

# Factsheet 1: State aid in Interreg Baltic Sea Region

## 1. Summary

Interreg Baltic Sea Region is bound to comply with the State aid rules which apply in the EU and the European Economic Area (EEA). The EU/EEA rules generally prohibit State aid, but they allow for State aid to be compatible with the Treaty in closely-defined circumstances where it can contribute to certain policy objectives.

The general expectation is that, as in the past, few projects in Interreg Baltic Sea Region will be State aid relevant. However, the objective of increasing private sector involvement may also increase the likelihood of State aid.

Where State aid is present, and in contrast with the previous programme period, this will not exclude the activity from eligibility under Interreg Baltic Sea Region. Instead a number of options exist to enable projects to be supported, notably on the basis of the *de minimis* Regulation, which generally allows for amounts of support of up to EUR 200,000 in any three-year period, or under the General Block Exemption Regulation (GBER), under which aid which meets specified criteria is deemed to be compatible with the State aid rules. However, applicants should be aware that if support for a project does constitute aid, specific steps need to be taken to ensure compliance, and this may affect the cofinancing rate for the project, or parts of it.

## 2. What is State aid?

Although State aid is in principle prohibited under EU law (Articles 107-108 TFEU), the Treaty does not precisely define what a State aid is. However, an assessment of whether a project is State aid relevant is needed before support is approved. This assessment is reflected in the State aid self-declaration and can usefully be broken down into two steps.

### 2.1 First, is the recipient an undertaking - that is, is the activity to be supported economic in nature?

The State aid rules apply only to the extent that the beneficiary is an *undertaking*. Undertakings are entities engaged in an *economic activity*, regardless of what their legal status is (they can be public bodies, charities or universities, for example, as well as private firms) and regardless of whether they aim to make a profit. Economic activity is broadly defined as 'offering goods or services on a given market'.

In thinking about this, it is useful to ask whether, in principle, the activity could be carried out by a private body in order to make a profit. There is no definitive list of economic activities, but

‘non-economic’ activities include those related to State prerogatives and public safety such as police, armed forces, air and maritime traffic control, as well as the organisation of public education and compulsory social security contributions.

Public funding of general infrastructure such as public roads, bridges or canals which are for public use without charge and not for commercial exploitation are also non-economic – this would extend to leisure facilities such as cycle paths, nature trails and associated signage, equipment and information, promenades, piers and picnic places to be used by the public at no cost.

Deciding whether an organisation is an undertaking is specific to an economic activity so, for example, research organisations and infrastructures (including public universities and private research institutes) can be involved in both economic and non-economic activities. However, the costs and revenues must be separated for the non-economic activities to fall outside the scope of State aid.

Non-economic activities of research organisations include their ‘primary’ activities, namely: public education; independent R&D for more knowledge and better understanding, including collaborative R&D (but excluding contract research); and wide dissemination of research results on a non-discriminatory basis, for example through open access databases, publications and software. Knowledge transfer activities of research organisations and infrastructures where all profits are reinvested in their primary activities are also regarded as non-economic.

## 2.2 Second, if the activity is economic, does the support involve State aid?

The second step is the State aid ‘test’: where the beneficiary is an undertaking for the purposes of the project – ie. is engaged in an economic activity, the five elements of the State aid ‘test’ should be applied – these criteria are cumulative, so *all* must be met for the measure to constitute aid.

1. Is the measure imputable to the **State** and financed through **State resources**? Yes: this is always the case for European Structural and Investment Fund (ESIF) programmes.
2. Does the measure confer an **advantage** on the undertaking? This is the most difficult criterion to determine and concerns whether there is a benefit that the undertaking would not gain under ‘normal market conditions’ or whether it is relieved of costs that it would normally have to meet. Where a transaction is carried out on market terms – determined, for example, on the basis of an open tender process – there is no advantage, and therefore no aid.
3. Is the measure selective? Yes: Interreg programmes are by their nature selective.
4. Does the measure **distort** or **threaten to distort competition**? Almost certainly ‘yes’, if there is an advantage.
5. Does it have the potential to **affect trade between the Member States**? Almost certainly ‘yes’, since Interreg programmes are not intended to have purely local effects.

As can be seen, the presence of State aid will largely turn on whether the entity is engaged in an economic activity and, if so, whether the measure provides an advantage in respect of that activity. Therefore, applicants in Interreg Baltic Sea Region will be asked to complete a State aid self-declaration that concentrates on these two criteria to determine whether there is a State aid.

In cases of doubt about the presence of State aid, applicants may consult with their national or regional State aid unit (a contact list of national State aid experts will be provided on the Programme website). National State aid experts will be able to provide basic information on State aid, support in the understanding of economic activities and may provide specific national information, documents and contacts in the area of concern. However, national State aid experts will not answer questions related to State aid in the programme. Such information is provided by the MA/JS. And, the national State aid experts will not carry out a detailed assessment of State aid in the project and/or establish a State aid solution for the applicant. The final decision and responsibility for identifying State aid relevant activities and the suitable State aid instrument remains with the concerned project partner.

Where the activity is economic and support is regarded as constituting an advantage, support from the programme is likely to be State aid relevant. Consideration should then be given to whether any aid element can readily be eliminated based on one of the conditions below:

- The observation of **public procurement** rules

The State aid relevant activities are not carried out by the project partner but by an external service provider that has been selected in accordance with the applicable public procurement rules (see chapter F.1.4 of this Programme Manual).

Please note: Exceptions to the public procurement rules (chapter F.1.4.7) are not possible as it can otherwise not be concluded that the planned activities are most likely considered not to be State aid relevant.

or

- The respect of the **open-access** principle

All outputs resulting from State aid relevant activities are open-source and widely disseminated on a non-exclusive and non-discriminatory basis to ensure the most transparent and the widest possible access to all interested stakeholders including potential competitors. The publications on the project outcomes have to be in the form of “defensive publications”, so that all innovations and inventions arising from the project are made available in the public domain and become state of art. In this way no intellectual property rights can afterwards be claimed on any of the project outcomes neither by the project's participants nor other actors outside the project.

Partners would have to check compliance with these conditions before concluding that there is no State aid involved in the project. In case of doubt whether these conditions can be realistically fulfilled it is not recommended to apply them. State aid relevant activities can still be covered by the State aid instruments (as outlined in the sub-chapter below).

Importantly, aid may be present at several levels. For example, funding to an organisation to provide training courses to firms may involve aid to the course provider, as well as to the firms undergoing training. Therefore, applicants must also consider whether the project will give rise to State aid ‘downstream’ from the project partners. For example, a project that results in training being offered free of charge to firms might involve State aid to end users. Again, consideration should be given to eliminating any State aid element, for instance, by charging a market price for the training. Alternatively, support to end users in the form of say training or consultancy support could be framed within the *de minimis* provisions discussed below. In this case, the partner is responsible for ensuring that the terms of the *de minimis* Regulation are met, including the monitoring and administrative arrangements (e.g. collection of *de minimis* self-declarations, informing the third party in writing of the prospective amount of *de minimis* aid, informing central registers for *de minimis*, if existing, maintaining records regarding individual *de minimis* aid, etc.). Partners that intend to frame aid to third parties within the *de minimis* Regulation are encouraged to get familiar with that regulation and, if needed, seek further information at national level.<sup>146</sup> If national rules allow, the example *de minimis* declaration for aid to third parties and/or the example *de minimis* award letter available on the Programme website may be used.

### 3. What happens if there is State aid?

Where support to a project *is* State aid relevant, there are two main options for compliance: *de minimis* support; and aid compatible with the General Block Exemption Regulation.

The general *de minimis* Regulation allows support of up to EUR 200,000 in any three-year period to fall outside the scope of State aid; a lower limit of EUR 100,000 applies to the road freight transport sector (see Factsheet 2: *de minimis* support).

Separate Regulations apply to the fisheries and aquaculture sector, as well as the agricultural sector. These impose lower limits of EUR 30,000 (*de minimis* support for production,

<sup>1</sup> A contact list of national State aid experts will be provided on the Programme website. These experts provide general information on State aid and support in the understanding of “economic activities”. If needed, the national State aid experts also provide specific national information and documents (e.g. national template for *de minimis* certificates/confirmation letters) and national contacts in the area of concern (e.g. contact to national State aid registers). However, the national State aid experts will not provide information on State aid in the programme. And, the experts will not carry out a detailed assessment of State aid in the project and/or establish a State aid solution. The final decision and responsibility for identifying activities providing State aid to third parties and the suitable State aid solution remains with the concerned project partner.

processing and marketing of fishery and aquaculture products) and EUR 15,000 (*de minimis* support for production of agricultural products). *De minimis* support based on these Regulations will not be provided in Interreg Baltic Sea Region. Therefore, the support to activities of applicants active in these sectors can only be framed within the General Block Exemption Regulation (GBER).

In case the State aid relevant activities shall be covered by this instrument, the submission of a *de minimis* declaration<sup>2</sup> will be required during contracting of the project (i.e. before the subsidy contract is signed between the lead partner and the MA/JS).

Consideration can also be given to framing support within the General Block Exemption Regulation (GBER). The GBER enables aid that meets specified criteria to be presumed compatible with the State aid rules. However, the absolute amounts of support are subject to limits and the aid intensities allowed are lower than the standard cofinancing rate. The Managing Authority will be responsible for ensuring that the appropriate legal basis for GBER aid to be offered is in place.

In case the GBER cannot be applied, the applicant has to remove the State aid relevant activities from the application.

In case the State aid relevant activities shall be framed within the GBER the submission of a GBER declaration or a GBER and SME declaration<sup>3</sup> will be required before the subsidy contract is signed between the lead partner and the MA/JS.

The decision on whether to apply the *de minimis* Regulation or the GBER will be taken by the applicants themselves. As outlined above, both instruments specify certain limits on the maximum amount of aid and/or the aid rate (percentage) applicable. Project partners should consider carefully the implications before opting for one of the two instruments.

State aid legal basis	Absolute ceiling	% Ceiling
<b>No aid</b> (the activity is not economic or the support is not State aid relevant)	None	Standard co-financing rate of the Programme
<b><i>De minimis</i></b> (general <i>de minimis</i> Regulation)	EUR 200,000 in a 3-year period (EUR 100,000 in road freight transport sector)	Standard co-financing rate of the Programme
<b>GBER – aid for SMEs participating in ETC projects</b>	EUR 2 million per undertaking, per project	50% of eligible expenditure
<b>GBER – other provisions</b>	Variable, depending on policy objective	Variable, depending on policy objective, but lower than the standard co-financing rate of the Programme

<sup>2</sup> A template is available on the Programme website (<http://www.interreg-baltic.eu/for-projects/state-aid.html>).

<sup>3</sup> The MA/JS will inform the lead partner about the document required. The templates are also available on the Programme website (<http://www.interreg-baltic.eu/for-projects/state-aid.html>).

#### 4. GBER-based support for SMEs participating in Interreg

Article 20 of GBER 2014-20 is expressly concerned with the participation of SMEs in Cohesion policy ETC (i.e. Interreg) projects. It provides that aid for up to 50 percent of eligible costs, subject to a ceiling of EUR 2 million per undertaking, per project, falls within the GBER (subject to the general conditions being met).

Eligible costs are:

- a) organisational cooperation including staff and offices linked to the cooperation project<sup>4</sup>
- b) advisory and support services linked to cooperation and delivered by external consultants and service providers (but not continuous or periodic or relate to usual operating costs, such as routine tax consultancy services, regular legal services or routine advertising)<sup>5</sup>
- c) Travel expenses, cost of equipment and investment expenditure directly related to the project and depreciation of tools and equipment used directly for the project

Note that:

- Article 20 is restricted to SMEs. In broad terms, this means enterprises with fewer than 250 employees, an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million. This means that funding for this type of expenditure for larger undertakings (including partners such as universities) would either have to be formulated in order to remove any aid element (or, as noted above, the absolute amount of aid would need to conform to the *de minimis* Regulation or aid would have to be notified, unless it were to fit within another element of the GBER).
- Where size is a determining factor in eligibility – i.e. where measures are restricted to SMEs, applicants will be required to complete a self-declaration concerning their SME status.<sup>6</sup>
- As shown in the table above, the maximum rate of award (50 percent) is lower than the maximum co-financing rate provided for in Interreg Baltic Sea Region.

<sup>4</sup> 'organisational cooperation' means the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs

<sup>5</sup> advisory services linked to cooperation' means consulting, assistance and training for the exchange of knowledge and experiences and for improvement of cooperation

support services linked to cooperation' means the provision of office space, websites, data banks, libraries, market research, handbooks, working and model documents

<sup>6</sup> For a detailed explanation of the definition of an SME and a model self-declaration see: [http://ec.europa.eu/enterprise/policies/sme/files/sme\\_definition/sme\\_user\\_guide\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf) .

## 5. Other relevant documents

- Factsheet 2: De minimis support
- Factsheet 3: The General Block Exemption Regulation
- Factsheet 4: Guidance on State aid definition