

## **STATE AID AND DE MINIMIS PROVISIONS**

### **📌 IMPORTANT**

**Within Interreg-IPA Cross-border Cooperation Programme Bulgaria - the former Yugoslav Republic of Macedonia **no state aid is granted.****

According to Article 107 (ex. Article 87) of the Treaty on the Functioning of the European Union, state aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods, therefore affecting trade between Member States.

It is not the legal aspect (public or private) but the nature of the activities that the applicant intends to implement within the project that determines whether the state aid is present or not. State aid applies when all five criteria are met (these criteria are cumulative, so if one of the State aid criteria is not met, the grant in question does not constitute State aid):

**1. Presence of Public resources.** The state-aid norms comprise exclusively the measures that imply the public sources/resources transfer (including from national, regional and local authorities, banks and public foundations, etc.). Moreover, the aid does not need to be granted by the state as such. The aid can be granted by a public or private intermediate body appointed by the state. The criterion is always fulfilled for CBC Programmes.

**2. The measure granted confers an economic advantage (a benefit) to an undertaking, which it would not have otherwise received.** First of all it is important to analyse whether the recipient of the aid is an undertaking. The State aid case-law considers an undertaking any entity engaged in an economic activity, **regardless** of its legal status and the way in which it is financed (an undertaking can be a public body, a charity, a NGO, an association, an university etc.). Classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former.

Any activity consisting in offering goods and services on a market is an economic activity. Economic activity means the supply of goods and services on a given market. The application of

the State aid rules as such does not depend on whether the entity is set up to generate profits, as also non-profit entities can offer goods and services on a market too. The only relevant criterion is to decide whether or not the entity carries out an economic activity in the context of the ETC project. Also, the State authorities may themselves be considered as undertakings when they are involved in economic activities.

With regard to the economic advantage, an advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention.

**3.The measure granted by the State is selectively favoring certain undertakings or the production of certain goods.** Not all measures which favor economic operators fall under the notion of aid, but only those which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. An analysis of the selective nature is relevant when there is an indirect advantage.

**4.The grant distorts or threatens to distort competition.** A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalized sector where there is, or could be, competition. A possible distortion of competition is excluded if (1) a given service is subject to a legal monopoly (established in compliance with EU law) and is not in competition with similar (liberalised) services and (2) the service provider cannot be active (due to regulatory or statutory constraints) in any other liberalised (geographical or product) market.

**5.The grant affects trade between Member States.** An advantage granted to an undertaking operating in a market which is open to competition will normally be assumed to affect trade between Member States. However, if the service in question is of a merely local interest there is no effect on trade between Member States. In order to assert that this criterion is not fulfilled, the project in question must have a mere local impact. If State support is granted to an activity which has a purely local impact, there may not be an effect on intra-EU trade, e.g. where the beneficiary supplies goods or services to a limited area within a Member State and is

unlikely to attract customers from other Member States. Moreover, the measure should have no - or at most marginal – foreseeable effects on cross-border investments.

**📌 IMPORTANT**

**All projects proposed for financing shall be subject to state aid assessment.**

Before signature of the subsidy contract all activities planned by the Bulgarian partners within project proposals proposed for financing will be subject to check for compliance with the state aid rules. This check is always made case by case and therefore the presence or lack of state aid relevant activities depends on the specificity of the project.

The aim of the analysis is to identify those activities planned to be implemented by Bulgarian partners in the selected project proposals that can be affected by state aid rules and to propose measures for ensuring the compliance of these projects with state aid rules.

The activities in each project proposals are analyzed against the following assessment criteria:

- The applicant is to be considered as undertaking/ not undertaking in regards with the planned activities;
- The planned activities are/are not market oriented;
- The planned activities are/are not affecting the trade between Member States;
- The applicant will/will not be the final user of the aid;
- The applicant is/is not in a situation of single undertaking.

Within one project proposal it could be found that some of activity/ies are state aid relevant. This means that the funding for only these activity/ies will obey to the state aid rules.

**Within the Interreg –IPA CBC Programme Bulgaria- the former Yugoslav Republic of Macedonia activities of economic character could be financed under the de minimis rule.**

Public support given by the Programme to undertakings for activities of economic character will be granted under the de minimis rule on the basis of the requirements set in Commission regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (Official Journal of the European Union L 352/1 dated 24/12/2014).

This implies that undertakings that envisage implementing activities of state aid character will receive grants for these activities only if they have not received public aid under the de minimis rule totaling more than 200,000 EUR within three fiscal years from the date of granting the aid. This ceiling is reduced to 100,000 EUR in the road transport sector.

De minimis aid granted in accordance with this Regulation (EU) No 1407/2013 may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) No 360/2012. It may be cumulated with de minimis aid granted in accordance with other de minimis regulations up to the relevant ceiling laid down in Article 3(2) of Regulation (EU) No 1407/2013.

The public aid considered for the applicable de minimis ceiling comprises all aids granted by the national, regional or local authorities, regardless of whether the resources are provided from domestic sources or are partly financed by the European Union (in the meaning of Article 3, paragraph 5 from Regulation (EU) 1407/2013).

However, this will not affect the possibility of an undertaking to receive public support under other state aid schemes as far as cumulation provisions are respected. As a consequence, undertakings (i.e. not only private companies but also public authorities, NGOs etc.) carrying out state aid relevant activities in the project might receive limitations on the public contribution to their budgets.

In case of single undertaking in the meaning of art. 2, para. 2 from Regulation (EU) 1407/2013, the total amount of de minimis aid granted to the single undertaking under the de minimis rule cannot exceed the overall permissible ceiling.

For the purposes of the ceilings laid down in Article 3, paragraph 2 from Regulation (EU) 1407/2013, aid shall be expressed as a cash grant. All figures used shall be gross, that is, before any deduction of tax or other charge.

De minimis aid shall be deemed granted at the moment the legal right to receive the aid is conferred on the undertaking irrespective of the date of payment of the de minimis aid to the undertaking.

**👉 IMPORTANT**

**The rules for state aid apply to all undertakings, either participating as project partners, or third parties (indirect aid).**

This means that public funding in the form of de minimis aid could be granted to third parties (where the project partner is not the final user of the aid) for implementation of specific activity/ies. Third parties, receiving benefits from the project, could be for example target groups and/or participants in the project activities like trainings, seminars, workshops, etc.

Undertakings which represent third parties can receive de minimis aid under the projects only if they have not received public aid under the de minimis rule totalling more than 200 000 EUR within three fiscal years from the date of granting the aid.

In the case of mergers or acquisitions, all prior de minimis aid granted to any of the merging undertakings shall be taken into account in determining whether any new de minimis aid to the new or the acquiring undertaking exceeds the relevant ceiling. De minimis aid lawfully granted before the merger or acquisition shall remain lawful.

If one undertaking splits into two or more separate undertakings, de minimis aid granted prior to the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the de minimis aid was used. If such an allocation is not possible, the de minimis aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

#### **IMPORTANT**

In order to ensure strict observation of the set maximum thresholds, in accordance to Art. 6(1) of Regulation (EU) 1407/2013 at the contracting stage the Managing Authority shall request from the Bulgarian applicants to declare any de minimis aid received in the fiscal year in progress and in the two previous fiscal years. The provided information shall be verified through the public Register of the de minimis aids, available on the webpage of the Bulgarian Ministry of Finance (<http://minimis.minfin.bg/>).

The MA maintains register for the subsidy granted under the de minimis rule. The MA informs the Minister of Finance for each de minimis aid granted in 3 (three) days from the grant.

The Programme bodies at all levels (first level controllers, JS and MA) will closely monitor the adherence of the state aid rules not only during the pre-contracting phase, but also during the whole implementation period of the projects. To this end the project partners have to ensure that all planned activities are set up and implemented in compliance with the national legislation

related to competition and state aid. In addition to this they shall ensure publicity and transparency of these activities and project outputs and results, which can create an economic advantage to an economic operator.

In case the Programme bodies find out that the any of the project partners made false declaration regarding state aid, the MA is entitled to terminate the subsidy contract and to demand repayment of the amounts already paid in accordance with the provisions of the subsidy contract and the applicable state/de minimis aid regime.

**NOTE**

The following **examples for state aid are identified among activities** in project proposals funded under the First Call for proposals

The state aid assessment is always made case by case and therefore the presence or lack of such depends on the specificity of the project. Within one specific project proposal it could be found only one state aid relevant activity and thus only the respective funding for its implementation could be granted under the de minimis rule.

Here are some examples for activities which are identified as market-oriented, with economic character or giving advantage to certain persons:

- ISO Consultations:

The specific project activity foresees providing ISO Consultations for 12 companies, acting in the tourism field in order to enhance the quality of their services on the European market and help to harmonize technical specifications of products and services making industry more efficient.

- Development of Internet platform for the Fun Center Network, development of new tourism offers, marketing of the Cross-Border Fun Center product

The project activities foresee development of internet platform for selling of tourism offers of the members of the established under the project Fun Center Network. In addition, planning of new services, products and development of individual offers for each network member and series of marketing measures aimed at the improved selling of the new tourism offers developed for network members. are envisaged.

- Joint Web-based Platform:

The online platform, envisaged under the project, is a tool for promotion of the cross-border organic production potential at international level and for supporting the trade exchange opportunities between all the trade and production SMEs. The Joint Web-based Platform include virtual database and exhibition of local organic products produced in the cross-border region and web-based individual company promotion platform to present and promote the companies of the target cross-border region, including their production opportunities and cooperation requests. Developing and maintaining the web-based platform is perceived as a tool for general dissemination of information and promotion of the organic producers from the target cross-border region because of the advantages it provides - accessibility from anywhere across the world, at any time, and by an unlimited number of visitors.

- Development of a mobile application for Android, iPhone:

The main objective of the activity is development and implementation of an interactive mobile application and supporting web-site with a database of local attractions. Specific objectives are: organization and presentation of information on local attractions, festivals, hotels and guest houses, creation of tools and procedure for maintenance of up to date information on upcoming events, current offers from places to stay and visit.

- Registration of trademark for products/services

The specific project activity foresees registration of trademark (name and image) for elaboration of a product, which will be included in the assortment of selected market operators. The purpose is to provide an innovative product and thus to attract more clients. It is also expected this product to be presented at different fairs and exhibitions and to expand the market position of the selected operators.

- Supply of specialized equipment

This specific activity envisages supply of specialized equipment to a beneficiary which acts as economic operator as well. The equipment will be included in the assets of the beneficiary and could be used for economic purposes. In addition to this the access to the equipment is limited to a specific target group, which will benefit from its use.