

- Summarised background information to State aid -

This document is a summarised overview on the basic State aid law. It provides a concise and sometimes simplified summary of legislation in the field of State aid. The Investitionsbank Schleswig-Holstein cannot under any circumstances or for any reason whatsoever be held liable for completeness, correctness and up-to-dateness of this summary.

I. General information about Community law on State aid

According to Article 87(1) of the Treaty establishing the European Community (hereinafter referred to as "EC Treaty"), *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market."*

The European Commission *"shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid"* (EC Treaty, Article 88(3), sentence 1, "notification requirement"). The Member State concerned shall not put its proposed measures into effect until the European Commission has made a final decision (cf. EC Treaty, Article 88(3), sentence 3, "standstill clause"); new aid put into effect in contravention of this provision of the EC Treaty is unlawful aid.

II. Relation to the Baltic Sea Region Programme 2007-2013

Based on the decisions of the Monitoring Committee of the Baltic Sea Region Programme 2007-2013, the Investitionsbank Schleswig-Holstein (IB) is awarding non-repayable grants from the ERDF, Norwegian national funds and the ENPI to lead partners which partly transfer the grants to project partners to co-finance their project activities.

In its decision adopting the programme, the European Commission determined that *"Any public support under the operational programme shall comply with the procedural and substantive State aid rules applicable at the time when the public support is granted"*.

Within the framework of the two-stage funding process (Stage 1: Decision of the Monitoring Committee on project approval. Stage 2: Grant Contract between IB and lead partner), both the Member States – in particular the Monitoring Committee being their "programme body" – and the Managing Authority, assisted by the Joint Technical Secretariat, are responsible to comply with this requirement. They shall ensure that no State aid is granted to lead partners or project partners in contravention of Article 88(3) sentence 3 of the EC Treaty, i.e. to ensure that the "standstill clause" is not infringed.

In the operational programme (chapter 5.3), the Member States confirmed that any State aid that might be granted under the programme will be notified to the European Commission (cf. section I. above: "notification requirement") or granted in accordance with State aid regulations which determine exemptions from the notification requirement¹.

¹ In particular the De-minimis-Regulation (Regulation (EC) No 1998/2006, OJ L 379, 28.12.2006, p. 5) or the General block exemption Regulation (Regulation (EC) No 800/2008, OJ L 214, 9.8.2006, p. 3). These regulations have not yet been applied by the programme bodies.

III. Assessment of State aid in each individual project

In a project of the Baltic Sea Region Programme 2007-2013, the actors from different levels may receive State aid. Primarily, the lead partner (it is entitled to claim the grant according to the grant contract) and each of the project partners, which participate in the grant based on the Partnership Agreement via the lead partner, can be aid beneficiaries. But State aid could also be given to the end users/target group of the project.

For this reason, an assessment of the project's activities is required. It must be checked whether all criteria defined in Article 87(1) of the EC Treaty are fulfilled or circumstances are given which permit the assessment that one criterion or some criteria are not fulfilled.

State aid rules only apply to measures that satisfy all the criteria (cumulative) listed in Article 87(1) of the EC Treaty. Specific to the Baltic Sea Region Programme 2007-2013, they can be exemplified in six questions as follows:

1. Are the programme funds granted by Member States or through State resources?
2. In case the Monitoring Committee and the Investitionsbank Schleswig-Holstein granted the funds to undertakings (cf. question 4), would the criterion of selectivity be fulfilled (cf. Article 87(1): ... "favouring certain undertakings ...")?
3. Does the lead partner, any of the project partners or any end user/target group of the project obtain an advantage from the funds granted?
4. Does the lead partner, any of the project partners or the end users of the project fulfil the status of an undertaking as defined by the Community law on State aid, i.e. are they pursuing economic activities in the project?²
5. Does the awarded grant distort or threaten to distort competition?
6. Does the awarded grant affect trade between Member States?

As State aid rules only cover measures that satisfy all the criteria listed in Article 87(1) of the EC Treaty (cf. above), State aid is not granted, if one criterion or more criteria are not satisfied.

Partners located in Belarus:

According to Article 299 of the EC Treaty, Article 87 and the following articles of the EC Treaty on State aid law do not apply to Belarus.

Partners located in Norway:

The State aid law also applies to Norwegian lead partners, project partners or end users. According to Articles 61 and the following of the Agreement on the European Economic Area (OJ L 1, 3.1.1994, p. 3), similar rules on State aid law as determined in Article 87 and the following of the EC Treaty have been agreed with Norway.

² For example, a non-profit association or a charitable organisation pursuing an economic activity will constitute an "undertaking", but only for the part of the activity which is economic. Competition rules will not apply to their non economic activities (cf. Commission Staff Working Document of 20.11.2007 [(SEC 2007) 1516] on Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty (OJ L 312, 29.11.2005, p. 67).

IV. Overview about the State aid procedure applied in the Baltic Sea Region Programme 2007-2013

In order to ensure that the assistance in the programme is provided through means that are not in conflict with State aid law, the Monitoring Committee approved the following procedure during its meeting in Vilnius on 8 June 2009.

When	Actor	Description
		Declaration of compliance with the State aid law
Application stage	LP and PPs	Through signature of the Partner declaration the Lead partner and its project partners declare that they comply with the State aid law and adhere to the conditions of the programme for compliance with the State aid law (see Programme Manual).
Quality assessment	MA/JTS	Assessment of the State aid relevance
MC meeting	MC	Approval/rejection of the project proposal (might include requirements concerning State Aid relevant activities)
Before signature of the Grant Contract	MA/JTS	Implementation of the decision of the MC
		Lead partner legally binds the project to the compliance with the State aid law
Signature of the Grant contract	MA/JTS and LP	The Grant contract contains the conditions of the programme for compliance with the State aid law. By signing the Grant contract the Lead partner binds the project to ensuring the compliance with these provisions and the State aid law in general.