

Controllers workshop

State aid GBER Articles 20&20a + de minimis

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05 June 2025 | Athens, Greece

Interact



Co-funded by
the European Union
Interreg

Type of irregularities (number) - comparison

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

Type of irregularities (amounts) - Interreg

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

Competition

Car factory 1



Price 25 000 EUR
Range 400 km

Car factory 2



Price 25 000 EUR
Range 400 km

Car factory 3



Price 15 000 EUR
Range 400 km

After 5 years...

Car factory 1



Car factory 2



Car factory 3



New price 35 000 EUR

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

Why so cheap in the first place?

Car factory 3



15 000 EUR –
how was it possible?

State aid

Or subsidies, support, etc.

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

State corporate tax
exemption for 5 years

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

oversubsidising distorts competition

From economic theories to EU policies

Competition policy (DG Comp)

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

Mergers control

State aid control

Foreign subsidies control

Digital Markets Acts control

Funding and grants

Regional policy (DG Regio)

Strong research, technological development and innovation

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

Competitive small business

Shift towards a low-carbon economy

Adaptation to climate change, risk prevention and management

Environmental protection and resource efficiency

Sustainable transport and better transport infrastructures

Sustainable and quality employment and labour mobility

Promote social inclusion, combating poverty and any discrimination.

Investment in education, training and lifelong learning

More efficient public administration

Elements of definition

State
resources
(1)

Distortion of
competition
(5)

Undertaking
(2)

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

Advantage
(3)

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

Selectivity
(4)

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

The 5 Criteria - Summary

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

Exemptions from the application of EU Competition policy

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

State aid in Interreg – assessments

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

State aid irregularity

The project consisted in **adapting medical facilities** to the needs of people with disabilities.

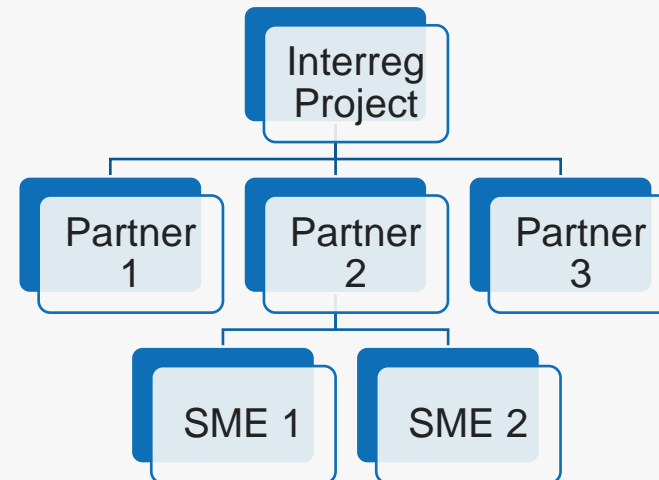
The **MA** considered that **State aid in projects in the public healthcare system does not exist**, as health benefits are **addressed to the general public** and as such the state support for these activities would not have any negative effect on competition between Member States.

However, some of the hospitals with awarded grants **carried out also commercial, private medical activities**, considered as an economic activity and therefore could involve State aid.



Indirect State Aid

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



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

De minimis

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

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

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

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

2023

2022

2021

De minimis – Other Issues

Administrative proceedings (until 31 December 2025 (2028)):

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

Registers:

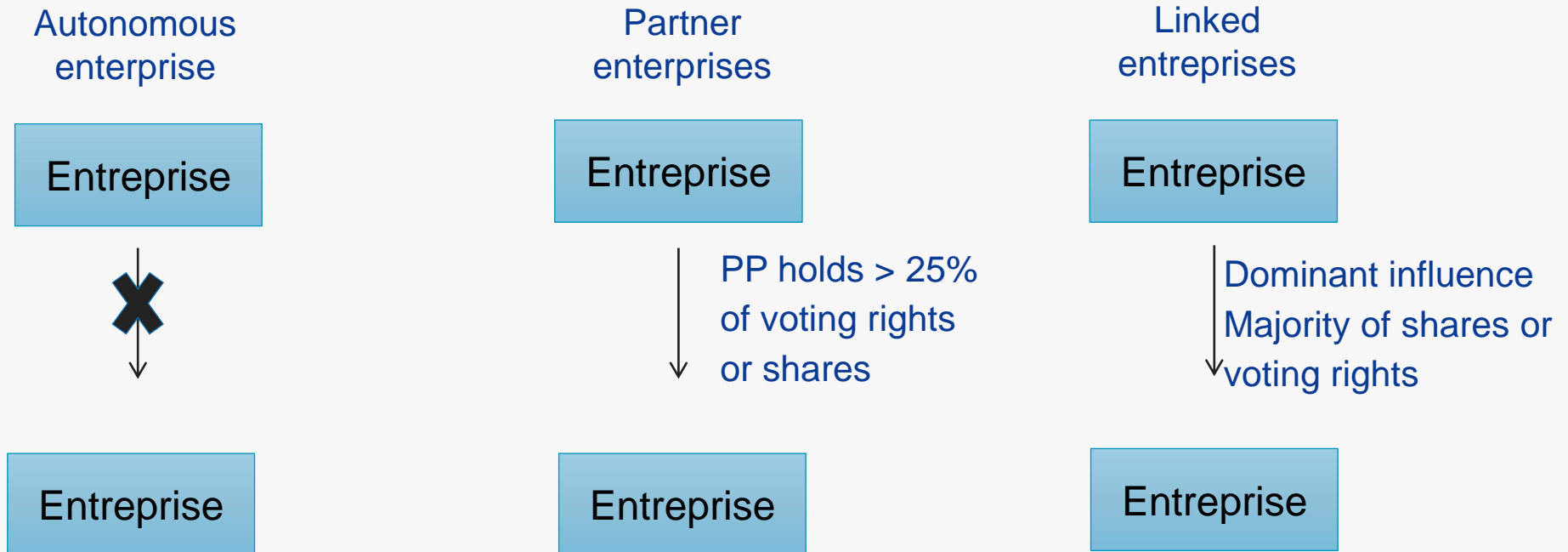
- As of 1 January 2026 use of national register or Union level central register obligatory
- The approach is to model the central register on the transparency module (TAM)
- 10 EU MS currently WITHOUT the national registries AT, BE, DE, DK, FI, FR, GR, IE, NL, SE
- 16 EU MS currently WITH the national registries: BG, HR, CY, CZ, EE, ES, HU, IT, LV, LT, LU, PL, PT, SI, RO, SK

Sector specific rules:

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

De minimis set to expire at the end of 2029

Autonomous, partner, linked...



Possible irregularities

- De minimis received within the last 3 years not checked and the threshold exceeded
- The declaration done at the level of the sole subsidiary not single undertaking (the whole company group in the MS)
- De minimis letter not sent
- De minimis self-declarations falsified
- Aid granted to undertakings active in the primary production of fishery and aquaculture products
- Checks (registers, single undertaking) done by the controller, but not documented in the checklist

What is GBER and how does it work?

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

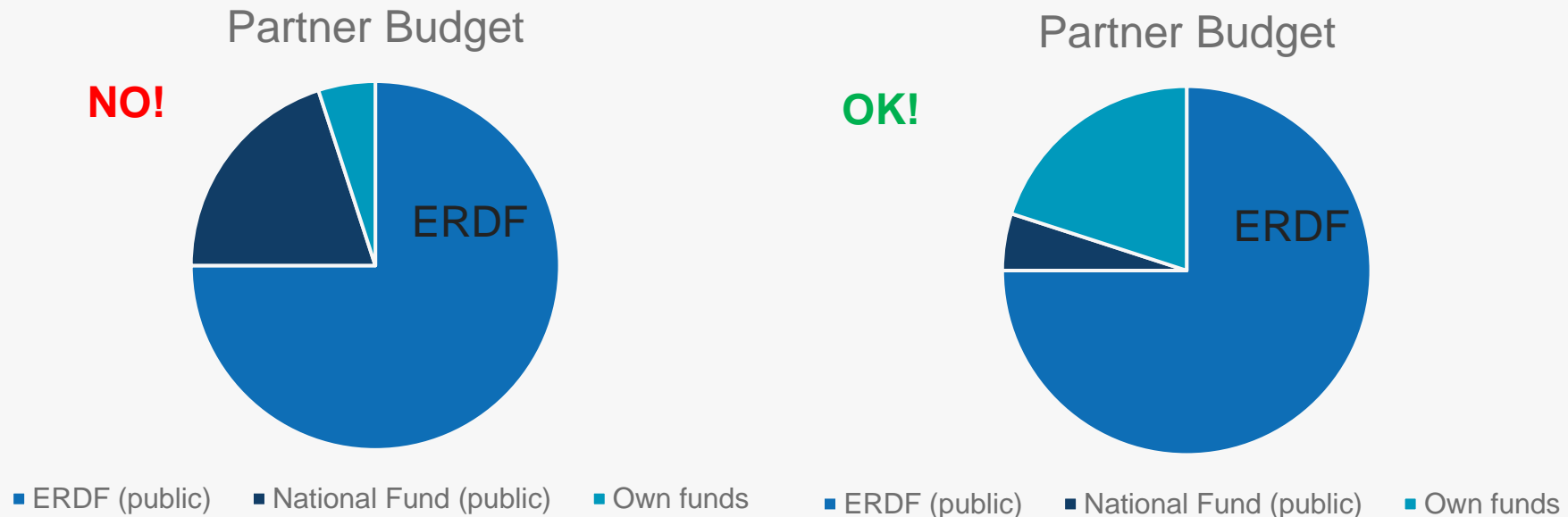
GBER procedure



Specific GBER Issues

The aid intensity \neq co-financing

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



Specific GBER issues

Expert's approach (there are various!)

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

Transparency Award Module (TAM)

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

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

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

GBER requirements

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

GBER Article 20

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

GBER Article 20a

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

Possible irregularities

- Threshold exceeded
- Aid intensity exceeded
- Aid over 100 000 EUR not published in TAM
- Recoverable VAT treated as eligible cost
- GBER articles other than 20 and 20a: incentive effect, eligibility, SME status etc, research institution status etc.

Cooperation works

All materials will be available on:

[Interact library](#)