



STATE AID AND INTERREG SPECIFICS

Czech Perspective on European Territorial Cooperation after 2020



Position

To exclude INTERREG programmes completely from State Aid rules in line with programmes, such as Horizon2020.



Rationale

Nature of INTERREG interventions - INTERREG programme interventions are activities of the common European interest as they promote development and deepening of partnerships and links across borders. Otherwise, these activities would not have happened, as they do not receive priority support by national states. The nature of such interventions, with respect to their focus or financial amount, means, in fact, a very low risk of distortion of economic competition on the Internal Market. It is also due to the fact, that all interventions are being approved by Monitoring Committees, where representatives of all involved member states are present. Therefore the decision is never solely on one member state and cross-border trade between Member States is well protected.

Locality of interventions – Especially Cross-Border Cooperation (CBC) projects are often in a dubious situation – even though cross-border projects are usually smaller (=cheaper) than mainstream projects the risk of State Aid relevance is often higher. This paradox is caused by the fact that CBC projects should have a cross-border impact which is automatically interpreted that this feature for State Aid relevance - *intervention is likely to affect trade between Member States* - (out of four that should be fulfilled cumulatively) is automatically fulfilled regardless the scale of the project. In mainstream programmes, this feature is not automatically fulfilled and very often it is the one that allows the activities to “escape” from being relevant for State Aid even though the scale is much higher than in CBC projects. In our opinion, locality should rather refer to “the scale of intervention impact” than to the territorial aspect, which is always relevant in INTERREG programmes, as our interventions are based on cooperation between Member States. INTERREG interventions, by their nature, are complementary - based on cooperation across the border. There is no aim and also no high probability to distort Internal Market supporting these interventions, as they are small-scale (by the amount of funding) and local (by their effects).

Differences in interpretation - Even after adoption of Commission’s notice,¹ State Aid is often interpreted differently in individual Member States, therefore rules may not be applied in these multinational programmes with a reasonable legal certainty, which in practice often prevents high-quality projects.

State Aid rules complexity - Another problem is the fact that the issue of State Aid is very complex. To be able to assess that properly it is not sufficient to know the legislation, but also judgements of the European Court of Justice, because those form the decision-making practice. And, of course, it is not

¹ Commission Notice on the notion of State Aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946, 19/07/2016.



in the capacity of the programme authorities to follow all these sources and, of course, it increases uncertainty among applicants, beneficiaries and also programme authorities. On top of that, once we identify that the project or part of its activities are State Aid relevant, it is necessary to fulfil all the conditions and rules that apply to it. While Commission's notice on State Aid brought more understanding, the exercise remains complex and extremely difficult to grasp for beneficiaries.

Assessing a combination - Frequently, there is a combination of activities that are not State Aid relevant with activities that are State Aid relevant within one project. In that case, the project budget is divided not only into partner parts, but the budget of each partner is also divided among activities that are State Aid relevant and those that are not. At the same time, levels of co-financing and rules of eligibility are also different. This all should be followed by the partners as well as by the controller throughout the whole implementation of the project and, of course, it causes additional administrative burden and increases risk of errors.

State Aid to third parties (indirect Aid) - Complicated and costly administration of projects, considered with indirect State Aid, isn't adequate to negligible (nearly zero) benefits. Despite the fact, that amounts of indirect State Aid in registers are very often at the level of hundreds of EUR only, all following requirements are necessary due to this rule: relevance is being assessed by external experts; Joint secretariat negotiates conditions of project activities in order to incorporate conditions in the contract; beneficiaries must keep an additional evidence for all participants of indirect State Aid activity in a register; programme bodies must control the evidence. Those administrative burdens are unproportional to the potential risks to the Internal Market.

Sharing knowledge is an economic activity – 7th Cohesion Report states² that stimulating investment in SMEs has contributed to enlarging the knowledge-based economy across Europe. It is, however, a paradox that SMEs are, due to the significant risk of State Aid relevance, very often excluded from grant support of Cohesion Policy unlike of Horizont 2020 programme. It would be to the benefit of European competitiveness to open up INTERREG also for SMEs, especially for R&D activities, knowledge transfer and institutional cooperation in capitalization of innovation. Those activities should not be perceived as economic activities any more, therefore they shall cease to be the subject to State Aid rules.



Example

Concerning the topics, we deal with State Aid mainly in thematic objective 1 in case of application research, because in this field private bodies are also beneficiaries. Another thematic objective where there is an increased risk of State Aid is TO 10, especially (but not exclusively) when it concerns life-long education. Nevertheless, we had some discussion on State Aid also in TO 6 (IP 6c) or TO 11.

Ad Locality of interventions

Some representative CBC projects can include revitalizations of the cultural sights that offer certain tourist services, but on a very limited local scale. An example is a project of revitalization of the castle orangery in the town of Šilhářovice (1.581 inhabitants in 2017) supported, under the *de minimis* regime, by the Interreg Programme V-A Czech Republic - Poland. In this project, a kitchen was constructed, which was identified as a State Aid relevant activity. Even though the revitalized orangery

² On page XIX.



becomes an important complementary part of the offer of the region for the tourists, it is unlikely that the orangery itself would attract a significant number of foreign tourists. Despite that all four criteria of the State Aid were fulfilled, in reality it is highly improbable that the project would have a significant impact on the international trade between the two Member States involved, i. e. the Czech Republic and Poland. The impact of the project is local while it is still important for the development of the local community. In this case, the State Aid rules became one of the aspects complicating financing and administration of the project, inadequately to the risk of distorting the Internal Market.

Ad Differences in interpretation

Interpretation for *de minimis* differs - according to the regulation the limit of 200 000 EUR is applied per member State (MS). In some MS the interpretation is that *de minimis* is registered in the Member State in which the Managing Authority is located, because that Managing Authority signs the contract. Interpretation in other MS is that each project partner can choose in which MS (from those involved in the INTERREG programme) the *de minimis* will be registered. As a result, some programmes e.g. Interreg Danube, completely left the *de minimis* principle, due to the lack of clarity among participant MSs.

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