Interreg Co-funded by the European Union
NEXT Hungary – Slovakia – Romania – Ukraine

ANNEX VIII OF THE APPLICATION PACKAGE

STATE AID

The notion of state aid

Funds granted by Interreg VI-A NEXT Hungary-Slovakia-Romania-Ukraine Programme must comply with the state aid rules. According to the TFEU Article 107 (1), state aid is defined as *"any aid granted by a Member State or 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 Member States, be incompatible with the internal market".*

In practical terms, state aid applies when all five criteria listed below are met:

1. The recipient of the aid is an "undertaking", which is carrying out an economic activity in the context of the project.

2. The aid is granted by the State or through State resources and it is imputable to the State, which is always the case for any Interreg programme.

3. The aid gives an economic advantage (a benefit), which an undertaking would not have obtained under normal market conditions.

4. The aid is selectively favouring certain undertakings or the production of certain goods or provision or certain services.

5. The aid distorts or threatens to distort competition and affects trade within the European Union.

Apart from compliance with the aid specific rules, state aid can be granted in consideration of the Chapter I-II of the Commission Regulation (EU) 651/2014[1] (hereinafter referred to as: **"GBER"**) and the Commission Regulation (EU) 2023/2831[2] (hereinafter referred to as: **"De Minimis Regulation"**). Comprehensive information on state aid can be found on the DG Competition website of the European Commission, where also a guideline on the notion of state aid is available[3]. Also relevant national or regional authorities may be consulted to obtain more specific information on rules and limitations concerning state aid.

State Aid Assessment and Contractual Conditions

Submitted application forms undergo a specific "State aid assessment" focusing on the five criteria listed above. This is offered for the applicants as part of the application form in the Programme as a

[1] Commission Regulation (EU) 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 Text with EEA relevance
[2] Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid Text with EEA relevance
[3] https://ec.europa.eu/competition-policy/state-aid/legislation/notion-aid_en

self-assessment, with particular attention to the assessment of the status as "undertaking" (Criterion 1) of the partners (i.e. the lead partner or any project partner) and of the existence of an economic advantage for the undertaking (Criterion 3).

Please note, however, that the state aid evaluation is the responsibility of the Member State, and the assessment by the responsible national bodies may overrule the applicants' self-assessment.

The results of the state aid assessment may lead to one or more of the following scenarios:

a) **No state aid relevance**. In this case, no contractual conditions are set on state aid.

b) **Risk of state aid that can be removed**. In this case, the MC may approve the project with certain conditions that are included in the subsidy contract in order to eliminate the state aid risks (e.g. wide dissemination, also to competitors, of certain project outputs).

c) **Direct state aid granted to one or more partners**. In this case, the entire budget allocated to the activity / activities under state aid / de minimis incidence carried out by the concerned partner, that is, the direct beneficiary of the project.

d) **Indirect state aid granted to third parties** outside the project partnership. The direct beneficiary of the Programme does not gain advantage. The partner confers the advantage on the third party, therefore the state aid evaluation must be carried out in the relation between the direct beneficiary and the final beneficiary. A contractual condition setting a threshold to the aid granted to third parties is set.

During the implementation of the project, the MA/JS verifies that the concerned partners fulfil contractual conditions on state aid.

Any amendment to the project might be restricted if its activities are assessed as state aid relevant. Furthermore, additional contractual conditions on state aid may be given to projects in case of project amendments assessed as state aid relevant.

For partners receiving additional national public co-financing to their budgets, the aid granting shall comply with the cumulation and aid intensity rules.

The 90% maximum co-financing rate of the Programme cannot be exceeded with any additional public co-financing to their budgets.

Such partners shall include information on applications for additional public co-financing in the budget co-financing section of the application form.

Common Provisions

1. Scope

This Call for proposal does not apply to:

a) - with the exception of the Aid for costs incurred by undertakings participating in European Territorial Cooperation project, Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects and De Minimis Aid; –any organisation which, at the time the aid was granted, has not yet fulfilled all its obligations to repay the aid resulting from

the Commission's decisions ordering Hungary or Slovakia or Romania or Ukraine to recover the aid.

b) - with the exception of De minimis aid - undertakings in difficulty;

c) aid for production, processing, and marketing of fishery and aquaculture products as defined in Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 under Aid for culture and heritage conservation, Aid for sport and multifunctional recreational infrastructures, Investment aid for local infrastructures, and De Minimis Aid;

d) aid granted in the primary agricultural production sector under Aid for culture and heritage conservation, Aid for sport and multifunctional recreational infrastructures, Investment aid for local infrastructures, De Minimis Aid;

e) aid to an undertaking active in the processing and marketing of agricultural products, if:

   i. the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or marketed by the undertakings concerned; or

   ii. the aid is conditional on being partly or entirely passed on to primary producers;

f) aid to export-related activities, if directly linked to the quantities exported, to the establishment and operation of a distribution or to other current expenditure linked to the export activity;

g) aid if it is made conditional on the use of domestic goods instead of imported goods;

h) aid with conditions that result in a breach of EU law;

i) aid for costs incurred by undertakings participating in European Territorial Cooperation project, Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects, Aid for culture and heritage conservation, Aid for sport and multifunctional recreational infrastructures and Investment aid for local infrastructures for uncompetitive coal mines, as covered by Council Decision 2010/787/EU.

2. Incentive effect

1) Aid granted under GBER – with the exception of Aid for costs incurred by undertakings participating in European Territorial Cooperation project, Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects, Aid for culture and heritage conservation – may be granted only if the beneficiary has submitted a written application for aid containing the mandatory content elements specified in GBER Article 6(2) before the start of the project.

2) Only De minimis aid within the meaning of De minimis Regulation may be granted for costs incurred before the submission of the application for aid.

3. Cumulation

1) In the case of identical or partly identical identifiable eligible costs, aid may be cumulated with other State aid from local, regional, national or Union sources, provided that it does not lead to the maximum aid intensity laid down in the block exemption regulations or in the Commission's approval decision being exceeded.
2) Aid may be cumulated with other State aid from local, regional, national or Union sources for different identifiable eligible costs.
3) The aid intensity of all aid received for a project, whether financed from Union, national, regional or local sources, shall not exceed the aid intensity or aid amount laid down in the applicable Union State aid rules.
4) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects and De minimis aid that does not have identifiable eligible costs may be cumulated with any other State aid that has identifiable eligible costs. Aid with no identifiable eligible costs may be cumulated with any other State aid with no identifiable eligible costs up to the maximum overall funding ceiling laid down in the block exemption regulations and in the Commission's approval decision.

4. Aid intensity

1) In calculating the aid intensity all figures used shall be taken into account before deduction of taxes and duties. The aid paid in several instalments is discounted to the value at the date of the decision to grant aid, using the discount rate.

5. Miscellaneous

1) The beneficiary shall keep all documents and records relating to the aid for a period of 10 years from the date of the decision to grant the aid.
2) The aid measures in this Program only be granted in a transparent form, as direct grant.
3) The grantor must provide information on each individual aid award exceeding EUR 100 000 or for beneficiaries active in primary agricultural production or in the fishery and aquaculture sector on each individual aid award exceeding EUR 10 000.

Specific provisions for different categories of aid

1. Aid for costs incurred by undertakings participating in European Territorial Cooperation project

1) In case of Aid for costs incurred by undertakings participating in European Territorial Cooperation projects covered by Regulation (EU) 2021/1059 the aid intensity shall not exceed the maximum co-financing rate provided for in Regulation (EU) 2021/1059 Art. 13 (1).
2) To the extent that they are linked to the cooperation project, the following costs, which shall have the meaning ascribed to them in Regulation (EU) 2021/1059, shall be eligible costs:

a) staff costs;
b) office and administrative costs;
c) travel and accommodation costs;
d) external expertise and services costs;
e) equipment costs;
f) costs for infrastructure and works.

3) Aid for costs incurred by undertakings participating in European Territorial Cooperation project cannot exceed EUR 2,2 million per undertaking, per project.

2. Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects

1) In case of Aid to undertakings for their participation in European Territorial Cooperation projects covered by Regulation (EU) 2021/1059 the total amount of aid granted to an undertaking per project shall not exceed EUR 22 000.

3. Aid for culture and heritage conservation

1) Aid for culture and heritage conservation may take the form of:

a) investment aid, including aid for the construction or upgrade of culture infrastructure;
b) operating aid;

2) The aid shall be granted for the following cultural purposes and activities:

a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
b) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of an EU Member State;
c) intangible heritage in any form, including folklorist customs and crafts;
d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
e) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
f) writing, editing, production, distribution, digitisation and publishing of music and literature, including translations. The maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or the 70 % of the eligible costs. The revenues shall be deducted from the eligible costs ex ante or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs),

translators' fees, editors' fees, other editorial costs (proofreading, cor-recting, reviewing), layout and pre-press costs and printing or e-publication costs.

3) For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including:

   a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;
   b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
   c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
   d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
   e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project;

4) In case of the investment aid, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period. Alternatively, for aid not exceeding EUR 2,2 million, the maximum amount of aid may be set at 80 % of eligible costs.

   Investment aid for culture and heritage conservation cannot exceed EUR 165 million per project.

5) For operating aid, the eligible costs shall be the following:

   a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
   b) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

c) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
d) operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;
e) costs for personnel working for the cultural institution or heritage site or for a project;
f) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

6) In the case of the operating aid, the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism. Alternatively, for aid not exceeding EUR 2,2 million, the maximum amount of aid may be set at 80 % of eligible costs.

   Operating aid for culture and heritage conservation cannot exceed EUR 82,5 million per undertaking per year.

7) Aid cannot be granted to press and magazines, whether they are published in print or electronically.

4. Aid for sport and multifunctional recreational infrastructures

1) Aid for sport and multifunctional recreational infrastructures may take the form of:

   a) investment aid, including aid for the construction or upgrade of sport and multifunctional recreational infrastructure;
   b) operating aid for sport infrastructure;

2) Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.

3) Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.

4) Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted

preferential access under more favourable conditions, provided those conditions are made publicly available.

5) If sport infrastructure is used by professional sport clubs, the pricing conditions for its use are made publicly available.

6) Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

7) For investment aid for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.

8) In case of the investment aid for sport and multifunctional recreational infrastructure, the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism. Alternatively, for aid not exceeding EUR 2,2 million, the maximum amount of aid may be set at 80 % of eligible costs.

   Investment aid for sport and multifunctional recreational infrastructures cannot exceed EUR 33 million or the total costs of the project cannot exceed EUR 110 million.

9) For operating aid for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.

10) In case of the operating aid for sport infrastructure, the aid amount shall not exceed the operating losses over the relevant period. This shall be ensured ex ante, on the basis of reasonable projections, or through a claw-back mechanism. Alternatively, for aid not exceeding EUR 2,2 million, the maximum amount of aid may be set at 80 % of eligible costs.

    Operating aid for sport infrastructure cannot exceed EUR 2,2 million per infrastructure per year.

5. Investment aid for local infrastructures

1) Investment aid for local infrastructures finances the construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base. Investment aid for local infrastructures shall not apply to aid for infrastructures that is covered by other sections of Chapter III of GBER with the exception of Section 1. Investment aid for local infrastructures shall also not apply to airport infrastructure and port infrastructure.

2) The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.

3) Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

4) The eligible costs shall be the investment costs in tangible and intangible assets.

5) The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, on the basis of reasonable projections, or through a claw-back mechanism.

6) Dedicated infrastructure shall not be exempted.

7) Investment aid for local infrastructures cannot exceed EUR 11 million or the total costs exceeding EUR 22 million for the same infrastructure.

De Minimis Aid

1. The gross grant equivalent[4] of any de minimis aid granted on the basis of the De Minimis Regulation to any single undertaking[5] shall not exceed EUR 300 000 over any period of three years per Member State taking into account Article 3 paragraph 8 and 9 of the De Minimis Regulation, which contain additional provisions for mergers, acquisitions and undertakings splitting into two or more separate undertakings.

2. Aid shall not be granted to undertakings active in the sectors listed in Article 1 paragraph 1 of the De Minimis Regulation, taking into account Article 1 paragraph 2, which contains additional provisions for undertakings active in sectors falling within the scope of the De Minimis Regulation and sectors excluded from the scope of the De Minimis Regulation as well.

3. De minimis aid may be cumulated with de minimis aid granted on the basis of other de minimis Regulations up to EUR 300,000 with the exception of aid granted on the basis of Commission Regulation (EU) 2023/2832.

4. De minimis aid may be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would not exceed the highest relevant aid intensity or aid amount defined in a block exemption regulation or a decision adopted by the European Commission.

5. The beneficiary must submit a declaration in accordance with Article 7 paragraph 4 of the De Minimis Regulation about any other de minimis aid received to which the De Minimis Regulation or any other de minimis Regulations apply over any period of 3 years.

[4] The gross grant equivalent can be calculated on the basis of Article 4 of the Commission Regulation (EU) 2023/2831.
[5] Undertakings within the meaning of Article 2 Section 2 of the general De Minimis Regulation are considered to be one and the same undertaking.

6. With a direct reference to the De Minimis Regulation the aid grantor shall inform the beneficiary by issuing a certificate stating the amount of the aid expressed in gross grant equivalent and its de minimis character, in accordance with Article 7 paragraph 4 of the De Minimis Regulation.

7. Aid payable in several instalments shall be discounted to its value at the moment it is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the time the aid is granted.

8. The records regarding information on de minimis aid must be kept for 10 years from the date on which the aid was granted. On request by the European Commission information shall be provided within 20 working days on aid granted under the De Minimis Regulation.

Classification of the supported activities in terms of state aid

1. The aid measures according to the **Objective 1.1. (Climate change adaptation, risk prevention), Objective 2.1 (Equal access to health care), Objective 3.1 (Harmonious neighbourly relations through cooperation)** do not qualify as state aid within the meaning of the TFEU Article 107 (1), since the supported activities do not qualify as economic activities within the meaning of the EU competition law.

2. The aid measures according to the **Objective 1.2 (Biodiversity and reduced pollution) and Objective 2.2. (Culture and tourism)** do not qualify as state aid within the meaning of the TFEU Article 107 (1), because the supported activities related to culture and the preservation of cultural heritage within the meaning of the Point 33-34 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01) (hereinafter referred to as: „Commission Notice") can be organized in a non-commercial way, so in some cases these activities are not of an economic nature.

The Commission considers that public funding of a cultural or heritage conservation activity accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature. In the same vein, the fact that visitors of a cultural institution or participants in a cultural or heritage conservation activity, including nature conservation, open to the general public are required to pay a monetary contribution that only covers a fraction of the true costs (maximum 50 %) does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided.

If the above conditions are met, the aid measures do not qualify as state aid according to the TFEU Article 107(1), as the supported activities are not economic activities in the sense of EU competition law.

In contrast, cultural or heritage conservation activities (including nature conservation) predominantly financed by visitor or user fees or by other commercial means (for example, commercial exhibitions, cinemas, commercial music performances and festivals and arts schools predominantly financed from tuition fees) should be qualified as economic in nature. Similarly, heritage conservation or cultural activities benefitting exclusively certain undertakings rather than the general public (for example, the

restoration of a historical building used by a private company) should normally be qualified as economic in nature.

As long as the aid measures according to the Objective 1.1, 1.2, 2.1, 2.2 and 3.1 are considered State aid, the aid measures are granted only in line with the provisions of the 241/2023 Government Decree on the implementation of the cross-border Interreg programmes 2021-2027 (hereinafter referred to as: "241/2023 Government Decree").

Supported activities	Reference to the legal ground	Aid category
Objective 1.1: Climate change adaptation, risk prevention (SO 2.4)	241/2023 Government Decree") 77. § Point 1.	Aid for costs incurred by undertakings participating in European Territorial Cooperation project (241/2023 Government Decree Article 78 Point 1.) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (241/2023 Government Decree Article 78 Point 2.) Investment aid for local infrastructures (241/2023 Government Decree Article 78 Point 5.) de minimis aid (241/2023 Government Decree Article 78 Point 6.)
Objective 1.2: Biodiversity and reduced pollution (SO 2.7)	241/2023. Government Decree 77. § Point 2.	Aid for costs incurred by undertakings participating in European Territorial Cooperation project (241/2023 Government Decree Article 78 Point 1.) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (241/2023 Government Decree Article 78 Point 2.) Aid for culture and heritage conservation (241/2023 Government Decree Article 78 Point 3.) de minimis aid (241/2023 Government Decree Article 78 Point 6.)

Objective 2.1: Equal access to health care (SO 4.5)	241/2023. Government Decree 77. § Point 3.	Aid for costs incurred by undertakings participating in European Territorial Cooperation project (241/2023 Government Decree Article 78 Point 1) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (241/2023 Government Decree Article 78 Point 2) Investment aid for local infrastructures (241/2023 Government Decree Article 78 Point 5) de minimis aid (241/2023 Government Decree Article 78 Point 6)
Objective 2.2: Culture and tourism (SO 4.6)	241/2023. Government Decree 77. § Point 4.	Aid for costs incurred by undertakings participating in European Territorial Cooperation project (241/2023 Government Decree Article 78 Point 1) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (241/2023 Government Decree Article 78 Point 2) Aid for culture and heritage conservation (241/2023 Government Decree Article 78 Point 3) Aid for sport and multifunctional recreational infrastructures (241/2023 Government Decree Article 78 Point 4) Investment aid for local infrastructures (241/2023 Government Decree Article 78 Point 5 de minimis aid (241/2023 Government Decree Article 78 Point 6)

Objective 3.1: Harmonious neighbourly relations through cooperation (ISO1 b)	241/2023. Government Decree 77. § Point 5.	Aid for costs incurred by undertakings participating in European Territorial Cooperation project(241/2023 Government Decree Article 78 Point 1) Limited amounts of aid to undertakings for participation in European Territorial Cooperation projects (241/2023 Government Decree Article 78 Point 2) Aid for culture and heritage conservation (241/2023 Government Decree Article 78 Point 3) Aid for sport and multifunctional recreational infrastructures (241/2023 Government Decree Article 78 Point 4) de minimis aid (241/2023 Government Decree Article 78 Point 6)