

# MANUAL STATE AID AND DE MINIMIS AID

Methods of identifying aid in the  
activities of Interreg projects and the  
rules of granting it

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## TABLE OF CONTENTS

|   |    |
|---|----|
| Introduction .....  | 5  |
| PART I. What the State aid is? .....                                | 6  |
| 1.1 To whom do the provisions on State aid shall apply? .....       | 6  |
| Undertaking.....  | 6  |
| Economic activity .....   | 7  |
| 1.2 Prerequisites for State aid .....                               | 10 |
| Definition of State aid .....                                       | 10 |
| Public funds .....  | 11 |
| Economic benefit .....  | 11 |
| Selectivity .....   | 13 |
| Impact on competition and trade .....                               | 14 |
| 1.3 Direct and indirect aid .....                                   | 16 |
| PART II. The possibility of excluding State aid in the project..... | 19 |
| PART III. <i>De minimis</i> aid.....                                | 22 |
| 3.1 Scope of use of <i>de minimis</i> aid .....                     | 22 |
| 3.2 Eligibility of expenses in <i>de minimis</i> aid .....          | 23 |
| 3.3 Limit of <i>de minimis</i> aid .....                            | 24 |
| 3.4 Single undertaking .....  | 25 |
| 3.5 Cumulation of <i>de minimis</i> aid .....                       | 26 |
| 3.6 Obligations of the beneficiary of <i>de minimis</i> aid .....   | 27 |
| 3.7 Obligations of the entity providing <i>de minimis</i> aid.....  | 28 |
| PART IV. State aid in Interreg programs.....                        | 31 |
| 4.1 Aid under Article 20 of GBER .....                              | 32 |

|  |    |
|--|----|
| Scope of application .....   | 32 |
| Eligible costs .....   | 32 |
| Aid intensity .....  | 33 |
| 4.2 Aid under Article 20a of GBER .....                                  | 33 |
| Scope of application .....   | 33 |
| Eligible costs .....   | 34 |
| Aid intensity .....  | 34 |
| 4.3 Aid for culture and heritage conservation .....                      | 34 |
| Scope of application .....   | 34 |
| Eligible costs .....   | 35 |
| Aid intensity .....  | 37 |
| 4.4 Aid for sport and multifunctional recreational infrastructures ..... | 38 |
| Scope of application .....   | 38 |
| Incentive effect .....   | 39 |
| Eligible costs .....   | 39 |
| Aid intensity .....  | 40 |
| Additional conditions .....  | 41 |
| 4.5 Investment aid for local infrastructures .....                       | 42 |
| Scope of application .....   | 42 |
| Incentive effect .....   | 42 |
| Eligible costs .....   | 43 |
| Aid intensity .....  | 43 |
| Additional conditions .....  | 43 |
| 4.6 Cumulation of State aid .....  | 43 |

|  |    |
|--|----|
| 4.7 Monitoring of State aid.....                       | 44 |
| 4.8 Obligations of the beneficiary of State aid .....  | 45 |
| 4.9 Obligations of the entity providing State aid..... | 45 |
| 4.10 Irregularities related to State aid.....          | 47 |
| Unlawful aid .....                                     | 47 |
| Misuse of aid .....                                    | 48 |

## Introduction

State aid can distort fair and effective competition among economic undertakings in Member States and negatively affect the development of their economies. In the [Treaty on the Functioning of the European Union \(hereinafter: TFEU\)](#) provisions were introduced that grant the European Commission powers to examine the admissibility of State aid and monitor it within the European Union. A key objective of this legislation is to ensure a level playing field for entities carrying economic activity throughout the European Economic Area.

The complexity of issues related to public assistance and the need for transparent information on it from entities providing and applying for support prompted us to prepare this study. Its goal are:

- to present the principles of identification of public aid in relation to Interreg projects,
- to systematise knowledge in the subject area,
- to draw attention to the practical application of the rules of State aid or *de minimis* aid in Interreg projects.

The manual deals with the rules of State aid and *de minimis* aid in the following programs of European territorial cooperation (Interreg 2021-2027):

- 1) Poland-Slovakia Interreg Cooperation Program for 2021-2027,
- 2) Poland-Saxony Interreg Cooperation Program for 2021-2027,
- 3) Poland-Denmark-Germany-Lithuania-Sweden (South Baltic) Interreg Cooperation Program for 2021-2027,
- 4) Poland-Ukraine Interreg NEXT Cooperation Program for 2021-2027.

The manual covers the following topics:

- identification of the undertaking/economic activity in the project,
- prerequisites for State aid,
- direct and indirect aid,
- the possibility of excluding aid in the project,
- use of *de minimis* aid,
- the rules of State aid, provided for use in Interreg programs,

- responsibilities of the aid provider and the aid beneficiary.

## PART I. What the State aid is?

The concept of State aid is an objective legal concept defined directly in the TFEU. Article 107(1) of TFEU defines State aid 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 [...] in so far as it affects trade between Member States,**

This chapter will explain the various elements of the concept of State aid:

- existence of undertaking,
- prerequisites for State aid,
- the presence of aid at different levels (direct and indirect aid).

### 1.1 To whom do the provisions on State aid shall apply?

According to the TFEU, State aid rules apply only when the beneficiary of State's support is an "undertaking" (through public support it gains an advantage over its competitors).

#### **What to do to answer the question: Should State aid rules be applied to the project?**

Another question must first be answered:

#### **Does a State aid beneficiary meet the EU definition of an undertaking?**

##### Undertaking

An undertaking is considered to be an entity engaged in economic activities, regardless of its organizational and legal form or sources of financing.

Accordingly, **an undertaking**, and thus a potential beneficiary of public aid, **can be:**

- an individual engaged in economic activities,
- commercial company,
- partnership.

The definition of an undertaking will be met regardless of whether the entity is operating for profit or not. The most important is conducting an economic activity. Thus, a potential undertaking can be either a non-profit organization, an entity allotting profit for statutory activities, as well as a foundation or association. The same principle applies to an entity that is formally part of the public administration, if that entity conducts an economic activity.

**Summary:** The concept of "undertaking" in EU law is interpreted broadly by European courts.

Three basic principles emerge from this:

- entity's status under national law is not decisive,
- the application of State aid rules is not determined by whether an entity was created to generate a profit,
- the classification of an entity as an undertaking always refers to a specific activity. An entity that conducts both economic and non-economic activities at the same time should be treated as an undertaking only with respect to economic activities.

The phrase "undertaking" used in the remainder of the manual will therefore refer to the broad definition derived from the jurisprudence of European courts.

### **Economic activity**

Therefore, a key feature of the definition of an undertaking is conducting an economic activity. Under settled Community case-law, it is defined as "offering goods and services in a given market."

#### **Example 1**

The partnership (composed of local government units, a cultural institution and an association) submits an application providing for the revitalization of post-mining facilities and making them available to visitors as an Industrial Culture Center. In addition, the project envisages using the resulting infrastructure to organize symposia, performances, concerts, exhibitions.

Providing a historic site to the public for a fee, as well as organizing exhibitions, concerts, performances or symposia, may be considered an economic activities.

Whether there is a market for certain services may depend on how those services are organized in a given Member State. This may vary from country to country. In addition, the definition of market services changes over time. What is not an economic activity in the market today may become one in the future, and vice versa. Therefore, it is not possible to create a complete catalog of activities that are deemed to be an economic activity.

Activities that are usually the exclusive competence of the public authority and are carried out by the State do not constitute economic activities. There will be a derogation if a Member State has decided to introduce market mechanisms. Such tasks among others include: the activities of the military and police, the safety and control of air navigation or maritime traffic, the activities of public bodies in the development and revitalization of public lands.

### **Example 2**

One of the components of the tourism project is a task carried out by the local government to establish and mark bicycle tourist paths. The paths will be freely accessible to the public and will be laid out on government-owned land.

This type of activity is not economic in nature and is not subject to State aid rules.

The European Commission and European courts recognize that it is possible to consider a number of activities as non-economic activities, such as:

#### ➤ **education**

Public education within the national education system, which is financed and supervised by the State, can be considered a non-economic activity. To exclude economic activity in the project, its activities should be a part of the education system, i.e., they should follow the curriculum imposed by Member State in question and involve activities that are mainly publicly financed.

### **Example 3**

The university's operating partner is implementing an investment to build a new greenhouse under the project. It will exclusively hold botanical classes with full-time students.

This nature of infrastructure use does not constitute an economic activity.

➤ **culture and heritage preservation**

The European Commission's position is that public subsidy for culture or heritage preservation activities is non-economic, if the results of these activities are available to the general public free of charge and fulfill a purely social and cultural purpose. The non-economic nature of the cultural institution is also confirmed by the fact that it is mainly financed from public funds, and the fees paid by visitors cover only a fraction of the actual costs.

**Example 4**

A new multimedia exhibition at the ethnographic museum will be arranged under the project. School groups will visit the museum free of charge. Visitor fees, on the other hand, will be charged only to individual tourists and will cover about 15% of the facility's maintenance costs. The rest of the operating costs will be covered by public funds.

This nature of infrastructure use does not constitute an economic activity of the museum.

Economic activity in the culture sector is often identified by whether an entity is funded primarily through fees paid by visitors or users, or through other commercial means (e.g., commercial exhibitions, cinemas, commercial musical performances and festivals, art schools funded primarily from tuition fees).

**Example 5**

One component of the project is an investment in modernizing the puppet theater building. So far, in addition to organizing paid performances, the theater has rented rooms for commercial conferences and training sessions and earned money by providing advertising space. The theater's maintenance costs are covered in more than 60% by the market proceeds.

This nature of infrastructure use is evidence of economic activity and that the theater fulfills the definition of an undertaking.

**To summarize:** in order to exclude the application of State aid rules in a project from the culture sector, it must be shown that all of the project activities relate exclusively to non-economic activities.

**NOTICE:** The construction of publicly available and publicly funded infrastructure, such as public roads, bridges, bike paths, nature trails, is not an economic activity. If the purpose of the project will be activities that relate to publicly accessible infrastructure and are not related to offering services on the market, economic activity will not occur.

#### Example 6

Local government units and tourism organizations from two cross-border regions plan to build a Tourist Route under the project. The aim of the project will be to designate a tourist route connecting historical objects (castles, sacral objects, defensive structures, etc.).

Basic free of charge tourist infrastructure will be built along the trail, i.e. restrooms, information boards, road signs, benches and trash garbage cans.

Partners working in partnership can potentially conduct paid activities (especially tourism organizations). It is clear from the project's assumptions that the planned expenditures will not be for the purpose of conducting economic activity, but will only serve to mark and designate the tourist trail. Thus, even if the tourism organizations involved in the project are engaged in other economic activities, it should be considered that the subject of the project will not be used for such activities.

## 1.2 Prerequisites for State aid

### Definition of State aid

According to Article 107 (1) of TFEU on the Functioning of the European Union:

**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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.**

Article 107 of TFEU provides the basic prerequisites for State aid, which are used to examine whether there is a case of State aid:

## Public funds

Support is **awarded by the State or with use of State resources**.

Public funds shall be funds provided by:

- central administration,
- local government administration,
- funds, foundations, associations and other types of public institutions administered by a Member State at the central, regional or local level. Public funds in this case will be funds from the budgets of these entities and funds obtained from the EU funds.

In the case of institutions with public funds, i.e., when a public body appoints a private or public entity to manage a benefit measure, it must be shown that the support provided by these institutions is attributable to the State. This means that the State action had a significant impact on the decisions made by the entity with public funds. This is the case, for example, when the entity's activities must be carried out in consideration of government requirements, require consideration of guidelines issued by public authorities, or involve activities in a sector regulated by the State.

**Public funds are defined very broadly. Among the forms of aid we can distinguish**, for example:

- grants,
- the provision of products or services by the State at preferential prices,
- making a public infrastructure available free of charge (e.g., for the participation of undertakings in a trade fair event),
- training and consulting services, study visits aimed at undertakings and financed by public funds.

Any State action that results in an economic benefit to an undertaking can meet the criteria of public measures under the TFEU.

Funds raised in Interreg programs are counted as public funds.

## Economic benefit

Advantage within the meaning of Article 107 (1) of TFEU means:

**any economic advantage that the undertaking in question could not have obtained under normal market conditions, i.e. without State intervention.**

The economic benefit can be:

- direct (e.g., grant, preferential loan, reimbursement, etc.),
- indirect (e.g., services provided below the market cost of those services).

It may involve:

- lead partner or project partner,
- third parties that are participants in the project.

#### Example 7

Under the Interreg project it is planned to organize a study visit of cultural and tourism undertakings to foreign partners. The aim of the project will be, among others, to acquire the skills to create a joint tourist offer of integrated reservation systems or conduct effective marketing activities.

The study visit will be attended by undertakings. The effect of the study visit will be to improve the business competencies of the participating undertakings. Accordingly, these undertakings will receive an indirect economic benefit as a result of the project in the form of free use of the services offered by the project partner.

**Indirect benefit** occurs if the project is planned in such a way that secondary impacts can be targeted to identifiable undertakings or groups of undertakings. The support can also be both a direct benefit to the beneficiary undertaking and an indirect benefit to other undertaking, such as downstream undertakings.

### Example 8

The project is to create an online platform to promote the region's tourist attractions. Its owner will be a project partner. The platform will include information about tourism and cultural undertakings that have been successfully audited and received "Regional Product" certificate during the project. The platform will be promoted nationally and internationally. For the undertakings indicated therein, it will be a free advertising. At the same time, the project partner, as owner of the "Regional Product" mark, plans to certify more undertakings for a fee. Since the platform was created with project funds, its free use by the undertakings recruited to cooperate in the project - third parties - will be an economic benefit to them (free advertising) and, consequently, may constitute State aid. The economic benefit to third parties is an indirect benefit.

At the same time, the planned use of the platform for economic activities by the project partner (awarding the "Regional Product" certificate for a fee) will result in the occurrence of State aid for the project partner. The economic benefit to the project partner is a direct benefit.

### Selectivity

Article 107(1) of TFEU states:

**the State aid measure must favor "certain undertakings or the production of certain goods."**

As a result, not all measures that favor economic operators fall under the concept of aid. This applies only to those measures that selectively benefit specific undertakings or categories of undertakings, or specific sectors of the economy.

In the event of support in Interreg programs, selectivity is multidimensional:

- subject selectivity - reservation in the content of Interreg programs of a closed catalog of support beneficiaries,
- material selectivity - reservation in the content of Interreg programs of a closed catalog of types of projects subject to support,
- geographical selectivity - reserving support for only part of the area of Member States, i.e., in the areas supported by Interreg program,

- selectivity due to discretionary authority - the system of projects' subsidizing in Interreg programs is based on the evaluation of submitted applications. Thus, the provision of support depends on the individual evaluation of each project, with the result that not every applicant who meets the program's criteria will receive support.

### Impact on competition and trade

In accordance with Article 107 of the TFEU:

**state aid must "distort or threaten to distort competition" (IMPACT ON COMPETITION).**

Almost any selective support will have the potential to distort competition. The scale of the distortion or risk of distortion of competition will depend on the size of the aid beneficiary, in particular its market share. At the same time, the definition of State aid does not require that the distortion of competition or impact on trade be significant or substantial.

#### Example 9

One of the activities in the project is the organization of a fair of local products. The project partner envisages renting exhibition stands free of charge for the benefit of local juice and processed vegetables producers.

The ability of a local manufacturer to offer its products free of charge will give it a competitive advantage over other undertakings producing the same assortment of products and competing on the same market. So there will be a potential distortion of competition in this case.

Support constitutes State aid within the meaning of Article 107 of TFEU if:

**"affects trade between Member States" (IMPACT ON TRADE EXCHANGE).**

Most products or services are traded between Member States. Therefore, support for almost any economic activity can cause a distortion of intra-EU trade, even if the supported undertaking does not directly carry export activity and does not directly participate in cross-border trade.

The European Commission considers that the **support** has only a local impact and therefore **does not affect trade** between Member States **if the following conditions are cumulatively met:**

- the aid does not lead to attracting demand or investment to the region and does not create obstacles to the establishment of businesses by entities from other Member States,
- the goods produced by the beneficiary and the services it provides are local or of interest only in a specific geographic area,
- the impact on neighboring markets and consumers is at best marginal.

What is important, the European Commission stresses that programme considerations must be taken into account when evaluating the above conditions. The objectives of the Interreg programs are:

- development of cross-border cooperation (e.g., development of joint marketing strategies, joint cultural or tourism routes, joint cultural or tourism products),
- target groups include visitors to the program area and tourists.

Therefore, it is likely that projects implemented under Interreg programs will influence markets and consumers in the cross-border area and may attract demand for services from neighboring Member States. As a result, it is impossible to exclude the impact on intra-Community trade in these cases. Possible exceptions to this rule are described in Part II of this manual.

**To summarize:** State aid is present only if the support is provided in connection with economic activities and a **total of 4** conditions is met:

- public funds,
- economic benefit,
- selectivity,
- impact on competition and trade.

In case of projects implemented under Interreg programs, there will be fulfillment of the condition of public funds, selectivity and impact on competition and trade. The condition of economic benefit in specific projects may not apply to the beneficiary of the project but to a third party (e.g., an undertaking that is a participant in the project). In this event we are dealing with indirect aid (described in more detail in the next chapter).

### 1.3 Direct and indirect aid

In projects implemented under Interreg programs, it is possible to occur:

- direct aid, identification of the occurrence of an economic benefit respectively at the level of the beneficiary (first level of support),
- indirect aid, identifying the occurrence of an economic benefit respectively at the level of project participants (second level of support).

**Direct aid (first level of support)** means aid provided in Interreg programs directly by the Managing Authority. In this case, the beneficiary of the aid can be both the lead partner as well as the project partners. Public aid is identified in relation to specific project activities and will be attributed to the entity responsible for implementing these activities.

#### Example 10

In the project to establish a Folklore Center, the project partner (a cultural institution) plans to modernize the building of which it is an owner. The building hosts cultural activities, including activities that support the education and upbringing system and disseminate cultural knowledge and information. At the same time, the lead partner uses the facility for commercial rental of premises and equipment, and for trade and catering activities.

Since the facility that is to be upgraded in the project is used for economic activities, the project partner will be subject to the rules of State aid with regard to the expenses relating to upgrading the facility.

**Indirect State aid (or otherwise: second-level State aid)** occurs when the ultimate recipient of support from program funds is not the lead partner (the project partner), but a third-party business entity. The lead partner (project partner) is then the provider, and the final recipient is a third party. A third party can be, for example, a project participant.

#### Example 11

The lead partner in the project conducts a series of free training courses/workshops for undertakings as understood in EU competition law. The subject of the trainings will be knowledge in the field of implementation of projects increasing energy efficiency of undertakings.

The knowledge gained by the participants can be used in their economic activities. Undertakings participating in trainings/workshops receive a benefit. Thus, if all the prerequisites for the presence of State aid are met, these undertakings will become indirect beneficiaries of the aid.

Similarly, indirect aid will occur in the case of free provision of booths to third parties at fairs/exhibitions/festivals organized under the project.

A third party, as a beneficiary of aid, may also be an entity whose activities are affected by the results of the project.

#### **Example 12**

In the Interreg project, tourism organizations plan to create an interactive map of tourist and cultural attractions in the border region. A web portal will be created, containing proposals for thematic tours, depending on the type of attractions preferred by the Internet user (monuments, bicycle trails, canoe routes, active recreation centers, etc.) and the length of the planned stay (one-day, weekend, week-long routes). Placing information about individual facilities on the web portal will be free of charge. There will be contact information along with redirection to the websites of individual facility owners. The project partners, wanting to guarantee the high quality of services in the resulting tourism product, plan to place on the web portal only information about entities that have successfully passed prior authorization.

In this case, the recipients of indirect aid are entities whose data will be posted on the portal free of charge. According to the information, the database will include information on selected entities. The promotion of the portal will increase interest in the activities of selected entities. On top of this, recommended thematic tour programs will be created, which will be an added benefit for those entities that are described in such tour programs. This will also apply to owners of attractions whose description will be placed on the portal in the future according to the same rules. Thus, the designated entities will benefit from free advertising, that is, they will receive an economic benefit.

#### **Example 13**

In the Interreg project, the local government unit is revitalizing the former river port, creating a marina on the site. Once the project is completed, the marina will be leased to a private

undertaking. At the same time, in close proximity to the marina, another undertaking operates a tourist business (hotel and restaurant).

In the case of a private entity that will manage the marina, there may be indirect State aid if the lease fee is not set at the market rate. If the entity had been selected through an open, transparent and non-discriminatory bidding process, the lease rent could be considered market-based and indirect aid would not be present.

With regard to the second undertaking, which operates a hotel and catering business in the vicinity of the marina, indirect aid will not occur. Pursuant to the European Commission's position, it is necessary to distinguish between the indirect benefits received as a result of the project and the usual secondary economic effects that are inherent in almost all State aid measures (e.g., an increase in the number of customers at the hotel). The same benefits, resulting from an increase in the number of tourists in the locality, could benefit other businesses in the area (e.g., store owners, organizers of cultural events, etc.).

At the stage of evaluating a grant application, often only the probability of indirect aid can be determined. It is based on an analysis of:

- the nature and scope of the planned activities (e.g., organization of training courses, trade fairs, excursions),
- the circle of entities that may receive benefits as a result of project activities.

Therefore, the final assessment of whether aid has occurred for a given activity is carried out by the lead partner or the project partner providing the aid. In such a case it is then responsible for its proper granting.

## PART II. The possibility of excluding State aid in the project

The lack of need to apply State aid rules may be primarily due to the non-economic nature of the project (see summary on page 16.) Three basic cases can be distinguished **at the first level of support - direct aid**, when this situation will occur:

- project activities (e.g., modernization of the facility, its equipment) are related to educational activities within the national education system. The national education system covers only education, in case of which the curriculum is determined by the public authorities and, as a rule, the financing of these activities is from public funds,
- project activities concern cultural institutions (libraries, museums, theaters, art galleries, etc.) that operate free of charge or are mainly funded from public funds (where fees for the use of cultural offerings cover only a fraction of the actual costs),
- project activities involve public infrastructure that is not used to offer goods or services on the market (for example, roads made available for free public use, bicycle paths, hiking trails).

### Example 14

In the Interreg project, the beneficiary digitized in 3D and 2D the historical objects of four local museums (project participants) and created an offer of virtual tours of these museums. Project participants were not selected through an open, transparent and unconditional procedure. These are public museums, sustained mainly by public funds (cost coverage on the level from 63% to 94%).

Project activities will increase the attractiveness of the final beneficiaries who were not selected for the project in a non-discriminatory manner. However, indirect aid will not occur due to the non-economic nature of public museums' operations. They are maintained mainly with public funds, and revenues from paid activities (tickets, advertising, incidental space rental) cover only a fraction of the operating cost of these institutions.

In addition, **State aid will not occur** when project activities involve facilities that are used almost exclusively for non-economic activities, but in which there is **ancillary infrastructure** that is used for economic purposes (such as restaurants, stores, paid checkroom or paid parking). And

although here we are dealing with the economic nature of the project (meeting the definition of an undertaking) and the need to examine the prerequisites for State aid, the European Commission assesses that:

- infrastructure used for economic purposes may be considered an ancillary infrastructure if the capacity allocated annually to such infrastructure does not exceed 20% of the total annual capacity of the infrastructure,
- public financing of ancillary infrastructure located around facilities used almost exclusively for non-economic activities, usually has no effect on trade between Member States,
- support infrastructure is unlikely to attract customers from other Member States, and the impact of its financing on cross-border investment or cross-border entrepreneurship is unlikely to be more than marginal.

#### Example 15

Under the Interreg project a canoe port was built. The infrastructure (piers, harbor authorities, toilets) is generally available and free of charge to all interested parties. Tourists can rest here, use the bathroom, refill their water supply free of charge. At the same time in the main lobby of the harbor authorities a cafe space was created, along with a tourist information center (sales of maps, souvenirs, cards, etc.).

The project's infrastructure is non-economic in nature. At the same time, part of the facility is to be used economically to complement the facility's main offerings. If the area used commercially does not exceed 20% of the area of the harbor authorities, it can be considered ancillary infrastructure, the financing of which will not affect the need to apply the rules of State aid.

State aid can also be excluded **at the second level - indirect aid**. The project may involve the transfer of a number of non-market benefits to project participants. For example, it provides for participation in free trainings, free participation in fairs or exhibitions, creation of a web portal in the project to promote undertakings, etc. In this situation, State aid at the level of project participants can be excluded by eliminating one of the prerequisites for State aid. To this end, the following actions should be carried out:

- selection of project participants in an open, transparent and non-discriminatory procedure (ensuring the selection of the most advantageous offer, i.e. meeting market conditions),
- organization of training in an on-line formula, with sufficiently wide publicity of the training offer, and thus ensuring that all potentially interested parties participate in the training (accessibility for all, i.e., no distortion of competition),
- creation of on-line portals and ensuring that information on all potentially interested undertakings is included. For example, if the portal is about the creation of an accommodation base in the region, we allow the portal to include not only information about the direct participants of the project, but also about other entities in the accommodation industry that will be interested in posting information on the portal in the future. This ensures a level playing field for all potential competitors and eliminates the likelihood of competitive distortion.

If access to the project result is not guaranteed to all interested parties, e.g. the project partner limited the number of exhibition places at the fair in relation to those interested, it will not be possible to exclude aid to project participants.

## PART III. *De minimis* aid

The legal basis for awarding *de minimis* aid in Interreg programs is directly based on Commission Regulation (EU) No. 1407/2013 of December 18, 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (Official Journal EU L 352 of 24.12.2013) or on the regulation on the provision of *de minimis* aid and State aid in the Interreg European Territorial Cooperation programs for 2021-2027, which refers to the Commission regulation.

Interreg programs provide *de minimis* aid in the form of grants.

### 3.1 Scope of use of *de minimis* aid

*De minimis* aid can be granted to undertakings in all sectors except:

- aid granted for activities in the fisheries and aquaculture sector,
- aid granted for primary production of agricultural products,
- aid granted to undertakings engaged in the processing and marketing of agricultural products in the following cases:
  - when the amount of aid is determined on the basis of the price or quantity of such products purchased from original producers or placed on the market by the benefiting undertakings,
  - when the granting of aid depends on the fact that it is transferred in part or in full to original producers.

In addition, granting *de minimis* aid is excluded:

- for activities related to export to third countries or Member States, i.e., aid directly related to the volume of products exported, the establishment and operation of a distribution network, or other current expenses related to export activities,
- when aid is contingent upon the use of domestic over imported goods.

If an undertaking is active in several sectors (including those excluded from *de minimis* aid), it will be possible to grant aid to the undertaking provided that it separates its activities or isolates its costs in order to demonstrate the absence of benefit from aid in the sectors excluded from support.

### Example 16

The Interreg project provides for study visits of participants (undertakings) to economic entities from another Member State. The undertakings represent honey producers. The purpose of the study visits will be to learn about the technology of producing honey and bee products in another Member State. In addition, participants will gain practical knowledge on how to increase the profitability of this activity.

Study visits (as a free form of training) will be an indirect aid to the participants of these visits (undertakings). Honey production is a primary activity in agriculture (honey is a product that comes directly from bee keeping). Thus, subsidizing for a study visit in an Interreg project cannot be done under *de minimis* aid.

### Example 17

In the Interreg project, the activities applies to owners of farms. One of them runs a horse stud and offers hippotherapy classes and horseback riding lessons.

The primary activity in agriculture is horse breeding. If a company earns revenue from this, it means that it operates in the agricultural sector. Recreational activities, such as hippotherapy and horseback riding lessons, do not constitute agricultural activities. Thus, if the project activities are not related to horse breeding but to recreational activities, *de minimis* aid can be applied.

## **3.2 Eligibility of expenses in *de minimis* aid**

The *de minimis* aid rules do not introduce a separate catalog of eligible expenses. The only restriction is the exclusion of the purchase of a means of transport used for the provision of road freight transport services for undertakings engaged in such activities. If *de minimis* aid is planned in an Interreg project, the general rules for eligibility of expenses in the relevant Interreg program will apply.

### 3.3 Limit of *de minimis* aid

In *de minimis* aid, as in case of State aid, there is no maximum percentage level of subsidizing established. However, the European Commission has set an upper limit of 200 thousand euro from the three tax years preceding the date the aid was granted (or 100 thousand euro for companies performing economic activity in the road freight transport sector). It is necessary to take into account the tax years (understood as tax years according to national regulations) that apply to a particular undertaking, since the tax year does not necessarily coincide with the calendar year.

#### Example 18

The Interreg project partner is to carry out activities with *de minimis* aid of 30 thousand euro. The application was submitted on June 15, 2021. The application was accompanied by information on any *de minimis* aid the partner received from various sources during the period:

- from January 1, 2021 to June 15, 2021 (current tax year) - EUR 112,000
- from January 1, 2020 to December 31, 2020 (the first preceding tax year) - EUR 0
- from January 1, 2019 to December 31, 2019 (the second preceding tax year) - EUR 41,000

The certificates subsequently submitted show that it received *de minimis* aid totaling to 153 thousand euro. As a result, it can receive the support it is applying for (subject to perform economic activities other than in the road transport sector).

#### Example 19

The Interreg project partner is to carry out activities with *de minimis* aid of 50 thousand euro. The application was submitted on October 25, 2021. The application was accompanied by information on any *de minimis* aid the partner received from various sources during the period:

- from January 1, 2021 to October 25, 2021 (current tax year) - EUR 80,000
- from January 1, 2020 to December 31, 2020 (the first preceding tax year) - EUR 40,000
- from January 1, 2019 to December 31, 2019 (the second preceding tax year) - EUR 0

The certificates subsequently submitted show that it received *de minimis* aid totaling to 120 thousand euro. However, the project evaluation was completed in January 2022. At that time, the entrepreneur received another *de minimis* aid from another institution (January 10, 2022) in the amount of 35 thousand euro.

The contract is scheduled to be signed on January 21, 2022.

Since *de minimis* aid is to be granted in the applicant's new tax year, *de minimis* aid limit calculated for the last 3 years now covers the following periods:

- from January 1, 2022 to January 21, 2022 (current tax year) - EUR 35,000
- from January 1, 2021 to December 31, 2021 (the first preceding tax year) - EUR 80,000
- from January 1, 2020 to December 31, 2020 (the second preceding tax year) - EUR 40,000

This means that at the time of providing *de minimis* aid, the applicant has received 155 thousand euro and is entitled to receive only 45 thousand euro. Therefore, it is necessary to reduce the requested aid to this value, so that *de minimis* aid limit (200 thousand euro) is not exceeded.

The limit has been set as an amount per "single undertaking," which the European Commission defines as an undertaking that applies for aid together with related parties.

### 3.4 Single undertaking

As defined in EC Regulation No 1407/2013:

**“Single undertaking” includes all enterprise having at least one of the following relationships with each other::**

- a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;**
- b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;**
- c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;**

- d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.**

Enterprise that have any of the relationships referred to in the first clause (a-d) through single other enterprise or several other enterprises shall also be considered a single undertaking.

#### **Example 20**

A participant in the Interreg project is to receive *de minimis* aid in the amount of 10 thousand euro (the cost of participation in the series of exhibition events per participant). In the current and in two preceding tax years, it received *de minimis* aid of 87 thousand euro. At the same time, the project participant's Management Board is mostly appointed by another enterprise that received 110 thousand euro in the corresponding period of three tax years.

As of the time of the application, the applicant and its related enterprise have used 197 thousand euro under *de minimis* aid. Thus, it will not be possible for it to participate in the project under *de minimis* aid rules, as the 200 thousand euro limit would then be exceeded.

### **3.5 Cumulation of *de minimis* aid**

*De minimis* aid may be combined with State aid with respect to the same eligible costs.

The condition for merging *de minimis* aid with other State aid is to ensure that such cumulation does not lead to exceeding the relevant maximum aid intensity level or aid amount set by [Commission Regulation \(EU\) No 651/2014 of June 17, 2014 declaring certain types of aid as compatible with the internal market in application of Articles 107 and 108 of the Treaty \(Official Journal EU L 187 of June 26, 2014\)](#), hereinafter referred to as the "GBER" or by Commission Decision.

*De minimis* aid that has not been granted for specific eligible costs or that cannot be attributed to such costs may be combined with other State aid granted in accordance with the GBER Regulation or in accordance with a decision adopted by the Commission.

### Example 21

The Interreg project partner is to receive *de minimis* aid of 75 thousand euro in the project (for the cost of the museum's modernization work, amounting to 250 thousand euro). The aid is within the partner's *de minimis* aid limit including all related parties.

At the same time, the partner has already received regional investment aid of 40 thousand euro for the same modernization. The maximum intensity of this aid is 50% of eligible expenses.

Since the project partner intends to receive *de minimis* aid for expenses already covered by State aid, it is additionally necessary to check whether the planned *de minimis* aid will not result in exceeding the State aid intensity.

In case of a partner, the permissible intensity of regional investment aid is 50%, so with modernization expenses of 250 thousand euro, it gives a maximum subsidizing of 125 thousand euro.

Since regional investment aid (40 thousand euro) has already been granted for the same expenses, *de minimis* aid can be granted up to an amount equal to:  $125,000 - 40,000 = 85,000$  euro. Thus, the planned *de minimis* aid meets the requirements of cumulation with State aid rules.

### **3.6 Obligations of the beneficiary of *de minimis* aid**

When applying for *de minimis* aid under the Interreg program in Poland, in addition to the standard documentation of the grant application, one must provide the information required by the Regulation of the Council of Ministers of March 29, 2010 on the scope of information presented by the entity applying for *de minimis* aid. They are included in the form of information submitted when applying for *de minimis* aid.

The form includes:

- information on applicant,
- its economic activities,
- ties with other entities and information on *de minimis* aid received by related entities ,

- information on the amount and use of State aid received for the same eligible costs for which *de minimis* aid is to be used.

In addition, along with the completed form, the applicant is required to provide information on *de minimis* aid received to date, in one of the following forms:

- all certificates concerning *de minimis* aid and *de minimis* aid in agriculture or fisheries that it received in the year in which it applies for aid and in the two preceding tax years, or
- a statement of the amount of such aid received during period in question, or
- statements of not having received such aid during this period.

*De minimis* aid may not be granted to the applicant until the applicant submits certificates, statements or information contained in the form in accordance with [the Act of April 30, 2004 on proceedings in State aid cases](#),

After receiving *de minimis* aid, the beneficiary is obliged to keep documents relating to it for 10 tax years from the date the aid was granted.

### 3.7 Obligations of the entity providing *de minimis* aid

The entity providing *de minimis* aid may be:

- managing authority (direct aid),
- lead partner/partner of the project (indirect aid, provided it is allowed by program rules).

**The lead partner/partner of the project from outside of Poland**, when providing indirect aid, follows the national rules of the respective Member State.

**The entity providing *de minimis* aid in Poland** (MA/lead partner/project partner) is obliged to collect and verify all the necessary information for its granting, which is:

- the form of information submitted when applying for *de minimis* aid (in particular, verify the links among enterprises and *de minimis* aid provided to linked enterprises),

- copies of certificates of *de minimis* aid received/statements of aid received/statements of non-receipt of *de minimis* aid (the completeness of the information provided to be verified through the SUDOP or SHRIMP database<sup>1</sup> ).

The granting entity, on the basis of the collected information, verifies whether the planned aid meets the conditions for admissibility of *de minimis* aid. If the planned *de minimis* aid exceeds *de minimis* aid limit, it cannot be granted. However, it is possible to reduce the requested *de minimis* aid up to the allowable limit before the date of granting of *de minimis* aid.

**The date of granting aid** is the date the subsidy contract is signed (first level aid) or the date the participant joins the project activities (second level aid).

Entity providing *de minimis* aid in Poland:

- shall issue a certificate of *de minimis* aid on the date the aid is granted, using the [form](#) specified in the [Regulation of the Council of Ministers of March 20, 2007 on certificates of \*de minimis\* aid and \*de minimis\* aid in agriculture or fisheries](#). The aid provider issues them to the aid recipient,
- shall report on *de minimis* aid granted to the President of the Office of Competition and Consumer Protection (UOKiK), using the SHRIMP application, within 7 days from the date of granting the aid.

If *de minimis* aid is provided by the lead partner (or project partner), they must have access to the SHRIMP application. If they do not have one, they should submit a relevant [request](#) to the President of the UOKiK. The UOKiK shall forward the login and password for access to the SHRIMP application by e-mail to the user's address entered in the request within 40 days of receipt of a complete application.

- shall enter an update of the report in the SHRIMP application within 7 days of becoming aware of the change in the amount of aid provided, if *de minimis* aid provided has changed (e.g., the aid was provided to the partner for planned expenses, and the actual implementation costs were lower).

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<sup>1</sup> SUDOP - System for Sharing Data on State Aid ([sudop.uokik.gov.pl](http://sudop.uokik.gov.pl))

SHRIMP - System for Scheduling Registration and Monitoring of Aid ([shrimp.uokik.gov.pl](http://shrimp.uokik.gov.pl))

- shall correct and issue a new certificate on *de minimis* aid granted , if there has been a reduction in the value of *de minimis* aid granted . The aid provider has 14 days to do so after becoming aware of the change in the amount of aid provided.

## PART IV. State aid in Interreg programs

The legal basis for the provision of State aid is [the proposed regulation on the provision of \*de minimis\* aid and State aid in European Territorial Cooperation \(Interreg\) programs for 2021–2027](#). It refers directly to the State aid rules established by the [GBER regulation](#).

National legislation provides for the following types of State aid:

- aid for costs incurred by undertakings participating in European Territorial Cooperation projects (Article 20 of GBER),
- limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (Article 20a of GBER),
- aid for culture and heritage conservation (Article 53 of GBER),
- aid for sports and multifunctional recreational infrastructures (Article 55 of GBER),
- investment aid for local infrastructures (Article 56 of GBER).

In all of the above types of aid support in the form of grants is provided for.

### **NB!**

In projects involving State aid, the eligibility of VAT is determined by the provisions of the GBER and depends on the possibility of its recovery in the light of national regulations.

What does it mean?

The GBER provides that for the purposes of calculating aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge i.e. the gross amounts. The eligible costs are documented in a clear, detailed and up-to-date manner (Article 7(1) GBER). At the same time, if VAT is a real cost in the sense of non-recoverability, then it is part of the eligible costs and therefore qualifies for support under the GBER. If VAT is recoverable, then it is not treated as an actual cost and therefore not considered eligible under the GBER.

**Recoverable VAT (even if the right to recover VAT is not used by the recipient) will be ineligible, regardless of the value of a partner's budget in the project.** The net amount of the expenditures which fall under state aid rules will therefore be taken by the MA/JS into account

when calculating the thresholds pursuant to Article 4 (1) GBER (State aid limit). Those project partners that are affected by this condition might be asked by the MA/JS to provide additional documents before granting the state aid.

## 4.1 Aid under Article 20 of GBER

Under Article 20 of GBER, aid is provided for costs incurred by undertakings participating in European Territorial Cooperation (Interreg) projects. The value of aid per undertaking in a single project may not exceed 2 million euro.

### Scope of application

Aid under Article 20 of GBER may be granted to undertakings in all sectors (including fisheries and aquaculture and the agricultural sector). The provision of aid is excluded only in the following cases:

- for activities related to exports to third countries or Member States, i.e., aid directly related to the volume of products exported, the establishment and operation of a distribution network, or other current expenses related to export activities,
- when aid is conditioned by the priority to use of domestic over imported goods.

### Example 22

Under Interreg projects a Polish Cultural Center in another Member State will be established. In addition to promoting Poland's cultural heritage, the Center will offer tickets for cultural events taking place in Polish cultural institutions (theater performances, vernissages, etc.).

The Center's activities will include the distribution of an offer for services from Polish cultural institutions. Thus, the establishment of the Center can be treated as the establishment of a service distribution point abroad, an action prohibited by Article 20 of GBER.

### Eligible costs

Under aid arising from Article 20 of GBER, eligible costs are as follows:

- staff,

- office and administrative,
- travel and accommodation,
- external expertise and services,
- equipment,
- infrastructure and works.

### **Aid intensity**

Under aid arising from Article 20 of GBER, the maximum aid intensity may not exceed the maximum subsidizing rate specified for the Interreg program, i.e. 80%.

## **4.2 Aid under Article 20a of GBER**

The value of aid provided under Article 20a of GBER may not exceed 20 thousand euro per undertaking in connection with participation in a single Interreg project. Aid is provided in the form of grants or direct transfer of benefits to project participants (e.g., free participation in study visits, trainings, publication of marketing materials for the benefit of project participants, etc.).

### **Scope of application**

Aid under Article 20a of GBER may be granted to undertakings in all sectors (including fisheries and aquaculture and the agricultural sector). The provision of aid is excluded only in the following cases:

- for activities related to exports to third countries or Member States, i.e., aid directly related to the volume of products exported, the establishment and operation of a distribution network, or other current expenses related to export activities,
- when aid is conditioned by the priority to use of domestic over imported goods.

### Eligible costs

Aid under Article 20a of GBER does not include a separate catalog of eligible expenses. Thus, in the case of this aid, it will be permissible to finance expenses under the general rules of the Interreg program.

### Aid intensity

Under aid arising from Article 20a of GBER, the maximum aid intensity may not exceed the maximum subsidizing rate specified for the Interreg program.

## 4.3 Aid for culture and heritage conservation

Cultural institutions and activities related to culture and heritage conservation may be supported under this aid. The aid may be provided as:

- investment aid (including aid for the construction or upgrade of cultural infrastructure),
- operational aid (subsidizing of specific concerts, exhibitions, other cultural events).

The maximum allowable value of aid for culture and heritage conservation under GBER regulation is 15 million euro (for investment aid per project) and 7.5 million euro (for operating aid per undertaking per year).

### Scope of application

Aid is provided for the following cultural purposes and activities:

- museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
- tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
- intangible heritage in any form, including folklorist customs and crafts;

- art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
- cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.

Aid for press, whether for hard copy or electronic publications, cannot be funded under this aid.

### Eligible costs

In the case of investment aid, eligible costs are the costs of investment in tangible and intangible assets, including:

- costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;
- costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
- costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programs and visitors;

- costs for cultural projects and activities, cooperation and exchange programs and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.

However, for operating aid, eligible costs are as follows:

- the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of economic activity;
- costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
- operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;
- costs for personnel working for the cultural institution or heritage site or for a project;
- costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

## Aid intensity

In case of investment aid, the amount of aid shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit is deducted from eligible costs *ex ante* on the basis of:

- reasonable projections (analogous to the gap method for revenue-generating projects),  
or
- use of the claw-back mechanism.

At the same time, the aid recipient has the right to retain a reasonable profit over the depreciation period of the investment.

Reasonable profit is determined with reference to typical profit for the cultural activities sector. The [swap](#) rate, plus a premium of 100 basis points, may be taken as the appropriate level of reasonable profit.

In case of operating aid, the amount of aid shall not exceed the level that is necessary to cover operating losses and reasonable profit over the relevant period. This shall be ensured *ex ante* on the basis of reasonable projections or using the claw-back mechanism.

The claw-back mechanism consists of verifying the actual operating profits generated from the investment over the entire period of its depreciation and creating rules for refunding the excess aid in case the amount of operating profits from the investment is higher than originally assumed.

It is also possible to apply simplified rules for calculating the amount of allowable aid for culture and heritage. If the volume of aid does not exceed the amount of 2 million euro, the maximum amount of aid can be set at the level of 80% of eligible expenses.

### **Example 23**

In the Interreg project, the project partner (a cultural institution) has planned investment expenses (modernization of the theater's concert hall) and operational expenses (organization of a festival) totaling 2 million euro.

In this case, it is possible to use a simplified method of calculating aid intensity. The size of the allowable aid will be: 2 million euro x 80% = 1.6 million euro.

Separate subsidizing rules apply to the creation, editing, production, distribution, digitization and publication of musical and literary works, including translations. In this case, the maximum amount of aid may not exceed either the difference between eligible costs and discounted project revenues or 70% of eligible costs.

Eligible costs are:

- cost of publishing music and literature, including the remuneration of authors (copyright costs), translators, publishers,
- other editorial costs (proofreading, correcting, reviewing),
- costs associated with text layout and preparation for printing or e-publication,
- printing or on-line publication costs.

Revenues are deducted from eligible costs *ex ante*, either on the basis of reasonable projections or using a claw-back mechanism.

## 4.4 Aid for sport and multifunctional recreational infrastructures

### Scope of application

Aid for sports and multifunctional recreational infrastructure is provided as investment aid (including aid for the construction or modernization of sports infrastructure and multifunctional recreational infrastructure) or operating aid for sports infrastructure.

Multi-functional recreational infrastructure consists of multi-functional recreational facilities offering in particular cultural and recreational services, with the exception of leisure (amusement) parks and hotel facilities.

The maximum allowable value of investment aid under GBER is 30 million euro. The maximum allowable operating aid for sports infrastructure under GBER is 2 million euro per infrastructure per year.

#### Example 24

In the Interreg project, the partner planned operational expenses (organization of two annual editions of the sports picnic). The total cost of organizing these events is 100 thousand euro.

The value of the planned operating aid is 50 thousand euro per year (2 editions in 2 years). Thus, the aid does not exceed the threshold for permissible operating aid, or 2 million euro per year.

#### Incentive effect

**In case of this aid, it is necessary to demonstrate that it meets the incentive effect.** It is considered to be met if the beneficiary submits a written application for aid to the respective Member State before starting work on the project or commencing economic activities.

In this case "start of work" means:

- commencement of construction work (verified by an entry in the construction logbook) related to the investment, or
- the first legally binding commitment to order equipment (e.g., signing a contract with a supplier, payment of an advance, successful award of a tender for a supply or service), or
- another commitment that makes the investment irreversible, whichever comes first.

The purchase of land or preparatory work, such as obtaining permits and conducting feasibility studies, is not considered the start of work.

#### Eligible costs

With regard to investment aid for sports and multifunctional recreational infrastructures, eligible costs are the costs of investment in tangible and intangible assets.

In the case of operating aid for sports infrastructure, eligible costs are the operating costs of providing services within such infrastructure. These include costs of:

- staff,
- materials,
- contracted services,

- communications,
- energy,
- maintenance,
- rent, administration, etc.

Eligible costs of operating aid do not apply to depreciation and financing costs, if they were covered by investment aid.

#### Example 25

In the expenses for organizing sports picnics, the project partner included staff salaries, purchase of prizes, costs of energy consumption at sports facilities and other costs of providing facilities (depreciation of infrastructure for the duration of the picnic).

In this case, it is necessary to determine whether the sports infrastructure was constructed with the use of State aid. If so, depreciation costs may not be an eligible expense under operating aid for sports picnics.

#### **Aid intensity**

In the case of investment aid for sports and multifunctional recreational infrastructures, the amount of aid shall not exceed the difference between the eligible costs and the operating profit from the investment. Revenues are deducted from eligible costs *ex ante*, either on the basis of reasonable projections or through a claw-back mechanism.

In case of operating aid for sports infrastructure, the amount of aid shall not exceed operating losses over the project period. The above should be calculated *ex ante* on the basis of reasonable forecasts or using the claw-back mechanism.

It is also possible to apply simplified rules for calculating the amount of allowable investment or operating aid. If the volume of aid does not exceed the amount of 2 million euro, the maximum amount of aid can be set at the level of 80% of eligible expenses.

### Additional conditions

1. A condition of the sports infrastructure subsidizing is to ensure that the infrastructure is not used exclusively by a single professional sports user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.
2. Sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available
3. If the sports infrastructure is used by professional sports clubs, it is necessary to ensure that the pricing conditions for its use are made publicly available (e.g. published on the website of the infrastructure owner).
4. Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

#### Example 26

A marina is being built under the project. After its completion, selection of an entity that will manage the infrastructure is planned. Due to the estimated low value of the service and the lack of need for a bidding procedure, it is planned to send a request for proposal to 3 potential bidders.

The selection of the manager will not be conducted in an open manner, so the selected manager may be considered a beneficiary of indirect State aid.

## 4.5 Investment aid for local infrastructures

### Scope of application

The purpose of this aid is to build or modernize local infrastructures, including infrastructure that contributes at the local level to the improvement of the business and consumer environment, and to the modernization and development of the industrial base.

This may include:

- business incubator infrastructure,
- construction of a transportation hub,
- utilities for future business investment.

The maximum allowable value of investment aid under GBER regulation is 10 million euro.

### Incentive effect

**In case of this aid, it is necessary to demonstrate that it meets the incentive effect.** It is considered to be met if the beneficiary submits a written application for aid to the respective Member State before starting work on the project or commencing economic activities. In case of the Interreg program, this means starting work after submitting a project application.

In this case "start of work" means:

- commencement of construction work (verified by an entry in the construction logbook) related to the investment, or
- the first legally binding commitment to order equipment (e.g., signing a contract with a supplier, payment of an advance, successful award of a tender for a supply or service), or
- another commitment that makes the investment irreversible, whichever comes first.

The purchase of land or preparatory work, such as obtaining permits and conducting feasibility studies, is not considered the start of work.

### Eligible costs

With regard to investment aid for sports infrastructure, eligible costs are the costs of investment in tangible and intangible assets.

### Aid intensity

The amount of aid shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.

### Additional conditions

1. It is imperative that the infrastructure created in the project is made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or sale of the infrastructure must correspond to the market price.
2. Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

## 4.6 Cumulation of State aid

An aid for which eligible costs can be isolated can be cumulated with:

- any other State aid, provided that these measures relate to various distinguishable eligible costs,
- any other public aid for the same (overlapping in part or in whole) eligible costs only if such cumulation does not result in exceeding the highest aid intensity level or amount applicable to that aid,
- *de minimis* aid in relation to the same eligible costs only if this does not result in exceeding the level of State aid intensity.

#### Example 27

In the Interreg project, the lead partner has planned operational expenses (organization of the festival). At the same time, he reported that he had received State aid for culture from domestic funds (a grant for the construction of a new theater headquarters).

In this case, it is possible to provide aid in the Interreg program, because it relates to other expenses (festival) than the domestic aid provided (construction works). Domestic aid will also not affect the allowable amount of operating aid for organizing the festival.

#### Example 28

In the Interreg project, the partner has planned to build a sports center. It has already received State aid for this purpose from a national institution in the form of a property tax exemption in the amount of 300 thousand euro. Eligible expenses are set in the amount of 1 million euro.

In this case, it is possible to provide aid under the Interreg program, but the amount of aid resulting from the property tax exemption must be taken into account. The amount of already granted domestic aid together with the aid from the Interreg program may not exceed the maximum allowable level of aid, calculated in accordance with the rules of investment aid for sports infrastructure (80%). The partner has therefore the opportunity to receive another 500 thousand euro for this project under the Interreg program.

### **4.7 Monitoring of State aid**

The institution managing the Interreg program is required to keep detailed records including information and supporting documents necessary to establish that all conditions of GBER have been met. Documents are kept for the period of 10 years after the last aid was granted under the aid program (national regulation). Document retention requirements do not apply to State aid provided under Article 20a of GBER.

The European Commission may request from the Managing Authority any information and supporting documents it deems necessary to monitor the application of GBER. The institution managing the Interreg program is required to provide the requested information to the

Commission within 20 working days from the date of receipt of the request, or within the longer period specified in the request.

#### **4.8 Obligations of the beneficiary of State aid**

When applying for State aid under the Interreg program in Poland, the applicant, in addition to the application for subsidizing, is required to submit information required [by the Regulation of Council of Ministers of March 29, 2010 on the scope of information presented by an entity applying for aid other than \*de minimis\* aid or for \*de minimis\* aid in agriculture or fisheries](#). It is included in the [Form of information submitted when applying for aid other than in agriculture or fisheries, \*de minimis\* aid or \*de minimis\* aid in agriculture or fisheries](#).

The purpose of the submitted information is to enable verification of whether the planned State aid meets the conditions for granting it. In particular, the form applies to:

- the information on the applicant and his economic activities,
- the information on the planned project,
- the information on the amount and use of State aid received for the same eligible costs for which State aid is to be used.

Pursuant to the Act of April 30, 2004 on proceedings in State aid cases, no State aid may be granted to the applicant until the applicant has provided the information required in the Form.

After receiving the State aid, the beneficiary is obliged to keep documents relating to it for 10 tax years from the date the aid was granted.

#### **4.9 Obligations of the entity providing State aid**

The entity providing the State aid may be:

- Managing Authority (in case of direct aid), or
- lead partner/partner of the project (if the program does not allow State aid at the second level or so-called indirect aid, the obligations listed in this chapter do not apply).

The provider of State aid is obliged to collect and verify all necessary information for its granting, contained in the Form of information presented when applying for aid other than in agricultural or fishery sectors, *de minimis* aid or *de minimis* aid in agriculture or fisheries.

The information collected is the basis for the examination carried out by the granting entity whether the planned aid meets the conditions for admissibility of State aid arising from the specific purpose.

It should also be confirmed that the planned State aid meets all the conditions of GBER, in particular whether:

- the planned project falls within the scope of support of the given type of State aid,
- expenses fall within the catalog of eligible expenses,
- the level of intensity of the planned aid (including consideration of possible cumulation with other aid, including *de minimis* aid), was correctly calculated,
- additional conditions for State aid as specified in GBER, are met.

The day of providing aid shall be:

- the date of signing the subsidy contract (direct aid), or
- the day the participant joins the project activities (indirect aid).

#### **Example 29**

In the Interreg project, the lead partner has planned to organize free training courses on conducting marketing activities in SMEs. The training courses are recognized as aid to participating undertakings.

In this case, the date of providing aid will be the day on which the undertaking submitted a declaration of participation in the training (if there was such a declaration) or the actual day on which the training was conducted (if there was no other formal document confirming participation in the training).

The entity providing the aid is required to report on the public aid provided to the President of the Office of Competition and Consumer Protection, using the SHRIMP application, within 7 days from the date the aid was provided.

If the State aid will be provided by the lead partner (or project partner), they must have access to the SHRIMP application. If they do not have such an access, they should submit [a request](#) to the President of UOKiK. The login and password for access to the SHRIMP application shall be provided by UOKiK by e-mail to the user's address entered in the request within 40 days of receipt of a complete application.

If the State aid provided has changed (e.g., aid was provided to a partner for planned expenses, and the actual implementation costs were lower), the providing entity is required to update the report in the SHRIMP application within 7 days.

Pursuant to the Act on the issues concerning State aid, the aid provider is obliged, when granting public aid, to inform the aid recipient in writing on:

- approval of the aid by EC or on no notification requirement,
- the aid program reference number assigned by the European Commission. This is the number that refers to the Regulation on the provision of *de minimis* aid and State aid in European Territorial Cooperation (Interreg) programs for 2021-2027.

## 4.10 Irregularities related to State aid

### Unlawful aid

Unlawful aid may occur when the original activities of the project assumptions were not related to the presence of state aid, and it occurred as a result of a change in the implementation of these activities of the project assumptions.

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#### Example 30

In the Interreg project, the partner is a public cultural institution, sustained in 90% by public funds. The purpose of the project was to finance the construction of the Cultural Center (a new building with an exhibition function). At the stage of signing the subsidy contract, no State aid was foreseen due to the non-economic nature of the partner's economic activity and the planned non-economic use of the facility. However, after the project was completed, the

Cultural Center was often rented for commercial purposes, with the result that the costs of all the partner's operations are now mainly covered by the proceeds from the market.

In this case, contrary to the original assumptions, the partner conducted mainly commercial activities in the facility. In reference to the above, the partner's revenue mainly comes from paid activities in the market, and therefore it should be identified as a business entity (undertaking), and the support provided to it thus becomes an unlawful aid.

Unlawful aid may be subject to an investigation, followed by a formal investigation procedure conducted by the European Commission on its own initiative or as a result of a complaint by an interested party. The introduction of changes to the project resulting in the occurrence of State aid may also give rise to consequences such as depriving the beneficiary of support or terminating the subsidy contract, if the occurrence of unauthorized aid is identified in the course of ongoing inspections or audits.

The receiving of unlawful aid may result in a decision of the European Commission ordering recovery of the aid, which includes interest calculated at the appropriate rate set by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.

The Commission has the right to seek recovery of the aid within 10 years counted from the date the unlawful aid was granted to the beneficiary. Any action, taken by the Commission or by a Member State acting at the request of the Commission with respect to unlawful aid, interrupts the limitation period. Any interruption causes the limitation period to start running from the beginning.

### **Misuse of aid**

Misuse of aid means that State aid is used by the beneficiary in violation of the rules for the specific use of State aid.

#### **Example 31**

In the Interreg project, the partner runs a sports and recreation center. The aim of the project is to build a new sports infrastructure. A sports hall that is being built is used 90% of the time by a

local professional handball club. In addition, there is no publicly posted information on the pricing terms for the use of the facilities by the club

In this case, the partner is violating the rules of investment aid for sports infrastructure, which require that the infrastructure is not available to a single professional sports club for more than 80% of the time. In addition, the conditions for providing this aid impose an obligation to publish the price conditions under which professional sports clubs use the infrastructure.

As a result, the partner received misused aid.

The European Commission has the same powers over misuse aid as it does over unlawful aid. Thus, when it occurs it also puts the beneficiary at risk that the aid may be recovered with interest over a period of at least 10 years from its reception.

Therefore, beneficiary should properly evaluate the planned activities already at the stage of preparing an application for funding of the project. If there is any doubt about the occurrence of aid, it will be safer to assume in the application for funding that public aid will occur. This will help to avoid the risk that State aid will be identified after the implementation of the project activities, which may cause that it is declared unlawful or misused aid.