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Danish response to the Commission's invitation to comment on revised State aid rules on Important Projects of Common European Interest

The Danish government appreciates the opportunity to comment on the European Commission's draft communication 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 (the draft IPCEI Communication).

In general, the Danish Government is positive towards the draft IPCEI Communication. Overall, we agree that the new focus points in the draft Communication will help secure more openness, transparency and inclusiveness, notably for SME participation and enhance the focus on the green and digital transition. Furthermore, we are happy to note that many of the Danish Government's views and points have been taken into account in the draft IPCEI Communication.

As mentioned in the Danish Government's response to the road map hearing, we strongly support the Commission's intention to limit the scope of the revision to the three main adjustments foreseen in the road map 1) providing further guidance on criteria in the communication, including the Green Deal, 2) facilitating the involvement for SME's, and 3) ensuring that the process is genuinely transparent and inclusive.

The Danish Government finds that the current Communication on IPCEI (2014/C 188/02) has contributed in a positive way to provide helpful guidelines for Member States when preparing schemes for an approval process that is as smooth and quick as possible, while ensuring a strict use and application of IPCEI. We believe that this revision will not and should not lead to a general relaxation of the rules or an undermining of the Commission's objective assessment of notified projects.

Updating of the EU priorities and strategies

We welcome the update of references to EU policies and strategies in the cumulative criteria. This includes especially references to initiatives related to the green and digital transition, e.g. European Green Deal, the Digital Strategy. The guidelines should enable the development of state-

of-the-art green and digital technologies through the use of IPCEI. However, always in the case of a market failure and projects going beyond the aim of catching up with the technological developments globally.

Furthermore, it should be noted, that state aid policy cannot stand alone in supporting these strategies and a comprehensive approach is needed, including a focus on improving the general framework conditions, which in many cases would be a more effective tool to support the digital and green transition.

We would refer to the Danish Government's response of 20th of November 2020 on how the competition policy can support the Green Deal.

Openness and inclusiveness of IPCEIs

We are supportive of the Commission's focus on securing transparency and inclusiveness. Therefore, we find it very positive that the Commission has clarified that all Member States must be given a genuine opportunity to participate in new projects and that the Commission has expanded the eligibility criteria regarding the minimum number to four member states for a project to qualify as an IPCEI. However, it is important that this remains the minimum number and does not become the norm for e.g. IPCEIs on research and innovation and first industrial deployment, so that all Member States are granted the opportunity to participate.

Currently, there is no clear procedure for how Member States can coordinate and cooperate on IPCEI in advance of the state aid assessment. The current work on the hydrogen on IPCEI is a great step in the right direction in terms of improving transparency and inclusiveness in the early stages of establishing an IPCEI for industrial development. However, we believe that more can be done in providing a standardised setup in order to safeguard that all Member States are given an opportunity to participate and that clarity and predictability with regards to the process is ensured from the start. A common digital platform provided by the Commission involving reporting obligations for Member States on current statuses on upcoming and/or ongoing IPCEIs could be considered in this regard.

Further, we welcome the additions aimed at ensuring better inclusion of SMEs, namely in provision 5 and 22 d. We see the additions as an important tool to support the SME Strategy and maintaining a broad base of SMEs across the EU.

Clarifications and updates

In general, the new clarifications are positive. However, the Danish Government would like the IPCEI Communication to clarify the definition of

market failure further so that it doesn't include IPCEIs in the infrastructure sector. We elaborate on this in the specific comment to provision 16 below.

Specific comments

Below, we will give our comments to the specific provisions in the draft IPCEI Communication.

Provision 4

The Danish Government is worried that the last sentence in provision 4 outlining that IPCEIs can contribute to recovery potentially changes the focus of IPCEIs towards activities aimed at neither research and innovation nor infrastructural needs, but merely recovery needs. Recovery efforts through IPCEIs should only be allowed to the extent that such efforts comply with the eligibility criteria. Otherwise, such efforts could potentially lead to unnecessary distortion of competition within the internal market. Therefore, the Danish Government would like this new addition to be clarified further or alternatively removed from the provision.

Provision 5

We find it very positive that SMEs and the SME Strategy are now mentioned specifically in the IPCEI Communication. However, we would like to point out that this provision can be hindered by the draft provision 20 since many IPCEIs will have difficulties providing *significant* co-financing. Therefore, we suggest that SMEs are exempt from the condition of providing *significant* co-financing.

Provision 10 (a)

The Danish Government is supportive of the exemption regarding undertakings that became undertakings in difficulty in the period from 1 January 2020 and as long as the Temporary Framework is applied. The intention hereof should be to allow for the participation of companies, who under normal circumstances would not have been undertakings in difficulty. Hence, the amendment should not lead to a shift in focus of IPCEIs towards activities aimed at compensation and strictly recovery efforts.

Provision 16

The Danish Government supports that the Commission continues to apply the market-based principles in its assessment, meaning that IPCEIs can only be used to overcome important market or systemic failures or to address societal challenges that cannot otherwise be addressed. In this light, we welcome the inclusion of this aspect as one of the cumulative criterions.

On the other hand, however, the Danish Government sees a potential problem in having a *market or systemic failure* as one of the cumulative criterions since this could lead to infrastructure IPCEIs falling outside the scope of the IPCEI Communication and TFEU article 107(3)(b). Therefore, we suggest that a clear exemption regarding infrastructure IPCEIs is implemented in this provision. Furthermore, we would like the provision to clarify further what is to be understood by *market or systemic failures*.

Provision 17

The Danish Government is positive about IPCEIs must involve at least four Member States unless a smaller number is justified. However, as noted above, in some cases and especially regarding research and innovation projects the number of participating Member States should in practice be higher.

Provision 18

The Danish Government supports this new provision. It is important that all Member states be given a genuine opportunity to participate in IPCEIs. It is positive that it falls on the applying Member State(s) to inform other Member States.

Provision 20

See the comment regarding provision 5. We propose that SMEs are exempt from the condition of providing *significant* co-financing.

Provision 21

We strongly support the inclusion of provision 21 and the principal of ‘do no significant harm’. It is essential to maintain the provision in order to support and fulfil the needs for the green transition.

Provision 22 (d)

We are supportive of the addition regarding SMEs since the Danish Government finds collaboration between SME’s and large enterprises as a good way to strengthen the European competitiveness.

Provision 24 and 25

We find it positive that a definition of *first industrial deployment activities* has been included in the draft IPCEI Communication. However, we find it unclear what is to be understood when an R&D&I component constitutes “*an integral and necessary element for the successful implementation of the project*”. This should be clarified further.

Provision 32

The Danish Government supports that the notifying Member States are invited to provide relevant documentation. This helps secure that state aid

given under the IPCEI Communication does not distort competition in a disproportionate manner.

Provision 36

The Danish Government supports that State aid can be cumulated. However, we emphasize the importance of a narrow interpretation of this provision.

Provision 37

The Danish Government supports this new provision. However, it needs to be very clear in the Commission's decisions when and how a Member state is obliged to claw-back disproportionate and unnecessary State aid.

Provision 39

The Danish Government would like a clarification of what “*appropriate actions*” the Commission may take in the mentioned circumstances.

Provision 42

We are positive towards the draft IPCEI Communication now mentioning that the Commission will consider more favourably projects that include a *very* significant contribution by the beneficiaries themselves.

Provision 49

The Danish Government is very happy with this new provision. It is our opinion that State aid must never lead to the relocation of a product activity or any other activity within the EU.

Provision 50

We are positive about the new clarification in provision 50 (c) to 50 (i).

Provision 55

The Danish Government wonder why the revision does not include an end date to its validity like the current communication.