

## State Aid Self-Assessment

**This questionnaire has been developed to help you to make an initial assessment of whether State aid is involved in your project and your options for dealing with this. This will help us to ensure that we have the necessary information to deal with your enquiry and to do so more quickly.**

### What is State aid?

State aid is defined as an **advantage** in any form whatsoever conferred on a **selective basis to certain undertakings/sectors** by national, regional or local public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State aid (examples include general taxation measures or employment legislation).

To be State aid, a measure needs to have these features (cumulative):

- there has been an **intervention** which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, granting special/exclusive rights, granting use/administration of state owned infrastructure without a public tender procedure etc.**by the State or through State resources (local, regional or national resources, structural funds, resources of public undertakings, all resources form public sector, including, under certain circumstances, the resources of private bodies)**)
- the intervention gives **an advantage on a selective basis**, for example to specific companies or industry sectors, or to companies located in specific regions;
- the beneficiaries are undertakings
- **competition has been or may be distorted (competition at European level not just national);**
- the intervention is likely to **affect trade between Member States**.

Before the State aid tests can be applied it is necessary to determine whether the following two aspects are present:

1.	<b>Is the beneficiary an 'undertaking'?</b> An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic (commercial/competitive) activity and where there is a market in comparable goods or services.
2.	<b>Is an undertaking engaged in economic activity?</b> This is defined as offering goods and/or services on a given market and which could, at least in principle, be carried out by a private operator for remuneration.

### Key questions that should be considered are:

Consider these questions from the perspective of any organisations which could benefit directly or indirectly from the measure.

#### PART 1 – INITIAL STATE AID ASSESSMENT

##### 1. Is the support provided granted by the State or through State resources?

The definition of state resources is aid that is granted by the state; this includes all public and private bodies controlled by the state to distribute public funds. State resources include Funds not permanently belonging to the state but which the state may direct, such as European funds like IPA, ERDF.

This criteria is automatically fulfilled for IPA Programme

**Yes/No:**

**If no, please provide an explanation.**

##### 2. Does the support confer a selective advantage to an undertaking?

The intervention gives **an advantage on a selective basis**, for example to specific companies or industry sectors, or to companies located in specific regions. *or*

A benefit which is granted for free or on favorable (non-commercial) terms to some selected undertakings (but not others), could be state aid.

As grants within IPA Programme are awarded only to certain entities, the selective nature is always present.

##### Definitions:

**Advantage:** An advantage can take the form of direct payment of state resources in the form of grants and subsidies as well as indirect benefits that affect the public budget such as tax breaks, rate rebates, low interest loans, sale of public land below market value and the provision of services for free or at below-market rates.

**Selectivity:** Support that targets particular businesses, regions or types of firm e.g. SMEs or particular sectors and not others is selective.

**Undertakings:** An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic activity and where there is a market in comparable goods or services. It does not have to be profit-making as long as the activity carried out is one which, in principle, has commercial competitors (at EU Level). It can include voluntary and non-profit-making public or public authorities when they are engaged in economic activity. Charities, universities, research institutions, voluntary entities, social enterprises and public sector bodies may therefore be deemed to be undertakings when they are engaged in economic activity. Support in favour of non-undertakings (i.e. entities which are not involved in economic activity) is not state aid.

**Economic activity:** Activity which consists of offering goods or services on a given market and which could, at least in principle, be carried out by private actors in order to make profits.

**Yes/No:**

**If no, please provide an explanation.**

**3. Does the support distort or have the potential to distort competition?**

If the support has the potential to strengthen the position of the beneficiary relative to other competitors then this criteria is likely to be met. The potential to distort competition does not need to be substantial or significant, and this criterion can apply to relatively small amounts of financial support and firms with little market share.

If all the above conditions are fulfilled, this criteria is automatically met (except for the case when the beneficiary has a **legal** monopoly)

Yes/No

**If no, please provide an explanation.**

**4. Does the support affect trade between Member States?**

Commission's interpretation of this is broad - it is sufficient that a product or service is tradeable between member states, even if the recipient of support does not itself export to other EU markets. This test is not met only in very limited circumstances e.g. where a single, small business is involved in much localized activity e.g. hairdressers.

Yes/No

**If no, please provide an explanation.**

**Initial Assessment**

**Please provide a summary of your initial assessment of whether the measure is state aid and which aid frameworks may be relevant, considering the legal basis presented in the Annex:**

**Please also provide details of any particular areas of uncertainty or questions which you would like the Steering Committee to consider:**

## **ANNEX – LEGAL BASIS**

### **State aid websites:**

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

[http://ec.europa.eu/competition/state\\_aid/overview/index\\_en.html](http://ec.europa.eu/competition/state_aid/overview/index_en.html)

[http://ec.europa.eu/comm/competition/state\\_aid/legislation/legislation.html](http://ec.europa.eu/comm/competition/state_aid/legislation/legislation.html)

New INTERACT Publication on State Aid

[http://admin.interact-eu.net/downloads/9263/Questions\\_Answers\\_ETC\\_and\\_State\\_Aid\\_April\\_2015.pdf](http://admin.interact-eu.net/downloads/9263/Questions_Answers_ETC_and_State_Aid_April_2015.pdf)

### **State aid guidance available:**

#### **State aid definition**

**DRAFT!** [Communication from the Commission](#) - Commission Notice on the notion of State aid pursuant to Art. 107(1) TFEU

#### **Rules on Procedure**

**NEW!** [Council Regulation \(EU\) No 734/2013](#) amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

[Council Regulation \(EC\) No 659/1999](#) of 22 March 1999 laying down detailed rules for the application of Article 93 (now Art. 88) of the EC Treaty

**NEW!** [Commission Regulation \(EC\) No 659/1999](#) laying down detailed rules for the application of Article 108 of the TFUE (consolidated and non-official version)

[Commission Regulation \(EC\) No 794/2004](#) of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

**NEW!** [Commission Regulation \(EU\) No 372/2014](#) of 9 April 2014 amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information

[Commission Regulation \(EC\) No 1125/2009](#) of 23 November 2009 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.2, Part III.3 and Part III.7 of its Annex I

[Corrigendum](#) to Commission Regulation (EC) No 794/2004 of 24 April 2004 implementing Council Regulation (EC) No 659/1999 laying detailed rules for the application of Article 93 of the EC Treaty

[Corrigendum](#) of the Corrigendum to Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

[Commission Regulation \(EC\) No 1627/2006](#) of 24 October 2006 amending Regulation (EC) No 794/2004 as regards the standard forms for notification of aid

[Commission Regulation \(EC\) No 1935/2006](#) of 20 December 2006 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

[Commission Regulation \(EC\) No 1147/2008](#) of 31 October 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, as regards Part III.10 of its Annex 1

[Commission Regulation \(EC\) No 271/2008](#) of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

[Council Regulation \(EC\) No 994/98](#) of 7 May 1998 on the application of Articles 92 and 93 (now 87 and 88 respectively) of the Treaty establishing the European Community to certain categories of horizontal State aid

**NEW!** [Council Regulation \(EU\) No 733/2013](#) of 22 July 2013 amending Regulation (EC) No 994/98 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid

[Details of arrangement](#) for the electronic transmission of State aid notifications including addresses together with the arrangements for the protection of confidential information - Article 3(6) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty

[Commission communication C\(2003\) 4582](#) of 1 December 2003 on professional secrecy in State aid decisions

[Commission notice](#) on the enforcement of State aid law by national courts

[Commission notice](#) on the determination of the applicable rules for the assessment of unlawful State aid (notified under document number C(2002) 458)

[Notice from the Commission](#) — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid

[Regulation \(EEC, Euratom\) No 1182/71](#) of the Council of 3 June 1971 determining the rules

applicable to periods, dates and time limits

**Commission Recommendation** of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

**Commission communication** - Model declaration on the information relating to the qualification of an enterprise as an SME

**Corrigendum** to the Commission Communication — Model Declaration on the information relating to the qualification of an enterprise as an SME

### **Simplification Package regarding State aid Proceedings**

**Commission Notice** on Simplified procedure for the treatment of certain types of State aid

**Commission Notice** on a Best Practices Code on the conduct of State aid control proceedings

### **Transparency of State aid and of public undertakings**

**Commission communication to the Member States:** Application of Articles 92 and 93 [now 87 and 88] of the EEC Treaty and of Article 5 of the Commission Directive 80/723/EEC to public undertakings in the manufacturing sector

**Commission Directive 2006/111/EC** of 16 November 2006 transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version)

### **Public Land Sales**

**Commission communication** concerning aid elements in land sales by public authorities

### **General Block Exemption Regulation**

**NEW! Commission Regulation (EC) No 651/2014** of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General Block Exemption Regulation - GBER)

### **De minimis aid**

**NEW! Commission Regulation (EU) No 1407/2013** on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid

### **Horizontal rules**

**NEW! Guidelines** on regional State aid for 2014 – 2020

**NEW! Communication from the Commission** - Criteria for the analysis of the compatibility with the internal market of the state aid for the promotion of the development of some important common European projects (Available only in Romanian)

**NEW! Annex** to the 1a Communication from the Commission - Criteria for the analysis of the compatibility with the internal market of the state aid for the promotion of the development of some important common European projects(Available only in Romanian)

**NEW! Community framework** for State aid for research and development and innovation

**NEW! Community guidelines** on State aid for environmental protection and energy 2014-

2020

**NEW! [Community guidelines](#)** on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012

**NEW! [Communication from the Commission](#)** - Guidelines on State aid to promote risk finance investments

**NEW! [Communication from the Commission](#)** - Guideline on State aid for rescuing and restructuring non-financial undertakings in difficulty

**[Communication from the Commission](#)** - Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged workers subject to individual notification

**[Communication from the Commission](#)** - Criteria for the analysis of the compatibility of State aid for training subject to individual notification

**[Communication from the Commission](#)** - Criteria for an in-depth assessment of regional aid to large investment projects

### **Modification of some sector-specific rules and some specific aid instruments rules**

**[Communication from the Commission](#)** amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines

### **Sector-specific rules**

**NEW! [Community Guidelines](#)** for the application of State aid rules in relation to rapid development of broadband networks

**[Communication from the Commission](#)** on the application of State aid rules to public service broadcasting

**[Council Regulation \(EC\) No 1407/2002](#)** of 23 July 2002 on State aid to the coal industry

**[Council Decision](#)** of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines

**NEW! [Communication from the Commission](#)** on State aid for films and other audiovisual works

**[Commission Communication](#)** relating to the methodology for analysing State aid linked to stranded costs

**[Notice from the Commission](#)** on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services

**NEW! [Communication from the Commission](#)** concerning the prolongation of the application of the Framework on State aid to shipbuilding

**[Framework](#)** on State aid to shipbuilding

**[Communication from the Commission](#)** — Rescue and restructuring aid and closure aid for the steel sector (notified under document No C(2002) 315)

**[Communication from the Commission](#)** concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty

**NEW! [Communication from the Commission](#)** - Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012

**NEW! [Communication from the Commission](#)** amending the Communication from the Commission - Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012

### **Specific aid instruments**

**Commission Notice** on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees

**NEW! Commission Communication** amending the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance

**NEW! Communication from the Commission** extending until end-2014 the list of marketable risk countries in the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance

**NEW! Communication from the Commission** to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance

**NEW! Communication from The Commission** amending the list of marketable risk countries in the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance

**Commission Notice** on the application of the State aid rules to measures relating to direct business taxation

#### **Services of general economic interest**

**NEW! Communication from the Commission** on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest

**NEW! Commission Decision of 20 December** on the application of art. 106 (2) of the TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest

**NEW! Communication from the Commission** - European Union framework for State aid in the form of public service compensation

**NEW! Regulation (EU) nr. 360/2012** on the application of art. 107 and 108 of the TFEU to de minimis aid granted to undertakings providing services of general economic interest

**COMMISSION STAFF WORKING DOCUMENT Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest**

**[http://ec.europa.eu/competition/state\\_aid/overview/new\\_guide\\_eu\\_rules\\_procurement\\_en.pdf](http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf)**

**more information at [http://ec.europa.eu/competition/state\\_aid/legislation/sgei.html](http://ec.europa.eu/competition/state_aid/legislation/sgei.html)**

#### **State aid on transport sector**

**NEW! Guidelines** on State aid to airports and airlines

**Community guidelines** on State aid for railway undertakings

**Community guidelines** on State aid to maritime transport

**Communication from the Commission** (2008) providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea

**Communication from the Commission** (2009) providing guidance on State aid to shipmanagement companies



### **Community rules on public services in transport**

**Regulation (EC) No. 1370/2007** on public passenger transport services by rail and by road and repealing Council Regulations Nos. 1191/1969 and 1107/70

**NEW! Communication from the Commission** on interpretative guidelines concerning Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road  
**Regulation (EEC) No 1192/69** on common rules for the normalisation of the accounts of railway undertakings

**You may also consult relevant national authorities to obtain more specific information on rules and limitations concerning State Aid:**

### **National rules on procedure (Romania)**

<http://www.ajutordestat.ro/>

#### **section State aid legislation**

**Reglementări procedurale naționale**

**<http://www.ajutordestat.ro/?pag=79>**

**NOU! Ordonanța de Urgență a Guvernului nr. 77/2014** privind procedurile naționale în domeniul ajutorului de stat, precum și pentru modificarea și completarea Legii concurenței nr. 21/1996, modificată și completată prine efectul Legii nr. 20/2015

**Regulamentul Consiliului Concurenței din 20.06.2007** privind procedurile de monitorizare a ajutoarelor de stat

**Regulamentul Consiliului Concurenței din 13 iunie 2005** privind Registrul ajutoarelor de stat

**Legea nr. 346 din 14 iulie 2004** privind stimularea înființării și dezvoltării întreprinderilor mici și mijlocii - definirea întreprinderilor mici și mijlocii

**Hotărârea de Guvern nr. 651/2006** privind aprobarea Politicii în domeniul ajutorului de stat pentru perioada 2007 - 2013

**Hotărârea de Guvern nr. 98/2010** privind constituirea Consiliului interministerial "Consiliul pentru aplicarea politicii în domeniul ajutorului de stat"

### **Transparența relațiilor financiare**

**Regulamentul Consiliului Concurenței din 21 mai 2004** privind transparența relațiilor financiare dintre autoritățile publice și întreprinderile publice, precum și transparența financiară în cadrul anumitor întreprinderi, cu modificările și completările ulterioare

### **Harta ajutorului de stat regional – România – 2007 – 2013**

**Hotărârea de Guvern nr. 517 din 26 iunie 2014** privind intensitatea maximă a ajutorului de stat regional în perioada 2014-2020 pentru investiții inițiale

### **National rules on procedure (Serbia)**

Law on State Aid Control, RS Official Gazette 51/09 (Zakon o kontroli državne pomoći, „Službeni glasnik RS“ broj 51/09)

Regulation on Rules for Granting the State Aid, RS Official Gazette 119/14 ( Uredba o pravilima za dodelu državne pomoći („Službeni glasnik RS“ broj 13/2010; 100/2011, 91/2012, 37/2013, 97/13 and 119/2014)

Regulation on the Rules and Procedures for State Aid Notification, RS Official Gazette 13/10 (Uredba o načinu i postupku prijavljivanja državne pomoći („Službeni glasnik RS“ broj 13/10))

Here is the link for the Ministry of Finance web site with all the above documents:

<http://www.mfin.gov.rs/pages/issue.php?id=7272>