The 2014–2020 Interreg Programme Management Handbook is composed of fact sheets. Each theme is covered by one fact sheet so that the reader can easily and quickly choose the relevant fact sheet.

Fact Sheet; State Aid in ETC

1. What is it? What is the definition of the term / theme of this fact sheet?

State Aid refers to any advantage provided by state resources to undertakings on a selective basis. To be State Aid, a measure needs to have these features:

- there has been an **intervention by the State or through State resources** which can take a variety of forms (e.g., grants, interest and tax relief, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.);
- the intervention gives **the recipient an advantage on a selective basis**; for example, to specific companies or industry sectors, or to companies located in specific regions
- **competition has been or may be distorted**;
- the intervention is likely to **affect trade between Member States**.

Source: European Commission, DG Competition website

Provision of State Aid is generally prohibited in the European Union, but there are some notable exceptions relevant to ETC. In the context of ETC, the most relevant exceptions are:

- ***de minimis***: The *de minimis* regulation[1] exempts small aid amounts. It sets a ceiling below which aid is deemed compatible with the Treaty. The *de minimis* ceiling is EUR 200 000 granted over a period of three years. A specific ceiling of EUR 100 000 applies to road transport.
- **General Block Exemption (GBER):** The GBER Regulation (GBER)[2] specifies 42 permitted categories of State Aid, including - *Regional Aid*, *Aid for research and development and innovation* and *Aid for SMEs' cooperation costs linked to ETC projects*. The latter was specifically designed to facilitate participation of SMEs in ETC projects. The GBER is particularly important to ETC as it permits programmes to provide aid in a transparent way without prior notification to the Commission. Programmes only have to inform the Commission by completing an information sheet. In the case of ETC, the Member State in which the MA is located can take over this information requirement.
- **Services of General Economic Interest (SGEI)[3]:** SGEI are of particular importance to citizens and would not be provided (or would be provided under different conditions) if there was no public intervention. Examples are utilities such as transport networks, water supply and waste water management. SGEI differ from Member State to Member State. In cases of uncertainty, Member States can be consulted.

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[1] (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid

[2] (EU) No 651/201 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

[3] Note: Only SGEI that meet the so called Altmark Crteria are outside the scope of State aid.

2. Why we are discussing it?

Although there has been some debate as to whether or not ETC subsidies constitute State Aid at all, the current understanding is that State Aid rules must be obeyed by all Interreg programmes. The core issue for Interreg programmes in dealing with State Aid rules remains the definition of what State Aid actually is. This is the subject of a large volume of case law on which the European Court remains the sole judge, although the decisional practice of the Commission is an important guide.

Moreover, rules are sometimes interpreted differently in different Member States. Many Interreg programmes are therefore debating how to best deal with State Aid.

3. Reference to the regulations and what is new in the 2014-2020 programming period compared with the 2007-2013 programming period

Legislative framework:

- Commission Regulation 1407/2013: De minimis
- Commission Regulation 651/201: GBER

4. Challenges and frequently-asked questions

What options are available to ETC programmes to deal with State Aid?

What are advantages and disadvantages?

What administrative effort is involved?

5. How they are addressed?

Programmes deal differently with State Aid, and the most common approaches are:

- Some programmes have opted not to finance any activities that could potentially be relevant to the market, in order to avoid any State Aid. However, this comes at a price since avoiding State Aid at any cost can make it difficult for programmes to meet their strategic aims, such as promoting innovation in SMEs.

- Others are applying *de minimis,* and grant up to 200.000 ERDF to an undertaking. One advantage of this approach is that the usual co-financing rates can be applied. One disadvantage is that the *de minimis* threshold is not sufficiently attractive for some undertakings, and programmes can have a hard time attracting the right project partners for certain projects.

- Yet others are (also) applying the GBER and making use of certain aid categories, such as the one for research and innovation. The new GBER provides an exemption for SMEs in ETC which has been specifically designed for ETC and matches ETC eligibility rules and budget lines. One advantage is that the exemption for SMEs in ETC sets an attractive ceiling of up to 2 million EUR public support per SME and project, which can be applied to all SMEs acting in ETC. One disadvantage is that the maximum permissible co-financing rate is only 50%.

6. How does it work in practise?

- Programmes avoiding any market-relevant activities usually undertake an assessment of projects during the application phase, in which they determine whether or not project activities are potentially relevant to the market. When such activities are detected, the project is either entirely rejected or asked to omit these activities.

- Applying *de minimis* also involves a State Aid assessment to determine whether or not project activities are subject to State Aid rules. When such activities are detected, project partners are asked to sign a *de minimis* self-declaration in which they declare that they are permitted to receive *de minimis*. *De minimis* counts per Member State, and in ETC there are many options for choosing the Member State which grants the *de minimis*, as long as the choice can be justified by the programme. Options include the location of the Managing Authority, the Lead Partner or the undertaking. Some Member States[4] have set up a central register of *de minimis aid*, containing complete information on all de minimis aid granted by any authority within that Member State. This information must be provided to the Member States concerned. Documents must be archived for a period of 10 years.

- Applying the GBER requires a decision on which aid categories a programme wants to use (e.g., SME cooperation costs in Interreg, research, etc.), as conditions vary among aid categories. In the case of the ETC SME exemption (Article 20 of the GBER), SMEs applying for funding can be granted up to 2 million EUR public support with a maximum co-financing rate of 50%. Among other issues, a programme needs to ensure that SMEs meets the definition of SME provided in the GBER regulation. Using the GBER requires no approval from the European Commission. The European Commission keeps track of how the GBER is used and requires certain information (e.g., which category of aid is used by the ETC programme? How much is granted?). The information and monitoring requirements entail that the programme submits this information to the State Aid authority of the country in which the ETC Managing authority is located. Documents must be archived for a period of 10 years.

7. Good practice examples

As the various State Aid tools provide very different advantages (and disadvantages), a programme wishing to support activities that fall under State Aid can consider using both *de minimis* and the GBER. For example, all SMEs could be treated under the GBER, and other types of project partners could receive *de minimis* or be considered under other GBGER categories of aid (e.g., *Aid for research and development and innovation*).

8. Reference to other, more-detailed papers

- **GBER Regulation:** COMMISSION REGULATION (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

[4] Currently very few countries have a general register: CY (since 2009), CZ (since 2010), EE (since 2009), EL (since March 2013), LT (since 2005), PL (since 2013), PT (since 2002), SI (since 2002). One MS is in the process of introducing a central register (SK) and others have an indicative central register which works together with a system of declarations (BG and HU).

- **De minimis Regulation:** COMMISSION REGULATION (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid
- INTERACT Publications available on the INTERACT website:
  - State Aid and European Territorial Cooperation **Questions and Answers**
  - **Involvement of SMEs in ETC programmes**, chapter VI (ETC and State Aid)
- **CBC Flash news N° 2 April 2014**, European Commission, DG Regional and Urban Policy