Interreg

NEXT MED

Co-funded by the European Union

Note on State aid assessment

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Introduction and overview

According to EU Regulation no. 1059/2021 (Interreg Regulation), aid granted under the Interreg NEXT MED Programme 2021-2027 shall comply with the applicable Union rules on State aid within the meaning of article 107 of the Treaty on the Functioning of the European Union.

Based on its priorities, in particular Priority 1 "A smarter and more competitive Mediterranean", the Interreg NEXT MED Programme 2021-2027 will support business and SMEs development as well as the reinforcement of innovation capacities, technological transfer and links between industry and research economic growth. The financial support to these activities, as well as the involvement, as project partners but also as stakeholders and final beneficiaries, of MSMEs and other private and public economic actors operating in the market will be one of the key aspects of the projects funded under Interreg NEXT MED Programme.

Due to these main Programme features, some projects may have activities which are State aid relevant. This Note aims at setting out the general principles of State aid under the Interreg NEXT MED Programme 2021-2027, identifying possible measures and procedures in order to minimize or annulling potential market distortions of project actions.

It is very important that from the beginning all applicants and Partners should carry out a "self-assessment" on their project, even though they do not initially consider that State aid rules are relevant to their project activities, as the application of State aid rules may be wider than expected. If a project is awarded funding that is later deemed to be not compliant with State aid rules, the concerned Member State or the Managing Authority could be obliged to recover the funds. Although the Programme provides advice to projects and assesses the risk of State aid when the project is considered for selection (see State aid Assessment section), the responsibility for ensuring that the project is State aid compliant remains with each Lead Partner and each project partner during the whole duration of the project. A previous assessment will have to be carried out by Lead Partners and partners before the submission to the MA of further modifications of project activities or a different budget allocation between project partners, in order to verify if they fulfil or not State aid requirements. Major or minor changes of the projects may be also assessed by the MA / JS before their approval.

State aid in Member States

In accordance to Article 107(1) of TFEU, State aid as "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods insofar as it affects trade between Member States.*"

The transfer of State resources (financial or otherwise, "in any form") is the first condition in order to identify a State aid existence. "State Resource" can consist of money (such as grants) or other benefits, (such as rent-free buildings, free training courses, or specific tax exemptions

etc.) directly granted by the state and all its controlled public and private bodies in charge of distributing public funds[1].

All members of a project partnership are automatically in receipt of state resources, as they are in receipt of Programme Funds, therefore this criterion is automatically fulfilled for the Interreg NEXT MED Programme. However, at the same time it is important to identify the potential end recipients of the project activities.

In that respect, State aid is usually understood as an aid to be given to any entity which undertakes an economic activity that is seen as distorting or threatening the fair competition in the internal market. Subsidies granted to individuals or general measures open to all enterprises do not normally constitute State aid.

It is very important to be aware of the following key terms:

- **Economic activity, meaning any activity consisting of offering goods or services on a given market,** performed for economic reasons, i.e. earning profit or acquiring wealth. All other activities, conducted without any charge and not for commercial exploitation, are defined as "non-economic". Typical examples of non-economic activities in projects funded by the Programme are: project management, small infrastructures for renewable energy in public buildings not market oriented, etc. (condition of not distorting the market).

  An example could be the installation of solar panels by a local authority on the roof of one of its buildings with the intention of selling electricity. Although the main functions of the local authority are not economic, this part of its activities is considered an economic activity.

  On the contrary, in the context of tourism, public financing for the preservation or restoration of tangible cultural heritage that can be visited free of charge without any limitation, and that is not used for any commercial activity, does not benefit any undertaking within the meaning of EU competition law.

- **Undertaking** is an entity carrying out an economic activity, regardless of its legal status or its main purpose. Participating in an economic activity is enough to determine whether an entity is an undertaking or not. If an entity is not profit-oriented, State aid rules will apply as long as it competes with companies that are profit-oriented. Therefore, not only private companies are subject to State aid rules but also public authorities if they carry out an economic activity on the market. As an example, a public university that offers in the market the results of its research activities could be considered as undertaking.

- **Selectivity**: to be considered selective, a state measure should favour "certain undertakings or the production of certain goods". Hence, not all measures which favour 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. Instead, a measure that has general application (such as a tax cut to all

[1]Comprehensive information on State aid can be found on the DG Competition website of the European Commission, where also a guideline on the notion of State aid is available (https://competition-policy.ec.europa.eu/state-aid_en).

businesses) does not constitute State aid, as it is not selective. The award of grant funding is always selective as a specific group of Project Partners will receive the funding.

- **Competitive advantage** is defined as any economic benefit that an undertaking would not gain under normal market conditions. Therefore, purchase of goods and services at market rates will not be considered State aid as it is presumed that a company operating at normal market rates will not be gaining a benefit. Payment for goods and services made through an open procurement process will not be considered a State aid, as carrying out business on the open market is not considered to grant an advantage.
- **Affecting trade between Member States**: this condition is verified if there is a market for goods and it is likely that a company in another Member State could provide them; in such case, providing an advantage to an economic operator in that market, will affect trade between Member States. However, measures which are purely local can be considered as not affecting trade between member states.

  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. An effect on trade between Member States cannot be hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.

  If there is an activity with only local impact on trade, such as support to handicraft or local tourism, it could not be considered to have the potential to affect trade between Member States.
- **Third parties:** potential recipient of State aid, meaning all those undertakings (i.e. entities engaged in economic activities) not included in the project partnership (e.g. target groups, etc.) which could receive an advantage through the project's activities that they would not have received under normal market conditions. For example:
  - Consultancy or other subsidised services provided to SMEs;
  - Training courses provided to SMEs;
  - Access to research facilities for companies.
- **Infrastructure projects:** Public investment for the construction or upgrade of infrastructure is free of State aid, if it does not directly compete with other infrastructure of the same kind. Such projects can, therefore, be implemented by the Member State without needing to be checked under EU State aid rules. This is typically the case for water supply and waste water networks. In contrast, infrastructure in fields such as energy or broadband could be in competition with similar infrastructure. In these sectors, if one project is financed with public resources while competing projects have to operate without public support, this can give the subsidised project a selective economic advantage over its rivals. There is no aid if an operator or user pays a market price to use the infrastructure, for instance as a result of a competitive, transparent, non-discriminatory and unconditional tender. Funding provided to local infrastructures or local services which are

unlikely to attract customers from other Member States, and which only has a marginal effect on cross-border investment, does not fall under EU State aid rules[2].

Even though project partners do not perform State aid relevant activities, such activities could mean an advantage for third parties outside the partnership. This type of State aid is called "**indirect State aid**" thus the granting entity should adopt the measure, in compliance with the State aid Programme rules.

State aid in Partner Countries

Only those actors of Interreg NEXT MED Programme from EU Member States are bound to comply with the EU rules on State aid in the meaning of the Treaty, as defined in the previous section. However, bilateral agreements between the MPCs and the EU may include provisions on the competition and trade between the European Union and the concerned countries.

Therefore, in the event national legislation has been developed in the concerned partner country or EU State aid criteria have to be taken into account, the Managing Authority will adopt the same approach as the one for Member States in order to assess if project activities should be considered or not State aid relevant, according to the EU State aid rules.

Specific factsheets on State aid will be developed for the concerned Mediterranean Partner Countries.

Egypt, Jordan, Tunisia, and Türkiye include State aid provisions in the Euro-Mediterranean Association agreements signed with the European Union. In accordance with these agreements, the criteria in the Treaty are applied mutatis mutandis in regard to the trade between the country and the European Member States.

This condition affects any project activity carried out by partners located both in MS and in each one of the above-mentioned countries[3].

The General Block Exemption Regulation

The General Block Exemption Regulation (GBER)Regulation in force since June 2023 (Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014) contains the provision which can be applied to the European Territorial Cooperation programmes. In particular, it allows to implement a wide range of public support measures without prior notification to the EC as long as all criteria given in the regulation are fulfilled. It includes a block exemption for aid granted in the context of Interreg projects (article 20). The aid granted by the Interreg NEXT MED Programme amounts to the whole EU contribution granted by the Managing Authority (MA), up to a ceiling of 2.2 million EUR of total public contribution per partner and per project.

[2] Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01): http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html

[3] This paragraph is based on the fact sheets delivered by TESIM on Stat aid in Partner Countries. Their content will be reviewed and adapted according to the outcomes of specific TESIM briefings with the National Authorities.

Project activities might result in advantages granted to undertakings outside the project partnership that they would not have received under normal market conditions. This might be the case, for example, of free of charge services, training, or consultancy to companies. In such cases, the aid is granted to third parties who are the final beneficiaries of project activities. This aid is granted under GBER Article 20.a, referring to exemption for aid of limited amount in the context of Interreg.

Aid granted under GBER Article 20a to an undertaking that is the final beneficiary of project activities cannot exceed EUR 22.000. The amount of aid granted to each final beneficiary is to be determined by the concerned partners prior to the implementation of project activities s (or part thereof) that are affected by indirect aid, and it shall be approved by the MA/Joint Secretariat (JS). An ex-post approval of the determined amount of aid to final beneficiaries may be granted by the MA/JS in exceptional and duly justified cases.

It is very important to note that partners receiving the EU funds from the programme **under the GBER regime cannot receive any additional public contributions to their budgets[4].**

Submitted project proposals undergo a specific "State aid assessment" described below.

The results of this assessment may lead to one or more of the following scenarios:

- No State aid relevance. In this case no contractual conditions are set on State aid.
- Risk of State aid that can be removed. In this case, specific conditions are included in the negotiation letter in order to mitigate or eliminate the State aid cause (e.g. wide dissemination, also to competitors, of certain project outputs).
- Direct State aid granted to one or more partners. In this case the entire budget allocated to the concerned partner is regarded as State aid granted under the General Block Exemption Regulation (GBER)
- Indirect State aid granted to third parties outside the project partnership. In this case, a contractual condition setting a threshold to the aid granted to third parties is set (see below).

In order to identify at an early stage and, if required, mitigate the State aid risk applicants and project partners will be required to provide information on State aid relevant activities by using a specific self-assessment grid to be attached to the Application Form.

The aim of this self-assessment checklist is, first, to establish whether State aid is present, and second, assist on what steps need to be taken to ensure compliance).

In the first step, evidence that State aid issues have been considered will be required. Therefore, this checklist raises a number of points that should be assessed to conclude whether the planned project activities are State aid relevant or not. These are, in particular:

[4]Organizations entitled to receive national co-financing (from Italy, Greece, and Türkiye), which are considered undertaking according to the state aid assessment and included under the aid granted through art. 20 of GBER, cannot receive any national co-financing.

- whether the partner organisation is engaged in an economic activity in the project (support for non-economic activities does not involve State aid);
- those project activities which are identified as being "economic" have to be assessed whether there is a selective advantage. If there is no selective advantage or benefit to the applicant and partners, State aid rules do not apply.

In the second step of the evaluation process, during the eligibility check, this checklist will be assessed by the Programme bodies (MA and JS), with the support of external experts, together with the Application Form in order to identify potential State aid relevant activities.

The final decision for identifying State aid relevant activities and the suitable State aid instrument remains with the Managing Authority and must be justified with appropriate reasoning.

The respect of State aid rules shall be ensured **during the entire project implementation** both by the project partners and the Managing Authority; modification of the project activities will be assessed in order to identify the introduction of potential risk of State aid; changes of budget will be monitored as well.

In the event the mitigation measures do not eliminate the risk of distortion, the GBER exemption will apply.

Overall, four levels of assessment have been established as follows:

1st LEVEL	**Information from the applicants: self-assessment**	• Each applicant and partner[5] shall perform a self-assessment on the nature of activities carried out in the framework of the project. A self-assessment check list will have to be submitted with the application form • The result of the self-assessment is (a) **State aid low risk,** or • (b) **State aid high risk**: the organization considered itself as **performing economic activity(ies)** in the framework of the project; therefore, it should be subject to State aid regulations.
2nd LEVEL	**Assessment by the MA/JS**	• During the eligibility check (step 2 of the evaluation), carried out on the pre-selected proposals, the MA/JS (with the support of an external expert) will further evaluate the State aid risk taking into consideration the information provided by the partners. A check with National Authorities may also be carried out, in order to get more information on the status of each concerned partner. • The MA/JS: (a) Will confirm the results **"low risk"** of the self-assessment from the applicant and / or partners. The proposal can be

[5] A specific self-assessment check grid is requested for Applicants and partners from Egypt, Jordan, Türkiye and Tunisia.

included in the list of pre-selected project without any further actions.

or

(b) Will not confirm the results **"low risk"** or will confirm the results **"high risk"** as assessed by applicant and / or partners. A revision of the Application Form and Budget could be considered in order to minimize or eliminate the risk before being approved and pre-selected.

3rd LEVEL

Decision by the MA and notification to the Monitoring Committee

In case option b above is selected then:

The MA confirms the existence of a high State aid risk and the Application form is **NOT** in line with the applicable measure to mitigate or eliminate the risk: **the project is still eligible** and the GBER exemption applies.

4th LEVEL

Submission State aid declaration

A State aid declaration to accept the amount granted through the GBER art. 20 and to confirm that no additional public funds will be received. In the event an indirect aid is foreseen according to art. 20a id GBER, the concerned Lead partner/project partner granting the indirect aid shall monitor the value of services offered and provides the relevant information when reporting to the programme.

State aid self-assessment check grid

SECTION 1–Is your organization engaged in an economic activity?		
1.1 In the context of the project, do you undertake any activities - consisting of offering goods or services - for which a market exists?		
☐ Yes, in the context of the project my organisation implements activities for which a market exists. ☐ No, in the context of the project, my organisation does not undertake activities for which a market exists. NO STATE AID RISK.		
If **YES**, please describe such project activities and quantify their planned budget.		
Work package	**Description of activities**	**Estimated budget**
WP.....		
WP		
WP		
WP		

1.2 In the context of the project, do you implement activities - consisting of offering goods or services - that could be carried out or provided by another operator with the view to making profit?		
☐ Yes, in the project there are activities that could be carried out by another operator in order to make profit. ☐ No, in the project there are no activities that could be carried out by another operator in order to make profit. NO STATE AID RISK.		
Work package	**Description of activities**	**Estimated budget**
WP.....		
WP		
WP		
WP		

SECTION 2–Competitive advantage from the project[6]

[6] Please note that you will be asked to decide on potential advantage for each economic activity that you have identified in section 1 of this check list.

2.1 Do you gain any benefits from the Programme funding for the implementation of the above-listed economic activity(ies), which you would not have received in the normal course of business, i.e. in the absence of Programme funding? Are you relieved from costs that you would normally have to meet?	
☐ Yes, I gain benefits and/or am relieved from costs through programme support to the economic activity/ies. ☐ No, I neither gain benefits nor am relieved from costs through programme support to the economic activity/ies. NO STATE AID RISK.	
Work package	**Description of economic advantage in terms of saved costs**
WP……	
WP ……	
WP ……	
WP ……	

SECTION 3–Infrastructures		
3.1 Do you plan to carry out activities involving construction of infrastructure? If yes, will the infrastructure be exploited commercially? Will the infrastructure not be available for public use for free?		
☐ Yes, and the infrastructure will be exploited commercially. ☐ Yes, and the infrastructure will not be available for free public use. ☐ No. None of the infrastructure will be commercially exploited, neither during project implementation nor after project closure. ☐ No infrastructure will be constructed in the framework of the project.		
Work package	**Description of activities**	**Estimated budget**
WP……		
WP ……		
WP ……		
WP ……		

SECTION 4–Benefits for third parties/organisations outside the project partnership
4.1 Does any economic operator (e.g. SME) that is outside the project partnership (i.e. not listed as beneficiary in the application form) receive an advantage through your activities in the project?

☐ Yes, certain project activities provide an advantage for economic operators outside our project partnership. ☐ No, there are no project activities that provide an advantage for economic operators outside our project partnership.

Work package	Description of activities, and recipients of aid	Estimated budget
WP……		
WP ……		
WP ……		
WP ……		

SECTION 5 –Effect on the trade (only for organisations established in Egypt, Tunisia, Türkiye and Jordan)
5.1 Are goods or services affecting the trade between EU and your country?
☐ Yes, goods or services, producted under the project, affect the trade between EU and …… (specify country). ☐ No, goods or services, producted under the project, do not affect the trade between EU and …… (specify country).

Description of goods or services	Estimated budget

STATE AID DECLARATION

Title and acronym of the project: [insert title, acronym and reference number]

I the undersigned insert the name and last name, as

- ❑ Legal representative; or
- ❑ Delegate of the legal representative

of the following organisation: [insert the name of partner institution in English],

Declare that (please select only one option):

- ❑ My organisation is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- ❑ My organisation is an undertaking in difficulty.
- ❑ None of the above statements apply to my organisation

For my organisation the fiscal year covers the following period of every year:

From: ☐ To: ☐

dd / mm dd / mm

My organisation will benefit of the following public aid (amount in euro.....) under the *GBER (651/2014 as modified by Reg, art. 2*, granted by Italy under the Project ..... financed by the Interreg NEXT MED Programme 2021-2027,

No additional public funds will be received by my organization within this project and the 11% contribution will be entirely provided by my organization.

All the relevant documents under this scheme will be recorded and maintained for 10 years from the date on which the aid was granted, and they will be notified by the Managing Authority to the EC.

I acknowledge that untruthful/false declarations, in addition to the administrative sanctions and the request of refunding unduly received contribution charged with the interests, can also be prosecuted by law.

_____ _____

Place and date *Legal representative/delegate*[7]

Official stamp (if available)

[7] If the signatory is different from the Legal representative an official authorization has to be attached.