

# Position Paper

## Revision of Communication on IPCEI

2021-April-19

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### Summary

Bitkom welcomes the Commission's initiative to review the Communication on important projects of common European interest (IPCEI). Where private initiatives supporting breakthrough innovation fail to materialise because of the significant risks such projects entail, the IPCEI communication enables Member States to jointly fill the gap to overcome these market failures, while ensuring that the EU economy at large benefits and limiting potential distortions to competition. In order to become more effective, the communication needs to define conditions and criteria matching the realities of global competition and the demands of the innovation cycles of the ITC-industry.

- **Legal certainty:** In order to provide greater incentives for collaboration, the Commission should issue clear guidance on the application of antitrust rules to cooperation under IPCEI projects.
- **Agility:** The time span between funding request and project start needs to be reduced. Once an IPCEI is approved, grants must be disbursed according to a predictable schedule including synchronized funding decisions in the involved Member States within determined periods of time.
- **Eligibility:** The renewed communication rightly references broader EU policies and considers projects that represent an important contribution to the Digital Strategy or the European Strategy for Data as eligible. With respect to conformity with the eligibility criteria, the communication needs to provide a clearer language on a set of provisions.
- **Compatibility:** The proposed provisions risk undermining legal predictability in the EU investment environment. Repayment obligations should be limited to cases of proven violations and not penalise successful projects. IPCEIs need to pose an incentive for beneficiaries to maximise their investment and project performance.

Bitkom  
Bundesverband  
Informationswirtschaft,  
Telekommunikation  
und neue Medien e.V.  
(Federal Association  
for Information Technology,  
Telecommunications and  
New Media)

**Lukas Gabriel Wiese**  
**Head of Foreign Trade & International  
Relations**  
P +49 30 27576-170  
l.wiese@bitkom.org

**Lukas Klingholz**  
**Head of Cloud, GAIA-X & AI**  
P +49 30 27576-101  
l.klingholz@bitkom.org

**Benjamin Ledwon**  
**Head of Brussels Office**  
P +32 2 60953-21  
b.ledwon@bitkom.org

Albrechtstraße 10  
10117 Berlin  
Germany

President  
Achim Berg

CEO  
Dr. Bernhard Rohleder

## **1 General Assessment**

Bitkom welcomes the Commission's initiative to review the Communication on important projects of common European interest (IPCEI) before its expiration on 31 December 2021. Given that some of Bitkoms' members are participants or partners in IPCEIs, we are able to draw on comprehensive experience with this instrument and already provided feedback on the roadmap for the revision of the IPCEI Communication ([see here](#)).

IPCEIs are about ambitious and large-scale cross-border projects that often entail significant risks, which private investors are initially not able to take on in Europe. In such cases, public support from several EU Member States may be necessary to fill the financing gap in order to overcome this kind of market failure and allow abovementioned strategic projects to emerge in Europe. Thus, IPCEIs are a specific possibility to find aid compatible with the internal market.

In 2014 the Commission adopted a dedicated Communication laying out the conditions for its application in all sectors. Until now, it was applied for one infrastructure project decision (Fehmarn Belt) and for three R&D&I integrated projects (on Microelectronics in 2018 and on Batteries in 2019 and 2021).

Bitkom explicitly welcomes that existing instruments, such as IPCEIs, are increasingly being used for digital technologies. IPCEIs are a suitable instrument to stimulate private investments for strategic R&D&I projects in Europe, to safeguard European competitiveness and technological sovereignty, and to foster innovation across member states for topics closer to the market. It is important to promote creation and economic activity in Europe as a business location while staying open and compliant with EU state aid rules and WTO-provisions.

## **2 Recommendations in Detail**

The review of the Communication on IPCEI provides an opportunity for all stakeholders to align this instrument with broader EU policy goals as well as to update its conditions in order to match the demands of the fast-paced innovation cycles of the ITC-industry. To this end, Bitkom would like to make the following recommendations for the revision of the communication on IPCEI in detail.

### **2.1 Legal Certainty**

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.

## 2.2 Agility

The time span between funding request and project start needs to be reduced to ensure a timely realization. IPCEIs are projects in internationally highly competitive areas. Time is an important factor to be able to establish or maintain a competitive lead position. Once an IPCEI is approved, grants must be disbursed according to a predictable schedule including synchronized funding decisions in the involved Member States within determined periods of time to establish investment security for private partners.

## 2.3 Eligibility Criteria

We believe that the current IPCEI Communication does not fully reflect recent EU policy developments. Thus, we welcome that the renewed communication references the European Green Deal, the Digital Strategy, and the Industrial/SME Strategy (see No 4 and No 5). Especially, we welcome that the renewed communication considers projects that represent an important contribution to the Digital Strategy, European Strategy for Data, and the New Industrial Strategy for Europe as eligible (No 15).

However, we see shortcomings in the following provisions on the eligibility criteria.

- **No 16:** The communication should consider that market or systemic failures are also present in the case of insufficient digital- or technological-sovereignty, in which Europe identifies the need to mitigate critical dependencies. Fostering digital sovereignty means strategically investing in technologies to be developed in Europe, strengthening trusted partnerships in order to facilitate innovation, and being able to autonomously understand and use digital technologies in both the public and the private sector, while remaining open for international sustained investments and partnerships.
- **No 19:** While we support the notion of positive spillover effects as a key eligibility criterion, we call for clearer language on the legitimacy of the protection of beneficiaries' IP generated in IPCEIs. IP exploitation should be balanced against a legitimate interest for beneficiaries to safeguard their knowledge assets.
- **No 20:** The Commission should re-assess its decision requiring beneficiary's co-financing to be "significant". COVID-19 has posed unique economic challenges to many industrial sectors, at a time where the EU embarks on long-term climate-neutrality and digital resilience goals. The added value of the IPCEI instrument lies in its ability to ensure state aid for important innovation purposes. Asking industry to bear the burden for such investments, as No 20 highlights, would run counter to these goals. It would be particularly unfeasible for SMEs that can't spare funding for innovation as they struggle after COVID-19.

- **No 22 a) to c):** The Commission claims to have significant influence on the design, selection and governance of the projects even though the funding is covered by the participating Member States. The Commission's influence should be limited to aspects of European strategies and political targets, such as digital- and technological-sovereignty.
- **No 22 d):** SMEs and start-ups are an integral part of the value chain built around large industrial actors. The provisions of No 22 d) 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. However, while the participation of SMEs as part of the ecosystem is useful, IPCEIs should have significant impact and therefore will require a significant participation of bigger industry players. In order for IPCEIs to better plug into the expertise of SMEs and Start-ups, the Commission should rather lead efforts on shrinking the administrative burden on applicants and provide specific assistance to SMEs (e.g. in the form of awareness-raising, training and support in proposal-writing).
- **No 22 e):** Involving co-funding from an EU fund impede the overall governance and therefore increases the administrative burdens for the project partners since there are different conditions, accounting procedures and reporting mechanisms on EU and national level.
- **No 22 f):** The communication remains too vague on how the Taxonomy Regulation can link up to IPCEI activities. The Taxonomy provisions offer an opportunity to leverage the enabling potential of the ICT sector, not only in terms of existing technologies but also new innovative solutions which the IPCEI framework seeks to embrace. It is essential to articulate such a point in more detail.
- **No 25:** In order to address challenges, close to the market, the definition of specific activities qualifying as first industrial deployment (FID) should clearly expand to the early production phase of an investment.

## **2.4 Compatibility Criteria**

Overall, the general exclusion of investments relating to industrial deployment and commercial activities could threaten the objective of IPCEI funding. The definition of eligible costs seems overly restrictive when aiming at enabling the European industry to become a significant world-scale player. The Commission should therefore consider allowing funding, at least partly, of activities related to the production phase of an investment. Lower aid intensities for this part of an IPCEI would reflect closer to the market activities. The per se exclusion of production-related activities appears too rigid and not suitable when targeting strategic objectives with respect to public support in other regions.

In addition, Bitkom would like to draw attention to the following provisions in terms of compatibility criteria.

- **No 32 and No 33:** Private sector partners are not in the position to calculate ex ante net extra costs which would have arisen in a non-funding situation and to hand in a counterfactual (non-aid) scenario. This is even more difficult when a greater number of project partners is involved.
- **No 37:** Clawback clauses could be an issue, because there could be claims by the funding agency to return received funding in case of economic success. Such amounts may not be directly available and could result in economic issues for beneficiaries. Profits may be achieved in different legal entities than in the R&D units, which received funding. The Commission must add details on how it intends to protect incentives for beneficiaries to maximise their investment and project performance. As it stands, the provisions of No 37 risk undermining legal predictability in the EU investment environment. Thus, repayment obligation provisions should be limited to cases of proven eligibility violations. Expanding them to scenarios where the project is more profitable than foreseen would send the wrong signal to industry. It would effectively penalise successful projects.
- **No 39:** In order to address actual or potential direct or indirect distortions of international trade, the Commission may take account of the fact that, directly or indirectly, competitors located outside the EU have received or are going to receive aid of an equivalent intensity for similar projects and therefore can extend the reference period. European companies compete to a large extent on global markets. It should therefore be possible to also take aspects of global competition into account in the funding gap calculation.

Bitkom represents more than 2,700 companies of the digital economy, including 2,000 direct members. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.