



State Aid

Guidance for applicants

Version No 4 of 23 November 2018

Contents

A.	INTRODUCTION	3
B.	STATE AID RISK ASSESSMENT IN THE EEP	3
C.	STATE AID QUESTIONS IN THE EEP	3
D.	ADDITIONAL POINTS OF CONSIDERATION:.....	10
A.	AID IMPACT ON TRADE BETWEEN MEMBER STATES	10
B.	SECOND LEVEL STATE AID.....	11
E.	MITIGATION MEASURES	12
A.	DETERMINE THE TYPE OF UNDERTAKING	12
B.	ASSESS IF THE PROJECT APPLICANT IS ELIGIBLE TO BENEFIT FROM STATE AID	14
C.	IDENTIFY THE NACE CODE	14
F.	MITIGATIONS MEASURES	15
A.	PRINCIPLES.....	15
B.	DE MINIMIS REGULATION	16
C.	"ARTICLE 20 SCHEME"	18
D.	"2 SEAS SCHEME"	18
G.	REVENUES GENERATION.....	31
H.	ARCHIVING REQUIREMENTS	31
I.	CONCLUSIONS.....	31

A. Introduction

This document aims at providing the necessary elements of information in order to comply with the applicable State Aid rules and procedures and therefore clarify the notion of State Aid as far as 2 Seas project applicants are concerned.

This guidance follows the logic of the Electronic Exchange Platform (EEP) section on State Aid and completes the following Programme available sources of information:

1. Programme Manual Fact sheet 11 – Focus on State Aid
2. Guidance available on the EEP for each box to be filled-in (more specifically the partner section on State Aid B.2).

B. State Aid risk assessment in the EEP

The general reasoning of the EEP section on State Aid reflects the risk assessment process detailed in the Fact sheet 11 of the Programme Manual. Indeed, each applicant (State Aid relevant or not) is asked to answer two main questions on State Aid and to conclude on a risk appreciation, **i.e. a high or low risk that its activities in the project are likely to be State Aid relevant**. In this case, all public aid (including the ERDF provided by the 2 Seas Programme as well as any external public contribution received to match the ERDF) is to be framed through the proposed measures in order to comply with State Aid rules¹.

The **responsibility of the applicant** entails therefore to answer these questions thoroughly in order to provide sufficient information for both its organisation and the Programme in order to appreciate the risk. This means that whether the applicant answers YES or NO to the EEP questions on State Aid, the reasoning behind the selected answer is expected.

The State Aid risk assessment process is built up on two principles:

- **Only the partner's activities in and during the project are concerned**
- **Two cumulative questions are displayed as far as the risk assessment is concerned, which are required to be both positively answered in order to conclude to a high risk of State Aid** (i.e. if only one of them is positively answered, the risk is considered as low which consequently means that no mitigation measures have to be adopted).

C. State Aid questions in the EEP

The two main questions² raised by the Programme are the following:

- 1) Is the project applicant engaged in an economic activity in the framework of the project?
- 2) Will the project applicant gain an advantage from the project that it would not have had otherwise?

The cumulative link of these two questions is to be understood in the way that, if the applicant aims at carrying out economic activity(ies) in the project, only those economic activities have to be assessed to see whether it provides an advantage to the organisation involved. If so, the organisation is considered as an undertaking in the project and is subject to State Aid rules.

The notion of undertaking is neutral with regard to ownership, legal status and financing. The term undertaking is not clearly defined in the EU regulations, but it is established that it may be public or private, voluntary, charitable or not-for-profit, involve a group of organisations or a public-private partnership or a self-employed individual. The key is not the status of the organisation, but the activity in which it is engaged in the project.

The European Court of Justice has consistently held that, in the context of competition law, the concept of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of the entity or the

¹ Treaty on the Functioning of the European Union - PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 2: Aids granted by States - Article 107 (ex Article 87)

² These two questions reflect the transposition of the remaining open criteria to be checked further to the balancing test applied on the Programme support.

way in which it is financed³.

As mentioned above, the qualification of an entity as an undertaking depends entirely on the nature of its activities. In practice, this means that:

- Undertakings may be charities, clubs or associations, public bodies, universities, social enterprises etc. as well as private firms.
- It does not matter whether the entity aims to generate profits.

An entity can be engaged in economic and non-economic activities; it is only an undertaking in relation to its economic activities in the project.

The following section aims at providing further clarification on the EEP questions on State Aid in order to help applicants when building up their answers.

a. Main question 1: Is the organisation engaged in an economic activity in the project?

The question above mainly asks whether the project applicant is an "undertaking"⁴ in the framework of the project. Three sub-questions apply as follows:

- I. Will the project applicant implement activities and/or offer goods/services **for which a market exists**?
- II. Are there activities/goods/services that could have **been undertaken by another operator with the view to making profit** (even if this is not the intention)?
- III. Does the project applicant **plan to disseminate the goods/services** on an exclusive and discriminatory basis, for example through restricted access databases, restricted publications or software?

Each sub-question tackles an aspect of the main question that needs to be assessed in order to estimate the risk. These three sub-questions are consecutive and have to be taken into account only through the activities that are considered in the first sub-question.

- I. *Will the project applicant implement activities and/or offer goods/services for which a market exists?*

As far as the main question is concerned, economic activity is broadly defined as "offering goods or services on a given market". By extending the definition for project purposes, it entails the "implementation of activities". It could be then rephrased as: "implement activities and/or offer goods/services for which a market exists" – sub-question I.

On a general level, the answer to that question is of importance, as it also requires the applicant to distinguish the economic activities from their non-economic activities (specifically when both types of activities exist in the project). In that case, the applicant is expected to distinguish them and to explain the distinction through his answer.

Economic and non-economic activities

Considering the large spectrum of the definition above, it is **not possible to draw up an exhaustive list of activities that would never be economic**. It is possible nevertheless to list some general activities that can be considered economic or not based on the "Commission Notice on the notion of State Aid as referred to in Article 107(1) TFEU (2016)"⁵.

Generally Economic	Generally non-Economic
Examples include: <ul style="list-style-type: none">• Employment procurement by public employment agencies	Activities related to State prerogative: <ul style="list-style-type: none">• Armed forces and police• Maintenance and improvement of air

³ See annex 1 of the General Block Exemption Regulation.

⁴ An undertaking is any entity engaged in economic activities.

⁵ The Commission Notice on the notion of State Aid as referred to in Article 107(1) TFEU is available [here](#).

<ul style="list-style-type: none"> • Optional insurance schemes based on the capitalisation principle • Emergency transport and patient transport services • Management of transport infrastructure • Provision of infrastructure ancillary to social housing 	<ul style="list-style-type: none"> • navigation safety, air traffic control, maritime traffic control and safety • Anti-pollution surveillance as regards protection of the environment in maritime areas • Organisation, financing and enforcement of prison sentences • Development and revitalization of public land by public authorities • Certain purely social activities • Management of compulsory social security • Provision of childcare and public education • Organisation of public hospitals • Collection of data to be used for public purposes on the basis of a statutory obligation imposed on the undertakings concerned to disclose such data • Additional to EC staff working document: Public funding of general infrastructure⁶
---	---

Based on the broad definition of the economic activities, two aspects have to be taken into account:

- 1/ Implement activities or offering goods or services...
- 2/ ... on a market (that exists).

Existence of a market

"Implement activities or offering goods or services" is broad and can concern all projects partners. However, the second aspect, **existence of a market i.e. the market definition⁷, is of particular importance as this is not always the case.** Stating whether this is the case implies a self-assessment from the applicant on whether a market exists (considering that the applicant is the best placed to own this information). As such, applicants are expected to identify whether other operators exist in the European market in relation to their activities and to which extent operators are competing with each other.

One could suggest that there is a market for almost all activities generally financed through public resources. The aspect to assess is whether the public support to a specific (economic) activity is liable to distort competition between Member States. This is a rather complex assessment because it is based upon an economic analysis implying a broad knowledge of that market (and the **capability to foresee any possible "negative" reactions of the competitors in that market triggered by the Programme aid**).

Exercise of public powers

Another aspect to consider regarding the market is whether **the activities identified fall within the public remit of the public organisations involved in the project i.e. the state prerogative.** As such, these types of activities are generally considered out of the State Aid scope. This also applies to purely social activities that do not pursue an economic goal (e.g. social security systems) and aims at an exclusively social goal, functioning under the solidarity principle and equal treatment of the potential beneficiaries.

In this respect, activities that fall within public power and that especially relate to the anticipation and management of natural, technological and industrial risks and hazards might not fall within the State Aid scope.

Economic return

⁶ Such as public roads, bridges or canals, made available for public use without any charge and not for commercial exploitation are also noneconomic, e.g. leisure facilities such as cycle paths, nature trails and associated signage, equipment and information and rest areas to be used without charge. The future use of the infrastructure is also to be considered. "Public funding to infrastructure" is meant to include all forms of provision of State resources for the construction, acquisition or operation of infrastructure. More information is available in the Commission Notice on the notion of State Aid as referred to in Article 107(1) TFEU (2016), pp60.

⁷ See OECD Market definition: <https://stats.oecd.org/glossary/detail.asp?ID=3253>

Other consideration will also involve the generation of economic returns (such as revenues or other financial gains thanks to the project) that will strengthen the probability of an economic activity in the framework of the project.

Research, development and innovation

Regarding the market and the innovation, the fact that the project targets an innovative product or service (and therefore potentially a market) could be considered as a way to state that the market does not (yet) exist. Indeed, the mere fact of looking for a potential market does not mean that the product or the service is sure to be successful and will then reach and/or create a market. However, on a case by case level, this aspect can become an indicator of risk that cannot be ignored.

In general and having in mind the TRL (Technology Readiness Level⁸) scale, projects activities situated between 1 and 7 could be considered out of the State Aid scope considering that the route to market is not clear at this stage and generally remains theoretical (based upon positive assumptions). Nevertheless, the fundamental goal of the project has to be taken into account; the scope shall not be purely commercial.

In this regard, applicants should keep in mind that the project is concerned about its duration. In case of innovation (a potential for a market), preliminary questions apply:

- Can the project applicant situate the innovation on the TRL scale?
- Does the market exist already or not?
- Will this exist during or after the project implementation?

In line with the innovation concept and more widely Research & Development & Innovation (R&D&I), State Aid should be considered for research organisations (RO) or infrastructures (RI). An R&D&I framework for State Aid exists⁹ and gives directions on how to understand economic or non-economic activities. It also provides definitions of different terms such as RO and RI but also on the activities. This helps clarifying to which extent the applicant can be defined as a RO or RI but also to which extent the RDI framework concerns its activities (more information in the Mitigation measures section, 2 Seas scheme).

Non-economic activities of research organisations include:

- Their “primary” activities, namely:
 - Education for more and better skilled human resources – essentially education organized within the national educational system, predominantly funded by the State and supervised by the State.
 - Independent R&D for more knowledge and better understanding, including collaborative R&D where the research organisation or infrastructure engages in effective collaboration¹⁰. However, contract research and provision of research services are not considered forms of collaboration; provision of R&D services and R&D carried out on behalf of undertakings are not considered as independent R&D.
 - Wide dissemination of research results on a non-exclusive and nondiscriminatory basis, for example through teaching, open-access databases, open publication or open software.
- Knowledge transfer¹¹ activities of research organisations and infrastructures where all profits are reinvested in their “primary activities” are also regarded as non-economic.

Regarding the framework of R&D&I, it can be understood that public funding of the core teaching, research and knowledge exchange activities of university and other research organisations do not involve State Aid because the activities are considered as non-economic. Based on the definition of “knowledge transfer”, this also applies to technology transfer type activities such as licensing and spin-off research created by the research organisation where these are conducted internally and the profits reinvested.

⁸ http://ec.europa.eu/research/participants/data/ref/h2020/wp/2014_2015/annexes/h2020-wp1415-annex-g-trl_en.pdf

⁹ Framework for State Aid for research and development and innovation – http://ec.europa.eu/competition/state_aid/modernisation/rdi_framework_en.pdf.

¹⁰ **Effective collaboration** means: 1/collaboration between at least two independent parties and 2/to exchange knowledge or technology or to achieve a common objective based on a division of labour where the parties jointly define the scope of the project, contribute to its implementation and share its risks and results; one or several parties may bear the full costs of the project and thus relieve the other parties of their financial risks.

¹¹ **Knowledge transfer means** 1/any process which aims to acquire, collect and share explicit and tacit knowledge, including skills and competence in activities such as research collaborations, consultancy, licensing, spin-off creation, publication and mobility of researchers and other personnel. 2/Knowledge on the use of standards and regulations embedding them in real life operating environments and methods for organisational innovation, and management of knowledge related to identifying, acquiring, protecting defending and exploiting intangible assets.

According to the R&D&I framework, activities from research organisations or infrastructures that can be considered economic refer to renting out equipment or laboratories, supplying services to undertakings, experimental development¹² or performing contractual research.

Where a research organisation or research infrastructure is used for both economic and non-economic activities, public funding falls under the State Aid rules only insofar as it covers costs linked to the economic activities.

In this regard, where the RO or RI is used almost exclusively for a non-economic activity, **its funding may fall outside State Aid rules in its entirety**. This is possible if the economic use remains purely ancillary¹³, that is to say corresponds to an activity that is directly related to and necessary for the operation of the RO or RI or intrinsically linked to its main non-economic use, and which is limited in scope. For the purposes of the RDI framework, the Commission will consider this to be the case where the economic activities **consume exactly the same inputs** (such as material, equipment, labour – number of Full Time Equivalent - and fixed capital) as the non-economic activities and the capacity **allocated each year** to such economic activities does not exceed 20 % of the relevant entity's overall **annual** capacity.

This precision is important as this could mean that RO or RI (universities, laboratories etc.) will not be subject to State Aid rules if they carry a significant quantity of non-economic activities (more than 80%) in their usual business compared to the quantity of economic activities.

When such ratio is calculated and declared in the EEP, the applicant must ensure that the documentation supporting the ratio calculation remains available for any audit and/or control purposes. The ratio compliance is to be ensured at the date of project approval and on an annual basis until the project closure.

Health care

Public hospitals, integrally part of a national health service, based on the principle of solidarity, directly funded from social security contributions (and other State resources) and provide services free of charge on the basis of universal coverage are not considered as undertakings. Where that structure exists, even activities that in themselves could be of an economic nature, but are carried out merely for the purpose of providing another non-economic service, are not of an economic nature. An organisation that purchases goods — even in large quantities — for the purpose of offering a non-economic service does not act as an undertaking simply because it is a purchaser in a given market.

Hospitals and other health care providers can sometimes offer their services for remuneration, be it directly from patients or from their insurance. In such systems, there is a certain degree of competition between hospitals concerning the provision of health care services. Where this is the case, the fact that a health service is provided by a public hospital is not sufficient for the activity to be classified as non-economic.

The Union Courts have also clarified that health care services, which independent doctors and other private practitioners provide for remuneration at their own risk, are to be regarded as an economic activity. The same principles apply to pharmacies.

Culture and heritage conservation, including nature conservation

Taking into account the culture particular nature, certain activities related to culture, heritage and nature conservation may be organised in a non-commercial way and thus be non-economic in nature. Public funding thereof may therefore not constitute State Aid. The Commission considers that public funding of a cultural or heritage conservation activity accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature. In the same vein, the fact that visitors of a cultural institution or participants in a cultural or heritage conservation activity, including nature conservation, open to the general

¹² **Experimental Development** means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes. Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements (RDI Framework).

¹³ See OECD Ancillary activity definition: <https://stats.oecd.org/glossary/detail.asp?ID=106>

public are required to pay a monetary contribution that only covers a fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided.

In contrast, cultural or heritage conservation activities (including nature conservation) predominantly financed by visitor or user fees or by other commercial means (for example, commercial exhibitions, cinemas, commercial music performances and festivals and arts schools predominantly financed from tuition fees) should be qualified as economic in nature. Similarly, heritage conservation or cultural activities benefitting exclusively certain undertakings rather than the general public (for example, the restoration of a historical building used by a private company) should normally be qualified as economic in nature.

Moreover, many cultural or heritage conservation activities are objectively non-substitutable (for example, keeping public archives holding unique documents) and thus exclude the existence of a genuine market. In the Commission's view, such activities would also qualify as non-economic in nature.

Public funding of infrastructures

Regarding the public funding of infrastructures, they do not generally fall under the State Aid scope as the public funding of infrastructure **does not target a commercial exploitation**¹⁴.

Here the reference is made to general infrastructures such as roads, bridges, tunnels and canals but for example also the funding of cross border Natural Park or cross border cycle paths etc. that are put at disposal of the general public without any (financial) return.

II. Are there activities/goods/services that could be undertaken by a private operator with the view to making profit (even if this is not the intention)?

Regarding sub-question II, obviously, most of the activities (good and services) can be considered to be taken up by a private body for profit making (theoretically or potentially speaking). It is indeed rather difficult to think about one activity that could not be undertaken by a private operator for profit making even if it is not the intention.

The question here is whether the implementation of activities or provision of services or goods could have been paid. If goods or services are offered through the project, there is the question whether these are on the market price or not. Not operating at market price could lead to a clear advantage (main question 2).

Of course, this goes without saying that the roles of the partners and suppliers must be clearly distinguished. The Programme aims at funding cooperation projects between officially approved partners and not between partners and suppliers of goods and services.

In line with the concept of economic activities, an exception exists and is reflected in the definition of **SGEI** (Services of General Economic Interests)¹⁵. These are indeed falling into the category of economic activities but they can, be funded, according to article 106.2 of the TFUE, by public funding but are still subject to specific conditions. The European Commission defines the SGEI as *economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there was no public intervention*. The EC establishes that services can be qualified as of general interest when they are addressed to citizens or be in the interest of society as a whole¹⁶.

Public authorities from the Member States have the duty to define at their level (and also at regional and local level) throughout the repartition of competences between those, which economic activities fall with the general interest. The freedom that Member States have to define SGEI has to comply with the following: 1. Regulation with harmonised sectors, 2. Without European harmonisation, the examination from the EC and other related bodies to verify if there were no appreciation mistakes.

¹⁴ Leipzig/Halle Case, 2010. More information is available in the Commission Notice on the notion of State Aid as referred to in Article 107(1) TFEU (2016), 7.2.3.

¹⁵ More information on the SGEI is available: http://ec.europa.eu/competition/state_aid/overview/public_services_en.html

¹⁶ Official Journal of the European Union, 2012/C 8/02, 3.3.2.50

Typical examples of SGEI are public transport, some of the postal services, childcare services, access & inclusion in the labour market, social housing, healthcare and social inclusion of vulnerable groups of people.

Some projects that are SGEI related could be funded if they also comply with the four Altmark criteria¹⁷ (in addition to the definition). Naturally, applicants that claim to fall within the SGEI scope shall ensure that an official statement or any other form of evidence exists when applying to the Programme.

III. Does the project applicant plan to disseminate the goods/services on an exclusive and discriminatory basis, for example through restricted access databases, restricted publications or software?

Sub-question III relates to the dissemination of goods/services produced through the project but specifically deriving from the collaboration of RO or RI with undertakings. However, any products widely disseminated (i.e. on a non-exclusive and non-discriminatory basis, for example through unrestricted access databases, unrestricted publications or software) should reduce the risk of State Aid, as potential other economic operators could also benefit from the project support indirectly.

Nevertheless, if the project aims at generating some access restrictions such as Intellectual Property Rights for example, the project shall also take into consideration the potential financial return that it can generate (i.e. the revenues). Restricting the access to outputs and/or deliverables is to be seen as potentially increasing the risk of economic advantage and economic activities given the possible generation of revenues.

Regarding the access restriction, applicants shall also consider the points of attention raised for article 25 of the 2 Seas Scheme; see section IV, point d. Article 25.

b. Question 2: Does the organisation gain an advantage from the project that it would not have had otherwise?

This question tackles whether the entity engaged in an economic activity will receive an economic advantage in respect of these activities. Article 107.1 of TFUE defines *the advantage as any economic advantage that an undertaking would not have obtained in the normal course of its business, in normal market conditions i.e. without the state intervention.*

The two sub-questions below treat this concept in order to cover all of its aspects, as follows:

- I. 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?
- II. Will the project applicant **gain any benefits from its project economic activities, not received in the normal course of business?**

These two questions reflect the two main aspects to take into account when appreciating the advantage i.e. the **externalisation** and **the comparison of the applicant's activities with the concerned organisation's regular activities and with the market situation.**

The applicant will have to therefore justify here how any economic activities identified as such will or not bring an advantage compared to other economic operators on the market by considering the two sub-questions above.

The reduction of the economic advantage through the **externalisation** aspect is twofold. Firstly, the externalisation of the majority of the budget of the partner can be seen as a way to reduce the advantage. However, this is possible only if the partner's activities are initially not economic. If the partner's activities pursue an economic goal (therefore considered as economic), the economic advantage remains. Indeed, the

¹⁷ Almark criteria are described in the Official Journal of the European Union, 2012/C 8/02, 3.3.1.42

partner organisation will still be the beneficiary of the activities at the end of the process (i.e. even if all activities have been externalised).

Secondly, if the partner organisation opens the procurement of their economic activities to the market (with transparent and non-discriminatory procedure and with sufficient publicity), the risk of economic advantage on the selected supplier will be avoided. Indeed, the EC considers that in that case that the normal conditions of the market are met.

If the partner organisation plans to carry out all economic activities on its own and if these in addition refer to the usual (or regular) activities of the applicant, a risk of an economic advantage could exist.

On another note, one can appreciate the advantage through the hypothetical analysis of the situation before and after the intervention. An advantage could exist if the financial situation of the undertaking is improved thanks to the state intervention. In terms of state intervention (public aid), it is to be noted that both the ERDF subsidy constitutes an aid but also the expenses exemption, reduction of social contributions or any fiscal exemption (i.e. any situations where the economic operators – undertakings – are discharged from the inherent costs in relation to their economic activities).

As a final consideration, putting at disposal the project's productions free is also a way to reduce any economic advantage. Obviously, the disposal should be clear, transparent and free of charge for any other (economic) operators interested in the field.

D. Additional points of consideration:

a. Aid impact on trade between Member States

The 2 Seas checklist can be considered restrictive in terms of criteria checked. Indeed, the check is based on the assumption that three out of the five State Aid criteria of the balancing test are met (such as the effect on trade and competition, the selectivity and the state origin)¹⁸.

The state origin seems clear as, in ETC Programmes, the decision to grant ERDF is always taken by Member States. In addition, ETC Programmes are selective by nature, which then fulfills the selectivity criteria as well. However, this is not always straightforward for the effect on trade and competition (i.e. the aid impact).

Indeed, the share of economic activities is not relevant, because the idea in general is the potential to affect competition, and even if the services are of small magnitude, they are still offered in a market, where competition of same size is distorted. Nevertheless, the affectation of trade and competition can be questioned which can also be taken into account as far as the economic advantage is concerned.

As mentioned in the EC press release IP-15-4889¹⁹, the aid impact depends on very specific circumstances. Even though all cases mentioned in the Commission's press release refer to regional or national Programmes, these examples could be considered for ETC projects as well. The EC states that if State support is granted to an activity that 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** in the sector or the establishment of firms within the EU's Single Market. This is demonstrated through seven cases presented in the press release.

In the case of projects funded by the Programme, even though the cross-border collaboration should foster the effect of not having purely local impact, this aspect can apply to some projects and can therefore reduce the potential of obtaining an economic advantage. This is assessed on a case-by-case basis.

¹⁸ See page 3 of the "Programme Manual – Factsheet 11 on State Aid".

¹⁹ http://europa.eu/rapid/press-release_IP-15-4889_en.htm

b. Second level State Aid²⁰

Any undertaking receiving an advantage through cooperation project that it would not have received under normal market conditions can be the recipient of State Aid. This applies to undertakings participating **as project partners (first level)** as well as – potentially – **to third parties (more specifically economic operators such as SMEs) receiving benefits from the project (second level)**.

Such second level State Aid would only be deemed to be State Aid in the case where project partners offer **marketable services to undertakings**. This might include offering free or partly paid services such as trainings, advisory activities, workshops etc. to undertakings (e.g. SMEs) for which they would have to pay on the market (i.e. under normal market conditions). To determine if there is risk of second level State Aid in the project the following question could be asked:

Does any economic operator (e.g. SMEs) outside of the project partnership (i.e. not listed as project partner or observer partner in the application form) receive a selective advantage through the activities carried out by the organisation partner of the project?

If this question is answered positively, second level will then apply and the project partner(s) concerned will be considered as intermediary granting bodies of that aid.

The risk of having second level State Aid can be however always mitigated by applying the following measures:

- **Avoid selectivity** - offering services to all interested SMEs, create an open and non-discriminatory targeting of potential participants
- Exclude the second level State Aid aspect by **charging at market prices** the services offered and concerned (in compliance with Programme manual – Fact sheet on revenue generating projects)

The mitigation measures have to be described either in the risk management section (section C.4.6. of the application form) and/or in the related work package description.

Project partners concerned by the second level State Aid will have to meet specific requirements during the project implementation and beyond. Indeed, each partner that will carry out such activities will have to fill-in an award letter of “de minimis” (based on the template provided by the Programme) for each final beneficiary participating in the activity (second level State Aid relevant). The amount to insert in the letter will be a gross equivalent amount corresponding to the market price for similar types of activities.

The recipient of this letter will have to count this amount as de minimis and the partner “granting” the second level State Aid will have to ensure that the ceiling of de minimis is not exceeded before the participation²¹ in the concerned activities.

The other possibility to mitigate the State Aid risk at a second level is to frame this indirect aid through one article of the GBER. Opting for this measure implies that the concerned partner(s) will get in touch with their national competent body in order to select the article, understand its requirement, monitor and report the information to the related Member State. The Member State concerned is the one where the partner organisation associated to the second level State Aid is located.

²⁰ Second level State Aid can be also named downstream or indirect aid.

²¹ More information about the de minimis threshold is available in section E.IV.b. of this document.

E. Mitigation measures

Once the high risk of State Aid for the concerned project applicant is demonstrated (through the self-assessment process), the project applicant is considered as an “undertaking” in the framework of the project and has the possibility to:

- Demonstrate the non-economic character of its activities as well as the absence of economic advantage
- Exclude or modify the identified economic activities
- Participate to the project with a different role (observer, external supplier of goods or services etc.)

In case the project applicant is not in the possibility to apply any of the above solutions and therefore the high risk of State Aid cannot be avoided, the following steps in the EEP shall be fulfilled:

- I. Determine the typology of “undertaking” for the concerned applicant (e.g. SME, large enterprise);
- II. Assess if the applicant is eligible to receive State Aid (under condition of fulfilling the requirements of the mitigation measures listed below);
- III. Identify the NACE Code of the applicant;
- IV. On the basis of the above three points, one of the following mitigation measures shall be selected:
 - **de minimis regulation**
 - **“Article 20” Scheme**
 - **“2 Seas” Scheme**

a. Determine the type of undertaking

As stated in the “User guide to the SME Definition²²” and in the GBER annex 1, Undertaking (or enterprise) can be categorized in two ways: SME (Small and Medium-sized Enterprise) or Large enterprise.

The SME definition reflects the EU definition and does not follow the different definitions at Member State levels. The SME qualification entails different types (Micro, Small and Medium sized) and categories (Autonomous, Partner and linked Enterprises).

Attention must be paid to the categorization and typology of undertaking for the applicant concerned, as it will condition the possible mitigation measures to reduce State Aid risk²³.

State Aid relevant applicants will be liable in case of false or wrong declarations.

The detailed types of enterprises are the following ones:

Medium sized Enterprise	Small Enterprise	Micro Enterprise
< 250 staff headcounts ²⁴ Annual turnover ²⁵ EUR < 50MEUR OR Annual balance sheet ²⁶ total < 43MEUR	< 50 staff headcounts Annual turnover EUR < 10MEUR OR Annual balance sheet total < 10MEUR	< 10 staff headcounts Annual turnover EUR < 2MEUR OR Annual balance sheet total < 2MEUR

By means of exclusion, a SME that exceeds these thresholds is to be considered as a large enterprise. Specific cases such as the hybrid case of exceeding one threshold only as well as the conditions of applications are detailed in the User guide to the SME Definition from the EC.

²² The document is available [here](#).

²³ A SME qualification test is available on the Programme dedicated section: <http://www.interreg2seas.eu/en/content/state-aid>.

²⁴ Basic headcount is expressed in AWUs (Annual Workers Unit). Anyone who worked full time within an enterprise, or on its behalf, during the entire reference year, counts as one unit. Part-time staff, seasonal workers and those who did not work the full year are treated as fractions of one unit.

²⁵ Annual turnover is determined by calculating the income that an enterprise received during the year in question from the sale of products and provision of services falling within the company's ordinary activities, after deducting any rebates. Turnover should not include value added tax (VAT) or other indirect taxes.

²⁶ The annual balance sheet total refers to the value of a company's main assets.

It is to be noted that even though at a first glance the enterprise can be considered as a SME, it can lose the qualification given the shares and voting rights owned or detained by other parties.

To work out the data to be considered and assessed against the thresholds above, an enterprise must first establish whether it is:

- An **autonomous** enterprise (by far the most common category)
- A **partner** enterprise
- A **linked** enterprise

The calculations for each of the three categories of enterprise are different and will ultimately determine whether the enterprise meets the various ceilings established in the SME Definition. Depending on the situation, an enterprise may have to take into account:

- Only its own data
- A proportion of the data in case of a partner enterprise
- All the data of any enterprise considered linked to it

Any such relationships an enterprise has with other enterprises (direct or indirect) need to be taken into consideration. The geographical origin or the field of business activity of these enterprises is not relevant. Please note that enterprises that draw up consolidated accounts or that are included by way of full consolidation in the consolidated accounts of another enterprise are usually treated as linked enterprises.

An enterprise is autonomous if:

- It is totally independent i.e. it has no participation in other enterprise and no enterprise has a participation in it
- Or it has a holding of less than 25 % of the capital or voting rights (whichever is higher) in one or more other enterprises
- And/or any external parties have a stake of no more than 25 % of the capital or voting rights (whichever is higher) in the enterprise
- Or it is not linked to another enterprise through a natural person.

If an enterprise is autonomous, it uses only the number of employees and the financial data contained in its annual accounts to check if it respects the thresholds.

Enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another;
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

A typical example of a linked enterprise is the wholly owned subsidiary.

In case a relationship of this kind occurs through the ownership of one or more individuals (acting jointly), the enterprises involved are considered as linked if they operate on the same or adjacent markets.

With respect to linked enterprises, 100% of the linked enterprise's data must be added to those of the enterprise in question to determine if it meets the staff headcount and one of the financial thresholds of the Definition.

If not linked, enterprises can be partners. This type of relationship describes the situation of enterprises that establish certain financial partnerships with other enterprises, without one exercising effective direct or indirect control over the other. Partners are enterprises that are neither autonomous nor linked to one another.

An enterprise is a partner enterprise if:

- The enterprise has a holding equal to or greater than 25 % of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25 % in the enterprise in question
- And the enterprise is not linked to another enterprise. This means, among other things, that the enterprise's voting rights in the other enterprise (or vice versa) do not exceed 50 %.

With respect to partner enterprises, the enterprise in question must add a proportion of its partner's staff headcount and financial data to its own when determining its eligibility for SME status. This proportion will reflect the percentage of shares or voting rights — whichever is higher — that are held.

Nevertheless, an enterprise may still be considered autonomous, and thus as not having any partner enterprises, even if the 25 % threshold is reached or exceeded by any of the following types of investors:

- Public investment corporations, venture capital companies and business angels
- Universities and non-profit-making research centres
- Institutional investors, including regional development funds
- Autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.

One or more of the above investors may individually have a stake of up to 50 % in an enterprise, provided they are not linked, either individually or jointly, to the enterprise in question.

b. Assess if the project applicant is eligible to benefit from State Aid

After having determined the typology of undertaking, the EEP will ask to indicate if the project applicant is eligible to receive State Aid. This is done by checking the compliance with the following assertions²⁷:

- *In the project, I carry out export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity*
- *I seek support for aid contingent on the use of domestic over imported goods*
- *My activities in the project fall in the fishery and aquaculture sector*
- *My activities are related to the primary agricultural production sector*
- *My activities concern the processing and marketing of agricultural products*
- *My undertaking is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market*
- *My undertaking is a firm in difficulty.*

In case one or more of the above assertions applies to the activities to be undertaken in the framework of the project, **the concerned applicant cannot receive State Aid from the 2 Seas Programme.**

c. Identify the NACE Code

This code refers to Regulation (EC) N°1893/2006 establishing the statistical classification of economic activities NACE. This code is part of common statistical classification of economic activities which allows the application of statistical standards to the collection, transmission and publication of national and Community statistics so that businesses, financial institutions, governments and all other operators in the internal market can have access to reliable and comparable statistical data. To this end, it is essential that the various categories for classifying activities in the Community be interpreted uniformly in all the Member States which is the reason why this question is asked in the EEP.

²⁷ Article 1 of the De minimis and GBER defines thoroughly these assertions.

F. Mitigations measures

a. Principles

As a general principle, it is to be noted that the information below complements the information provided in Fact sheet 11 of the Programme Manual (applicants facing a risk of State Aid are strongly recommended to also carefully read Factsheet 11).

Among the mitigation measures available in the framework of the 2 Seas Programme, applicants can choose between de minimis and one exemption from the GBER. Concerning the latter, two schemes are available in the 2 Seas Programme: "Article 20 scheme", which focuses only on the exemption provided by article 20 of the GBER, and the "2 Seas scheme" which includes several articles of the GBER. If necessary, other articles of the GBER (outside the scope of the 2 above mentioned schemes) can be selected.

The choice of the most appropriate mitigation measure will also depend on the status of the applicant, the nature of the activities to be undertaken and the requested amount of funding.

It is to be noted that the application of the de minimis rule as well as the selection of one exemption of the GBER (either article 20 or another article) may have an impact on the applicant's financial contribution to match the ERDF in the framework of the project.

Indeed, de minimis and GBER contain specific conditions that can be stricter than the Programme rules (e.g. maximum funding rate, eligibility rules, conditions of application, calculation methodology, public aid threshold, revenues generation etc.).

The compliance with these conditions is of utmost importance in order to use the selected mitigation measure. The Programme Authorities expect that the applicant can also justify the compliance with a sound audit trail at any time.

In case a State Aid relevant applicant selects one mitigation measure, the following conditions have to be complied with:

- **Each concerned applicant can select only one measure.** The selected measure will apply to **all activities** undertaken by the applicant in the framework of the project;
- Consequently, despite that only some of the activities are deemed as economic, if one mitigation measure is selected, **all applicant's activities** in the project **will be subject to some or all restrictive conditions of the selected mitigation measure** (at least the aid intensity, aid threshold, ex-ante deduction of revenues). The applicant will have to indeed counter check the measure's eligibility conditions with its budget and its activities in order to determine the measure's framework;
- **Any other specific and stricter conditions of the selected measure applicable to only one or several budget line(s)** will apply to the concerned budget lines. For example, if one mitigation measure implies specific and stricter conditions for infrastructure costs (i.e. 2 Seas Budget Line 6) with only tangible and intangible assets as eligible costs, the applicant must fulfill these conditions. Consequently, no other costs linked to the infrastructure (the economic activity) than those mentioned above will be budgeted. Nevertheless, other costs related to the non-economic activities can still be inserted in the budget.
- When the maximum rate of aid intensity has been selected, the applicant will be only able to match the remaining contribution with private funds or its own funds;
- All specific conditions of the selected mitigation measure apply for **the whole project duration**.
- It will be up to the applicant to ensure **a clear distinction and follow up between economic and non-economic activities** at the application, reporting, monitoring and audit and control stages. If the distinction is not possible, the applicant will only insert the economic activities in its proposal and fulfill the selected measures' conditions. As an additional condition, the applicant is not allowed to opt for the flat rate for staff costs (budget line 1) among the staff costs options, unless the applicant uses one of the following GBER articles: 20, 25, 29 or 30.

By way of clarification, the mitigation measures incorporate some terms to be taken carefully into account. Indeed, the **aid intensity** is the maximum rate of public funding (ERDF + external public contribution) that the undertaking can receive from external public sources.

The **threshold** is the maximum amount of public funding (ERDF + external public contribution) that the undertakings cannot exceed in its own partner budget.

Some **definitions** apply to each selected mitigation measure (for example, GBER article 2 provides a set of important definitions linked to each article).

Particular attention should be paid to the applicant's financial contribution necessary to match the ERDF when applying State Aid mitigation measures.

Each applicant's budget in the application form represents 100% of applicant's costs, which is made up of ERDF (generally 60%) and contribution (public or private, internal or external, amounting to generally 40%).

State Aid rules apply to the whole public funding subsidized to the undertakings (i.e. ERDF and external public contribution). Therefore, by selecting specific State Aid measures, the applicant will be required to match the ERDF by using private contribution only or its own internal (public or private) funds. By going through the proposed mitigation measures, it is to be noted that the allowed rate of public aid can be lower than the usual ERDF rate applied by the 2 Seas Programme. **As such, in some cases the maximum allowed rate/amount of ERDF for a State Aid relevant applicant can be lower than for other applicants.**

For example, an applicant that selects GBER Article 25 ("Aid for Research & Development Projects") to undertake a State Aid relevant activity related to fundamental research can receive up to 100% of public aid. In this case, the concerned applicant can request for 60% ERDF from the 2 Seas Programme and 40% from other external public funds.

In another example, if the applicants select GBER Article 25 to undertake a State Aid relevant activity related to experimental development, the maximum allowed intensity would be 25%. In this case, the concerned applicant is allowed to ask for 25% ERDF only (no other external public contribution is allowed) and to match the ERDF co-financing through 75% of private external contribution or its own (private or public) funds. This restriction would apply to the whole applicant's budget and activities (both economic and non-economic ones) until the end of the project.

b. De minimis regulation

The "de minimis" rule [COMMISSION REGULATION (EU) No 1407/2013] determines a threshold of aid below which the European State Aid rules do not apply. This threshold amounts to EUR 200,000 cumulative over the last three fiscal years **per undertaking** (in the road freight transport sector this threshold is decreased to EUR 100,000 and will not apply for acquisition of road freight transport vehicles) and **per Member State**.

Following the Programme Monitoring Committee (22-23/11/2018), it has been decided to reconsider the total de minimis threshold applicable within the 2 Seas Programme. The threshold is consequently calculated by multiplying the de minimis threshold (EUR 200,000) by the number of Member States involved in the Programme (four).

Therefore, the total threshold can now reach up to **EUR 800,000** cumulative over the last three fiscal years per undertaking. **Any de minimis aid already received will consequently decrease this total threshold.**

In this respect, the undertaking receiving ERDF from the 2 Seas Programme falling under the de minimis rule will be asked to provide a self-declaration (as displayed on the EEP) listing all de minimis aids (qualified as such by any other granting bodies) received in the last three fiscal years (*the submission date represents the current fiscal year; on the top of that, the previous two fiscal years have to be taken into account*).

The maximum ERDF that can be granted by the Programme will be automatically calculated on the basis of this declaration. Indeed, if a beneficiary has received any amount of de minimis in the last three fiscal years, the sum of the previously received de minimis aid will be automatically subtracted from the EUR800.000 de minimis threshold. The ERDF grant will correspond to the difference between EUR800.000 and the previously received de minimis aid per Member State.

In terms of calculation methodology of the aid threshold, the following one will be applied:

$$X = (Y^1 - Z^1) + (Y^2 - Z^2) + (Y^3 - Z^3) + (Y^N - Z^N)$$

X = EUR # of de minimis aid to be granted by the Programme

Y = EUR 200,000, maximum amount of de minimis aid per Member State

Z = EUR # of de minimis already granted in the last three fiscal years

Superscript numbers (N) of Y and Z represent an individual Member State.

The two following examples are displayed below in order to better illustrate the calculation possibilities:

Example 1: NO DE MINIMIS AID RECEIVED - one single undertaking applies for the 2 Seas Programme and has not received any aid up to now; they will be able to request a maximum of EUR 800,000.

$$EUR\ 800,000 = (EUR\ 200,000^{FR} - EUR\ 0^{FR}) + (EUR\ 200,000^{UK} - EUR\ 0^{UK}) + (EUR\ 200,000^{NL} - EUR\ 0^{NL}) + (EUR\ 200,000^{BE} - EUR\ 0^{BE})$$

Example 2: DE MINIMIS AID ALREADY RECEIVED - one single undertaking applies for the 2 Seas Programme but has already received EUR 190,000 de minimis aid in 2018 from Belgium; they will be able to request a maximum of EUR 610,000.

$$EUR\ 610,000 = (EUR\ 200,000^{BE} - EUR\ 190,000^{BE}) + (EUR\ 200,000^{FR} - EUR\ 0^{FR}) + (EUR\ 200,000^{UK} - EUR\ 0^{UK}) + (EUR\ 200,000^{NL} - EUR\ 0^{NL})$$

In both examples, the ERDF will be granted as "de minimis" aid and no other external public contribution can be granted to this undertaking in the framework of the project to match the ERDF (i.e. only private external contribution or its own funds allowed).

After the project approval by the Monitoring Committee, the Joint Secretariat (on behalf of the Managing Authority) will notify the undertakings whose ERDF grant falls under the de minimis. This Programme **notification** will display an amount that will have to be taken into account by the concerned undertakings when applying for further de minimis aid in the future.

The Programme **notification** will also provide the undertaking with the distribution of de minimis per Member State.

Should a partner already have received de minimis aid from one or several Member States composing the Programme, the total amount to be granted (X) will be distributed based on the following steps:

1. Identify the origin(s) and year of the total amount of de minimis aid already received;
2. Reach the de minimis threshold(s) for each Member State that granted de minimis in the last three fiscal years;
3. Distribute the remaining amount of de minimis between the Member State(s) that did not grant any de minimis in the three previous fiscal years.

Example:

A project partner (located in Belgium) requests de minimis aid in the framework of a 2 Seas funded project but already received some from Belgium in 2018, amounting to EUR 190,000EUR.

Following the steps explained before, the granting distribution would be made as follows:

1. EUR 190,000 de minimis aid granted in 2018, allowing a total amount of de minimis to be granted up to EUR 610,000;
2. EUR 10,000 would be necessary to reach the threshold at the level of Belgium for this partner;
3. This leaves EUR 610,000 to be distributed between the Member States as follows:

- FRANCE	EUR 200,000
- NEDERLAND	EUR 200,000
- UNITED KINGDOM	EUR 200,000
- BELGIUM-FLANDERS	EUR 10,000

The concerned undertakings have the responsibility and liability to comply with the de minimis threshold on an ongoing basis.

The de minimis conditions of application are the following ones:

- Any types of undertaking (SME and large enterprises) are eligible.
- No stricter rules than the Programme budget lines for costs budgeting and claiming.
- The ERDF rate is fixed at 60% by the Programme.
- The ceiling of de minimis is EUR 800.000 (threshold of EUR 200,000 per Member State).
- No external public funding (other than ERDF) is allowed.

c. "Article 20 scheme"

Compared to the previous GBER²⁸, a specific and new article 20 has been adopted which is directly opened to ETC (European Territorial Cooperation) projects. **Article 20 of the GBER** (*Aid for cooperation costs incurred by SMEs participating in ETC projects*) applies **only to SMEs** fulfilling the following conditions: criteria of the SME definition²⁹, thresholds, transparency, incentive effect, aid intensity, eligible costs, cumulation, publication and information. In case these conditions are fulfilled, the following costs can be deemed eligible:

Costs for **organisational cooperation**³⁰ including:

- Costs for **staff** and **offices** to the extent that it is linked to the cooperation project;
- Costs of **advisory** and **support services** linked to cooperation and delivered by consultants and service providers;
- **Travel** expenses, costs of **equipment** and **investment** expenditure directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the project.
- The services referred above shall not be a continuous or periodic activity nor relate to the undertakings usual operating costs, such as routine tax consultancy services, regular legal services or advertising.

Organisational cooperation is defined as *the development of joint business strategies or management structures, the provision of common services or services to facilitate cooperation, coordinated activities such as research or marketing, the support of networks and clusters, the improvement of accessibility and communication, the use of joint instruments to encourage entrepreneurship and trade with SMEs.*

The aid amount under Article 20 of GBER shall not exceed **50% (all types of external public sources included)** of the eligible costs. In addition, aid to SMEs for cooperation costs incurred by participating in ETC projects cannot exceed **EUR 2 million per SME and per project**.

After the project approval by the Monitoring Committee, the Joint Secretariat (on behalf of the Managing Authority) will notify the undertakings whose ERDF grant falls under the GBER.

The conditions of application for "Article 20 scheme" (**SA.40646**) are the following ones:

- Only SMEs are eligible.
- No stricter rules than the Programme budget lines for costs budgeting and claiming.
- The ERDF rate is fixed at 50% by the Programme.
- The ceiling of ERDF is 2.000.000EUR.
- No external public funding (other than ERDF) is allowed.

As a general consideration, even though other mitigation measures are available for SMEs, the "Article 20 scheme" is often the most useful and advantageous option for SMEs.

d. "2 Seas scheme"

²⁸ See COMMISSION REGULATION (EC) No 800/2008 of 6 August 2008

²⁹ See annex 1 of the GBER (General Block Exemption Regulation) - COMMISSION REGULATION (EC) No 651/2014

³⁰ See article 2 (63) of the GBER (General Block Exemption Regulation) - COMMISSION REGULATION (EU) No 651/2014.

The 2 Seas scheme (available on the 2 Seas website) covers a selection of GBER articles (others than article 20) that can be used by applicants to mitigate State Aid risk. Each article of the scheme determines the eligible conditions to be respected (allowed activities, costs, aid intensity and threshold etc.). The scheme also contains **a glossary** which is of particular importance to properly understand the logic and conditions. The GBER article 2 also provides important definitions.

When the Programme rules are stricter than the GBER article selected, the scheme is restricted by the Programme rules (e.g. if the GBER article allows for an item of expenditure that is not eligible according to the 2 Seas rules, the latter will apply). When the GBER article is stricter than the Programme rules, the latter are restricted by the scheme and the stricter approach will apply on the whole applicant's budget and activities. It is to be noted however that the restrictions usually and particularly concern the aid intensity and the specific eligibility conditions of the article selected, when an article targets one or several budget line(s). If the applicant is able to distinguish the non-economic activities from its economic activities, the other budget lines can be used to declare some costs.

The 2 Seas scheme covers the following articles:

R&D&I	Article 25	Aid for research and development projects
	Article 26	Aid for research infrastructures
	Article 27	Aid for innovation clusters
	Article 28	Innovation aid for SMEs
	Article 29	Aid for process and organisational innovation
Training	Article 31	Training aid
Environmental Protection	Article 36	Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards
	Article 38	Investment aid for energy efficiency measures
	Article 41	Investment aid for the promotion of energy from renewable sources
	Article 45	Investment aid for remediation of contaminated sites
	Article 46	Investment aid for energy efficient district heating and cooling
	Article 47	Investment aid for waste recycling and re-utilisation

The 2 Seas scheme targets the following organisations:

- Micro enterprise (see criteria described in GBER annex 1 and in the User guide to SME definition)
- Small enterprise (see criteria described in GBER annex 1 and in the User guide to SME definition)
- Medium enterprise (see criteria described in GBER annex 1 and in the User guide to SME definition)
- Large enterprise (see criteria described in GBER annex 1 and in the User guide to SME definition)
- Research Organisation (see definition in the glossary from the "2 Seas Scheme")
- Research Infrastructure (see definition in the glossary from the "2 Seas Scheme")
- Innovation cluster (see definition in the glossary from the "2 Seas Scheme")

The data concerning individual aid over 500.000 EUR will be published on the Programme website and specific State Aid websites. The following information will be required:

- | | |
|-----------------------------|---|
| - Project Acronym | - Aid objective |
| - Beneficiary Name | - Granting authority |
| - NACE Code (if applicable) | - Programme Intervention rate |
| - Type of organisation | - State Aid scheme |
| - Type of undertaking | - Maximum overall aid Amount awarded to the undertaking |
| - Address and NUTS3 | - Reference number |
| - Aid instrument | |
| - Aid granting date | |

After the project approval by the Monitoring Committee, the Joint Secretariat (on behalf of the Managing Authority) will notify the undertakings whose ERDF grant falls under the GBER.

Articles 27, 36, 38, 41, 46, and 47 provide that the aid intensity may be increased by 15% for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty. The assisted areas are assigned on a lower level than NUTS3 (Nomenclature des Unités Territoriales Statistiques) (so called LAUs – Local Administrative Units). As a consequence, some parts of the same NUTS3 can have different status (a, c or unassisted) and different percentages of maximum intervention rate.

For some of these territorial units the percentage applied will be different between “2014-2017” and “2018-2020” therefore it is recommended that the concerned undertaking contact the Joint Secretariat to counter-check the correct percentage to be used. The list of assisted areas can be found on the Programme website.

If the applicant decides to opt for one of the “2 Seas scheme” articles, the EEP will ask to justify the reason why one and not another article has been selected and the reasoning behind the aid intensity that has been selected. The applicant will be also required to distinguish the economic and non-economic activities.

It is to be noted that if, by application of a given article, the allowed aid intensity is higher than 60% (i.e. the Programme ERDF rate), the EEP will not be able to check the consistency between the total external public funding rate (ERDF plus external public contribution) and the limit imposed by the selected article of the scheme: **the applicant is fully responsible for ensuring the consistency between its budget and the eligibility conditions determined by the selected GBER article.**

As another example, if the aid intensity is at 30% and the exemption selected entails specific conditions for one or several budget line(s), the applicant’s budget will be subject to the lower rate and the applicant will have to ensure compliance with the eligibility conditions for the budget line(s) concerned. Nevertheless, the applicant will still be able to declare costs in other budget lines at the same lower rate, should a clear distinction be possible between the non-economic and economic activities.

The applicant bears full responsibility in case wrong information has been inserted in the EEP which then might have the consequence of deeming the applicant and the project **INELIGIBLE**.

In order to assist applicants in selecting the most appropriate GBER article and understanding where particular attention should be paid to, the following section of the guidance will go through an explanation of the conditions and implications of each article of the "2 Seas scheme". The particular points of attention mentioned below do not prevent the applicants also fully complying with all other specific conditions mentioned in each article.

AID FOR RESEARCH & DEVELOPMENT & INNOVATION

▪ Article 25 - Aid for research and development projects

Aid for research and development under this scheme shall comply with GBER 2014-20, **Article 25**.

The aided part of research and development shall completely fall within one or more of the following categories:

- (a) Fundamental research;
- (b) Industrial research;
- (c) Experimental development;
- (d) Feasibility studies.

The eligible costs of research and development shall be allocated to a specific category of research and development, and can cover the following types of costs:

- (a) Personnel costs: researchers, technicians and other supporting staff to the extent employed on the project;
- (b) Costs of instruments and equipment to the extent and for the period used for the project. Where such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible.
- (c) Costs for of buildings and land, to the extent and for the duration period used for the project. With regard to buildings, only the depreciation costs corresponding to the life of the project, as calculated on the basis of generally accepted accounting principles are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible.
- (d) Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project;
- (e) Additional overheads and other operating expenses, including costs of materials, supplies and similar products, incurred directly as a result of the project;

The eligible costs for feasibility studies shall be the costs of the study.

The aid intensity for the concerned applicant shall not exceed:

- (a) 100 % of the eligible costs, in case of fundamental research;
- (b) 50 % of the eligible costs, in case of industrial research;
- (c) 25 % of the eligible costs, in case of experimental development;
- (d) 50 % of the eligible costs, in case of feasibility studies.

The aid intensities for industrial research and experimental development may be increased up to a maximum aid intensity of 80 % of the eligible costs as follows:

- (a) by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises;
- (b) by 15 percentage points if one of the following conditions is fulfilled:
 - i. the project involves effective collaboration:
 - between undertakings among which at least one is an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70 % of the eligible costs, or

- between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10 % of the eligible costs and have the right to publish their own research results;
- ii. the results of the project are widely disseminated through conferences, publication, open access repositories, or free or open source software.

The aid intensities for feasibility studies may be increased by 10 percentage points for medium-sized enterprises and by 20 percentage points for small enterprises.

As highlighted above, if a given applicant will undertake - in the framework of the same project - several activities that fall under different categories of research (e.g. partly fundamental, partly industrial and partly experimental), **the strictest eligibility conditions and intervention rate apply** to the whole applicant's budget and for all applicant's activities (economic and non-economic) until the end of the project.

	Large Enterprise	Medium Enterprise	Small Enterprise	Wide dissemination	Ceiling
Fundamental Research	100%	100%	100%		40MEUR
Industrial Research	50%	60%	70%	+15%	20MEUR
Experimental Development	25%	35%	45%	+15%	15MEUR
Feasibility Studies	50%	60%	70%		7.5MEUR

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises).
- Specific definitions apply for (a) Fundamental research; (b) Industrial research; (c) Experimental development and (d) Feasibility studies (see the 2 Seas scheme glossary for more information).
- **The classification regarding the definition of each R&D category and its correlation with the TRL (Technology Readiness level) is as follows³¹:** *For practical purposes, and unless it is shown that a different scale should be used in individual cases, the different R&D categories can also be considered to correspond to Technology Readiness Levels 1 (fundamental research), 2-4 (industrial research) and 5-8 (experimental development).*
- If for a given applicant, several activities fall under different categories of research & development, the strictest eligibility conditions will apply to all activities.
- Applicants should take into consideration that an open, wide and free dissemination of the project deliverables and outputs reduces the risk of State Aid and, as such, increases the possible percentage of funding. On this aspect, the establishment of Intellectual Property Rights for example on project deliverables or outputs is not contradictory with the wide dissemination as long as projects results are widely disseminated through conferences, publication, open access repositories, or free or open source software.
- Particular attention should be paid on the sum of percentage points applicable to the type of undertaking, type of activities and specific conditions of application.

▪ Article 26 - Investment aid for research infrastructures

Investment aid for research infrastructures under this scheme shall comply with GBER 2014-20, **Article 26**.

Where a research infrastructure pursues both economic and non-economic activities, the financing, costs and revenues of each type of activity shall be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles.

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, "A European strategy for Key Enabling Technologies – A bridge to growth and jobs", COM(2012) 341 final of 26.6.2012.

The price charged for the operation or use of the infrastructure shall correspond to a market price.

Access to the infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the infrastructure may be granted preferential access under more favorable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

The eligible costs shall be the investment costs in intangible and tangible assets.

The aid intensity shall not exceed 50 % of the eligible costs, subject to a ceiling of EUR 20 million per infrastructure.

Where a research infrastructure receives public funding for both economic and non-economic activities, Member States shall put in place a monitoring and claw-back mechanism in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation envisaged at the time of awarding the aid.

Points of attention:

- Only research infrastructures costs are eligible – see the “2 Seas scheme” glossary definition.
- Specific conditions apply for budget line 6 for costs budgeting and claiming.

▪ Article 27 - Aid for innovation clusters

Aid for innovation clusters under this scheme shall comply with GBER 2014-20, **Article 27**.

Aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation).

Access to the cluster's premises, facilities and activities shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10 % of the investment costs of the innovation cluster may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

The fees charged for using the cluster's facilities and for participating in the cluster's activities shall correspond to the market price or reflect their costs.

Investment aid may be granted for the construction or upgrade of innovation clusters. The eligible costs shall be the investment costs in intangible and tangible assets.

The aid intensity of investment aid for innovation clusters shall not exceed 50 % of the eligible costs. The aid intensity may be increased by 15 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(a)³² of the Treaty and by 5 percentage points for innovation clusters located in assisted areas fulfilling the conditions of Article 107(3)(c)³³ of the Treaty. The aid amount is subject to a ceiling of EUR 7.5 million per cluster.

Operating aid may be granted for the operation of innovation clusters. It shall not exceed 10 years.

The eligible costs of operating aid for innovation clusters shall be the personnel and administrative costs (including overhead costs) relating to:

- (a) Animation of the cluster to facilitate collaboration, information sharing and the provision or channelling

³² Aid is compatible with the internal market if aid is has a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned.

³³ Aid is compatible with the internal market if aid facilitates the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

- of specialized and customised business support services;
- (b) Marketing of the cluster to increase participation of new undertakings or organisations and to increase visibility;
 - (c) Management of the cluster's facilities; organisation of training programmes, workshops and conferences to support knowledge sharing and networking and transnational cooperation.

The aid intensity of operating aid shall not exceed 50 % of the total eligible costs during the period over which the aid is granted.

Points of attention:

- Specific costs for innovation clusters are eligible – see the “2 Seas scheme” glossary definition;
- Specific conditions apply for budget lines 1, 2 and 6 (such as specific eligible costs, open and non-discriminatory access etc.);
- Sum of percentage points for assisted areas applies.

▪ **Article 28 - Innovation aid for SMEs**

Innovation aid for SMEs under this scheme shall comply with GBER 2014-20, **Article 28**.

The eligible costs shall be the following:

- (a) costs for obtaining, validating and defending patents and other intangible assets;
- (b) costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
- (c) costs for innovation advisory and support services;

The aid intensity shall not exceed 50 % of the eligible costs.

In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100 % of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200 000 per undertaking within any three-year period.

The ceiling for innovation aid for SMEs projects is EUR 5 million per undertaking, per project.

Points of attention:

- Only costs incurred and paid by SMEs are eligible under this article;
- Specific conditions apply for budget lines 1 and 4;
- Considering that article 28 concerns SMEs, it may be more advantageous to use “Article 20 scheme” instead (if the applicant is an SME).

▪ **Article 29 - Aid for process and organisational innovation**

Aid for process and organisation innovation under this scheme shall comply with GBER 2014-20, **Article 29**.

Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs.

The eligible costs shall be the following:

- (a) Personnel costs;
- (b) Costs of instruments, equipment, buildings and land to the extent and for the period used for the project;
- (c) Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's

length conditions;

- (d) Additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project.

The aid intensity shall not exceed 15 % of the eligible costs for large undertakings and 50 % of the eligible costs for SMEs, subject to a ceiling of EUR 7.5 million per undertaking per project.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- The consideration of the definition of process and organisational innovation is of particular importance (see the glossary of the "2 Seas scheme");
- The support to Large Enterprises is much narrowed. Aid to large undertakings shall only be eligible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30 % of the total eligible costs;
- Specific conditions apply for all budget lines;
- Considering that article 29 mainly concerns SMEs, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

Training aid

▪ Article 31 – Training aid

This aid under this scheme shall comply with GBER 2014-20, **Article 31**.

Aid shall not be granted for training which undertakings carry out to comply with national mandatory standards on training.

The eligible costs shall be the following:

- (a) trainers' personnel costs, for the hours during which the trainers participate in the training;
- (b) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project. Accommodation costs are excluded except for the minimum necessary accommodation costs for trainees' who are workers with disabilities;
- (c) costs of advisory services linked to the training project;
- (d) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

The aid intensity shall not exceed 50 % of the eligible costs. It may be increased, up to a maximum aid intensity of 70 % of the eligible costs, as follows:

- (a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers;
- (b) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises.

Where the aid is granted in the maritime transport sector, the aid intensity may be increased to 100 % of the eligible costs provided that the following conditions are met:

- (a) the trainees are not active members of the crew but are supernumerary on board; and
- (b) the training is carried out on board of ships entered in Union registers

The ceiling for training aid projects is EUR 2 million per training project.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply as far as training actions are concerned;
- The aid intensity to large enterprises cannot be higher than 50%;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

Aid for Environmental protection

- **Article 36 - Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards**

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards under this scheme shall comply with GBER 2014-20, **Article 36**.

The investment shall fulfill one of the following conditions:

- (a) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards;
- (b) it shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards.

Aid shall not be granted where investments are undertaken to ensure that undertakings comply with Union standards already adopted and not yet in force.

By way of derogation, aid may be granted for:

- (a) the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased before that date.
- (b) retrofitting of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the Union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply retroactively to those vehicles.

The eligible costs shall be the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. They shall be determined as follows:

- (a) where the costs of investing in environmental protection can be identified in the total investment cost as a separate investment, this environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the costs of investing in environmental protection are identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the environmental protection-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

The aid intensity shall not exceed 40 % of the eligible costs.

The aid intensity may be increased by 10 percentage points for aid granted to medium sized undertakings and

by 20 percentage points for aid granted to small undertakings.

The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The aid intensity for large enterprises cannot exceed 40%;
- Sum of percentage points for assisted areas applies;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

▪ **Article 38 - Investment aid for energy efficiency measures**

Investment aid for energy efficiency measures under this scheme shall comply with GBER 2014-20, **Article 38**.

Aid shall not be granted under this Article where improvements are undertaken to ensure that undertakings comply with Union standards already adopted, even if they are not yet in force.

The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:

- (a) Where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;
- (b) In all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.

The costs not directly linked to the achievement of a higher level of energy efficiency shall not be eligible.

The aid intensity shall not exceed 30 % of the eligible costs.

The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The aid intensity for large enterprises cannot exceed 30%;
- Sum of percentage points for assisted areas applies;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

▪ **Article 41 - Investment aid for the promotion of energy from renewable sources**

Investment aid for the promotion of energy from renewable sources under this scheme shall comply with GBER 2014-20, **Article 41**.

Investment aid for the production of biofuels shall be exempted from the notification requirement only to the extent that the aided investments are used for the production of sustainable biofuels other than food-based biofuels. However, investment aid to convert existing food-based biofuel plants into advanced biofuel plants shall be exempted under this Article, provided that the food-based production would be reduced commensurate to the new capacity.

Aid shall not be granted for biofuels which are subject to a supply or blending obligation.

Aid shall not be granted for hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

The investment aid shall be granted to new installations only. No aid shall be granted or paid out after the installation started operations and aid shall be independent from the output.

The eligible costs shall be the extra investment costs necessary to promote the production of energy from renewable sources. They shall be determined as follows:

- (a) where the costs of investing in the production of energy from renewable sources can be identified in the total investment cost as a separate investment, for instance as a readily identifiable add-on component to a pre-existing facility, this renewable energy-related cost shall constitute the eligible costs;
- (b) where the costs of investing in the production of energy from renewable sources can be identified by reference to a similar, less environmentally friendly investment that would have been credibly carried out without the aid, this difference between the costs of both investments identifies the renewable energy-related cost and constitutes the eligible costs;
- (c) for certain small installations where a less environmentally friendly investment cannot be established as plants of a limited size do not exist, the total investment costs to achieve a higher level of environmental protection shall constitute the eligible costs.

The costs not directly linked to the achievement of a higher level of environmental protection shall not be eligible.

The aid intensity shall not exceed:

- (a) 45 % of the eligible costs if the eligible costs are calculated on the basis of point (a) or point (b) above;
- (b) 30 % of the eligible cost if the eligible costs are calculated on the basis of point (c) above.

The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Where aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid intensity may reach 100 % of the eligible costs. Such a bidding process shall be non-discriminatory and provide for the participation of all interested undertakings. The budget related to the bidding process shall be a binding constraint in the sense that not all participants can receive aid and the aid shall be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations.

The ceiling for **Investment aid for the promotion of energy from renewable sources** projects is EUR 15 million per undertaking per investment project.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The aid intensity for large enterprises cannot exceed 45%;
- Sum of percentage points for assisted areas applies;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

▪ **Article 45 - Investment aid for remediation of contaminated sites**

Investment aid for remediation of contaminated sites under this scheme shall comply with GBER 2014-20, **Article 45**.

The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

Where the legal or physical person liable for the environmental damage under the law applicable in each Member State without prejudice to the Union rules in this matter — in particular Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries, Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC is identified, that person must finance the remediation in accordance with the 'polluter pays' principle, and no State Aid shall be granted. Where the person liable under the applicable law is not identified or cannot be made to bear the costs, the person responsible for the remediation or decontamination work may receive State Aid.

The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites.

Evaluations of the increase in value of the land resulting from remediation shall be carried out by an independent expert.

The aid intensity shall not exceed 100 % of the eligible costs.

The ceiling for **Investment aid for remediation of contaminated sites** projects is EUR 20 million per undertaking per investment project.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The maximum aid intensity is 100%;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

▪ **Article 46 - Investment aid for energy efficient district heating and cooling**

Investment aid for energy efficient district heating and cooling under this scheme shall comply with GBER 2014-20, **Article 46**.

The eligible costs for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the energy efficient district heating and cooling system.

The aid intensity for the production plant shall not exceed 45 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

The aid intensity for the production plant may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

The eligible costs for the distribution network shall be the investment costs, subject to a ceiling of EUR 20 million per undertaking per investment project.

The aid amount for the distribution network shall not exceed the difference between the eligible costs and the operating profit. The operating profit shall be deducted from the eligible costs ex ante or through a claw-back mechanism.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The aid intensity for large enterprises cannot exceed 45%;
- Sum of percentage points for assisted areas applies;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

▪ Article 47 - Investment aid for waste recycling and re-utilisation

Investment aid for waste recycling and re-utilisation under this scheme shall comply with GBER 2014-20, **Article 47**.

The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings.

The recycled or re-used materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner. Aid to waste recovery operations other than recycling shall not be block exempted under this Article.

The aid shall not indirectly relieve the polluters from a burden that should be borne by them under Union law, or from a burden that should be considered a normal company cost.

The investment shall not merely increase demand for the materials to be recycled without increasing collection of those materials.

The investment shall go beyond the state of the art.

The eligible costs shall be the extra investment costs necessary to realise an investment leading to better or more efficient recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence the aid.

The aid intensity shall not exceed 35 % of the eligible costs. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings and by 10 percentage points for aid granted to medium-sized undertakings.

The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling

the conditions of Article 107(3)(a) of the Treaty and by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

Aid for investments relating to the recycling and re-utilisation of the beneficiary's own waste shall not be exempt from the notification requirement under Article 47.

Points of attention:

- The article can be selected by any types of undertaking (SME and large enterprises);
- Specific conditions apply for budget line 6;
- The aid intensity for large enterprises cannot exceed 35%;
- Sum of percentage points for assisted areas applies;
- Unless the applicant is eligible to use specific conditions to increase the percentage of aid intensity, it may be more advantageous to use "Article 20 scheme" instead (if the applicant is an SME).

G. Revenues generation

Project applicants and partners that are State Aid relevant are not concerned by the revenue generation during the project implementation and/or after implementation will not have to comply with the procedures detailed in the Programme manual – Fact sheet 10 on revenue generating projects.

Following the adoption of EC REGULATION (EU) No 2018/1046 and the changes brought by this regulation in article 61.8 of EC REGULATION (EU) No 1303/2013, no net revenues will have to be deducted by State Aid relevant partners (regardless of their size and occurrence of revenues' generation).

As pointed by point (197) of EC REGULATION (EU) No 2018/1046, the relevant provisions of this Regulation should apply to already selected but still ongoing projects and to projects which are still to be selected under the 2014-2020 programming period.

H. Archiving requirements

Any documentation concerning the aid granted under the State Aid measures must be kept for at least 10 years starting from the date when the aid was granted (i.e. the date when the subsidy contract is signed).

Additional national or internal requirements may oblige the undertaking to comply with longer periods of archiving.

I. Conclusions

This guidance aimed at providing applicants with an overview of the key elements to consider for assessing the State Aid risk in the framework of a 2 Seas project, and with a detailed guidance on how to fill-in the EEP sections relating to State Aid.

In order to further support applicants in the evaluation and mitigation of State Aid, the following bodies can be contacted for assistance and advice:

- Member States national authorities
- Territorial facilitators
- Joint Secretariat's officers

All contacts are available on the 2 Seas website. In addition, the following sources of information can be useful:

- Programme Manual – Fact sheet 11
- Article 107 of TFUE – available [here](#)
- 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 - available [here](#)
- R&D&I State Aid framework – available [here](#)
- INTERACT - State Aid and ETC Questions and Answers – available [here](#)

- User guide on SME definition - available [here](#)
- SME qualification test – available [here](#)
- National websites on State Aid

*** ***** *** ***** *** ***** ***