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DIGITALEUROPE's response to the consultation on the Review of the Communication on IPCEI

DIGITALEUROPE is supportive of the IPCEI instrument and has recently outlined detailed recommendations on the topic.[1] In revising the guidelines, ***the Commission should ensure the IPCEI framework continues to apply only to areas where there are market failures or other important systematic failures,[2] all while grasping the opportunity to better align this instrument with the broader EU policy context.***

The revised draft guidelines include several important changes. We wish to provide our views on the following:

General remarks

- *IPCEI rationale:* the goal of the IPCEIs should remain to fix market failures while avoiding that governments ''pick winners'' in doing that. Public intervention should specifically take place in circumstances when the market, alone, cannot provide efficient outcomes for society. That includes cases when certain investments are not undertaken even if their economic benefits for Europe outweigh their costs.[3] Granting state aid with the sole purpose to merely improve the individual standing of a specific organisation should not be regarded as a market failure.

- *Legal certainty on cooperation:* the Commission should issue clear guidance on the application of antitrust rules to cooperation under IPCEI projects. This will provide organisations with greater incentives for collaboration.

- *Role of SMEs and inclusiveness:* we welcome the addition of Point 18 and Point 22 (d). They provide a more inclusive approach to project eligibility and aid granting. These additions will offer stronger incentives to create SME-relevant value networks shaped around given products or services. These points are corroborated by Point 5, which we support too. IPCEIs should always strive to improve not only the innovation position of direct beneficiaries, often large actors in value chains, but indirectly also that of their small suppliers, which are leaders in their niche markets. Attention must also

[1] See here

[2] As indicated in Article 107 (3) (b)

[3] As an example, here are State aid guiding templates to assist Member States in the design of their national plans under the Recovery and Resilience Facility (RRF)

be paid to avoid scenarios where SMEs are over-reliant on their customer receiving IPCEI state aid, or where the IPCEI instrument leads to reduced competition or imbalances in the supply chain. Any such development would be detrimental to Europe's long-term industrial resilience and competitiveness.

Eligibility criteria

- *Spillover rights:* we call for clearer language in Point 19 on the legitimacy of the protection of beneficiaries' IP. We support spillovers as a key eligibility criterion. Yet, IP exploitation should be balanced against a legitimate interest for beneficiaries to safeguard their knowledge assets. That should be at the core of the IPCEI framework, as it will maintain incentives to invest over time.
- *Taxonomy Regulation[4]:* Point 22 (f) is too vague on how such Regulation can link up to IPCEI activities. The Taxonomy provisions offer an opportunity to leverage the enabling potential of the ICT sector, both in terms of existing technologies and new solutions which the IPCEI framework seeks to embrace. It is essential to articulate such a point in more detail.
- *First industrial deployment (FID):* we welcome the definition of specific activities qualifying as FID in Point 25. Eligible FID activities should expand to the early production phase of an investment as well as activities supporting the sales learning curve, where the company sharpens its strategy to maximise sales success around the new product or service. Being closer to the market, such activities could benefit from lower IPCEI aid intensity than their purely R&D&I counterparts.

Compatibility criteria

- *Claw-back mechanism:* the inclusion of Point 37 is concerning. The Commission must add details on how it intends to protect incentives for beneficiaries to maximise their investment and project performance. As it stands, Point 37 risks undermining legal predictability in the EU investment environment. Repayment obligation provisions should be limited to cases of proven eligibility violations. Expanding them to scenarios where the project is more profitable than first foreseen would send the wrong signal to industry. It would effectively penalise the most successful projects. Crucially, these risks are further exacerbated by clauses in Point 37. These would allow Member States to implement even tougher claw-back provisions, which we ask to re-evaluate. Finally, the mechanism is also excessively one-sided. It ignores

[4] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment

scenarios where there may be a need for extra aid to beneficiaries, should the funding gap turn out to be larger than initially expected.

- *Counterfactual scenario, funding gap and net extra costs:* the counterfactual scenario corresponds to the situation where no aid is awarded by any Member State. The funding gap refers to the difference between positive and negative cash flows over the lifetime of the investment. Language on the counterfactual scenario analysis in Point 32 and the funding gap calculation in Point 34 remains fundamentally complex, and unrealistic to implement for applicants. Asking industry to predict the future performance of a sector, should it not receive funding aid, is a complex endeavour, even more so in multi-partner IPCEI projects. The counterfactual scenario analysis should be simplified as much as possible. Similarly, the Commission should streamline, harmonise and make more transparent the methodology to calculate the funding gap in Point 34, both per partner and consortium. Ex-ante net extra costs calculations are too convoluted and cannot be anticipated. We therefore recommend further guidance on the latter to facilitate as much as possible the provision of relevant information.

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DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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