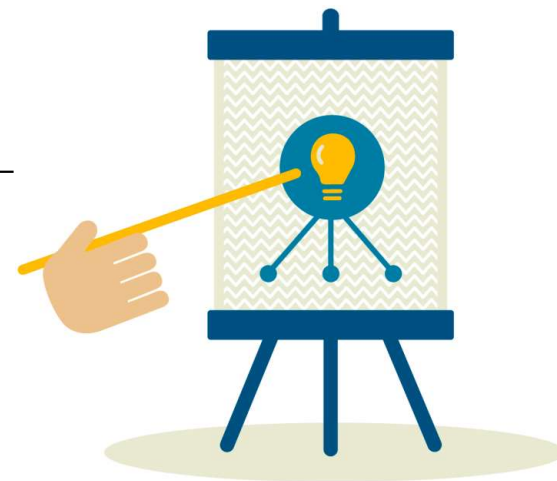


State aid for beginners

27 April 2022 | Zoom

4 May 2022 | Zoom

25 May 2022 | Zoom



Meeting outline

1. Origins, 5 criteria, assessment of activities
2. GBER (focus on Art. 20 and 20a)
3. Reporting
4. De-minimis

Economic theories and EU policies in short

Coffee shop 1



3,5 EUR

Coffee shop 2



3,5 EUR

Coffee shop 3



1,5 EUR

After 5 years...

Coffeeshop 1



Coffeeshop 2



Coffeeshop 3



4,5 EUR

- No competition
- We grow
- We can now set up prices
- We are a monopoly

Why so cheap in the first place?

Investment in the machines 50% paid by an EU project

Tax exemption for SMEs for 5 years

Regional support to create workplaces in SMEs, 25% of the salaries paid by the region

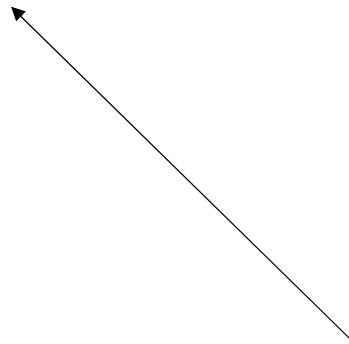
Coffeeshop 3



1,5 EUR – how is it possible?

State aid!

Or subsidies, support, etc.



From economic theories to EU policies

Free-market economics

- government should be hands-off and let the market regulate itself
- a company receiving State aid has an advantage over competitors
- **State aid is generally prohibited unless compatible with EU rules**

Competition policy (DG Comp)

Keynesian economics

- free markets have no self-balancing mechanisms that lead to full employment government intervention needed
- state intervention is necessary to moderate the booms and busts in economic activity
- Governments need to remedy market failures

Regional policy (DG Regio)

EU competition policy vs. WTO Agreement on Subsidies and Countervailing Measures

- ‘subsidy’ under the WTO regime is broadly similar to ‘state aid’ in EU law
- the EU rules are a lot more stringent than the WTO rules on subsidies
- in WTO rules is that subsidies are generally allowed, while EU rules consider subsidies to be generally illegal
- WTO rules apply to goods, EU rules include services too
- EU rules are applied prospectively (i.e. legality must be proved before awarding any support), while WTO rules are only reactive, and are only triggered if a member country lodges a complaint
- Under EU rules, a business has to repay illegal state aid. There is no such mechanism to remove anti-competitive effects under the WTO rules.

Exemptions from the application of EU Competition policy

- State aid to the former East Germany
- 2009 financial economic crisis aid
- De minimis (general, fisheries, aquaculture, SGEI)
- General Block Exemption Regulation: SMEs, ETC, R&D&I, environment, culture and heritage coservation...
- FBER
- ABER
- Temporary framework (Covid aid)
- Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia
- Others...

The principle already in the Treaty of Rome (1957)

Section troisième

Les aides accordées par les États

ARTICLE 92

- 1. Sauf dérogations prévues par le présent Traité, sont incompatibles avec le marché commun, dans la mesure où elles affectent les échanges entre États membres, les aides accordées par les États ou au moyen de ressources d'État sous quelque forme que ce soit, qui faussent ou qui menacent de fausser la concurrence en favorisant certaines entreprises ou certaines productions.**
- 2. Sont compatibles avec le marché commun :**
 - a) les aides à caractère social octroyées aux consommateurs individuels, à condition qu'elles soient accordées sans discrimination liée à l'origine des produits,**
 - b) les aides destinées à remédier aux dommages causés par les calamités naturelles ou par d'autres événements extraordinaires,**
 - c) les aides octroyées à l'économie de certaines régions de la République Fédérale d'Allemagne affectées par la division de l'Allemagne, dans la mesure où elles sont nécessaires pour compenser les désavantages économiques causés par cette division.**

Elements of definition

Any aid granted by a Member State or through State resources (1) in any form whatsoever which distorts or threatens to distort competition (5) by favouring (3) certain (4) undertakings (2) or the production of certain (4) goods shall, in so far as it affects trade between Member States (5), be incompatible with the internal market.

Article 107, TFEU

- Form of aid – any form
- Geographical application – EU
- 5 criteria

The 5 Criteria – (1) State Resources

1. Transfer of State resources – why in Interreg?

- National authorities (States) have discretion as how to the use resources
- In particular the selection of beneficiaries by the Monitoring (Steering) Committee
- Resources are not awarded directly by the Union (in comparison to some programmes managed by EC)

Source: Commission Notice on the notion of State aid, point 60, p. 14

The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING

- **Is the partner involved in economic activities through the project?**
- The following is completely irrelevant:
 - Legal form (large undertaking, SME, association, etc.)
 - Public/private
 - non-profit concept
- Automatic checks usually give bad results – case by case analysis needed



The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING – examples

A public university in the context of an Interreg project finances a biogas plant and sells the produced gas to the grid.

Public regional office rents office space in a business incubator charging fees.

Regional public company managing a port finances riverbed deepening works.

Municipal office finances renovation of a local market where groceries are sold. Sellers pay a monthly fee to the municipal office to get a licence.



The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING

- Does the partner develop/offer goods/services for which a market exists (even hypothetically)?
- Could the activity be carried out by a private entity in order to make profit? (even if this is not the intention of the partner)
- Does the partner plan to carry out the economic activities on its own (not to select external service provider via public procurement procedure)?
- Does the partner plan to disseminate goods/services achieved within the project on an exclusive and discriminatory basis (through restricted access databases, restricted publications or software)
- Will activities involving construction of infrastructure and this infrastructure be exploited commercially and/or will be not available for public use for free?



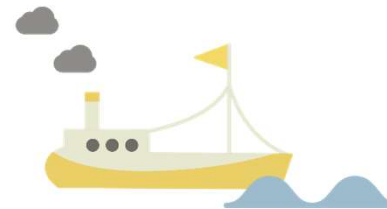
Undertaking and commercial activity – EXAMPLE CASE

Reconstruction of a port

The aim of the project was **reconstruction of the port pier** which was later used to board **passengers and cargo** between **two cities of two Member States**.

The Beneficiary was a municipality. The Managing Authority assessed the project as generating revenues and no State Aid analysis was conducted.

The subvention creates unlawful State Aid since the European Court of Justice in its judgment Leipzig / Halle (T-455/08 a T-443/08) declared that **the economic character of use of the infrastructure determines economic character of its construction**.



The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING

Is there a List of NON-economic activities?

List would vary among MS (in case activity is not liberalised – e.g. train services, water supply, etc.)!

- Activities related to **public safety** (police, air and maritime traffic control, anti-pollution services, etc.)
- Public funding of **infrastructure** (public roads, bridges, canals, cycle paths, nature trails, etc.) that is freely available
- Primary activities of research organisations (R&D)
- Public education within **national education system**
- Other performance of **public duty** (e.g. plans and tools by authorities to help them in their tasks, cooperation to achieve these goals)

Undertaking and commercial activity – EXAMPLE CASE

Church renovation

The project consisted of renovation of a church and nearby church buildings including an old hospital. The Managing Authority approved the project with 70% co-financing rate.



The Beneficiary later created a company that offered accommodation services in the renovated buildings. This fact was not communicated to the Managing Authority. Since the Beneficiary is active in the accommodation services market, it falls within the scope of State Aid.

ECA audit finding: According to applicable legislation (eg. GBER) the project should have been approved with max. 50% co-financing.

The 5 Criteria – (3) Advantage

3. Advantage

Does the measure give an economic advantage (a benefit) which an undertaking would not have obtained under normal market conditions?

Is there no advantage, e.g. it is merely a service at market price (e.g. obtained through public procurement?)



Advantage – EXAMPLE CASE

- Public bodies develop pilots to provide free-of-charge training to SMEs on enhancing innovation in SMEs. The training is for free.
- SMEs can rent office space at about 20% lower fee than the market price.
- Companies participating in the project get a voucher of EUR 20 000 to increase the level of environmental protection

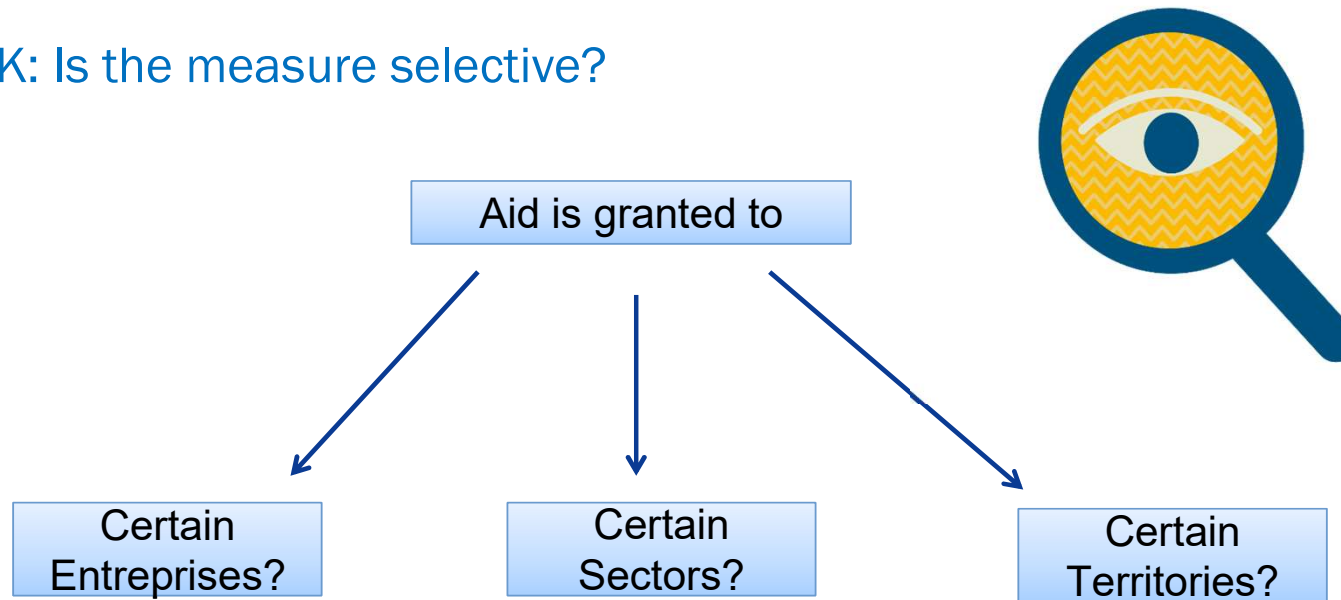
If you conclude there is no advantage, always document the decision and reasoning!



The 5 Criteria – (4) Selectivity

4. Selectivity

ASK: Is the measure selective?



The 5 Criteria – (5) Effect on Competition

5. (Potential) distorting effect on competition and trade within the Union

- Possibility of distortion is sufficient
- if undertaking and selective advantage it is often concluded that this criterion is met
- Careful with **purely local activities!** Lack of effect on trade (e.g. very local museums, local fairs, local ski-lifts)

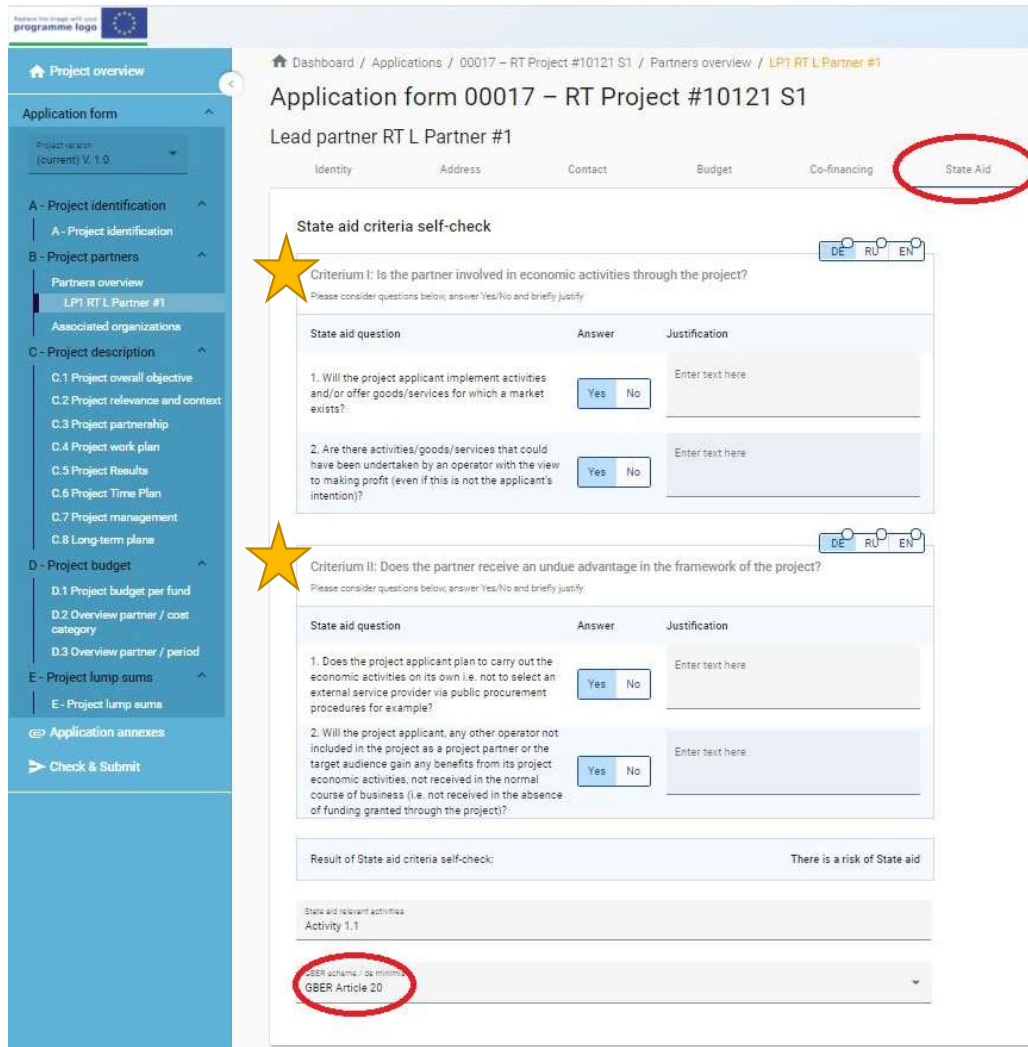
Try to support decision that activity is purely local with **actual data!**



The 5 Criteria - Summary

1. Transfer of State resources: Always YES for Interreg
2. Resources granted to an UNDERTAKING -> Is the partner involved in economic activities through the project?
3. Advantage -> Does the partner receive an undue advantage in the framework of the project?
4. Selectivity: Almost certainly YES in Interreg
5. Potential) distorting effect on competition and trade within the Union: Most often YES.

State aid in Jems



The screenshot shows the 'Application form 00017 - RT Project #10121 S1' for 'Lead partner RT L Partner #1'. The 'State Aid' tab is highlighted with a red circle. The 'State aid criteria self-check' section contains two criteria, each with a table for questions, answers, and justifications. Two yellow stars are placed next to the criteria headers. The 'Result of State aid criteria self-check' is 'There is a risk of State aid'. The 'GBER scheme / de minimis' dropdown is set to 'GBER Article 20' and is circled in red.

Application form 00017 - RT Project #10121 S1
Lead partner RT L Partner #1

Identity Address Contact Budget Co-financing **State Aid**

State aid criteria self-check

Criterion I: Is the partner involved in economic activities through the project?
Please consider questions below; answer Yes/No and briefly justify.

State aid question	Answer	Justification
1. Will the project applicant implement activities and/or offer goods/services for which a market exists?	<input type="button" value="Yes"/> <input type="button" value="No"/>	Enter text here
2. Are there activities/goods/services that could have been undertaken by an operator with the view to making profit (even if this is not the applicant's intention)?	<input type="button" value="Yes"/> <input type="button" value="No"/>	Enter text here

Criterion II: Does the partner receive an undue advantage in the framework of the project?
Please consider questions below; answer Yes/No and briefly justify.

State aid question	Answer	Justification
1. Does the project applicant plan to carry out the economic activities on its own (i.e. not to select an external service provider via public procurement procedures for example)?	<input type="button" value="Yes"/> <input type="button" value="No"/>	Enter text here
2. Will the project applicant, any other operator not included in the project as a project partner or the target audience gain any benefits from its project economic activities, not received in the normal course of business (i.e. not received in the absence of funding granted through the project)?	<input type="button" value="Yes"/> <input type="button" value="No"/>	Enter text here

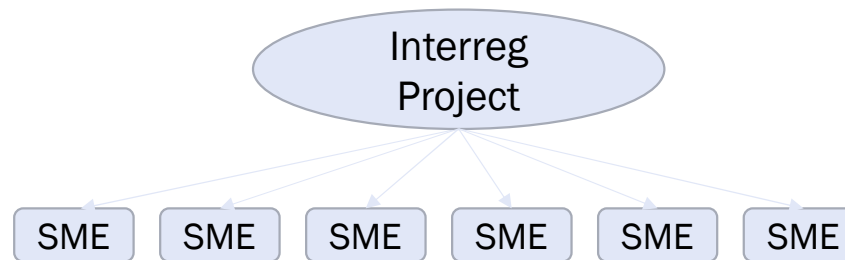
Result of State aid criteria self-check: **There is a risk of State aid**

State aid relevant activities
Activity 1.1

GBER scheme / de minimis
GBER Article 20

Indirect State Aid

- Referred to also as **downstream state aid** or **2nd level State aid**
- In Interreg this is often **trainings or services** (including vouchers) provided to third parties SMEs (Programme – beneficiary– third party). The final beneficiary of State Aid is whoever takes the training course or benefits from the services.



- Often very low value (> EUR 5000), but still 5 criteria are met...

What is GBER and how does it work?

- Regulation which declares certain categories of aid as compatible with the internal market
- Divided into sections (Section 2a - Aid for European Territorial Cooperation)
- Sections into articles which define special conditions (e.g. eligibility rules, max. aid intensity) for block exemption
- First inform the EC (scheme) that you will use it

GBER procedure

Scheme preparation

Scheme registration
in SANI

Approval of projects
and granting the aid

Annual reporting in
SARI and/or in TAM
(if higher than EUR
0,5 million)

GBER scheme (1)

Creating the scheme you need to inform DG Comp about:

- Which institution will be granting
- For what (which articles you will be using)
- Period when the aid will be granted
- How much you plan to grant
- That you will observe the rules
- DG Comp needs to be informed within 20 working days following entry into force the support measure
- Description to be published on your website + GBER Annex II for EC

GBER scheme (2)

- Different approaches (1 scheme for all programmes, every programme its own scheme, scheme prepared only when the call has been finished and the content of the projects known)
- DG Comp assigns a number to each scheme (e.g. SA.42811, SA.42812, SA .42813), relevant for reporting afterwards
- You can search for and find all schemes here:
<https://ec.europa.eu/competition/elojade/isef/index.cfm>

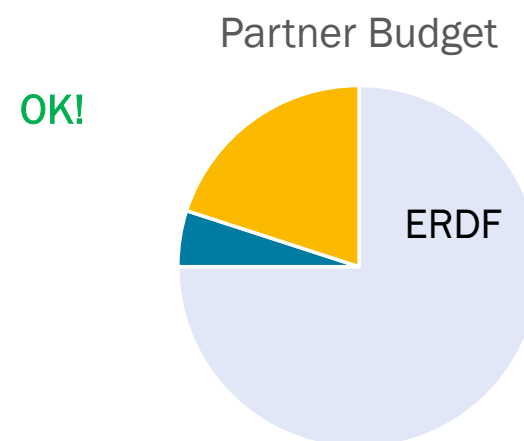
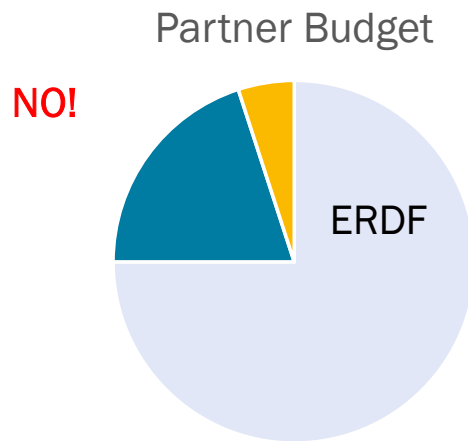
General approach

- The programmes will use GBER, but will keep the *de minimis* (with 1 exception)
- Article 20 and Article 20a preferred by the majority
- Both articles be applied to indirect and direct SA
- Other articles to be used only when 2 million EUR limit in Art. 20 not sufficient or the project meets the requirements of other articles and could have higher max. intensity

Specific GBER Issues

The aid intensity \neq co-financing

EXAMPLE: Max. aid Intensity: 80%
ERDF Co-financing: 75%



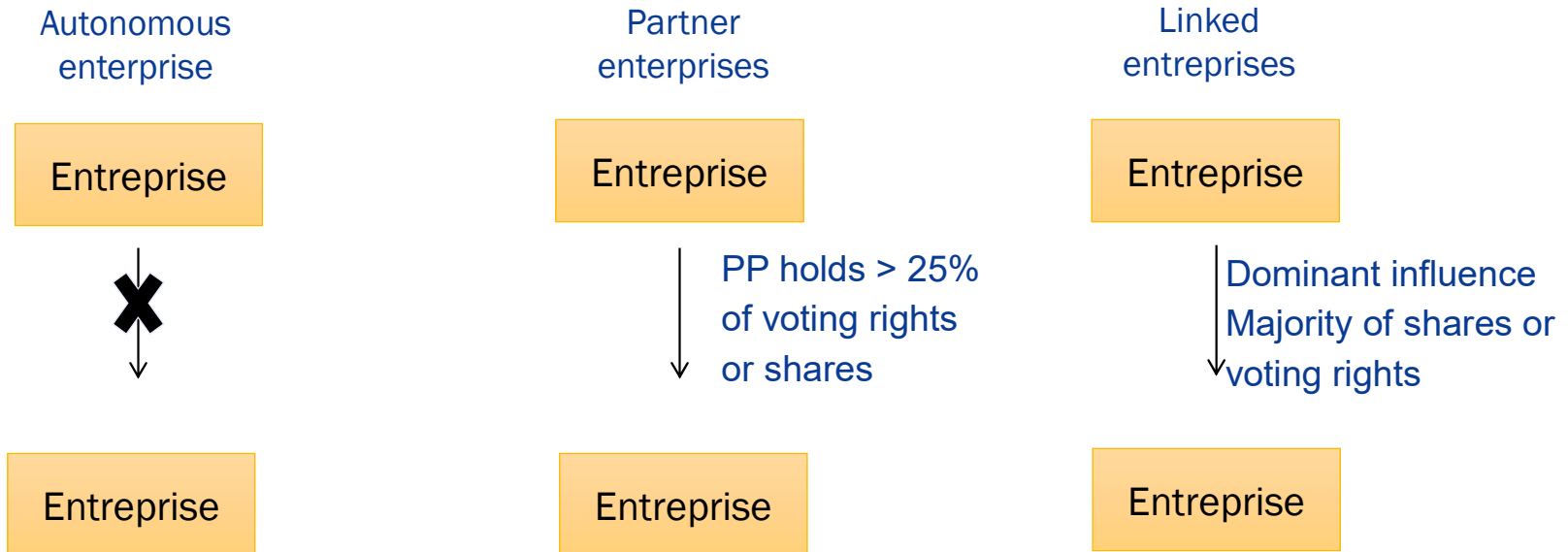
■ ERDF (public) ■ National Fund (public) ■ Own funds (private) ■ ERDF (public) ■ National Fund (public) ■ Own funds (private) ■

Public sources cannot exceed 80%, the rest (20%) must come from private sources

GBER requirements and internal management (1)

- The undertaking in difficulty is ineligible (Definition - GBER Annex I, but prohibition comes from Article 7(1)(d) Regulation on ERDF and CF 2021/1058)
- NACE number may be required for reporting in TAM
- Incentive effect (project activities cannot start before the submission of written application for aid) – does not apply to art. 20 and 20a
- Deggendorf rule (recovery orders) - does not apply to art. 20 and 20a
http://ec.europa.eu/competition/state_aid/studies_reports/recovery_statistics.xlsx
- SME status check required for all articles which make a distinction between SME and large - does not apply to art. 20 and 20a
- Self declaration is not sufficient – EC auditors and AAs prepared a [paper how to check SME status](#)

Autonomous, partner, linked...



Amended GBER Article 20

- Article 20 open for all: large, medium-sized, small enterprises
- Eligibility catalogue in this article = the eligibility in Art 38 - 44 of Interreg Regulation 2021/1059
- SCOs compatible
- The fishery and aquaculture sector and the primary agricultural production sector eligible
- Threshold of aid: EUR 2 million per undertaking, per project as before
(for programmes with 80%, EUR 2 million ERDF + EUR 0,5 million private funds)

GBER Article 20a

- Threshold of aid: up to EUR 20 000 per undertaking per project
- Can be applied to voucher schemes, trainings etc.
- The fishery and aquaculture sector and the primary agricultural production sector eligible
- No need to inform in SANI, no annual reporting needed in SARI
- The detailed records with supporting documentation kept for 10 years – do not apply
- The MA shall ensure that all supporting documents are kept at the appropriate level for a 5-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made (Article 82.1 CPR)

State Aid Documentation

Different provisions compared to other project documentation!

Make sure you can meet this deadline when archiving files.

- Records (documentation) regarding State aid available for **10 fiscal years from the date when aid was granted** (*de minimis*)
- Available for **10 years** from the date on which the ad hoc aid was granted or **the last aid was granted under the scheme** (GBER)
- if requested by the EC, these documents and any supporting documentation must be presented to the EC within 20 working days or longer, but only if it was fixed in the request



Date of granting the Aid

When is the date of granting *de minimis* or aid under the GBER?

1. *... at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime irrespective of the date of payment of the de minimis aid to the undertaking (Art. 3(4) of the de minimis regulation).*
2. *... the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime (Article 2(28) GBER)*

In the context of Interreg programmes this means **the date of signing the subsidy contract** is the date the aid was granted.



Transparency Award Module (TAM)

- TAM is a website maintained by EC where all EU MS register individual aid granted (GBER Annex III) when this aid exceeds EUR 500 000
- <https://webgate.ec.europa.eu/competition/transparency/public/search>
- Interreg 2 Seas example
<https://webgate.ec.europa.eu/competition/transparency/public/aidAward/show/613018>
- Interreg NEW example
<https://webgate.ec.europa.eu/competition/transparency/public/aidAward/show/938296>

Reporting on GBER granted (in SARI)

- Aid granted needs to be reported (via Member State service usually)
- The final data is sent to State Aid Reporting Interactive (SARI)
- SARI is the database of the EC which collects and cumulates the data on all aid granted within GBER

De minimis

- Aid of minimal financial importance
- The amounts of *de minimis* aid granted per Member State to a single undertaking within the last 3 financial years cannot exceed EUR 200.000
- road freight transport sector EUR 100,000

I, the undersigned, representing XXX and involved as project partner in the project YYY declare that:

- the institution I represent **and all other entities belonging to the same company group** as my institution have not received any contribution falling under the **de minimis Regulation during the previous three fiscal years** (this being the current fiscal year and the previous two fiscal years);*
- the institution I represent and all other entities belonging to the same company group as my institution **have received the following contribution(s)** falling under the **de minimis Regulation** during the previous three fiscal years (this being the current fiscal year and the previous two fiscal years):*

De minimis – Cumulative

De minimis counts per Member State!

In Interreg: An undertaking from one country may receive *de minimis* aid from various Member States participating in the Programme.

The Channel Programme

2 MS * EUR 200.000 = EUR 400.000 max.

Germany – Netherlands

2 MS * EUR 200.000 = EUR 400.000 max.

Germany – Belgium – Netherlands

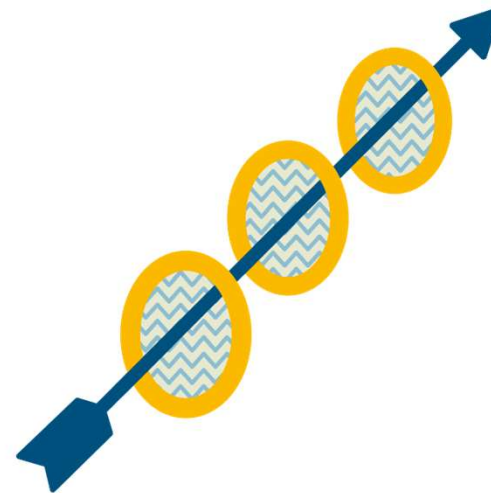
3 MS * EUR 200.000 = EUR 600.000 max.

North Sea Region Programme

5 MS * EUR 200.000 = EUR 1 mio max.

NWE Programme

6 MS * EUR 200.000 = EUR 1,2 mio max.



De minimis – Other Issues

Administrative proceedings:

- self-declaration / check of *de minimis* register
- *de minimis* letter

National registers:

- Cyprus, Czech Republic, Estonia, Greece, Italy, Lithuania, Poland, Portugal, Slovenia, Slovakia (in process)
- Bulgaria and Hungary have an indicative central register, which works together with a system of declarations.

Sector specific rules:

- Fisheries and aquaculture: EUR 30,000
- Agriculture: EUR 15,000
- SGEI: EUR 500,000 for SGEI

State Aid Audits

1. Develop a strategy how to deal with State Aid.
2. Be ready to provide justification why no aid for all non-state aid relevant projects (on the basis of 5 criteria)
3. Be sure sectoral and activities exclusions were respected
4. De-minimis: self-declaration received / thresholds respected / beneficiary informed
5. De-minimis: single undertaking as a whole group
6. GBER: Deggendorf rule (no pending recovery orders), in difficulty, incentive effect (AF before start), eligibility of costs, timely publication in SANI + SARI, specific article provisions (intensity, eligibility, other)

Interact tools

- Report – GBER and Interreg
- Report – Article 20a GBER and Interreg interpretations
- Q&A on State aid revision in preparation

Cooperation works

All materials will be available on:

www.interact-eu.net

