

State Aid

➔ Background Information

The European Commission (EC) encourages Member States and regions to set activities to strengthen the competitiveness of the regional economy. Assistance from the state to individual companies is an important instrument to reach this objective. However, such measures also distort competition as they discriminate between companies that receive assistance and others that do not. As such, they could present a threat to the operation of the internal market. Therefore, the European Community has set up a legal framework which defines the limits under which public assistance can be granted to companies. The basic rules on state aid are set out in articles 87-88 of the Treaty. These rules have been amplified over the years by secondary legislation and decisions of the European Court of Justice.

The above-mentioned rules on state aid are also relevant for the structural funds programmes as the structural funds regulations of the European Union set out that public aid granted under operational programmes shall observe the applicable rules on state aid.

In the present factsheet basic information shall be provided on the legal framework on state aid as well as on the measures taken by the programme to ensure that these provisions are obeyed.

➔ Guidance

1 Definition of "State Aid" according to Community rules

State aid rules apply only to measures that satisfy all of the criteria listed below. If one single criterion is not fulfilled the respective assistance granted is not subject to the Community rules of state aid.

1.1 Transfer of State Resources

State aid rules cover only measures involving a transfer of state resources (including national, regional or local authorities). Furthermore, the aid does not necessarily need to be granted by the state itself. It may also be granted by a private or public intermediate body appointed by the state (the latter could apply in cases where a private bank is given the responsibility to manage a state funded aid scheme). Financial transfers that constitute aid can take many forms: not just grants or interest rate rebates, but also loan guarantees, accelerated depreciation allowances, capital injections etc. ERDF-funds that are administered and granted by the structural funds programme are also to be regarded as state resources.

1.2 Economic Advantage

The aid should constitute an economic advantage that the undertaking would not have received in the normal course of business. Such an economic advantage can be assumed if the undertaking does not provide for any market-driven consideration (e.g. it promises to create jobs in return for state funds received or it buys land from the state for a price lower than the market price). No such advantage is to be assumed if a private investor would have acted in the same way as the state when granting an advantage or if the advantage is passed on to someone else (e.g. an innovation centre receives state funds and passes this advantage on to undertakings which due to this subsidy pay lower rents for office rooms in that innovation centre).

The term "undertaking" is to be interpreted in accordance with the law of the EU. Thus, the definition set up by the European Court of Justice is decisive: it interprets the term "undertaking" in a wide sense as any entity which exercises an activity of an economic nature and which offers goods and services on the market, regardless the legal form and the way of financing of this entity. Also 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 insofar they carry out an economic activity as set out above on the market.

1.3 Selectivity

State aid must be selective and thus affect the balance between certain firms and their competitors. "Selectivity" is what differentiates state aid from so-called "general measures" (namely measures which apply without distinction across the board to all firms in all economic sectors in a Member State such as most nation-wide fiscal measures). The selectivity criterion is also satisfied if the scheme applies to only part of the territory of a Member State (this is the case for all regional and sectoral aid schemes).

1.4 Effect on Competition and Trade

This criterion is already fulfilled if an aid has potential effect on competition and trade between Member States. It is sufficient if it can be shown that the beneficiary is involved in an economic activity and that it operates in a market in which there is trade between Member States. No effects on competition and trade are to be expected in case of purely local activities such as taxi drivers, retail sale.

2 Measures taken by the Programme to ensure Compliance of Projects with State Aid Rules

The partner states of the **Alpine Space Programme** have taken the decision that **in general only such projects shall be co-funded that do not affect the Community rules on state aid**. This means that any national and ERDF-co-funding granted to a project shall not fulfil the criteria of state aid as set out above.

Only in exceptional cases state aid in the sense of article 87 of the Treaty (i.e. aid that fulfils the four criteria as set out above) shall be granted. In these cases the ERDF and the national co-funding granted to a project participant shall stay within the limits as set out in Commission Regulation (EC) No 1998/2006 on **de minimis aid** (the ceiling for aid covered by this regulation is a maximum of 200.000 Euro resp. 100.000 Euro in the road transport sector over any three fiscal year period and it applies to the total amount of de minimis aid granted to an undertaking).

It is the overall responsibility of the MA to safeguard that this basic principle of the programme is observed. In most cases specific knowledge of the concrete market situation respectively project participants in the respective Member States is necessary to judge if a project affects state aid rules or not. For this reason the MA is supported by the respective programme bodies and authorities in these Member States (e.g. national co-ordinators, first level co-ordination bodies, first level control bodies, Alpine Space Contact Points).

In the following it is set out which measures the programme has taken to ensure the observance of state aid rules in each single phase of the project life-cycle.

2.1 Project generation

When generating the project idea the project promoters will be assisted by the programme bodies, namely Joint Technical Secretariat (JTS) and Alpine Space Contact Points (ACP) (see also factsheet 1.1 on *Project generation*). These bodies are familiar with the issue of state aid, thus can provide for first information on that respectively can assist project promoters to get in touch with experts in this field in their country.

2.2 Project development and application

In this phase Project Partners (PP) and envisaged project activities will be more concrete and thus uncertainties with regard to state aid rules might arise. Sometimes it will not be easy for the project promoters to find an answer on questions such as if a certain project activity is to be regarded as activity of an undertaking that acts on the market and therefore relevant with regard to state aid rules or not (e.g. PP intend to create a market for their bio products in the Alpine space: while the elaboration of a concept for that might be no problem with regard to state aid, activities such as sales promotion, marketing, presentation of the products at fairs might be regarded as relevant to state aid law).

Project participants shall be aware that it will be their **responsibility to pre-assess** if the state aid regulations are affected by the project or not. ACP will have an eye on any incompatibilities of the project with state aid rules respectively assist the PP in getting correct and liable information on that issue of experts located in their country (in each Member State, experts on state aid are working in the respective public authorities. PP can get in touch with these experts to get assistance. They can also contract experts such as lawyers to clarify state aid questions - such costs are eligible for co-funding as long as the eligibility rules on programme and national level (see factsheet 2.2 on *What can be co-funded*) are obeyed).

Project applicants shall bear in mind that **sometimes problems with regard to state aid can be resolved by changing the structure of the project** (e.g. by skipping activities from the project which might be state aid relevant) **or the partnership** (e.g. by changing the role of an envisaged PP that would have received state aid to that of a contractor that will be commissioned by a PP which is not to be regarded as "undertaking" in the sense of the states aid rules and that can request for co-funding for these costs).

2.3 Project Evaluation and Selection

During project evaluation the **observance of state aid rules will be carefully checked in the course of the national assessments**. In case de minimis aid shall be granted it will be checked if the co-funding will not raise the total amount of de minimis aid already received by the respective project participant during the relevant three year period above 200.000 Euro respectively 100.000 Euro. On **transnational level the MA will assess the projects with regard to state aid** and may also involve experts in case that doubts arise on possible problems with state aid. When it decides on the projects to be co-funded by the programme the **Programme Committee (PC) may decide to exclude certain partners or activities from** co-funding to ensure that the subsidy granted to the project is in line with the state aid rules.

2.4 Project Implementation, Financial Control

It is the responsibility of the **First Level Control (FLC) bodies** (see factsheet 6.2 on *Financial Control System of the Programme*) to verify if the project has been implemented in line with applicable state aid rules. In case the FLC body comes to the result that these rules have been violated the respective costs are not eligible for co-funding. **Beside the FLC a project can be audited** by the programme or responsible authorities on EU and national level. During these audits the observance of state aid rules will be checked as well. In case of any detected violation of these rules the project will have to repay any ERDF-funds already received for the related activities /partners.

Reference Documents

- + Article 9 (5) and 60 lit. a) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.
- + Operational Programme "Alpine Space", Chapter 4.1.2.
- + Vademecum Community Rules on State Aid:
http://ec.europa.eu/competition/state_aid/studies_reports/vademecum_on_rules_09_2008_en.pdf
- + Website of the European Commission, DG Competition:
http://ec.europa.eu/comm/competition/state_aid/legislation/legislation.html
- + Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid