



Technical sheet 9 concerning State aid in the context of the INTERREG IVA France (Channel) – England Programme

Checks of compliance with regulations are done:

- When projects are assessed by the Joint Technical Secretariat, of which the analysis grid is presented below, thus before the project is approved by the Steering Committee
- At the time of first-level controls. The controller must ensure that partners in the field of application, i.e. actors that carry out an economic activity, always comply with regulations relating to State aid when implementing project actions.

Field of application

Any public or private structure that carries out an economic activity is potentially covered by European regulations relating to State aid.

Definitions

Economic activity:

The notion of economic activity is defined in Regulation (EC) 1998 / 2006 of 15 December 2006. The European Court of Justice defines the notion of business in the widest sense, i.e. any entity that carries out an economic activity and that supplies goods and services on the market, independent of its legal status or its mode of financing.

State aid

Rules in regard to State aid apply only to aid that meet the four criteria listed below on a cumulative basis:

- transfer of public resources

The rules that apply to State aid only apply to measures that involve a transfer of public resources, including from national, regional, and local public authorities. Furthermore, it is not necessary for the aid to be provided by the State itself. It can be provided by a public or private body that plays the role of intermediary and that is appointed by the State. Financial transfers that constitute State aid can take several forms: grants, interest subsidy, loan guarantees, provisions for accelerated depreciation, contribution in the form of capital, etc. This criterion is always met in the context of financing granted by the France (Channel) – England programme

- economic benefit

The aid must confer upon the body concerned an economic benefit that it would not receive in the normal context of its activities

- selective character

Aid that falls into the context of State aid must be selective, i.e. that they provide advantages to certain bodies, territories, or sectors, in the context of their activities. This criterion is always met in the context of European co-operation programmes

- effect on competition and exchanges

The effect on competition can be real or even only potential. Accordingly, this criterion is always met in the context of European co-operation programmes.

Accordingly, the analysis of the qualification of State aid mainly covers the criterion of economic benefit, to the extent that the other criteria are always met.

If the aid granted in the context of the programme is qualified as State aid, analysis of compliance with European rules is always carried out with regard to texts relating to the rule described as *de minimis*, as well as exemption regimes by category, as described in the plan given below.

De minimis rule

Below a certain threshold, aid cannot be considered as having impact on the European internal market, since their effects are minimal: they do not interfere with the economic activity of the beneficiary's competitors or with exchanges within the market in which the beneficiary is active.

In addition, and in accordance with Regulation (EC) 1998 / 2006 of the European Commission of 15 December 2006 on the application of articles 87 and 88 of the Treaty to *de minimis* aid, a project partner must not have received more than €200 000 in national or European public aid totalled over the previous three tax years, including aid sought for the project. In the context of the European Union stimulus plan, the *de minimis* ceiling is €500 000 € for the period 2008-2010.

Regime of exemption by category

When the amount of aid is higher, a project partner may, in certain cases, go above the *de minimis* threshold if a specific exemption regime applies to its activity. The ceiling for exemption regimes varies according to the type of activity concerned.

The JTS during the appraisal, and the first-level controller, must then check if the aid granted comes under an exemption. General Regulation (EC) 800 / 2008 of the European Commission of 6 August 2008, so-called "exemption by category", offers a list of derogations that Member States may draw upon to have their state aid authorised.

Legal sources

- Articles 87 and 88 of the European Community Treaty
- Regulation (EC) 1998 / 2006, article 2.2
- Regulation (EC) 800 / 2008
- Regulation (EC) 1083 / 2006, article 54
- EU Guide to EU rules that apply to State aid

ANALYSIS GRID OF PARTNERS CARRYING OUT AN ECONOMIC ACTIVITY IN REFERENCE TO STATE AID

Does the partner carry out an economic activity under the meaning of European law (receiving revenue, exchange of goods and / or services)? **If yes, then please continue with the analysis**

① *Is this a case of State aid?*

In order to know if the aid requested in the context of the project constitutes State aid, the following 4 criteria must be checked in reference to the objectives of the project, the resources implemented to ensure dissemination to the project's results, the partners involved, and the final beneficiaries.

• Is it public aid?	> this criterion is always met in the case of INTERREG
• Does the aid provide an economic benefit?	> this criterion may or may not be met, depending on INTERREG projects
• Is the aid selective?	> this criterion is always met in the case of INTERREG
• Does the aid have an effect on commercial exchanges between Member States?	> this criterion will be met in the case of most INTERREG projects

These 4 criteria being met, the aid is considered to be State aid – please go to point ②

If all the criteria are not met, it is not a case of State aid.

② *If it is State aid, are we below the de minimis ceiling?*

Has the beneficiary received less than €200 000 in public grants over the previous three years, or received less than €500.000 for the 2008-2010 period?

If the beneficiary is above the ceiling, please go to point ③

If yes, the aid is not considered to have an effect on competition.

③ *Special case of SGEIs (Service of General Economic Interest)*

Does the beneficiary carry out its activity in the context of a public-service delegation? In that case, the ceiling stands at €150 000 per year of aid totalled for the SGEIs in communes with fewer than 10 000 inhabitants.

④ *Does the aid come under a regime of exemption by category?*

If yes, the aid may be applied on the basis of maximum rates of grant set out in the regulations.

- The JTS enters it in a register of aid that fall into the context of the general regulations on exemption
- Information concerning this type of aid is held for 10 years

If no, the FLC must indicate the status of the aid (State aid, lying above the de minimis ceiling, does not fall into the context of a regime of exemption by category) in her / his control certificate, and the Managing Authority will take the appropriate measure