

Explanatory note accompanying the public consultation on the review of the IPCEI Communication

The purpose of this note is to clarify the objective and scope of the proposal to revise the Commission 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”). It accompanies the public consultation on the draft revised IPCEI Communication that will last for a period of 8 weeks.

Citizens, organisations, companies and public authorities are invited to provide their views on the Commission’s proposal for the revised IPCEI Communication. In addition to the consultation, a meeting with Member States will be held to gather their feedback on the draft IPCEI Communication.

Stakeholders are invited to provide their comments in electronic format and should clearly indicate if their reply is confidential. In such case, a non-confidential version of the reply, which can be published on the website of DG Competition, should also be provided. Full contact details are provided in the public consultation page.

1. Context

IPCEIs may represent an important contribution to the achievement of strategic objectives of the Union, notably in view of their positive spillover effects. IPCEIs can make it possible to bring together Member States and stakeholders throughout the Union, so as to overcome important market or systemic failures and societal challenges which could not otherwise be addressed.

In the IPCEI Communication¹, adopted for the first time in 2014, the Commission sets out the conditions under which State aid for the execution of important projects of common European interest may be considered to be compatible with the internal market under Article 107(3)(b) of the Treaty.

In 2019, the Commission launched an evaluation of the IPCEI Communication in the context of the Fitness Check² of the 2012 State aid modernisation package to assess if the rules were still fit for purpose. The results showed that the rules worked in principle well but require some punctual adjustments for the period thereafter.

On 11 December 2019, the Commission published the European Green Deal Communication, outlining the policies to make Europe the world’s first carbon-neutral continent by 2050. To deliver the European Green Deal, there is a need for action by all sectors.

Furthermore, the European Digital Strategy was presented on 19 February 2020 and aims to make the digital transformation work for people and businesses, while helping to achieve its targets of a climate-neutral Europe by 2050.

This twin-transition to a green and digital economy requires also an alignment of the current State aid rules.

¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0620\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0620(01))

² https://ec.europa.eu/commission/presscorner/detail/en/IP_19_182

The IPCEI Communication is due to expire at the end of 2021³. The adoption of the new IPCEI Communication is envisaged in the second semester of 2021.

2. Proposed changes in the draft text of the IPCEI Communication

The revision of the IPCEI Communication relies largely on the results, evidence and data collected in the context of the evaluation of the IPCEI Communication, including a targeted consultation and the public consultation on all rules covered by the Fitness Check⁴, in combination with the Commission's experience stemming from its case practice, notably in three IPCEI decisions on research and innovation (on Microelectronics, approved in December 2018, and two on the Batteries value chain, approved respectively in December 2019 and January 2021). In addition, the Communication needs to be updated to take into account new major policy priorities such as the Green Deal and the Digital Strategy.

Based on the evaluation results, the IPCEI Communication is considered as overall fit for purpose. In particular, it proved to be an appropriate instrument to facilitate the emergence of important cross-border, integrated and collaborative projects in strategic value chains, which promote the common European interest.

In that respect, the replacement of the previous, sector-specific rules for the assessment of IPCEIs with dedicated and cross-disciplinary guidance, appears to have attained its objectives of clarifying the criteria for the eligibility and compatibility of State aid for IPCEIs and enhancing the predictability of the Commission's assessment.

More concretely, the draft IPCEI Communication, while remaining largely unchanged compared to the 2014 Communication, is revised with focus on the following areas.

Openness and inclusiveness of IPCEIs

It appears that the existing eligibility requirements (e.g., minimum number of Member States for a project to qualify as an IPCEI) and positive indicators (e.g., openness of the IPCEI) are not sufficient to ensure that the design of IPCEIs is carried out in a fully open and inclusive manner.

It appears therefore appropriate to slightly increase the minimum number of participating Member States, while keeping the possibility to have fewer participating Member States when justified by the nature of the project, and to require that all interested Member States have a genuine opportunity to participate in an emerging IPCEI (see points 17 and 18 of the draft IPCEI Communication).

Role of SMEs

While several SMEs participated in the three R&D&I integrated IPCEIs approved since 2014, the rules of the IPCEI Communication do not, by themselves, address the specific situation of SMEs.

In view of the special role that SMEs play in the EU economy it is important that SMEs can participate in IPCEIs and benefit from them. In addition considering that smaller amounts of aid, for example to SMEs, are in principle less likely to unduly distort competition, it is appropriate to

³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1247

⁴ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/2044-Fitness-check-of-2012-State-aid-modernisation-package-railways-guidelines-and-short-term-export-credit-insurance/public-consultation>

introduce an explicit principle of proportionate assessment (see point 5 of the draft IPCEI Communication).

In addition, it is also appropriate to encourage large enterprises participating in IPCEIs to involve SMEs in different Member States as their partners, so that SMEs can increasingly benefit from IPCEIs (see point 22 d) of the draft IPCEI Communication).

Update to current EU priorities and strategies

The current IPCEI Communication does not fully reflect recent EU policy developments, in particular the European Green Deal, the Digital Strategy and the Industrial/SME Strategy.

It is therefore considered necessary to insert references to more recent relevant initiatives (see points 4, 5 and 15 of the draft IPCEI Communication).

Furthermore, it is appropriate to expressly recognise the possibility to assess under the IPCEI Communication, large cross-border projects in the health or digital fields of great importance for the respective strategies (see point 26 of the draft IPCEI Communication).

Preventing negative effects of aid for IPCEIs and further ensuring aid proportionality

To further reinforce the European character of IPCEIs, and to ensure consistency with the EU cohesion policy, it is appropriate to introduce specific provisions for the treatment of relocation conditions (see point 49 of the draft IPCEI Communication).

To further ensure that aid remains proportionate in case of extra net revenues earned by aid beneficiaries as a result of the aided project, it is appropriate to introduce an explicit provision on the possibility for the Commission to request appropriate claw-back mechanisms (see point 37 of the draft IPCEI Communication). It is also appropriate to require that co-financing by the beneficiary must be significant (see point 20 of the draft IPCEI Communication).

Other clarifications and updates

Taking into account requests for clarification expressed during the consultations carried out as part of the Fitness Check, and in light of the case practice, it appears appropriate to update, slightly revise or restructure some provisions of the IPCEI Communication, in particular with regards to: the definition of ‘integrated project’ (see point 13 of the draft IPCEI Communication); the presence of market or systemic failures or societal challenges (see point 16 of the draft IPCEI Communication); the definition of ‘first industrial development’ (see point 25 of the draft IPCEI Communication); the assessment of counterfactual scenarios (see point 32 of the draft IPCEI Communication); cumulation (see point 36 of the draft IPCEI Communication); transparency (see points 50 and 51 of the draft IPCEI Communication).