

### Guidelines to avoid State Aid incidence

Examples of activities	Recommendations to avoid State Aid incidence
Organizing events	<p>NO participation fees for participants;</p> <p>NO sale of products is allowed;</p> <p>NO commercial activities are to be supported by the project;</p> <p>The event will be widely promoted;</p> <p>Public access will be free of charge;</p> <p>NO commercial purpose/activity within the event;</p> <p>If economic operators are foreseen among participants, the event must be promoted to all interested operators;</p> <p>The event shall not be dedicated to meet the specific economic interest of a single economic operator.</p>
Creating a brand/platform/network	<p>Non-discriminating access to the cross-border platform/network will be provided;</p> <p>In case a fee is foreseen for network maintenance and operation, it must be transparent, moderate (preferably covering only the real costs of operation and maintenance) one and unique for all users;</p> <p>The intention to create the cross-border platform/network will be largely disseminated, on the applicant's and Programme sites</p> <p>If the brand/platform is addressed to enterprises, those should be:</p> <ul style="list-style-type: none"> <li>- of small/very small dimension;</li> <li>- active mainly at a local level (the area should be well defined);</li> <li>- active in economic sectors where the cross-border commercial flows are marginal.</li> </ul>
Organizing training	<p>Ensuring a non-discriminatory participation of all interested stakeholders/persons;</p> <p>Wide dissemination;</p> <p>Free access, opened to the general public;</p> <p>The participants (others than the staff of a public institution) must attend the training as natural person;</p> <p>The objective of the training shall be the social promotion or employability of the natural persons, and they shall not serve the direct economic interest of a specific employer;</p> <p>Training support materials will have to be published on the Programme's website, either entirely, or at least in the format of a coherent summary;</p> <p>It is recommended to adopt a selection procedure ensuring that:</p> <ul style="list-style-type: none"> <li>a) the participants to a training initiative are not the employees of the same employer and/or</li> <li>b) the majority (in terms of percentages) of the employees of the same employer take part to a training initiative</li> </ul>

## Romania - Hungary

	In case of training related to the use of purchased equipment: the price of training will be included in the equipment price and can be done only for staff operating the equipment.
Strategies, studies, plans	<p>The content of the strategy/study/plan <b>shall not be</b> customized for the needs of one/few specific company(ies);</p> <p>The studies, strategies, plans will have to be published on the Programme's website, either entirely, or at least in the format of a coherent summary.</p>
Investment in equipment/infrastructure	<p><b>HEALTH (RSO4.5):</b></p> <p>a) The activities are <b>State's prerogative</b> (e.g.: activities exclusively related to emergency, development of telemedical and e-health infrastructure for diagnosis and treatment)</p> <p>b) The funding of the activities is based on the principle of solidarity (according to paragraphs 23-24 of NoA<sup>1</sup> and State Aid Monitoring Office letter, on 24 March 2017).</p> <p><b>OR if either a) or b) are not fulfilled, then</b></p> <p>c) There is no potential effect on trade between Member States, due to <b>local impact</b><sup>2</sup>: The applicant shall submit a local impact study addressing, in a non-cumulative/exhaustive manner, indicative aspects such as:</p> <ul style="list-style-type: none"> <li>i) the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;</li> <li>ii) the healthcare services offered by the beneficiary, or the operator of the infrastructure/equipment are purely local or have a geographically limited attraction zone;</li> <li>iii) There is at most a marginal effect on the markets and on consumers in the neighbouring Member States.</li> </ul>
	<p><b>CULTURE (RSO4.6):</b></p> <p>The cultural activities are</p> <p>a) organized in a <b>non-commercial way</b>:</p> <ul style="list-style-type: none"> <li>✓ Absence/marginal presence of economic activities OR</li> <li>✓ There are both economic/non-economic activities but there is a clear separation of accounts OR</li> <li>✓ The activities are objectively <b>non substitutable</b>, thus excluding the existence of a genuine market.</li> </ul>

<sup>1</sup>See paragraphs 23-24 of 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) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)

<sup>2</sup> See paragraphs 196 of 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); [http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016XC0719\(05\)](http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016XC0719(05))

## Romania - Hungary

	<p><i>(Such activities are not economic in nature<sup>3</sup> and thus the funding of such infrastructure will not be considered as State aid);</i></p> <p>Verifying absence//marginal presence of economic activities:</p> <ul style="list-style-type: none"> <li>✓ The visitors' fees cover only a fraction of real running costs;</li> <li>✓ The commercial-oriented use of the infrastructure is NOT overpassing 20% of its overall use (Both the surface and the periods of use of the infrastructure for economic purposes should be considered to calculate the real proportion, which should never overpass 20%).</li> </ul> <p>Clear separation of accounts:</p> <ul style="list-style-type: none"> <li>✓ the existence of a system of separation of accounts that guarantees that the public aid covers only the part of the infrastructures having non-economic purposes;</li> <li>✓ All expenditures reported to the Programme are exclusively recorded in the non-commercial sections of the accounts, as all related running costs.</li> <li>✓ No significant incomes appear in the recordings related to the "non-commercial" part of the accounts.</li> </ul> <p><b>b)</b> there is no potential effect on trade between Member States, due to <b>local impact<sup>4</sup></b>:</p> <ul style="list-style-type: none"> <li>✓ the cultural infrastructure is unlikely to attract users or visitors from similar offers in other Member States, thus not affecting the trade between Member States</li> <li>✓ the cultural activities/the cultural infrastructure is not promoted to potential visitors from abroad, and the statistics do not show a strong increase of visitors from abroad.</li> </ul>
	<p><b>RENEWABLE ENERGY (RSO2.2):</b></p> <p><b>No aid in case of absence of economic activity</b></p> <ul style="list-style-type: none"> <li>• Economic activity: entities engaged in an economic activity are 'undertakings', regardless of their legal form and the way in which they are financed. 'Economic activity' is any activity consisting in offering goods and services on a market.</li> </ul> <p>In case of construction, replacement or upgrade, as well as the operation and use of energy infrastructure (excluding energy production units and the construction or operation of district heating and cooling):</p> <ol style="list-style-type: none"> <li>1. No potential distortion of competition for the construction and/or management and operation of energy infrastructure: legal/natural monopoly             <ol style="list-style-type: none"> <li>a. legal monopoly: infrastructure investments which are made within the framework of a legal monopoly are not subject to State aid rules.</li> </ol> </li> </ol>

<sup>3</sup> See paragraphs 33, 34, 36 and 37 of 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); [http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016XC0719\(05\)](http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016XC0719(05))

<sup>4</sup> See paragraphs 196 of 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); [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)

## Romania - Hungary

	<p>b. natural monopoly: comprehensive network infrastructures in the area of electricity or gas for which a replication by market players would be uneconomical, an effect on trade between Member States or a distortion of competition may be excluded as regards the construction, upgrading or maintenance of the electricity and gas networks</p> <p>c. points 1 and 2 of <i>INFRASTRUCTURE ANALYTICAL GRID FOR ENERGY INFRASTRUCTURE</i><sup>5</sup></p> <p>2. No economic advantage at the level of the owner/developer of the infrastructure</p> <p>a. If it is proven that the State acted under the same terms and conditions as a private investor in a comparable situation when providing the necessary funding for the development of energy infrastructure, then State aid is not involved.</p> <p>b. point 4 of <i>INFRASTRUCTURE ANALYTICAL GRID FOR ENERGY INFRASTRUCTURE</i></p> <p>3. No economic advantage at the level of the operator/concessionaire</p> <p>a. If the operator/concessionaire is selected through a tender or fees that are otherwise in compliance with the Market Economy Operator Principle</p> <p>b. If the operation of the infrastructure is entrusted as a service of general economic interest (SGEI) in line with the Altmark criteria<sup>6</sup></p> <p>c. point 5 of <i>INFRASTRUCTURE ANALYTICAL GRID FOR ENERGY INFRASTRUCTURE</i></p> <p>4. No economic advantage at the level of the user (when the operator of an energy infrastructure has received State aid or if its resources constitute State resources)</p> <p>a. If fees paid by users are set through a tender</p> <p>b. If user tariffs set in line with EU legislation</p> <p>c. point 6 of <i>INFRASTRUCTURE ANALYTICAL GRID FOR ENERGY INFRASTRUCTURE</i></p> <p><b>Types of energy infrastructure for which potential effect on trade or distortion of competition cannot be excluded:</b></p> <ul style="list-style-type: none"> <li>Certain energy infrastructure categories are to a large extent built by market actors, which is evidence of significant market financing. Hence, these infrastructure categories are typically not covered by a legal monopoly or do not constitute a natural monopoly. In the areas of electricity, gas and oil, this is in particular the case.</li> </ul>
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<sup>5</sup> [grid\\_energy\\_en.pdf\(europa.eu\)](#)

<sup>6</sup> (1) there must be an entrustment act clearly defining the public service obligation; (2) the parameters for calculating the compensation must be established in advance in an objective and transparent manner; (3) the compensation cannot exceed the relevant costs and a reasonable profit (i.e. there is no overcompensation); (4) the provider is either chosen through a public procurement procedure or the level of compensation is determined based on an analysis of the costs of an average "well-run" undertaking in the sector concerned.

## Romania - Hungary

	<p>In cases where the presence of state aid cannot be ruled out, the applicable guidelines are Article 20, 20a of the GBER (General Block Exemption Regulation), as well as the rules of De minimis.</p> <ul style="list-style-type: none"><li>• all state aid-related RSO2.2 activities can be granted under Article 20 of GBER<sup>7</sup>. Please note that, under Article 20, only the following costs shall be eligible:<ul style="list-style-type: none"><li>○ staff costs;</li><li>○ office and administrative costs;</li><li>○ travel and accommodation costs;</li><li>○ external expertise and services costs;</li><li>○ equipment costs;</li><li>○ costs for infrastructure and works.</li></ul></li><li>• in cases where third parties - outside the partnership - are benefitting economically from the results of the project, the aid is considered indirect aid, and article 20a of GBER applies (up to EUR 22.000 per undertaking).</li><li>• The aid intensity shall not exceed the maximum co-financing rate provided for in Regulation (EU) 1059/2021, i.e. 80% ERDF + national public co-financing.</li></ul>
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<sup>7</sup> The maximum threshold under article 20. GBER is 2, 200,000 EUR/undertaking/project