

DG COMP Code of good practices for a transparent, inclusive, faster design and assessment of IPCEIs

Introduction

In 2021, the Commission adopted a revised Communication on the assessment of State aid to promote the execution of Important Projects of Common European Interest (IPCEI Communication)¹. The IPCEI Communication sets the eligibility and compatibility criteria that the Commission applies in the assessment of State aid granted for IPCEIs.

IPCEIs are large and ambitious cross-border projects by multiple Member States aimed at overcoming important market or systemic failures. They enable breakthrough innovation and support infrastructure investments of great importance for the Union and have clearly defined positive spill-over effects on the internal market and the society as a whole. IPCEIs are not suited to tackle urgent or crisis-related support measures that require swift approval of State aid. For the latter, State aid rules other than the IPCEI Communication can be used; notably, the General Block Exemption Regulation (“GBER”)² or the Temporary Crisis and Transition Framework³.

Following the approval of State aid for IPCEIs so far, the Member States and the Commission have both gained experience and knowledge on the assessment of State aid for IPCEIs. Based on this knowledge, experience and lessons learned, the Commission, on 1 February 2023, announced in its Communication “A Green Deal Industrial Plan for the Net-Zero Age”⁴ that it would prepare a code of good practices (“Code”) for a transparent, inclusive, and faster design of IPCEIs allowing for a streamlined assessment, and share it with the Member States.

This Code constitutes a manual of good practices addressed to national authorities, the Coordinator Member State⁵ selected by the national authorities, undertakings benefitting from aid based on the IPCEI rules (“IPCEI direct participants”), and the Commission services, for the purpose of facilitating the development and assessment of IPCEIs.

The Code does not express an applicable legal position or constitute a legally binding approach for the IPCEI direct participants. It does not create any further rights, nor imposes any new obligations, in addition to those laid down in the Treaty on the Functioning of the European Union, the Procedural Regulation⁶, the Implementing Regulation⁷ and the Code of Best Practice for the conduct of State aid control procedures⁸, as well as the IPCEI

¹ OJ C 528, 30.12.2021, p. 10.

² OJ L 187, 26.6.2014, p. 1, as amended.

³ OJ C 101, 17.3.2023, p. 3.

⁴ COM (2023) 62 final.

⁵ If deemed necessary, the Coordinator Member State can also be supported by experts from other Member States.

⁶ OJ L 248, 24.9.2015, p. 9.

⁷ OJ L 325, 10.12.2015, p. 1.

⁸ OJ C 253, 19.7.2018, p. 14.

Communication, as interpreted by the Union Courts⁹. This Code does not alter those rights or obligations in any way.

Phase 1: Emergence of an IPCEI

The IPCEI emergence phase extends from the identification of the object of an IPCEI to the joint public announcement of (ordinarily, at least four) Member States that are considering initiating an IPCEI. All interested Member States must have a genuine opportunity to participate at an early stage in an emerging IPCEI. Before any announcement is made, there should be an identification of the important market or systemic failures to be addressed, of the objective(s) of common interest, of the scope and the highly innovative nature of the project or the great importance of the infrastructure project for the relevant Union strategies.

Good practices

- One or more Member States that have identified a possible segment, sector, or value chain for which they propose to design an IPCEI, should liaise with all other Member States and communicate about the IPCEI plans, offering all other Member States a genuine opportunity to participate. Announcements or declarations about possible new IPCEIs among Member States could, for example, take place in the framework of the Council competition working party or other appropriate settings where all Member States are present.
- Interested Member States should agree on a Coordinator Member State (“Coordinator”). The interested Member States and the designated Coordinator should set a tentative joint timeline for the emergence and design phase.
- Before any public announcement, the Coordinator should start the preparatory work with all interested Member States as well as consult the relevant services of the Commission, namely the policy DG(s) most concerned and DG COMP for guidance focusing on:
 - the contribution that the anticipated project can make to a common European interest,
 - its alignment with current Union strategies and policy priorities,
 - the identification of important market or systemic failures and targeted market segments,
 - the tentative scope and structure of the IPCEI,
 - demonstration that the intended objectives and scope are in line with the IPCEI Communication.
- National authorities should pro-actively consider at this early stage whether the joint effort of the Member States can take the form of an IPCEI, which meets the

⁹ This document does not contain an exhaustive overview of the State aid rules.

requirements of Article 107(3)(b) TFEU, as interpreted by the IPCEI Communication, or whether such joint efforts may also be compatible with the internal market under other State aid tools (e.g., other relevant State aid guidelines or, in particular, the GBER).

- Undertakings that might benefit from aid on other legal bases can also be part of an IPCEI created ecosystem (as so-called “indirect” or “associated” partners) through collaborations with IPCEI direct participants and, in so doing, contribute to the relevant policy objectives pursued by the proposed IPCEI. In particular, projects of indirect or associated partners for which national authorities envisage applying the GBER to grant aid could be implemented more expeditiously.
- To keep the IPCEI process manageable, national authorities should direct potential IPCEI participants with projects suitable for aid based on the GBER or other State aid tools accordingly. Before designing an IPCEI, national authorities should consider that the manageability of an IPCEI is also an essential factor. IPCEIs with a large number of individual projects unavoidably take longer to coordinate, design, and assess.
- At the end of Phase 1, the Coordinator should inform the other Member States about the outcome of this phase, demonstrating the underlying important market or systemic failures, the targeted market segments, and the intended scope and structure of the IPCEI. This presentation should also include the analysis underpinning these conclusions.

Phase 2: Design of an IPCEI

This phase comprises actions by Member States, prior to pre-notifying the IPCEI to the Commission. During this phase, national authorities should establish which of the interested Member States will participate in Phase 2 and with which projects.

<i>Good practices</i>

Confirm the Coordinator

- In this phase, national authorities should finally confirm the Coordinator agreed upon in Phase 1, which will continue in its role as Coordinator. To act as Coordinator, a Member State must be ready to dedicate sufficient administrative capacity, budget and must have in-depth knowledge of, and experience with the relevant State aid rules.
- The Coordinator should:
 - formally invite all Member States (including for example, in the relevant Council working party) to participate,
 - underline the possibility for Member States to have either undertakings join the IPCEI as direct participants, or as indirect or associated partners, which collaborate with the IPCEI direct participants,

- continue to involve DG COMP and the relevant policy DG(s) in a timely and open manner, thereby maintaining sincere cooperation with the Commission,
 - coordinate the efforts of the participating Member States,
 - exercise its Coordinator role for the duration of the IPCEI and until all participating projects and the IPCEI itself have been completed and potential joint assessments or evaluations have been finalised unless Member States agree to appoint a different Coordinator after the adoption of a Commission decision.
- The Coordinator should schedule multilateral meetings between national authorities throughout Phase 2.
 - To facilitate the preparation of the IPCEI, the Coordinator should organise ad-hoc meetings with the affected Commission services (including DG COMP) prior to pre-notification and invite the other participating Member States to join. The Coordinator should inform all participating Member States about the outcome of such meetings on a regular basis.
 - The Coordinator should, from the start, include in its coordinating team State aid (IPCEI) experts.
 - The Coordinator should organise regular workshops aimed at providing guidance and a good understanding of the policies and procedures involved in the IPCEI process (e.g., on the requirements, templates to be used, etc.) for national authorities of all participating Member States, and potential IPCEI direct participants (selected undertakings requesting aid under IPCEI rules).

Share IPCEI knowledge and experience

- Within a Member State, knowledge should be shared between different national authorities (including the State aid authority), teams in different ministries, different national agencies or managing authorities that may assist national authorities throughout the process. State aid (IPCEI) experts from the national authorities should always be included in the exchanges at national level.
- Relevant information concerning IPCEIs can be found on DG COMP's IPCEI website¹⁰.

Organise open, transparent, and non-discriminatory national calls

- Each Member State must select the undertakings for the planned IPCEI. It is recommended to encourage small and medium-sized enterprises, including innovative start-ups, to participate either as IPCEI direct participants or as indirect or associated partners.

¹⁰ Cf.: https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/ipcei_en

- National calls should be aligned to the scope and objective of the IPCEI as agreed among Member States (after having consulted DG COMP and other relevant policy DG(s)). It is recommended that Member States align the timing of their national calls to the extent possible.
- National authorities should manage the expectations of interested undertakings as regards the requirements of the IPCEI process and explain that IPCEIs are not an exception to State aid rules.
- Calls for expression of interest and subsequent procedures should be designed to allow for flexibility and adaptation should a project appear better suited for support based on other State aid instruments.
- National authorities should therefore explain in the calls to interested undertakings that aid to a project submitted for possible participation in an IPCEI might also be granted under different legal bases, if more appropriate, such as the GBER, the Framework for State aid for research and development and innovation (RDIF) or the Guidelines on State aid for climate, environmental protection and energy (CEEAG), depending on the project's specificities (e.g., scope, low amount of aid, stand-alone project etc.). Even if aid for certain projects is granted under a different legal basis, for example the GBER, such projects can still form part of and fully benefit from the IPCEI ecosystem, including governance and knowledge dissemination¹¹.
- National authorities should pre-select only projects for direct participation in the IPCEI that fit within the scope and objectives of the IPCEI and satisfy the criteria set out in the IPCEI Communication (hereinafter "potential IPCEI direct participants").
- National authorities should make it clear to potential IPCEI direct participants that the pre-selected projects at the national level will only be able to be granted State aid if they fulfil all the eligibility and compatibility criteria set out in the IPCEI Communication. They should clarify in a timely manner with DG COMP any issues or questions they have and guide the potential IPCEI direct participants in the presentation of their individual projects.
- For confidentiality reasons, discussions with potential IPCEI direct participants are to be handled exclusively by the respective financing Member State and DG COMP.

Organise an open, transparent, non-discriminatory "match-making" process

- The Coordinator should organise "match-making" sessions between potential IPCEI direct participants. The purpose of such sessions is to promote collaborations and identify synergies and areas where pre-selected projects could complement each other

¹¹ Cf. Annex to the Communication to the Commission: Approval of the content of a draft for a Commission Regulation amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty; C(2023) 1712 final, point 23 (concerning the amendment of Article 25 of the GBER).

to demonstrate the IPCEI's integrated nature and allow the potential IPCEI direct participants to define appropriate work streams together.

- National authorities should ensure that the potential IPCEI direct participants are responsive and actively participate in and contribute to the match-making sessions, either as participants of a defined work-stream or as contributors to the discussions.
- The Coordinator should involve the relevant policy DG(s) and DG COMP in the match-making process with full access from the start.
- When forming collaborations or exchanging information, potential IPCEI direct participants must do so in a manner compliant with Union antitrust rules.

Preparation of the IPCEI "Chapeau" draft text

- The Coordinator should begin to draft the so-called Chapeau text that will serve as the structure of the project, calling on other Member States and all pre-selected potential IPCEI direct participants to contribute with the necessary input, while regularly updating DG COMP on the progress.
- The Coordinator should use best practices to ensure that the Chapeau text is:
 - precise and aims at optimal comprehensibility (non-technical language should be used to the extent possible),
 - concise in length, and
 - apt to demonstrate meeting the legal requirements of the IPCEI Communication; in particular, to establish the integration of an IPCEI.
- National authorities should ensure that the undertakings they have selected respond in a timely manner to the Coordinator's requests for input on the Chapeau text.
- The Coordinator should use its best efforts to ensure that the Chapeau text does not exceed an indicative target length of 150 pages.
- Pre-selected potential IPCEI direct participants should also contribute to the Chapeau text by providing, among other things, necessary (non-confidential) short descriptions of their individual projects, their projects' concrete significant added value to the IPCEI and their complementarity to other individual projects of the IPCEI, their concrete commitments to generate spill-over effects on the internal market and definitions of work packages and deliverables.
- The Chapeau text should neither contain business secrets, nor should it serve as a marketing document. Instead, it should demonstrate compliance with key IPCEI requirements, in particular the eligibility and compatibility criteria set out in the IPCEI Communication.

Preparation of project documents

- The Coordinator can obtain the latest templates (e.g., project portfolio template) from DG COMP's IPCEI website¹² and share them with all participating Member States.
- National authorities should then distribute these templates to the potential IPCEI direct participants without delay. Potential IPCEI direct participants should draft their project documents based on those templates and guidance received.
- National authorities should oversee that the project portfolio and its annexes are completed in the most precise manner possible. They should aim for optimal comprehensibility and minimal length and for avoiding that information related to the individual projects is presented more than once in the project portfolio and its annexes thus creating redundancies. The completed project portfolios and annexes should aptly demonstrate that the legal requirements of the IPCEI Communication have been met. For these purposes, national authorities should keep in mind that a complete and high-quality individual project portfolio including annexes will lead to fewer questions by DG COMP and the technical experts. National authorities and undertakings should make best endeavours to ensure that a target size range of 50-75 pages for the project portfolio is not exceeded.
- Potential IPCEI direct participants should strive to establish meaningful collaborations. Such collaborations should be, for example set out in Letters of Intent, or agreements, or other appropriate documentation detailing the level of collaboration between the undertakings, co-signed by the partners during the preparation phase to avoid delays and disputes during the subsequent cooperation process and the State aid assessment.
- National authorities should treat the business secrets of individual projects of each undertaking as strictly confidential.
- To avoid delays, national authorities should ensure that undertakings will not invoke confidentiality as a reason for not providing information to the Commission services. Pursuant to Article 339 TFEU and to Article 30 of the State aid Procedural Regulation, Commission officials shall not disclose confidential information that they receive.

Before pre-notification, national authorities should carefully analyse all IPCEI documents

- National authorities should collect and carefully analyse all project documents, namely: the project portfolio, funding gap projections, competition distortion assessment template and appropriate evidence as well as annexes, such as Letters of Intent (or other appropriate documentation describing the collaborations between participants and co-signed) ahead of pre-notification.

¹² Cf.: https://competition-policy.ec.europa.eu/state-aid/legislation/modernisation/ipcei_en

- To facilitate and speed up the assessment by the Commission services, it is strongly recommended that Member States submit language waivers, and all project documents are drafted and submitted in English.
- The Coordinator, together with the national authorities, should review the overall IPCEI Chapeau text for quality and sufficiency, before submitting it to the Commission as part of the pre-notification process.
- National authorities should request that potential IPCEI direct participants implement the necessary quality improvements to project documents within a set deadline.
- National authorities should remove projects that are insufficiently developed or of low quality before pre-notification to avoid causing undue delays for other pre-selected projects.

Phase 3: Pre-Notification of an IPCEI

This phase comprises work by the participating Member States during the pre-notification phase of the IPCEI to the Commission. During this phase, the Commission assesses the project documents and sends requests for information (“RFI”) to the participating Member States, where needed. All participating parties, national authorities, potential IPCEI direct participants and the Commission services work closely together to ensure that the procedure runs efficiently. This phase ends when DG COMP concludes its initial assessment of the individual project documents and the Chapeau document based on the finding of the completeness and accuracy of the pre-notified information.

<i>Good practices</i>

Ensure compliance during the entire pre-notification phase and support the Commission services’ assessment

- National authorities should continue to manage potential IPCEI direct participants’ expectations. IPCEIs can only be approved if they satisfy all the eligibility and compatibility criteria set out in the IPCEI Communication.
- National authorities should make it clear to potential IPCEI direct participants that they should expect to receive and be able to reply to detailed RFI(s) in a timely manner.

Ongoing coordination

- The Coordinator can request meetings with DG COMP on horizontal issues relevant to the overall IPCEI.
- DG COMP will assess the submissions of the potential IPCEI direct participants and the IPCEI overall, in accordance with the conditions laid down in the IPCEI Communication.

- DG COMP will inform the Coordinator about the planned approach for assessing the IPCEI. The timing of the assessment might change in view of the quality of the individual projects and the timely receipt of complete information. Low-quality projects and data slow down the overall IPCEI process to the detriment of good-quality projects. In addition, manageability is also an important factor; IPCEIs comprising a large number of projects necessarily take longer to assess.
- DG COMP might send one or several RFI(s) to collect missing information necessary for the assessment. DG COMP might also use other means (e.g., meetings) to exchange with the relevant national authorities and, if necessary, also with potential IPCEI direct participants to better understand the projects and seek clarifications.
- DG COMP will invite Member States to withdraw from the IPCEI those projects for which a first screening reveals that they are insufficiently developed (for instance in terms of cross border co-operation) or poorly substantiated (for instance regarding the innovation and the global state of art) and therefore do not satisfy the conditions of the IPCEI Communication. DG COMP will provide feedback to the national authorities in this respect.
- National authorities should direct potential IPCEI direct participants to reply to RFI(s) in a timely fashion and national authorities should critically review the quality and completeness of those replies. Where necessary, the national authorities should request that the potential IPCEI direct participants improve and/or complete their replies before transmitting them to the Commission in order to avoid delays or additional RFI(s). National authorities should not limit their role to that of merely forwarding replies drawn up by the potential IPCEI direct participants. Such a hands-off approach would risk delaying the assessment of the IPCEI overall.
- National authorities can ask for a reasonable extension to the deadline to improve the quality of the replies to the RFI. This is preferable to sending a deficient reply, which could ultimately lead to longer delays in the assessment.
- National authorities can allow potential IPCEI direct participants to start works during the pre-notification phase while DG COMP's assessment is ongoing, if the aid application was previously submitted to the national authorities. National authorities should clarify that starting works before the adoption of a decision by the Commission is at the undertaking's own risk, as DG COMP's assessment might subsequently result in the potential IPCEI direct participant not being eligible to receive State aid based on the IPCEI rules. National authorities should inform DG COMP about this in advance.
- Where deemed necessary and appropriate, DG COMP will approach the Coordinator and the national authorities to have a high-level discussion on the progress and state of play. Such discussions may address problematic issues that would cause, or risk causing delays in the assessment process and agree on the way forward.
- At the end of the pre-notification phase, when the preparatory work for the notification is deemed complete, as indicated by DG COMP to the Coordinator, the latter will provide an updated and revised 'Chapeau' document to all participating

Member States. This document should be endorsed by the participating Member States enabling them to notify it to the Commission.

Phase 4: Notification of an IPCEI

This phase follows the pre-notification. The Commission has two months to process the notified project after the notification of all participating Member States is deemed complete. This phase ends with the adoption of a formal Commission decision.

Good practices

- Should DG COMP consider that information is still missing or unclear, it will ask for additional information on both individual projects and the Chapeau text, which extends the deadline for adopting a decision. National authorities should inform potential IPCEI direct participants that in this phase, changes concerning projects should be strictly avoided and that the potential IPCEI direct participants should respond to RFI(s) from DG COMP within short deadlines to avoid delays in the decision-adoption process.

Phase 5: Publication and Reporting on the implementation of an IPCEI and improving the process

This phase starts once the Commission has adopted a decision to approve State aid to promote the implementation of an IPCEI. During this phase, the national authorities grant and disburse the aid approved, monitor the projects' implementation, and submit reports to the Commission based on the information collected from the IPCEI participants. National authorities should also use this phase to share knowledge and experiences gained.

Good practices

- To establish legal certainty, it is in the interest of all stakeholders that a non-confidential version of the decision is published as soon as possible after the adoption by the Commission.
- National authorities should ensure that all agreed terms and conditions in the Chapeau and in the project documents (e.g., project portfolio, funding gap calculation, etc.) are correctly implemented during the projects' lifetime.
- National authorities must ensure that the relevant information on the IPCEI measure and on individual aid awards exceeding EUR 100,000 is published in line with the IPCEI Communication.
- National authorities should produce and share annual reports on the status of implementation of the decision with the Commission.
- Annual reports should comprise information both at the level of individual projects ("individual project report") and at the level of the overall IPCEI.

- The individual project reports should provide a detailed presentation of the annual progress of the individual project. Such reports should include, but are not limited to, advancements of the project, dissemination and spillover effects, financial implementation, KPIs achieved and status of partnerships to allow for comparison between such advancements and the commitments made by the Member States.
- The national authorities should review the individual project reports for completeness and quality before submitting them to the Commission.
- As a continuous process, national authorities should share knowledge on process, substance, best practices, and the role and work of a Coordinator. In particular, the Coordinator should widely share, and, where requested, devise appropriate ways to spread the knowledge and experience it has gained in its role as a Coordinator with other Member States that have not yet undertaken that role.