

Interreg



Co-funded by
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Alpine Space

Legal issues

Lead Applicants seminar

Salzburg | Austria | 06-07.02.2024

21/27

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Partnership agreement (PA)



- Legal basis: article 26 of Regulation (EU) No. 2021/1059
- regulates relationship between LP, ERDF-LP and partners
- Obligatory programme templates to be used
- additional rules can be foreseen
- to be uploaded in JEMS as attachment of the application form
- Number of copies: each project participant shall get one
- difficulties of getting signature in time: please inform JS

PA - Finalisation and Signature Process



Option 1 (*minimum clauses*)

Just add project name, working language, number of copies, applicable law, place of jurisdiction

signature: (ERDF) LP with each PP

submission with AF in JEMS

Option 2 (*additional clauses*)

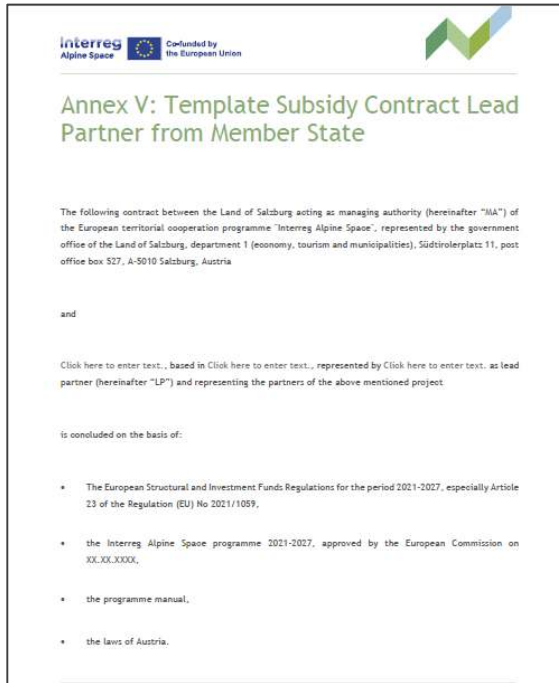
LP sends *draft* of additional clauses to MA for check as soon as possible, at **latest by 23.2.2024**
alpine.space@salzburg.gv.at

signature: (ERDF) LP with each PP

submission with AF in JEMS

8.3.2024

Subsidy contract (SC)



- Legal basis: article 26 of Interreg-regulation (EU) No. 2021/1059
- regulates conditions for ERDF-grant, tasks, duties and responsibilities of LP
- templates: LP from MS, LP from non-MS
- in partnership agreement all partners declare to have read the provisions of the subsidy contract (SC)
- valid throughout project lifetime



STATE AID

State aid criteria - Article 107(1) TFEU

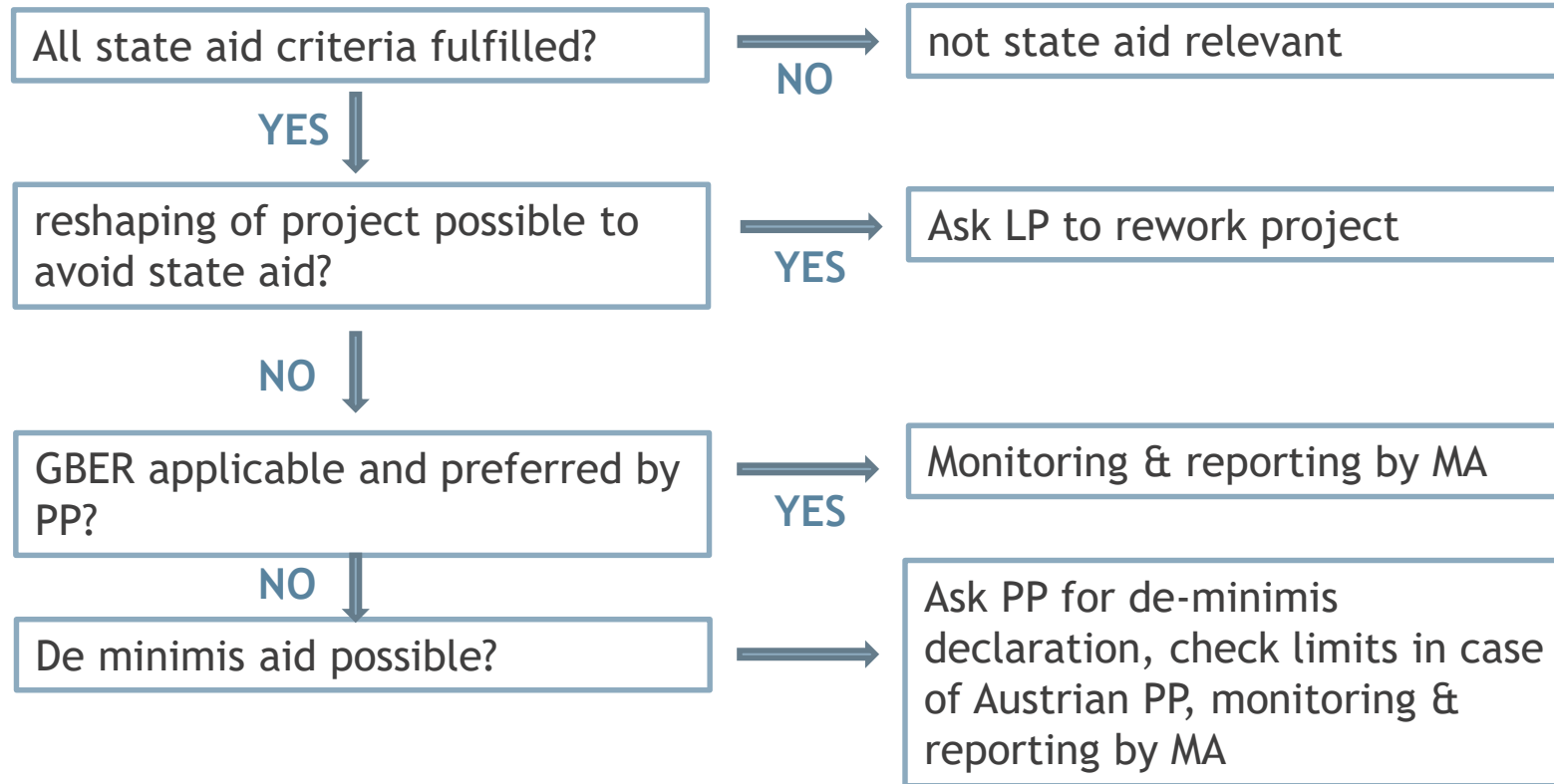


- transfer of state resources
 - national, regional, public funds, also EU-funds if managed by a member state
- selectivity
 - not all companies in a country, but only selected ones
- effects on competition and trade
 - Potential effect is already enough, sufficient if an entity acts on the market and there is trade among member states, not given in cases like sports infrastructure, cultural events, health services aiming at local audience
- economic advantage
 - grant, loan with interest rate rebates, liabilities, capital injections
- undertaking
 - any entity engaged in an economic activity (offering goods and services on the market for pecuniary interest), regardless the legal form, the way of financing, profit-orientation



NO state aid if only one of criterion is not fulfilled

State Aid Approach of the Programme



State aid check done by JS with support MA, documented in JEMS, PC decisions, controller controls if state aid rules are obeyed, JS verifies if project activities carried out as set out in AF and requested by PC

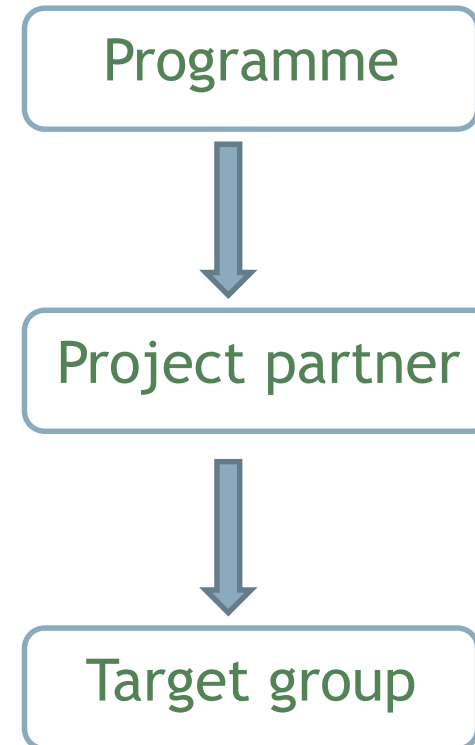
Direct and indirect State Aid



✔ Programme funds project participant (PP)

✔ PP passes advantage on to third party, eg. by providing workshop for SME free of costs

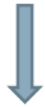
✔ No state aid on level of PP, but potential state aid on level of target group (SME)



GBER Articles 20 and 20a on ETC-projects



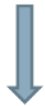
Programme



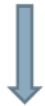
Project partner

Article 20: aid for costs of undertakings as partners in ETC-projects allowed if staff costs, costs for office and administration, travel & accommodation costs, external expertise and service costs, equipment costs, infrastructure costs and aid intensity not higher than co-funding rate foreseen in regulation/programme (75%)

Programme



Project partner



Target group

Article 20a: aid for costs of undertakings as target groups of ETC-projects fine if total amount granted to undertaking per project is not more than 22.000

- PP shall define value of advantage for end-users (target groups) in AF, e.g. one workshop for 20 companies costs 30.000 Euro.
- MA/JS check and PC approve.
- Controller checks if amount is below value of art. 20a GBER
- (max. 22.000 Euro per undertaking taking part in the measure/event).

De minimis



in case of project approval under de minimis-rules:

- self-declaration to be submitted by respective project participant to MA before signature of subsidy contract
- limits of *de minimis* aid:
 - max EUR 300,000
 - over a 3 year period
 - per single undertaking
 - per Member State
- aid provided by MS of MA: Austria



PROCUREMENT LAW

Procurement and Simplified Costs



If costs for external expertise and services and equipment are co-financed on a **real cost basis**, controllers will carefully check the procurement procedure.

Any mistake detected might lead to

- a reduced amount that will be reimbursed and to
- a reduction of reimbursement of project costs that are calculated as a flat rate on costs for external expertise and services



If 40% **flat rate** for eligible costs other than direct staff costs is applied, beneficiaries will not have to document and prove their procurement procedures against programme bodies, controllers or auditors.

Project Partners vs. External Experts



- Project participants may not contract each other to carry out project activities
- An organisation cannot become project partner if the main activity within its business profile and role in the project consists of project coordination, management, communication, consulting or other activities that are of a mere executive or supporting character. Such activities are usually provided by external service providers.
- The JS will check the fulfilment of this requirement during the quality assessment phase
- It is recommended to get in touch with the national ACP beforehand.

Joint cross-border procurement



Procurement law allows for joint procurement of contracting authorities of different member states, if they agree on:

- responsibilities of partners and applicable law
- internal organisation of procurement incl. management of procurement and distribution of procured services, supplies, works (article 39 of directive 2014/24/EU)



Project partner acts in line with procurement when it purchases elements from partner acting as contracting authority and being responsible for procurement

40% flat rate recommended for all PP making use of joint procurement.

Only PP using real-cost option may carry out joint procurement.

Cost calculation options to be defined in AF already.