**ANNEX IV.2**

**Declaration on the status of the Applicant according to the State Aid discipline**

Title and acronym of the project: <***insert title, acronym***>

Undersigned representing the following organisation:

<***insert the name of partner institution in English*** >*,*

declares that:

1. Within the State Aid discipline, the institution I represent shall be considered as *undertaking/not undertaking[[1]](#footnote-1).*

2. In the framework of the Danube Transnational Programme project proposal, in connection with the activities the institution I represent shall be considered as *undertaking/not undertaking[[2]](#footnote-2)*:

3. The activities described in the project proposal *are/are not[[3]](#footnote-3)* market oriented.

In this section a comprehensive overview of market-oriented activities should be provided per Work Package. Please give a short explanation of your conclusion why you consider that the activities are market oriented or not market oriented. In case of market oriented activities please indicate the budget of the respective activity in the project.

4. If the answer to questions above is yes for all (1-3), does the aid give an economic advantage (benefit) selectively[[4]](#footnote-4) to the undertaking, which would not have obtained under normal market conditions? (Yes/No)

5. The activities described in the project proposal *are/are not* affecting trade between Member States for the following reasons.

In case some activities affect, some not affect the trade between Member States, please indicate separately the reasons.

6. The institution I represent *will/will not[[5]](#footnote-5)* be the end user of the *ERDF/ENI* contribution (i.e.: it will involve its own staff or it will delegate the implementation to one of its controlled institutions). Please also mention whether, in case of controlled institution, it should be considered or not as an undertaking and why.

I declare that within the meaning of Article 2 (2) of *de minimis Regulation*[[6]](#footnote-6) the body I represent is considered as a single undertaking together with the following bodies.

If you are not benefited from public fund under *de minimis* please delete this table.

|  |  |
| --- | --- |
| Name of the undertaking | Tax number |
|  |  |

I declare the aid granted - not including the exception of Article 1 (2) of *de minimis Regulation* - will not be used for the exceptional cases defined in Article 1 (1) of *de minimis Regulation* and according to Article 3 (2) for the acquisition of road freight transport vehicles.

I acknowledge that untruthful/false declarations, in addition to the administrative sanctions and the request of refunding unduly received contribution charged with the interests, can also be prosecuted by the penal code.

 ……………………………………… ………………………………………

 Signature Date

………………………………………

 Title of the Signatory (Official stamp of the Partner Institution)

**State Aid discipline**

According to Article 107 of the Treaty on the Functioning of the European Union (hereinafter referred to as Treaty) and to Article 2 (13) of Reg. (EC) No. 1303/2013, **it is not the legal aspect (public or private) but the nature of the activities that the Applicant intends to implement that determines whether the State aid discipline has to be respected or not.**

In particular, Article 107 (1) of the Treaty:

*“(…) 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, insofar as it affects trade between Member States, be incompatible with the common market.”*

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

1. The recipient of the aid is an “undertaking”, i.e. an entity engaged in an economic activity (i.e. offering goods and services on the market), regardless of its legal status and whether its aim is to make profit or not. An undertaking can be a public body, a charity, a NGO, an association, a university, a private firm, etc.
2. The aid comes from the State, which is always the case for Interreg programmes.
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 and it distorts or (threatens to distort) competition and trade between Member States.

***The provision of aid by a public body***

Due to the fact the funds to be granted by the Danube Transnational Programme are of a public nature, point 2 above has to be considered as existing “de facto”.

***The definition of undertaking***

Within the domain of competition law, an undertaking is identified as any entity which exercises an activity of an economic nature and which offers goods and services in competition (actual or potential) with other operators active in the market, carrying out activities of an economic nature, devoted to the production and marketing of goods and services in the market.

This very wide concept of undertaking also includes all private and public firms and the entirety of what they produce. Activities carried out within the framework of statutory tasks normally performed by public authorities do not fall within the concept of an undertaking, in view of their non-business purposes and procedures.

In many cases, however, local public or administrative bodies may be considered to be similar to undertakings. In this regard the Commission has observed:

*“Admittedly, municipalities and local authority associations are not normally regarded as undertakings. But, even though they may carry out a range of public tasks and exercise public powers, they can, according to the ruling given by the Court of Justice of the European Communities on 16 June 1987, in Case 118/85 (Commission v Italy), be regarded as undertakings if they carry out an economic activity on the market. This is to be assumed to be the case here especially if the municipalities are active via an owner-operated municipal enterprise”:*

When assessing the whole range of activities of these bodies a pragmatic approach that takes into account the activities that will be implemented within the market is required. Waste disposal or treatment, for example, which in the past was the prerogative of local administrations or was provided by them outside the market logic, is now largely considered a business activity. In general, such activities are often carried out by entities that are mainly or completely controlled by public bodies and directed towards a public interest are considered business activities.

***The distortion of the market***

The third element required for the application of the State Aid discipline occurs when competition is distorted and affects trade among Member States. Two are the exceptions: when the aid is granted for activities that can be considered as local and when the aid is limited amount (*de minimis*).

As far as the first exception is concerned, the Commission, at 2.1 of the Community Guidelines on State Aid for Small and Medium Sized Enterprises of 1996 stated:

*“Nevertheless, some SMEs, and certain micro-enterprises in particular, carry on businesses in which there is no trade between Member States…Aid is given to them for activities of this sort falls outside the scope of Article 92 (now 87)(1)”*

What is important is not the size of the enterprise but the activities carried out by it, which, by their nature, are not found on a competitive international market. As a result, any public aids in its favour are not such as to affect trade among Member States.

The principle was then confirmed in the “Guidelines on State Aid for Undertakings in Deprived Urban Areas” of 1997, where the Commission exemplified the activities which can be defined as being “local”, citing, among others, the retail trade and repair of household goods, taxis, community, social and personal activities, the sale and repair of motor vehicles; and even arriving at taking into consideration hotels and restaurants and construction companies, specifying that they do not fall within the application of Article 92 (now 107), (1), “to the extent that the activities are not of a transnational nature”. To sum up, it should be noted that, for the activities listed above, they have to be implemented by small enterprises operating in a local and particularly disadvantaged context, like that represented by deprived urban areas.

***Public support given by the programme to undertakings will be granted under the de minimis regulation****. This implies that undertakings will receive grants under the Danube Transnational Programme only if they have not received public aid under the de minimis rule totalling to more than* ***EUR 200,000*** *within three fiscal years from the date of granting the aid. This ceiling is reduced to* ***EUR 100,000*** *in the road transport sector while other sectors as agriculture, aquiculture and fisheries have lower ceilings. The public aid considered for the applicable de minimis ceiling comprises all aids granted by the national, regional or local authorities, regardless of whether the resources are provided from domestic sources or are partly financed by the European Union. However, this will not affect the possibility of an undertaking to receive public support under other state aid schemes. When calculating de minimis Article 3 (8)-(9) of “de minimis Regulation has to be respected as well.*

In the case of mergers or acquisitions, all prior *de minimis* aid granted to any of the merging undertakings shall be taken into account in determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the relevant ceiling. *De minimis* aid lawfully granted before the merger or acquisition shall remain lawful.

If one undertaking splits into two or more separate undertakings, *de minimis* aid granted prior to the split shall be allocated to the undertaking that benefited from it, which is in principle the undertaking taking over the activities for which the *de minimis* aid was used. If such an allocation is not possible, the *de minimis* aid shall be allocated proportionately on the basis of the book value of the equity capital of the new undertakings at the effective date of the split.

*De minimis* aid granted in accordance with *de minimis* Regulation may be cumulated with *de minimis* aid granted in accordance with Commission Regulation (EU) No 360/2012 up to the ceiling laid down in *de minimis* Regulation. It may be cumulated with *de minimis* aid granted in accordance with other *de minimis* Regulations up to the relevant ceiling laid down in Article 3(2) of *de minimis* Regulation.

*De minimis* aid shall not 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 exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. *De minimis* aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

*De minimis* Regulation applies to aid granted to undertakings in all sectors, with the exception of:

|  |  |
| --- | --- |
| (a) | aid granted to undertakings active in the fishery and aquaculture sector, as covered by Council Regulation (EC) No 1379/2013; |
| (b) | aid granted to undertakings active in the primary production of agricultural products; |
| (c) | aid granted to undertakings active in the sector of processing and marketing of agricultural products, in the following cases:

|  |  |
| --- | --- |
| (i) | where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; |
| (ii) | where the aid is conditional on being partly or entirely passed on to primary producers; |

 |
| (d) | aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity; |
| (e) | aid contingent upon the use of domestic over imported goods;  |

(f) *De minimis* aid granted per Member State to a single undertaking performing road freight transport this *de minimis* aid shall not be used for the acquisition of road freight transport vehicles.

Where an undertaking is active in the sectors referred to in points (a), (b) or (c) above and is also active in one or more of the sectors or has other activities falling within the scope of *de minimis* Regulation, the *de minimis* Regulation shall apply to aid granted in respect of the latter sectors or activities, provided that the Member State concerned ensures, by appropriate means such as separation of activities or distinction of costs, that the activities in the sectors excluded from the scope of *de minimis* Regulation do not benefit from the *de minimis* aid granted in accordance with *de minimis* Regulation.

Records regarding individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted.

1. Select by striking through the not needed parts (e.g. are/are not ….) [↑](#footnote-ref-1)
2. Select by striking through the not needed parts (e.g. are/are not ….) [↑](#footnote-ref-2)
3. Select by striking through the not needed parts (e.g. are/are not ….) [↑](#footnote-ref-3)
4. The advantage is granted to specific companies or industry sectors, or to companies located in specific regions. [↑](#footnote-ref-4)
5. Select by striking through the not needed parts (e.g. are/are not ….) [↑](#footnote-ref-5)
6. 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 [↑](#footnote-ref-6)