



Technical support to the implementation
and management of ENI CBC programmes

Factsheet on State aid and distortion of competition for Moldova

Applicable rules, tools, tips and recommendations

May 2018

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

State aid rules in the Association Agreement

The Association Agreement was published on the OJEU on the 30th August 2014 and includes the State aid provisions in section 2 of the chapter 10 of the title IV of the Agreement.

The outline of the section, which is called “State aid” is as follows:

Article no.	Content
339	General principles and scope
340	Assessment of State aid
341	State aid legislation and authority
342	Transparency
343	Confidentiality
344	Review clause

General principles

Article 339.1 defines State aid, in the meaning of the Association Agreement as:

State aid** granted by the Union or the Republic of Moldova, or through the resources of one of the Parties, in any form whatsoever, **which distorts or threatens to distort competition** by favouring certain undertakings or the production of certain goods and services and which affects trade between the Parties, **shall be incompatible with this Agreement.

According to the article 339.2, State aid shall not be applied to following aid:

This Chapter shall not apply to State aid related to fisheries, products covered by Annex 1 to the Agreement on Agriculture or other aids covered by the Agreement on Agriculture.

Assessment of State aid

Article 340 of the Association Agreement states that:

***State aid shall be assessed** on the basis of the **criteria** arising from the application of the **competition rules applicable in the EU**, in particular Article 107 of the Treaty on the Functioning of the European Union and interpretative instruments adopted by the EU institutions, including the relevant jurisprudence of the Court of Justice of the European Union.*

In practice the criteria for the assessment would be similar to the ones for Member States, but with exceptions referred to in the article 339.2.

There is a transition period of five years, after which Moldova should assess State aid according to the competition rules applicable in EU, however, the programmes should take into account that Moldova already has State aid legislation.

The five-years transition period finalises in 2021 (agreement was ratified and came into force in 2016), which is within current programming period and might imply the modification of the procedures, in case of new developments on the national level.

Practical implication as of May 2018

It has to be highlighted that currently ENI CBC programmes where Moldova is participating and calls for proposals are launched, have decided to not support State aid relevant activities.

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

Key criteria for assessing State aid relevant activities

The criteria for the assessment are similar to the ones for Member States, with some specificities for Moldova:

