



Interreg IPA South Adriatic (Italy–Albania–Montenegro 2021-2027)



PROGRAMME MANUAL

4.6 State Aid

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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 Programmes, 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,

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.

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 651/2011) 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 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.

State aids could be direct or indirect:

- **Direct state aid** refers to financial aid granted to organisations that are project partners (beneficiary) in approved projects.
- **Indirect state aid** refers to aid granted to third party organisations (e.g. undertakings) that are not listed in the project partnership but that, through their participation in activities carried out by the project, receive an economic advantage compared to other identical organisations.

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 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.

2. RELEVANCE FOR THE INTERREG IPA SOUTH ADRIATIC PROGRAMME

As a guiding principle the Interreg IPA South Adriatic 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 (*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**

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

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. GRANTS TO SMES (THIRD PARTY) ON THE BASIS OF ART. 20A OF REGULATION (EU) NO 651/2014 (GBER)

In the EU legal framework of State Aid, the Programme supports the undertakings (or other third parties) by means of grants funded by project specific actions carried on by beneficiaries of the Programme.

During the implementation of project activities, project partners (beneficiaries of programme funding) shall provide a benefit to their target groups (e.g. citizens or organisations undertakings, citizens, organizations). This benefit may potentially have an economic value and may provide an economic advantage to involved economic operators, which would have not received it under normal market conditions, and therefore it may be a potential State Aid according to the EU rules on State Aid. Therefore, third party organisation that are not listed in the project partnership but still get an economic benefit from the project may still fall under the state aid rules as so-called final recipients of aid. This is also called indirect state aid. Indirect State Aid is the economic advantage provided by beneficiaries to their target groups, if this distort the internal market. However, in Interreg projects this advantage is usually so limited that it may not distort the internal market, therefore the GBER Regulation introduced a further simplification for Interreg.

In order to take advantage of these new opportunities, project partners may also foresee that specific target groups, being SMEs third parties other than project partners, may receive from the project partners a grant up to a maximum of € 22.000 to implement specific project activities (e.g.: training activities, consultancy services; access to research facilities, innovation vouchers, creative productions, etc.) which shall contribute to reaching the project objectives. The activities object of the sub-grant, which must be coherent and in line with project objectives, shall be precisely described and justified in the project application form, to be approved by the programme bodies according to the programme rules. The related amount to be granted to the third parties shall be precisely estimated by project partners on the basis of a market research, it shall relate exclusively to costs for external experts and services and / or equipment, which shall comply with the rules specified above, as well as it shall be included in those budget lines of the project budget in the project application form.

The programme manages the risk of indirect State aid using Article 20a of the GBER. The total amount of aid granted under Art. 20a GBER to a non project partner organization per project shall not exceed € 22.000.

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.”

The project partner according the grant monitors the value of services/equipment offered and provides the relevant information when reporting to the programme. This includes the name of the enterprise receiving indirect aid (i.e. the service/equipment provided) as well as the amount of aid received. The partner must also ensure that the aid granted does not exceed the limit of € 22.000 per undertaking per project. The amount of aid granted is to be based on a precise calculation using a convincing methodology according to the Programme Manual as specified in Factsheet 4.10.

