

State aid **in Interreg** for beginners.

Grzegorz Golda, Przemyslaw Kniaziuk | Interact | 12.11.2024

Interact



Co-funded by
the European Union
Interreg

Agenda

01

Source of irregularities?

Economic theories and origins of State aid control

02

5 criteria,

Assessment of activities – who does it?

03

De minimis

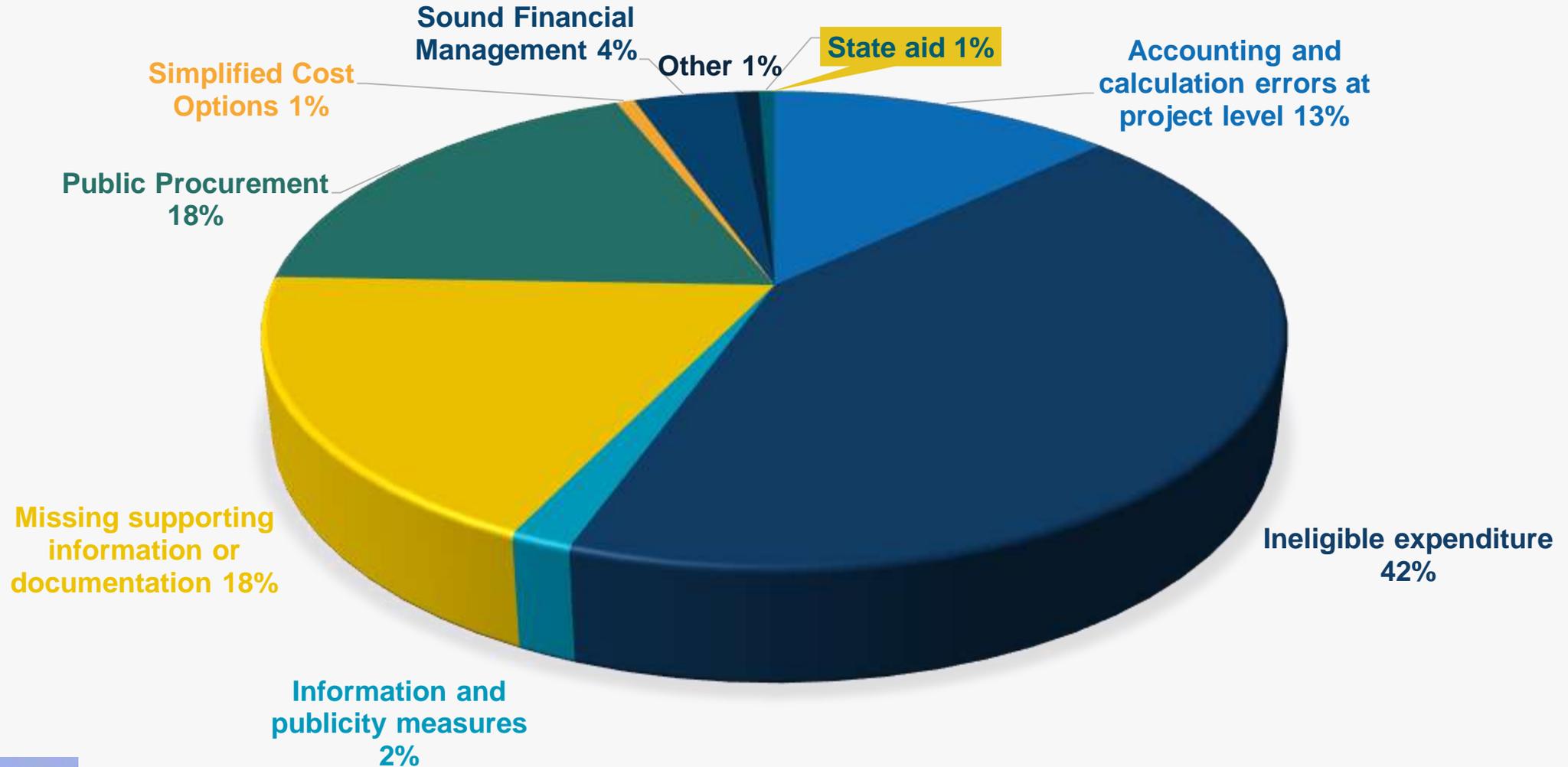
04

GBER (Art. 20 and Art. 20a)

05

Reporting

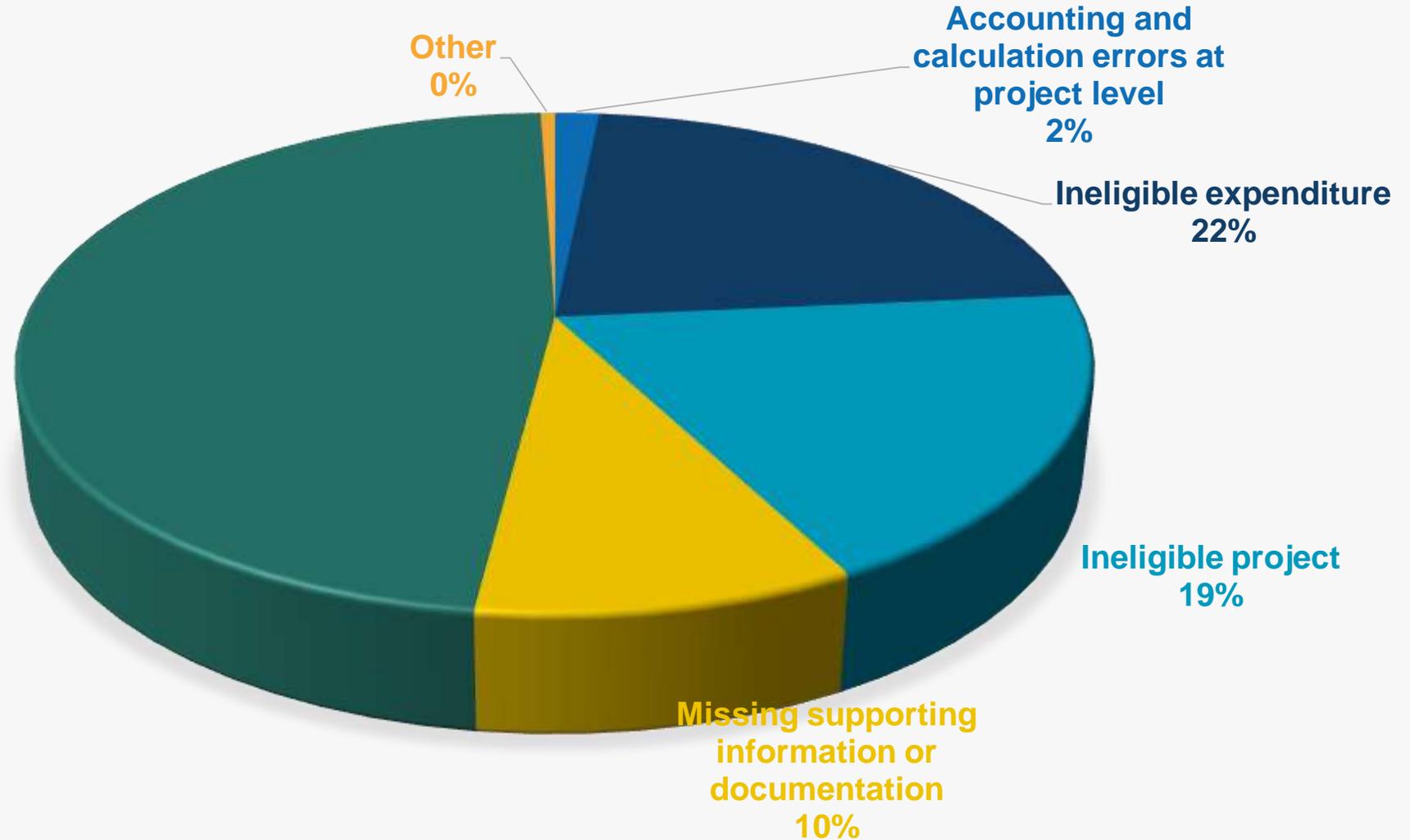
Type of irregularities (number) - Interreg



Type of irregularities (number) - comparison

Type	All	Interreg
Ineligible expenditure	2,429	431
Missing supporting information or documentation	1,634	187
Public Procurement	1,100	187
Sound Financial Management	506	39
Accounting and calculation errors at project level	403	132
Simplified Cost Options	225	7
Performance indicators	177	6
State aid	143	6
Information and publicity measures	117	17
Ineligible project	53	2
Financial instruments	49	-
Revenue Generating projects	13	1
Equal Opportunities / Non discrimination	10	-
Data protection	4	-
Total	6,863	1,015

Type of irregularities (amounts) - Interreg



State aid
EC Audit
Findings

Type of irregularities (amounts) - Interreg

Type	All	Interreg
Public Procurement	141,183,697.19	3,291,205.70
Ineligible expenditure	41,774,822.70	1,521,197.28
State aid	25,990,351.75	1,614.22
Missing supporting information or documentation	21,388,566.92	669,136.35
Ineligible project	11,259,107.42	1,303,822.86
Financial instruments	6,877,854.61	-
Accounting and calculation errors at project level	2,456,719.98	109,518.97
Simplified Cost Options	1,706,731.76	6,658.77
Sound Financial Management	807,924.92	27,433.86
Equal Opportunities / Non discrimination	658,219.85	-
Performance indicators	73,011.14	-
Information and publicity measures	23,140.03	77.52
Revenue Generating projects	16,850.71	7.53
Total	254,216,998.98	6,930,673.06

Economic theories and EU policies in short

Car factory 1



Price 25 000 EUR
Range 400 km

Car factory 2



Price 25 000 EUR
Range 400 km

Car factory 3



Price 15 000 EUR
Range 400 km

After 5 years...

Car factory 1



Car factory 2



Car factory 3



New price 35 000 EUR

- No competition
- We grow
- We can now set up prices
- We are a monopoly

Why so cheap in the first place?

Car factory 3



15 000 EUR –
how was it possible?

State aid

Or subsidies, support, etc.

Investment in the machine park 50% paid by an EU project

State corporate tax exemption for 5 years

Regional support to create workplaces, 25% of the salaries paid by the region

oversubsidising distorts competition

From economic theories to EU policies

Free-market economics

- a company receiving State aid has an advantage over competitors
- government should be hands-off and let the market regulate itself
- **State aid is generally prohibited unless compatible with internal market (-> exemptions!)**
- far-reaching state aid disciplines

Competition policy (DG Comp)

Keynesian economics

- state intervention is necessary to moderate the booms and busts in economic activity
- Governments need to remedy market failures
- free markets have no self-balancing mechanisms that lead to full employment -> government intervention needed

Regional policy (DG Regio)

From economic theories to EU policies

Competition policy (DG Comp)

Antitrust & cartels (anti-concentration, anti-monopoly)

Mergers control

State aid control

Foreign subsidies control

Digital Markets Acts control

Funding and grants

Teresa Ribera, Commissioners-designate for a clean, just, and competitive transition

[EP hearing today!](#)

Regional policy (DG Regio)

Strong research, technological development and innovation

Access to, and use and quality of, information and communication technologies

Competitive small business

Shift towards a low-carbon economy

Adaptation to climate change, risk prevention and management

Environmental protection and resource efficiency

Sustainable transport and better transport infrastructures

Sustainable and quality employment and labour mobility

Promote social inclusion, combating poverty and any discrimination.

Investment in education, training and lifelong learning

More efficient public administration

The principle already in the Treaty of Rome (1957)

Section troisième

Les aides accordées par les États

ARTICLE 92

1. **Sauf dérogations prévues par le présent Traité, sont incompatibles avec le marché commun, dans la mesure où elles affectent les échanges entre États membres, les aides accordées par les États ou au moyen de ressources d'État sous quelque forme que ce soit, qui faussent ou qui menacent de fausser la concurrence en favorisant certaines entreprises ou certaines productions.**
2. **Sont compatibles avec le marché commun :**
 - a) **les aides à caractère social octroyées aux consommateurs individuels, à condition qu'elles soient accordées sans discrimination liée à l'origine des produits,**
 - b) **les aides destinées à remédier aux dommages causés par les calamités naturelles ou par d'autres événements extraordinaires,**
 - c) **les aides octroyées à l'économie de certaines régions de la République Fédérale d'Allemagne affectées par la division de l'Allemagne, dans la mesure où elles sont nécessaires pour compenser les désavantages économiques causés par cette division.**



Save as otherwise provided in the Treaties, 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.

Article 107 of TFEU

Exemptions from the application of EU Competition policy

- State aid to the former East Germany
- 2009 financial economic crisis aid
- De minimis (general, fisheries, aquaculture, SGEI)
- General Block Exemption Regulation: SMEs, ETC, R&D&I, environment, culture and heritage conservation...
- FBER
- ABER
- Temporary framework (Covid aid)
- Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia
- Others... e.g. notification – approval of DG Comp

State aid outside EU?

Albania

- Article 71 of Stabilisation and Association Agreement with EU, 2009
- The Competition Authority, <https://caa.gov.al/>



State aid outside EU?

Northern Macedonia

- Article 69 of Stabilisation and Association Agreement with EU, 2004,
- The Law on State Aid Control (“Official Gazette of the Republic of Macedonia” no. 145/2010) is aligned with the relevant EU legislation
- Commission for the Protection of Competition, <http://kzk.gov.mk/>



State aid outside EU?

Serbia

- Stabilisation and Association Agreement between the EU and Serbia, Article 72, 2013
- Law on Protection of Competition, “Official Gazette of the RS”, no. 51/2009 and 95/2013
- Commission for Protection of Competition, <https://www.kzk.org.rs/en/>
- IPA III project entitled “EU Support for the Development of Serbia’s Internal Market,” training for civil servants engaged in the drafting of regulations, attended by competition expert Pablo Delgado Cubillo from the CNMC, the Spanish competition authority.



State aid outside EU?

Ukraine

- Association Agreement between the European Union and Ukraine, Article 262, 2014
- Antimonopoly Committee of Ukraine, <https://amcu.gov.ua/>



Status of countries can be checked here:

- https://competition-policy.ec.europa.eu/international/legislation_en
- https://competition-policy.ec.europa.eu/international/bilateral-relations_en

Elements of definition

State resources
(1)

Distortion of competition
(5)

Undertaking
(2)

Any aid granted by a Member State or through State resources (1) in any form whatsoever which distorts or threatens to distort competition (5) by favouring (3) certain (4) undertakings (2) or the production of certain (4) goods shall, in so far as it affects trade between Member States (5), be incompatible with the internal market.

Advantage
(3)

The Treaty on the Functioning of the European Union (TFEU) - Article 107

Selectivity
(4)

- Form of aid – any form
- Geographical application – EU
- 5 criteria

The 5 Criteria – (1) State Resources

1. Transfer of State resources – why in Interreg?

- National authorities (MSs) have discretion as how to the use resources
- In particular the selection of beneficiaries by the Monitoring (Steering) Committee
- Resources are not awarded directly by the Union (in comparison to some programmes managed by EC) - *Commission Notice on the notion of State aid, point 60, p. 14*

The 5 Criteria – (2) Undertaking

2. UNDERTAKING - an entity engaged in an economic activity

UNDERTAKING = ENTITY + ACTIVITY

Is the partner involved in economic activities through the project?

- The following is **completely irrelevant**:
 - Legal form (large undertaking, SME, association, etc.)
 - Ownership - Public/private
 - Non-profit concept
- Automatic checks usually give bad results – case by case analysis needed



The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING – examples:

A public university in the context of an Interreg project finances an experimental biogas plant and **sells** the produced gas to the grid.

Public regional office **rents** office space in a business incubator charging fees.

Regional public company managing a port **performs** riverbed deepening works.

Municipal office finances renovation of a local market where groceries are sold. Sellers **pay a monthly fee** to the municipal office to get a licence.



The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING – guiding questions:

- Does the partner develop/offer goods/services for which a market exists (**even hypothetically**)?
- Could the activity be carried out by a private entity in order to make profit? (**even if making profit is not the intention of the partner**)
- Does the partner plan to disseminate goods/services achieved within the project **a)** on his own **b)** on an exclusive and discriminatory basis (through restricted access databases, restricted publications or software)
- Will infrastructure be exploited commercially and/or will be not available for public use for free?



Undertaking and commercial activity – EXAMPLE CASE

Reconstruction of a pier

The aim of the project was **reconstruction of the port pier** which...

was later used to board **passengers and cargo** between **two cities of two Member States**.

The Beneficiary was a municipality.

The Managing Authority assessed the project as generating revenues, yet no State Aid analysis was conducted.

The subvention creates unlawful State Aid since the European Court of Justice in its judgment Leipzig / Halle (T-455/08 a T-443/08) declared that **the economic character of use of the infrastructure determines economic character of its construction**.



The 5 Criteria – (2) Undertaking

Is there a List of NON-economic activities?

No - List would vary among MS (in case activity is not liberalised – e.g. train services, water supply, etc.)!

Yet, there are some hints:

- Activities related to **public safety** (police, air and maritime traffic control, anti-pollution services, etc.)
- Public funding of **infrastructure** (public roads, bridges, canals, cycle paths, nature trails, etc.) that is freely available
- Primary activities of research organisations (**R&D**)
- Public education within **national education system**
- Other performance of **public duty** (e.g. plans and tools by authorities to help them in their tasks, cooperation to achieve these goals)

Undertaking and commercial activity – EXAMPLE CASE

Church renovation

The project consisted of **renovation of a church** and nearby church buildings including an old hospital. The Managing Authority approved the project with 70% co-financing rate.



The Beneficiary **later created a company** that **offered accommodation services** in the renovated buildings. This fact was not communicated to the Managing Authority. Since the Beneficiary is active in the **accommodation services market**, it falls within the scope of State Aid.

ECA audit finding: According to applicable legislation (eg. GBER) the project should have been approved with max. 50% co-financing.

The 5 Criteria – (3) Advantage

Does the measure give an economic advantage (a benefit) which an undertaking would not have obtained under normal market conditions?

Is there no advantage, e.g. it is merely a service at market price (e.g. obtained through public procurement?)



Advantage – EXAMPLE CASE

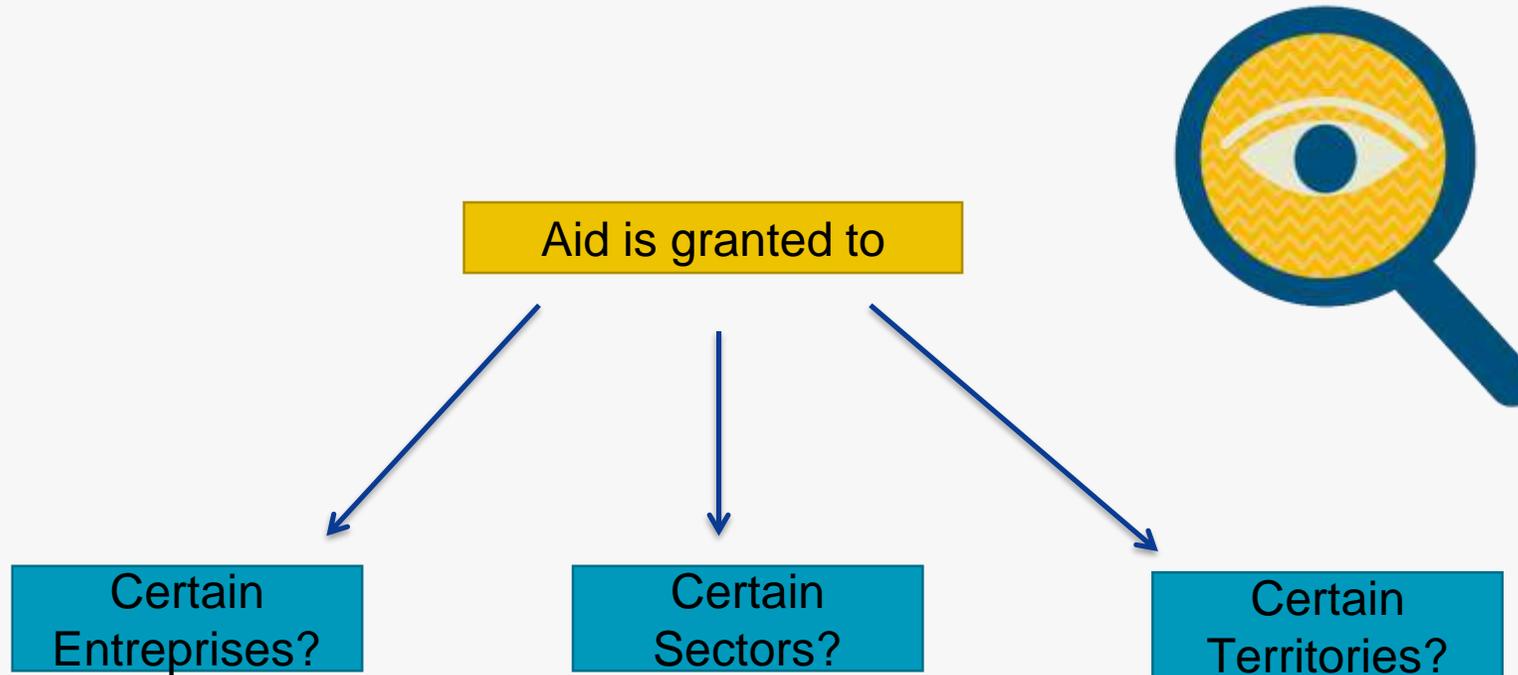
- Public bodies develop pilots to provide free-of-charge training to SMEs on enhancing innovation in SMEs. The training is for free.
- SMEs can rent office space at about 20% lower fee than the market price.
- Companies participating in the project get a voucher of EUR 20 000 to increase the level of environmental protection



If you conclude there is no advantage, always document the decision and reasoning!

The 5 Criteria – (4) Selectivity

ASK: Is the measure selective?



The 5 Criteria – (5) Effect on Competition

5. (Potential) distorting effect on competition and trade within the Union

- Possibility of distortion is sufficient
- if undertaking and selective advantage exists, it is often concluded that this criterion is met
- Careful with **purely local activities!** Lack of effect on trade (e.g. very local museums, local fairs, local ski-lifts)

Support decision that activity is purely local with **actual data!**



The 5 Criteria - Summary

1. **Transfer of State resources:** Always YES for Interreg
2. **Resources granted to an UNDERTAKING -> Is the partner involved in economic activities through the project?**
3. **Advantage -> Does the partner receive an undue advantage in the framework of the project?**
4. **Selectivity:** Almost certainly YES in Interreg
5. **Potential) distorting effect on competition and trade within the Union:** Most often YES.

State aid in Jems

The 5 Criteria – (2) Undertaking

2. Resources granted to an UNDERTAKING – guiding questions:

- Does the partner develop/offer goods/services for which a market exists (even hypothetically)?
- Could the activity be carried out by a private entity in order to make profit? (even if this is not the intention of the partner)
- Does the partner plan to disseminate goods/services achieved within the project on an exclusive and discriminatory basis (through restricted access databases, restricted publications or software)
- Will infrastructure be exploited commercially and/or will be not available for public use for free?



The 5 Criteria – (3) Advantage

Does the measure give an economic advantage (a benefit) which an undertaking would not have obtained under normal market conditions?

Is there no advantage, e.g. it is merely a service at market price (e.g. obtained through public procurement)?



Application form 00017 – RT Project #10121 S1
Lead partner RT L Partner #1

Identity Address Contact Budget Co-financing **State Aid**

State aid criteria self-check

Criterion I: Is the partner involved in economic activities through the project?
Please consider questions below, answer Yes/No and briefly justify

State aid question	Answer	Justification
1. Will the project applicant implement activities and/or offer goods/services for which a market exists?	Yes No	Enter text here
2. Are there activities/goods/services that could have been undertaken by an operator with the view to making profit (even if this is not the applicant's intention)?	Yes No	Enter text here

Criterion II: Does the partner receive an undue advantage in the framework of the project?
Please consider questions below, answer Yes/No and briefly justify

State aid question	Answer	Justification
1. Does the project applicant plan to carry out the economic activities on its own i.e. not to select an external service provider via public procurement procedures for example?	Yes No	Enter text here
2. Will the project applicant, any other operator not included in the project as a project partner or the target audience gain any benefits from its project economic activities, not received in the normal course of business (i.e. not received in the absence of funding granted through the project)?	Yes No	Enter text here

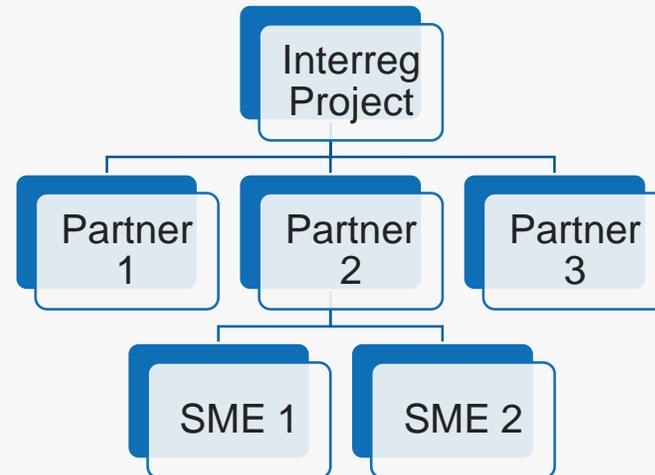
Result of State aid criteria self-check: **There is a risk of State aid**

State aid relevant activities
Activity 1.1

GBER scheme / de minimis
GBER Article 20

Indirect State Aid

- Referred to also as **downstream state aid** or **2nd level State aid**
- In Interreg this is often **trainings or services** (including vouchers) provided to third parties SMEs (Programme – beneficiary– third party). The final beneficiary of State Aid is whoever takes the training course or benefits from the services.



- Often very low value (> EUR 5000), but still 5 criteria are met...

State aid in Interreg – assessments

Baltic Sea Region	Central Europe	North West Europe	Euro Medditeranean	Central Baltic Programme
Internally JS/MA	External experts	Internally JS MC approves	External experts	Internally JS

Controllers and State aid

2 roles of controllers in SA

- The ex ante verification of State aid relevant partner activities in most cases was already performed by JS -> Project Partners approved with/without State aid;
- Partners with State aid: focus on compliance with procedures
- Partners without State aid: focus on activities - some activities might be SA relevant (on the basis of State Aid criteria – keep them in mind).

State aid in Jems

The screenshot displays the 'Partner details' page in the Jems system. The left sidebar contains a navigation menu with 'Contracting' and 'Partner details' highlighted in red circles. The main content area shows the following information:

- Country: [Empty field]
- De-minimis: [Empty field]
- Date of granting aid (DD/MM/YYYY): 03/06/2024
- Aid amount granted: 55.250,00
- Self-declaration submission date to the date of register consultation (DD/MM/YYYY): 10/6/2024
- Aid granted on the basis of: Subsidy contract
- Aid granted by: Rijksoverheid Nederland

Member state	Amount (in Euro)
Oostenrijk	55.250,00

Comments: [Empty field]

Attachments: PP2 Trey Research

There are no files uploaded.

De minimis

- Aid of minimal financial importance (small amounts of aid)
- The amounts of *de minimis* aid granted per Member State to a single undertaking within the last 3 ~~financial~~ years cannot exceed EUR 300.000
- The same threshold for road freight transport sector

I, the undersigned, representing XXX and involved as project partner in the project YYY declare that:

*the institution I represent **and all other entities belonging to the same company group** as my institution have not received any contribution falling under the de minimis **Regulation during the previous three years***

*the institution I represent and all other entities belonging to the same company group as my institution **have received the following contribution(s)** falling under the de minimis Regulation during the previous three years:*

2023

2022

2021

De minimis – Other Issues

Administrative proceedings (until 31 December 2025):

- self-declaration / check of *de minimis* register
- *de minimis* letter

National registers:

- Cyprus, Czech Republic, Estonia, Greece, Italy, Lithuania, Poland, Portugal, Slovenia, Slovakia (in process), Spain, Bulgaria and Hungary have an indicative central register, which works together with a system of declarations.
- As of 1 January 2026 national register or Union level central register obligatory, no self-declarations
- The approach is to model the central register on the transparency module (TAM)

Sector specific rules:

- Fisheries and aquaculture: EUR 30,000 / EUR 40,000 in Member States with a central register
- Agriculture: EUR 20,000 / EUR 25,000 in Member States with a central register
- Services of General Economic Interest: EUR 750,000

Cumulative de minimis

An undertaking from one country may receive *de minimis* aid from various Member States participating in the Programme. Approach from 2014-2020:

The Channel Programme

2 MS * EUR 200.000 = EUR 400.000 max.

Germany – Netherlands

2 MS * EUR 200.000 = EUR 400.000 max.

Germany – Belgium – Netherlands

3 MS * EUR 200.000 = EUR 600.000 max.

North Sea Region Programme

5 MS * EUR 200.000 = EUR 1 mio max.

NWE Programme

6 MS * EUR 200.000 = EUR 1,2 mio max.

What is GBER and how does it work?

- Regulation which declares certain categories of aid as compatible with the internal market
- Divided into sections (Section 2a - Aid for European Territorial Cooperation)
- Sections into articles which define special conditions (e.g. eligibility rules, max. aid intensity) for block exemption (e.g. trainings for SMEs)
- Current GBER expires on 31 December 2026

GBER procedure



GBER scheme (1)

Creating the scheme you inform DG Comp about:

- Which institution will be granting
- For what (which articles you will be using)
- Period when the aid will be granted
- How much you plan to grant
- That you will observe the rules
- DG Comp needs to be informed within 20 working days following entry into force the support measure
- Description to be published on your website + GBER Annex II for EC

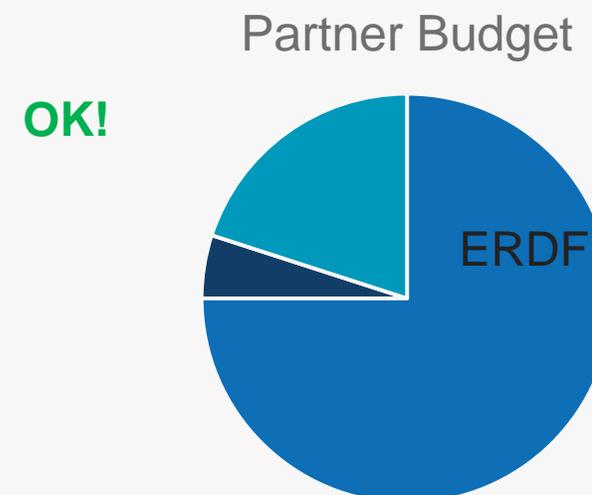
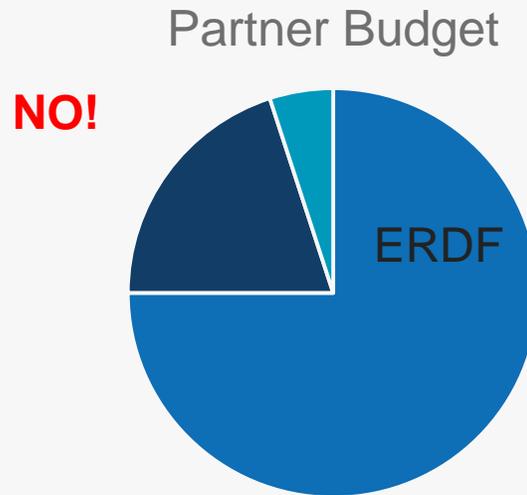
GBER scheme (2)

- Different approaches (1 scheme for all programmes, every programme its own scheme, scheme prepared only when the call has been finished and the content of the projects known)
- DG Comp assigns a number to each scheme (e.g. SA.42811, SA.42812, SA .42813), relevant for reporting afterwards
- You can search for and find all schemes here:
<https://competition-cases.ec.europa.eu/search>

Specific GBER Issues

The aid intensity \neq co-financing

EXAMPLE: Max. aid Intensity: 80%
ERDF Co-financing: 75%



■ ERDF (public) ■ National Fund (public) ■ Own funds ■ ERDF (public) ■ National Fund (public) ■ Own funds

Specific GBER issues

Expert's approach (there are various!)

- Not all public funding falls within the scope of Art. 107(1)
- The public funding of a public entity that carries out public task remains outside of scope of Art. 107(1)
- A public entity must have account separation for projects that constitute economic activities

Transparency Award Module (TAM)

TAM is a website maintained by EC where all EU MS register individual aid granted (GBER Annex III)

<https://webgate.ec.europa.eu/competition/transparency/public/search>

- NACE number required for reporting in TAM
- Transparency threshold for reporting in TAM: 100 000 EUR

Reporting on GBER granted (in SARI2)

- SARI2 is the database of the EC which collects and cumulates the data on all aid granted within GBER
- Aid granted needs to be reported (via Member State service usually)
- The final data is sent to State Aid Reporting Interactive (SARI2)

The screenshot displays the SARI2 web application interface. The main content area shows a search summary for 'DRAFT cases to review & update' with a case list for 'X 344/2010'. Below this, there are two sections for 'Case expenditure rows'. Each section contains a table with columns for 'Ref', 'Aid instrument', 'Primary objective', 'Objective', 'Region', and 'Assisted region(s) Art.107(3)'. The first row (Ref 1) is for 'Direct grant' under 'Training' with the objective 'General training (Art. 38(2))'. The second row (Ref 2) is for 'Direct grant' under 'Training' with the objective 'Specific training (Art. 38(1))'. Both rows include an 'Expenditure' table with columns for 'Year', 'Currency', 'Ad element (in million currency)', 'Type of data', 'Last comment', 'Action', and 'Category'. The expenditure tables show data for 2010 and 2009.

Ref	Aid instrument	Primary objective	Objective	Region	Assisted region(s) Art.107(3)	Sector
1	Direct grant	Training	General training (Art. 38(2))		M	
Expenditure:						
Year	Currency	Ad element (in million currency)	Type of data	Last comment	Action	Category
2010	GBP	0				
2009	GBP					
2	Direct grant	Training	Specific training (Art. 38(1))		M	
Expenditure:						
Year	Currency	Ad element (in million currency)	Type of data	Last comment	Action	Category
2010	GBP	0.228				
2009	GBP					

GBER requirements

- The undertaking in difficulty is ineligible (Definition - GBER Annex I, but prohibition comes from Article 7(1)(d) Regulation on ERDF and CF 2021/1058)
- Recoverable VAT not eligible under GBER
- Incentive effect (project activities cannot start before the submission of written application for aid)
– does not apply to art. 20 and 20a
- Deggendorf rule (if EC issued a recovery orders no further aid) - does not apply to art. 20 and 20a
https://competition-policy.ec.europa.eu/state-aid/procedures/recovery-unlawful-aid_en
- SME status check required for all articles which make a distinction between SME and large - does not apply to art. 20 and 20a - Self declaration is not sufficient!

GBER Article 20

- Article 20 open for all: large, medium-sized, small enterprises
- Eligibility catalogue in this article = the eligibility in Art 38 - 44 of Interreg Regulation 2021/1059
- SCOs compatible
- The fishery and aquaculture sector and the primary agricultural production sector eligible
- Threshold of aid: EUR 2,2 million per undertaking, per project
(for programmes with 80%, EUR 2,2 million ERDF + EUR 0,55 million non-public own funds= EUR 2,75 million TEC per partner)
- Article 20 can be applied to indirect and direct SA

GBER Article 20a

- Threshold of aid: up to EUR 22 000 per undertaking per project
- Can be applied to voucher schemes, trainings etc. – indirect aid, but to direct aid as well
- The fishery and aquaculture sector and the primary agricultural production sector eligible
- No need to inform in SANI2, no annual reporting needed in SARI2
- The detailed records with supporting documentation kept for 10 years – do not apply
- The MA shall ensure that all supporting documents are kept at the appropriate level for a 5-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made (Article 82.1 CPR)

State Aid Documentation

Different provisions compared to other project documentation!

Make sure you can meet this deadline when archiving files.

- Records (documentation) regarding State aid available **for 10 fiscal years from the date when aid was granted** (*de minimis*)
- Available for **10 years** from the date on which the ad hoc aid was granted or **the last aid was granted under the scheme** (GBER)
- if requested by the EC, these documents and any supporting documentation must be presented to the EC within 20 working days or longer, but only if it was fixed in the request



Date of granting the Aid

When is the date of granting de minimis or aid under the GBER?

1. ... at the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime irrespective of the date of payment of the de minimis aid to the undertaking (Art. 3(4) of the de minimis regulation).
2. ... the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime (Article 2(28) GBER)

In the context of Interreg programmes this means **the date of signing the subsidy contract** is the date the aid was granted.



State Aid Audits

1. Develop a strategy how to deal with State Aid.
2. Be ready to provide justification why no aid **for all non-state aid relevant projects** (on the basis of 5 criteria)
3. Be sure sectoral and activities exclusions were respected
4. De-minimis: self-declaration received / thresholds respected / beneficiary informed
5. De-minimis: single undertaking as a whole group
6. GBER: Deggendorf rule (no pending recovery orders), in difficulty, incentive effect (AF before start), eligibility of costs, timely publication in SANI + SARI, specific article provisions (intensity, eligibility, other)

[State aid](#)
[EC Audit](#)
[Findings](#)