



ANNEX 7.4 – MANAGEMENT OF STATE AID

7.4.1 STATE AID REGULATORY FRAMEWORK

The Regulation (EU) No 897/2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument, defines the managing authority as *“the authority or body appointed by the participating countries as responsible for managing the programme”* (art. 2 letter h) and states that:

- *“Aid granted under the programme shall comply with the applicable Union rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union”* (art. 12, par. 3);
- *“A financial correction by the Commission shall not prejudice the Managing Authority's obligation to pursue recoveries under Articles 74 and 75 nor the obligation by Member States to recover State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and under Article 14 of Council Regulation (EC) No 659/1999”* (art. 31, par. 5);
- *“Any project including an infrastructure component shall repay the Union contribution if, within five years of the project closure or within the period of time set out in state aid rules, where applicable, it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.”* (art. 39, par. 3).

7.4.2 MANAGEMENT OF STATE AID IN THE ENI CBC MED PROGRAMME

The ENI CBC MED Programme 2014-2020 shall deal with State Aid relevant activities by applying the *de minimis* rule set by the Regulation (EU) No 1407/2013 of 18 December 2013¹ which foresees:

- the amount of contribution granted to concerned undertaking bodies (private and public) of EU Member States shall not exceed EUR 200 000 (cash grant equivalent) over any period of three fiscal years;

¹ 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

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1407&from=EN>

- the ceiling applies per EU Member State; as for the ENI CBC MED Programme, the aid will be considered as granted by Italy (location of the MA) and will not cumulate with State Aid under de minimis regime granted by other EU Member States.
- the ceiling will apply to the total of all kinds of public assistance considered to be de minimis aid, irrespective of the form it takes or the objective pursued. The general rule is that an aid will not distort the internal market of the European Union if it is less than EUR 200 000 from a Member State over any period of three fiscal years.
- For the primary production in Agriculture the threshold, as per Regulation (EU) No. 316/2019, is up to EUR 20 000, while for Aquaculture or Fisheries, as per Regulation (EU) No 717/2014, the threshold is up to EUR 30 000, per undertaking over a period of three fiscal years.

The three-fiscal year period is considered as a rolling period, i.e., any aid granted in the current fiscal year and the previous 2 years is counted. If an organisation were to receive EUR 200 000 in one given year, it would then be excluded from receiving any other aid for the next two years. To determine which fiscal year a grant of aid falls into, the date on which the aid is awarded is used, irrespective of the date of payment.

Recipients of state aid in the framework of the ENI CBC Med Programme may be project Lead Beneficiaries, project partners or subgrantees established in EU countries, Tunisia, Jordan and Egypt.

In case of Lead Beneficiaries or partners receiving a state aid, the date of the award is considered to be the date of the official act approving the results of the selection procedure and the list of projects selected for funding by the Joint Monitoring Committee and/or the date of the approval of the major change to the Grant Contract introducing the major amendment.

A first assessment of state aid relevant activities is conducted during the selection process by external state aid experts contracted by the MA.

The respect of State Aid rules shall be ensured during the entire project implementation both by the project partners and the Managing Authority. To this end, further evaluations are conducted by the JTS/MA in order to verify the respect of the conditions declared during the negotiation phase, and to avoid any potential risk stemming from the actual realization of the activities.

Moreover, any major modification of the project partnership and activities will be assessed in order to identify the introduction of potential risk of State Aid; changes of budget will be monitored as well.

The Managing Authority will recover the grant, if it has evidence that funds are used to finance State Aid relevant activities (e.g., training addressed to a group of employees of a

specific company) beyond the thresholds of *de minimis*. Corrective measures could be adopted as well (open trainings, open source software).

In case of sub-grantees receiving a state aid, the date of the award is considered to be the date on which the subgrant has been awarded.

Project Lead Beneficiaries/Partners awarding subgrants need to obtain a state aid declaration from each subgrantee.

Proper records of the support given to each subgrantee must be kept in order to demonstrate the compliance with the *de minimis* threshold. To this end, the value of in-kind support (such as training courses and use of equipment), shall be calculated and recorded as well.

7.4.3 SUPPORTING DOCUMENTS

Documents to be filled in and transmitted during the implementation of the project include:

- Self-assessment state aid check grid (in case of partner change), filled in by the new partner (if established in EU countries, Jordan Tunisia, Egypt) and transmitted to the JTS along with the request for major amendment.
- State aid *de minimis* declarations to be filled in by new partner(s) (in case state aid relevant activities are detected) and transmitted to the JTS along with the request for major amendment.
- State aid *de minimis* declarations to be filled and by all subgrantees and transmitted to the JTS along with the supporting documents for reporting.
- State aid check list on the call for subgrants and List of subgrantees, to be filled in by the LBs/Partners awarding subgrants and transmitted to the JTS along with the supporting documents for reporting.;
- List of state aid recipients for events to be filled in by the LBs/Partners organizing training, events and other activities for third parties that can be considered undertaking.

7.4.4 KEY TERMS

It is very important to be aware of the following key terms:

Economic activity, meaning any activity consisting of offering goods or services on a given market, performed for economic motive, i.e. earning profit or acquiring wealth. All other activities, conducted without any charge and not for commercial exploitation, are defined as “non-economic”. Typical examples of non-economic activities in projects funded by the

Programme are: project management, small infrastructures for renewable energy in public buildings not market oriented, etc. (condition of not distorting the market).

An example could be the installation of solar panels by a local authority on the roof of one of its buildings with the intention of selling electricity. Although the main functions of the local authority are not economic, this part of its activities is considered an economic activity.

On the contrary, in the context of tourism, public financing for the preservation or restoration of tangible cultural heritage that can be visited free of charge without any limitation, and that is not used for any commercial activity, does not benefit any undertaking within the meaning of EU competition law.

Undertaking is an entity carrying out an economic activity, regardless of its legal status or its main purpose. 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. As an example, a public university that offers in the market the results of its research activities could be considered as undertaking.

As per article 2 of Regulation No 1407/2014:

“Single undertaking’ includes, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:

- (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
- (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- (d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

Enterprises having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.”

Selectivity: to be considered selective, a state measure should favour “certain undertakings or the production of certain goods”. Hence, not all measures which favour economic operators fall under the notion of aid, but only those which grant an advantage

in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. Instead, a measure that has general application (such as a tax cut to all businesses) does not constitute State Aid, as it is not selective. The award of grant funding is always selective as a specific group of Project Partners will receive the funding.

Competitive advantage is defined as any economic benefit that an undertaking would not gain under normal market conditions. Therefore, purchase of goods and services at market rates will not be considered State Aid as it is presumed that a company operating at normal market rates will not be gaining a benefit. Payment for goods and services made through an open procurement process will not be considered a state aid, as carrying out business on the open market is not considered to grant an advantage.