



Urząd Ochrony Konkurencji i Konsumentów

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Mr. Carles Esteva Mosso
Deputy Director-General
for State Aid
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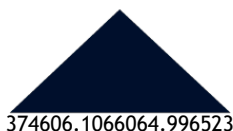
HT.4892 - Review of the Communication on important projects of common European interest (IPCEI)

Dear Mr. Carles Esteva Mosso,

Following the public consultation on *the 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* (hereinafter: the draft Communication), I present the Polish position.

The Polish authorities very much welcome the adjustments to the Communication targeted specifically at:

- clarifying certain notions and providing further guidance on certain criteria set out in the Communication;
- facilitating the involvement of SMEs, in line with the Industrial Strategy and the SME Strategy;
- ensuring the wide European character of important projects of common European interest by enhancing their openness and consistency with EU policies, notably the European Green Deal.



The Polish authorities are particularly pleased that provisions for a claw-back mechanism have been introduced, which is considered necessary to ensure the proportionality of the aid, especially given that IPCEI projects are often innovative.

Nevertheless, in order to provide that the proposed regulations be an effective tool allowing for the State aid rules to be correctly applied, in the opinion of the Polish authorities the draft Communication should be amended, supplemented or clarified in accordance with the comments presented in the table below.

<p>Point 17 of the draft Communication</p>	<p>Requiring at least four Member States to be involved in the project (with some exceptions), although it significantly expands the international group of cooperating entities, may, at the same time, hinder the development of some projects. It is therefore recommended to keep the current wording of the (analogous) provision - point 16 of the Communication reads as follows: "The project must normally involve more than one Member State and its benefits must not be confined to the financing Member States, but extend to a wide part of the Union. The benefits of the project must be clearly defined in a concrete and identifiable manner".</p> <p>The approach presented above appears to be justified as it takes into account future projects that may be jointly developed and implemented by more than one Member State and at the same time be of international importance, but due to the nature of the project would have to be located in a single Member State.</p> <p>It is proposed also to consider introducing a measure (condition) according to which projects from less developed regions (C and A regions) would be assessed more favourably. It seems that the above would ensure the balance of IPCEI participants (in particular by building IPCEI projects also in less developed Member States - as experience shows large projects are the domain of more developed countries, encouraging their participation and better addressing the issue of pan-European interests).</p>
<p>Point 18 of the draft Communication</p>	<p>Although the Polish authorities express their support for regulations contained in point 18 of the draft Communication, the Communication still lacks reference to the very process of shaping the IPCEI itself, designing such initiatives and informing about them. The increased coordination and transparency is needed regarding the informal phase and phase of the call for proposals. It seems also necessary to create in particular a dedicated IPCEI platform for information purposes.</p>
<p>Point 20 of the draft Communication</p>	<p>It appears that the modification of the co-financing criterion (adding the "significant" to the co-financing criterion) will make it more difficult for projects in certain fields, such as</p>

	hydrogen projects, to obtain IPCEI status - due to the early stage of development, such projects require greater public support. Further, it should be noted that modification in question may create the risk of hampering the use of the Reconstruction and Resilience Facility and, consequently, jeopardize many projects across Europe that are essential to mitigate the economic and social impact of the coronavirus pandemic. In this context, it should be considered whether the proposed provision is justified.
Point 22 of the draft Communication	<p>The following provision of the draft Communication: “In addition to the cumulative criteria in Section 3.2.1, the Commission will take a more favourable approach where (...)” requires clarification or rewording. The wording of this provision is imprecise and may lead to interpretative doubts. One could conclude that a more favourable approach would also apply where the involvement of any legal body to which the Commission delegated its powers was only marginal and did not have a significant impact on the project. Therefore, it is proposed to clarify the provision by linking the involvement of such a legal body to the real impact on the development and management structure and implementation of the project.</p> <p>In addition, the Commission’s competence specified in point 22(b) of the draft Communication, according to which the Commission is involved in the selection of projects, should be clarified. The wording of the proposed provision may suggest that the Commission would evaluate the project twice: at the application stage in the Member State and at the grant award decision stage.</p> <p>As regards point 22(e) of the draft Communication, it should be clarified how the Commission will assess compliance with the criterion of involving co-funding from an EU fund in direct, indirect or shared management. In particular, it should be explained what form of agreement between the Member State and the applicant at the moment of application to the IPCEI will suffice for the Commission to adopt a more favourable approach. The clarification is also needed whether it is sufficient for the applicant to indicate the program financed by the ERDF under which, after obtaining the decision on the IPCEI, he plans to apply for funding.</p> <p>It is also proposed to include the criterion from point 22 (f) of the draft Communication - to take into account the Taxonomy Regulation in the project, in section 3.2.1 of the Communication as a formal requirement.</p>
Point 25 of the draft Communication	Based on our experience realizing the IPCEI projects we are of the opinion there is a need of clarification as to the understanding of the notion of mass productions by the Commission. The distinction between the FID (first industry deployment) and mass production phases is of great importance for the calculation of eligible costs and the amount of aid and therefore further clarification in the Communication

	is required.
ANNEX: eligible costs, (e)	The cost catalogue (namely: 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) should also include the certification of the project implementation effects (products or services) necessary to introduce them to the market.

Yours sincerely,

Piotr Pełka

Dyrektor

Departamentu Monitorowania

Pomocy Publicznej

/podpisano elektronicznie/