



TESIM

Technical support to the implementation and management of ENI CBC programmes

Factsheet on State aid and distortion of competition for Turkey

Applicable rules, tools, tips and recommendations

May 2018

DRAFT

DISCLAIMER

This **non-binding paper** has been developed by the TESIM project. It does not necessarily reflect the views of the European Commission on the topic and is presented to programme practitioners **for illustrative purposes to support the decision making.**



Introduction

The article 12.3 of the ENI CBC Implementing Rules (Commission Implementing Regulation (EU) No 897/2014) 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 is applicable only for the goods and services tradeable across the EU Member States. Therefore, it does not affect any activity concerning trade within the CBC partner countries or between them and the EU.

However, some countries have specific provisions on State aid or distortion of competition in their Association or Framework Agreements, which are fully applicable.

Turkey is a candidate country since December 1999 and as regards the competition policy, Turkey's Law on the Monitoring and Supervision of State aid is broadly in line with Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). However, secondary legislation is not in place yet.

State aid rules in the Association Agreement and national legislation

The Decision No 1/95 of The EC-Turkey Association Council (22 December 1995) on implementing the final phase of the Customs Union, includes chapter on approximation of laws, including competition related laws and provisions regarding State aid. Specifically, the article 34 refers to incompatible and compatible aid and broadly mirrors articles 107 and 108 of TFEU.

In addition, on national level state aid issues are regulated by the Law on the Monitoring and Supervision of State aid.

According to the EC working document 'Turkey 2016 Report' which accompanies 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions' and '2016 Communication on EU Enlargement

Policy - the legislative framework of State aid is partially in line with the *acquis*. State aid regulations do not cover agriculture, fisheries, or the services sectors, which are not part of the EU-Turkey Customs Union. Turkey's Law on the Monitoring and Supervision of State aid is broadly in line with Articles 107 and 108 of the TFEU. However, the secondary legislation, which is required to implement the law in question, was due to enter into force on 31 December 2016.

Regarding the institutional framework, the State Aid Monitoring and Supervision Board is responsible for implementing the law. Turkish law requires State aid measures to be notified to the Board, and gives it the authority to accept an aid measure, to ensure its compatibility and to carry out checks on its own initiative or on the basis of a complaint. However, these provisions have yet to enter into force, due to repeated postponement of the adoption of the necessary secondary legislation.

General principles

The article 34 of the Decision No 1/95 of the EC-Turkey Association Council **defines incompatible aid** as:

*Any aid granted by Member States of the Community or by Turkey 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 the Community and Turkey**, be incompatible with the proper functioning of the Customs Union.*

Practical implication as of May 2018

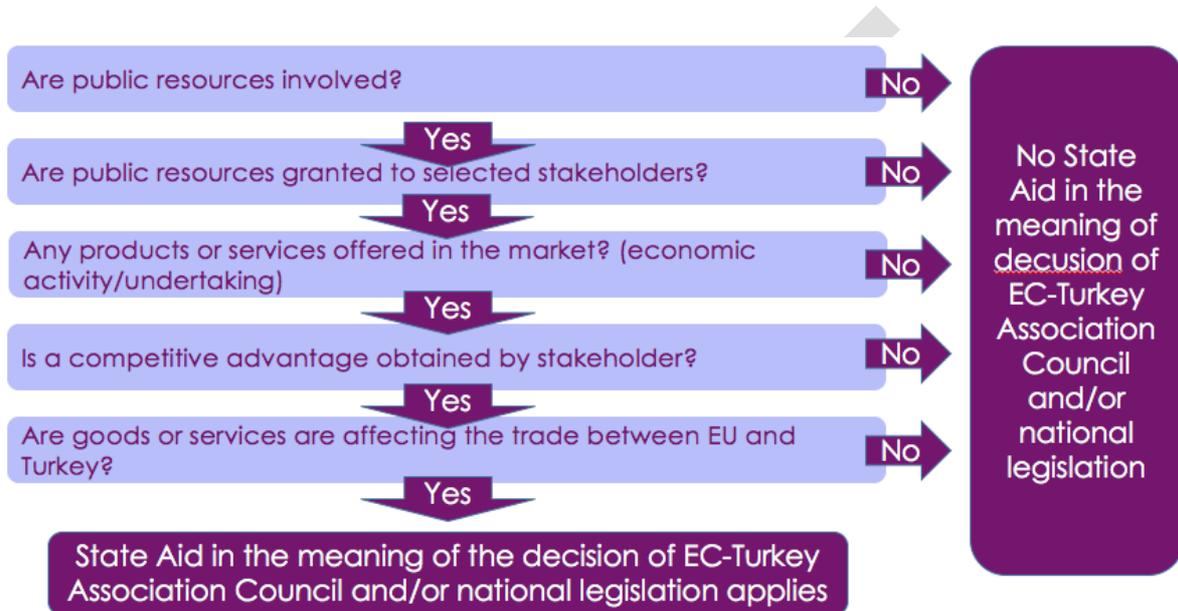
It has to be highlighted that currently BSB ENI CBC programme where Turkey is participating and call for proposals are launched, have decided to not support State aid relevant activities.

Therefore for this call for proposals identified State aid activities in the selected projects will be have to be adjusted / excluded / treated accordingly.

Assessment of State aid

Key criteria for assessing State aid relevant activities

The criteria for the State aid assessment are defined in the Turkish law on State aid (Law No 6015) and are similar to the ones for Member States:



The key criteria for the assessment are included in the Guidelines for Applicants, together with a specific self-assessment.