

---

Response of the Dutch authorities on the draft Communication from the Commission 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

---

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

In the review of the IPCEI Communication 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.

*1. General remarks*

The Dutch authorities recognize that IPCEIs may in some cases represent an important contribution to the achievement of strategic objectives of the Union, notably in view of their positive spillover effects. IPCEIs can address important market or systemic failures and societal challenges which could not otherwise be addressed, by bringing together Member States and stakeholders throughout the Union.

The Dutch authorities welcome the review of the IPCEI Communication and endorse the focus on the areas of openness and inclusiveness, the role of SME's and clarity of some of the main definitions.

However we also like to point out that it should be prevented that IPCEIs will be identified as the final solution to every "strategic" objective. For this reason the Netherlands has three overarching recommendations:

- a. Assure that IPCEIs are part of a coherent policy to strengthen each strategic value chain;
- b. Only use IPCEIs for a select number of truly strategic objectives of the Union;
- c. Maintain scrutiny in assessing IPCEI proposals.

*a. Assure that IPCEIs are part of a coherent policy to strengthen each strategic value chain*

To make IPCEI projects more effective, they should be part of a broader strategy to create an optimal ecosystem for these value chains to thrive in, rather than being a stand-alone instrument. Such a strategy should analyse the needs of each particular strategic value chain, identify potential bottlenecks and look into all possible policy options that could strengthen the strategic value chains. Policies that could be considered are for example: fragmentations of standards and regulation, lack of legislation and implementation, or access to needed resources<sup>1</sup>. However an IPCEI is not the only financial instrument available. Value chains can also be served by general instruments that already are

---

<sup>1</sup> These includes, but should not be limited to, available (digital) infrastructure, access to skills, access to finance, access to critical raw materials, access to data, access to energy, market access, or the development of special innovation hubs or a network of excellence centers to coordinate and link knowledge



in place, such as the broad range of R&D&I support measures that are offered through Horizon Europe or other instruments for support like, InvestEU and other instruments of the EIB/EIF.

On the basis of such a thorough approach, a coherent strategy should be created to foster the development of the strategic value chains. An IPCEI could be a valuable part of the broader strategy to kick-start and address major challenges within these strategic value chains. However, an IPCEI should only be set-up when enough (and potentially less distortive) steps have been taken to improve the ecosystem *and* the analysis shows that private initiatives supporting innovative projects fail to materialise because of the significant risks these projects entail. The benefit of making IPCEIs part of a broader approach is that a more structural stimulus is given for the strategic value chains to develop, that the different steps taken can reinforce each other and that the right instruments will be used in the according situations. This significantly increases the chance of success.

An IPCEI should not lead to a **disproportional** disruption of the internal market and hamper SME's or value chains that have not been acknowledged as being an IPCEI. Member States and the Commission have a joint responsibility to ensure that IPCEIs do not undermine effective markets.

The IPCEIs are also a point of attention, since high amounts of public support are likely to be necessary. Therefore an ex ante control mechanism by the European Commission, to assess the potential impact on the competition of the internal market, is of major importance. State aid through an IPCEI should distort competition as little as possible. Fair competition on the EU market is essential for a well-functioning internal market.

#### ***b. Only use IPCEIs for a select number of truly strategic objectives of the Union***

State aid support schemes differ between Member States:

- a. Various Member States will have smaller budgets than other Member States;
- b. Some Member States have more leeway to utilize their budgets in a discretionary way than others, e.g. give direct state aid, versus generic support schemes that often are tax based;
- c. Smaller Member States will have smaller staffs which will make guiding multiple IPCEIs simultaneously challenging.

Potentially, this makes that some Member States will be better positioned to deal with and benefit from IPCEIs than others, even proportionally. This may strengthen those Member States with "big discretionary coffers" and exacerbate an unlevel playing field within the EU.

For this reason the Dutch authorities call on the Commission to prevent a proliferation of IPCEI projects:

- by creating a stronger guiding role for the Commission to assess in which strategic areas an IPCEI would be of significant added value (including timing),
- based on an assessment of the relative burden of the number of IPCEIs for smaller versus larger Member States.

#### ***c. Maintain scrutiny in assessing IPCEI proposals and uphold the level playing field***

Although the Dutch authorities see the necessity for IPCEIs, this does not mean that a fast track and streamlined IPCEI notification procedure should go at the expense of a careful assessment of the effects on competition of an IPCEI. The Dutch authorities suggest that process standardization and a more central role for the Commission are key to making the IPCEI procedures more efficient.



The goal of an IPCEI should be carefully balanced with and proportional to the distortion of the internal market. This should be done by a thorough analysis of the market failure and/or systemic failure and/or the transition failure that an IPCEI is meant to address. In this regard, for the Netherlands, it is clear that an IPCEI with the sole purpose to strengthen the strategic autonomy of the Union, without addressing market failures directly, cannot be enough to justify the use of an IPCEI. There are potentially more proportionate instruments at hand (to be identified in an Industrial Alliance Roadmap). Since the IPCEI potentially distorts the internal market, it is of the utmost importance to clearly analyze why the IPCEI is the most proportionate instrument at hand to solve a problem. An IPCEI may be suitable to spur innovation in case the private market fails to do so.

In the view of the Dutch authorities keeping IPCEIs fair for the well-functioning of the internal market means that:

- IPCEIs should only be considered as part of a coherent strategy for the benefit of a strategic value chain;
- IPCEIs should be underpinned by a thorough analysis to the existence of market failures, systemic failures, or social challenges that validates the necessity of an IPCEI;
- Analysis should entail an explanation which other instruments have been sought and why these are not suitable;
- Public private partnership Industrial Alliances should play a pivotal role in these analyses;
- IPCEIs should not focus on just one regional market within the European Union;
- First industrial deployment should not entail mass production or commercialization of the aided activities, e.g. only a first batch of test products;
- Participation of companies should be an open and standardized process which would specifically enable SMEs, not directly involved in setting up the IPCEI project, to join a project already under development;
- IPCEIs focusing on breakthrough technologies should not provide aid for a period longer than the absolute minimum necessary, but in any way no longer than five years.

#### *IPCEIs to tackle social and transition challenges*

This being said, it is clear to the Dutch authorities that the EU faces major societal challenges (most notably the twin transition) that may well require the creation of IPCEIs. The Communication needs to be updated to take into account new major policy priorities such as the Green Deal and the Digital Strategy.

The Dutch authorities see that major societal challenges may ask for wider support measures to overcome so-called transition failures, in which pre-commercial operational expenses can also be supported. Without such support measures, the initial support might be too little, too late, through which true solutions of the “wicked problem” societal challenges may not be feasible.

It has to be clear that IPCEI projects do not undermine the goal of reaching a climate neutral EU by 2050. However, due to the urgent and profound need for new innovative solutions, special emphasis should be given to climate and environmentally friendly technologies when applying and assessing state aid to IPCEI projects. Furthermore it is of the utmost importance that all Union Member States get a fair chance in reaching the goals of the energy transition and low carbon economy.

This means that point 26 of the draft IPCEI Communication should for example allow for economic incentives for hydrogen to compensate both the higher costs of renewable and low carbon hydrogen production, as well as end users higher consumption cost.

An example is Hydrogen, where the difference between the commercial price of grey hydrogen (made with natural gas) is substantially lower than clean hydrogen (made with



renewable energy). The major aim is scaling up the market for clean hydrogen, so that – together with incorporating the ETS price - it will be able to compete with grey hydrogen. To be able to sufficiently stimulate the development of that market, only support for infrastructural capital expenditures, will not suffice. There will be need for a number of years to also give support towards the operational expenses.

This is needed in order to be able to the change to renewable or low carbon hydrogen from fossil energy sources, and to transition fossil based industrial processes and technologies into those based on hydrogen.

Similar situations may play in future IPCEI projects that intend to deal with the twin transitions of sustainability and digitalisation. In the coming period, together with other Member States, the Dutch authorities would like to explore the feasibility of this topic further with the Commission.

#### *Environmental and climate requirements*

Point 22 f of the draft IPCEI Communication considers it a positive indicator if the project takes into account the Taxonomy Regulation.

The development of the EU taxonomy as a means to provide guidance for private investors assessing which investments are future proof (i.e. in line with the EU climate goals) can be supported. However, as the EU taxonomy is still being developed, applying it to the broad spectrum of the State aid rules is not supported by the Dutch authorities at this stage. The EU taxonomy could be one of the factors that helps the European Commission in defining positive environmental gains, but such use of the EU taxonomy should be explored further by the European Commission first.

Could the Commission acknowledge that the approval of an IPCEI, which does not meet all the conditions of the EU taxonomy, will not being hampered by this provision, in particular when Member States only fund an IPCEI with national public funding ?

## 2. Specific remarks

### a. Openness and inclusiveness of IPCEIs

The Dutch authorities are of the opinion 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) may not be sufficient to ensure that the design of IPCEIs is carried out in a fully open and inclusive manner.

Point 18 of the draft IPCEI Communication sets out that all Member States must be given a genuine opportunity to participate in an emerging project. Unless justified by the nature of the project, notifying Member States must demonstrate that all Member States were informed of the possible emergence of a project, including by way of contacts, alliances, meetings, or match-making events, and given adequate opportunity to participate. Although this is a positive new element in this draft, the Dutch authorities think this provision may not be sufficient to carry out IPCEI's in a fully open and inclusive manner.

In order to establish that these important European projects generate even more benefits to the entire EU without unduly distorting competition, we suggest introducing an ex ante consultation carried out by the Commission.

Without prejudice to the Member states possibilities of having national calls for interest or organizing European match-making meetings, we suggest the Commission should start an ex ante consultation at least 3 months before the designated start of an IPCEI prenotification process. This will provide other



Member States and stakeholders with the opportunity to submit comments (e.g. on potential spillover effects) or to apply for co-participation in line with the spirit of the framework while the participating member states are finalising the notification to the Commission.

The consultation should consist of an overall description of the project, outlining the general objective and scope, expected participating Member States and enterprises in addition to the estimated financial size of the project. This will make the process more transparent, while not delaying but solidifying the application, as the consultation can run parallel with the finalization of the pre notification to the Commission. Five weeks should be given for Member States to either submit comments or apply for co-participation to a project. Subsequently, a period of up to three weeks should follow allowing the applying Member States to coordinate a response to both the received comments and applications for co-participation

The Dutch authorities find it positive that the Commission recently allowed a Member State to join an already established and ongoing IPCEI. Joining at a late stage when most of the existing projects have already substantially progressed, might raise issues with regard to demonstrating additionality, integration and real collaborations. The governance structure of the IPCEI may provide if and how this can be done as it could impact the timeline and on-going collaborations within the IPCEI.

Overall, it is fair to say that joining later an already approved IPCEI would be far more demanding compared to joining from the beginning, as the added value of the project to the integrated project needs to be proven. This is why it is important that an ex ante consultation, before the start of an notification process, is being carried out by the Commission. So that an IPCEI is really open to all interested MSs (besides through the forum, alliances and other fora etc.) all interested MSs should be aware and be able to participate from the start.

The Dutch authorities further find it appropriate to slightly increase the minimum number of participating Member States to 4 including at least one or two smaller Member States.

**b. A more efficient IPCEI procedure**

The Dutch authorities would argue that a more efficient IPCEI procedure requires further standardization of the processes leading up to an IPCEI. The experience of the Dutch authorities is that a lot of work on the side of the Member States goes into organizing national calls for interest, designing forms and determining the required company information. This work, combined with the organizing tasks at the side of the responsible governments seem largely superfluous given the fact that projects have to be integrated at the European level in the end.

As a solution the Dutch authorities propose a standardized 'manual' for IPCEI procedures, with a stronger role for the Commission in facilitating the platform for exchange between governments and other parties involved. This manual should contain standardized forms and a step-by-step explanation of the process, the information required by the Commission at each step of the process, and an indicative assessment of the time and capacity each step requires at both governments and market parties. Besides this manual the Commission would also provide a digital platform for calls for interest, matchmaking and Q&As. Of course governments involved should always be at liberty to organize their own calls for interest or matchmaking events, but this then is out of preference instead of pure necessity.

In the meantime the Commission could clarify – for each phase of an IPCEI project - what kind of information would be necessary, by whom it should be provided and in what phase of the IPCEI State aid procedure it should be provided. A solution for this would be that the Commission per IPCEI creates a dedicated support team that helps Member States maneuver through the entire IPCEI process in a structured way. This could include supplying generic descriptions of the project as a



whole, help craft and update roadmaps, supply checklists, templates and guiding notes. This will help ensure that all the Member States remain similarly informed and reduces the burden to join an IPCEI (see point 2a. and 2c.).

c. Role 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. The Dutch authorities therefore support point 22 d of the draft IPCEI Communication which encourages large enterprises participating in IPCEIs to involve SMEs in different Member States as their partners, so that SMEs can increasingly benefit from IPCEIs. To support these linkages between large enterprises and SMEs, motivating closer cooperation in industrial alliances might already be beneficial to exchange knowledge, network and soften administrative burdens for SMEs to participate in these larger scale projects.

However the draft does not make clear in what circumstances and under which conditions the assessment for SMEs can be less stringent than for large enterprises. For SMEs the administrative burden is a major obstacle for the participation in an IPCEI. For the sake of legal certainty it is important to know beforehand what kind of information an SME, wanting to participate in an IPCEI, has to submit in the notification process.

The Dutch Authorities envisage a system in which, for all applications, the level of administrative burden depends on the size of the project that is executed by the company. This would mean that SMEs, who are likely to have smaller projects with smaller budgets, would need to provide less proof. Also for large companies that only desire small projects this could lower the threshold to apply. By making the administrative burden proportionate to the potential funding that can be received, the IPCEI will become more inclusive without diminishing the strategic and highly innovative objective of the projects.

d. 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).

Recovery as such (as put forward in point 4 and 15) is, for the Netherlands, not a suitable goal for an IPCEI as it does not entail spurring innovations to overcome market failures or systemic failures to address societal challenges.

Furthermore, it is appropriate to expressly recognize 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).

The Dutch authorities would like to underline that not only large multi country projects in the health or digital fields could be assessed under the IPCEI but also environmental and energy projects are crucial to be able to receive state aid under the new IPCEI Communication. In line with the Hydrogen Strategy of the Commission, the Netherlands considers the following (environmental and energy) projects to be of great importance: international energy infrastructure, specifically for hydrogen and electricity, transnational maritime transport of hydrogen-like energy carriers.

e. 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). The Netherlands acknowledge that relocation of jobs through state aid under an IPCEI affects the objectives of State aid control. Relocation as a result of State aid is a disagreeable effect that must be prevented by definition. 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). The Dutch authorities support this new claw back mechanism as it limits the state aid as much as possible.

It is also appropriate to require that co-financing by the beneficiary must be significant (see point 20 of the draft IPCEI Communication). The Dutch authorities support this requirement as it stimulates the company - receiving state aid - to take up the necessary risks and attracts private investments.

f. Other clarifications and updates

The Dutch authorities support the update, slightly revising or restructuring of some provisions of the IPCEI Communication, but do have some questions in particular with regards to:

- Could the Commission clarify for each IPCEI which is being taken up what she considers as a market or systematic failure in that particular case ?
- The project must involve significant co-financing by the beneficiary (see point 18 of the draft IPCEI Communication). Can the Commission clarify what would entail “significant”?
- More guidance on the benefits of the project that need to be clear and defined (point 18).
- The definition of ‘first industrial development’ (see point 25 of the draft IPCEI Communication). Could the Commission give more guidance on this definition. Could the Commission consider to introduce indicators that will make ‘first industrial deployment ‘ more measurable and transparent?
- Could the Commission clarify the definition, or minimum quantitative amount, of spill-over effects and how that will be measured (point 17)?
- The assessment of counterfactual scenarios (see point 32 of the draft IPCEI Communication); cumulation (see point 36 of the draft IPCEI Communication) and transparency (see points 50 and 51 of the draft IPCEI Communication)
- The definition of ‘particularly innovative’ in point 23 of the draft IPCEI Communication.
- Could the Commission clarify how the cooperation between companies during an IPCEI can take into account antitrust and merger control regulation ?

*More clarity needed for point 26 IPCEI projects*

The Dutch authorities appreciate these clarifications however are missing one mayor clarification on point 26 of this draft IPCEI Communication.

- Could the Commission clarify what requirements have to be fulfilled in case of environmental, energy, transport, health or digital projects would like to qualify under an IPCEI?
- Does the Netherlands understand correctly that only infrastructural project would qualify? Could the Commission give guidance on how “infrastructural” would be defined?
- The Annex “Eligible Costs” only specifies how capital and operating expenditures should be assessed. It does not give guidance on how to apply point 26.
- Could the Commission clarify whether also pre-commercial production, conversion distribution and storage (for example of energy carriers) could qualify as an IPCEI?



- How should non exclusivity and third party access be ensured to cover for the spillover effects?
- Are carbon contracts of difference an instrument to be used under an IPCEI?
- Could technologies for industrial applications and equipment manufacturing be based on point 26 of should these be based on point 23-25 of the draft IPCEI communication?

#### *More clarity needed for Hydrogen*

The EU and many individual Member States have defined ambitious targets for deployment of renewable and low-carbon hydrogen in support of the Union's 2030 and 2050 climate targets. Further, the EU Hydrogen Strategy and equivalent Member State documents recognize that cost-effective import of renewable energy, such as in the form of hydrogen, will be necessary to meet those targets. As the Commission has developed a very ambitious hydrogen target for 2024 already, the IPCEI hydrogen seems to be a crucial instrument to realize that target. Besides local hydrogen production an IPCEI can be needed for setting up the necessary infrastructure for large scale renewable hydrogen imports from neighboring regions.

The Dutch authorities would like to point out that they have doubt whether the scale up of electrolyzers could qualify as first industrial deployment under point 22 (now proposed 24) of the draft Communication. The Dutch authorities seriously doubt whether individual electrolysis projects will be able to prove their additionality, specifically on most R&D&I aspects, to other electrolysis projects. It seems more appropriate to assess the value of different electrolysis projects under point 26 of the revised communication, as these installations should contribute to climate neutrality by 2050. How would the Commission assess multiple electrolysis projects as part of one integrated IPCEI project, specifically in light of the Commissions own targets for electrolysis (6 GW in 2024, 40 GW in 2030)? Does the Commission deem all electrolysis projects contributing towards those targets additional?

#### g. Co- financing an IPCEI from European funds

In point 22.e. of the proposal for the revision of the IPCEI Communication the Commission suggests to take as positive indicator whether an IPCEI consists of co-financing from an EU-fund. The Dutch authorities recognize that support from an EU-fund would offer an opportunity for smaller member states that otherwise do not have the same opportunities to join an IPCEI. However, the Dutch authorities find it very important that co-financing from an EU-fund is subject to a number of requirements:

- First, co-financing from an EU-fund may not exceed 30% of the total costs. This ensures the ownership of the project at national member states level and the private sector.
- Second, co-financing from an EU-fund should be restricted to a number of specific instruments, for the Netherlands the InvestEU-program and the RRF, without overshadowing the core goals of these instruments. Other instruments are found to be less suitable for funding an IPCEI and should be dedicated to the goals established in the respective regulations.
- Third, insofar co-financing from an EU-fund is possible, the expenses should be in line with general principles of the MFF, most notably in terms of transparency, fraud-prevention and the do no significant harm principle.
- Fourth, support from an EU-fund for an IPCEI must clearly have spill-overs for other member states that only join with national funds and/or do not join the IPCEI at all.

#### h. Evaluation



The Commission should continue to assess and monitor the ex-post changes in the behavior of the participating undertakings as well as general market changes resulting from the provided state aid, including market foreclosure and dominance or risk of initiation of a subsidy race between Member States. In line with the communication from 2014, projects should continue to be subject to regular monitoring. Results of IPCEIs should, to the largest possible extent, be made publicly available to build upon and learn from to support further innovation and strengthening the EU's global competitiveness. In 2025 at the latest, the Commission should present an overall evaluation of the use of the IPCEIs to support strategic value chains, the efficiency of the preceding processes ,including the effect on EU's global competitiveness, description of participants (e.g. large vs. small countries) and (potential) distortionary effects, within but not limited to the Single Market. The Commission should also evaluate whether the realization of an IPCEI on a specific topic is reason to exclude the same topic from future IPCEIs. To demonstrate the effectiveness of the IPCEI setting and functioning, it could be envisaged to define and monitor selected Key Performance Indicators.