

**2nd CALL FOR PROPOSALS**

**State Aid Assessment Sheet**

<i>Project Acronym:</i>	
<i>Project title :</i>	
<i>Partner :</i>	
<i>Register no.</i>	
<i>Priority axis:</i>	

**Investment priority:**

**Specific objective:**

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### CRITERIA FOR THE EXISTENCE OF STATE AID (all 5 must apply)

CONDITIONS /CRITERIA FOR CONSIDERATION	YES/ NO/N.A. <sup>1</sup>	SHORT JUSTIFICATION
<b>I. IS THE RECIPIENT OF THE AID AN UNDERTAKING, I.E. EXERCISING AN ECONOMIC ACTIVITY, OFFERING GOODS AND/OR SERVICES IN A MARKET?</b>		<b>IF THE ANSWER IS POSITIVE PLEASE PROCEED DIRECTLY TO PART II. IF THE ANSWER IS NEGATIVE, PLEASE JUSTIFY:</b>
Does the activity of the beneficiary fall within the public remit, i.e. : <ul style="list-style-type: none"> <li>▪ The army</li> <li>▪ The police</li> <li>▪ Air navigation safety and control</li> <li>▪ Maritime traffic control and safety</li> <li>▪ Anti-Pollution surveillance</li> <li>▪ Organisation and enforcement of prison sentences</li> <li>▪ Other (please indicate precisely)</li> </ul>		
Is the beneficiary engaged in the area of social security? In order to answer this question the following criteria shall be examined: <ul style="list-style-type: none"> <li>▪ Whether social security is compulsory;</li> <li>▪ Whether the scheme pursues an exclusively social purpose ;</li> <li>▪ Whether the scheme is non-profit;</li> <li>▪ Whether the principle of solidarity is met (whether the benefits are independent of the contributions made) or</li> </ul>		

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<sup>1</sup> Not applicable.

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<p>whether the principle of capitalization is met (whether benefits paid are not necessarily proportionate to the earnings of the person insured )</p> <ul style="list-style-type: none"> <li>▪ Whether the social security scheme is supervised by the State</li> </ul>		
<p>Is the beneficiary engaged in the field of health care/ medical or hospital treatment services?</p> <p>In order to answer this question the following criteria shall be examined:</p> <ul style="list-style-type: none"> <li>▪ Whether the beneficiary is part of a national health system;</li> <li>▪ Whether the principle of solidarity is met in contrast to the risk-taking principle;</li> <li>▪ Whether the beneficiary is mainly funded by the State or is mainly privately funded ( i.e. from patients)</li> <li>▪ Whether the services are provided free of charge on the basis of universal coverage or whether the beneficiary may deny access to the services it provides</li> </ul>		
<p>Is the beneficiary engaged in the field of education?</p> <p>In order to answer this question the following criteria shall be examined:</p> <ul style="list-style-type: none"> <li>▪ Whether the beneficiary pursues a public purpose/ provision of public education</li> <li>▪ Whether the beneficiary is organized within the national education system</li> <li>▪ Whether the services are provided on the basis of universal coverage or whether the beneficiary may deny access to the services it provides</li> </ul>		

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<ul style="list-style-type: none"> <li>▪ Whether the beneficiary is financed mainly by State resources or by students and their parents</li> <li>▪ Whether the beneficiary is supervised by the State</li> </ul>		
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### II. IF THE BENEFICIARY IS ENGAGED IN AN ECONOMIC ACTIVITY, PLEASE CHECK WHETHER THE FOLLOWING CUMULATIVE CONDITIONS ARE FULFILLED. IF THE ANSWER IN ONE OF THE FOLLOWING FIVE SECTIONS IS NEGATIVE, PLEASE JUSTIFY:

<b>1. IS THERE A DIRECT OR INDIRECT TRANSFER OF STATE RESOURCES TO THE UNDERTAKING?</b> <i>(WHERE A PUBLIC AUTHORITY GRANTS AID TO A BENEFICIARY OR DESIGNATES A PRIVATE OR PUBLIC BODY TO ADMINISTER THE MEASURE, THE TRANSFER IS IMPUTABLE TO THE STATE)</i>		It is <b>Yes</b> in European Structural and Investment Fund Programmes, including ETC. Please specify.
Is it a grant, loan, guarantee, direct investment in the capital of an enterprise, or a benefit in kind granted by the State?		
Does the measure entail forgone state resources of any kind?		
In case an intermediary / private body is involved, is the decision for this transfer of resources imputable to the State?		
Is there any influence from the side of the State on the (transfer of the) resources in question?		
Is the State involved in the reallocation of resources between private entities?		

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<b>2. DOES THE MEASURE CONFER AN ECONOMIC ADVANTAGE?</b> <i>(I.E. AN ECONOMIC BENEFIT WHICH THE UNDERTAKING WOULD NOT HAVE OBTAINED UNDER NORMAL MARKET CONDITIONS)</i>		
Is the principle of the private investor/vendor met?		
Does the measure constitute compensation for the discharge of SGEIs?		
<b>3. IS THE MEASURE SELECTIVE?</b> <i>(IN PARTICULAR AS FAR AS TAX MEASURES OR RELIEF FROM SOCIAL SECURITY CONTRIBUTIONS ARE CONCERNED)</i>		<b>It is Yes in ETC programmes as there is regional selectivity</b> Please consider other aspects as well.
Does the measure concern certain undertakings only? What are the generally applicable rules (general system)? Does the measure constitute an exemption or derogation from generally applicable rules?		
Is the derogation/exemption justified by the logic of the system?		
Is the measure related to undertakings active in a certain part of the national territory?		
<b>4. DOES THE MEASURE DISTORT OR THREATEN TO DISTORT COMPETITION?</b> <i>(ANY MEASURE THAT IMPROVES THE COMPETITIVE POSITION OF THE RECIPIENT COMPARED TO OTHER UNDERTAKINGS WITH WHICH IT COMPETES IS CONSIDERED TO DISTORT OR THREATEN TO DISTORT COMPETITION).</i>		<b>No</b> (No further state aid assessment has to be done)  <b>Yes</b> (State aid assessment continues) Presumed <b>Yes</b> if there is an advantage.

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Is the beneficiary active in a market open to competition?		
If the market is not open to competition, is the beneficiary engaged in other economic activities in sectors open to competition and/or in another Member State?		
If the beneficiary is engaged in other activities in sectors open to competition and/or in another Member State, are there separate accounts for each activity?		
<b>5. IS THE MEASURE LIABLE TO AFFECT TRADE BETWEEN MEMBER STATES?</b>		Presumed <b>Yes</b> in most cases where an advantage is identified.
Does the measure strengthen the position of the beneficiary company as compared to other undertakings competing in intra-EU trade?		
Are the activities carried out by the beneficiary of purely local nature?		

Assessor 1	Name	
	Signature	
Assessor 2	Name	

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	Signature	
JS Coordinator	Name	
	Signature	

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## Clarifications and Examples related to the State Aid Criteria:

### 1. Does the project imply economic activity in competition with other operators?

Activities through which the Member State **exercises a public power** (unless the Member State concerned has decided to introduce market mechanisms,) are activities that intrinsically form part of the prerogatives of official authority and are performed by the State and therefore are not of an economic nature and in general fall outside the scope of State aid rules. ).

Examples of such activities are the following:

(a) the army or the police; (b) air navigation safety and control; (c) maritime traffic control and safety; (d) anti-pollution surveillance; (e) the organisation, financing and enforcement of prison sentences; (f) the development and revitalization of public land by public authorities; and (g) the 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.

- a) Public funding of a **cultural or heritage conservation activity** (including nature conservation) 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, open to the general 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 predominantly financed by visitor or user fees or by other commercial means should be qualified as economic in nature. Especially



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for **museums and historic monuments** the local demand and the attraction of international visitors should be taken into account when establishing the existence of an effect on the trade between Member States as a prerequisite for State Aid. If they are minimal it is more likely that State aid rules would not apply.

- b) **Public hospitals** that are an integral part of national health service, based on the principle of solidarity, directly funded from social security contributions and other State resources and provide their services free of charge on the basis of universal coverage, are **not considered to act as undertakings**; It should be underlined that where hospitals and other health care providers offer their services for remuneration, either directly from patients or from their insurance the fact that a health service is provided by a public hospital is not sufficient for the activity to be classified as non- economic.
- c) **Public education** organized within the national educational system funded and supervised by the State may be considered as a **non-economic activity**. This is not affected by the fact that pupils or their parents sometimes have to pay tuition or enrolment fees which contribute to the operating expenses of the system. This principle can cover public educational services such as vocational training, private and public primary schools and kindergartens, public libraries, secondary teaching activities in universities, the provision of education in universities, education for more and better skilled human resource;
- d) Conduct of independent **research and development for more knowledge** and better understanding, including collaborative research and development and dissemination of research results; technology transfer activities (licensing, creation of spin-off and other forms of management of knowledge) are non-economic where those activities are of internal nature and all incomes are reinvested in the primary activities of the research organizations concerned; The requirements and conditions foreseen in the Communication from the Commission (2014/C 198/01) on the Framework for State aid for research and development and innovation must always be respected.

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e) Public funding of **infrastructure that is not meant to be commercially exploited** is in principle **excluded from the application of State Aid rules**. This concerns, for instance, general infrastructures, such as public roads, bridges or canals which are made available for public use without any consideration; air traffic control related infrastructure in airports, lighthouses and other equipment for the needs of general navigation, police- and customs-related infrastructure;

However, in the *Aéroports de Paris* (T-128/98) judgment the General Court acknowledged this evolution, clarifying that the operation of an airport had to be seen as an economic activity. More recently, the *Leipzig/Halle* judgment (C-288/11) the Court of Justice confirmed that the construction of a commercial airport runway is an economic activity in itself. While these cases relate specifically to airports, the principles developed by the Union Courts appear to be of broader interpretation and thus applicable to the construction of other infrastructures that are indissociably linked to an economic activity.

Where an infrastructure originally used for non-economic activities is later re-assigned to economic use (for example where a military airport is converted to civilian use), only the costs incurred for the conversion of the infrastructure to economic use will be taken into account for the assessment under the State aid rules.

If an infrastructure is used for both economic and non-economic activities, public funding for its construction will fall under the State aid rules only insofar as it covers the costs linked to the economic activities. If an entity is engaged in economic and non-economic activities, Member States have to ensure that the public funding provided for the non-economic activities cannot be used to cross-subsidize the economic activities. This can notably be ensured by limiting the public funding to the net cost (including the cost of capital) of the non-economic activities, to be identified on the basis of a clear separation of accounts.

If, in cases of mixed use, the infrastructure is used almost exclusively for a non-economic activity, the Commission considers that its funding may fall outside the State aid rules in its entirety, provided the economic use remains purely ancillary, that is to say an

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activity which is directly related to and necessary for the operation of the infrastructure, or intrinsically linked to its main non-economic use. This should be considered to be the case when the economic activities consume the same inputs as the primary non-economic activities, for example material, equipment, labour or fixed capital. Ancillary economic activities must remain limited in scope, as regards the capacity of the infrastructure. Examples of such ancillary economic activities may include a research organisation occasionally renting out its equipment and laboratories to industrial partners.

**f) To assess whether the construction or upgrade or extension of infrastructure/facility is an economic activity** the following parameters should be considered:

- How the facility will be used:
  - entrance for the public (free or ticket pricing)
  - renting of the facility or part of it to a third party and pricing (could be classified as ancillary activities)
  - existence of a cafeteria or a shop inside the facility (could be classified as ancillary activities)
  - Do the ancillary activities exceed 20% of the overall annual capacity of the infrastructure? (The existence of a minor economic activity that is directly related to and necessary for the operation of the infrastructure, or that is intrinsically linked to its main non-economic use, will not affect the overall classification of the activity as non-economic. ).
- Which is the exact location of the facility? – is it of local use or could be used internationally exploited (e.g . situated near to the borders, near to airports or road /railroad networks);

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### 3. Does the supported measure give advantage to the undertaking?

- a) Measures that **avoid economic advantages** of an undertaking are the implication of **public procurement** for the services and purchasing of goods, **benchmarking** establishing that the beneficiaries will not receive compensation above market prices. If a service provided;
- b) **Economic transactions carried out by a public body** or a public undertaking **does not confer an advantage** on its counterpart, if they are carried out **in line with normal market conditions**.

### 5. Does the supported measure distort or threaten to distort competition?

- a) Aid is presumed to distort competition if it allows the recipient to maintain a stronger competitive position than it would have had if the aid had not been provided;
- b) Aid is presumed to distort competition if it gives the beneficiary an advantage by relieving it of expenses it would otherwise have to bear in the course of its day-to-day business operations.

### 6. Does it have the potential to affect trade between Member states?

- a) The aid **does not affect trade between Member states** if it has a purely local impact and does not lead to demand or investments being attracted to the region concerned; does not create obstacles to the establishment of undertakings from other Member States; the goods or services produced by the beneficiary are purely local or have a geographically limited attraction zone; there is at most a marginal effect on the markets and on consumers in neighbouring Member States;
- b) Examples of **lack of affecting trade between Member states**: swimming pools and other leisure facilities; museums and other cultural infrastructure unlikely to attract visitors from other Member States; hospitals and other health care facilities aimed at local

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population; news media and/or cultural products with locally restricted audience; a conference center where the location and the potential effect of the aid on prices is unlikely to divert users from other centers in other Member States; cable ways (in particular ski lifts) with local catchment area.