 34 elaborates: *"The funding gap refers to the difference between the positive and the negative cash flows over the lifetime of the investment"*.

- We recommend to further **clarify the term lifetime of investment** in order to equip beneficiaries with a better understanding of the funding gap calculation.

### Art. 37: Claw-Back Mechanism

Due to companies' necessary planning security (especially SMEs) in connection with long project durations, Austrian stakeholders critically view the claw-back mechanism. A claw-back mechanism is considered asymmetric, i.e. if the market develops better, subsidies have to be paid back. If the market develops worse, there are no additional subsidies. On the other hand, a claw-back mechanism can be viewed as an appropriate instrument to avoid market distortion due to higher than initially forecasted benefits. Moreover, it could incentivize beneficiaries to estimate their funding gap more conservatively. In order to reconcile both sides, AT would recommend the following:

- The **framework conditions of the claw-back mechanism** need to be **consistent and standardized for all future IPCEI-projects** to avoid dispensable differing prerequisites for stakeholders and contribute to a more efficient notification process.
- **Implementation-related details of a claw-back mechanism** (e.g. threshold, maximum reimbursement, application details) must be **clear and comprehensible** from the outset in any case in order to **ensure corresponding plannability and security for all stakeholders**. If the Commission considers the communication not to be the right place to detail, we recommend issuing procedural guidelines applicable to all future IPCEI processes.
- At the same time, a standardized claw-back mechanism must also **safeguard a balanced distribution of the higher than expected profit** in the funding gap analysis between the beneficiary and the funding authority.

### Art. 39: Avoidance of distortion of international trade

We regard it as very difficult for companies to prove which subsidies a global competitor has received.

- **Limiting the period of consideration for aid received by a competitor outside the EU** to three years **may not be sufficient to prevent distortions of competition** in international trade in individual cases, as such distortions often only occur in a later period, which can easily exceed three years. In such cases, **the period under consideration should be extended accordingly**.



- While companies have at least some insight about the effects of an IPCEI has a distortional effect on international trade, the **full assessment of such effects** is not only beyond their scope, but also would run counter their interests. Hence, such an assessment **must necessarily lie with the European Commission**. Companies should only be obliged to provide respective information and data at request of the EC. In addition, **these requests should be well specified and targeted** in order to avoid too high information gathering costs on the side of the companies.

#### **Art. 47: Examination of the risk of market foreclosure and market dominance**

We consider this point very vague, the handling of IPRs (Intellectual Property Rights), for instance, is not sufficiently addressed.

- As for open non-discriminatory access to infrastructure, we reckon that **clarification is needed as to what is meant here in terms of infrastructure**. Do you refer to research infrastructure or “non-R&I”-infrastructure? Footnote 28 exempts pilot lines from the definition of infrastructure and thus suggests that research infrastructures are in the focus here. However, further clarification would be welcomed.
- Non-discriminatory access to infrastructure is to be questioned in the case of **company-internal infrastructure**. We regard it as problematic to make a company-specific infrastructure available to others.

#### **Art. 49: "Exclusion of relocation of production capacities within the EEA"**

While acknowledging the importance to avoid subsidy races, the exclusion of relocation of production capacities within the EEA area as a participation criterion is in part critically questioned by Austrian stakeholders. **Flexibility in production and in the supply chain is often a key factor to remain competitive** in a volatile environment. It is argued that any structural change that goes hand in hand with increased European competitiveness will also bring about changes in the regional and national division of labour and the development of local centres of excellence.

- Art. 49 runs the risk of being understood in the sense of protectionist industrial policy and provoking structural lock-in. It is therefore **recommended to specify cases when production relocation can be justified and describe (clawback) mechanisms in case relocation takes place** during the lifespan of a project.

#### **Art. 50: Transparency**

The Commission is asked to ensure that the **information published in the Commission's transparency award module is in line with the usual processes and harmonized with the usual entries**.

### **ANNEX: Eligible cost**

We would like to draw the Commission's attention to the fact that there seem to be discrepancies between the English original version of the IPCEI communication and the German translation. The English original states: *"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 German translation, however, does not feature the (important and clarifying) notion on the time span. We strongly recommend to add this notion in the German version as well.

## BEYOND THE IPCEI COMMUNICATION

Austria would like to thank the Commission for their continuous help and efforts in the past IPCEI notification processes – especially against the background that these **processes are time-intensive and potentially burdensome for all parties involved** – companies, member states as well as the European Commission.

Bearing in mind, however, the **strategic importance of value chains** at stake and the **urgency to reach the goals of European strategies and objectives**, we reckon that we all need to contribute to the streamlining of processes, reduction of administrative burdens and learning from past experiences so that notification processes can gain speed and thus increase the impact of IPCEI as a whole.

- We therefore recommend that the **European Commission develops reliable and coherent procedural guidelines** which elaborate in greater detail **important IPCEI criteria** mentioned in the communication (such as spill-over effects, claw-back-mechanism, funding gap calculation etc.) – applicable for all IPCEIs.
- We also kindly ask the **Commission to implement process management standards and tools** in order to provide member states and companies with reliable information, i.e. on which criteria have already been met or which questions still need to be answered (until which deadline). The use of an online tool would certainly be welcomed by all involved parties.