State aid self-assessment questionnaire

*This State aid self-assessment questionnaire has been developed by the Managing Authority of the Interreg EMR programme as a supporting document for applicants in the framework of programme. The document aims to help applicants to identify State aid relevant activities in their applications.*

*The document starts with a brief description of the main concepts related to the analysis of state aid. The second part of the document lists a series of questions in order to help the applicant to proceed with its self-assessment. The third and last part of the document focuses on State aid to third parties with the description of some key elements besides a specific self-assessment question related to that topic.*

*The Managing Authority of the programme also wishes to draw attention to the fact that this document represents a self-assessment of State aid relevance, performed by the project partnership, which entails the appropriate responsibility of the (lead) applicant(s). Conclusions of this self-assessment shall not replace nor preclude the State aid assessment that will be performed by the Managing Authority of the programme for each officially submitted application.*

State aid in a nutshell

Following definitions of certain key terms should help the applicant to have a good understanding of the concept of Staid aid before starting the self-assessment exercise:

*State aid*

Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) defines 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 […], in so far as it affects trade between Member States’.

In that respect, State aid is usually understood to be aid given to an undertaking that is seen as distorting or threatening to distort competition in the internal market[[1]](#footnote-1). Subsidies granted to individuals or general measures open to all enterprises do not constitute State aid.

*State resources*

State resources include all resources coming from the public sector, including resources of intra-state entities (decentralized, federated, regional or other)

*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. 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.

*Economic activity*

An economic activity is defined as any activity involving the offer of goods or services on a given market. It is not necessary to make a profit to be engaged in an economic activity, if other entities in the market offer the same or similar goods or service. However, if project activities are carried out to make a profit, it will increase the possibility of State aid occurrence. To determine if project activities are economic activities one of the following questions need to be answered positively:

* In the context of the project, does your organisation undertake any activities and/or develop/offer goods/services for which a market exists[[2]](#footnote-2) ?
* In the context of the project, does your organisation implement activities or provide goods/services that could be carried out or provided by an operator to make profit(even if this is not the intention of your institution)?
* In the context of the project, does your organisation plan to carry out the economic activities on its own i.e. not to select external service provider via public procurement procedure?
* Does your organisation plan to disseminate the goods/services achieved within the project on an exclusive and discriminatory basis; for example through restricted access to databases, publications or software?

*Non-economic activity*

Non-economic activities are understood as activities that can only be carried out by the state, such as the provision of public goods for which there is no market (eg. Public education, army, police, …). This is a fluid term, and interpretation is subject to frequent modification. *In this respect, please also consult §17 and 18 of the EC notice on the notion of State aid[[3]](#footnote-3), which provides details on the fact that some activities do not constitute State aid following their classification as part of the prerogatives of official authority.*

*Selective advantage*

Selective advantage is defined as any economic benefit the undertaking would not normally gain under normal market conditions.

To determine if there is a selective advantage one of these two questions need to be answered positively:

* Does your organisation gain any benefits from the project which it would not have received in the normal course of business?
* Does your organisation receive any direct (positive aid in the form of subsidies etc.) or indirect[[4]](#footnote-4) advantage?

Self–assessment questions

Building on the above mentioned definitions, a series of questions is presented for the State aid self–assessment. **All questions need to be addressed** **for each work package of the project. Each project partner needs to address the 5 questions for every work package it is involved in.**

**The section in yellow has to be amended each time the 5 questions are applied to a new work package.**

The following questions are based on the five criteria stipulated under Article 107 of the TFEU.

In this respect, a measure is considered State aid relevant if it meets, on cumulative bases, all of the following criteria:

1. The measure is financed from the state budget or it is imputable to the state
2. The beneficiary is an undertaking
3. The measure confers an advantage to the beneficiary
4. The measure is selective
5. The measure affects the trade and competition between the Member States – within the internal market.

**Work Package : (Fill in WP number & Title in line with the eMS application form)**

**Please fill in the 5 questions and the section regarding state-aid to 3rd parties for every project work package you are involved in!**

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| **1. Is the support provided/granted by the state or through state resources?**  *The definition of state resources is aid that is granted by the state; this includes all public and private bodies controlled by the state to distribute public funds. State resources include Funds not permanently belonging to the state, but which the state may award, such as European funds like ERDF.*  *This criterion is automatically fulfilled in the framework of Interreg V- A EMR.*  **Yes  No**  **If no, please provide an explanation.** |

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| **2. Is the beneficiary an 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 within the framework of the project is enough to determine whether an entity is an undertaking or not.*  *It is recommended to analyse the additional questions listed under Economic activity on page 2 of this document for further clarification.*  **Yes  No**  **If no, please provide an explanation.** |

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| 1. **Does the support confer a selective advantage to a beneficiary?**   *The answer to this question is positive:*  *When the activity gives an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions.*  *or*  *When the activity gives a benefit which is granted for free or on favourable (non-commercial) terms to some selected undertakings (but not others), could be state aid.*  *As grants within Interreg V- A EMR are awarded only to certain entities in a restrictive geographic area, the selective criterion is always present.*  **Yes  No**  **If no, please provide an explanation.** |

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| 1. **Does the support distort or have the potential to distort competition?**   *If the support has the potential to strengthen the position of the beneficiary in relation to other competitors, then this criterion is likely to be met*.  *The potential to distort competition does not need to be substantial or significant, and this criterion can apply to relatively small amounts of financial support and companies with little market share.*  *If all the above mentioned conditions are fulfilled, the answer to the question is positive (except for the case when the beneficiary has a legal monopoly).*  **Yes  No**  **Please provide an explanation:** |

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| 1. **Does the support affect trade between Member States?**   *It is sufficient that a product or service is tradeable between Member States, even if the beneficiary does not itself export to other EU markets.. The non–fulfilment of this criterion applies to very limited circumstances where local impact could be proved. In this respect, additional details are available under § 196 of the EC notice on the notion of State aid[[5]](#footnote-5). The beneficiary is requested to consult these details and address them under this criterion.*  **Yes  No**  **Please provide an explanation:** |

If all four criteria above are answered as “yes” please consider the following requests:

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| **Please provide a summary of your findings in which you describe whether some or all activities are State aid relevant:** |

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| **Please also provide details of any particular areas of uncertainty or questions which you would like the programme authorities to consider:** |

**State aid to third parties**

Any undertaking receiving an advantage through a cooperation project that it would not have received under normal market conditions can be the recipient of State aid. This applies to undertakings participating as project partners as well as - potentially - to third parties receiving benefits from the project such as trainings, business supports etc. State aid indeed applies at different levels.

State aid to third parties occurs in the following situations:

* The beneficiary transmits (part of) the aid to one third party or more third parties through a financial aid.
* The outputs of the projects are made available to certain subjects at advantageous conditions;
* Any other situation in which an undertaking or more ends up by getting an economic advantage as a direct consequence of the project implementation.

Also in this case, the following specific question must be addressed **for each activity of the project** in order to identify possible State aid to third parties.

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| **Does any economic operator (e.g. SMEs) that is outside the project partnership (i.e. not listed as project partner, sub-partner or associated partner in the application form) receive an advantage through activities carried out by the partnership within the project?**  *Where a beneficiary provides State aid to end users, it will be necessary for the applicant that will providing the advantage to calculate the value of the supportive activities.*  **Yes  No**  **Please provide an explanation:** |

If this question is answered positively, State aid will be considered to be granted by project partners (which become “intermediaries”) to third parties who then fall under State aid rules.

The project partners would then be required to meet the requirements of *de minimis* or GBER (e.g. ask for *de* *minimis* self-declarations, keep the register and inform SMEs about the amounts granted or apply special restrictions related to GBER).

Alternatively, the project partners might exclude State aid relevant activities by either charging the market prices for services offered to SMEs, or by excluding selectivity i.e. offering services to all interested enterprises, across all sectors, and from all Member States.

**Project partner name…………………………………………………………………………**

Signed by the representative of the project partner

…………………………………….

*(Date/month/year)*

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*(Signature)*

1. By internal market, one should understand the European market. [↑](#footnote-ref-1)
2. Reference is made here to the EU market [↑](#footnote-ref-2)
3. *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)* [↑](#footnote-ref-3)
4. Additional details on indirect aid are to be found in the last part of this document [↑](#footnote-ref-4)
5. *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)* [↑](#footnote-ref-5)