STATE AID SELF-ASSESSMENT

***Guidance for filling in the self-assessment***

The State aid is not allowed for granting under the current call.

This self-assessment aims to provide the Applicants with the necessary instruments for developing a project in full compliance with the call requirements in the matter of State Aid.

Any activity of the project shall be analysed by the Applicant and partners (beneficiaries), prior to the submission of the application form. Please carefully consider each criteria so that your answers to actually reflect the reality of the project proposal. The self-assessment is part of the application and will be analysed by the Selection Committee when assessing the project. However, the Selection committee will perform its own assessment on these issues during the evaluation process, based on all information concerning beneficiaries and activities foreseen by the project. Provided it contains State Aid relevant activities, the project shall be rejected in entirety, except those situations when an adjustment of the activities, without affecting the project objectives, may be recommended by the Selection Committee.

***This self-assessment must refer to the project as a whole***. However, when performing the State Aid self-assessment, ***please consider each partner and each project activity***. Moreover, please take into consideration the potential ”indirect advantage”, which may occur as a result of project implementation.

An “***indirect advantage***” (indirect State aid) occurs when funds received by beneficiaries are channelled, during the project implementation or following the finalisation of the project, to identifiable undertakings/groups of undertakings (e.g. if the funds are used by the beneficiary for training of the employees of certain SMEs, a certain “undertaking” is going to benefit by an infrastructure developed by a beneficiary within a project, etc.). Thus, these third parties-“undertakings”- receive an advantage through the project activities that they would not have received under normal market conditions. This implies that they would be recipients of State aid.

There are 5 key questions/criteria that must be answered in order to conclude whether or not the financing of project should be considered as State Aid.

All answers YES means that financing of project shall be considered as state aid and consequently the project shouldn’t be submitted under the present call for proposals.

If at least one answer is NO, the conclusion of the self-assessment is that no State Aid is involved by the project.

**How to interpret the criteria?**

**1. Are public resources involved?**

The definition of state resources is aid that is granted by the state. This includes resources received by any public and private bodies to which public funds are distributed by state. State resources include funds which the State is managing. Resources coming from the EU budget are considered State resources.

*This answer to this question will always be* ***YES****, because the financing source is EU funds.*

**2. Are public resources granted selectively to the beneficiaries?**

The public resources are to be granted to beneficiaries following a call for proposals-a selection process. Consequently, a process of selection of beneficiaries is carried out.

*The answer to this question is always* ***YES*** *for beneficiaries selected following a call.*

**3. Is any beneficiary of the project an “undertaking”?**

An **“undertaking”** is defined as any entity, **regardless of its legal status**, which is engaged in an **“economic activity”** and its **products and/or services are offered on a market.** The way in which the entity is financed or its ownership (State owned or not State owned and being a non-profit-making entity are not relevant for the purpose of this analysis, as long as for the activity performed within the project there are other commercial competitors on the market. In this respect, an “undertaking” can also be, inter alia: public universities, research institutions, voluntary organisations, an association or a sport club under the national law, NGOs or non-profit-making public organisations or even public authorities, provided that they are engaged, through the project, in an economic activity. An entity that carries out both economic and non-economic activities is to be regarded as undertaking only with regard to the economic activities.

**“Economic activity”** consists of offering goods or services on a given market when these activities can, at least in principle, be carried out by private actors in order to make profits (these may include e.g. training and capacity building, rental of premises, etc.).

There are not considered as “economic activity” those activities performed by a public entity when it acts “by exercising public power” or in its capacity as “public authority” and its task forms part of the essential functions of the State or is connected with those functions by its nature, its aim and the rules to which it is subject. In this respect, unless the participating countries have decided to introduce market mechanisms, there have **a clear non-economic character** the following activities: a) the army or the police; (b) air navigation safety and control; (c) maritime traffic control and safety; (d) anti-pollution surveillance; (e) the organisation, financing and enforcement of prison sentences; and (f) the collection of data to be used for public purposes on the basis of a statutory obligation imposed on the undertakings concerned to disclose such data.

The notion of “economic activity” is not linked to the presence of a charge. E.g. an **infrastructure** may qualify as being used for **economic purposes** even if there is no charge imposed on users. This is the case in particular if other market players offer the same or a similar service and there is thus a market for such activities. Briefly, to establish if a measure concerns an economic activity, it is relevant to assess whether there is a market for such use. The rehabilitation/construction by a beneficiary of any type of **infrastructure that is meant** **to be exploited economically** is considered an economic activity in itself.

On the other hand, “the funding of infrastructure that is not meant to be commercially exploited is in principle excluded from the application of the State aid rules. This concerns, for instance, infrastructure that is used for activities that the State normally performs in the exercise of its public powers (for instance, military facilities, air traffic control in airports, lighthouses and other equipment for the needs of general navigation including on inland waterways, flood protection and low water management in the public interest, police and customs) or that is not used for offering goods or services on a market (for instance roads made available for free public use). Such activities are not of an economic nature and consequently fall outside the scope of the State aid rules, as does, accordingly, the public funding of the related infrastructure”.[[1]](#footnote-2)*When one or more activities performed by a beneficiary within the project will be considered as “economic”, this particular beneficiary will be thus considered as an “undertaking”. In case that at least one beneficiary of project is considered as an undertaking, the answer to this question should be* ***YES****.*

*If the activity to be performed within the project is not of an “economic” nature, the beneficiary would not be considered as an “undertaking” for State aid purposes and the answer to this question shall be* ***NO****.*

**4. Does any beneficiary (“undertaking) and/or a third party (“undertaking”) get an economic advantage that it could not normally get from the market?**

This question is meant to analyze whether, as a result of the financing of the project, **any of project beneficiaries and/or a third party** (provided that any of these is an “undertaking”) would **gain an advantage** that under “normal market conditions” would not be gained by this particular entity, that is to say in the absence of State intervention. Therefore, an advantage (and therefore State aid) can be excluded if economic transactions carried out by public authorities are in line with normal market conditions.

**An advantage** can take the form of direct payment in the form of **grants as well as other benefits** that affect the public budget such as provision of services for free or at below-market rates (e.g. lower rents for an infrastructure, free use of an equipment or infrastructure, free training, free promotion, etc).

Please note that the ”economic advantage” within the meaning of the State aid discipline and “profit, are different concepts.

Please note that **infrastructure projects** usually involve **three categories of actors** that are potential recipients of the State aid: “**the developer of an infrastructure** (in case of this Programme - project Beneficiary), **the operators** (that is to say undertakings who make direct use of the infrastructure to provide services to end-users, including undertakings which acquire the infrastructure from the developer/owner to exploit it economically or which obtain a concession or lease for the use and operation of the infrastructure), and the **end-users** of an infrastructure, although these functions may in some cases overlap.”[[2]](#footnote-3)

***a) State aid for project beneficiaries-developer of infrastructure***

*European Commission view on potential State Aid for beneficiaries in few examples of infrastructure[[3]](#footnote-4):*

“Public funding of **research infrastructures** can favor an economic activity and is hence subject to State aid rules insofar as the infrastructure is in fact intended for the performance of economic activities (such as renting out equipment or laboratories to undertakings, supplying services to undertakings or performing contract research). Public funding of research infrastructures used for non-economic activities, such as independent research for increased knowledge and better understanding, in contrast, does not fall under the State aid rules. For more detailed guidance on the distinction between economic and non-economic activities in the area of research, see the explanations provided in the Framework for State aid for research and development and innovation. “

“While **roads** made available for free public use are general infrastructures and their public funding does not fall under State aid rules, the operation of a toll-road constitutes in many instances an economic activity. However, the construction as such of road infrastructure, including toll-roads — as opposed to the operation of a toll-road and provided that it does not constitute dedicated infrastructure […] and its financing therefore typically does not affect trade between Member States or distort competition.[..]. The same reasoning applies to investments in bridges, tunnels and inland waterways (for example, rivers and canals)”.

***b) State aid for operators***

In case the Beneficiary developer make the infrastructure available to an operator who in turn provides services to end-users of the infrastructure, must be ensured that operator will not receive an advantage if the use of the infrastructure provides it with an economic benefit that it would not have obtained under normal market conditions. This normally applies if what the operator pay for the right to exploit the infrastructure is less than what it would pay for a comparable infrastructure under normal market conditions. An economic advantage to the operator can in particular be excluded if the concession to operate the infrastructure (or parts of it) is granted through an open, transparent and unconditional tender and the operator pays to the Beneficiary -developer, for the use of the infrastructure, a fee/royalty set up at a value at least equal with the amortization of the infrastructure (namely proportionally with the value of the infrastructure and its use time).

**c) State aid to end-users**

An advantage to end-users can be excluded where the fees for use of the infrastructure have been set through an open, transparent and unconditional tender.

*If there is granted an “economic advantage” to a beneficiary (“undertaking”) and/or a third party -operator or end-user, (“undertaking”), the answer to this question is* ***YES****.*

*If no economic advantage is granted to any beneficiary (“undertaking”) and/or to a third party (“undertaking”), the answer to this question is* ***NO.***

**5. Does the aid (financing of project) distorts or threatens to distort competition and trade between Member States, and/or between Member States and Ukraine?**

A measure granted by the State (including EU funds) is considered to **distort or threaten to distort competition** and trade when this measure is able to improve the competitive position of the recipient compared to other undertaking(s) with which enter in competition.

This question should refer both to beneficiaries (“undertakings”) and third parties (“undertakings”) that benefit as a result of project implementation.

Please note that provided that the service or products financed are of a merely local interest, the trade between the EU Member States or between Member States and a specific CBC Partner Country is not going to be affected. In order to assess that, the beneficiaries have to demonstrate that:

* the aid does not create obstacles to the establishment of undertakings from other Member States, the aid does not lead to investments being attracted in the region concerned;
* the goods or services produced under the project are purely local or have a geographically limited attraction zone;
* there is at most marginal effect on the markets and, in particular, on consumers in neighbouring Member States/ participating countries.
* The market share of the beneficiary is limited.

The Commission considered, in a number of decisions[[4]](#footnote-5), in the light of the specific circumstances of each case, that public support was not liable to affect trade between Member States. Examples of such cases, that may be relevant for the Programme, are:

a) sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other Member States;

b) cultural events and entities performing economic activities which however are unlikely to attract users or visitors away from similar offers in other Member States; the Commission considers that only funding granted to large and renowned cultural institutions and events in a Member State which are widely promoted outside their home region has the potential to affect trade between Member States;

c)hospitals and other health care facilities providing the usual range of medical services aimed at a local population and unlikely to attract customers or investment from other Member States;

d) news media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience;

e) a conference centre, where its location and the potential effect of the aid on prices is genuinely unlikely to divert users from other centres in other Member States;

f) an information and networking platform to directly address problems of unemployment and social conflicts in a predefined and very small local area;

g) small ports that predominately serve local users, thereby limiting competition for the services offered to a local level, and for which the impact on cross-border investment is genuinely no more than marginal;

h) the financing of certain cable ways (and in particular ski lifts) in areas with few facilities and limited tourism capability. The Commission has clarified that the following factors are typically taken into account to draw a distinction between installations supporting an activity capable of attracting non-local users, which are generally considered to have an effect on trade, and sport-related installations in areas with few facilities and limited tourism capability, where public support may not have an effect on trade between Member States: (294) a) the location of the installation (for example within cities or linking villages); b) operating time; c) predominantly local users (proportion of daily as opposed to weekly passes); d) the total number and capacity of installations relative to the number of resident users; e) other tourism-related facilities in the area. Similar factors could, with the necessary adjustments, also be relevant for other types of facilities.

*If cannot be demonstrated that project does not distorts the competition and trade at the level of beneficiary (“undertaking”) or at the level of third parties(“undertaking”) , the answer to this question will be* **YES**

*If the project can demonstrate that both at the level of beneficiary (“undertaking”) and/or at the level of third parties(“undertaking”), the competition is not going to be distorted, the answer to this question will be* ***NO***

**SELF-ASSESSMENT GRID**

|  | **Key questions** | **Answers** |
| --- | --- | --- |
| 1. | **Are public resources granted selectively to the beneficiaries?** | **Yes X**  **No □** |
| 2. | **Is any beneficiary of the project an 'undertaking'?** | **Yes □**  **No □**  *In case of YES, list the “economic activities” of the partner concerned. Analyse the possibility of excluding these “economic activities” from the project.* |
| 3. | **Does any beneficiary (“undertaking”) and/or a third party (“undertaking”) get an “economic advantage” that it could not normally get from the market?** | **Yes**  **□**  **No □**  *In case of YES, identify the list of activities linked to the “economic advantages”. Analyse the possibility of excluding these activities from the project.* |
| 4. | **Does the aid (financing of project) distorts or threatens to distort competition and trade between Member States, and/or between Member States and Ukraine?** | **Yes**  **□**  **No □**  *In case of YES, identify the list of activities that may conduct to a distortion of competition and trade. Analyse the possibility of excluding these activities from the project.* |

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| As a result of the self-assessment, please conclude if financing your project can be considered as State Aid.  Please note that all beneficiaries must ensure that they comply with state aid rules towards end users.  If possible, adjust the project by reconsidering those activities that put the financing the project in the State Aid category.  We remind you that all answer **YES** indicates the existence of State Aid. |

1. According to *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)* [↑](#footnote-ref-2)
2. According to *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)* [↑](#footnote-ref-3)
3. According to *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)* [↑](#footnote-ref-4)
4. According to *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)* [↑](#footnote-ref-5)