

**To:**

European Commission  
Directorate-General for Competition, Unit H1  
State aid Registry  
1049 Brussels  
Belgium  
Ref.: HT.4892

**NON-CONFIDENTIAL VERSION**

Sent by email to [COMP-IPCEI-REVIEW@ec.europa.eu](mailto:COMP-IPCEI-REVIEW@ec.europa.eu)

20 April 2021

**Subject: Public consultation on the review of the communication on important projects of common European interest (IPCEI)**

Dear Sir / Madam,

Further to the consultation (“**Consultation**”) on some targeted adjustments to be made to the draft 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 (the “**Amended Communication**”), we hereby submit the following reply to the Consultation:

1. The Project is a project aimed at the production of green hydrogen, to be based in a Member State but substantially destined for export, in strict compliance with the policies defined by the European Union for this sector;
2. The Sponsors begun their work on the structuring of the Project, in early 2020, in view of its subsequent contemplation in an IPCEI application to be submitted by their national Government, namely by reference to a memorandum of understanding then already signed between such government and the government of another Member State;
3. The workstreams carried out have considered and relied on the currently in force Communication from the Commission on the criteria for the analysis of the eligibility of the project and its compatibility with the internal market of State aid to promote the execution of important projects of common European interest (2014/C 188/02) (“**Current Communication**”);
4. Since the date on which the Amended Communication became known, the Sponsors have also considered the solutions contained therein but, notwithstanding all efforts being made, it is not possible to ensure, at this stage, that without prejudice to a substantial part of the work already carried out on the basis of the Current Communication, there may be some minor non-conformities between the Project, as structured, and literal requirements to be observed pursuant to the criteria set out in the Amended Communication;
5. Taking into account the disadvantages that could result from the need to reconfigure some of the core components of the envisaged Project and the advantages that could result from subjecting it, in full, to the Amended Communication (the principles of which do not differ, in substantial terms, from the principles underlying the Current Communication), it seems that the first

advantages far outweigh these disadvantages, if any, thus recommending the adjustment of the transitory solutions set forth in section 5.3 of the Amended Communication;

6. Accordingly, it would be reasonable to ensure that (i) the workstreams already undertaken by the Sponsors; (ii) the characteristics of the Project already agreed upon between the Sponsors; and (iii) the eligibility and compatibility criteria, which were designed and determined under the eligibility criteria in force on the date of their notification, are not negatively affected nor deemed unsatisfactory based on the terms of the Amended Communication, should the proceedings on the application to be submitted contemplating the Project not be completed up to 1 January 2022, date on which the Amended Communication will begin to apply.

Considering the above, a possible solution would be to reserve the application of the New Communication for applications submitted after 1 January 2022.

An alternative solution, which would only aim to mitigate the effects of the immediate application of Amended Communication, would be to adopt a solution that only safeguards the effects already produced and consolidated under the Current Communication in relation to projects that are already and manifestly in an advanced stage of development, considering, in particular, the date on which their structuring began, and provided that no detrimental consequences result from these solutions to the principles set forth in the Amended Communication.

For this purpose, one alternative could be to adjust the transitory regime provided in sub-paragraphs 55-57 of the Draft Communication as follows:

#### **“5.3. Application**

55. *This Communication will be applied from 1 January 2022.*
56. *The Commission will apply the principles set out in this Communication to all notified aid projects in respect of which it is called upon to take a decision after its applicability, even where the projects were notified prior to that date. The application of these principles will not, however, affect the eligibility of projects that have been structured and notified before 1 January 2022 provided that (i) those projects fully respect the eligibility criteria in force on the date of their notification; (ii) these projects do not contain significant deviations from the principles set out in this Communication; and (iii) it is evidenced that the structuring of those projects was started before 1 January 2021, including in the context of cooperation agreements entered into by the Members States signed before that date or through the selection, before that date, of at least some of the components comprised in the project notified.*
57. *In line with the Notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>33</sup>, in the case of non-notified aid, the Commission will apply this Communication if the aid was granted after its applicability, and the rules in force at the time when the aid was granted in all other cases.”*