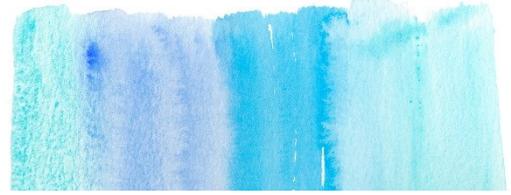


**Interreg**  
*Mediterranean*



## PROGRAMME MANUAL

## STATE AID

Programme cofinancé par le Fonds Européen  
de Développement Régional (FEDER)

Programme cofinanced by the European Regional  
Development Fund (ERDF)

## What is State Aid?

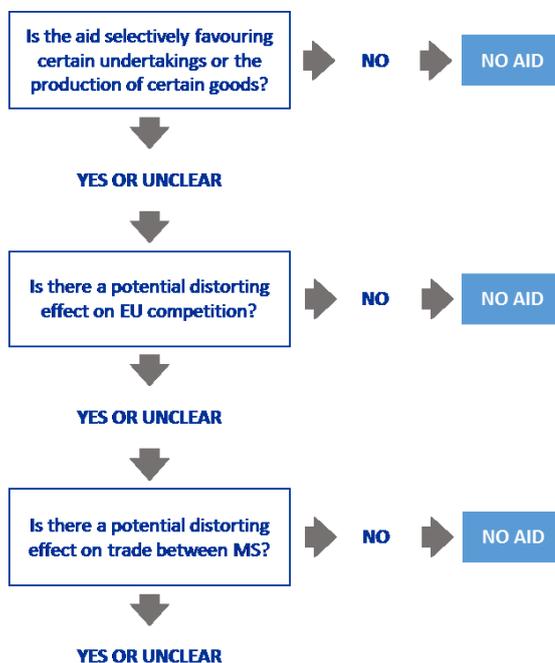
According to Article 107 (ex. Article 87) of the Treaty on the Functioning of the European Union, State aid is defined as any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

All entities engaged in an economic activity fall under the State aid rules, regardless of their legal status and regardless of whether they aim to make a profit. This means that both public and private partners can be affected by state aid. Public institutions may perform economic activities (e.g. a regional council can implement a support scheme for SMEs) and such activities are State aid relevant. On the other hand, the participation of an SME in a project does not necessarily mean that its activities will be State aid relevant

Based on this definition, it can be concluded that there is State aid only if ALL the following 5 points (cumulative criteria) are fulfilled:

- 1) The measure must confer a benefit or advantage on the recipient which it would not otherwise have received (which is always the case for any Interreg programme);
- 2) It must be granted by a Member State or through State resources (which is always the case for any Interreg project);
- 3) It must selectively favour certain undertakings or production of certain goods<sup>1</sup>;
- 4) It must distort or threaten to distort competition;
- 5) It must affect trade between Member States.

### STATE-AID SELF-ASSESSMENT QUESTIONS



## Who is concerned by State Aid?

<sup>1</sup> With the meaning of the Article 87(1) EC in comparison with other undertakings in a comparable legal and factual situation in the light of the objective pursued by the measure concerned.

Any project partner offering goods and services in the market in the context of the proposed project is considered an undertaking, regardless of its legal status ownership, the way it is financed and whether its aim is to make profit or not.

Activities carried out within the framework of statutory tasks normally performed by public authorities do not fall within the concept of an undertaking, in view of their non-business purposes and procedures, but in some cases, however, local public or administrative bodies may be considered to be similar to undertakings. The concept of “undertaking” is very wide and may include SMEs, large companies, public bodies, NGOs, associations, universities, etc.

Even if an entity provides the goods or services free of charge or is financed entirely by the state, it can be subject to the State aid rules. State aid rules apply thus to both public and private partners. In the evaluation of the existence of a potential State aid issue, the nature of the beneficiary is therefore not relevant since, as said, even a not-profit organisation can be engaged in economic activities.

As a consequence, the main element to take into account is the nature of the activities that the partner institution and the project intend to implement through the public funding. From that perspective, in the Partner declaration, a question concerning whether the partner carries out or not an economic activity in the project (undertaking offering goods and services on the market regardless of its legal status and whether its aim is to make profit or not).

Economic activity definition:

If after the project’s evaluation it appears that a project partner did not fill in its partner declaration correctly, this document should be updated before signature of the project Subsidy Contract.

## How to deal with State Aid?

The co-financing of activities falling under state aid rules is prohibited in the European Union, but some exemptions relevant for project partners participating in Interreg projects has been put in place by the regulation:

In the case of the Interreg MED Programme, State aid relevant activities can be co-financed as project’s activities financed only if they are in strict compliance with Article 20 of the General Block Exemption Regulation (GBER)<sup>2</sup> or in compliance with the de minimis Regulation<sup>3</sup>. Only the exemption modality here mentioned (GBER or De minimis), can be considered under the MED Programme.

The decision on whether to apply the GBER or the de minimis Regulation is to be made by the applicants themselves, taking into account the information included below. Both instruments specify certain limits on the maximum amount of aid and/or on the co-financing rate to be applied. Project partners should consider carefully the implications before opting for one of the two instruments.

**If you’re an SME participating in the INTERREG Med Programme: Article 20 of the General Block Exemption Regulation (GBER)**

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<sup>2</sup> Commission Regulation (EU) No 651/2014).

<sup>3</sup> 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.

As part of an administrative simplification, the European Commission adopted the General Block Exemption Regulation (GBER) and allows any Member State not to notify a number of State aid measures to the Commission. It consolidates and harmonizes the rules previously existing and enlarges the categories of State aid covered by the exemption. Compared to the previous GBER, a specific and new Article 20 has been adopted which is directly opened to Interreg Programmes and projects.

Article 20 of the GBER applies only to SMEs<sup>4</sup> fulfilling the conditions established regarding thresholds, transparency, incentive effect, aid intensity, eligible costs, accumulation, publication and information.

In case these conditions are fulfilled, the following costs can be deemed eligible<sup>5</sup>:

- costs for organisational cooperation including cost for staff and offices to the extent that it is linked to the cooperation project;
- costs of advisory and support services linked to cooperation and delivered by consultants and service providers;
- travel expenses, costs of equipment and investment expenditure directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.

The services referred above shall not be a continuous or periodic activity nor relate to the undertakings usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

The aid amount under Article 20 of GBER shall not exceed 50%<sup>6</sup> (all types of public sources included) of the eligible costs. In addition, aid to SMEs for cooperation costs incurred by participating in Interreg projects cannot exceed EUR 2 million **per undertaking and per project**.

**During the application phase the applying structure submit its partner declaration stating that it applies for ERDF under the GBER. In case of project selection a SMEs status declaration<sup>7</sup> must be submitted to the JS before signature of the Subsidy Contract.**

<sup>4</sup> "SME" stands for small and medium-sized enterprises as defined in EU law: Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise

The main factors determining whether a company is an SME are the number of employees and either turnover or balance sheet total.

- Medium-sized: Employees < 250; Turnover ≤ € 50 m; Balance sheet total ≤ € 43 m.
- Small: Employees < 50; Turnover ≤ € 10 m; Balance sheet total: ≤ € 10 m.
- Micro: Employees < 10; Turnover ≤ € 2 m; Balance sheet total ≤ € 2 m.

These ceilings apply to the figures for individual firms only. A firm which is part of larger grouping may need to include employee/turnover/balance sheet data from that grouping too. For the details of how this works, please refer to: [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index\\_en.htm](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index_en.htm)

<sup>5</sup> In order to adapt those cost categories to the budget lines established by the Interreg MED Programme, kindly use the following correspondences:

- BL 1: Staff costs: cost for staff
- BL 2: Office and administrative expenditure: cost for staff and offices
- BL 3: Travel and accommodation: travel expenses
- BL 4: External expertise and services costs: costs of advisory and support services linked to cooperation and delivered by consultants and service provider
- BL 5: Equipment expenditure: costs of equipment and investment expenditure directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project

<sup>6</sup> Co-financing rate of 50% for the SME partner.

<sup>7</sup> according to the definition of SME of the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise

### **If your institution corresponds to other type of undertaking than SMEs : De minimis rule**

In other cases for which a potential State aid issue was identified, partners that are not SMEs may decide to apply the de minimis rule.

To benefit from the de minimis rule, the maximum co-financing is limited to a certain amount and the following criteria must be obeyed:

- The ceiling for the aid covered by the de minimis rule is EUR 200 000 (cash grant equivalent) over any three tax year period.
- **The ceiling applies per Member State.** Unlike as in the past, in the case of the Interreg MED Programme the aid will be considered as granted by France (location of the MA) and will not cumulate with State aid under de minimis regime granted by another Member State of the Interreg MED Programme.
- The ceiling will apply to the total of all public assistance considered to be de minimis aid.
- The ceiling applies to aid of all kinds, irrespective of the form it takes or the objective pursued.
- The regulation only applies to “transparent” forms of aid, which means aid for which it is possible to determine in advance the gross grant equivalent without needing to undertake a risk assessment.

During the application phase and additionally to their Partner declaration, structures applying the de minimis rule must sign a de minimis self declaration indicating any contribution received during the previous three fiscal years falling under the de minimis Regulation, to be submitted along with the Application Form. The maximum ERDF grant rate will be calculated on the basis of this declaration.

In case of project’s selection, aforesaid document must be updated before signature of the Subsidy Contract.

### **Comparative chart**

The comparative chart included here below aims to give information regarding the differences between the two possible State aid schemes to be used by concerned partners in the framework of the Interreg MED Programme.

## COMPARATIVE CHART FOR STATE AID

	GBER	<i>De minimis</i> rule
<b>Maximum public contribution (ERDF grant)</b>	Up to <b>EUR 2 million</b> per SME and per project. If the SME is participating in a second different project, this operator will be able to receive EUR 2M + EUR 2M.	Up to <b>EUR 200 000</b> over a period of 3 fiscal years, this being the fiscal year of the date of the MED grant (date of the signature of the subsidy contract) and the previous two fiscal years. An undertaking (and all other entities belonging to the same company group) can receive the <i>de minimis</i> aid several times provided that it is a different Member State granting the <i>de minimis</i> aid. Within the Interreg MED Programme, the <i>de minimis</i> is considered as granted by the Member State where the Managing Authority is located (France).
<b>Co-financing rate</b>	<b>Up to 50%</b>	<b>Up to 85%</b>
<b>Undertakings concerned</b>	Only SMEs (for Interreg)	Undertakings in all sectors
<b>Application phase</b>	The undertaking shall state that it applies for ERDF under the General Block Exemption Regulation in the Partner Declaration to be submitted with the Application Form	The undertaking shall state that it applies for ERDF under the <i>de minimis</i> Regulation in the Partner Declaration and shall submit a <i>de minimis</i> declaration with the Application Form, indicating any contribution received during the previous three fiscal years falling under the <i>de minimis</i> Regulation
<b>Eligibility and evaluation phase</b>	Plausibility check undertaken by the MA/JS and Consultation of the relevant Member State (e.g. undertakings in difficulty should be excluded; Member States confirmation that the relevant partners have social security expenses and taxes up to date proving the solvency of the partner)	Plausibility check undertaken by the MA/JS and Consultation of the relevant Member State (e.g. undertakings in difficulty should be excluded; Member States confirmation that the relevant partners have social security expenses and taxes up to date proving the solvency of the partner)
<b>Documents to be provided after the approval and before the signature of the Subsidy Contract</b>	SMEs shall provide a SME status declaration, according to the definition of SME of the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprise. Once the entity has proven its SME status, no further controls to be carried out about the nature of its activity In case it is not a SME, the project will only be approved under the condition that this partner is excluded, and replaced by a similar solvent undertaking under the definition of SME	Update of the <i>de minimis</i> declaration, only if the included amounts have changed since the submission of the proposal <sup>8</sup> and eventual modification of the Application form.
<b>Suspensory clause included in the</b>	The undertaking will be excluded and amounts unduly paid will be recovered in case of false	The undertaking will be excluded and amounts unduly paid will be recovered in case of false

<sup>8</sup> The *de minimis* threshold shall take effect from the date of the MED grant (date of the signature of the subsidy contract). Therefore, the *de minimis* amount granted by the Interreg MED Programme shall include amounts changes from the date of the project submission to the date of the signature of the subsidy contract.

	GBER	<i>De minimis</i> rule
<b>subsidy contract (Art. 20)</b>	statement proven after the approval of the project (e.g. during the complementary tests to be carried out during the follow-up of the project; ERDF expenditures reimbursement stop from the date the undertaking does not constitute an SME anymore)	statement proven after the approval of the project (e.g. during the complementary tests to be carried out during the follow-up of the project; <i>de minimis</i> amounts were not declared before the signature of the subsidy contract, consequent reduction of ERDF <i>a pro rata</i> )
<b>Eligible costs</b>	<p>Only the following costs are eligible:</p> <ul style="list-style-type: none"> <li>- costs for organisational cooperation including cost for staff and offices to the extent that it is linked to the cooperation project;</li> <li>- costs of advisory and support services linked to cooperation and delivered by outside consultants and service providers;</li> <li>- travel expenses, costs of equipment and investment expenditure directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.</li> </ul> <p>The services referred above shall not be a continuous or periodic activity nor relate to the undertakings usual operating costs, such as routine tax consultancy services, regular legal services or advertising.</p>	All costs that are eligible under the MED Programme
<b>Complementary tests to be carried out during the follow-up of the project</b>	Interreg MED JS will carry out complementary tests during the management verifications.	Interreg MED JS will carry out complementary tests during the management verifications in order to ensure that the <i>de minimis</i> threshold is not exceeded and to verify the scope of the Regulation.

#### **Solutions to mitigate the State Aid relevancy risk**

- Respect of Community and National public procurement rules for all activities co-financed on the framework of an Interreg Med project (-even if you are a public authority or if specific rules allow your structure not to use public procurement rules)
- Wide dissemination of project outputs, results and deliverables to avoid selective advantage,
- Open source softwares,
- Open trainings.

#### **OTHER RELEVANT INFORMATION**

During the implementation of the project, the Lead partner ensures that all the partners respect the above measures in order to avoid falling under the concept of State aid relevancy. In the same way, First Level Controllers will verify if community rules on State aid have been respected by the related partner.

The project partners need to be vigilant because infringement of State aid rules can lead to major **financial errors and irregularities**.

The INTERACT programme has also summarised a list of questions and answers on this topic:

<http://admin.interact->

[eu.net/downloads/9263/Questions\\_Answers\\_ETC\\_and\\_State\\_Aid\\_April\\_2015.pdf](http://admin.interact-eu.net/downloads/9263/Questions_Answers_ETC_and_State_Aid_April_2015.pdf)

Applicants may also consult the relevant national authorities to obtain more specific information on rules and limitations concerning State aid.