

ENI CBC MEDITERRANEAN

SEA BASIN PROGRAMME

2014-2020

Note on State Aid Assessment

First call for Standard Projects

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Introduction and overview

According to art. 12.3 of the EU Regulation no. 897/2014 of the European Union and of the Council, aid granted under the ENI CBC MED Programme 2014-2020 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.

The ENI CBC MED Programme 2014-2020 has a strong focus on business and SMEs development as well as on innovation, technological transfer and links between industry and research economic growth in both traditional sectors (agro-food, tourism, textile/clothing, etc.) and non-traditional sectors (innovative solutions for urban development, eco-housing, blue technologies, sustainable water-related and other clean technologies, renewable energies, creative industries, etc.). The financial support to these activities, as well as the involvement, as project partners but also as stakeholders and final beneficiaries, of MSMEs and other private and public economic actors operating in the market will be one of the key aspects of the projects funded under ENI CBC MED Programme.

Due to these main Programme features, it will be most likely to deal with projects having activities State Aid relevant. This Note aims at setting out the general principles of State Aid under the ENI CBC MED Programme 2014-2020, identifying possible measures and procedures in order to minimize or annulling potential market distortions of project actions.

It is very important that from the beginning all applicants and Partners should carry out a “self-assessment” on their project, even if they do not initially consider it likely that State Aid rules are relevant to their project activities, as the application of State Aid rules may be wider than they expect. If a project is awarded funding that is later deemed to be not compliant with State Aid rules, the concerned Member State or the Managing Authority could be obliged to recover the funding pursuant article 31(5) of EU Regulation no. 897/2014. Although the Programme provides advice to projects and assesses the risk of State Aid when the project is considered for selection (See State Aid Assessment section), the responsibility for ensuring that the project is State Aid compliant remains with each lead beneficiary and each partner during the whole duration of the project. A previous assessment will have to be carried out by Lead Beneficiaries and partners before the submission to the MA of further modifications of project activities or a different budget allocation between project partners, in order to verify if they fulfil or not State Aid requirements (e.g. compliance with the *de minimis* thresholds). Major or minor changes of the projects will be also assessed by the MA / JTS before their approval.

State aid in Member States

In accordance to Article 107(1) of TFEU, 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 insofar as it affects trade between Member States.*”

The transfer of State resources (financial or otherwise, “in any form”) is the first condition in order to identify a State Aid existence. “State Resource” can consist of money (such as grants) or other benefits, (such as rent free buildings, free training courses, or specific tax exemptions etc.) directly granted by the state and all its controlled public and private bodies in charge of distributing public funds.

All members of a project partnership are automatically in receipt of state resources, as they are in receipt of Programme Funds, therefore this criterion is automatically fulfilled for the ENI CBC MED Programme. However, at the same time it is important to identify the potential end recipients of the project activities.

In that respect, State aid is usually understood as an aid to be given to any entity which undertakes an economic activity that is seen as distorting or threatening the fair competition in the internal market. Subsidies granted to individuals or general measures open to all enterprises do not constitute State aid.

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.
- **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.

- **Affecting trade between Member States:** this condition is verified if there is a market for goods and it is likely that a company in another Member State could provide them; in such case, providing an advantage to an economic operator in that market, will affect trade between Member States. However, measures which are purely local can be considered as not affecting trade between member states.

A measure granted by the state is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. An effect on trade between Member States cannot be hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.

If there is an activity with only local impact on trade, such as support to handicraft or local tourism, it could not be considered to have the potential to affect trade between Member States.

- **Third parties:** potential recipient of State aid, meaning all those undertakings (i.e. entities engaged in economic activities) not included in the project partnership (e.g. target groups, etc.) which could receive an advantage through the project's activities that they would not have received under normal market conditions. For example:
 - Consultancy or other subsidised services provided to SMEs;
 - Training courses provided to SMEs;
 - Access to research facilities for companies.
- **Infrastructure projects:** Public investment for the construction or upgrade of infrastructure is free of State aid, if it does not directly compete with other infrastructure of the same kind. Such projects can, therefore, be implemented by the Member State without needing to be checked under EU State aid rules. This is typically the case for water supply and waste water networks. In contrast, infrastructure in fields such as energy or broadband could be in competition with similar infrastructure. In these sectors, if one project is financed with public resources while competing projects have to operate without public support, this can give the subsidised project a selective economic advantage over its rivals. There is no aid if an operator or user pays a market price to use the infrastructure, for instance as a result of a competitive, transparent, non-discriminatory and unconditional tender. Funding provided to local infrastructures or local services which are unlikely to attract customers from other Member States, and which only has a marginal effect on cross-border investment, does not fall under EU State aid rules¹.

Even though project partners do not perform State aid relevant activities, such activities could mean an advantage for third parties outside the partnership. This type of State aid is called “indirect State aid” thus the granting entity should adopt the measure, in compliance with the State Aid Programme rules.

State aid in Partner Countries

Only those actors of ENI CBC Mediterranean Programme from EU Member States are bound to comply with the EU rules on State aid in the meaning of the Treaty, as defined in the previous section. However,

¹ 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): http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html

bilateral agreements between the MPCs and the EU may include provisions on the competition and trade between the European Union and the concerned countries.

Therefore, in the event national legislation has been developed in the concerned partner country or EU State aid criteria have to be taken into account, the Managing Authority will adopt the same approach as the one for Member States in order to assess if project activities should be considered or not State aid relevant, according to the EU State Aid rules.

Specific factsheets on State aid will be developed for the concerned Mediterranean Partner Countries.

Egypt, Tunisia and Jordan include state aid provisions in the Euro-Mediterranean Association agreements signed with the European Union. In accordance with these agreements, the criteria in the Treaty are applied *mutatis mutandis* in regard to the trade between the country and the European Member States.

This condition affects any project activity carried out by partners located both in MS and in each one of the above-mentioned countries.²

De Minimis Regulation

In case the State Aid assessment carried out, firstly by the applicant and the project partners, and then by the Programme bodies, identifies a risk to distort or threaten competition, possible measures and conditions should be identified in order to mitigate or cancel the State Aid relevance of the identified project activities, such as the modification of some activities (for example, by introducing corrections to avoid the selective advantage) or the reduction of the budget to accomplish with the thresholds set in the *de minimis* Regulation.

The ENI CBC MED Programme 2014-2020 shall deal with State Aid relevant activities by applying the *de minimis* rule set by the regulation (EC) 1407/2013 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;
- 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 Road Freight Transport sector the *de minimis* threshold is set to a maximum of EUR 100 000. For the primary production in Agriculture the threshold is up to EUR 15 000, while for Aquaculture or Fisheries the threshold is up to EUR 30 000, per undertaking over a period of three fiscal years.

² This paragraph is based on the fact sheets delivered by TESIM on State aid in Partner Countries. Their content will be reviewed and adapted according to the outcomes of specific TESIM briefings with the National Authorities.

The three-fiscal year period is considered a rolling period, 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 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, even if the money is not paid out until sometime later.

In the context of a project financed under the ENI CBC MED Programme, the date of the award is considered to be the date of the JMA official act approving the results of the selection procedure and the list of projects selected for funding by the Joint Monitoring Committee.

The *de minimis* threshold counts per “single undertaking”. In case the project partner/third party is part of a group with several affiliated entities, the entire group is considered as one single undertaking and the *de minimis* threshold applies to the entire group. This could be for example the case of a company owning (or controlling) one or more companies, or the different departments of one university. The notion of single undertaking is clearly mentioned in Article 2(2) of Regulation (EU) No 1407/2013.

The full *de minimis* regulation, Regulation (EU) 1407/2013, can be found by following the link below. It is noted that the present document is only a guide and Project Partners should consult it together with the relevant regulation before applying the *de minimis* regime.

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1430990257490&uri=CELEX:32013R1407>).

In order to apply the *de minimis* rule within the projects, the partners with State Aid relevant activities whose proposals have been preselected for funding, must sign a *de minimis* declaration and submit it **before the approval of the final results of the selection procedure**. This declaration will allow the JMA to assess if the organisation is in compliance with the thresholds, therefore information concerning previous aid received under the *de minimis* rule is to be provided with this declaration.

In the same declaration, the applicant / partner should also declare if its organisation is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal (Deggendorf principle) and incompatible with the internal market and if it is an undertaking in difficulty.³,

Failure to fill in this form correctly could result in funds being recovered if it is found that an organisation has exceeded the threshold for *de minimis* aid.

If a project wishes to use the *de minimis* exemption during the project implementation in order to provide support to “end users” of the project, then it will need to obtain a similar declaration from each end user. They will also need to calculate the value of the support given in order to record the amount given to each beneficiary, to allow it to be demonstrated that the amount given does not exceed the *de minimis* threshold.

Example: A project sets up a consultancy service for SMEs in the Programme area. This is a selective advantage provided to undertakings, but the value of the consultancy will be less than EUR 200,000 € per business supported. Therefore, the project will ask for a signed *de minimis* declaration from each SME

³ As defined in point 24 (in conjunction with point 20) of the “Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty” (Communication from the Commission No. 2014/C 249/01 of 31.07.2014).

receiving the service. In order to determine the amount of the aid, it will compare market rates for similar services in the area.

The same rules shall apply, *mutatis mutandis*, for the activities affecting the trade between Egypt, Tunisia and Jordan with the EU Member States, which also fulfil the other four criteria for State aid, as previously described.

State Aid Assessment

Applicants will be required to provide information on State aid relevant activities by using a specific self assessment grid to be attached to the Application Form.

The aim of this self-assessment checklist is, first, to establish whether State aid is present, and second, assist on what steps need to be taken to ensure compliance (i.e., whether the State aid granted by the Programme, the *de minimis* Regulation can be applied).

In the first step, evidence that State aid issues have been considered will be required. Therefore, this checklist raises a number of points that should be assessed to conclude whether the planned project activities are State aid relevant or not. These are, in particular:

- whether the partner organisation is engaged in an economic activity in the project (support for non-economic activities does not involve State aid);
- those project activities which are identified as being “economic” have to be assessed whether there is a selective advantage. If there is no selective advantage or benefit to the applicant and partners, State aid rules do not apply.

In the second step, during the eligibility check, this checklist will be assessed by the Programme bodies (MA and JTS), with the support of external experts, together with the Application Form in order to identify potential State aid relevant activities.

The final decision for identifying State aid relevant activities and the suitable State aid instrument remains with the Managing Authority and must be justified with appropriate reasoning.

If a project contains a risk of State aid, it can be either modified, or the partners should ensure that the aid given complies with the thresholds set in the *de minimis* Regulation. Project Partners should be aware that the maximum amount of money that can be claimed by each of them may be lower than they have originally planned for in developing their project.

A *de minimis* declaration will be also required to the State Aid relevant organisations (see above).

The respect of State Aid rules shall be ensured **during the entire project implementation** both by the project partners and the Managing Authority; modification of the project activities will be assessed in order to identify the introduction of potential risk of State Aid; changes of budget will be monitored as well, to avoid that the fixed threshold will exceed during the project implementation.

The Managing Authority could decide the recovery of the grant, if it has evidence that funds are used to finance activities State Aid relevant (for example, training addressed to a group of employees of specific company) beyond the thresholds of *de minimis*. Corrective measures could be adopted as well (open trainings, open source software).

Overall, four levels of assessment have been established as follows:

1st LEVEL	Information from the applicants: Self Assessment	<ul style="list-style-type: none"> Each applicant and partner⁴ shall perform a self assessment on the nature of activities carried out in the framework of the project. A self assessment check list will have to be submitted with the Application Form The result of the self assessment is <ul style="list-style-type: none"> (a) State aid low risk, or (b) State aid high risk: the organization considered itself as performing economic activity(ies) in the framework of the project; therefore it should be subject to State Aid regulations.
2nd LEVEL	Assessment by the MA/JTS	<ul style="list-style-type: none"> During the eligibility check, carried out on the pre-selected proposals, the MA/JTS (with the support of an external expert) will further evaluate the State Aid risk taking into consideration the information provided by the partners. A check with National Authorities may also be carried out, in order to get more information on the status of each concerned partner. The MA/JTS: <ul style="list-style-type: none"> (a) Will confirm the results “low risk” of the self assessment from the applicant and / or partners. The proposal can be included in the list of pre-selected project without any further actions. or (b) Will not confirm the results “low risk” or will confirm the results “high risk” as assessed by applicant and / or partners. A revision of the Application Form and Budget could be considered in order to reduce the risk before being approved and pre-selected.
3rd LEVEL	Decision by the MA and notification to the JMC	<p>In case option b above is selected then:</p> <ul style="list-style-type: none"> (a) The MA confirms the existence of a high state aid risk and the Application form is NOT in line with the applicable measure to reduce the risk (<i>de minimis</i> rule): the project is not eligible. (e.g excluding a core activity or a partner, and/or reducing the budget, the project would not fulfill all the award criteria or would not reach its main objectives and/or results). or <p>The MA confirms the existence of a high state aid risk and the project can be revised: a notification letter will be sent to the Applicant on the MA decision, asking to submit a new proposal, which modifies the composition of the partnership, or excludes some activities or reduce the budget of the partner concerned by state aid in order to comply with the <i>de minimis</i> thresholds. In this case, the MA will assess the new proposal and will take a final decision on the compliance with State Aid rules. The Join Monitoring Committee will be informed on the MA final decision about the pre-selected projects having demonstrated a high State Aid risk and the measures adopted to reduce it.</p>

⁴ A specific self assessment check grid is requested for Applicants and partners from Egypt, Jordan and Tunisia.

**4th
LEVEL**

**Submission State Aid
Declaration**

A State Aid Declaration to check the compliance with the *de minimis* rule has to be provided by applicants and partners concerned with de minimis in the framework of the project.

State Aid Self-assessment Check grid

SECTION 1 – Is your organization engaged in an economic activity?		
1.1 In the context of the project, do you undertake any activities - consisting of offering goods or services - for which a market exists?		
<input type="checkbox"/> Yes, in the context of the project my organisation implements activities for which a market exists. <input type="checkbox"/> No, in the context of the project, my organisation does not undertake activities for which a market exists. NO STATE AID RISK.		
If YES , please describe such project activities and quantify their planned budget.		
Work package	Description of activities	Estimated budget
WP.....		
WP		
WP		
WP		

1.2 In the context of the project, do you implement activities - consisting of offering goods or services - that could be carried out or provided by another operator with the view to making profit?		
<input type="checkbox"/> Yes, in the project there are activities that could be carried out by another operator in order to make profit. <input type="checkbox"/> No, in the project there are no activities that could be carried out by another operator in order to make profit. NO STATE AID RISK.		
Work package	Description of activities	Estimated budget
WP.....		
WP		
WP		
WP		

SECTION 2 – Competitive advantage from the project ⁵

⁵ Please note that you will be asked to decide on potential advantage for each economic activity that you have identified in section 1 of this check list.

2.1 Do you gain any benefits from the Programme funding for the implementation of the above-listed economic activity(ies), which you would not have received in the normal course of business, i.e. in the absence of Programme funding? Are you relieved from costs that you would normally have to meet?

- ☐ Yes, I gain benefits and/or am relieved from costs through programme support to the economic activity/ies.
- ☐ No, I neither gain benefits nor am relieved from costs through programme support to the economic activity/ies. NO STATE AID RISK.

Work package	Description of economic advantage in terms of saved costs
WP.....	
WP	
WP	
WP	

SECTION 3 – Infrastructures

3.1 Do you plan to carry out activities involving construction of infrastructure? If yes, will the infrastructure be exploited commercially? Will the infrastructure not be available for public use for free ?

- ☐ Yes, and the infrastructure will be exploited commercially.
- ☐ Yes, and the infrastructure will not be available for free public use.
- ☐ No. None of the infrastructure will be commercially exploited, neither during project implementation nor after project closure.
- ☐ No infrastructure will be constructed in the framework of the project.

Work package	Description of activities	Estimated budget
WP.....		
WP		
WP		
WP		

SECTION 4 – Benefits for third parties/organisations outside the project partnership

4.1 Does any economic operator (e.g. SME) that is outside the project partnership (i.e. not listed as beneficiary in the application form) receive an advantage through your activities in the project?

- ☐ Yes, certain project activities provide an advantage for economic operators outside our project partnership.
- ☐ No, there are no project activities that provide an advantage for economic operators outside our project partnership.

Work package	Description of activities, and recipients of aid	Estimated budget
WP.....		
WP		
WP		
WP		

SECTION 5 – Effect on the trade (only for organisations established in Egypt, Tunisia and Jordan)	
5.1 Are goods or services affecting the trade between EU and your country?	
<input type="checkbox"/> Yes, goods or services, produced under the project, affect the trade between EU and (specify country).	
<input type="checkbox"/> No, goods or services, produced under the project, do not affect the trade between EU and (specify country).	
Description of goods or services	Estimated budget

STATE AID DECLARATION

(given in accordance with art. 47 of Italian D.P.R. 445/2000 and aware of the penal sanctions foreseen by articles 75 and 76 in case of false acts or declarations)

Title and acronym of the project: [insert title, acronym and reference number]

I the undersigned insert the name and last name, as

- ☐ Legal representative; or
- ☐ Delegate of the Legal representative

of the following organisation: [insert the name of partner institution in English],

Declare that (please select only one option):

- ☐ My organisation is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- ☐ My organisation is an undertaking in difficulty.
- ☐ None of the above statements apply to my organisation

For my organisation the fiscal year covers the following period of every year:

From: To:

dd / mm dd / mm

My organisation and all other entities belonging to the same group as my organisation (according to the notion of “single undertaking” as defined in Article 2(2) of Regulation (EU) No 1407/2013 on *de minimis* aid) benefited of the following public aid under the *de minimis* regime in the current and in the two previous fiscal years, granted by Italy (to be filled in only if applicable):

Organisation granting the <i>de minimis</i> aid	Beneficiary of the <i>de minimis</i> aid	Amount of the granted aid (EUR)	Date of granting the aid (dd.mm.yyyy)
		0,00	
		0,00	
		0,00	
		0,00	
		0,00	
Total		0,00	

All the relevant documents under the *de minimis* scheme will be recorded and maintained for 10 years from the date on which the aid was granted, and they will be produced under any request by the public authorities or the EC.

I acknowledge that untruthful/false declarations, in addition to the administrative sanctions and the request of refunding unduly received contribution charged with the interests, can also be prosecuted under the Italian penal code.

Place and date

Legal representative/delegate⁶

Official stamp (if available)



⁶ If the Signatory is different from the Legal representative an official authorization has to be attached.