

Telefónica's response to the Public consultation on the review of the Communication on important projects of common European interest (IPCEI)

April 20, 2021

Telefónica welcomes DG COMP's initiative to revise the Communication on 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 ("IPCEI Communication").

Overall, Telefónica believes that the rules set out by the IPCEI Communication have been fit for analysing the key enabling projects of EU priorities such as those on microelectronics or batteries. In this sense, the Communication's criteria for the eligibility and compatibility of State aid for IPCEIs has helped to enhance the predictability of the Commission's assessment for these strategic European projects and should continue to do so under the current EU political goals.

Accordingly, Telefónica welcomes the Commission's willingness to adapt the IPCEI Communication to the challenges ahead, especially after the Covid-19 outbreak and the initiative to introduce the Next Generation EU instrument and the Recovery and Resilience Facility, which aim to speed up the implementation of EU goals (i.e. Green Deal, the Digital Strategy, the New Industrial/SME Strategy for Europe, the Digital Decade Communication and the European Strategy for Data). In line with such goals, Cloud, Edge computing and Open RAN projects are key to enhance EU's data sovereignty, and its economic recovery and resilience.

In addition, Telefónica believes that the challenges raised by globalisation and economic competition coming from outside the EU should be addressed in the analysis for the eligibility and societal benefits of IPCEI projects (specifically in terms of economic progress, efficiency, network safety and avoidance of relocation of activities outside the EU). The revised Communication should recognise that the fostering of innovation leadership in strategic sectors, in line with EU's commitment to determine its own future and digital sovereignty, is a societal benefit that may require the use of State aid.

Therefore, under the upcoming review, Telefónica encourages the Commission to broaden the current scope of State aid rules for IPCEIs to achieve EU's policy goals. Telecommunication operators are the best-positioned players to engage in the building of green, digital and safe projects in Europe. Telefónica, together with other telecom operators, is engaged in the building of Next Generation Cloud Infrastructure and Services through telecoms Edge and cloud computing solutions. We believe that EU's industry must seize the opportunity for technology leadership at the edges while distinguishing its value proposal in the cloud. In addition, Telefónica is contributing to the Digital Strategy through the Open RAN project¹. These projects should be considered part of an integrated project of IPCEI because they will bring smart cloud and edge capabilities and open interoperable solutions that will enhance future mobile

¹ The Open-RAN project (Open Ran) aims to support the roll-out of Open Radio Access Network solutions that take advantage of new open virtualized architectures, software and hardware to build more agile and flexible mobile networks in the 5G era, boosting the technology of choice for future mobile networks to the benefit of consumer and enterprise customers across the EU.

networks, in terms of innovation, interoperability, security and energy efficiency. Therefore, they will have positive spillover effects across EU businesses of all sectors, public entities, and consumers.

Going through the substantive side of the upcoming review of the IPCEI Communication, we want to stress the following issues to ensure that the conditions set by the revised Communication remain fit for the objectives pursued by the EU and the Member States.

Openness and inclusiveness of IPCEI

Telefónica believes that the existing eligibility requirements set out in Section 3.2 of the IPCEI Communication are fit for purpose, especially regarding the minimum number of Member States required for a project to qualify as an IPCEI and regarding the openness of the IPCEI.

Telefónica considers that the proposed point 17 of the Draft Communication has a risk of limiting the chances of success of several projects which have intrinsic clear and identifiable objectives of creating a significant positive impact on a wide part of the EU. In fact, setting a minimum number of Member States (at least four Member States), while limiting the options for projects initially funded by a smaller number of Member States² is not fit for the very purpose of IPCEIs. The proposed point 17 of the Draft reduces the chances of generating positive spillover effects on the internal market and the Union society. This provision would limit the scope of future IPCEIs without having regard to the type of project, the objective pursued and its financing needs. This is especially relevant considering the changing nature and needs of EU's economy.

The current rules provide an adequate opportunity for the funding of projects undertaken by a small number of Member States, but which are of a particularly large scope, and which entail a considerable level of technological or financial risk, provided that they are kept open for other Member States wishing to join subsequently. Therefore, **Telefónica pushes for maintaining the openness and inclusiveness of the rules of Section 3.2 of the IPCEI Communication: an IPCEI project must normally involve more than one Member State³; and such projects must be designed so as to make it possible for all interested Member States to participate⁴.**

Update to current EU priorities and strategies

As stated beforehand, Telefónica welcomes the Commission's efforts to insert references to recent and relevant initiatives such as the Green Deal, the Digital Strategy, the European Strategy for Data, the new Industrial/SME Strategy and the recent Communication on the Next Digital Decade. In particular, Telefónica considers that projects driven by telecommunication operators are key to favour the development of a European digital ecosystem that may acquire global scale, taking advantage of synergies in the digital single market, enhancing a sustainable economic recovery of the EU after the Covid crisis, and supporting the efforts to strengthen the EU social and economic resilience under the "Scale-up" flagship.

² I.e. 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.

³ Point 16 of the IPCEI Communication.

⁴ Point 20.a) of the IPCEI Communication.

Telefónica wishes to highlight the need to strategically invest in the next generation of European cloud and edge capacities and in broadband deployment solutions under the Digital Strategy and the Next Digital Decade Communication. We believe that by developing the next generation of cloud and edge solutions, the EU has the opportunity to own its data transformation and establish the success pillars for its “Digital Decade” on the global scale.

The implementation of the IPCEI on Next Generation Cloud Infrastructure and Services to which Telefónica aims to contribute through telecom Edge and cloud computing solutions and the implementation of an Open RAN project, embedded in the Microelectronics IPCEI or deemed as an IPCEI in itself, would strategically contribute to effectively foster European data leadership and digital sovereignty, and to creating a more resilient and sustained competitiveness of the EU economy. These projects require Member States’ joint investments and efforts to succeed in the creation of coordinated and trustworthy telco computing infrastructures and services.

On this basis, Telefónica wishes to emphasize that the Commission should expressly consider that Telecom Edge/Cloud projects and Open-Ran projects are susceptible to access to public funds as part of an integrated project of an IPCEI.

Eligibility criteria

Telefónica welcomes the introduction of further guidance on the criteria to determine if a project is eligible to be considered as an IPCEI under the scope of Article 107 (3)(b) TFUE. In particular, regarding the definition of integrated project and the definition of first industrial development. Such clarifications will provide more legal certainty for Member States and stakeholders in the development of IPCEI projects.

By contrast, Telefónica considers that the notion of “societal challenge” of point 16 of the Draft Communication shall be widened to also include objectives aimed at fostering EU’s sovereignty (in terms of economic progress, efficiency, network safety and avoidance of relocation of activities outside the EU). The Commission shall take account of the challenges created by the competition exerted from players and markets outside the EU. On this basis, the Communication should more explicitly recognise that fostering innovation leadership in strategic sectors, in line with EU’s commitment to determine its own future, is a societal challenge that could not be tackled in the absence of State aid. On this basis, Telefónica suggests the following wording for point 16 of the Draft Communication:

Point 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, including fostering the development of ecosystems of EU suppliers in strategic sectors, which could not otherwise be addressed or remedied.

Additionally, Telefónica is concerned about the provision set out in point 20 of the Draft Communication establishing that project must involve significant co-financing by the beneficiary. We believe that this wording is legally indeterminate and may give the Commission too much leeway in deciding whether a project is suitable to be considered as IPCEI. Instead, we propose to add that the Commission shall analyse the “*significant co-financing by the beneficiary attending to the type of project, the objective pursued and its financing needs*” (on a case-by-case basis).

Finally, as regards the definition of “first industrial deployments” of point 25 of the Draft Communication, Telefónica considers that the proposed wording explicitly excluding “*mass production and commercial activities*” may be too strict, given that investments in critical infrastructure, especially in the case of highly distributed infrastructure (e.g. edge cloud), often entail the construction of multiple sites for industrial use cases and first commercial offers. Thus, the definition of “first industrial deployments” could be further clarified to ensure that it does not exclude the possibility of funding for infrastructure deployments for the purpose of commercial use.

Compatibility criteria: preventing negative effects of aid for IPCEIs and further ensuring aid proportionality

In general, Telefónica welcomes the new provisions added in the Commission’s Draft proposal which ensure that IPCEIs create sufficient pro-competitive effects to outweigh possible negative effects on competition and thus, ensure their compatibility with the internal market.

Telefónica supports the mechanism established in point 49 of the Draft Communication related to the relocation of a production activity from another country within the EU to prevent potential negative effects on trade.

By contrast, Telefónica believes that point 37 of the Draft Communication introducing a clawback mechanism should be narrowed down to cases of proven eligibility violations. In highly innovative projects, making a precise estimate of future cashflows is very likely to be challenging. Hence, entitlement to claw-back without more detailed rules on when and how the Commission will exercise such discretion will present recipients of aid with unacceptable level of uncertainty.