

Factsheet: State Aid

Interreg IPA CBC

Greece – Republic of North Macedonia 2014-2020

IPA CBC Greece – Republic of North Macedonia
is co-financed by European Union and National Funds of participating countries

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State aid

The notion of State aid

Public support granted by the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme must comply with State aid rules applicable at the point of time when the public support is granted. According to Article 107 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 favoring certain undertakings or the production of certain goods”**, therefore affecting trade between Member States.

In practical terms, State aid applies when **all five criteria** listed below are met:

1. The recipient of the aid is an **“undertaking”**, which is carrying out an economic activity in the context of the project (see definitions below).
2. The aid **comes from the State**, which is always the case for any Interreg programme.
3. The aid gives **an economic advantage** (a benefit), which an undertaking would not have obtained under normal market conditions.
4. The aid is **selectively** favoring certain undertakings or the production of certain goods.
5. The aid **distorts** or threatens to distort competition and trade within the European Union.

An **undertaking** is to be regarded as any entity engaged in an economic activity, regardless of its legal status (it can be a public body, a charity, an NGO, an association or university, as well as a private firm) and regardless of whether it aims to make a profit or not. The classification as an undertaking is specific to an activity and it is not linked the status of an entity such as public or private. The only decisive criterion is whether or not the entity carries out an economic activity in the context of the Interreg project.

An **economic activity** is broadly defined as offering goods or services on a given market and therefore, due to this, a comprehensive list of economic (and non-economic) activities does not exist. It is to be kept in mind that State aid applies only if an LP or PP carries out activities in the project that can reasonably be assumed to be of economic nature. If the project partner carries out non-economic activities in the project, there is no State aid even if this organization normally (i.e. outside the Interreg project) carries out activities of an economic nature. The contrary (i.e. economic activities are performed in the project by an organization that normally does not carry out economic activities) can also occur, thus resulting in State aid relevance.

EXAMPLE A public university participating as LP in an Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 project carries out economic activities (e.g. contracted research for SMEs) and non-economic activities (e.g. knowledge development and cooperation with other partners) **in the context of the project**. This university is therefore to be regarded as an undertaking in the context of the project.

The public contribution granted to the part of the project referring to the economic activity belongs to the State aid discipline. Contrary to this, public contributions granted to non-economic activities (knowledge development and cooperation) falls outside the scope of State aid. However, economic and non-economic project activities must be clearly separated in the application form.

Further general information on state aid can be found on the DG Competition website of the European Commission (http://ec.europa.eu/competition/state_aid/overview/index_en.html), where also a comprehensive guideline on the notion of State aid is available¹. Also relevant national and/or regional authorities may be consulted to obtain more specific information on rules and limitations concerning State aid.

Last, a guidance document on State aid in the framework of European Territorial Cooperation Programmes has been issued by the Interact Programme².

State aid in the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme

State aid assessment

The Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme addresses State aid during the project lifecycle. A key step of the Programme approach towards State aid is already the assessment stage, i.e. when project proposals are assessed in response to calls for project proposals. Submitted application forms undergo a specific 'State aid assessment' focusing on the five criteria listed above, with particular attention to the assessment of the status as "undertaking" of LPs and/or PPs (criterion 1 above) and of the existence of an economic advantage for the undertaking (criterion 3 above).

The results of this assessment may lead to conditions for approval set by the MC for those projects that are relevant to State aid. Conditions for approval are drafted with the aim of ensuring compliance of the approved project with State aid rules, resulting in any of the following consequences:

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

² Available for download on www.interact-eu.net.

- Reduction of the community contribution to beneficiaries acting as undertakings in the framework of the project, in respect of de minimis thresholds (see below);
- Inclusion of provision(s) in the subsidy contract aimed at eliminating the State aid cause (e.g. wide dissemination, also to competitors, of a project output);
- Inclusion of provision(s) in the subsidy contract addressing indirect aid granted to project final beneficiaries.

During the implementation of the project, national controllers may then verify that contractual conditions on State aid are fulfilled by the concerned LP and/or PPs.

Additional contractual conditions on State aid may be given to projects in case of modification of their activities, budget and/or composition of the partnerships occurring during the project lifetime.

De minimis aid

Public support given to an undertaking in the framework of the Interreg IPA CBC Greece - Republic of North Macedonia Programme 2014-2020 is **granted under the de minimis rule**³ by the Member State. This implies that undertakings can receive grants from the programme **only if they have not received by public aid under the de minimis rule totalling more than EUR 200.000 within three fiscal years from the date of granting the aid.**⁴ This ceiling is reduced to EUR 100.000 in the road transport sector. Agriculture, aquiculture and fisheries, as well as aid to export-related activities and aid contingent upon the use of domestic over imported good, cannot be granted under the de minimis rule within the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme.

The amount of de minimis aid granted to an undertaking within an Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 project is ultimately linked to the respect of the de minimis threshold at the moment of granting the aid. This might lead to a reduction of the public contribution granted to the undertaking.

ATTENTION

The de minimis threshold counts per “single undertaking”. In case a project partner is part of a group, the entire group is considered as one single undertaking and the de minimis threshold applies to the entire group.⁵ This could be for example the case of a company owning (or controlling) one or more companies, or the different departments of one university.

³ As provided for in Regulation (EU) No 1407/2013 on de *minimis* aid.

⁴ Date of signature of the subsidy contract.

⁵ The European Court of Justice has ruled that all entities which are controlled (on a legal or on a de facto basis) by the same entity should be considered as a single undertaking [Case C-382/99 Netherlands v Commission [2002] ECR I-5163].

Article 2(2) of Regulation (EU) No 1407/2013 on de minimis aid precisely defines the principle of single undertaking.

Information concerning previous aid received under the de minimis rule is provided to the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme through a self-declaration, signed by the legal representative of the undertaking participating in the project, indicating any de minimis grant received within three fiscal years from the date of granting the aid (date of signature of the subsidy contract, as mentioned above). This self-declaration is to be provided, in case the project proposal is selected for funding, prior to signing the subsidy contract.

When granting the de minimis aid, the undertaking will be duly notified in writing by the programme authorities about the prospective amount of the aid and of its de minimis character.

Indirect aid

Any undertaking receiving an advantage from an approved project (usually in the form of services, trainings, consultancy, etc.) that it would not have received under normal market conditions can be the recipient of State aid. This applies to undertakings participating as LPs or PPs as well as – potentially - to third parties receiving benefits from the project.

On the basis of the State aid assessment performed in the selection process, any project proposal involving indirect State aid will have specific conditions addressing this issue in the subsidy contract. This may include the following obligations:

- The concerned PP (or LP if applicable) has to collect self-declarations from the final recipients of the indirect aid prior to granting the aid in order to verify the respect of de minimis thresholds.
- The concerned PP (or LP) has to notify in writing the final recipients of the indirect aid on the prospective amount granted under the de minimis rule as well as to fulfil any other obligation as provided for in Regulation (EU) No 1407/2013 on de minimis aid (e.g. to inform the central register for de minimis, if existing, maintaining records regarding individual de minimis aid, etc.).

The amount of indirect aid granted to the final beneficiaries is to be determined on the basis of market prices for benefits (services, trainings, consultancy, etc.) comparable to those given through the project. Only in case that for such benefits no reliable benchmark exists (e.g. it might be the case of highly specialised consultancy services), the amount of the aid is to be calculated according to an estimation of the real costs planned by the concerned LP or PP for implementing the service.

Last but not least, Member State controllers may verify that contractual conditions on indirect aid are fulfilled by the concerned LP and/or PPs.

Undertakings in difficulty

In compliance with Article 3(3) d) of the ERDF Regulation the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme does not support undertakings in difficulty⁶. In the occurrence that the LP and/or any of the PPs is in the situation of undertaking in difficulty, the affected institution is to leave the partnership following the procedure described in Project Implementation Manual (chapter Project Modifications). Furthermore, in such cases the MA is entitled to terminate, in whole or in part, the subsidy contract and/or to demand repayment of the granted subsidy.

⁶ 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).

Analysis of State aid relevance

Assessment process

The State aid analysis is performed with the twofold purpose of 1) identifying project proposals potentially relevant to State aid and 2) drafting recommendations that ensure the compliance of approved project with State aid rules.

The State aid assessment is performed on those project proposals which:

- Are to be funded, depending on the availability of funds, i.e. the State aid assessment is performed in a comprehensive manner, if required following the State aid exercise.

The State aid analysis is performed on the basis of information included in the Application Form as well as in the enclosed lead applicant and partner declarations. Furthermore, other information sources might be used such as the applicants' websites.

The State aid exercise analysis is carried out by experts. The MA/JS coordinates and supports the assessment work carried out by the experts, through a kick-off meeting prior to starting the assessment exercise as well as by means of individual contacts with experts.

The State aid analysis is performed in the following consecutive steps, as presented below.

Step 1: verification of existence of aid

Project proposals are analysed against the following assessment questions:

1. Are applicants to be regarded as undertakings carrying out economic activities in the context of the project?
2. Is the aid giving an economic advantage (a benefit), which an undertaking would not have obtained under normal market conditions?
3. Is the aid selectively favouring certain undertakings?
4. Does the aid distort (or threaten to distort) competition and trade within the European Union?
5. Is the measure liable to affect trade between Member States?

When the answer to all above questions is “yes”, the project is considered as State aid relevant.

Step 2: identification of State aid elements in the project proposals

Project proposals characterised by State aid relevance are further analysed in order to identify, for each proposal:

- What are the specific activities of economic nature carried out by each undertaking in the context of the proposal;
- What is the planned budget of the concerned State aid relevant activities (and related outputs).

If the information available in the Application Form does not allow completing the analysis, the following two options may apply:

1. Additional information might be requested by the MA/JS from the Lead Applicant and/or applicant in order to allow to properly performing the analyses. This might be the case especially when available information in the Application Form (or in the internet) does not allow assessing whether the applicant is an undertaking.
2. Additional information is retrieved from the Lead Applicant following the JMC decision for funding. This is the case when additional information not available in the Application Form is needed in order to draft contractual conditions on State aid (e.g. the project budget allocated to a certain applicant for performing a certain State aid relevant activity).

Step 3: drafting of recommendations

The result of step 2 of the analysis allows formulating specific recommendations that will be used by the MA/JS for drafting conditions for approval and/or contractual conditions to be included in the subsidy contract. Recommendations can be of the following nature:

- Elimination of the aid cause through specific measures to be implemented by the affected partners (e.g. wide dissemination of project outputs making them available to all undertakings of all economic sectors, including competitors);
- Granting de minimis aid and consequent application of thresholds to the affected applicants;
- Granting indirect de minimis aid to project final beneficiaries.

The entire assessment process is reflected within a State aid assessment grid containing guiding questions for assessment and text fields for assessment conclusions and expert recommendations.

Validation of State aid assessment results

The results of the State aid assessment are presented to the JMC by means of the following documents:

- Individual State aid exercise assessment grids filled by the experts for each project proposal analysed for State aid compliance;
- Overview table summarising the results of the State aid assessment at project level (where relevant).

Notification of granted de minimis aid and monitoring

Obligations on notification of granted de minimis aid as well as monitoring obligations deriving from Regulation (EU) No. 1407/2013 (in particular Article 6) are fulfilled through the implementation of the procedures described in the annex to this document. In particular, the annex gives an overview of the tasks to be accomplished by concerned authorities during the project contracting and implementation phases.

Annex: Procedures for the management of de minimis aid granted to undertakings involved in approved projects

a. Project contracting phase

Body	Tasks
<p style="text-align: center;">MA/JS</p>	<p>a. Ensure that projects affected by State aid relevance fulfil all State aid conditions for approval, as set by the JMC.</p> <p>b. Request the affected partners to provide updated self-declarations on de minimis grants received in the current and previous two fiscal years, using a standard template developed by the programme.</p> <p>c. On the basis of the updated information on previous de minimis grants, notifies the competent national authority (via the respective JMC members) on the final amount of de minimis aid granted by the programme to each affected partner located in their respective MSs.⁷ This notification shall include the following information:</p> <ul style="list-style-type: none"> ▪ Identification of the partners acting as undertakings in the approved project and receiving public funds under the de minimis regime; ▪ Updated amount of de minimis aid granted to each undertaking in the previous three fiscal years, on the basis of the self-declarations; ▪ The final amount granted to each undertaking within the project under the de minimis regime; ▪ The self-declarations, mentioned above, as an annex. <p>d. Inform the JMC on the de minimis aid granted to each affected partner.</p> <p>e. Notify the partners receiving the de minimis aid within the project through a letter containing at least the following information:</p> <ul style="list-style-type: none"> ▪ The prospective amount of the aid (expressed as gross grant equivalent) granted and the date of granting (date of signature of the subsidy contract).
<p style="text-align: center;">Competent National</p>	<p>For <u>direct</u> de minimis aid granted to project lead partners and partners:</p>

⁷ It is to be noted that in case of additional *de minimis* aid granted to a partner after the submission of the project proposal, this may result in a reduction of the aid granted within the project in comparison to the initial budget as in the submitted application form, in order to respect the applicable *de minimis* threshold.

Authority in Member State	<p>a. Where applicable, check the veracity of the information included in the self-declarations provided by the affected partners with regard especially previous de minimis grants. In case of discrepancies, the competent national authority is to inform the MA/JS on the detected issues;</p> <p>b. Implement any administrative steps/procedures which may be necessary at national level following the granting of aid to the concerned partners, in compliance with national rules.</p> <p>For <u>indirect</u> de minimis aid granted by project lead partners and partners to final beneficiaries:</p> <p>a. Where applicable, check the veracity of the information included in the updated self-declarations provided to the affected partners by the final beneficiaries of aid with regard to especially previous de minimis grants.</p> <p>b. Implement any administrative steps/procedures which may be necessary at Member State level following the granting of aid by the concerned partners, in compliance with national rules (e.g. national notifications to final recipients of aid, update of national central registers on de minimis, etc.).</p>
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b. Project implementation phase

Body	Tasks
MA/JS	<p>a. Verify the fulfilment of contractual conditions on State aid, as provided for in the subsidy contract, <u>on the project in its entirety</u>;</p> <p>b. Inform the competent authority (via the respective MC members) in case of any additional de minimis aid granted to an undertaking during the project implementation (e.g. increase of budget to a partner due to a budget shift);</p> <p>c. Keep records and compile all information regarding individual de minimis aid - necessary to demonstrate that the conditions of the de minimis Regulation have been complied with - for 10 fiscal years from the date on which the last individual aid was granted in the framework of the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme.</p> <p>d. Provide, on written request of the EC, with all the information that the EC considers necessary for assessing whether the conditions of the de minimis Regulation have been complied with.</p>

<p>National controllers in Member State⁸</p>	<p>a. Verify the fulfilment of contractual conditions on State aid, as provided for in the subsidy contract, <u>specifically on the beneficiaries affected by State aid conditions</u> which submitted expenditure for verification.</p>
<p>Competent National Authority in Member State</p>	<p>For <u>direct</u> de minimis aid granted to project lead partners and partners:</p> <p>a. Keep records and compile all information regarding individual de minimis aid - necessary to demonstrate that the conditions of the de minimis Regulation have been complied with - for 10 fiscal years from the date on which the last individual aid was granted in the framework of the Interreg IPA CBC Greece - Republic of North Macedonia Programme.</p> <p>b. Provide, on written request of the EC, with all the information that the EC considers necessary for assessing whether the conditions of the de minimis Regulation have been complied with.</p> <p>For <u>indirect</u> de minimis aid granted by project lead partners and partners to final beneficiaries:</p> <p>a. Keep records and compile all information regarding individual de minimis aid - necessary to demonstrate that the conditions of the de minimis Regulation have been complied with - for 10 fiscal years from the date on which the last individual aid was granted in the framework of the Interreg IPA CBC Greece - Republic of North Macedonia 2014-2020 Programme.</p> <p>b. Provide, on written request of the EC, with all the information that the EC considers necessary for assessing whether the conditions of the de minimis Regulation have been complied with.</p>

⁸ As designated by the MS in compliance with Article 23(4) of Regulation (EU) No 1299/2013.

Annex: State aid assessment sheet