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Teknikföretagen

Analysis of revised Communication from the Commission on the 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

General Comments

When analyzing the revised Communication from the Commission on the 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 (2021/C 528/02), published in the Official Journal of the European Union on December 30, 2020, the Association of Swedish Engineering Industries (Teknikföretagen) finds that that the concerns and reservations expressed in the organization's answer during the consultation process still apply¹.

In the introductory remarks, it is assumed that Important Projects of Common European Interest (IPCEI) have positive spill-over effects on the Single Market and society as a whole (1.2). Teknikföretagen emphasizes that we have yet to see empirical evidence in support of this assumption. Rather, we continue to stress the inherent risk that projects limited to companies from co-financing member states will lead to distorted competition on the Single Market, undermining its functionality and, thus, the competitiveness of European industry.

While welcoming the acknowledgement of the importance of enabling the participation of small and medium-sized enterprises (SMEs) and start-ups, Teknikföretagen asserts that there are structural limitations to the instrument's (top-down) process for identifying projects, selection of participants, governance and financial model that remedies the ambition unlikely to be achieved. Rather, the inherent risk of distorted competition expressed above is likely to adversely affect SMEs and start-ups, as distorted competition is especially detrimental to innovative micro, small, and medium-sized enterprises that are vital for European industry's market driven ecosystems.

Therefore, Teknikföretagen has stressed that the framework for IPCEIs shall continue to apply only when there are significant market or systemic failures the market itself cannot address that would justify state aid within the provisions of Article 107(3)(b) of the Treaty on the Function of the European Union. However, Teknikföretagen stresses that systemic failures often pertain to regulatory barriers or other framework conditions that need to be strengthened before considering state aid remedies, to preserve and strengthen the functionality of the Single Market.

¹ Teknikföretagen's answer to the consultation on the review of the criteria for Important Projects of European Interest can be found [here](#). Further analysis of the instrument in the context of EU industrial policy can be found in Teknikföretagen's comments on the European Commission's communication updating the 2020 industrial strategy [here](#).

Detailed comments

In the comments submitted during the consultation process, Teknikföretagen stressed the need for non-ambiguous 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, to secure a transparent and inclusive process that safeguards competition on the Single Market. This has not been achieved, as several suggestions for clarifications and more stringent language have been neglected. In Teknikföretagen's comments, please see §17, §20, §42 (deleted in final text), §43, §45, §48 and §49².

Teknikföretagen welcomes the increased requirement of participating member states (§16), while stressing that participation is still limited to member states' will and ability to finance the projects leading to competitive disadvantages for companies from member states with smaller national budget allocations for IPCEI-participation. This is an inherent structural issue that effectively undermines the general cumulative criteria that all member states must be given a genuine opportunity to participate in an emerging project (§17). In order to ensure that this criterion is fulfilled, funding must be awarded through competitive calls open for all companies, regardless of originating member state, which would both safeguard competition on the Single Market and facilitate SME-participation. This should be combined with thorough industry consultation to identify areas for potential new projects, limiting political intervention in the European economy.

The concern for distorted competition is exacerbated by the general positive indicator that projects involving co-funding or co-financing from a Union fund in direct, indirect or shared management (§21(e)), as some member states have allocated significant funding for IPCEIs through the Recovery and Resilience Facility while others adhere to regular budget allocations.

Teknikföretagen notes that the introduction of the requirement for member states to provide evidence as to whether the project complies with the principle of do no significant harm within the meaning of Article 17 of Regulation (EU) 2020/852 or other comparable methodologies is not a relevant criterion from a competition law perspective.

Pertaining to specific criteria set out in 3.2.3, Teknikföretagen is concerned by the significant broadening of the overall criteria. In addition to the testing phase, bringing batch production to scale is now explicitly included in the criteria (§24). Additionally, infrastructure projects in the environmental, energy, transport, health or digital sectors, to the extent that they are not covered by §22 (research, development and innovation projects) and §23 (projects comprising of first industrial deployment) of importance for environmental, climate, energy (including security of energy supply), transport, health, industrial or digital strategies of the Union, or contributing significantly to the Single Market, including but not limited to those specific sectors, can be supported until becoming fully operational following construction.

² Please note that these paragraph numbers refer to the proposal for revised criteria and may not correspond with the final communication published by the Commission.

If justified by the funding gap analysis, the aid intensity could cover all of the eligible costs (§33) set out in the Annex.

Teknikföretagen continues to question the criterion on necessity and proportionality of the aid, relating to “actual or potential direct or indirect distortions of international trade” (based on circumstantial evidence) due to competitors outside the EU receiving aid (§38). We assert that use of such matching clause poses a significant risk of distorting competition on the Single Market to the detriment of innovative micro, small and medium-sized enterprises that are vital for European industry’s market driven ecosystems, thus limiting European industry’s global competitiveness. Additionally, it may lead to or contribute to a subsidy race on a global level. As such, the scope of the assessment of potential negative effects on trade, including the risk of a subsidy race between member states (§46), needs to be broadened to consider adverse effects on international trade. Preferably, the issue should rather be addressed within the realm of European trade policy or through the proposed new instrument on foreign subsidies. Teknikföretagen would prefer that this paragraph was taken out. If not, it needs to be clearly specified that the paragraph adheres to the principles of proportionality and incentive effect.

Finally, we stress the criteria on prevention of undue distortion of competition and balancing test set out in section 4.2. must be rigorously applied.