

Ministerie van Economische Zaken
en Klimaat

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Bijlage(n)

1. EU-wetgevingsoverzicht Q2
2. Reguliere raadpleging I
3. Reguliere raadpleging II
4. Reguliere raadpleging III

Datum 16 juli 2019
Betreft EU-wetgevingsoverzicht en deelname EU-raadplegingen

Geachte Voorzitter,

Hierbij stuur ik u met bijgaande stukken de kwartaalrapportage van de lopende EU-wetgevingsonderhandelingen en de stand van zaken betreffende EU-raadplegingen voor de periode april tot en met juni 2019 op het terrein van Economische Zaken en Klimaat.

In deze periode april – juni is de volgende raadpleging op het terrein van Economische Zaken en Klimaat beantwoord:

- Evaluation of EU legislation on design protection.
- Draft communication notice on the recovery of unlawful and incompatible State aid.
- Draft Communication concerning the prolongation of the Commission Guidelines on Regional State Aid for 2014-2020¹.

De beantwoording hiervan vindt u in de bijlage.

Eric Wiebes
Minister van Economische Zaken en Klimaat

¹ Draft Communication concerning the prolongation of the Commission Guidelines on Regional State Aid for 2014-2020 referring to the national regional aid maps, Commission Guidelines on State Aid to Promote Risk Finance Investments, Commission Guidelines on State Aid for Environmental Protection and Energy, Commission Guidelines on State aid for rescuing and restructuring and Commission 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

EU-wetgevingsonderhandelingen EZK

Tweede kwartaalrapportage, juli 2019.

Titel	Document nummer	Korte beschrijving	Stand van Zaken
A new Boost for Jobs, Growth and Investment			
Meerjarig Financieel Kader 2021-2027			
Horizon Europe <i>Onderzoek en Innovatie programma</i> + vaststelling van het specifieke programma voor implementatie.	COM(2018)435 + 436	Nieuw kaderprogramma voor onderzoek en innovatie.	De onderhandelingen over de verordening en het specifiek programma zijn in triloog afgerond en er is een partieel akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. De omvang van het budget en nadere horizontale elementen zijn onderdeel van de horizontale MFK onderhandelingen.
Euratom <i>Onderzoek en Training Programma</i>	COM(2018)437	Nieuw kaderprogramma voor Euratom onderzoek en innovatie.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader. De omvang van het budget is onderdeel van de horizontale MFK-onderhandelingen.
Euratom <i>Regulation on funding for decommissioning and management of radioactive waste</i>	COM(2018)0252	Euratom ontmanteling van nucleaire installaties en beheer van radioactief afval. Verordening in het kader van MFF 2021-2027.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader. Deze verordening wordt vastgesteld door de Raad en is geen onderwerp van triloog-onderhandelingen.
Digitaal Europa Programma	COM(2018)434	Financieringsinstrument ter ondersteuning van de digitale transformatie van de Europese economie en samenleving.	De onderhandelingen in triloog zijn nog niet afgerond, de onderhandelingen worden voortgezet onder het nieuwe Europese Parlement. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
InvestEU Fonds	COM(2018)439	Nieuw programma dat een centraal financieringsinstrument bevat ter bevordering van investeringen in de EU-lidstaten op onder meer de gebieden duurzame infrastructuur, onderzoek, digitalisering en toegang van het MKB tot kapitaal.	De onderhandelingen in triloog zijn afgerond en er is een politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
Interne markt programma (COSME)	COM(2018)441	Programma voor de interne markt, het concurrentievermogen van ondernemingen, inclusief kleine en middelgrote ondernemingen en Europese statistieken.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader. Er is een gedeeltelijke algemene oriëntatie bereikt. Triloogfase start na installatie van het nieuwe Europees Parlement. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.

EU Ruimtevaartprogramma	COM(2018)447	De verordening bevat het EU Ruimtevaart programma en voorziet in de oprichting van het EU Ruimtevaart programma Agentschap.	De onderhandelingen in triloog zijn afgerond en er is een partieel politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
Verordening voor de gemeenschappelijke bepalingen inzake het Europees Fonds voor regionale ontwikkeling, het Europees Sociaal Fonds Plus, het Cohesiefonds, en het Europees Fonds voor maritieme zaken en visserij en de financiële regels voor die fondsen en voor het Fonds voor asiel en migratie, het Fonds voor interne veiligheid en het Grensbeheer en Visum Instrument.	COM(2018)375	Gemeenschappelijke bepalingen en financiële regels voor verschillende Europese fondsen.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader. Er is een gedeeltelijke algemene oriëntatie bereikt. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
Europees Fonds voor regionale ontwikkeling (EFRO) en Cohesiefonds	COM (2018)372	Verordening voor de uitvoering van twee regionale ontwikkelingsfondsen, onderdeel van de structuurfondsen.	De Raad heeft een algemene oriëntatie bereikt. Het voorstel bevindt zich momenteel in de triloofase met onderhandelingen tussen de Commissie, de Raad en het Europees Parlement. De triloog zal opnieuw aanvangen onder het Fins voorzitterschap. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
Europese territoriale samenwerking (Interreg)	COM(2018)374	Verordening over Interreg, de grensoverschrijdende poot van EFRO.	De Raad heeft een algemene oriëntatie bereikt. Onder het huidige Finse voorzitterschap zullen de triloggen aanvangen. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
Hervormingsondersteuningsprogramma (<i>Reform Support Programme</i>)	COM(2018)391	Het programma voorziet in financiële prikkels en technische assistentie bij de implementatie van structurele hervormingen, met name zoals geïdentificeerd in het Europees Semester.	Nog niet besproken in Raadskader. De omvang van het budget is onderdeel van de horizontale MFK onderhandelingen.
<i>Implementatie van de Digital Single Market Strategy</i>			
Bevordering van billijkheid en transparantie in de relatie tussen platforms en bedrijven	COM(2018)238	Regels voor transparantie en bemiddeling voor platforms in de relatie met (kleine) bedrijven die goederen of diensten op platforms aanbieden.	De onderhandelingen in triloog zijn afgerond en er is een politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase.

Herziening richtlijn ePrivacy	COM(2017)10	Herziening van privacyregels voor elektronische communicatiediensten. Doel: hoog niveau van bescherming en gelijk speelveld voor alle aanbieders van communicatiediensten (traditioneel en Over the Top-spelers). O.m. cookiebepaling.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader.
Verordening Europees Cybersecurity Competence Centrum	COM(2018)630	Creëren van één EU Cybersecurity Competence Centrum, dat verantwoordelijk wordt voor het coördineren en stroomlijnen van de EU inzet op cybersecurity.	Het voorstel wordt besproken op ambtelijk EU-niveau in Raadskader. Momenteel liggen de onderhandelingen stil.
Consumentenbescherming			
Richtlijn – Een <i>new deal</i> voor consumenten	COM(2018)185 (+184)	Gericht op betere handhaving en modernisering van de regels voor consumentenbescherming in de EU. De New Deal bestaat uit twee voorstellen, een moderniseringsvoorstel (185) en een collectieve-actie voorstel (184). Voor deze laatste ligt de verantwoordelijkheid primair bij J&V maar EZK is nauw betrokken.	De onderhandelingen in triloog zijn afgerond en er is een politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase.
A Deeper and Fairer Internal Market Strategy with a Strengthened Industrial Base			
Handhaving notificatieverplichting onder de dienstenrichtlijn	COM(2016)821	Dit voorstel verbetert en verbreedt de notificatieprocedure uit de Dienstenrichtlijn, waardoor lidstaten bepaalde eisen en vergunningstelsels die de vrijheid van vestiging en het vrij verkeer van diensten kunnen inperken in de ontwerpfase moeten melden aan de Europese Commissie en andere lidstaten. Dit vergroot de kans om ongerechtvaardigde regelgevende barrières tijdig op te sporen en te voorkomen.	De onderhandelingen in triloog liggen momenteel stil
Wetgevend kader Europese e-kaart voor diensten	COM(2016) 823+824	Introductie e-kaart als bewijs van wettige vestiging dienstverlener (bouw en zakelijke dienstverlening) in thuisland en waarbij een enkele administratieve verplichting in het werkland wordt vereenvoudigd (vrijwillige procedure).	Het Europees Parlement heeft tegen de voorstellen gestemd. In de Raad ligt het dossier stil.
Verordening generieke onderzoeksbevoegdheid <i>(Single Market Information Tool (SMIT))</i>	COM(2017)257	Het SMIT voorstel geeft de Commissie de mogelijkheid om direct informatie bij marktpartijen in lidstaten op te vragen (in plaats van via de nationale autoriteiten).	Onderhandelingen liggen stil in de Raad.
Vervolmaking EMU			

Wijziging verordening - Inzet prestatiereserve ESI-fondsen ten behoeve van structurele hervormingen	COM(2017)826	Pilotfase voor inzet prestatiereserve ESI-fondsen ter ondersteuning van structurele hervormingen.	Voorstel wordt besproken op ambtelijk EU-niveau in Raadskader.
<i>Statistiek</i>			
Verordening statistieken over migratie en internationale bescherming	COM(2018)307	Het doel van het voorstel is het integreren van specifieke gegevensverzamelingen van Europese statistieken in de bestaande verordening (EG) 862/2007 die op dit moment niet wettelijk zijn geregeld en het toevoegen van nieuwe uitsplitsingen.	De Raad heeft een algemene oriëntatie bereikt. Het voorstel bevindt zich momenteel in de triloofase met onderhandelingen tussen de Commissie, de Raad en het Europees Parlement
Verordening Europese bedrijfsstatistieken	COM(2017)114	Het doel van de verordening is om de bestaande tien thema specifieke verordeningen op het terrein van de Europese bedrijfsstatistieken te integreren en te stroomlijnen in één nieuwe kaderverordening en regelt de ontwikkeling, productie en verspreiding van Europese statistieken over de structuur, de economische activiteiten en de prestaties van ondernemingen.	De onderhandelingen in triloog zijn afgerond en er is een politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase.
Verordening Europese statistieken betreffende personen en huishoudens	COM(2016)551	Het doel van de verordening om bestaande vijf domeinspecifieke verordeningen op het terrein van de Europese sociale statistieken te integreren en te stroomlijnen in een nieuwe kaderverordening voor de ontwikkeling, productie en verspreiding van vergelijkbare Europese statistieken over personen en huishoudens in de Europese Unie.	De onderhandelingen in triloog zijn afgerond en er is een politiek akkoord bereikt tussen de Commissie, de Raad en het Europees Parlement. Het voorstel zit in de afrondende procedurele fase.

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EUSurvey

Consultation on Design Protection in the EU

Fields marked with * are mandatory.

Introduction

The main substantive aspects of national laws on the protection of designs are harmonized at EU level by the Design Directive[1] from 1998, which also aimed at maintaining a system for registering designs for businesses that only operate within an EU Member State. Alongside those national protection systems, the Community Design Regulation[2] from 2002 created an autonomous system for the protection of Community designs having equal effect throughout the European Union.

Designs are defined as appearance of the whole or a part of a product resulting from its features such as e.g. lines, contours, colours, shape, texture, materials used or ornamentation. Designs can be part of handcrafted or industrial goods, including among others also packaging, graphic symbols or even fonts.

Designers can benefit from different forms of protection of their work in the EU. Their creations are protected without any registration or formalities for a period of three years as unregistered Community designs (governed by the Community Design Regulation) if they are made publicly available ('disclosed') within the EU. When longer protection of up to 25 years is wanted, designers have a choice of registering their designs separately in some or all of the EU Member States following the harmonized national rules (as specified by the Design Directive).

Alternatively, they can register them once for the whole EU using the registered Community design (governed as well by the Community Design Regulation) managed by the European Union Intellectual Property Office (EUIPO). As yet another option, designers can protect their creations within or outside the EU through the Hague System for the International Registration of Industrial Designs, administered by the World Intellectual Property Organization (WIPO). While procedures are not harmonized, the principal substantive conditions for registering a design are identical in all EU Member States as are the principal rights of design owners. Design is a property right and its owner decides who can use it, how and for what price. Protection covers unauthorized use or copying. In 2017, 94,000 registered Community designs were registered (6% more than in 2016, and 12% more than in 2015). The registration involves fees, which for the registered Community design amount to €350 including publication.

This public consultation aims at gathering views of all those affected by design protection in Europe in order to evaluate the performance of the Community and national systems and identify areas where changes may be necessary. The consultation builds on and follows previous research, analysis and targeted surveys carried out as part of two studies on economic (http://ec.europa.eu/growth/content/economic-review-industrial-design-europe-0_en) (2015) and legal (https://ec.europa.eu/growth/content/legal-review-industrial-design-protection-europe-0_en) (2016) review of the design protection systems in Europe.

The questionnaire of the consultation is divided into several different sections. In principle respondents can choose to reply to a selection of these sections (one, several or all) according to their profile/type of activity. However, different levels of knowledge and experience will be needed to be able to answer the individual questions. While the reply to general questions will require at least certain knowledge on design protection in the European Union, it will not be possible to answer a larger number of specific questions without having profound legal expertise and experience in the relevant field.

[1] Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of

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designs

[2] Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

About you

*Language of my contribution

English

*I am giving my contribution as

Public authority

*First name

Saskia

*Surname

Jurna

*Email (this won't be published)

s.j.jurna@minez.nl

*Scope

National

*Organisation name

255 character(s) maximum

Ministry of Economic Affairs and Climate Policy

*Organisation size

Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>). It's a voluntary database for organisations seeking to influence EU decision-making.

*Country of origin

Please add your country of origin, or that of your organisation.

Netherlands

*What are the main areas of your activity?

at least 1 choice(s)

- Manufacturing
- Wholesale and retail trade; Repair of motor vehicles
- Information and communication
- Professional, scientific and technical activities
- Public administration
- Creative, arts and entertainment activities
- Other activities

*Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**
Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public**
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

*I agree with the personal data protection provisions (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

General questions to all

***1. Please indicate whether your knowledge of the design protection systems in the EU comes from the fact that you or members of your organization**

at least 1 choice(s)

- Create/own designs
- Use designs of others
- Give (legal) advice
- Work in intellectual property office, ministry, court or other authority
- Lecture/research the topic
- Other
- I don't have any knowledge of the design protection systems

***2. What do you generally think about the overall functioning of the design protection system in the EU (taking national design systems and the Community design regime altogether as a complementary whole and considering all relevant aspects of design protection)?**

- It works very well
- It works rather well
- It works rather bad
- It works very bad
- No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

3. Please evaluate the importance of the following objectives of the harmonization of national rules and of the creation of the Community design system.

between 9 and 9 answered rows

	Very important	Important	Rather not important	Not important at all	No opinion
*Promoting innovation, creativity and development of new products in the EU	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing products to circulate freely in the internal market	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Providing the same protection of designs everywhere in the EU	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Serving the needs of all industry sectors	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Preventing counterfeiting and copying of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for simple registration of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for affordable registration of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Making Community design registration readily accessible to small and medium-sized enterprises as well as to individual designers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for a simplified enforcement of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If there are other objectives that should be pursued, please let us know:

5000 character(s) maximum

4. Based on your knowledge of the design protection systems in the EU, how have the harmonization of national rules and the creation of the Community design system contributed to the achievement of those objectives since 2003?

between 9 and 9 answered rows

	Helped a lot	Helped a little	Hindered a little	Hindered a lot	No opinion
*Promoting innovation, creativity and development of new products in the EU	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing products to circulate freely in the internal market	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Providing the same protection of designs everywhere in the EU	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Serving the needs of all industry sectors	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Preventing counterfeiting and copying of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for simple registration of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for affordable registration of Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Making Community design registration readily accessible to small and medium-sized enterprises as well as to individual designers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Allowing for a simplified enforcement of unregistered Community designs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you want to add any remark, please do so here:

5000 character(s) maximum

Specific question to national authorities

*5. Do you agree that the respective costs involved in implementing the Design Directive and the Community Design Regulation are justified given the benefits that have already been achieved by harmonizing essential aspects of design protection and providing for a unitary system of EU-wide protection?

- Yes
- No
- No opinion

General questions to all

*6. In this context, to what extent do you agree that the harmonization of national rules and the creation of the Community design system is of added value compared to a situation where Member States would have (entirely) different rules on design protection and such protection would be available at national level only?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- No opinion

If you want to add any remark, please do so here:

5000 character(s) maximum

***7. Are you aware of any unintended consequences or shortcomings of the Design Directive or the Community Design Regulation?**

- Yes
- No
- No opinion

***8. In general, do you think that there is sufficient awareness among designers and entrepreneurs (including small and medium-sized enterprises) of the availability, benefits and ways for protecting designs in the EU?**

- Yes
- No
- No opinion

***If no, please specify where and in what respect you see deficiencies in the awareness:**

5000 character(s) maximum

***9. Do you consider that the unregistered Community design provides a useful legal protection against unauthorized copying of that design by a third party?**

- Yes
- No
- No opinion

***Please explain your answer:**

5000 character(s) maximum

More specific questions to all

We would now like to ask you questions that are more specific. These are best answered by those with greater knowledge or experience with the design protection systems in the EU.

Terms of protection

***14. An unregistered Community design is protected for 3 years after its first making available to the public. Do you think this term of protection is adequate?**

- Yes
- No, it is too long
- No, it is too short
- I have no opinion

***15. A registered Community or national design can be protected up to 25 years from the date of filing. Do you think this term of protection is adequate?**

- Yes
- No, it is too long
- No, it is too short
- I have no opinion

Spare parts protection

At the time of adoption of the Design Directive it was not possible to harmonize design protection for spare parts. The latter concern visible component parts used for the purpose of the repair of a complex product (such as a motorcar) so as to restore its original appearance (covering, in particular, body panels, integrated lighting and automotive glass).

While the majority of Member States extend design protection to such spare parts the other part does not do so.

***16. Are different rules on spare parts protection in the Member States a problem for you?**

- Yes
- No
- No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

***17. Should the rules on spare parts protection be the same in the EU?**

- Yes
- No
- No opinion

***If yes, please explain your answer and tell us what should be the common rules:**

5000 character(s) maximum

full harmonization is desirable

Specific questions to lawyers/legal advisors, authorities and academia

The following questions are very specific and therefore require profound legal expertise and experience in order to be answered.

Subject-matter and scope of protection

39. Based on your knowledge of the design protection systems in the EU, please evaluate the following elements in the legislation and its application by industrial property offices and in courts.

between 3 and 3 answered rows

	Very clear	Clear	Not clear	Very unclear	No opinion
*The definition of a "design", a "product" and a "complex product"	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The requirements for protection (e.g. related to the need of being "visible")	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*The scope of design protection (e.g. as to how to determine the individual character of a design)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Rights conferred

***40. Do you consider that the current scope of design rights, including limitations, provides sufficient protection against third parties copying a protected design by means of 3D printing?**

- Yes
- No
- No opinion

***41. Do you think that the scope of design rights should allow preventing third parties from transiting counterfeit design goods through the Union territory even if the goods are not intended to be placed on the Union market?**

- Yes
 No
 No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

Grounds for invalidity

*42. Do you think that lack of clarity and consistency in the representation should be an explicit ground for invalidity of a design?

- Yes
 No
 No opinion

*Please explain your answer:

2000 character(s) maximum

n.a.

Procedural issues

* 43. In your view, are the current requirements for the representation of Community designs under the Community Design Regulation and the respective Implementing Regulation (EC) No 2245/2002 (e.g. means of representation and their combination, static views, maximum number of views, neutral background) appropriate to show designs with sufficient clarity and precision, both for tangible products and non-tangible products (e.g. animated designs, graphical user interfaces)?

- Yes
 No
 No opinion

*Please explain your answer:

5000 character(s) maximum

the possibility to file computer animated designs appears very useful and technical cooperation in this respect would be welcomed

*44. Are you aware of any problems in relation to the option to file a description of a design under the Community design regime, national law or the international Hague system?

- Yes
 No
 No opinion

*45. The Community Design Regulation allows for the filing of a specimen where the application is for a two-dimensional design (e.g. a piece of textile), and deferment of publication is requested. Do you consider this option still to be relevant and meeting current business needs?

- Yes
 No
 No opinion

*Please explain your answer:

2000 character(s) maximum

none were filed at BOIP, and besides, the scope of protection is determined by what's in the register

*46. In your view, are there any specific provisions or requirements/conditions in the Community Design Regulation or the respective Implementing Regulation (EC) No 2245/2002 in relation to procedures before the EUIPO (e.g. for the application or registration of a registered Community design) which you consider to be inappropriately complex or rigid, or generating unnecessary burdens for users of the system?

- Yes
- No
- No opinion

Other potential for improvement

*47. Are you aware of any (other) specific issue in relation to the protection, registration or enforcement of designs in respect of which you feel there is need for improvement or updating of the Community Design Regulation and/or the Design Directive?

- Yes
- No
- No opinion

Degree of harmonization

48. Below is a list of design law aspects that are not (fully) harmonized by the Design Directive. For each item please let us know how do you assess the need for harmonization in view of potential obstacles for the internal market and the establishment of a level playing field for the registration of national designs.

between 16 and 16 answered rows

	Very important	Rather important	Rather not important	Not at all important	No opinion
*Description of design and its legal relevance for the subject-matter of protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Product indication and the design's scope of protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Formal requirements to represent a design (e.g. number of views, neutral background)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Deferment of publication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Multiple applications and its conditions	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Right to the design	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Protection of unregistered designs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Right of prior use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*National designs as objects of property (transfer, rights in rem, levy of execution, licensing)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Substantive grounds for refusal of registration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Procedure for refusal of registration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Responsible authority for invalidating a design	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Procedure for invalidating a design	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Refusal/invalidity based on earlier distinctive sign (optional in the Directive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Refusal/invalidity based on unauthorized use of a copyright protected work (optional in the Directive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Refusal/invalidity based on improper use of an item listed in Article 6b of the Paris Convention for the Protection of Industrial Property (optional in the Directive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

*Please also explain the problems caused by the lack of harmonization:

5000 character(s) maximum

n.a.

*Please also explain the problems caused by the lack of harmonization:

5000 character(s) maximum

n.a.

If you consider other aspects in need of harmonization, please specify them and explain the problems caused by the lack of harmonization:

5000 character(s) maximum

Specific question to national authorities

*49. In some Member States, invalidity proceedings can only be brought before a judicial body. What is your view on making such proceedings available before all national industrial property offices across the EU?

- Positive
 Negative
 No opinion

*Please explain your answer:

2000 character(s) maximum

too little experience with designs at national/regional office, due to low volumes compared to EUIPO

Specific questions to lawyers/legal advisors, authorities and academia

*50. In terms of coherence, are you aware of any problematic inconsistencies or discrepancies in the provisions of the Design Directive and/or the Community Design Regulation, and/or between these two instruments, and/or between one/both of these two instruments with other Union legislation?

- Yes
 No
 No opinion

*51. The Community Design Regulation and the respective Implementing Regulation (EC) No 2245/2002 set out rules for procedures before the EUIPO which is also responsible to conduct procedures in European Union trade mark matters. Are you aware of any procedural discrepancies between these regulations which are not justified by the different nature of designs and trade marks?

- Yes
 No
 No opinion

*52. In your opinion, to what extent has the accession of the EU (2006) to the international Hague system, which allows EU applicants to obtain design protection in countries which are party to its Geneva Act, proved to be a useful complement to the available venues for obtaining design protection both within and outside the EU?

- Very useful
 Useful
 Useless
 Completely useless
 No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

*53. In this context, do you consider the accession of Member States to the international Hague system to be necessary to remove major obstacles to the internal market and the establishment of a level playing field?

- Yes
 No
 No opinion

*Please explain your answer:

5000 character(s) maximum

n.a.

*54. Are you aware of any problems/issues which negatively influence the complementarity and interoperability between the Community design system, the national design systems and/or the international Hague system?

- Yes
 No
 No opinion

*55. If you wish to register the same design in the EU and in other countries outside the EU, what are the main difficulties in achieving it?

at least 1 choice(s)

- Different scope of protection
 Different requirements for the design representation
 Different requirements for the product indications
 Different procedural rules
 Other
 There are no relevant difficulties
 I have no experience

*56. In your view, is the current general level of fees for Community designs appropriate?

- Yes
 No, fees are too high
 No, fees are too low
 No opinion

*57. In your view, does the current structure of the various fees present any difficulties to applicants and holders of Community designs?

- Yes
 No
 No opinion

*58. In this context, do you think it is appropriate that all designs of a multiple application must refer to products in the same class of the International Classification for Industrial Designs (Locarno Classification) to be able to benefit from the current bulk discount?

- Yes
 No
 No opinion

Invitation to all

59. If you wish to add any further information or views in relation to the design protection systems in the EU and their potential for improvement, which have not been covered by this questionnaire, please feel free to do so here:

5000 character(s) maximum

60. Please feel also free to upload a concise document, such as a position paper or study. Please note that the uploaded documents will be published alongside your response to the questionnaire.

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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The Hague, 6 March 2019

Response of the Dutch authorities to the draft Communication Notice on the recovery of unlawful and incompatible State aid

HT. 5261

This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.

General points

The Netherlands understands that recovery is the necessary corollary of the general prohibition of State aid established by article 107 (1) of the Treaty of the Functioning of the European Union ('TFEU') . Fair competition is impossible without recovery of illegal State aid to restore the situation which existed in the internal market before the aid was paid. The Netherlands has a national law ('Wet terugvordering staatssteun'; Recovery Act State aid) for the recovery of unlawful and incompatible aid, providing a legal basis to recover illegal State aid for all the Dutch public authorities. So recovery injunctions or recovery decisions of the Commission can be implemented effectively and immediately. To that end the Recovery Act State aid has centralized the recovery-related litigation before two (specialized) national courts.

We welcome the draft Commission notice on the recovery of unlawful and incompatible State aid. However we do have some comments on this revision.

Recovery of illegal State aid granted through tax advantages could have very complex consequences in international situations when - for example - tax treaties apply and the ability of the national tax authorities to levy tax in other countries is limited or impossible. We would welcome more guidance and certainty from the Commission with regard to these issues.

In the Dutch decentralized institutional set-up, every State aid granting authority has to comply with the Union acquis, including State aid provisions in the TFEU. A special entrusted central body entrusted with the task of controlling and overseeing the recovery process, would not fit in with the own responsibility of the local or regional granting authorities.

The Commission states that in its experience proceedings before administrative courts, where available, tend to guarantee a faster enforcement of recovery orders than proceedings before civil courts. The Netherlands assumes that this does not influence the right of each Member State to choose its own legal proceedings for recovery-related litigation in accordance with the principle of procedural autonomy.

1. General principles

Does the Commission consider adding article 106 (2) TFEU in footnote 13 in relation to the [Commission Decision](#) of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of **public service compensation** granted to certain undertakings entrusted with the operation of services of general economic interest ?

Could the Commission substantiate in what cases or circumstances it would issue a recovery injunction without having examined the compatibility of the aid with the internal market under the procedure of article 108 (2) TFEU ? (footnote 16)

2. The principles of sincere cooperation

In point 23 the Commission states that the Commission may elaborate on the standard of proof and the type of evidence required for the Member State to determine, among other things, the identity of the aid beneficiaries . Could the Commission acknowledge that this does not create or alter any right or obligation for the Member States compared to those laid down in the TFEU, the Procedural Regulation and the Implementing Regulation ? And that this does not create new competences for the Commission as compared to those laid down in the TFEU or Procedural Regulation ? In particular in the field of (direct) taxation it is important that the Commission acknowledges that Member States and national tax authorities do not have the competence to recover illegal State aid in the form of a tax measure if the alleged beneficiary is not liable to tax in the Member State.

In point 24 the Commission states that recovery of State aid cannot be regarded as an unjust enrichment for the Member State concerned since it merely provides for the restitution of an amount that should not have been paid to the beneficiary. How does the Commission substantiate this for other forms of State aid such as guarantees which provide for an interest advantage on a regular loan?

General principles of Union law

Could the Commission provide for jurisprudence when it states that (point 30) general principles of Union law are subject to a restrictive interpretation in the context of State aid recovery policy?

The principle of the protection of legitimate expectations

Recovery of illegal State aid can – in certain circumstances and under particular facts – be contrary to a general principle of Union law. For Member States as well as beneficiaries it is important to have legal certainty, in particular in cases in which the Commission overrules an earlier decision from the Commission finding certain measures not constituting State aid. Could the Commission elaborate this more in the text of point 39 and not only in footnote 46?

The principle of res judicata

Point 41 the Commission points out that the principle of res judicata cannot preclude the recovery of State aid. Does the Commission mean that this holds true for definitive judicial rulings by national courts ? Could the Commission clarify that the principle of res judicata of a final judicial ruling of the EU Court of Justice can be an obstacle to the recovery of illegal State aid ?

3. The role of the Member State and the Commission

Could the Commission clarify the role of the Commission when it comes to providing accurate requests for information in the course of the formal investigation ?

In point 68 the Commission states that some Member States have entrusted a central body with the task of controlling and overseeing the recovery process. The Commission seems to be in favour of such a central coordinating body. The Netherlands is of the opinion that it is up to the Member States to decide on such a central coordinating body, as this is in accordance with the procedural autonomy of the Member States in the field of recovery of State aid. Furthermore it is important to point out that national courts do play an important role in the field of recovery of illegal State aid. This role of the national courts should be acknowledged in this respect.

4. Implementing the recovery decision

Could the Commission give examples of difficulties which would justify an extend of the recovery deadline? Experience of the Netherlands shows that this recovery deadline is often unrealistic and too short to be met, especially in more complicated tax measures cases.

In point 77 the Commission points out that it must adopt a new decision in order to extend the recovery deadline. What would be the legal basis of such a decision, could the Commission clarify this, preferably with a reference to the Procedural Regulation ?

Kick-off meeting

In point 78 the Commission mentions the kick-off meeting in order to facilitate and accelerate the recovery process. The Netherlands assumes that this kick-off meeting is not compulsory (as stated in point 81) and that not participating in this kick-off meeting does not influence in anyway the rights and obligations of the Member State or the Commission under the Procedural Regulation. It should be up to the Member State to decide whether or not it wants to participate in such a kick-off meeting.

Identification of the aid beneficiary belonging to a group of undertakings

In point 85 the Commission states that, where certain transactions occurred within a group of undertakings, the Commission may still limit the scope of recovery to only one aid beneficiary within the group.

Could the Commission provide jurisprudence of the Union courts which allows for abovementioned limitation of the scope?

Furthermore, we have noticed that in some decisions regarding State aid through tax advantages the Commission stated that the state aid could also be recovered from other companies of the group. This seems to be inconsistent with point 85.

Quantification of the amount to be recovered

In points 99 and 100 the Commission explains that it requires the Member State to recover all aid, unless at the time it was granted the aid met the applicable requirements established by a Block Exemption Regulation or the the minimis Regulation or a different previous decision of the Commission.

The Netherlands welcomes this clarification, it improves legal certainty for Member States as well as beneficiaries.

Could the Commission in this respect accept the retrospective application of the GBER when the Member State did not comply with the procedural requirements of the GBER, especially articles 9 and 11 (a) of the GBER in relation to the 20 days/6 months deadlines? We refer to the Dilly's Wellness ruling of the Court of Justice (21 juli 2016, C 493/14)

Tax measures

Point 108 points out that pursuant to national law, in order to collect tax amounts (including State aid granted in the form of tax advantages) the tax authorities of the Member State concerned might have to carry out internal tax audits prior to the actual recovery.

How should point 108 be read since the Commission has no competence in the field of internal tax audits of the Member States.

The publication by the Commission of the amount recovered is a sensitive issue in tax cases from the Dutch point of view. All information regarding the taxes paid is, based on the national law, confidential. The Commission has therefore agreed to inform the Dutch authorities before a possible publication of recovered amounts of taxes. We would welcome a formalization of this agreement in the Communication Notice on the recovery of unlawful and incompatible State aid.

5. Litigation before national courts

In order to safeguard the legal rights of the beneficiaries the national courts play an important role in recovery-related litigation. This role seems not to be reflected in chapter 5 of the revision of the Recovery Notice. Could the Commission focus more on the principle of procedural autonomy in relation to point 142 ?

It must be borne in mind that, in accordance with settled case-law, in the absence of pertinent provisions of European Union law, the recovery of aid which has been declared incompatible with the internal market is to be carried out in accordance with the rules and procedures laid down by national law, in so far as those rules and procedures do not have the effect of making the recovery required by

European Union law practically impossible and do not undermine the principle of equivalence with procedures for deciding similar but purely national disputes (see Case C-382/99 Netherlands v Commission [2002] ECR I-5163, paragraph 90). Disputes arising in connection with the enforcement of recovery are a matter for the national court alone (see, to that effect, the order in Case C-297/01 Sicilcassa and Others [2003] ECR I-7849, paragraphs 41 and 42).

Could the Commission focus also on the possibility that an ex officio recovery order is given by the administrative or civil national court in relation to the principle of procedural autonomy?

Points 140-144 refers to some jurisprudence of the Union courts. Could the Commission under these points also refer to Mediaset (judgment of the Court of Justice of 13 February 2014, C-69/13) ? We find it important that the EU Court of Justice ruled that national courts have – under certain circumstances – a discretion in determining the amount of aid.

Accordingly, and without calling into question the validity of the Commission's decision or the obligation to repay the aid declared unlawful and incompatible with the internal market, the national court may fix an amount of aid equal to zero to the extent that that determination follows directly from the quantification of the sums to be recovered.

The Hague, 16 May 2019

Response of the Dutch authorities to:

- the draft Commission Regulation (EU) .../... of XXX on amending Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid and Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty as regards their period of validity, and
- the draft Communication concerning the prolongation of the Commission Guidelines on Regional State Aid for 2014-2020 referring to the national regional aid maps, Commission Guidelines on State Aid to Promote Risk Finance Investments, Commission Guidelines on State Aid for Environmental Protection and Energy, Commission Guidelines on State aid for rescuing and restructuring and Commission 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

HT. 5594

The Dutch authorities welcome the opportunity to react to the Commission's draft regulation regarding the period of validity of the *de minimis* regulation, the General Block Exemption Regulation and the draft communication regarding the prolongation of various Commission Guidelines. This response reflects the views of the Dutch 'Interdepartementaal Steun Overleg (ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities.

General remarks

The Dutch authorities support this initiative of the Commission, since legal certainty, predictability and stability is important in the application of the State Aid rules. However we do have some comments and concerns regarding this initiative.

The current envisaged fitness check will cover many State Aid communications, guidelines or frameworks. In order to handle these fitness checks and prolongation proposals in a coherent way in a relative short period, considerable effort of the State Aid coordination bodies of the Member States is required. We hope the Commission takes this into account when drafting the schedule for the evaluation and the possible update of the different sets of State Aid rules.

The envisaged fitness check does not seem to cover the State Aid Broadband Guidelines. According to the Dutch authorities the fitness check should also assess these State Aid rules, in order to see whether these State Aid rules are still fit for their purpose, taking into account the future challenges regarding the demands of the gigabit society. The Dutch authorities also would like a fitness check and an assessment of the State Aid rules for Maritime transport (which dates from 2004).

For the Dutch Authorities it is clear that the Commission envisages to prolong the validity of the GBER and the *De minimis* regulation by two years . It could be necessary, in view of future EU priorities, to amend the GBER or the *de minimis* regulation before this two years period ends. Therefore we would like the Commission to consider the possibility to amend these guidelines at any time, if this should be necessary for reasons associated with competition policy or to take into account of other Union policies and international commitments or for any other justified reason. This could be the case for instance with regard to measures that contribute to a climate neutral society or new funding opportunities made available under the Multiannual Financial Framework.

The Commission seems to envisage a broad public consultation, not only Member States will be consulted but also other stakeholders such as local public authorities or industry and consumers' associations. Furthermore the Commission envisages targeted questionnaires to the main stakeholders and interested parties on specific issues related to the individual rules. For the Netherlands it is important that all questionnaires are made public and are also made available to the Member States at central government level.

We understand that some questionnaires are only send to specific Member States. We would like to know the reasoning of the Commission why some Member States will receive specific

questionnaires and other Member States will not. The Dutch authorities would appreciate if the Commission could provide us with some explanation or clarification.

We find it important that Member States are able to comment on all of the State Aid rules concerned - not only for the draft prolongation proposals but also for the fitness checks of all the State Aid rules - by way of a targeted consultation especially for the Member States through the common channels of the Permanent Representation of the Member States. Could the Commission acknowledge this?

Specific remarks

In anticipation of the review of the above-mentioned regulations and guidelines the Dutch authorities would like to ask the Commission to take into consideration the following remarks.

Enabling regulation

The Dutch authorities would like the Commission to take into consideration the extension of article 1 (a) of the Enabling Regulation (EU) 2015/1588 with aid in favour of the conservation and protection of nature.

De minimis regulation

The Dutch authorities propose an increase of the amount of de minimis aid up to € 500.000,-. The amount of € 500,000 over a 3-year period will not quickly lead to disruption of trade between states.

General Block Exemption Regulation

In light of the GBER revision, the "undertaking in difficulty" criteria continue to cause problems for our granting authorities. Some of these criteria seem to exclude from state aid economically healthy undertakings which - from an economic point of view - ought not to be considered as an "undertaking in difficulty". The Dutch authorities propose to adjust these criteria in accordance with these economic insights.

Furthermore the Dutch authorities propose an extension of the scope of risk finance aid (article 21) and aid for start-ups (article 22) with ad hoc aid, which would be consistent with the scope of the other block exemptions in this regulation. The Dutch authorities consider that the limited nature of this amendment, can be achieved without requiring an impact assessment. This can be considered a quick win and be realized at the same time as the prolongation of the regulation.

The Dutch authorities also propose that aid for start-ups (article 22) can also take the form of tax measures.

The Dutch authorities also propose an extension of the GBER with funding opportunities for small mid-caps and innovative mid-caps as defined in the Guidelines on State aid to promote risk finance investments.

The Dutch authorities would like to point out some difficulties the granting authorities face when applying Article 27 (2) GBER. This article sets out that aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation). The Commission has clarified that Article 27 (2) requires that the legal entity exists, i.e. that the cluster organisation could not be merely a collaboration of different entities. In the case of a project in which several undertakings carry out activities and two of these undertakings qualify as cluster organisations, it should be possible to grant aid to both cluster organisations as each of these form a legal entity operating an innovation cluster. In the context of the review of the GBER, the Dutch authorities would like to suggest that the Commission clarifies whether Article 27 puts a limitation on the amount of cluster organisations that carry out activities in a project

Guidelines on State Aid for Environmental Protection and Energy

The Dutch authorities support a reform of the State aid framework so that it contributes to and do not counteract a climate neutral society and the implementation of the Paris Agreement. This includes enabling Member states with better tools to combat climate change and enabling investments in (large scale) energy storage and flexibility, carbon capture and storage (CCU), cross-border infrastructure and transport of CO2 involved with the carbon neutral economy, production processes that use biobased feedstocks (circular economy), other sustainable energy carriers like hydrogen and ammonia, taking into account competition outside the EU while safeguarding fair competition in the EU internal market.

Furthermore the Dutch authorities would like to point out that there are increasingly complex projects in the climate and energy transition that do not always clearly show who the environmental benefits are. There are cases where the environmental benefit does not fall on the person making the investment and is therefore the beneficiary, while without the investment the environmental benefit is not realized. Could the GBER extended for such complex cases that would allow support to be given to projects where the beneficiary is not the one where the environmental benefit is achieved? This can play a role in particular for large heat infrastructure projects.

Article 46 (6) (Investment aid for energy efficient district heating and cooling) states:

The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs *ex ante* or through a claw-back mechanism.

The definition of operating profit in the GBER is: 'operating profit': the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

That means that when calculating the maximum support you have to include the support itself and that is somewhat complicated. The Dutch authorities would like to suggest that the Commission clarifies whether for example bank fees or legal costs can be considered as operating costs? Since there is no definition of "operating costs" in the GBER.

Important projects of common European interest

When it comes to the development of an EU industrial policy, the communication on "important projects of common European interest" ("IPCEI") plays a crucial role. However the Dutch authorities propose that the procedure for granting aid to IPCEI projects should however be simplified by building on the Commission and Member States' recent experience from the microelectronics project.