



FactSheet

No. 4.3

State aid

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The European Commission (EC) encourages Member States and regions to take action for strengthening the competitiveness of the regional economy. Assistance from the State to individual companies/market operators is an important instrument to reach this objective. However, such measures may distort competition if they discriminate between companies/market operators that receive assistance and others that do not. As such, they could present a threat to the operation of the internal market. Therefore, the EU has set up a legal framework which defines the limits under which public assistance can be granted to companies/market operators. The basic rules on State aid are set out in art. 107-109 of the Treaty on the Functioning of the European Union (TFEU). These rules have been complemented over the years by secondary legislation and decisions of the European Court of Justice.

State aid rules are also relevant for European structural and investment funds (ESI) programmes since the ESI-funds regulate that co-financed projects shall comply with applicable Union and national law (see article 6 of Regulation (EU) 1303/2013).

This factsheet provides basic information on the legal framework on State aid as well as on the measures taken by the Alpine Space programme to ensure that these provisions are obeyed throughout the various phases of generation, selection and implementation of projects.

1. What is State aid?

Public aid may be granted to different beneficiaries and take different forms. Public aid becomes relevant for State aid rules only if all of the criteria listed below are satisfied. If one single criterion is not fulfilled, the assistance granted is not subject to the EU rules on State aid.

Transfer of State resources

State resources must be considered in the wide sense of any public resources. This includes EU, national, regional or local public funds. It also includes those cases where public resources are granted by a private or public intermediate body on behalf of a public authority (for instance a private bank that is given the responsibility of managing a State funded aid scheme). State aid may take different forms: it is not limited to grants but it also includes interest rate rebates, loan guarantees, accelerated depreciation allowances, capital injections, etc.



Funds granted in the framework of the Alpine Space programme (ERDF co-financing and national contributions) are also to be regarded as State resources. Therefore, this criterion is to be considered as met for any Alpine Space project.

Economic advantage

This criterion is fulfilled when the aid gives an economic advantage to an undertaking that would not have arisen in the normal course of business. Such an economic advantage can be assumed if the undertaking does not apply any market-driven consideration (e.g. it promises to create jobs in return for State funds received or it buys land from the State for a price lower than the market price). No such advantage is to be assumed if a private investor would have acted in the same way as the State when granting an advantage (e.g. a region participates in a company under the same conditions as a private actor would do). No such advantage is given if it is passed on to someone else; for Alpine Space projects this means that State aid relevance might not only be given on the level of the project participants but could also be given at the level of the project's target group (indirect State aid): e.g. a project partner offers trainings for free to companies in its region and therefore the advantage is passed on to the latter.

The term "**undertaking**" is to be interpreted in accordance with EU law. Thus, the definition set up by the European Court of Justice is decisive: it interprets the term "undertaking" in a wide sense as any entity which exercises an activity of an economic nature and which offers goods and services on the market, regardless the legal form and the way of financing of this entity. Also 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 and bodies governed by public law¹ as far as they carry out an economic activity on a market.

The presence of an economic advantage and whether a legal person acts as an "undertaking" in an Alpine Space project will be carefully assessed by the programme bodies.

Selectivity

State aid is selective and thus affects the balance between certain companies/market operators and their

¹ A definition of bodies governed by public law is provided in art. 2 of the Directive 2014/24/EU on public procurement. See also the factsheet on 'Who can participate'.



competitors. “Selectivity” is what differentiates State aid from the so called “general measures”, namely measures which apply without distinction to all enterprises, in all economic sectors, in a Member State (such as most nation-wide fiscal measures). The selectivity criterion is also satisfied if the aid applies to only part of the territory of a Member State (this is the case for all regional and sectorial aid schemes). As part of measures focusing on a specific transnational area (the Alpine Space) or specific economic sectors, this criterion might be met by Alpine Space projects.

Effect on competition and trade

This criterion is fulfilled if an aid has a potential effect on competition and trade between EU Member States: it is thus sufficient that the beneficiary is involved in an economic activity and that it operates in a market in which there is trade between Member States. Thus, this criterion might be met by Alpine Space projects.

2. Alpine Space projects and State aid rules

Due to the nature of the activities carried out, projects typically implemented in the framework of a European Territorial Cooperation programme are rarely State aid relevant. Should State aid relevance be given, the Alpine Space programme might ask the project participants to exclude certain activities from the project proposal or to take other measures in order to remove State aid relevance.

Only in exceptional cases (i.e. a project proposal best serves the programme’s objectives if certain activities are implemented although being State aid relevant), the ERDF co-financing given by the programme to the relevant project participant(s) will be granted under the **de minimis aid**, as set out in Commission Regulation (EU) 1407/2013. According to this Regulation the total amount of *de minimis* aid granted per Member State to a single undertaking cannot exceed EUR 200,000 (cash grant equivalent) over any period of three fiscal years (lower aid is allowed for the road transport sector).

By ‘**single undertaking**’ the Regulation means 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) through one or more other enterprises shall also be considered to be a single undertaking.

It is the overall responsibility of the managing authority (MA) to safeguard that Alpine Space projects comply with the applicable State aid regulations and that the above mentioned basic principles of the programme are observed. Since specific knowledge of the concrete market situation or project participant in the relevant Member State is necessary to judge if a project complies with State aid rules or not, the MA is supported by the relevant programme bodies and authorities in these Member States (e.g. joint secretariat (JS), national co-ordinators, first level control coordination bodies, first level control bodies (FLCB), Alpine Space contact points (ACP)).

The programme has taken measures to ensure the observance of State aid rules in each single phase of the project life-cycle. They are summarised in the paragraphs below.

Project generation

When generating a project idea, project applicants are invited to get in contact with the programme bodies, namely the JS and the ACP to receive assistance. These bodies can provide first information on State aid matters and, where necessary, might assist project applicants in getting in touch with experts in this field in their country in case of questions.

Project development and application

In this phase, the project applicant and the envisaged project activities will be more concretely identified. Project participants shall be aware that it will be their responsibility to pre-assess if their project activities fall under the scope of State aid regulations. Also at this stage, they should seek assistance from the



programme bodies (such as JS and ACP) to spot possible incompatibilities of project activities with State aid rules and to get guidance on possible measures to ensure that the project is implemented in line with State aid law. In several Member State, experts on State aid are working in the respective public authorities. It is recommended that project participants get in touch with these experts to receive assistance. They can also contract experts such as lawyers to clarify State aid questions - such costs are eligible for co-financing as long as the eligibility rules on programme and national level are obeyed.

Project applicants shall bear in mind that sometimes State aid relevance can be removed by adapting the activities of the project.

Project evaluation and selection

The observance of State aid rules will be carefully checked in the course of assessment of project proposals, at both stages of submission of the expression of interest (EoI) and the application form (AF). The MA/JS will assess the projects with regard to State aid and may also involve experts in case of doubts. When approving a project for co-financing, the programme committee (PC) may decide to ask the project participants to exclude or change certain activities to ensure that the ERDF-subsidy granted to the project is in line with State aid rules. The PC may also decide to grant State aid within the *de minimis* rule. In this case and before the ERDF-subsidy is granted, the beneficiary will be requested to provide an honour declaration stating whether the limits foreseen by the Regulation have been exceeded (see template provided by the programme).

Project implementation, financial control

It is the responsibility of the FLCB to verify if the project is implemented in line with applicable State aid rules and according to the indications of the programme committee. In case the FLCB comes to the conclusion that these rules have been violated, the relevant costs are not eligible for co-financing. In addition, a project may be audited by the programme bodies or responsible authorities at the EU and national level. During these audits the observance of State aid rules will be checked as well. In case of any detected violation of these rules the project will have to repay any ERDF-funds already received for the related activities / participants.



Reference documents

- Art. 107-109 of the Treaty on the Functioning of the European Union (TFEU)
- Regulation (EU) 1303/2013 on common provisions on ESI funds
- Website of the European Commission, DG Competition:
http://ec.europa.eu/competition/state_aid/overview/index_en.html
- Regulation (EU) 1407/2013 on *de minimis* aid

Annexes and related factsheets

- Factsheet on Project generation
- Factsheet on Who can participate
- Factsheet on What can be co-financed
- Factsheet Financial control system
- Template of *De minimis* declaration