

State Aid and De minimis provisions

According to Article 107 (ex. Article 87) of the TFEU, state aid is “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 and services shall, in so as it affecting trade between Member States be incompatible with the internal market”.

It is not the legal aspect (public or private) but the nature of the activities that the applicant intends to implement within the project that determines whether the state aid is present or not.

State aid applies when all five cumulative criteria are met according Commission Notice on the notion of State aid as referred to in Article 107(1) of the TFEU (2016/C 262/01)¹:

1. Presence of Public resources. The state-aid norms comprise exclusively the measures that imply the public sources/resources transfer (including from national, regional and local authorities, banks and public foundations, etc.). Moreover, the aid does not need to be granted by the State as such. The aid can be granted by a public or private intermediate body appointed by the state. The criterion is always fulfilled for CBC Programmes.

2. The measure granted confers an economic advantage (a benefit) to an undertaking, which it would not have otherwise received. First of all it is important to analyze whether the recipient of the aid is an undertaking. The State aid case-law considers an undertaking any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (an undertaking can be a public body, a charity, a NGO, an association, an university etc.). Classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former. Any activity consisting in offering goods and services on a market is an economic activity. Economic activity means the supply of goods and services on a given market. The application of the State aid rules as such does not depend on whether the entity is set up to generate profits, as also non-profit entities can offer goods and services on a market too. The only relevant criterion is to decide whether or not the entity carries out an economic activity in the context of the ETC project. Also, the State authorities may themselves be considered as undertakings when they are involved in economic activities. With regard to the economic advantage, an advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention.

3. The measure granted by the State is selectively favouring certain undertakings or the production of certain goods and services. Not all measures, which favor economic operators, fall under the notion of aid, but only those, which grant an advantage in a selective way to certain undertakings or categories of undertakings or to certain economic sectors. An analysis of the selective nature is relevant when there is an indirect advantage.

4. The grant distorts or threatens to distort competition. A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. A distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalized sector where there is, or could be, competition. A possible distortion of competition is excluded if (1) a given service is subject to a legal monopoly (established in compliance with EU law) and is not in competition with similar (liberalised) services and (2) the service provider cannot be active (due to regulatory or statutory constraints) in any other liberalised (geographical or product) market.

5. The grant affects trade between Member States. An advantage granted to an undertaking

¹ [Official Journal C 262/2016 \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2016/262/oj)

operating in a market which is open to competition will normally be assumed to affect trade between Member States. However, if the service in question is of a merely local interest there is no effect on trade between Member States. In order to assert that this criterion is not fulfilled, the project in question must have a mere local impact. If State support is granted to an activity which has a purely local impact, there may not be an effect on intra-EU trade, e.g. where the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Moreover, the measure should have no - or at most marginal - foreseeable effects on cross-border investments.

The provisions of this document are applicable to the partner/s legally established on the territory of the Republic of Bulgaria. The applicants from Republic of Serbia should follow the applicable provisions set out in REGULATION (EU) 2023/2831, as well as national regulations regarding State aid

Due to the fact that the funds granted by the Interreg-VI-A IPA Bulgaria - Serbia Programme are of a public nature, before signature of the subsidy contract all activities planned by Bulgarian partners will be subject to check for compliance with the state aid rules.

This check is always made case by case and therefore the presence or lack of state aid relevant activities depends on the specificity of the project. The assessment is based on the above mentioned five criteria and intends to define whether:

- The applicant is to be considered as undertaking/ not undertaking in regards with the planned activities. An undertaking is an entity engaged in an economic activity in the context of the proposed project. It is not the legal status (public or private) but the nature of the activities that the applicant intends to implement that determines whether the State aid has to be respected or not;
- The planned activities are/are not market oriented;
- The planned activities are/are not affecting the trade between Member States;
- The applicant will/will not be the final user of the aid;
- The applicant is/is not in a situation of "single undertaking" ² (in the meaning of art. 2, para. 2 from Regulation (EU) 2023/2831).

Please, note that within the project proposal it could be found that only one activity is state aid relevant. This means that the funding for only this activity will obey to the state aid rules.

d IMPORTANT

Within the Interreg-VI-A IPA Bulgaria - Serbia Programme activities of economic character could be financed under the **de minimis regulation**.

On the basis of art.9, para. 4 and art. 11 of the State aid Law, the MA is constitute as the administrator of the aid and in that reason the Subsidy contract is the provision act that will provide de minimis aid.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1407&from=EN>

FACTSHEET

De minimis support

(INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME

INTRODUCTION

An undertaking that receives support from public funding sources, such as (INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME, may gain an advantage over its competitors through this support. Furthermore, the support can distort competition and affect trade between Member States. If this is the case, State aid is present.

The EU Treaty wants to prevent such effects on the market and therefore generally prohibits State aid. However, in some circumstances such support is necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of measures through which State aid can be made compatible with the rules. The Programme uses one of these measures, namely the *de minimis*. The Programme Manual lays down the State approach and procedures of the Programme.

This factsheet aims to provide additional information about the de minimis Regulation. The annexes to this factsheet support State aid relevant partners of approved projects in deciding whether de minimis is relevant for them and whether they are able to use de minimis.

SUMMARY

Public support given to undertakings in the framework of the (Interreg VI-A) IPA Bulgaria North Macedonia is exclusively in the form of subsidies granted under the de minimis provisions, in accordance with Regulation (EU) 2023/2831 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

LEGAL BASIS

COMMISSION REGULATION (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of

the Treaty on the Functioning of the European Union to de minimis aid:

http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

Please note

This factsheet is a summary of the key points of Regulation (EU) 2023/2831 and hereinafter referred to as "the Regulation" but is not a substitute for the full text of the Regulation, to which reference should be made.

GEOGRAPHICAL COVERAGE

The provisions of this document are applicable to the partner/s legally established on the territory of the Republic of Bulgaria. The applicants from Republic of Serbia should follow the applicable provisions set out in REGULATION (EU) 2023/2831, as well as national regulations regarding State aid.

AMOUNTS OF SUPPORT

According to REGULATION (EU) 2023/2831, undertakings falling within the scope of the regulation will be eligible for grants under the program only if they have not received public assistance exceeding EUR 300,000 over any period of 3 years, prior to the date of grant.

De minimis aid is deemed to be granted when the legal right to receive the aid is conferred, irrespective of the date of payment. In as (INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME this is understood as the date when the last contracting party signs the subsidy contract.

The ceiling laid down in shall apply irrespective of the form of the de minimis aid or the objective pursued by it and irrespective of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin.

For the purposes of the ceiling laid, aid shall be expressed as a cash grant. All figures used shall be gross that is, before any deduction of tax or other charge. When aid is granted in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.

Where the relevant ceiling would be exceeded by the grant of new de minimis aid, none of the new aid may benefit from the de minimis Regulation. This means that if an application is received which would result in the ceiling being exceeded, de minimis support cannot be awarded in whole or in part, even if a partial award would not result in the ceiling being exceeded.

SINGLE UNDERTAKINGS

The ceiling on de minimis aid is calculated per single undertaking per Member State. Conversely subsidiaries of the same enterprises could not each receive de minimis support from the same Member State.

The de minimis threshold counts per "single undertaking". In case a project partner is part of a group, the

entire group is considered as one single undertaking and the de minimis threshold applies to the entire group.

The notion of single undertaking includes all enterprises having at least one of the following relationships with each other, as provided for in Article 2(2) of Regulation (EU) No 2023/2831 on de minimis aid:

- 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.*

Enterprises having any of the relationships referred to in the above points through one or more other enterprises shall also be considered to be a single undertaking.

It is to be noted that in the framework of State aid, an "enterprise" is to be understood as any entity engaged in an economic activity irrespective to its legal status

Although the Regulation refers to 'enterprises', in practice, this encompasses any entity engaged in an economic activity. The above criteria are intended to ensure that a group of linked entities is treated as a single undertaking for the purposes of the de minimis rule. On the other hand, it is intended to ensure that entities which have no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other.

In calculating the amount of aid, special care must be taken where the recipient has been the subject of a merger or a split from another organization. In the case of mergers and acquisitions, all prior de minimis aid is considered in determining whether new de minimis support can be paid. De minimis aid lawfully granted before a merger or acquisition shall remain lawful.

If one undertaking splits into two or more separate undertakings, de minimis support granted before the split shall be allocated to the undertaking that benefitted from it. This is in principle the undertaking taking on the activities for which de minimis support was used. If this split is not possible, de minimis support will be allocated proportionately on the basis of the book value of the equity capital of the new undertaking at the date of the split.

Cumulation

De minimis aid granted in accordance with Regulation (EU) 2023/2831 may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) 2023/2832.

De minimis aid also may be cumulated with de minimis aid granted in accordance with COMMISSION REGULATION (EU) 2024/3118 of 10 December 2024 amending Regulation (EU) No 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector and (EU) No 717/2014, up to the relevant ceiling laid down in Article 3(2) of

this Regulation.³ up to the relevant ceiling laid down in Article 3(2) of the Regulation 2023/2831 up to the relevant ceiling laid down in Article 3, para. 2 of Regulation (EU) No 2023/2831.

In addition, art. 5, para 3 of the Regulation (EU) No 2023/2831 indicates that De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

EXCLUSIONS

(INTERREG VI-A) IPA BULGARIA SERBIA PROGRAMME is not allowed to grant the following types of aid under the de minimis Regulation:

J Aid to undertakings active in the primary fishery and aquaculture sector, as defined in Article 5, points (a) and (b) Regulation (EU) No 1379/2013;

J Aid granted to undertakings active in the processing and marketing of fishery and aquaculture products, where the amount of the aid is fixed on the basis of price or quantity of products purchased or put on the market

J Aid to undertakings active in the primary agricultural production ⁴;

J Aid granted to undertakings active in the sector of processing and marketing of agricultural products in the following cases:

- where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned;*
- where the aid is conditional on being partly or entirely passed on to primary producers.*

J Aid to export-related activities and aid contingent upon the use of domestic over imported good cannot be granted under the de minimis rule;

J Aid contingent upon the use of domestic over imported goods and services

Where an undertaking is active in one of the sectors referred above and is also active in one or more of the other sectors falling within the scope of the REGULATION (EU) 2023/2831, the provisions of article 1, para. 2 of the REGULATION (EU) 2023/2831.

For the purposes of De minimis Regulations the following definitions shall apply:

Agricultural products mean products listed in Annex I to the Treaty, with the exception of fishery and aquaculture products covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organization of the markets in fishery and aquaculture products⁵

Primary agricultural production means the production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing

³ Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45)

⁵ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354 28.12.2013, p. 1).

the nature of such products

Processing of agricultural products means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale.

Marketing of agricultural products means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing if it takes place in separate premises reserved for that purpose.

Fishery and aquaculture products *means the products defined in art. 5, points (a) and (b) of Regulation (EU) 1379/2013*

Primary production of fishery and aquaculture products means all operations relating to the fishing, rearing or cultivation of aquatic organisms, as well as on-farm or on-board activities necessary for preparing an animal or plant for the first sale, including cutting, filleting or freezing, and the first sale to resellers or processors;

Processing and marketing of fishery and aquaculture products means all operations, including handling, treatment and transformation, performed following the time of landing - or harvesting in the case of aquaculture - that result in a processed product, as well as the distribution thereof;

Additionally, the Programme ensures that partners do not receive the other types of aid that are excluded by the de minimis Regulation in addition to the ones listed above.

ENSURING COMPLIANCE

In order to ensure strict observation of the set maximum thresholds, in accordance to Art. 6(1) of Regulation (EU) 2023/2831 the Managing Authority shall request from the Bulgarian partners to declare any de minimis aid received in any period of three years s. The provided information shall be verified through the public Register of the de minimis aids, available on the webpage of the Bulgarian Ministry of Finance (<http://minimis.minfin.bg/>).

In case with planned project activities a Bulgarian partner exceed the maximum thresholds, the Managing Authority has the right to reduce the requested grant amount before signature of the subsidy contract.

The Programme bodies at all levels (first level controllers, JS and MA) will closely monitor the adherence of the state aid rules not only during the pre-contracting phase, but also during the whole implementation period of the project.

In case with already implemented project activities a Bulgarian partner exceed the maximum thresholds, the Managing Authority has the right to terminate the subsidy contract and to demand repayment of the amounts already paid in accordance with the provisions of the subsidy contract and the applicable state/de minimis aid regime.

Monitoring

Monitoring is carried out in full compliance with Article 6, paragraphs 2, 3, and 7 of Regulation (EU) 2023/2831. In addition, pursuant to Article 34, paragraph 1 of the Bulgarian State Aid Act, the Managing Authority (hereinafter referred to as the 'administrator') is required to register information on the granting of de minimis aid in the De Minimis Register within three working days from the date, the aid is granted."

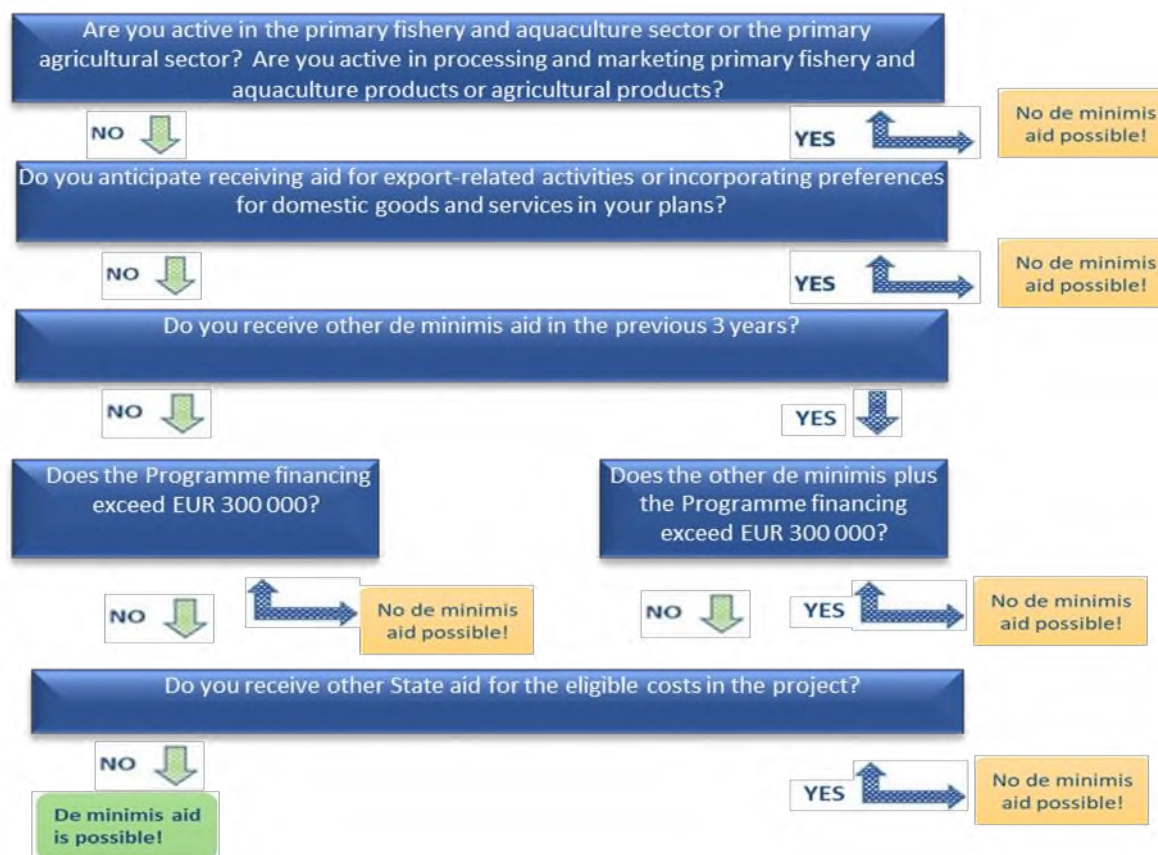
ADMINISTRATIVE ARRANGEMENTS

In case of a positive plausibility check, the Programme can grant de minimis support.

The Managing Authority ensures compliance with the monitoring and administrative arrangements of the de minimis Regulation. Project partners receiving de minimis aid have to maintain relevant documentation as outlined in the Programme Guidelines. The Lead partner and the project partners have to ensure that all planned activities are set up and implemented in compliance with the national legislation related to competition and state aid. In addition to this they shall ensure publicity and transparency of these activities and project outputs and results, which can create an economic advantage to an economic operator.

In case the Programme bodies find out that the Lead partner or any project partner made false declarations regarding state aid, the MA is entitled to terminate the subsidy contract and to demand repayment of the amounts already paid in accordance with the provisions of the subsidy contract and the applicable state/de minimis aid regime.

Am I able to use de minimis under REGULATION (EU) 2023/2831?



DISCLAIMER: This is a simplified flowchart that shall provide a first overview of the possible use of de minimis and it is not exhaustive. In case of questions, please contact the MA/JS. Further information on definitions and limitations is available in the de minimis factsheet and the de minimis declaration.

De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission