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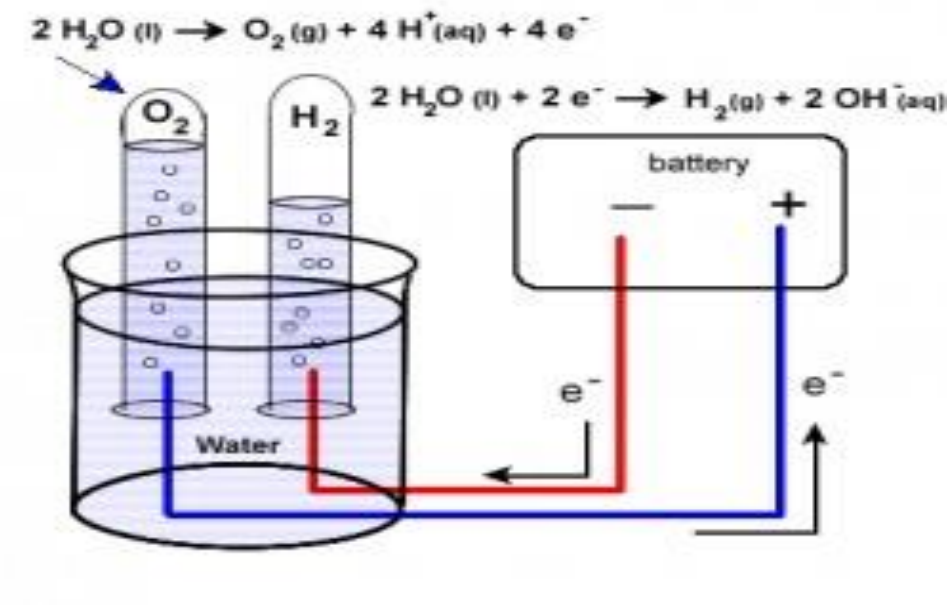

DANISH EXPERIENCE BY APPLYING THE IPCEI STATE AID RULES

PREBEN SANDBERG PETTERSSON

13-OCT-22

IMPORTANT PROJECTS OF COMMON EUROPEAN INTEREST (IPCEI)

Law and legal base

- Danish Permanent connection - tunnel to Germany - Fehmarn Belt: 2014, 2019, 2020 and the court case – a true and genuine Important Project of Common European Interest
- Fit the IPCEI communication OJ C 188, 20.6.2014
- 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 2021/C 528/02

The large IPCEI projects on hydrogen

- Hy2TECH – Hydrogen 15 July 2022 Denmark and Czech republic +
- Hy2Use – hydrogen – 21 September 2022 Denmark +

IPCEI CRITERIA – OJ C 188 20.6.2014

- A project must be in conformity with TFEU Article 107 par 3 litra b: ***"Aid to promote the execution of an important project of common European interest*** or to remedy a serious disturbance in the economy of a Member State".
- It must be a single project which is clearly defined in respect of its objectives as well of the terms of its implementation, including its participants and its funding,
- It must be of common European interest
- It must be important quantitatively and qualitatively

The Fehmarn Belt case – Commission decision of 20 March 2020 C(2020) 1683 - and the Court case

Brief

- A coast to coast permanent infrastructure (19 km tunnel) between Denmark and Germany. Double track railway and 4 lane motorway.
- Established consortia – Femern A/S – state owned limited company.
- State Guarantees for loans on the financial market. State capital injections.
- Alternatively state loans or [financing by the state budget]
- Pay-back by toll collection and railway charges
- Scanlines ferry company operates ferry route over the very same belt today

Process

- Aid approved in 2009 – N157/2009,
- Complaints – by Scanlines – ferry company
- Commission no objections decision in 2015 – S.A. 39078
- Complaints by Scanlines and European Court annulment in 2018
- Opening of formal investigation procedure 5 July 2019
- Formal decision
- Danish Action brought before the Court 2 June 2020 – Court procedure 8. November 2022

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- In the commission decision of **<u>2015</u>** (SA.39078) the planning, construction and operation of road and rail in the hinterland did not involve state aid and even if the planning, construction and operation of the fixed link involved state aid it was compatible pursuant to TEUF 107, 3. b.
- Rejected by the Court in Luxembourg 13. December 2018
- In the Commission decision of **<u>20 March 2020:</u>** Depreciation of assets, fiscal loss carried forward, the joint taxation regime, the railway fees, the use of state property (Sea bed) and state guarantees for the derivatives didn't constitute state aid **but**
- The measures consisting of capital injections and a combination of state loans and state guarantees that was at least partly put into effect constituted state aid
- As the measures was modified to capital injections of EUR 68.4 million, and loans and guarantees up to EUR 9.3 billion (2015 no specific limit) to be terminated and repaid after 16 years (2015:55), a guarantee premium on 2 % (2015: 0,15 %),
- The aid was declared compatible with the internal market on the basis of TEUF art. 107, 3, b and compatible to with IPCEI criteria

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Danish arguments for non aid

- The planning, Construction and operation of the fixed Link are not economic activities, but exercise of Public Authority/Public Power and the economic effects that may are produced on adjacent markets and in the EU are not a distortion of competition
- The Femern A/S does not carry out and economic activity before it starts operating as it are not offering any services on the market.
- The collection of user fees does not make the Fixed Link an economic activity as the collection is linked to the activities of the public Authority and maintanining state owned general road and rail infrastructure. The information activities are also part of the public authority. The user fees are meant to balance the public budgets.
- If the fixed link involves state aid it should be clarified from when, and at least be from the tunnel is operational
- No direct competition with ferries – like railway infrastructure is not in competition with roads, buses or airports.
- The Danish Authorities deny that the railway fees, tax measures, the free use of seabed in any way involves state aid.
- The Fixed Link could have been directly financed by the state budget as a public Important project of common European interest – more distortion of the ferry lines.

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Court case:
Danish Claim: Annul art. 2 in Commission decision of 20 March 2020 S.A.39078

The Commission erred in:

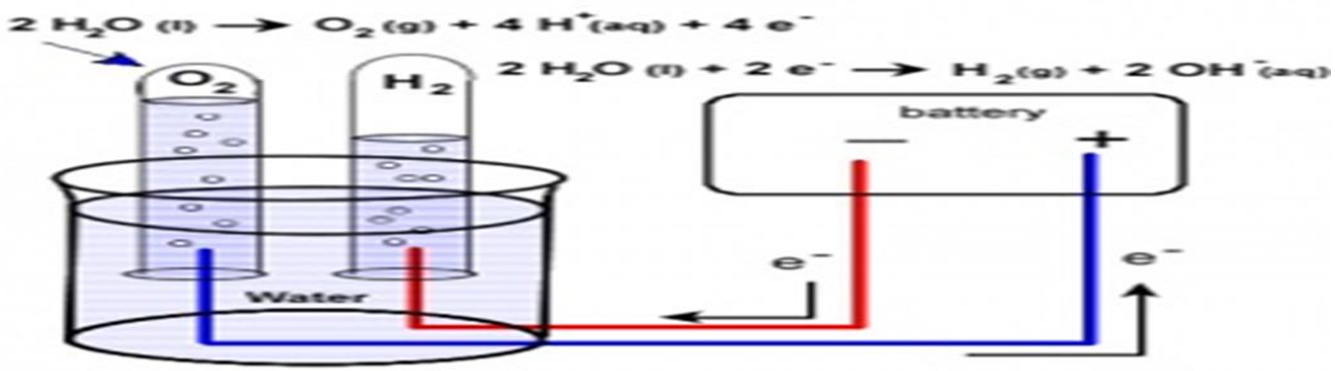
- The Financing of Femern A/S constitutes state aid,
- Contesting Femern A/S does not constitute the exercise of public power,
- In attaching importance to whether there are private operators offering alternative to Femern A/S,
- In concretely finding that Femern A/S' construction and operating of the fixed link is not an exercise of Public Authority,
- That Femern A/S offers transport services on a market in competition with others
- In finding that Femern a/s is an economic operator governed by an economic logic commercially exploiting the fixed link,
- In finding that the financing of the Fixed Link will distort competition and affect trade between MS.

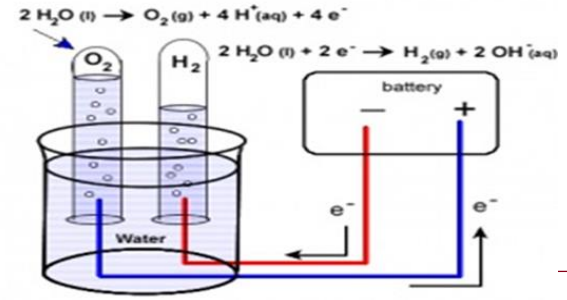
- Secondly erred in finding that Femern A/S is engaged in economic activity before the fixed link becomes operational and even when the construction have started.

- Court Oral proceedings 8 November 2022 in Luxembourg

THE IPCEI HYDROGEN PROJECT

- The European hydrogen strategy was launch by the commission 8 July 2020 + the European Clean Hydrogen Alliance.
  The alliance establish the framework public – private cooperation ad exchange of knowledge concerning the promotion of a European market for sustainable hydrogen through investments and consider regulatory obstacles and barriers for this effort.
  The commission see the initiative as part of the transition of EU to a climate neutral economy.
  22 EU member states and Norway signed a manifesto paving the way for a cleaner hydrogen value chain and committed themselves to initiate IPCEI hydrogen projects.
- "We commit to launching the IPCEI on Hydrogen and to initiating the next steps in coordination with the European Commission, the European Clean Hydrogen Alliance and European industry."

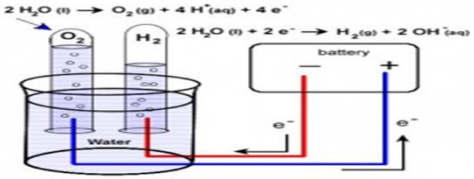




CRITERIA AND DEFINITIONS - IPCEI´S

- In the IPCEI Communication* the following criteria is included:
  - The project most be a concrete, clear and identical contribution to the objectives / strategies of the EU and have significant impact on sustainable growth.
  - The green deal, the digital strategy, ……the new industrial strategy for EU
  - Overcome important obstacles and failures on the market or systemic barriers hindering the project realization
  - Involve at least 4 Member states and have concrete positive impact on a large part of EU.
- All EU /EØS Member states should have the opportunity to participate
- The beneficiaries must be more than the specific involved undertakings – there must be a broader impact on the economic objectives and strategies of EU.
- Must involve a significant co-financing from beneficiaries.
- Should be proved that no significant impact as damage to Climate or environment.
- Should involve the Commission, EIB or EIF.

* 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 2021/C



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CRITERIA AND DEFINITIONS - IPCEI´S

- The selection and administration of the project involves the Commission.
- The project involves essential cooperation with partners and undertakings [large, Sme's and start ups] in different parts of EU and in less developed regions
- Co financing from a EU-fund
- Contributions from independent private investors
- The project tackles a clearly defined strategic barrier
- RDI projects must have essential innovative impact and value added
- Project that involves the <u>First Industrial Deployment (FDI), must make it possible to develop a new product or service with high content of RDI – and make upscaling to test or serial production possible.</u>
- Projects involving the environment, energy, transport, health and the digital area must contribute to the existing EU strategies and the single market.
- **To conclude very heavy criteria and conditionality's concerning proportionality, necessity, transparency, prevention of distortion of competition – and quite comprehensive requirements on notification, reporting and evaluation**.

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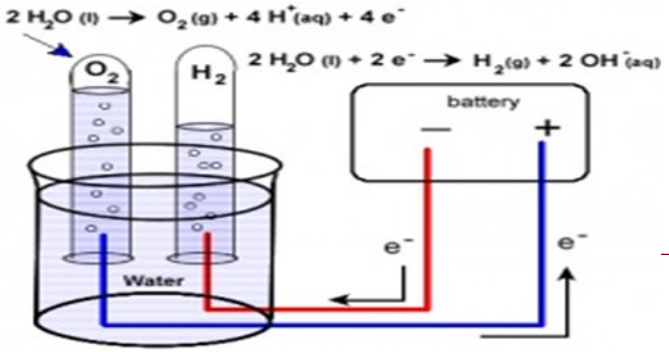
THE EU HYDROGEN IPCEI PROJECT



- Hy2TECH – Hydrogen technology 15 July 2022
- https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4544

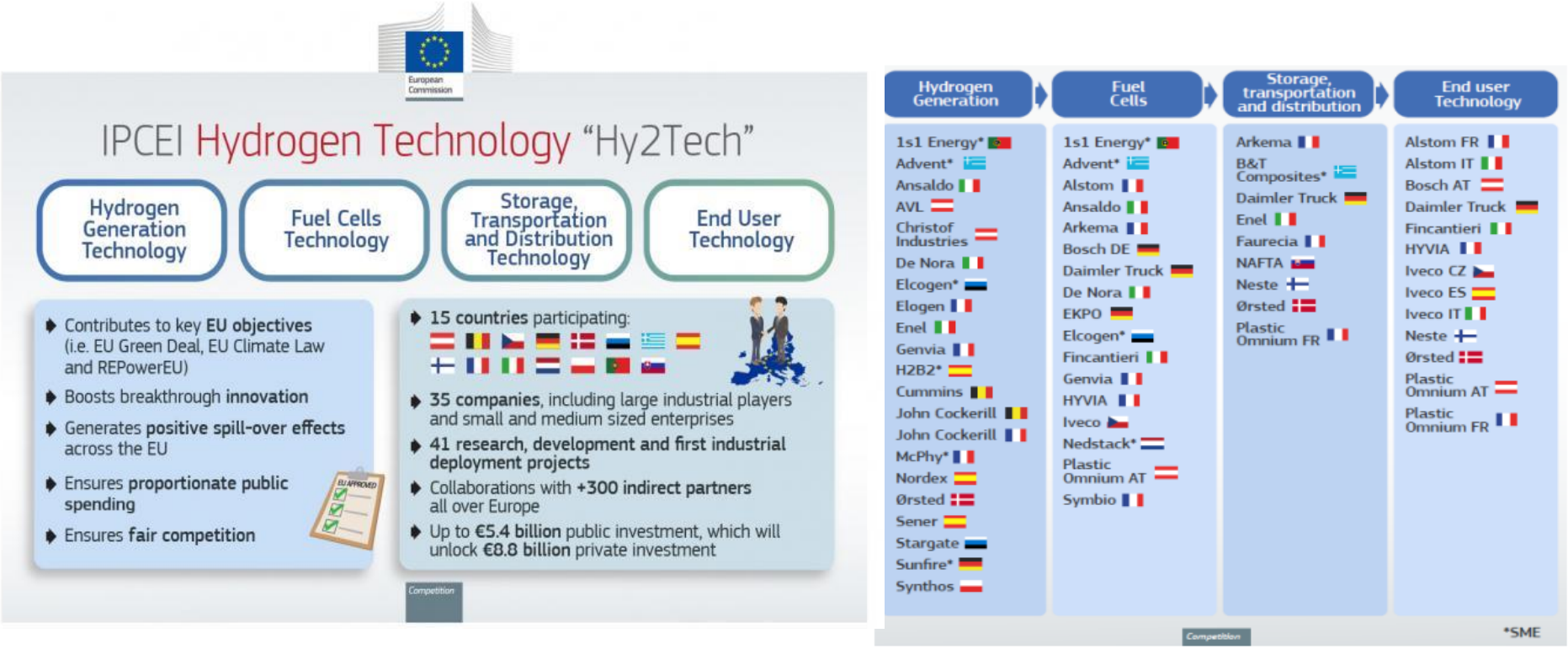
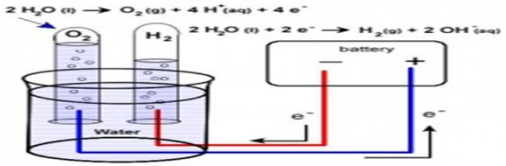


Figure 1: Overall structure of Hy2Tech



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HY2USE – HYDROGEN – 21 SEPTEMBER 2022

Public support of up to 5.2 billion euros of aid is expected to unlock approximatively another 7 billion euros of private investments.

Hydrogen Infrastructure	Hydrogen applications in Industry
Air Liquide France	Borealis
Air Liquide Netherlands – CurtHyl	Enel Green Power/Endesa
Air Liquide Netherlands – ELYgator	ENGIE Belgium
Bay of Biscay Hydrogen (Petronor/Repsol)	Everfuel*
Bondalti	Hybrit Development
Cartagena Hydrogen Network (Repsol)	IAM Caecius
ENGIE Belgium	NextChem
ENGIE Netherlands	RINA-CSM
Fluxys	RONA
H2 Aboño (EDP)	SardHy Green Hydrogen
H2-Fifty	Solar Foods*
H2 Los Barrios (EDP)	South Italy Green Hydrogen
HyCC	TECforLime
Iberdrola	TITAN Cement
MassHylia (TotalEnergies and ENGIE France)	VERBUND
Ørsted	
P2X Solutions*	
PKN Orlen	
Shell	
Uniper	

*SMEs

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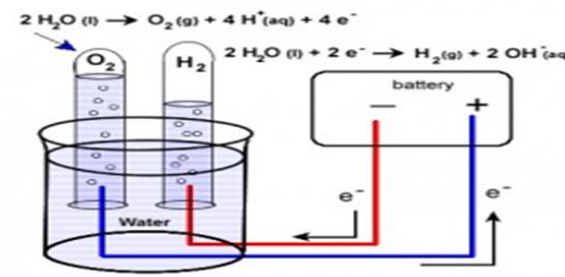
THE DANISH EXPERIENCE



- Inspiring and mutual stimulating European corporation
- A very demanding cooperation and process – much work
- A Multilevel process with many meetings
- It started up with 25 Danish undertakings and ended up with to projects and 2 undertakings.
- A very important project for the Danish Government - PtX – green hydrogen.
- The IPCEI requirements involves a lot of criteria's and documentation
- Advantages
  - High aid volume and synergy
- Disadvantages
  - Process time and costs
  - Very demanding requirements
  - To coordinate between beneficiary undertakings and public administrations
  - Difficult to define **first Industrial deployment, scale up and commercial use.**
  - Sharing of knowledge – secrets and circulation of chapeau