1. **DG Comp “non-papers” regarding the IPCEI**

DG Comp has recently provided five so-called “non-papers” presenting their actual understanding (which is nevertheless not legally binding) regarding the IPCEI. In order to meet the expectations of DG Comp, it is highly recommended to reflect this understanding within the individual “Project Portfolios” (PP; i.e. the document in which any beneficiary describes its individual project) and use similar wording.

*This document highlights the* ***main arguments of the five non-papers*** *and provides some recommendations on how to consider them while drafting the individual project descriptions.*

Disclaimer: It is explicitly noted that all non-papers should be studied in full and that the recommendations given hereafter are – as the non-papers themselves – not legally binding. The sole purpose is to give orientation to run a smooth notification process.

1. **Overall perception of the IPCEI by DG Comp**

The following references to the non-papers most prominently represent the understanding and expectations of DG Comp regarding the IPCEI:

* The project is of major importance for the European strategy for Key Enabling Technologies (KET).
* The benefits of the project must not be limited to the undertakings or to the sector concerned but must be of wider relevance and application to the European economy or society through positive spillover effects (such as having systemic effects on multiple levels of the value chain, or up- or downstream markets, or having alternative uses in other sectors or modal shift) which are clearly defined in a concrete and identifiable manner.
* An integrated project can be characterised by individual components relating to a given programme, roadmap or structure at several levels of the supply chain.
1. **Non-Paper on Integrated Project**

|  |  |
| --- | --- |
| **Citation of Non-paper** | **Recommendation for drafting the Project Portfolio (“PP”)** |
| The individual components of the integrated project may relate to separate levels of the supply chain but must be **complementary** and **necessary** for the achievement of the **important European objective** | Any individual project description should describe **its contribution to the overall IPCEI objectives** which are outlined in the Chapeau text. Frequent references (also to the “Technology Field Annexes”) are helpful. |
| The objective cannot be to improve the competitive position of the companies involved  | Please avoid arguments regarding an increase of competitiveness (with regard to global competitors).  |
| The project is of major importance for the European strategy for Key Enabling Technologies.  | Please explicitly refer to (or mention) the KET strategy. Stress upon the required proximity to co-operation partners (up- and downstream) in Europe. |
| … develop innovative technologies (carry out RDI) and strengthen the manufacturing capabilities in the EU (carry out first industrial deployment (FID)), in order to stimulate further R&D and enable downstream applications  | Please differentiate clearly between RDI and FID activities.  |
| An integrated project can be characterised by individual components relating to a given programme, roadmap or structure at several levels of the supply chain. | This reveals clearly the understanding of DG Comp that the IPCEI needs to be presented as an integrated project (of common European interest). Therefore, please integrate texts demonstrating the interaction between your organization and the consortium as a whole (e.g. by presenting progress on regular project meetings). |
| Antitrust | However, DG Comp states clearly:“No commercially sensitive (future & strategic) information should be exchanged between competing undertakings.” One explicit sentence to this regard should be added. |
| Complementarity: …any link between the activities undertaken by the companies, within a Technology Field and across Technology Fields …”  | The Project Portfolios should more often refer to activities within or across the Technology Fields. Any cooperation within the IPCEI should be stressed. |
| Necessity: There must be an explanation why each company's activities are necessary to achieve the important European objective. | See above: Describe the **contribution to the overall IPCEI objectives** which are outlined in the Chapeau text and explain why the contribution of your project is essential for the IPCEI as a whole. |

1. **Non-Paper on “RDI of Major Innovative nature”**

The non-paper refers to the (general) IPCEI communication from 2014 and elaborates the understanding of R&D and FID, with longer elaborations on the end of FID and entry into mass production.

|  |  |
| --- | --- |
| **Citation of Non-paper** | **Recommendation for drafting the PP** |
| Projects comprising of industrial deployment must allow for the development of a new product or service **with high research and innovation content and/or the deployment of a fundamentally innovative production process**. Regular upgrades without an innovative dimension of existing facilities and the development of newer versions of existing products do not qualify as IPCEI. | Any information provided on R&D and FID in the PP should stress the “innovative dimension”. |
| “… other important positive elements of the new products and technologies to be developed should be taken into account, such as bringing forward an **important evolution of the industrial sector** concerned, likelihood to bring about a **technological evolution in other industrial sectors** where the potential use of these new products and technologies is to be envisaged, etc.”  | This broadens the scope of eligible activities within the IPCEI. It is recommended to explicitly mention statements regarding envisaged contributions of the individual projects to the highlighted text in the left column. |
| The FID “…should be a result from a preceding R&D&I activity **within the framework of the project** (even if not necessarily performed by the same undertaking)”  | This presents an understanding which is not in line with that of the Member States (discussions ongoing). However, any FID within the IPCEI which is based on R&D performed within IPCEI, should be stressed and clearly presented that way.  |
| “the FID phase should contain a very important R&D component on its own” | Please strongly highlight/emphasise the R&D parts performed during FID. |
| Regarding the end of the FID: Comparisons to volume of mass production, critical number of wafer starts per customer per week/year, critical number of customers, etc., should be avoided and **replaced with criteria which are R&D&I-related, e.g. process stability, critical number of defects, critical number of testing scenarios to be performed, etc.** | Please take into account the given recommendation. |

1. **Non-Paper on “Spillover effects”**

This non-paper clarifies expectations of DG Comp regarding spillover and provides a number of suggestions how to meet the expectations.

|  |  |
| --- | --- |
| **Citation of Non-paper** | **Recommendation for drafting the PP** |
| Paragraph 17 of the Communication stresses "*The benefits of the project* ***must not be limited to the undertakings or to the sector concerned*** *but must be of* ***wider relevance and application to the European economy or society*** *through* ***positive spillover effects*** *(such as having* ***systemic effects*** *on multiple levels of the value chain, or* ***up- or downstream markets****, or having* ***alternative uses in other sectors*** *or modal shift) which are* ***clearly defined in a concrete and identifiable manner***." | This reference clearly explains why DG Comp is pushing so hard for more concrete spillover activities. Any concrete (and identifiable, like for example the number of to be published papers, patents, etc.) activities on individual project level would greatly support a positive notification. |
| Dissemination in (a recent UK notification) case was ensured *inter alia* through the sponsorship of PhD students and outreach activities such as conferences, public presentations, workshops and television interviews. | Any individual IPCEI partner is kindly asked to enforce concrete (and identifiable) dissemination activities as indicated in the left column. (The non-paper gives more elaborated examples on page 3.) |
| Spillover in the RDI field can also be follow-on or parallel RDI activities that will be triggered by the IPCEI project beyond the partners and Member States in the IPCEI. Such **spillover effects can be new project** that are contingent on the IPCEI project. Although information on such spillover effects may be difficult to obtain at this stage, **any estimation and some concrete examples** of follow-on projects could be considered.  | Please elaborate within the specific chapter of the PP on R&D that is triggered by the IPCEI. |
| since the IPCEI provides for aid for First Industrial Deployment, there must be spillover effects specifically from the First Industrial Deployment also | Please state relevant spillover activities. |
| RDI knowledge that is not protected by IPRs needs to be widely disseminated | The Chapeau text already lists dedicated roadshows and workshops (However, this is still not meeting the expectations of DG Comp). |
| Provide, to the largest possible extent given the available information, relevant details on these events, including the target audiences, and examples on the type of knowledge which will be disseminate | Please follow the expectation expressed in the left column, a mere listing of participation at a conference is not enough. Please describe for example, that you will present at the conference X, R&D results and that the audience are SME, universities etc.  |
| An effort should be made, not only by foundries but all Industry participants, to ensure that knowledge and results that are IPR protected will be shared beyond their usual customers, beyond the usual IPR arrangements, across the specific value chain and across value chains in the whole EU. | Please consider the recommendation. Please give arguments if you will not take up the recommendation. |
| As regards First Industrial Deployment, the non-paper give “possible suggestions of actions aimed at generating spillover effects beyond the partners involved in the IPCEI and beyond usual customers” | Please consult the suggestions on page 4 and consider taking them up. Please provide reasons if these suggestions will not be taken up. |

1. **Non-Paper on Antitrust**

**Executive Summary**

The Non-paper on Antitrust (14 pages) refers to the relevant articles of the Treaty of the Functioning of the European Union (TFEU), most often to articles 101 and 102. The non-paper gives indications to the competition analysis which will be performed by DG Comp during the official notification process. Repeated notions are given distinctively for cooperating in R&D and during market activities.

**Recommendation for drafting the PP**

The non-paper should be considered regarding the sharing of information during R&D phases and in relation to market activities. An explicit consensual statement that Antitrust rules are known, understood and will be strictly followed in the course of the IPCEI is recommended. More specifically, IP protection and licensing (an active technology transfer which would be welcomed by DG Comp) strategies are required to be explicitly outlined – concretely in reference to the IPCEI R&D and FID results.

1. **Non-Paper on necessity & proportionality of aid**

The non-paper provides several insights regarding the criteria applied by DG Comp during the notification process, e.g. what will be considered positively or negatively. It is recommended to study the non-paper in full and provide arguments in the PP that will allow a positive outcome. Larger parts of the non-paper, however, refer to Member States` and their choice of the funding instrument.

Quite some details are given on how DG Comp expects the “Counterfactual Scenario” to be drafted.

|  |  |
| --- | --- |
| **Citation of Non-paper** | **Recommendation for drafting the PP** |
| The IPCEI allows … “to overcome important market or systemic failures and societal challenges which could not otherwise be addressed.” IPCEIs are “large-scale projects that provide significant benefits to the Union and its citizens.” | This is cited to once again document the understanding and expectation of DG Comp. In this regard, statements how the individual projects address (and help to overcome) market failures are required. |
| The aid must not subsidise the costs of a project that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity.Without the aid the project’s realisation should be impossible, or it should be realised in a smaller size or scope or in a different manner that would significantly restrict its expected benefits. Aid will only be considered proportionate if the same result could not be achieved with less aid. | This is self-explaining and to be addressed in drafting the counterfactual scenario (by taking up the arguments given by DG Comp). |
| The counterfactual scenario … may relate to an alternative project that is wholly or partly carried out outside the Union.The counterfactual should be substantiated by “authentic internal company documents, showing that the company faces a clear choice and how the decision on whether to carry out the project is taken.” | If this is an alternative scenario, please mention it explicitly.Please provide the internal documents (e.g. minutes on board meeting, sensitive information can be blackened) to the respective MS authority. |
| The maximum aid level will be determined with regard to the identified funding gap in relation to the eligible costs**. If justified by the funding gap analysis, the aid intensity could reach up to 100 % of the eligible costs.** | Just for information on the importance of the funding gap questionnaire. |
| CAPEX: Cannot go beyond the date on which mass production or commercial activities start. | Clearly state entry dates for mass production for any single FID activity. If this date is reached during the funding period, the funding for this activity will be terminated by this date. |
| OPEX: Only operating expenses related to the R&D component of the FID are eligible; hence costs are limited both in scope and in time to the R&D that the first industrial deployment entails and only until mass production or commercial activities start  | Please take note. |
| Any figures entered into the Funding Gap Questionnaire should be accompanied by a “document providing explanations for the specific company on the Excel data.” The provided documentary evidence should enable to trace how these values have been calculated and must be apt to demonstrate that the values entered into the template stem from the genuine internal calculations of the beneficiary, used in its business plans and internal decision making process to assess the profitability of investments. | Please provide this information to the respective Member State authority. |
| DG Comp expects a presentation of * costs for each of the R&D activities
* costs for each of the FID activities
* and, within the FID costs, the costs of R&D carried out in the FID phase should be mentioned; this could give an idea of the overall importance of the R&D
 | This information shall be entered in section 2 of the PP. Accordingly, the provided tables need to be adapted to serve the purpose.  |
| The cut-off date of the R&D and FID phases should be provided explicitly by each company. | Please enter this information in the budget tables in section 2. |
| For the purposes of this IPCEI, it is sufficient to provide the Excel sheet calculations for one scenario, i.e. the basic scenario. | Companies please only refer to the basic scenario. MS will delete alternative scenarios from the Funding Gap Questionnaire. |