

STATE AID

State Aid Branch, BIS

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- 3) Dealing with State Aid
- 4) State Aid Modernisation

Role of BIS State aid branch (SAB)

- Overall responsibility for State aid policy and practice in UK (except transport and agriculture rules)
- Single point of contact for all UK Government contacts and DG Competition.

Activities

- Lead/coordinate UK response to State aid policy proposals
- Advice to Government officials on designing policy and aid schemes, assessing and managing State aid risk.
- Advice and support on notifications and notification process
- Coordinate and advise on responses to State aid complaints
- Compile annual UK State aid reports
- Website advice and guidance notes, courses and seminars

How we can help you

- Support you in assessing, understanding and managing State aid risks:
 - What approach has been taken in similar cases?
 - How strong are my arguments? How can I strengthen them?
 - What is involved in the notification process and how can I manage this?
 - What is on the Commission's mind at the moment?
- Build State aid considerations into policy design before it is too late

How you can help us

- **Think State aid EARLY.** Take time and ensure sufficient resource is made available to understand State aid implications and risks of developing policy options are understood.
- Let us know as early as possible if you think you have a notifiable measure.
- Be honest with us about difficulties and uncertainty.
- Refer to advice on our website and work through our enquiry form <http://www.gov.uk/state-aid>

....But what have the State aid rules ever done for us?

- State aid regime stops subsidy bidding wars.
- Aid dependent companies not good for consumers – inefficient.
- Rules allow “good aid” that provides an incentive for activities which support growth in a way that is compatible with a properly functioning market and provide value for money.
- Prevent “bad aid” which is deadweight and distortive.
- Crucial link to growth agenda. Rules and enforcement are needed to deliver key investment projects quickly as well as to ensure fair access to markets. Opportunity as well as a risk to be managed.
- The rules have just been updated and revised!

Why do you need to worry about this?

- Aid given without prior approval from the Commission is illegal.
- If Commission investigate and find aid incompatible with the Treaty you will have to recover with interest – regardless of consequences or difficulty.
- Even if aid is found to be compatible with the Treaty (approvable), interest for the period it was unnotified may still have to be recovered.
- If you get it wrong, it is those you want to help who will suffer the most.
- Political fallout and damage to reputation likely.
- A competitor could take you to Court in UK and seek damages.

What is a State aid?

- Support for organisations which can potentially distort competition
- Article 107 (1) EC Treaty – 4 tests.
- ALL tests must be met:
 - 1) Granted from or through state resources
 - 2) Favouring selected undertakings
 - 3) Which distorts or threatens to distort competition
 - 4) Which affects trade between Member States

Options for dealing with State aid:

Always consider State aid early on!

- Design or adapt to avoid State aid – i.e. ensure one of the 4 tests is not met – with help of BIS State aid branch.
- Comply with De minimis regulation
- Comply with a Block Exemption Regulation
- Use an existing and approved scheme
- Notify to the Commission and seek approval under State aid frameworks and guidelines
- Notify to the Commission and seek approval directly under the treaty – balancing test

De Minimis aid

Commission Regulation 1407/2013

- Aid of up to € 200,000 to one company over a 3 year period.
- All de minimis aid over rolling 3 year period must be cumulated. Aid giver responsible for checking and ensuring that ceiling is not breached.
- Recipient must be told that they are receiving de minimis aid and must declare this if offered de minimis aid in the future.

The General Block Exemption Regulation (GBER)

- Allows you to give aid under a scheme without having to go through the approval process. Aid giver reviews GBER and puts in place processes to ensure compliance.
- Please note incentive effect, record keeping and transparency requirements in particular.
- Inform Commission of your scheme within 20 days via SANI system
- In May 2014, Commission adopted new GBER. New rules in force from July 2014.

http://ec.europa.eu/competition/state_aid/legislation/block.html#gber

State Aid Modernisation: Main Changes

- New guidelines and GBER.
- Simplification and streamlining: more aid block exempt. Common assessment principles for notified aid.
- **BUT increased responsibilities for Member States on monitoring and transparency of aid.**
- **More Commission monitoring of aid given under GBER and approved measures.**
- Prioritisation across HMG cases
- Milestone planning
- More work to be done on improving process (on both sides)

GBER: Main changes from July

- Increased notification thresholds
- Addition of new aid measures and broadening of existing block exemption categories
- Help with interpretation of GBER: Ability to submit questions to Commission via BIS. Will be able to view questions from other MS and response.
- Incentive effect requirements clarified: application form plus additional evidence for large enterprises.

BUT:

- Light touch approval process required for evaluation processes for larger schemes (>£150M)
- Transparency requirements: national public register of individual awards of aid

Types of Aid Permitted Under GBER

- Regional aid
- SME aid
- Access to finance for SMEs
- Environmental protection
- Consultancy and participation in trade fairs for SMEs
- Risk capital
- R&D&I
- Training aid
- Disadvantaged and disabled workers
- **Natural disasters**
- **Social aid for transport for remote regions**
- **Broadband**
- **Culture and heritage**
- **Sport and recreational infrastructure**
- **Investment aid for local infrastructure**

Taking a risk-based approach

- Always a degree of risk involved in making judgements about whether a particular measure complies with the rules.
- **Aid granter responsible for properly assessing this risk.**
- Please ask us. We can help you to consider key factors:
 - How strong are your arguments?
 - What is the risk of complaint or investigation? Bear in mind ERDF audit processes etc.
 - What are the consequences of getting caught out?
 - Will the beneficiary accept risk?

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- Be honest with us about difficulties and uncertainty.
- Refer to advice on our website and work through our enquiry form <http://www.gov.uk/state-aid>
- **Provide us with feedback about difficulties and about guidance materials and training you need**

Regional aid

- Support for investment projects in assisted areas
- Aid can be given for ‘initial investment’ in ‘a’ areas & to SMEs
- Aid can only be given for ‘initial investment in new activities’ to non-SMEs in ‘c’ areas
- Beware the small print!
 - Must be notified if the company is closing down elsewhere in the EU
 - All regional aid to a beneficiary group is added together if in same local authority within three years

RDI – Research, Development and Innovation

- Doubling of thresholds for R&D projects
- New GBER categories for
 - research infrastructure
 - Innovation clusters
 - Process & organisational innovation
- Simplification of support for SME Innovation

NEW: Aid for infrastructure

Commercially exploitable infrastructure = State aid!

- Broadband infrastructure
- Culture & heritage conservation
- Sport & multifunctional recreation infrastructures
- Local infrastructures
 - Must have open access & transparency
 - Some allow preferential access to private investors
 - Aid amount cannot exceed ‘funding gap’

Main changes to aid for access to finance for SMEs

- Block exemption of risk finance measures up to €15m to cover **full development cycle** (and no cap in Guidelines).
- Less prescriptive; concept of equity by destination to embrace wide range of aid instruments.
- More refined approach for **aid to start-ups**, covering loans guarantees and grants. Maximum grants amounts can be doubled for small and innovative enterprises.
- New ability to provide aid for alternative trading platforms, and for scouting costs in relation to risk finance and start-up aid.

Training aid

Aid to support new training projects

- 50% aid intensity for all types of training
- Plus (up to a maximum of 70%),
 - 10% for medium companies;
 - 20% for small companies
 - 10% for disabled & disadvantaged workers
- €2m threshold remains
- Eligible costs remain the same

Environmental aid – principles

- Offset additional costs of reducing pollution (and additional risk?)
- Environmental aid must improve the environmental performance of the beneficiary i.e. not for design and manufacture of green products.
- State aid may only be used to deliver higher levels of environmental protection than those required under EU law.
- Only **extra costs** associated with increased levels of environmental protection are **eligible for aid**. Often calculated by comparison with technically equivalent **counterfactual investment**.

New environmental aid rules: main changes

- Increased notification thresholds (most €15M from €7.5M)
- More types of aid permitted under GBER including:
 - Remediation of contaminated sites
 - District heating (including infrastructure)
 - Energy infrastructure in assisted areas
- Bonuses for projects in assisted areas
- Simplified eligible cost calculation, most based on investment costs
- Guidelines broadened to include:
 - Competitiveness aid for energy intensive industries
 - Energy security and energy infrastructure