

TOURISM FINANCING AND STATE AID

This is a working document drafted by the services of DG COMP in order to facilitate a discussion in the Working Group of Member States on the existing options for the provision of State financing to tourism activities without the need for a notification under Article 108(2) TFEU. It does not express an official position of the Commission, nor does it anticipate such a position. It is not intended to constitute a statement of the law and is without prejudice to the interpretation of the Treaty provisions on State aid by the Union Courts.

I. Introduction

1. This document concerns aid for the construction and operation of infrastructures of touristic interest (such as information centers and accommodation facilities) as well as for activities that are relevant to the tourism sector (like production and distribution of touristic material and destination marketing).
2. This document first explains in which situations the existence of State aid is excluded (section II. below). It then summarizes situations in which State aid is present but no notification to the Commission is required provided certain conditions are met (section III. below).

II. Instances in which the existence of State aid is excluded

3. In the tourism sector, a number of measures taken by Member States may not constitute State aid because they do not fulfil all the criteria of Article 107(1) TFEU, in particular because the activity is not economic or because there is no effect on trade between Member States.

1. No economic activity

4. According to the established case law of the Union Courts any activity consisting in offering goods and services on a market constitutes an economic activity.
5. If the activities are not carried out in exchange for remuneration, the activity does not constitute an economic activity. Therefore, State aid is not involved. Activities through which the State fulfils a genuine public task and responsibility are not of an economic nature and in general fall outside the scope of State aid rules.
6. Therefore, in particular the financing of the following **non-income generating tourism facilities** built in the interest of the general public and open and equally accessible would fall outside the scope of Article 107(1) TFEU: information centers and similar welcoming facilities, footpaths, cycle paths and bridle paths, learning experience and nature paths including signage, equipment, shelter and observation posts, car parks, picnic areas to be used free of charge, public toilets, promenades, piers, ski trails, spa gardens, boat landing stages, floating jetties, bathing areas and natural theatres, graduation towers and water treading facilities that are not commercially exploited.
7. In circumstances where an aided tourist infrastructure is used almost exclusively for non-economic

activities, the principle of ancillarity may apply. If all the conditions for a mere ancillary economic use are fulfilled (see para. 207 of the Notice on the notion of aid), the financing of the whole infrastructure falls outside State aid rules. Similarly, public financing provided to customary amenities (such as restaurants, shops selling travel literature or souvenirs or paid parking) of infrastructures almost exclusively used for a non-economic activity normally has no effect on trade between Member States and therefore falls outside State aid rules.¹

8. For the same reasons as above, activities such as **production and distribution of touristic information materials** like brochures, maps, train and bus timetables or any comparable forms of dissemination of information about cultural and touristic activities (including through a website or through free visits or tours) that can be obtained free of charge by any interested visitor are non-economic in nature.
9. **General destination marketing**, involving typically a promotion campaign, organization of free information events and the creation of a general information website, also forms part of the dissemination of information to society at large and the promotion of a region or area and would therefore not qualify as an economic activity.
10. In order to remain within its public task of providing information, such website should not include advertising facilities or booking features, which typically qualify as economic in nature. Moreover, activities carried out in the course of the general public information function should not be used to advertise one or more commercial products over other commercial products in a way that is not part of fulfilling that function. For example, activities should be aimed at providing information about local accommodation in a neutral way, rather than advertising certain accommodation or certain providers.
11. As regards culture, heritage conservation and nature conservation, many activities are organized in a non-commercial way and therefore non-economic in nature. Please see the detailed guidance in section 2.6 of the Notice on the notion of aid.²
12. Other activities, which do not fall into the categories of non-economic activities mentioned above and which do or may compete with activities carried out by commercial operators in the tourist industry, such as the sale of tickets, booking facilities, sale of travel literature or souvenirs, sale of holiday accommodations and advertising are typically economic in nature.
13. If a provider is engaged in both economic and non-economic activities, Member States have to ensure that public funding provided for the non-economic activities cannot be used to cross-subsidize the economic activities. This can be ensured for instance by limiting the public funding to the net costs of the non-economic activities, to be identified on the basis of a clear separation of accounts.

2. No effect on trade between Member States

14. The effect on trade between Member States for the purposes of Article 107(1) TFEU must be

¹ See para. 207 of the Notice on the notion of aid.

² See also the Analytical Grid on culture: http://ec.europa.eu/competition/state_aid/modernisation/notice_aid_en.html .

established on a case-by-case basis apart from cases covered by the *de minimis* Regulations.

15. A measure only has local impact and consequently no effect on trade between Member States if (i) the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States and (ii) it cannot be foreseen that the measure would have more than a marginal effect on the conditions of cross-border investments or establishment.³
16. This test also applies to leisure facilities (for example for bad weather) or picnic places that can be used against a fee. The local catchment area shall be determined taking into account the following factors: i) the location of the infrastructure; (ii) the predominance of local users; iii) the total capacity of the infrastructure relative to the number of resident users; and iv) the existence of other tourism-related facilities in the area.
17. This test also applies to any other economic activities related to tourism. Therefore, for example, the entire activity of a local body offering a range of services (some of which can be qualified as economic and some as non-economic) can fall outside State aid rules provided there is only a local effect. Elements to take into account would be whether services are only offered in a limited geographical area, whether there are only a limited number of tourists from other Member States and whether there are providers of similar services from other Member States.
18. As regards cultural activities and infrastructures, the Commission considers that only funding granted to large and renowned cultural institutions and events which are widely promoted outside their home region has the potential to affect trade between Member States. The Commission has generally held that the restoration of cultural and historical landmarks does not, in most cases, affect intra-Union trade⁴.

3. *De minimis* Regulation⁵

19. Support granted under the *de minimis* Regulation is not regarded as State aid, if no more than EUR 200 000 is granted to a single undertaking over a period of three years and the other conditions laid down in the *de minimis* Regulation are also respected.

4. No advantage: Investments in compliance with the Market Economy Operator Principle

20. If it is proven that the State acted under the same terms and conditions as a commercial investor when providing the necessary funding, then State aid is not involved. This should be demonstrated by: (i) significant *pari passu* co-investments of commercial operators, i.e. on the same terms and conditions as the public authorities; and/or (ii) the presence (before the funding is provided) of a sound business plan (preferably validated by external experts) demonstrating that the investment provides an adequate rate of return for the investors - which is in line with the normal market rate

³ Para. 196 of the Notice on the notion of aid.

⁴ See Commission decisions of 9 April 2002 in case N560/2001 - UK - National heritage fund for Brighton West Pier Trust, OJ C 239, 4.10.2002, p. 3 and of 20 July 2005 in case NN 55/2005 - PL - Heritage conservation, OJ C 295, 26.11.2005, p. 10, http://ec.europa.eu/competition/state_aid/cases/199545/199545_516648_24_2.pdf.

⁵ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p.1.

of return that would be expected by commercial operators on comparable projects, taking into account the specific circumstances of each case.

21. Provided the above conditions are complied with, a public authority could, for example, participate as an investor, also together with a private operator, to the setting up of a commercially run accommodation or holiday booking platform.

5. No advantage: Entrustment of a service of general economic interest (SGEI) in line with the Altmark⁶ criteria

22. The existence of an economic advantage is excluded if: (i) the touristic services can be considered as a genuine service of general economic interest (SGEI) for which the public service obligations have been clearly defined; (ii) the parameters of compensation have been established in advance in an objective and transparent manner; (iii) there is no compensation paid beyond the net costs of providing the public service and a reasonable profit; and (iv) the SGEI has been either assigned through a public procurement procedure that ensures the provision of the service at the least cost to the community or the compensation does not exceed what an efficient company would require. Public funding granted for the provision of an SGEI not exceeding EUR 500 000 over three years is not regarded as State aid, provided the other conditions of the SGEI *de minimis* Regulation are also fulfilled⁷.

23. Member States have a wide margin of discretion to define SGEIs and the Commission only checks whether there is a manifest error in the definition. However, such manifest error is present if a service is defined as SGEI that either (i) is not addressed to citizens or in the interest of society as a whole or (ii) where an activity is already provided or can be provided by the market under the same conditions.⁸

24. Given that many activities are provided by the market and that certain activities financed by the State promote the tourism sector and are not directly addressed to citizens, it appears that an SGEI can only be defined in very specific circumstances, in particular those having a predominantly social character. One example could be the support for accommodation facilities aimed at hosting families with modest income. In such cases, Member States should clearly and sufficiently distinguish the service from services offered by the market.

III. Instances in which there is no need to notify for State aid clearance, but other requirements could apply

25. Possible State aid to touristic activities and tourism infrastructure may be considered compatible with the internal market and can be granted without notification in the following instances.

⁶ See Case C-280/00 Altmark Trans and Regierungspräsidium Magdeburg EU:C:2003:415 and Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic, OJ C 8, 11.1.2012, p. 4

⁷ Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

⁸ See SGEI Communication, paras. 50 and 48.

26. The measure may be exempted from notification if it is granted in compliance with the conditions of the GBER⁹ (including the common provisions in chapter I). Inter alia the following Articles of GBER can be particularly relevant as regards tourism.
27. **Article 56 of the GBER** allowing investment aid for local infrastructures up to EUR 10 million per project, can apply.
28. DG COMP has provided guidance on Article 56 GBER in its Frequently Asked Questions¹⁰ and in eState aid Wiki. This guidance confirms that this Article has a wide scope and many different permanent structures can be financed under Article 56 GBER, including hotels and park and ride infrastructure. Also the financing of the construction or renovation of privately owned accommodation facilities by the state is permitted under GBER provided that all the conditions of Article 56 are fulfilled. Provided that the thresholds applicable to Article 56 GBER are complied with, there is in principle no additional requirement that the infrastructure should be used by the local community only or, more generally, only have local impact. Therefore, it can also be used to finance a wide range of infrastructures relevant for tourism.
29. It is important to note that under **Article 56(6)** the aid amount has to be limited to the funding gap by taking into account all the operating profits of the investment over its lifetime. Therefore, if a public authority would like to finance the construction of an infrastructure or its upgrade, it has to ensure that all operating revenues generated by the infrastructure itself or by its upgrade for the entire lifetime of such infrastructure or upgrade are fully taken into account.
30. **Article 14 of the GBER** allowing regional investment aid can also apply, provided that the investment takes place in an assisted area, that aid intensities established in the regional aid map are not exceeded and that all the conditions set by Article 14 are complied with. Please note that Article 13 (b) also allows schemes specifically aimed at tourism activities.
31. Aid to SMEs – for example involved in the hospitality industry – can be granted under **Articles 17 to 19 of the GBER**.
32. If a service can be qualified as a service of general economic interest (see para. 22 to 24 above on the exceptional nature of this), State aid for the compensation of such an SGEI up to EUR 15 million per year (average over the whole duration of the entrustment¹⁹), may be exempted from notification on the basis of the **SGEI Decision**, provided that the criteria of that Decision are met: definition and entrustment of an SGEI, parameters of compensation established ex ante in a transparent manner, amount of compensation not exceeding the costs for the provision of the SGEI and a reasonable profit, claw back mechanism ensuring the absence of overcompensation.

⁹ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

¹⁰ See document here: http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf