**ANNEX 8: STATE AID COMPLIANCE ASSESSMENT GRID**

**Second call of proposals – Regular projects**

1. **WHAT IS STATE AID?**

According to the provision of Article 107(1) 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”*,** therefore affecting trade between Member States and the participating partner countries and not being compatible with the internal market.

State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities.

To be State aid, a measure needs to have the following features:

* there has been an **intervention by the State or through State resources** which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.);
* be granted to an undertaking;
* the intervention gives **an advantage on a selective basis**, for example to specific companies or industry sectors, or to companies located in specific regions;
* **competition has been or may be distorted**;
* the intervention is likely to **affect trade between Member States or between Member States and Partner Countries participating in the programme.**

*In case of partners established in Partner Countries, this criterion shall also consider, where existing and taking into consideration any stipulated exceptions, the provisions of any bilateral agreements between the respective countries and the EU.*

1. **BACKGROUND INFORMATION AND APPLICABLE LEGAL BASIS**

Further information on EU legislation in the field of State Aid can be obtained from:

* <http://ec.europa.eu/competition/state_aid/overview/index_en.html>
* <http://ec.europa.eu/comm/competition/state_aid/legislation/legislation.html>
* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN>

**National rules on procedure – Armenia**

# RA Law on protection of economic competition

# **Chapter 8, State Support**

* <https://competition.am/en/laws-and-legal-acts/ra-law-on-protection-of-economic-competition/>
* <https://competition.am/en/activities/state-aid/>
* Competition Protection Commission Decision NO. 270-N of July 26, 2022 on Determining the State Aid Assessment Procedure
* https://www.arlis.am/DocumentView.aspx?DocID=166656

**National rules on procedure – Bulgaria**

* <https://stateaid.minfin.bg/bg/page/574/>
* [Instruction for assessment of compliance with the state aid legislation](https://stateaid.minfin.bg/document/300);
* Logical algorithm of the state aid test.

**National rules on procedure – Georgia**

* Association Agreement (AA) between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part the European Union and Georgia

**National rules on procedure - Greece**

* Designated responsible service: Ειδική Υπηρεσία Κρατικών Ενισχύσεων και Χρηματοδοτικών Εργαλείων (ΕΥΚΕ)
* <https://www.espa.gr/>

**National rules on procedure – Republic of Moldova**

* [The Association Agreement (AA) between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN)
* <https://www.competition.md/tabview.php?l=ro&idc=36&t=/Documente-oficiale/Ajutor-de-Stat/Legi/>

**National rules on procedure – Romania**

* <http://www.ajutordestat.ro/> section [State aid legislation](http://www.ajutordestat.ro/?pag=1&limba=en)

**National rules on procedure – Republic of Türkiye**

* Decision No 1/95 of the EC- Türkiye Association Council
* Law no 615 on Monitoring and Supervision of State Aids,
* Presidential Decree No 102 on Implementation, Coordination, Monitoring and Evaluation of State Aids.

**National rules on procedure - Ukraine**

* [The Association Agreement (AA) between the European Union and its Member States, of the one part, and Ukraine, of the other part](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&from=EN)

1. **RELATION OF STATE AID RULES WITH THE INTERREG NEXT BSB PROGRAM**

State aid is not eligible in the framework of (INTERREG VI-B) NEXT Black Sea Basin programme, therefore any project that has state aid incidence, including the possibility of grating indirect state aid, shall receive recommendations on how to proceed further in order to avoid state aid incidence.

1. **ASSESSMENT OF THE STATE AID PRESENCE IN EACH PROJECT**

A State aid assessment for the activities of each individual project is necessary in order to determine if the criteria defining State aid are met (see point 1).

It is important to bear in mind that **if one of the criteria is not met, the grant in question does not constitute State aid.**

**The state aid assessment is mandatory for all projects partners, target groups and activities.**

1. **STATE AID CHECK-LIST**

**A. Check list**

| **No.** | **Criteria** | **Description** | **Question** | **Answer (Yes/No)** | **Comments** |
| --- | --- | --- | --- | --- | --- |
|  | **State resources** | Interreg funds are considered to be granted through State resources or by the State, so the answer is YES. | Automatically fulfilled | Yes |  |
| **2.** | **Economic advantage to an undertaking** | **The first step is to identify whether the beneficiary represents an undertaking.**  *An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic (commercial/competitive) activity and where there is a market in comparable goods or services.* | **1. Is the beneficiary** or its’ partners **an 'undertaking'?** |  |  |
| **Economic activity** *means the supply of goods or services on a given market and which could, at least in principle, be carried out by private actors in order to make profit.* | **2. Is an undertaking engaged in economic activity?**  3. Are there any products/services usually offered on a market? |  |  |
|  | **Economic advantage**  The key issue is to consider whether, and under which conditions, the grant award/financial support favours certain undertakings by giving them an economic advantage.  In line with the case law of the European Courts, the concept of economic advantage under the State aid rules includes any advantage “which the recipient undertaking would not have received under normal market conditions”. | 4. Does the grant award /financial support confer an economic advantage (a benefit) which an undertaking would not have obtained under normal market conditions? Or is there no advantage, e.g. it is merely a service at market price (e.g. obtained through public procurement)?  For example a service that is reimbursed at market price is not conveying an *advantage*. |  |  |
| Usually, a direct grant represents by itself an economic advantage. However, there are situations in which such grants do not confer a direct advantage.  An advantage can be conferred on undertakings other than those to which State resources are directly transferred (indirect advantage). An indirect advantage is present if the measure is designed in such a way so as to channel its secondary effects towards identifiable undertakings or groups of undertakings.  In order to avoid the economic advantage project beneficiaries have to ensure that all undertakings in the market (will) have the same benefit and no undue advantage will be/is given for anybody. Therefore all project outputs or deliverables will have to be made available by the beneficiaries, for free to all interested individual or legal persons, in a non-discriminatory way in order not to be considered an economic advantage. | 5. Are there indirect advantages awarded to the respective undertaking, to other undertaking(s) and/or target group(s) of the project that are understood as undertakings and/ or private bodies? |  |  |
| **3.** | **Selectivity** | As the grants within the transnational cooperation framework are awarded only to certain entities selected through a call for proposals, the selective nature is always present.  An analysis of the selective nature is relevant only when there is an indirect advantage. Beside the examples above, for example, in the cases involving research, if the results of the research are made available to a limited number of undertakings there might be a selective economic advantage granted to those undertakings. In order to avoid the selectivity issues in such a case ensuring a sufficient promotion of the results, by means of publication in speciality magazines and/or on the project’s web page. | 1. Are public resources granted selectively to the beneficiaries? 2. If there are indirect beneficiaries, is there a selective nature or all the potential undertakings can benefit? | YES |  |
| **4.** | **Distortion of competition** | A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. | 8. Is there a competitive market for the product/service in question? |  |  |
| **5.** | **Effect on trade between Member States or between Member States and Partner Countries participating in the programme** | In order to assert that this criterion is not fulfilled, the project in question must have a mere **local impact.** For this, the following characteristics have to be fulfilled  (a) the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;  (b) the goods or services produced by the beneficiary are purely local or have a geographically limited attraction zone;  (c) there is at most a marginal effect on the markets and on consumers in neighbouring Member States.  Some examples are:  - swimming pools and other leisure facilities intended predominantly for a local catchment area;  - museums or other cultural infrastructure unlikely to attract visitors from other Member States;  - hospitals and other health care facilities aimed at a local population;  - news media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience  - a conference centre, where the location and the potential effect of the aid on prices is unlikely to divert users from other centres in other Member States or partner countries; | 9. Is there a European market for the product/service in question, or does it have a mere local nature?  10. Are goods or services affecting the trade between EU and your country? |  |  |

***IMPORTANT NOTE!!!In case of partners established in Partner Countries, the assessment of criteria 4 and 5 shall also consider, where existing, the provisions of any bilateral agreements between the respective countries and the EU*** (e.g. the aid should not distort or threaten to distort competition and trade between the European Union and a specific Partner Country)

**B. Conclusion**

As a result of the assessment we conclude that:

* For the project < project\_Jems ID> no activities that are subject to State aid rules were identified.
* For the project < project\_Jems ID > the following potential state aid relevant activities were identified:

|  |  |  |  |
| --- | --- | --- | --- |
| **Description of the activity** | **Partner(s) involved** | **Country** | **Recommendations on how the activity can be adjusted so that potential state aid incidence is eliminated without affecting the nature of the proposal.** |
|  |  |  |  |