

## Terms of Reference

### State aid rules of the Baltic Sea Region Programme 2014 – 2020

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#### 1. PREAMBLE

The Baltic Sea Region Programme 2007-2013 is one of the 13 transnational programmes, part-financed by the European Regional Development Fund (ERDF) under the Territorial Cooperation Objective of the European Union (EU). The eligible area includes the EU Member States Denmark, Estonia, Finland, Latvia, Lithuania, Poland, Sweden and northern parts of Germany, as well as the neighbouring countries Norway, Belarus and north-west regions of Russia.

Investitionsbank Schleswig-Holstein, acting as Managing Authority/Joint Technical Secretariat (MA/JTS) of the Baltic Sea Region Programme 2007-2013 herewith opens a call for tender for the development of State aid rules for the Baltic Sea Region Programme 2014-2020. For further details about the outline of the assignment, the conditions and criteria for selection please see the Terms of Reference below.

#### 2. BACKGROUND

On 17 December 2013, the European Parliament and the Council adopted a legislative package for the Cohesion Policy during the funding period 2014-2020 (published in Official Journal L 347 of 20.12.2013). According to the Cohesion Policy regulations, European Territorial Cooperation (ETC) will be continued and even reinforced as a separate cohesion goal. The existing strands of cross-border, transnational and interregional cooperation will be maintained. The regulations entered into force in 2014.

In this framework, the transnational Baltic Sea Region Programme 2014-2020 is under preparation and expected to be launched in late 2014. In line with the Treaty on the Functioning of the European Union (TFEU) and the respective State aid regulations (see chapter 3 for details), the Programme has to comply with the State aid rules.



Consequently, specific State aid rules based on the State aid regulations in a transnational programme context are to be prepared. For this, external legal expertise by a State aid expert is needed to ensure that all stipulations and requirements deriving from the European legal framework are followed while the Programme's needs are met.

### 3. EUROPEAN LEGAL FRAMEWORK

According to Article 107(1) of the Treaty on the functioning of the European Union (TFEU), "[...] 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. "

The European Commission "shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid" (cf. TFEU, Article 108(3), sentence 1, "notification requirement"). The Member State concerned shall not put its proposed measures into effect until the European Commission has made a final decision (cf. TFEU, Article 108(3), sentence 3, "standstill clause"); new aid put into effect in contravention of this provision is unlawful aid (cf. Article 1(f) of Council Regulation (EC) No 659/1999).

According to Article 6 of the Regulation (EU) No 1299/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006 ("Common provisions regulation (CPR)") operations financed by the CSF Funds (these Funds include the European Regional Development Fund, ERDF, co-financing the Baltic Sea Region Programme 2014-2020) shall comply with applicable Union and national law. Part of this law is the EU State aid law; thus, it also applies to ETC programmes like the Baltic Sea Region Programme 2014-2020.

In 2012, the European Commission launched a State Aid Modernisation (SAM) process to revise the State aid rules. The aim is to improve the legal framework, to ensure consistency across the different guidelines and regulations, and to simplify rules.

With regard to the Baltic Sea Region Programme 2014-2020, in particular the following State aid rules and regulations seem to be relevant and shall be considered by the State aid expert. However, some of these rules are currently still draft versions:

Enabling Regulation: Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid as last amended by Council Regulation (EU) No 733/2013 of 22 July 2013.

Procedural Regulation: Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty as last amended by Council Regulation (EU) No 734/2013 of 22 July 2013.

General Block Exemption Regulation: Commission Regulation (EU) No .../... of XXX declaring certain categories of aid compatible with the internal market in application of

Articles 107 and 108 of the Treaty (DRAFT, regulation will most likely enter into force on 1 July 2014).

De minimis Regulation: Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (entered into force on 1 January 2014).

Regional Aid Guidelines (RAG): European Commission Guidelines on regional State aid for 2014-2020 (2013/C 209/01) (shall enter into force on 1 July 2014).

Furthermore, the Services of general economic interest (SGEI) might be of relevance for the future Programme's State aid scheme:

- 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 interest, Official Journal C8, 11.01.2012, p. 4-14
- Commission Decision of 20 December on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, Official Journal L7, 11.01.2012, p. 3-10
- Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011), Official Journal C8, 11.01.2012, p. 15-22
- 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, Official Journal L 114 of 26.4.2012, p. 8

The above list is not exhaustive. The State aid expert shall consider any other State aid document relevant for setting up sound and suitable State aid rules for the Baltic Sea Region Programme 2014-2020.

#### **4. OBJECTIVE AND METHODOLOGY**

##### Objective

As laid out above, the future Baltic Sea Region Programme 2014-2020 needs to set up suitable State aid rules, by which the Programme complies with the European legal framework. The State aid rules should in particular reflect the cooperation character of the projects as well as the transnational context of the Programme involving 11 countries. Against this background, the most suitable State aid instrument(s) should be selected. In general, the State aid rules shall be applicable to the provisions of the Operational Programme (OP) and the Programme Manual (PM). It might become necessary to amend some provisions of the OP/PM (e.g. co-financing rates, types of beneficiaries) so that the State aid can be implemented properly.

The State aid rules should describe in a clear, logical and comprehensive manner how these are to be implemented in the Programme, how projects are expected to comply with these, and how this is to be verified by the Programme bodies.

##### Methodology

The development of the State aid rules will be an interactive process between the State aid expert selected and the Programme bodies, in particular the Managing Authority (MA) and the Joint Technical Secretariat (JTS) of the current Baltic Sea Region Programme 2007-2013.

The State aid expert shall select the methodology that he/she considers the most appropriate. The methodology shall reflect the existing information sources and the expected outcome. An overview of the proposed methods, including the planning and structuring of the exercise, shall be provided in the tender.

The proposed methodology could consist of both desk-based research and interviews/meetings with selected staff of the JTS/MA of the current Baltic Sea Region Programme 2007-2013. If deemed relevant, research and/or interviews targeting other relevant ETC programmes, could be part of the methodology.

As a result, comprehensive State aid rules for the Baltic Sea Region Programme 2014-2020 should be developed that will finally be included into the Programme Manual.

## 5. STAKEHOLDERS

For the Baltic Sea Region Programme 2014-2020, the Monitoring Committee of the current Baltic Sea Region Programme 2007-2013 decided to set up a Joint Programming Committee (JPC) as main decision making body during the programming. The tasks of the JPC also encompass the selection of the external State aid expert and the approval of the final State aid scheme.

The JPC is complemented by a Programming Task Force, which was set up to discuss particular topics and to prepare JPC decisions.

The MA/JTS of the Baltic Sea Region Programme 2007-2013 will be responsible for coordinating the programming process including the development of the State aid rules. The MA/JTS is located at Rostock/Germany, with a JTS branch office in Riga/Latvia.

## 6. TIME SCHEDULE, REPORTING AND SPECIFIC PROVISIONS FOR IMPLEMENTATION

The JPC designated the Investitionsbank Schleswig-Holstein, Fleethörn 29-31, 24103 Kiel, Germany, acting as MA/JTS of the current Baltic Sea Region Programme 2007-2013, to be responsible for implementing the call for tender and the contracting of the State aid expert. The final selection of the State aid expert will be done by the JPC in written procedure.

The State aid expert to be selected shall make available a sufficient number of specialists as soon as possible after the selection procedure and contracting are completed. The present timetable (see below) suggests that the work is taken up in April 2014.

According to the current state of information, the following **time schedule** is envisaged:

<b>Timeframe<sup>1</sup></b>	<b>Stage of process</b>
January 2014 to February 2014	Call for tender for State aid expert
February-March 2014	Assessment of the expert proposals
March 2014	Written JPC decision on selection of State aid

<sup>1</sup> The dates will be specified in the contract concluded between the Investitionsbank Schleswig-Holstein and the expert. Furthermore, the schedule of the SAM will have an impact on the planned timeframe.

	expert
April 2014	Contracting procedure, followed by initial meeting between the State aid expert and the MA/JTS, start of activities
May to August 2014	Development of State aid rules and preparation of comprehensive State aid rules document
September 2014	Approval of State aid rules by JPC (TBC)

The timetable might be extended – depending on the progress of the programming and the approval of the relevant regulations and guidelines.

The State aid rules document must include at least the following information:

- An executive summary (2-page synopsis),
- A short description of the methodology, outlining the approach and including a description of the research undertaken as well as the sources of data and information,
- Comprehensive State aid rules and concrete measures (e.g. proposals for aligning the existing Programme rules with the proposed State aid rules; procedural descriptions for the assessment and monitoring of State aid in applications and running projects; templates for beneficiaries and JTS/MA staff, etc.)
- Bibliography, data sources, list of interviewees (if relevant),
- Other relevant attachments.

The external State aid expert shall plan a reserve of working days in case additional analysis and/or amendments of the State aid rules are/is required, which might occur within or even after the planned timeframe. There might also be need for up to three ad-hoc meetings between the State aid expert and the MA/JTS in Rostock, Germany, which are to be planned for in the expert's budget.

The State aid expert shall provide proposals for the State aid rules as agreed. All texts shall be prepared in English language.

## **7. SOURCES OF MATERIAL**

The main sources of written material will include (valid in their latest versions, provided by the Programme):

- The Programme Manual of the current Baltic Sea Region Programme 2007-2013 (especially chapter 1.4.6);
- The State aid check-list and related supporting documents of the current Baltic Sea Region Programme 2007-2013, i.e. the background document to the State aid checklist and the State aid summary;
- Relevant State aid documents prepared by INTERACT, such as "Exemplary State aid cases in ETC programmes" of 04 July 2011, "Why is an exemption needed specifically for ETC?" of May 2012, "Options to Simplify State Aid Rules for

European Territorial Cooperation” of July 2012, and “State aid in ETC: Current status and recommendations for the future” of July 2011;

- Documents of the Baltic Sea Region Programme 2014-2020 as they are produced/available, in particular the Operational Programme<sup>2</sup> and the draft Programme Manual<sup>3</sup>;

In addition, the State aid expert will have access to Programme related information and data as far as necessary for the fulfilment of the tasks described above.

Furthermore, the State aid expert must consult the following sources:

- All relevant EU Structural Funds regulations and guidelines as available;
- Documentation of State aid concepts of other European Territorial Cooperation Programmes as available.

## **8. SELECTION CRITERIA AND REQUEST FOR BUDGET PROPOSAL**

### **Selection criteria**

The State aid expert as well as potential consortium partners/sub-contractors must be functionally independent of those institutions responsible for the management or implementation of the Baltic Sea Region Programme 2007-2013, including Monitoring Committee, Managing Authority, Certifying Authority, Audit Authority, and Joint Secretariat as well as including the aforementioned stakeholders of the Baltic Sea Region Programme 2014-2020 (see point 5 of these Terms of Reference). If tendering institutions/companies are in any way involved in Programme- or project-related activities, this must be clearly described and stated in the tenderer’s proposal. If detected later on, the tender will be disqualified and/or the contract annulled.

The proposal shall reflect/demonstrate the following requirements that are to be used as selection criteria:

1. A plan reflecting how to achieve the elaboration of the State aid rules, including a realistic methodology and implementation schedule;
2. Proven experience of the European State aid framework, with particular reference to European territorial cooperation programmes or nationally based EU regional development programmes;
3. Budget proposal;
4. Proof of good knowledge of English language, fluent in spoken and written.

During the assessment of the submitted proposals, the criteria given above will be taken into consideration with the following scoring:

The maximum score to be given to the proposed evaluation plan (criterion 1) is 15. The following criterion 2 is to be assessed with a score from 1 to 10. Criteria 3 and 4 will be scored 1 to 5.

The experts proposed should have the following qualification profile:

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<sup>2</sup> The Operational Programme will be available as of 31 January 2014 when published on the Programme website in the frame of the public consultation.

<sup>3</sup> The draft Programme Manual will only be available in summer 2014.

- Functional independency of the authorities responsible for implementation of the Baltic Sea Region Programme 2007-2013 as well as of parties involved in programming (see these Terms of Reference point 5);
- Proven experience of State aid in a European / transnational context;
- Experience/ understanding of a transnational programme and projects;
- Good level of English, fluent in spoken and written.

In addition, the following aspects will be assessed:

- A demonstrated understanding of the overall scope and purpose of the assignment;
- A realistic methodology and implementation schedule;
- A proposal for qualified specialists including their CVs;
- Specific inputs (person/days) and availability of specialists during the evaluation process;
- The overall price and a budget plan presenting: expertise per unit costs (person/days); estimation of needed working time in days/months; general costs (overheads, material) and reimbursable costs (travel and daily subsistence allowance separately per person).

The overall most advantageous tender will be selected. Tenderers may be consulted if minor clarifications of their tenders are needed. However, modifications to the written tender submitted by the deadline will not be accepted.

### **Request for budget proposal**

The tenderer is asked to propose a total budget covering all services and outcomes to be delivered as stipulated in point 6.

The budget shall cover all costs of the overall process, if applicable, comprising the all consortium partners/sub-contractors, including necessary travel costs to ad-hoc meetings with the MA/JTS, and additional working days for the revision of the final State aid rules until their approval by the JPC.

This budget shall not include taxes for which the State aid expert may become liable, and the VAT liability for the service to be provided. VAT will have to be paid by the Investitionsbank Schleswig-Holstein or the State aid expert itself depending on his/her location (outside/in Germany).

## **9. CONTRACTING, PAYMENT AND COPYRIGHT**

### **Contracting**

The Investitionsbank Schleswig-Holstein as MA/JTS of the Baltic Sea Region Programme 2007-2013, will be the contracting party. It is a public-law institution. Its headquarters are located in Kiel, Germany (Fleethörn 29-31, 24103 Kiel).

Following the approval of the tender by the JPC, a contract will be signed between the Investitionsbank Schleswig-Holstein and the selected State aid expert. The elaboration of the State aid rules cannot be started before the contract is signed by both parties. In case of consortium-building/sub-contracting, the contract must include the division of

tasks and related responsibilities of each consortium partner/sub-contractor. It is envisaged to sign the contract in April 2014.

Tasks related to the development of State aid rules, Programme Documents drafts, meetings and negotiations with the MA/JTS, the JPC and the Programming Task Force as well as individual experts are to be treated confidentially by the State aid expert including possible consortium partners and sub-contractors.

Please note that the breach of confidentiality will be a reason to annul the contract without any compensation. Cut off of the price could be effected due to unjustified delays, late submission of proposals for the State aid rules and/or insufficient quality of the whole process.

### **Payment**

The following payment scheme shall be foreseen:

- Advance payment (20%) after signature of the contract
- Interim payment (40%) upon acceptance of draft State aid rules report by MA/JTS
- Final payment (40%) upon the approval of the final State aid rules by the JPC

### **Copy-right issues**

After the approval of the final State aid rules by the JPC, the ownership rights related to the corresponding documents shall be transferred to the MA/JTS. The document developed by the State Aid expert can be made public (e.g. at the Programme's website) and distributed to stakeholders of the Programme. In the published document, the involved specialists will be clearly mentioned.

## **10.ORGANISATIONAL INFORMATION/FORMAL REQUIREMENTS**

On behalf of the JPC, the MA/JTS of the Baltic Sea Region Programme 2007-2013 opens the call for tender for the State aid rules of the Baltic Sea Region Programme 2014-2020.

### **Tenders shall set out:**

- The expert's name, address, telephone, fax and e-mail address, website
- Legal status of the expert (individual or company)
- Attestations relating to the expert's situation in respect of VAT
- Bank reference
- Curriculum vitae of specialists who will effectively conduct the preparation of the State aid scheme, including their language skills and their respective role
- List of similar relevant experience
- Description of the tasks to be carried out
- The methodology and work plan proposed
- Breakdown of the total price, including at least the following items: rates per day x number of days worked by specialists, material costs, travel costs (indicated separately).

In case the offer is provided by the State aid expert in the name of a consortium, the consortium manager must be clearly identified in the offer as well as the division of tasks and responsibilities between the consortium manager and the members of the



consortium. The contract with Investitionsbank Schleswig-Holstein will only be signed with the consortium manager. The same applies in case of sub-contracting by the State aid expert.

The tenders shall be submitted in electronic and in paper version, which have to be identical and to be submitted by the deadline indicated below. Late offers will not be considered.

The electronic version of the tenders shall be submitted no later than **18 February 2014** (date of sending) to the MA/JTS of the Baltic Sea Region Programme 2007-2013 at the following addresses: [gudrun.dittrich@ib-sh.de](mailto:gudrun.dittrich@ib-sh.de) and [ute.neumann@eu.baltic.net](mailto:ute.neumann@eu.baltic.net). Please use "Proposal for State aid expert" as title of the e-mail.

The original paper version of the tenders, duly signed, stamped and dated, shall be submitted no later than **18 February 2014** (date of the post office counts). The hard copy of the tender shall be sent in a sealed envelope with the reference "State aid rules – Baltic Sea Region Programme 2014-2020" to the following address:

**Baltic Sea Region Programme 2007-2013**

Managing Authority/Joint Technical Secretariat  
Investitionsbank Schleswig-Holstein  
Ms Gudrun Dittrich/Ms Ute Neumann  
Grubenstraße 20  
18055 Rostock  
Germany

All tender documents, reports and presentations must be submitted in English.

If there is a need for clarification or interpretation regarding these Terms of Reference, please contact Ms Ute Neumann, Programme Manager, at the Joint Technical Secretariat via e-mail ([ute.neumann@eu.baltic.net](mailto:ute.neumann@eu.baltic.net), cc: [gudrun.dittrich@ib-sh.de](mailto:gudrun.dittrich@ib-sh.de)).

Investitionsbank Schleswig-Holstein  
MA/JTS of the Baltic Sea Region Programme 2007-2013  
Rostock, 7 January 2014