

Interreg IPA CBC Italy–Albania–Montenegro Programme

PROGRAMME MANUAL

4.6 State Aid

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<i>Contacts</i>	js@italy-albania-montenegro.eu



Introduction

This factsheet provides technical guidance to the Partners on the legal framework and general rules on State Aid. The factsheet shall be further developed and improved during the Programme implementation. In case of doubts, beneficiaries shall seek legal support.

1. WHAT IS STATE AID?

On the basis of Articles 107 and 108 of the Treaty on the Functioning of the European Union, the case law of the Court of Justice of the European Communities and the European Commission developed a concept of State Aid, which refers to **any advantage provided by state resources to undertakings on a selective basis**, no matter of the undertakings' public or private legal nature. To be State Aid, a measure needs to have all these four features (State Aid cumulative criteria):

1. there has been an intervention by the State or through State resources which can be a variety of forms (e.g., grants, interest and tax relief, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.). This is always the case in Interreg IPA CBC Programme, because a subsidy is provided to beneficiaries (the project partners);
2. the intervention gives the recipient an advantage on a selective basis; for example, to specific companies or industry sectors, or to companies located in specific regions;
3. competition between Member States¹ has been or may be distorted. For this to happen, there must be a market for the specific service or good financed, which is not the case in case of SGEI (see below).
4. the intervention is likely to affect trade between Member States. This is e.g. not the case for small value operations, such as under the "de minimis" rule (*see below*).

Provision of State Aid is prohibited in the European Union, but there are some notable exceptions, like:

- de minimis: The de minimis regulation (EU) No 1407/2013 exempts small aid amounts. It sets a ceiling below which aid is deemed compatible with the Treaty. The de minimis ceiling is EUR 200 000 granted over a period of three years. A specific ceiling of EUR 100 000 applies to road transport.
- General Block Exemption (GBER): The GBER Regulation (GBER (EU) No 651/201) specifies 42 permitted categories of State Aid, including - Regional Aid, Aid for research and development and innovation and Aid for SMEs' cooperation costs linked to ETC projects. The latter was specifically designed to facilitate participation of SMEs in ETC projects.
- Services of General Economic Interest (SGEI): SGEI are of particular importance to citizens and would not be provided (or would be provided under different conditions) if there was no public intervention. There must also be a duty provided by law for the service provider

¹ Even though Albania and Montenegro are not Member States, in their accession process they are adopting the *acquis communautaire* also in relation to State Aid. Additionally, the financing agreements of both Albania and Montenegro for the IPA II funding provide for a compliance with the State Aid rules.

to fulfil this public service². Examples are utilities such as transport networks, water supply and waste water management. SGEI differ from Member State to Member State. Only SGEI that meet the so called Altmark Criteria are outside the scope of State aid.

In general, a debate is going on at the level of European Commission and Member States to exempt Territorial Cooperation from the State Aid rule in the upcoming programming period, as it is recognized that **the risk to distort competition is extremely limited** in Territorial Cooperation, because:

- In its essence, Territorial Cooperation finances actions supporting cooperation among countries, instead of competition between them. I.e. territorial cooperation projects always provide aid to undertakings of more than one country, instead of providing an advantage to undertakings of one country, while damaging undertakings of another country;
- The amounts provided in territorial cooperation projects are limited, very often below the de minimis threshold for single undertaking, thus rarely in the position to distort competition;
- The type of activities and beneficiaries is very often not market-oriented, but rather involve services of general economic interest (SGEI).

2. RELEVANCE FOR THE INTERREG IPA CBC IT-AL-ME PROGRAMME

As a guiding principle the Interreg IPA CBC Italy-Albania-Montenegro Programme, already in the Programme text, **does not intend to provide state aid** because:

- 1) The **advantage provided to the Programme area is generally not selective**: For all priority axes, already in the cooperation programme it is provided that activities shall be focused on improving the “**framework conditions**” necessary for certain economic developments. Improved framework conditions for SMEs (as for Specific Objective 1.1 of the Programme), for cultural, creative or touristic operators (SO 2.1 and 2.2), for natural site or energy efficiency managers (SO 3.1 and 3.2), as well as for transport operators (SO 4.1) clearly imply that all the existing operators must benefit as target groups of project activities, therefore the measure as such cannot provide an advantage only to some operators and thus be selective;
- 2) **Distortion to competition is generally avoided**: The list of beneficiaries identified in the Programme are typically not market-oriented, i.e. they do **not carry out activities in an existing market**. Most of them have the duty set by law to provide services, so called SGEI

² According to the Altmark case law, four cumulative conditions must be met: 1) the recipient undertaking must have public service obligations and the obligations must be clearly defined; 2) the parameters for calculating the compensation must be objective, transparent and established in advance; 3) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit; 4) Where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed **must be determined on the basis of an analysis of the costs of a typical well-run company**.

(see above). Public bodies, local, regional and national authorities, as well as bodies governed by public law identified are typically providing SGEI within the typical actions listed in the CP. The same is true for chambers of commerce, universities and research centres, as well as local and regional development agencies or civil society organisations. For all those activities, which might be market-oriented, specific measures are foreseen, see below.

This is stressed and confirmed in following provisions of **the call for standard projects** and will be repeated for thematic and strategic projects, which are specified in the calls for projects:

- 1) Eligible partners (beneficiaries) are only public bodies, bodies governed by public law and non-profit organisations;
- 2) Already with project application partners have to declare if they intend to carry out state aid relevant activities (self-assessment). In particular, the self-assessment requires an explicit statement, why project activities are/are not even potentially market-oriented. If they are, a de minimis declaration is compulsory.
- 3) Project partners usually receive an average of less than 200.000 EUR for implementation activities, being under the de minimis threshold as such: The budget requirements for standard projects provide that for a minimum of three partners (one per country) the project budget shall be from 0.5 to 1.5/2.0 Mio. EUR, i.e. from an average of 150.000 to 600.000 EUR per partner, but of this only 60% are devoted to implementation, the rest is for management and communication. Specific cases where the amount exceeds this threshold must be checked by the JS, as to provide to JMC a basis for a correct decision.

Additionally, the **approved templates of the subsidy contract and partnership agreement** include a provision³, which obliges partners (beneficiaries) **to make available to the general public free of charge all outputs and results**, therefore this in principle excludes that the beneficiary develops outputs, which are economically used after project closure or that the indirect aid (e.g. specific know-how for SMEs) is selective, in the sense of state aid rules, i.e. for the benefit of only some undertakings.

³ Article 14: OWNERSHIP – USE OF OUTPUTS

“3. The Partner respects all applicable rules and the basic principles related to competition law as well as the principles of equal treatment and transparency within the meaning of the funding regulations and it ensures that no undue advantage, i.e. the granting of any advantage that would undermine the basic principles and political objectives of the funding regime, is given to anybody. Outputs and results, especially studies and analyses, produced during project implementation are made available to the general public free of charge and can be used by all interested persons and organizations in the same way and under the same conditions as by the Partner.

5. Any income generated by the intellectual property rights must be managed in compliance with the applicable EU, national and programme rules on-revenues and state aid.”

