



Technical support to the implementation and management of ENI CBC programmes

Factsheet on State Aid and distortion of competition for Ukraine

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

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 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 Ukraine have specific provisions on aid or distortion of competition in their Association or Framework Agreements, which are fully applicable. Moreover, in 2017 law “On State Aid to Undertakings” came to force to regulate the responsibilities of assessing, granting and monitoring of state aid on national level.

State Aid rules in the Association Agreement

The Association Agreement was published on the OJEU on the 29th May 2014 and includes the State Aid provisions in section 2 of the chapter 10 of the title IV of the agreement, as well as in Annexes XVI and XXIII.

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

Article no.	Content
262	General principles, including the cases for compatible aid
263	Transparency
264	Interpretation
265	Relationship with WTO
266	Scope
267	Domestic system of state aid control

Annex XVI is containing the scope of the provisions, as indicated in article 266:

- a list of reservations on establishment;
- list of commitments on cross-border supply of services;
- list of reservations on contractual services suppliers and independent professionals.

General principles

Article 262 is defining state aid, in the meaning of the Association Agreement as:

*Any aid granted by Ukraine or the Member States of the European Union through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the proper functioning of this Agreement insofar as it **may affect trade between the Parties.***

Practical implication as of May 2018

It has to be highlighted that currently all ENI CBC programmes where Ukraine is participating and calls for proposals are launched (as of May 2018), 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.

Ukrainian system of State Aid control

There is a transition period of five years, after which Ukraine should:

- adopt national state aid legislation,
- establish an operationally independent authority, entrusted with the powers for the enforcement of article 262 of the Agreement.

In 2 August 2017 law “On State Aid to Undertakings” entered into force, regulating the responsibilities, assessment of State aid and application of relevant instruments, where applicable.

According to the article 9 of the law, State aid providers shall submit notifications of new state aid to the authorised body (Antimonopoly Committee of Ukraine) that is obliged to assess measures to support undertakings through state or local resources for their qualification as state aid, to assess compatibility of state aid with competition, to take decisions as set forth by this Law.

Key criteria for assessing state aid relevant activities

The criteria for the assessment are similar to the ones for Member States, but with adapted criteria on the effect on the trade:

