# Clawback-Mechanism for the IPCEI Hydrogen – waves Industry, RHATL, Mobility

**Summary**

* *Application threshold*: Mechanism applies to all projects having funded more than 50 Mio EUR of aid in the IPCEI hydrogen, in nominal terms.
* *End date*: End of project lifetime, here set as equal to last year included in the FGA (In the event of delays in commissioning or completion of the FID phase, the end date will be extended accordingly.).

As to determine the height of the repayment obligation:

* *Payback:* Only if project leads to surplus: In that case, the lower of 60% of the surplus or the received state aid after interest.
* *Interest rate (rk)*: The interest rate (rk) will be the EU reference rate applicable to the Member State concerned according to the Commission's communication on setting the reference and discount rates[[1]](#footnote-1) applicable at year “k”, increased by 100 basis points between the corresponding disbursement and year “i”.

*Where i=* year of test-run ϵ {2027, 2028, 2029,... , end date}

As to determine the surplus:

* *ETS*: In the ex post figures of the project the beneficiary has to make explicit how CO2 costs were accounted for and if applicable also justify and account for underlying regulatory mechanisms leading to CO2 – cost “savings”
* *Hydrogen* price: For inputs and outputs where a market price can be computed, if the ex post figures of the project, which have been subject to annual approval by an independent auditor, are far from the market price (nb. the gap amount could be specified later on) , evidence shall be provided by the aid beneficiary to duly justify the gap between the market price and the figures of the project. In case of insufficient evidence, the relevant market price shall be used to compute the surplus of the project, and thus apply the clawback

**Basics**

The idea is to have funding paid back, if the project shows a surplus after aid has been disbursed:

*CFk* = actual ex post audited post-tax cash flow in year *k* (including Capex, State aid payments and indirect subsidies; excluding financing cash flows)

i = year of test-run ϵ {2027, ..., end date}

k = [2022, 2023,…, i]

The surplus is calculated in regular intervals (years i), and finally, after the end of the relevant lifetime.

The height of the repayment obligation then is determined as follows:

**Alternative A**: (fixed share of Surplus, not higher than aid issued – recommended by coordinator)

**Alternative B1:** (for Art 22 and Art 23 projects same solution as for Hy2tech, the surplus at time i is multiplied with the lower of 60% or the quotient of the Aid and the Eligible Cost (appropriately discounted) for Art 25 projects and projects of the CEEAG passarelle , the surplus at time i is multiplied with the lower of 60% or the quotient of the Aid and the CAPEX-part of the eligible cost (appropriately discounted)

*SAk* = annual State Aid amount

*rSAi* = State Aid after interest in year *i*

*El\_k = Eligible costs in year k*

*El^\*\_k = CAPEX part of eligible costs in year k*

This means that the received interest-bearing state aid is the absolute maximum to the repayment obligation in any of the 3 cases.

**Text suggestion for the Chapeau**

1. The aid is capped in nominal terms by the notified and actual eligible costs. Member states will also ensure that the discounted value in 2022 terms of the aid (using the notified WACC as a discount factor) will not exceed the notified funding gap.
2. In order to further ensure that the aid is kept to the minimum necessary, the Member States have in their notification committed to introduce a claw-back mechanism. The basis for the claw-back mechanism will be ex post figures, which have been subject to annual approval by an independent auditor. For this purpose, separate analytical accounting will be required from the participating companies in the relevant Member State. The detailed conditions of the claw-back mechanism are explained in Annex I.
3. The claw-back mechanism for the individual projects of the participating companies only applies in case of a ‘Surplus’ including the actual State aid disbursements and accounting for indirect subsidies, e.g. saved ETS costs, as defined in Annex I. To ensure, however, that the beneficiaries have an incentive in delivering their project in an efficient manner, a share of any potential ‘Surplus’ will remain with the participating companies.
4. To compute the surplus, companies need to assume the market price for hydrogen for their operations, as long as the realized price is not within a range as set out in Annex I.

**Annex I**

**Claw-back mechanism**

The aid is capped in nominal terms by the notified and actual eligible costs. Member States will also ensure that the discounted value in 2022 terms of the aid (using the notified WACC as a discount factor) will not exceed the notified funding gap.

The claw-back mechanism will apply to those aid beneficiaries having a notified aid amount, per Member State, above EUR 50 million[[2]](#footnote-2) in total in that Member State.

The basis for the claw-back mechanism will be *ex post* figures, which have been subject to annual approval by an independent auditor. For this purpose, separate analytical accounting will be required from the aid beneficiariesin the relevant Member State.

*Letter of credit*

Starting as from two years after the completion of the RDI/ FID-phase for such projects, respectively two years from the complete installation and commissioning of the facility in case of infrastructure projects, and then, every year, until an “End date”[[3]](#footnote-3) to be determined depending on the durations of the projects, a test will be run ("the test-run") and the following Surplusi for year i will be computed as the sum (positive or negative) of[[4]](#footnote-4) the net present value interest-adjusted to year “i” (using the notified WACC as a interest-adjustment factor[[5]](#footnote-5)) of the actual *ex post* audited post-tax cash flows CFk (including Capex, State aid payments and indirect subsidies; excluding financing cash flows) from 2022 to year “i”[[6]](#footnote-6).Indirect subsidies are further revenues from other financial contributions or indirect subsidies as negative costs. For example, if the conduct of the project leads to a decreased demand for ETS certificates, saved ETS costs would be added to the state aid disbursements, if these are part of the basic scenario of the notified Funding Gap Analyses; if they are taken into account in the counterfactual scenario of the FGA and the notified aid is reduced accordingly, no consideration in the clawback-mechanism is required.

The Surplusi, if it is positive, will be multiplied by an allocation ratio defined as the lower of 60% or a Quotient defined as follows:

where

and is the state Aid amount issued in year k.[[7]](#footnote-7)

This claw-back mechanism only applies in case of positive net present values of cash flows after taking into account the actual State aid disbursements. No surplus can be generated by projects with negative net present value after State aid.

A letter of credit (by a reputable financial institution having investment grade rating from a first-rank rating agency) should cover the repayment obligation at the End date by the aid beneficiary, from the first test-run.

The secured amount guaranteed by the above-mentioned letter of credit should be at least equal to an amount ensuring that the two following principles are fulfilled:

1) The secured amount must never be negative (initial balance equal to zero);

2) The secured amount must, after each 5th test-run[[8]](#footnote-8), correspond to the lower of the following, if positive:[[9]](#footnote-9)

- the Surplusi multiplied by (computed at that test-run)

- The sum of the actual State aid disbursements between 2022 and that test-run expressed in terms of the year “i” of the test-period. For all the disbursements before that test-run, the interest-adjustment factor will be the EU reference rate applicable to the Member State concerned according to the Commission's communication on setting the reference and interest-adjustment rates applicable at year “k”, increased by 100 basis points between the corresponding disbursement and year “i”.

An amount equal to the final secured amount, after the last application at the End date, will be transferred to the Member State.[[10]](#footnote-10)

The application of the claw-back mechanism will be reported by the relevant Member State to the Commission within 1 month following completion of each test-run and after the End date.

*Account with annual transfers*

Alternatively, the Member State, instead of the letter of credit system described above, may opt for an account-based system. This system will apply exclusively if the two following conditions are both met: a) the account to be used for the purpose of applying the claw-back mechanism is not under the control of the aid beneficiary; and b) computations and transfers to/from the account by the aid beneficiary must take place once every year[[11]](#footnote-11) until the End date.

The balance of that account should never be negative and no transfer by the Member State to the account shall take place at any time.

This account-based system must not be more favourable from the aid beneficiary perspective than the letter of credit system[[12]](#footnote-12) and should ensure comparable results[[13]](#footnote-13).

The annual application of the claw-back mechanism will be reported by the relevant Member State to the Commission within 1 month following completion of each test-run (e.g. for projects starting in 2023, first reporting on application of the claw-back mechanism in July 2024 and thereafter every July until the final application after the End date).

1. OJ C 14, 19.01.2008, p.6. [↑](#footnote-ref-1)
2. This threshold of EUR 50 million of aid amount is to be understood in nominal terms. If the aid eventually disbursed to the aid beneficiary is lower than the notified aid amount and lower than EUR 50 million, the Project will be relieved from this claw-back mechanism. In such case, the Member State disbursing the aid commits to inform the Commission of the occurrence of a lower than notified aid amount and of the inapplicability of the claw-back mechanism within 2 months after final disbursement of the aid. [↑](#footnote-ref-2)
3. The End date (only for the purposes of this claw-back mechanism) is set at the year corresponding to the last year that has been considered for the respective funding gap analysis, regardless of the type of IPCEI project (RDI, FID, or infrastructure). In the event of delays in commissioning or completion of the FID phase, the end date will be extended accordingly. [↑](#footnote-ref-3)
4. As a formula, the surplus would be represented as follows:

   , k = [2022, 2023,…, i] [↑](#footnote-ref-4)
5. This means that for instance, for a test-run in 2027, a cash flow in 2022 will be multiplied by (1+WACC)^(5). [↑](#footnote-ref-5)
6. • For inputs and outputs where a market price can be computed, if the ex post figures of the project, which have been subject to annual approval by an independent auditor, are far from the market price (nb. the gap amount could be specified later on), evidence shall be provided by the aid beneficiary to duly justify the gap between the market price and the figures of the project. In case of insufficient evidence, the relevant market price shall be used to compute the surplus of the project, and thus apply the clawback. [↑](#footnote-ref-6)
7. As a formula the Sharestate is defined as: [↑](#footnote-ref-7)
8. This means that the letter of credit must be adjusted every 5 years or after every 5th test run. [↑](#footnote-ref-8)
9. As a formula, the surplus would be represented as follows – as long as the amount is positive: [↑](#footnote-ref-9)
10. interest bearing state aid: [↑](#footnote-ref-10)
11. Not later than in the first six months of the year following the year of implementation the project (e.g. for a project starting in 2022, by end June 2023 at the latest). [↑](#footnote-ref-11)
12. Excluding the specific administrative costs of a letter of credit, as well as fees and deposit interests related to an account. [↑](#footnote-ref-12)
13. The competent services of the Commission will provide to the participating Member States a template in Excel format to assist them in the implementation of this claw-back mechanism, including in the form of an account-based system. This template should allow for comparable results of the account-based system with the “letter of credit” system when discounting both the final payment in the “letter of credit” system and the annual transfers to/from the account with the WACC. [↑](#footnote-ref-13)