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STATE AID AND DE MINIMIS AID IN INTERREG PROJECTS

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INTRODUCTION

BENEFICIARY OF STATE AID

- ▶ „undertaking" under European law = any entity engaged in economic activity (OFFERING GOODS AND SERVICES ON THE MARKET)
- ▶ regardless of its legal status
- ▶ regardless of how the entity is financed (regardless of whether it operates for profit)

- ▶ undertaking is certainly an entrepreneur within the meaning of national law

BENEFICIARY OF STATE AID

An undertaking can be:

- ▶ cultural institution providing cultural offer or commercial services
- ▶ public sports and recreation center
- ▶ foundation, association (or other non-profit entity), offering services that are the subject of a market offer
- ▶ public entity

STATE AID PREREQUISITIES

Article 107(1) of TFEU

*"Any aid granted
by a Member State or through State resources (1)
in any form whatsoever,
which distorts or threatens to distort competition (4)
by favoring (2)
certain undertakings or the production of certain
goods, (3)
shall, in so far as it affects trade between Member
States, be incompatible with the internal market. (4)*

STATE AID PREREQUISITES

1. **STATE FUNDS** (origin from the State, attributability)
2. **ECONOMIC BENEFIT** for the entity conducting business activities
3. **SELECTIVITY** (material or regional)
4. **DISTORTION OF COMPETITION AND IMPACT ON TRADE**

STATE FUNDS

- ▶ government and local administration,
- ▶ all private and public entities entrusted by the state with the administration of "State funds"
 - origin from the State
 - attributability
- ▶ must be met cumulatively

STATE FUNDS

In case of INTERREG projects, State funds are considered to be

- ▶ funds from the EU budget
- ▶ resources additionally committed by Member States

ECONOMIC ADVANTAGE

It will occur if the support differs from normal market practices, in particular in case of:

- ▶ grants
- ▶ loans at below-market interest rates (European Commission reference rate)

SELECTIVITY

It will occur if support includes:

- ▶ particular economic entity
- ▶ group of entities operating in a specific sector of the economy
- ▶ entities operating in a specific region of the country
- ▶ production or marketing of specific types of goods and services

In addition, there may be selectivity due to discretionary authority

DISTORTION OF COMPETITION

- ▶ thus, it does not matter whether the distortion will actually occur; what matters is whether there are indications that it will occur
- ▶ is the result of selective favoritism, which results, thanks to State intervention that some undertakings are better off than their competitors
(exception: legal monopolies!!!)

DISTORTION OF COMPETITION

It will not occur if:

- ▶ the service is covered by a legal monopoly
- ▶ legal monopoly excludes competition for the market
- ▶ the service does not compete with other services
- ▶ the service provider operates in other markets and cross-subsidization was excluded

IMPACT ON TRADE

The characteristics of the program are decisive









It will not occur if:

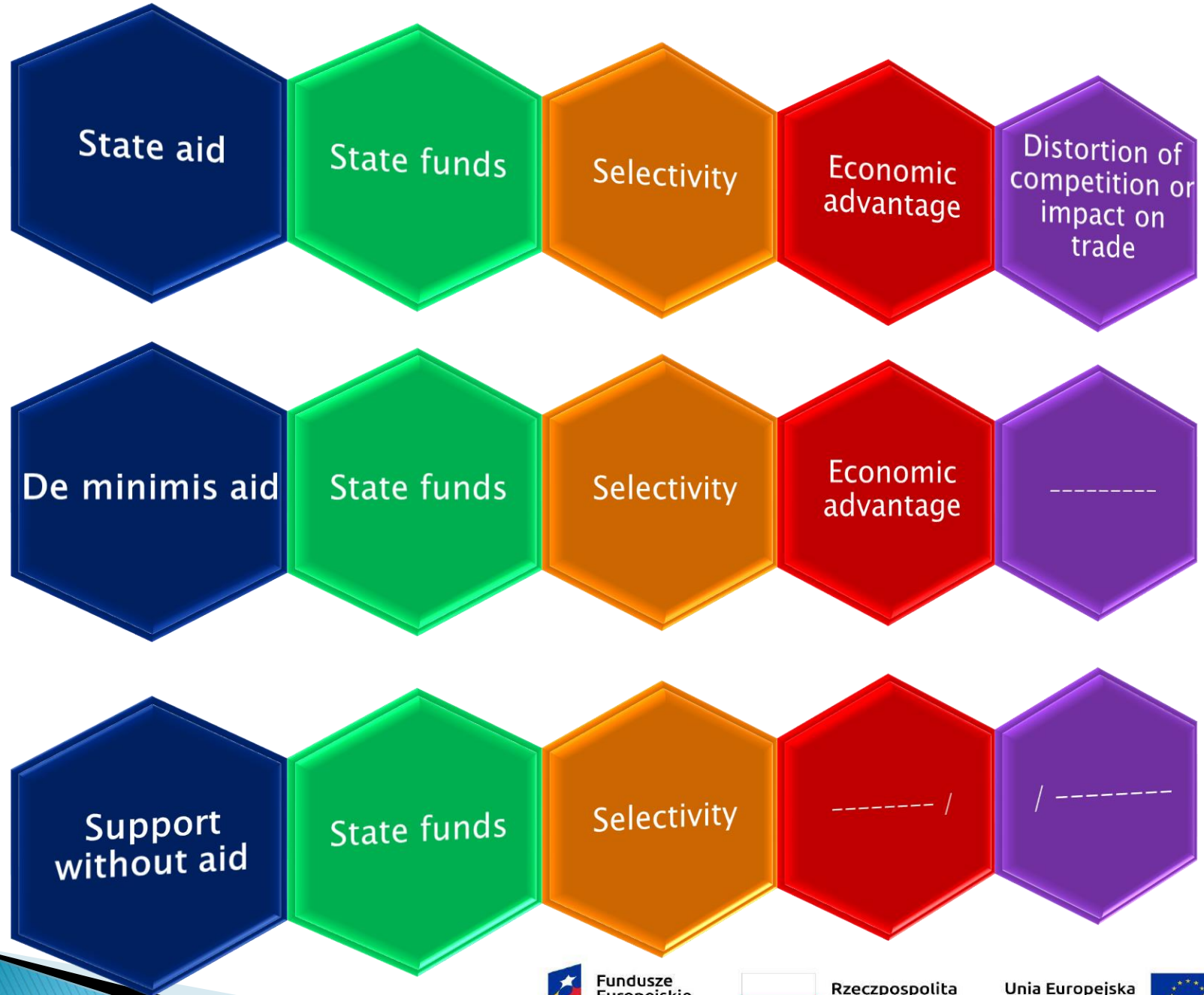
- ▶ the aid does not lead to attracting demand or investment to the region and does not create obstacles to the establishment of businesses by entities from other Member States;
- ▶ the goods produced by the beneficiary and the services he provides are local or arise interest only in a specific geographic area;
- ▶ the impact on neighboring markets and consumers is at best marginal.

NO IMPACT ON TRADE

- ▶ swimming pools and other leisure facilities intended mainly for the local area (*Dorsten* case);
- ▶ museums or other cultural infrastructure facilities that are unlikely to arouse interest of visitors from other Member States (*Lipica Horses* case);
- ▶ hospitals and other health care facilities for local residents (*Jean Piaget* case) ;
- ▶ news media or cultural products that, for linguistic and geographic reasons, reach only local audiences (*theater productions in the Basque Country* case);
- ▶ a conference center where the location and potential impact of the aid on prices are unlikely to attract users of other centers in other Member States (*Visby* case)

STATE AID VS. DE MINIMIS AID

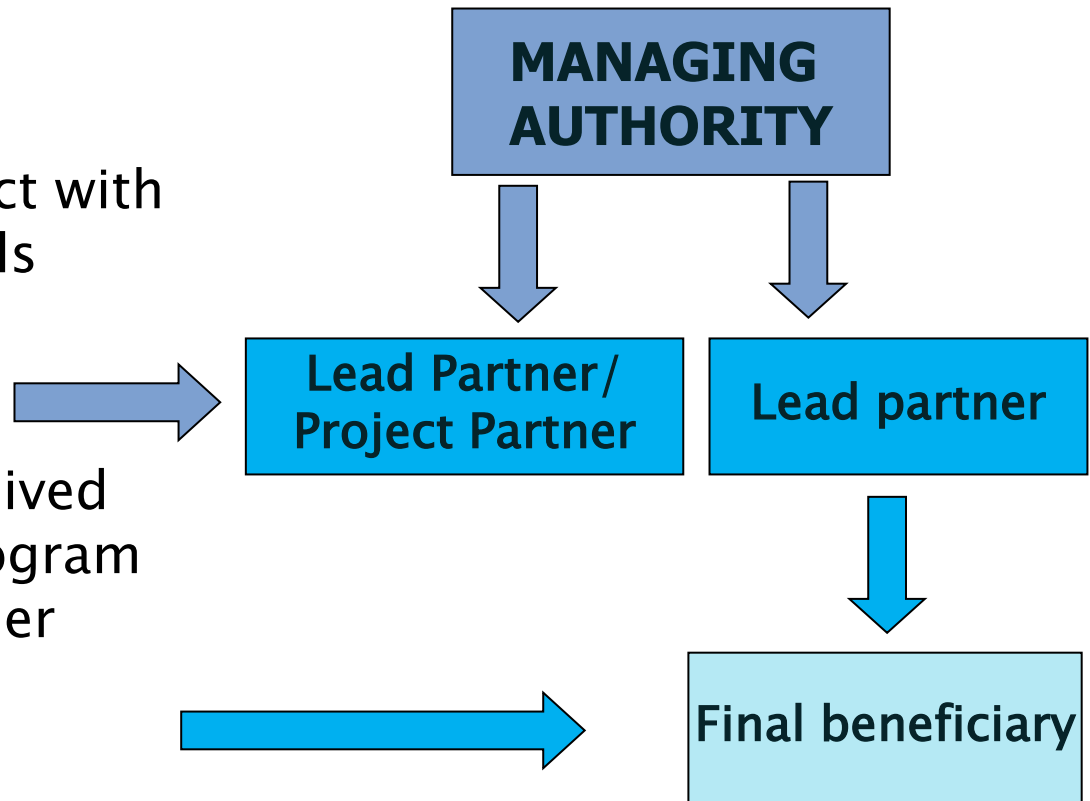
	State funds	Selectivity	Economic advantage	Distortion of competition	Impact on trade
State aid					
De minimis aid					



LEVELS OF AID OCCURENCE

Level I: funding the project with operational program funds
(DIRECT AID)

Level II: use of funds received under the operational program to provide benefits to other entities
(INDIRECT AID)



LEVELS OF AID OCCURENCE

- ▶ The Managing Authority is responsible for providing direct aid
- ▶ In the case of indirect aid, the Lead Partner is **always** responsible for guaranteeing the correctness of the provision of aid (even in the case of delegation of authority to the Project Partner)



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DE MINIMIS AID

Legal background

- ▶ Commission Regulation (EU) No 1407/2013 of December 18, 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union in respect to de minimis aid
- ▶ Ordinance of the Minister of Development Funds and Regional Policy of ... on granting de minimis aid and State aid under Interreg programs for 2021–2027 (OJ ...)
 - *only in case of aid provided by the Managing Authority or the Lead Partner/Project Partner based in the territory of Republic of Poland*

Exclusions from support opportunities

- ▶ Original production of agricultural products listed in Annex I to the TFEU (excluding fisheries and aquaculture)
- ▶ Processing and marketing of agricultural products if:
 - the value of the aid is determined on the basis of the price or quantity of agricultural products purchased from the original producers or marketed by the aided economic operators
 - the provision of aid is subject to the transfer of some or all of it to producers
- ▶ Activity in fishery and aquaculture sectors

Definitions of sectors

Primary production in agriculture:

- Farm-level farming and cultivation, internal transportation, storage and handling of products without significantly changing their nature.
- Necessary on-farm activities performed in respect to animal and plant products in order to prepare them for primary sale or sale to marketers or processors.

Processing: an activity performed on an agricultural product that results in another agricultural product

Definitions of sectors

"undertakings in the fisheries sector" means undertakings active in the production, processing and marketing of fisheries products;

"fisheries product" means the products defined in Article 1 of Council Regulation (EC) No 104/2000; ("fishery products" include products derived from fishing at sea or at inland waters, and aquaculture products)

"processing and marketing" means all operations, including handling, treatment, production and distribution, performed between the time of landing or harvesting and the end-product stage.

ATTENTION!!!

If an entrepreneur operates in the excluded sector and also in other sectors permissible under de minimis aid, aid to these sectors will be permissible under the following conditions:

- ▶ Business separation
- ▶ Separation of the costs of operations in each sector

The MA (direct aid) or the Lead Partner/Project Partner (indirect aid) is responsible for verifying the correctness of the above separation

Limit of de minimis aid

- aid for one entrepreneur may not exceed the amount of **200 thousand euro** over a period of **3 tax years**, and **100 thousand euro** in the case of enterprises operating in the road freight transport sector
- *de minimis* aid cannot be used for the acquisition of vehicles for the road freight transport
- obligation of Member State to ensure separation of activities/separation of costs

Limit of de minimis aid

2020

2021

2022 (until the date the aid is granted)

ATTENTION!!!

- ▶ DE MINIMIS AID LIMIT IS CALCULATED IN REFERENCE TO RELATED ENTERPRISES
- ▶ IN THE CASE OF A MERGER, THE AID GRANTED BEFORE THE MERGER IS AGGREGATED.

Single undertaking

includes all business units that are related to each other by at least one of the following relationships:

- a) single business entity holds a majority of the voting rights of shareholders, partners or members in the other business entity;
- b) single business entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another business entity;
- c) single business entity has the right to exercise a dominant influence over another business entity in accordance with an agreement concluded with that entity or provisions in its articles of incorporation or articles of association;

Single undertaking

- d) single business entity that is a shareholder or partner in, or a member of, another business entity it independently controls, pursuant to an agreement with other shareholders, partners or members of that entity, a majority of the voting rights of the shareholders, partners or members of that entity.

Business units that have any of the relationships referred to in the first clause (a) – (d) through one other business entity or several other business entities are also considered a single undertaking.

Monitoring of de minimis aid

In case of de minimis aid provided by the **Lead Partner/Project Partner from outside the Republic of Poland**, the information obligation to notify the beneficiary of the aid in writing of the anticipated amount of aid (expressed as GGE – Gross Grant Equivalent) and of its de minimis nature must be fulfilled, with clear reference to Regulation No 1407/2013.

De minimis certificates (on the territory of the Republic of Poland)

Entities providing aid (**MA or Lead Partner/Project Partner**) shall issue a certificate to the beneficiary stating that the aid provided is *de minimis* aid (Article 5(3) of the Act on proceedings in State aid cases)

Certificate (according to the Annex to the Regulation of the Council of Ministers on certificates of *de minimis* aid and *de minimis* aid *in* agriculture and fisheries sectors):

- ▶ data of the aid provider
- ▶ legal background
- ▶ data of the aid beneficiary
- ▶ gross aid value/equivalent in euro (NBP average exchange rate on the day the aid was granted)
- ▶ indication whether the aid is for road freight transport
- ▶ data of the person authorized to issue the certificate

De minimis certificates (on the territory of the Republic of Poland)

- ▶ **Certificate of *de minimis* aid (Article 5(3) of the Act on proceedings...)**

The certificate is issued ex officio (on the day of granting aid).

- ▶ **Certificate - correction (14 days): Article 5(3a) of the Act on proceedings...)**

The corrective certificate should include: information about the cancellation of the previous certificate (along with the reasons for this cancellation) and its replacement with a current one stating the actual value of *de minimis* aid granted

De minimis certificates (on the territory of the Republic of Poland)

- ▶ **Article 37(1) of the Act on proceedings in State aid cases**

The applicant for *de minimis* aid is required to submit to the granting entity, along with the application for aid:

all *de minimis* aid certificates that he has received in the year in which he applies for aid and in two preceding years, or a statement of the amount of *de minimis* aid received in this period, or a statement that he has not received *de minimis* aid;



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Aid under Article 20 of GBER

Legal background

- ▶ Commission Regulation (EU) No 651 /2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (**GBER**)
- ▶ Ordinance of the Minister of Development Funds and Regional Policy of ... on granting de minimis aid and State aid under Interreg programs for 2021–2027 (OJ ...)
 - *only in case of aid provided by the Managing Authority or the Lead Partner/Project Partner based in the territory of the Republic of Poland*

Admissibility of aid

Possible application of Article 20 of GBER to customarily excluded support sectors, i.e.:

- ▶ in the sector of primary production of agricultural products
- ▶ in fishery and aquaculture sectors

Eligible costs

- ▶ personnel costs;
- ▶ office and administrative costs;
- ▶ travel and accommodation costs;
- ▶ costs of external experts and services;
- ▶ equipment costs;
- ▶ infrastructure and works costs

Aid intensity

The maximum level of financing may not exceed the level approved for a given INTERREG measure

The value of the aid may not exceed 2 million euro per enterprise



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Aid under Article 20a of GBER

Legal background

- ▶ Commission Regulation (EU) No 651 /2014 of June 17, 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (**GBER**)
- ▶ Ordinance of the Minister of Development Funds and Regional Policy of ... on granting de minimis aid and State aid under Interreg programs for 2021–2027 (OJ ...)
 - *only in case of aid provided by the Managing Authority or the Lead Partner/Project Partner based in the territory of the Republic of Poland*

Admissibility of aid

Possible application of Article 20a of GBER to customarily excluded support sectors, i.e.:

- ▶ in the sector of primary production of agricultural products
- ▶ in fishery and aquaculture sectors

Eligible costs

It is permissible to finance project expenditures in accordance with the general rules of eligibility of expenditures established for the INTERREG program

Aid intensity

The maximum level of financing may not exceed the level approved for a given INTERREG measure

The value of the aid may not exceed 20 thousand euro per enterprise



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Obligations to apply for State or de minimis aid

De minimis aid

The entity that applies for de minimis aid from the MA or Lead Partner/Project Partner **located in Poland** shall attach to the application for aid:

- ▶ a) copies of certificates of de minimis aid or certificates of de minimis aid in agriculture or fisheries (last 3 tax years), or statements of the amount of such aid received in this period, or statements that such aid was not received in this period
- ▶ (b) a form that contains the information necessary for de minimis aid to be provided.

An entity that applies for de minimis aid from a Lead Partner/Project Partner **having its registered office in a country other than Poland** shall apply the regulations of that partner's country

State aid (Articles 20 and 20a of GBER)

The entity that applies for State aid from MA or Lead Partner/Project Partner **located in Poland** shall attach to the application for aid a form that includes information on the entity that applies for aid and its business activities, as well as information on State aid received.

An entity that applies for State aid from a Lead Partner/Project Partner **having its registered office in a country other than Poland** shall apply the regulations of that partner's country



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Obligations related to the provision of State or de minimis aid

De minimis aid

The Lead Partner/Project Partner **based in Poland** is required to:

- ▶ issue to the beneficiary of the aid a certificate that the aid granted is de minimis aid
- ▶ issue a corrective certificate to the beneficiary of the aid if the actual value of de minimis aid granted is different from that in the original certificate, within 14 days from the date of discovery of this fact
- ▶ prepare and submit of a report on de minimis aid granted or information on not granting such aid

De minimis aid

The Lead Partner/Project Partner **with headquarters in country other than Poland** is required to:

- ▶ report on the aid provided in accordance with the regulations of the country in which it is based
- ▶ provide the Joint Secretariat with information on the aid provided and on the change in the value of such aid

The project partner or any other entity that is entitled to provide aid shall forward a report on aid provided or information that such aid was not granted, also to the Lead Partner

State aid (Article 20a of GBER)

The Lead Partner/Project Partner **based in Poland** is required to:

- ▶ inform the beneficiary of State aid in writing that there is no obligation to notify the European Commission and on the reference number assigned by the Commission
- ▶ prepare and submit of a report on aid granted or information on not granting such aid
- ▶ prepare and submit an updated report if the value of the aid provided as shown in the report has changed

State aid (Articles 20 and 20a of GBER)

The Lead Partner/Project Partner **with headquarters in country other than Poland** is required to:

- ▶ report on the aid provided in accordance with the regulations of the country in which it is based
- ▶ provide the Joint Secretariat with information on the aid provided and on the change in the value of such aid

The project partner or any other entity that is entitled to provide aid shall forward a report on aid provided or information that such aid was not granted, also to the Lead Partner



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**Thank you for your
attention**

**The presenter:
Marcin Cichowicz**