**ANNEX 7: STATE AID COMPLIANCE ASSESSMENT GRID**

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 not being compatible with the internal market.

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

* be granted to an undertaking;
* 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.);
* 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**. *In addition, in case of partners established in CBC 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>

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| 1. **Relation of State aid rules with the BSB Programme** |

According to art. 12.3 of the EU Regulation no. 897/2014 of the European Union and of the Council, **aid granted under the programme shall comply with the applicable Union rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union.**

According to section 5.7 of the Joint Operational Programme Black Sea Basin 2014-2020, aid granted by participating countries under the Programme shall comply with the rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union and – where applicable - with State aid provisions of any bilateral agreements between the participating countries and the EU, in particular, chapter 10 of Title IV of the Association Agreement between the EU and Ukraine and chapter 10 of Title V of the Association Agreement between the EU and Moldova.

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.

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** | Automatically fulfilled | 1. Is the support provided granted by the State or through State resources? | Yes |  |
| **2.** | **Undertaking** | The first step is to identify whether the beneficiary represents an undertaking. | **2. Is the beneficiary** or its’ partners **an 'undertaking'?**  3. Does any activity of the project have an economic nature? Does the project awards an economic advantage to 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 other actors. | **4. Is an undertaking engaged in economic activity?** This is defined as offering goods and/or services on a given market and which could, at least in principle, be carried out by a private operator for remuneration in order to make profits.  5. Any products/services offered on a market? |  |  |
| **3.** | **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. | 6. Does the grant award /financial support confer an economic advantage (a benefit) which an undertaking would not have obtained under normal market conditions? |  |  |
| 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. | 1. Is there any indirect advantage awarded to one or more undertakings? 2. Are there indirect advantages awarded to other undertakings? |  |  |
| **4.** | **Selectivity** | *Support that targets particular sectors, regions or types of entities e.g. fishing sector and not others is selective.* | 1. Is the aid selectively favoring certain undertakings or the production of certain goods?   Also, the external assessor shall check here whether the lead partner and project partners took into account, in relation to the third beneficiaries, the recommendations set out in the guide meant to support potential state aid avoidance. |  |  |
| **5.** | **Distortion of competition and effect on trade between Member States.**  ***IMPORTANT NOTE!!! In addition, in case of partners established in CBC Partner Countries, the assessment of this criterion (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 CBC Partner Country) | 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. | 1. Is there a competitive market for the product/service in question? 2. Is there a European market for the product/service in question, or does it have a mere local nature? 3. *Other questions/criterion shall be added based on the provisions of the bilateral agreements with the CBC partner countries, and assessed accordingly.* |  |  |

B. **Conclusion**

As a result of the assessment we conclude that:

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

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| --- | --- | --- | --- |
| **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 or the score initially awarded for the quality assessment.** |
|  |  |  | **NO** (if adjustment affects nature of the proposal or the score initially awarded for the quality assessment)  **YES** (if adjustment does not affect nature of the proposal or the score initially awarded for the quality assessment) |
|  |  |  | **NO** (if adjustment affects nature of the proposal or the score initially awarded for the quality assessment)  **YES** (if adjustment does not affect nature of the proposal or the score initially awarded for the quality assessment) |

C. **Decision**

**The project assessed is considered ACCEPTED / ACCEPTED WITH RECCOMENDATIONS) (needs minor modifications) / REJECTED for the state aid compliance stage.**