



Technical support to the implementation and management of ENI CBC programmes

Legal provisions on State aid and distortion of competition in ENI CBC Partner Countries

GENERAL OVERVIEW

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DISCLAIMER

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1. Introduction

Article 12.3 of the ENI CBC Implementing Rules¹ stipulates that “Aid granted under the programme shall comply with the applicable Union rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union.”

This article of the Regulation is applicable only for goods and services tradable across the Member States of the European Union (EU). A general overview of the State aid for EU Member States in the context of ENI CBC (as well as some details on how to apply these provisions in Member States) is provided in the TESIM Guide on ‘The State aid discipline in ENI CBC programmes’.

However, ENI CBC programmes involve one or more countries outside the EU and the Article 107 of the Treaty cannot be directly applied for the activities concerning trade among the CBC Partner Countries or between them and the EU. **CBC Partner Countries participating in the ENI CBC programmes** should have a clear understanding whether any State aid related implications stem from the agreements they have signed with the EU.



The **obligation to respect the State aid provisions included in any bilateral agreement²** between the EU and each country is usually mentioned in the Joint Operational Programmes.

There is a strong legal background (regulatory acts, guidance documents, decisions of the European Commission, documents specific to cross border-cooperation etc.), but very little literature exists for State aid in the context of the CBC Partner Countries.

In order to support CBC Partner Countries and programme authorities in understanding the context of distortion of competition and possible implications of applicability of State aid legislation, TESIM will develop State aid factsheets for each CBC Partner Country, summarizing the specific provisions deriving either **from international agreements** and/or **national legislation, if any**.

¹ Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014.

² These provisions are usually included in the chapter about “competition”.

2. Bilateral agreements in force

Agreements signed by the EU with CBC Partner Countries participating in ENI CBC programmes vary significantly, and three core groups can be distinguished: Association, Framework and Partnership agreements. In relation to State aid, the provisions and the terminology used vary depending on the moment of signature and the specificities of each country³. Second, the level of detail of State aid provisions differs from agreement to agreement. In some agreements, there are no State aid provisions, while in others the provisions included are very close to the ones described in article 107 and 108 of the Treaty on the Functioning of the European Union (TFEU).

The agreements in force in the participating CBC Partner Countries are:

Country	Name of the agreement	Year of signature
Jordan	Euro-Mediterranean agreement	1995
Turkey	Association agreement	1995
Russia	Partnership & cooperation agreement	1997
Palestine	Euro-Mediterranean agreement	1997
Tunisia	Framework agreement	1998
Armenia	Partnership & cooperation agreement	1999
Israel	Euro-Mediterranean agreement	2000
Egypt	Euro-Mediterranean agreement	2001
Lebanon	Euro-Mediterranean agreement	2002
Belarus	Framework agreement	2008
Ukraine	Association agreement	2014
Republic of Moldova	Association agreement	2014
Georgia	Association agreement	2016

³ Some of the agreements were signed only recently, but others have been in force for more than 20 years.

3. State aid specifications in the agreements in force

Three approaches in relation to the competition provisions can be distinguished in the agreements, as follows⁴:

TFEU criteria	Mention of WTO or GATT criteria	No mention of State aid provisions
<ul style="list-style-type: none"> • Ukraine • Republic of Moldova • Georgia • Turkey • Jordan • Egypt • Tunisia 	<ul style="list-style-type: none"> • Israel • Palestine 	<ul style="list-style-type: none"> • Russia • Belarus • Lebanon • Armenia

As a result of these differences, a **'one-fits-all' approach cannot be applied**. An *ad hoc* **approach needs to be followed** by each concerned **programme** per each **country**⁵.

In the agreements where State aid provisions are included, the common feature is that the agreements set the conditions for **avoiding a distortion of the trade between the EU and the concerned country**, instead of "across Member States", as stipulated in the TFEU. This is a key element, as it significantly affects the type of assessment of the potential State aid activities in the projects, both for applicants/beneficiaries in Member States and for applicants/beneficiaries in CBC Partner Countries.

Therefore, the identification of the State aid relevant activities carried out by applicants/beneficiaries from CBC partner countries will take place through the assessment of the application form.

Assessment key questions to identify State aid relevant activities are proposed by TESIM in each individual factsheet of concerned CBC Partner Country and/or programme.

⁴ WTO – World Trade Organisation; GATT - General Agreement on Tariffs and Trade

⁵ Moreover, some agreements, such as the ones with Turkey or Tunisia, include explicit exceptions for agriculture and fisheries.

4. State aid approach for CBC partner countries by the programmes

When the notion of State aid is applicable, the respective programmes have decided how to apply it. This decision affects (1) the identification of State aid relevant activities and, in case detected, (2) how they will be treated (e.g., activities considered ineligible or instruments as de minimis regime applied).

The approach followed by ENI CBC programmes concerning the treatment of activities relevant to State aid/Competition rules in CBC partner countries can be split in three blocks:

State aid relevant activities not eligible	State aid management with the <i>de minimis</i>	No mention (no applicability)
<ul style="list-style-type: none"> • Poland-Belarus-Ukraine • Hungary-Slovakia-Romania-Ukraine • Romania-Ukraine • Romania-Republic of Moldova • Black Sea Basin 	<ul style="list-style-type: none"> • Mediterranean Sea Basin • Italy-Tunisia 	<ul style="list-style-type: none"> • <u>Kolarctic</u> • Karelia • South-East Finland Russia • Estonia-Russia • Latvia-Russia • Lithuania-Latvia-Belarus • Lithuania-Russia • Poland-Russia

The challenges are different for each situation:

- The **programmes** having **considered State aid relevant activities as not eligible** are **assessing the proposals** in order **to identify them**. If found, the applicants will be requested to cancel the resulting competitive advantage or to simply remove the activity. If these changes substantially affect the proposal, the project may also be fully rejected;
- The **two programmes in the Mediterranean**, after consultation with the concerned national competition authorities, have decided to apply *mutatis mutandis* the criteria of the *de minimis* regime to the applicants and beneficiaries from Jordan, Egypt and Tunisia. The **identification of State aid relevant activities** is being done **during project evaluation** and specific provisions will be included in the grant contract later on.

- The programmes where **Russia and Belarus** are the only participating Partner Countries **do not need** to carry out an **assessment on State aid** for applicants and beneficiaries from these countries, neither during the project evaluation, nor during the project implementation.

