

POSITION PAPER

ITALY

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STATE AIDS

An analysis has recently been launched, at the National level, regarding the application of the rules concerning the State Aids, for the territorial cooperation programme.

First of all, it comes out that, for each cooperation programme, the identification of the aids schemes to be notified to the Commission, should have been the result of strategic decisions at the programme level.

Without these decisions, the application, on the part of every participating countries in the programme implementation, of national or regional regimes, could be inconsistent with the programme.

There is a basic question to be solved that should be brought to the attention of the competent European Commission Directorates , relating to the use of the “instrument State Aid”, within the Territorial Cooperation Programmes.

Within this perspective, the choice of using the “de minimis” aids schemes, which, in any case, requires a legal basis at the national level, can result in a transitory solution, before more definite options are adopted.

A problem regarding the application of the “de minimis” scheme is related to the respect of the limits of the “de minimis” by the beneficiary: in all the programs, the presentation of a declaration by the beneficiary is required. However, said declaration, where a National Aid Registry is not operating, cannot be checked.

Regional and National Authorities, which are members of the Italian delegation in the Monitoring Committees, are sometimes called to act as “Confirmation Body”; i.e. authorities who confirm the legal status of the beneficiary and the conformity or non-conformity to the law, regarding State Aids.

It is believed that such a function cannot be executed by said Administrations, which, on the other hand, can only support the Managing Authorities on which lies the responsibility of the correct application of the law, and the secretariat, in the case of investigation of the legal status.

The application of the scheme “de minimis” can result in another risk, not contemplated before now.

The verification at national level does not exclude that a single beneficiary may receive contributions at the “de minimis” level in each country participating in the programme.

At the moment, there is no way to avoid this situation and it should be necessary to receive precise indications by the European Commission on how the contribution “de minimis” must be considered within the Territorial Cooperation Programs (respect of the limits, the accumulation, etc).

On this subject, please take notice of the comments regarding the first point, related to State Aid generically.

Another problem to be solved concerns the manner of participation of the private operators.

Normally, when the economic operator is also responsible for the implementation of the operation (not only for the project proposal), he should be selected following the public award procedures, procedures that, in the past, have not always been enacted.

SHARED COST OR COMMON TRANSNATIONAL ACTIVITIES (CTA)

Another point object of consideration has been the frequent preference to the utilization of CTA or shared cost, inside the projects of transnational cooperation.

The CTA are transversal activities, necessary for the implementation of the operation (or of the Workpackage where the CTA are activated) and, in all respects, they are in favour of all the beneficiaries of the project (or of those involved with the WP, where the CTA are activated), whose related costs are shared among all the subjects involved.

The beneficiary responsible of a CTA can realize these activities using **internal resources** or referring to a third party (**externalization**).

In the Programs, the CTA are realized following two different ways:

1. The beneficiary/responsible, who implements the activity (with internal or external resources) pays the entire amount of the CTA in advance and then asks every partner for the refund, according to the participating share in the project.
2. Subject to partnership agreement among all the beneficiaries, aimed at identifying a single supplier, every beneficiary realizes his own part of activity by himself, utilizing the same supplier of goods and services, reports and asks for the refund of expenses (**star contract**).

It is believed that the CTA, which supply goods and services, are included in the application field of the public award procedures or the State Aids rules and so they must be avoided, when funds, to be transferred to private bodies, public bodies or bodies acting under public law, are over the national limits established coherently with European rules.

When they are strictly necessary and inevitable, it is believed that:

- The use of the 2nd way of implementation, sharing the costs to realize a unitary activity even for the benefit of more partners, is in evident contrast with the Directive 2004/18/EC art. 9, point 3, where it is stated that “*No works project or proposed purchase*

of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive”, and so it must be left out: the Italian project partners cannot sign such partnership agreements.

- Only the first way will be allowed. According to it, the partner implementing the CTA, pays for the entire amount and then asks the other partners for the restitution of their part of the CTA costs. This refund cannot be realized by keeping the amount due for CTA implementation from the ERDF that is due to the Italian beneficiaries for their participation in the project. On the contrary it will be repaid by each partner to the partner implementing the CTA only after the certification of the whole expense by a first level supervisor, coming from the country of the partner implementing the CTA and the following payment is provided to each partner.
- The private bodies and the bodies acting under public law cannot implement the CTA for amounts larger than the limits provided by the rules applied by each partner and within the limits of the law, regarding the State Aids.
- In case of realization of these activities through externalization, the beneficiary/responsible must respect the rules regarding public procurement.