

## Fact Sheet 16 – State Aid

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**Core message:** Project partners can participate in the programme in a way that gives them a competitive advantage, which may result in a state aid situation. For example, an SME might be supported to develop a new product. In addition, undertakings that are not a partner in the project but get a benefit from the project may still fall under state aid rules when they receive indirect aid. Strict rules regarding the nature of participation, the amounts that can be claimed, and the documentation that has to be provided apply to undertakings that will (potentially) receive state aid. This fact sheet explains in detail what the requirements are.

### Background

State aid is aid granted to an undertaking that distorts or threatens to distort competition in the internal market. For example, granting aid to support an SME developing a smartphone application in the Netherlands could distort competition for a similar SME in Germany, as it would give the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations. When assessing whether state aid is present, it is very important to be aware of the definitions of a number of key terms<sup>1</sup>:

- **Undertaking:** An undertaking is an entity carrying out an economic activity, regardless of the legal status of the entity and whether it aims to make a profit. Participating in an economic activity is enough to determine whether an entity is an undertaking or not. As such, private and public bodies and NGOs can be undertakings.
- **Economic activity:** An economic activity is defined as any activity involving the offer of goods or services on a given market. When a project partner is a public partner and exercises their public power or acts in their capacity as a public authority, this is not considered an economic activity. In contrast, when a public entity undertakes an activity which can be separated from the exercise of public powers, this is an economic activity and the entity acts as an undertaking in relation to that activity.
- **Competitive advantage:** Competitive advantage is defined as any economic benefit the undertaking would not normally gain under normal market conditions; that is to say, in the absence of state aid.

<sup>1</sup> 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)

## Assessing the risk of state aid

An assessment of whether a measure (activity) constitutes state aid is based on five criteria. If the answer to all five questions below is 'Yes', there is a risk of state aid and appropriate action must be taken. As can be seen, the answer to three of the five questions is always 'Yes'!

1. Is the measure imputable to the state and financed through state resources? In the North Sea Programme, the answer to this question is always YES.
2. Is the measure selective? In the North Sea Programme, the answer is always YES.
3. Does it have the potential to affect trade between the member states? In the North Sea Programme the answer is always YES, as ETC projects aim at transnational effects.
4. Does the measure confer an advantage on the undertaking? This needs to be considered for each beneficiary.
5. Does the measure distort or threaten to distort competition? Yes, if there is an economic or potential economic advantage (closely related to question 4).

Criteria 1, 2 and 3 will always be answered 'Yes' in North Sea Programme projects, as the funds come from the state, there is a selection process, and effects are intended to go beyond a local impact only. In assessing possible cases of state aid, the assessment will therefore focus on whether the measure in question is an economic activity that confers an economic advantage to the partner and whether there is any distortion or potential distortion of competition resulting from the grant. If the answer to both questions is yes, then there is a risk of state aid and the programme will require that the partner concerned applies the rules set out below. Please note that the programme considers grants to private partners always a risk of state aid; therefore, these partners are always required to apply the rules set out below.

The section below explains how potential state aid to project partners should be handled. In some cases, however, undertakings that are not part of the project partnership receive a competitive advantage as a result of project activities. More information about this is included under the sub-heading 'Managing indirect state aid to other organisations'.

## Managing state aid to project partners – General Block Exemption Regulation (GBER)

If there is a risk of state aid, partners are required to apply under the programme's GBER scheme.

The GBER is essentially a long list of different types of aid (exemptions) that serve a useful public function and can therefore be accepted, provided that a number of conditions are met. Only one exemption is in use in the North Sea Programme. This is set out in Article 20 of the GBER: Aid for

cooperation costs incurred by undertakings participating in European Territorial Cooperation projects. In accordance with the GBER, the ceiling for aid is €2 million per undertaking per project<sup>2</sup>.

As is true for all project partners, partners participating under the GBER scheme will receive a grant covering 60% of their total costs (50% for Norwegian partners). In accordance with the GBER, the aid intensity to partners that apply under the GBER scheme shall not exceed 80% of the organisation's total budget. In addition to programme funding (60% for partners located in Member States or 50% for Norwegian partners), the aid intensity rate also includes any public match-funding. Project partners under the GBER scheme are therefore required to submit a self-declaration with the full application confirming that the aid intensity does not exceed 80%.

The programme cannot provide assistance to any undertaking in difficulty (as defined in Commission Regulation (EU) 651/2014, Article 2(18) declaring certain categories of aid compatible with the internal market).

In exceptional cases, the GBER may not be sufficient for organizations that would like to participate in an Interreg North Sea project. However, these organisations may be able to participate in the project under another State aid scheme called De Minimis. Please contact the Joint Secretariat if this is relevant for your project.

#### *Practical information*

When a partner applies under the GBER scheme, this should be indicated in the full application. The self-declaration form can be downloaded from the Online Monitoring System (OMS) and submitted to the programme as an annex to the full application. In addition, partners under the GBER scheme need to report the amount of GBER aid received from the programme in every full finance report (see Fact Sheet 20 – Reporting). All information pertaining to the GBER scheme and the project partners involved is forwarded to the European Commission (or the EFTA Surveillance Authority in Norway) and is made available to the public. All partners receiving aid under the GBER must retain all documents for at least 10 years after the date of the final aid payment to the project<sup>3</sup>.

## Managing indirect state aid to other organisations

In some cases, private sector companies participate in activities carried out by a project but not as project partners. This is known as receiving indirect aid. An undertaking receiving indirect aid is defined as an aid recipient that is not officially listed as a partner in the project but which, through the activities carried out by the project, receives an advantage over other companies (for example, by taking part in a training course for SME's offered through the project). In other words, the

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<sup>2</sup> Commission Regulation (EU) 2021/1237, Article 1(3)

<sup>3</sup> Commission Regulation (EU) 651/2014, Article 9(4)

benefits conferred by the project are passed on to undertakings that are not part of the project. For this reason, recipients of indirect aid may have to be placed under a state aid scheme.

Two types of support may be provided to these undertakings, and each has a set of requirements.

- General support such as workshops and training that are open to **all relevant undertakings** and target general knowledge and capacity development for these undertakings is not considered indirect state aid and may be offered free of charge.
- Services for **specific undertakings** that involve the provision of services with a clear value count as indirect state aid. Examples include consultancy, research and development, coverage of travel costs, etc. In this case the aid must not exceed 20.000 € (per undertaking during the project lifetime) and the rules set out in the paragraph below should be applied<sup>4</sup>.

The programme manages the risk of indirect state aid using Article 20a of the GBER.

Using Art. 20a, the service provided to the undertaking that is not a formal partner in the project may be funded in full without requiring the undertaking to provide any contribution. In addition, Art. 20a allows aid to be given to large enterprises. However, the total amount of aid granted under Art. 20a GBER to a non-partner undertaking per project shall not exceed 20.000 €.

The project partner granting the indirect aid monitors the value of services 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 provided) as well as the amount of aid received. The partner must also ensure that the aid granted does not exceed the limit of 20.000 € per undertaking per year. The amount of aid granted is to be based on a precise calculation using a convincing methodology.

For all state aid documents, whether related to indirect or direct recipients, all evidence must be kept on file for 10 years after 31 December in the year in which the final payment is made to the project.

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<sup>4</sup> Commission Regulation (EU) 2021/1237