

Fact Sheet 16: State Aid

Version	Valid from	Valid to	Main changes
Version 1	16.11.2021	20.09.2022	This version is applicable to projects approved as part of either Call 1 or Call 2 only.
Version 2	20.09.2022	25.10.2023	This version is applicable to all applicants and projects approved from Call three and onwards. This version of the fact sheet includes a change of paradigm from a risk-based to an activity-based approach when assessing the risk of state aid.
Version 3	25.10.2023		Updates to the GBER scheme based on the amended regulation. The maximum amount of aid under article 20 and 20a has been updated. The eligibility of VAT for partners under GBER has also been elaborated in this version.

CORE MESSAGE

Project partners can participate in the programme in a way that gives them a competitive advantage, and the financing from the programme will, in this situation, be considered State aid. For example, an SME might be supported to develop a new product. In addition, an undertaking that is not a partner in the project but gets a benefit from the project may still fall under the State aid rules when they receive indirect aid. Strict rules regarding the nature of participation, the amounts that can be claimed, and the documentation that has to be provided apply to undertakings that will (potentially) receive State aid. This fact sheet explains in detail what the requirements are.

Background

State aid is aid granted to an undertaking which may distort or threaten to distort competition in the internal market. For example, granting aid to support an SME developing a smartphone application in the Netherlands could distort competition for a similar SME in Germany, as it would give the project partner an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations. When assessing whether State aid is present, it is very important to be aware of the definitions of a number of key terms¹:

- **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. As such, private and public bodies and NGOs can be undertakings.

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).

- **Economic activity:** An economic activity is defined as any activity involving the offer of goods or services on a given market. When a project partner is a public partner and exercises their public power or acts in their capacity as a public authority, this is not considered an economic activity. In contrast, when a public entity undertakes an activity which can be separated from the exercise of public powers, this is an economic activity and the entity acts as an undertaking in relation to that activity.
- **Competitive advantage:** Competitive advantage is defined as any economic benefit the undertaking would not normally gain under normal market conditions; that is to say, in the absence of State aid.

Assessing State aid

An (ex-ante) assessment of whether a partner's involvement in a project is State aid relevant or not is based on the activities the partner will carry out as part of the project. This is called an activity-based assessment.

Whether an organisation is private or public is irrelevant to State aid considerations. Public organisations may be recipients of State aid, while the participation of a private organisation in a project may not be State aid relevant. The determination of whether an organisation must go under a State aid scheme comes down to the project-related activities they plan to undertake.

Applicants (i.e. the project partners) are asked to carry out a simple self-assessment of the potential State aid relevance of their activities via a self-assessment form in the application (see Annex 1). In this assessment, two criteria are checked:

1. Is the project partner engaged in an economic activity in the framework of the project?
2. Will the project partner gain an advantage from the project that it would not have otherwise?

On the basis of these two criteria, it can be determined whether an applicant's (i.e. the project partner) activities in a project are State aid relevant. If both criteria are met, the risk of State aid is assessed to be high and mitigating measures have to be adopted. If the answer to only one of them is 'yes,' the risk is considered low, and no mitigation measures are necessary.

Applicants (i.e. the project partners) whose activities in the project are assessed to be State aid relevant can mitigate this by making use of GBER Article 20, or, in exceptional cases, de minimis. The section below explains how potential State aid to project partners will be handled in practice. In some cases, however, undertakings that are not part of the project partnership receive a competitive advantage as a result of project activities. More information about this is included under the sub-heading 'Managing indirect State aid to other organisations.'

Managing State aid to project partners – General Block Exemption Regulation (GBER)

If the activities a project partner will carry out in the project are deemed State aid relevant, the project partner is required to apply under the programme's GBER scheme. The GBER is essentially a long list of different types of aid (exemptions) that serve a useful public function and can therefore be accepted, provided that a number of conditions are met. Only one exemption is in use in the North Sea Programme. This is set out in Article 20 of the GBER: Aid for cooperation costs incurred by undertakings participating in European Territorial Cooperation projects. In accordance with the GBER, the ceiling for aid is €2.2 million per undertaking per project².

As is true for all project partners, partners participating under the GBER scheme will receive a grant covering 60% of their total costs (50% for Norwegian partners). In accordance with the GBER, the aid intensity for partners that apply under the GBER scheme shall not exceed 80%.³ In practice, this means that at least 20% of the partner's total eligible budget in the project under the GBER scheme needs to come from their own funds. Project partners under the GBER scheme are required to submit a self-declaration with the small-scale or full application confirming that the aid intensity does not exceed 80% (see below).

Value added tax (VAT) charged on eligible costs or expenses that is refundable under the applicable national tax law shall, however, not be taken into account when calculating aid intensity and eligible costs⁴. This means that if a partner under the GBER scheme can recover VAT from a national or other source, this cost cannot be claimed to the programme, and this rule takes precedence when observing the VAT rules presented in Fact Sheet 1.

The programme cannot provide assistance to any undertaking in difficulty (as defined in Commission Regulation (EU) 651/2014, Article 2(18) declaring certain categories of aid compatible with the internal market).

In exceptional cases, the GBER may not be sufficient for organizations that would like to participate in an Interreg North Sea project. However, these organisations may be able to participate in the project under another State aid scheme called de minimis. For partners from Belgium, Denmark, France, the Netherlands, Germany and Sweden, de minimis aid may be granted in an aggregated manner.

² Commission Regulation (EU) 2021/1237, Article 1(3). The amended GBER regulation has increased the maximum support to 2.2 million EUR. This is an increase of 200.000 EUR when compared to the previous version of the regulation. .

³ According to Commission Regulation (EU) 2021/1237, Article 20(3), "the aid intensity shall not exceed the maximum co-financing rate provided for in [...] Regulation (EU) 2021/1059, [...]". The Interreg Regulation 2021/1059, Article 13(1) sets the co-financing rate at the level of each Interreg programme at a maximum of 80%. Since the programme co-financing rate does not exceed 60%, there is no violation of the aid intensity rule.

⁴ This is part of the amended GBER regulation that went into force on 23 June 2023. This is an update to article 7(1) of regulation 651/2014.

For these partners, the maximum amount of aid available may be up to 6 x €200.000⁵ per undertaking over a period of three fiscal years. Please contact the joint secretariat if this is relevant for your project.

For Norwegian organisations that need to participate in the programme under a State aid scheme, the default option is GBER. Pre-approval by Norwegian authorities is needed for Norwegian organisations that would like to make use of the de minimis option.

Practical information

When a partner applies under the GBER scheme, this should be indicated in the full application or small-scale project application. The self-declaration form is signed electronically via the Online Monitoring System (OMS) and submitted to the programme together with the full application or small-scale project. In addition, project partners under the GBER scheme need to report the amount of GBER aid received from the programme in every full finance report (see Fact Sheet 20 – Reporting). All information pertaining to the GBER scheme and the project partners involved is forwarded to the European Commission (or the EFTA Surveillance Authority in Norway) and is made available to the public. All partners receiving aid under the GBER must retain all documents for at least 10 years after the date of the final aid payment to the project⁶.

State aid status plausibility check and verification

When carrying out the technical assessment of an application, the joint secretariat conducts a plausibility check of the State aid status selected by the applicants (i.e. the project partners), assessing whether the selected status is in line with the information provided in section B.1 of the application form (question: What is the role (contribution and main activities) of your organisation in the project?). Clear discrepancies between the self-assessment and the applicant's answer to this question will be forwarded to the responsible national authorities for further verification.

Managing indirect State aid to other organisations

In some cases, third party organisations participate in activities carried out by a project but not as project partners. This is known as receiving indirect aid. An undertaking receiving indirect aid is defined as an aid recipient that is not officially listed as a partner in the project but which, through the activities carried out by the project, receives an advantage over other companies (for example, by taking part in a training course for SME's offered through the project). In other words, the benefits conferred by the project are passed on to undertakings that are not part of the project. For this reason, recipients of indirect aid may have to be placed under a State aid scheme.

Two types of support may be provided to these undertakings, and each has a set of requirements:

⁵ With the new de minimis regulation 2023/2831 coming into force on 1 January 2024 this amount has been increased to 300.000 EUR. This rule is applicable to all projects approved after the date of the regulation coming into force.

⁶ Commission Regulation (EU) 651/2014, Article 9(4)

- General support such as workshops and training that are open to **all relevant undertakings** and target general knowledge and capacity development for these undertakings is not considered indirect State aid and may be offered free of charge.
- Services for **specific undertakings** that involve the provision of services with a clear value count as indirect State aid. Examples include consultancy, research and development, coverage of travel costs, etc. In this case the aid must not exceed 22.000 € (per undertaking during the project lifetime) and the rules set out in the paragraph below should be applied⁷.

The programme manages the risk of indirect State aid using Article 20a of the GBER.

Using Art. 20a, the service provided to the undertaking that is not a formal partner in the project may be funded in full without requiring the undertaking to provide any contribution. In addition, Art. 20a allows aid to be given to large enterprises. However, the total amount of aid granted under Art. 20a GBER to a non-partner undertaking per project shall not exceed 22.000 €.

The project partner granting the indirect aid monitors the value of services offered and provides the relevant information when reporting to the programme. This includes the name of the enterprise receiving indirect aid (i.e. the service provided) as well as the amount of aid received. The partner must also ensure that the aid granted does not exceed the limit of 22.000 € per undertaking per year. The amount of aid granted is to be based on a precise calculation using a convincing methodology.

For all State aid documents, whether related to indirect or direct recipients, all evidence must be kept on file for 10 years after 31 December in the year in which the final payment is made to the project.

⁷ Commission Regulation (EU) 2021/1237

Annex 1 – State aid self-assessment tool

I	Is the partner involved in economic activities through the project? <i>Please consider the questions below.</i>		
	<i>Assessment question</i>	<i>Answer</i>	<i>Justification</i>
	1. Will the project partner implement activities and/or offer goods/services for which a market exists?	Yes/No	Explain: - Text
	2. Are there activities/goods/services that could have been undertaken by a market actor with the view to making a profit (even if this is not the project partner's intention)?	Yes/No	Explain: - Text
II	Does the project partner or any market operator receive an economic advantage in the context of this project? <i>Please consider the questions below.</i>		
	<i>Assessment question</i>	<i>Answer</i>	<i>Justification</i>
	1. Does the project partner plan to carry out the economic activities on its own, i.e. rather than selecting an external service provider via public procurement procedures to carry out the activities, for example?	Yes/No	Explain - Text
	2. Will the project partner itself or any other market actor not included in the project partnership or target audience gain any benefits from the project's economic activities? (The benefit(s) would not have been obtained without the project funding coming from the North Sea Programme.)	Yes/No	Explain - Text

Objective assessment

Direct aid

If both questions in part I (I.1 and I.2) and both questions in part II (II.1 and II.2) can be answered with a "Yes", then the risk of state aid exists and a state aid scheme for the partner has to be applied.

Indirect aid

If the answer to question II.2 is 'yes,' then a risk of indirect state aid exists and GBER article 20.a. should be applied when the relevant activities are being implemented. Please read more about managing indirect aid in the fact sheet on state aid.