



State Aid Law

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Guidance for MHCLG grant Programmes

October 2020

This document is guidance from the Ministry for Housing, Communities and Local Government on State Aid law compliance. Although provided primarily for the benefit of applicants for England's European Regional Development Fund, it should also be a point of guidance for local authorities, councils and regeneration organisations such as local enterprise partnerships delivering MHCLG programmes. The guidance is not a substitute for legal advice and any organisation using the guidance should also refer to the European Commission and Department for Business, Energy and Industrial Strategy online State Aid documents.

Introduction

1. State Aid law is the means by which tax-payer funded subsidies to businesses are regulated. It applies to all public subsidies awarded across the European Union and European Free Trade Area.
2. The aim of State Aid law is to promote effective competition between businesses by ensuring subsidies are targeted towards particular activities, use the minimum amount of tax-payer subsidy required and do not undermine healthy competition between businesses.
3. All grants must be administered and awarded in line with the law. This includes State Aid law. Organisations distributing grant programmes must have systems in place to ensure that proposals are checked prior to making an award and the applicant for the subsidy is given the opportunity to make their own assessment of State Aid compliance.
4. State Aid compliance is subject to regular checks and inspections. When unlawful State Aid is found the value of the unlawful aid will be recovered from the recipient with compound interest applied from the date of the award. Therefore the recovered sum may exceed the original subsidy. An organisation which has awarded unlawful State Aid is likely to also be negatively affected, for example an ERDF Managing Authority which is found to have awarded unlawful State Aid will have to record the finding in its error rate, which can affect the ability to deliver the programme.
5. To ensure the lawfulness of MHCLG grants, every applicant is required to explain at the outset whether their project contains State Aid and, if so, which exemption they will use to make it lawful.
6. Chapter 1 of this guidance explains how to identify whether State Aid is present in a public funding proposal. Chapter 2 provides an overview of the ways to award State Aid lawfully.
7. State aid is a specialist area. Grant applicants commissioning legal advice to assist their grant application should ensure their advisor has

the relevant experience and expertise. Their advice should address all elements of the proposed project and the analysis should withstand expert scrutiny.

8. State Aid compliance is monitored after the award. So during an ERDF project, the recipient will undergo checks reviewing State Aid from one or more of (a) the MHCLG National ESIF Compliance Team (b) the Government Internal Audit Agency (c) the European Commission Audit Services (d) Directorate General Competition and (e) the European Court of Auditors. Therefore recipients of State Aid must maintain detailed records to prove their compliance.
9. The current State Aid rules in relation to European funds will remain in place until the end of 2023 with ongoing conditions as required by the individual state aid approval.
10. The European Commission has adopted a series of flexibilities in relation to State Aid rules in response to the Covid-19 emergency. Information and guidance can be found [here](#).

Chapter 1: Identifying whether State Aid is present

11. Not all public funding is State Aid. Only a measure which satisfies all of the conditions set out in [Article 107\(1\) of the Treaty for the Functioning of the European Union](#) ('TFEU')(set out at Schedule 1) is regarded as State Aid.

12. This chapter sets out a simplified method applicants can use to identify whether their proposal contains State Aid. A more detailed, legally focussed, explanation can be found in the European Commission's "[Notion of State Aid](#)" document.

13. A beneficiary will be considered in receipt of State Aid if it meets all of the tests set out in Steps 2 to 7 below. A beneficiary that fails one or more of the tests will not be in receipt of State Aid.

14. It is unlawful to award State Aid except in accordance with the exemptions set out in Chapter 2. Awarding unlawful State Aid will have a serious impact upon the Managing Authority's error rate (making it possible that the funding programme will be suspended) and is likely to result in the recovery of the aid from the beneficiary with compound interest backdated to the date of the award.

Step 1 – List all the potential beneficiaries of the proposal

15. The first step of the assessment involves making a list of all the organisations which may benefit from the proposed project.

16. The State Aid test needs to be applied to all beneficiaries, whether or not it was the original intention that they would benefit. This will include the organisation receiving the subsidy as well as all of those downstream (for example suppliers, organisations helping deliver the project and those who will take advantage of the subsidised proposal). For example, in an ERDF project to build a facility for small enterprises, the recipients would include the organisation applying for ERDF, the construction company and the small enterprises who occupy the building. Depending on the structure of the

project, some of the grant recipients may be found to be in receipt of State Aid whereas others will not: however it is necessary in all cases to apply the State Aid test to everyone.

17. Having completed Step 1 you should have a list of all potential beneficiaries. It is necessary to apply the State Aid test separately to each beneficiary.

Step 2 – Is there a transfer of State resources?

18. The State Resources are the funds, rights and assets at the state's disposal¹.

19. This means all European Regional Development Fund projects involve the transfer of State Resources because of the State's role as Managing Authority.

20. Public sector bodies, including government departments and local authorities will be considered to represent the Member State. The assets, rights and funds in their control (for instance by way of a contract) will be classed as imputable State Resources.

21. A transfer may occur in "any form whatsoever". Some common forms are listed below but this is not an exhaustive list:

- a. grants;
- b. loans (with interest below the European Commission's [reference rate](#));
- c. purchasing goods, works or services above the market rate;
- d. providing specialist training;
- e. providing consultancy / expert advice;
- f. acting as a guarantor;
- g. writing off a debt; and
- h. selling a publicly owned asset such as land at an undervalue.

¹ Joined cases C-72 and 73/91 Sloman Neptun Schiffarts AG v Seeberiebsrat Bodo Ziesemer, 1993 ECR I-887

Step 3 - Is the transfer to an undertaking?

22. An undertaking is any entity engaged in an economic activity².

23. An economic activity is “*any activity consisting of offering goods and services on a given market*”³.

24. ‘*Offering goods and services*’ occurs when goods or services are made available to users, even if a fee is not actually charged. A market exists when there is competition with at least one other organisation to provide goods or services to customers.

25. It is irrelevant whether the organisation has charitable aims or if profits will be directed towards activities for the public good.

26. Additional care must be taken when applying the undertaking test to public sector organisations. The funding of many public sector activities such as the police, army, air traffic control, maritime safety and primary schools are outside the scope of the State Aid test. However the public sector is capable of acting as an undertaking⁴. This may occur when a public sector body offers goods or services on the commercial market or when they construct infrastructure with a view to subsequently offering goods or services on the commercial market.

27. Further information on this area of State Aid law can be found in the [Leipzig Halle](#) guidance and Chapter 7 of the Commission’s [Notion of State Aid](#) guidance.

28. Individuals are rarely undertakings. However an individual operating as a sole trader will be within the definition of undertaking.

29. In State Aid law the term ‘undertaking’ is used interchangeably with enterprise. There is no material difference: both terms relate to the entire organisation carrying out the business (for example a group of companies).

² C-303/88 Italy v Commission 1991 ECR I-1433

³ C35/96 – Commission v Italy 1998 ECR I-03851

⁴ Italy v Commission, 1991 ECR I-1433

Further detail on this can be found at the [Small and Medium Sized Enterprises Definition User Guide and Model Declaration](#).

Step 4: Does the measure provide an advantage?

30. An advantage means a benefit not obtained under normal market conditions⁵.

31. Therefore an ERDF grant will always be regarded as creating an advantage.

32. Where a public sector organisation is able to demonstrate it is acting in the same way as a Market Operator then no aid will be conferred by the transaction. For example where a public sector organisation offers a loan to a viable business setting the interest rate in line with the European Commission's [proxy reference rate](#) then the facility will be considered to be at market conditions meaning that there is no advantage for the purposes of State Aid law. This is a complex area with detailed case law, therefore expert legal advice should be sought before determining whether the Market Operator principle applies.

33. A compliant public procurement process will usually ensure that the suppliers of goods, works or services do not receive an advantage for the purposes of State Aid because their remuneration is established by the market.

Step 5: Is the advantage selective?

34. An advantage is selective if it is limited to certain beneficiaries. An ERDF grant will always be selective because the transfer is to the specified bank account of the ERDF applicant. Other funding provided alongside the grant may also be selective.

35. An advantage will not be selective when it can be shown it applies equally to all undertakings, for example a tax rebate offered to all

⁵ SFEI and Others, C-39/94, , Spain v Commission, C-342/96

companies in a particular Member State. Indeed, because of the nature of selectivity, almost all case law in this area relates to tax measures.

Step 6: Does the transfer have the potential to distort competition?

36. As Article 107(1) of the TFEU refers to the “potential” to distort competition, there is no requirement to quantify or otherwise demonstrate an actual distortion of competition across the EU. As a result the potential to distort competition will be present whenever the transfer of State resources appears likely to improve the competitive position of the recipient compared to other undertakings in its market.

37. Most public subsidies have the potential to distort competition and the circumstances where the courts have found that they don’t are specific combinations of particular characteristics including serving a highly localised market⁶. A thorough explanation with reference to the case law would need to be provided to rely on this argument.

Step 7: Is trade between Member States affected?

38. The European Court has interpreted Article 107(1) of the TFEU in a way that means even very small amounts of aid are capable of having an effect upon trade between Member States.

39. The Commission is obliged to apply the test in line with the Court’s decision making and paragraph 191 of the [Notion of State Aid](#) reads “*Public support can be considered capable of having an effect on trade between Member States even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in*

⁶ There are some examples at https://ec.europa.eu/commission/presscorner/detail/en/IP_16_3141

other Member States to enter the market by maintaining or increasing local supply”⁷.

40. Although the effect has to be more than hypothetical, the bar is low. As a result there are only a few highly localised and limited situations where a grant applicant has been able to persuade the Court that their proposal would not affect trade between Member States. Some of the previous decisions in this area are listed at paragraphs 197 (a) – (h) of the [Notion of State Aid](#). Further information is also available [here](#).

Conclusion

41. Applicants for public funding should consider State Aid compliance early on in their project design, involving experts where necessary. If steps 2 to 7 apply to a beneficiary then that beneficiary will be in receipt of State Aid; if one or more of them does not apply then there will be no State Aid.
42. Given that the project is likely to be audited, it’s important to be realistic when identifying potential beneficiaries and working through steps 2 to 7. An unrealistic assessment may result in repaying more than the original grant.
43. The responsibility for decision making on State Aid compliance rests with the applicant although MHCLG staff may be able to signpost particular areas of State Aid law or guidance⁸. This is because the funding agreement will require the applicant to give assurances that their project is State Aid compliant and to undertake to meet the costs of recovery of unlawful State Aid.

⁷ *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 67; Judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11

⁸ See also paragraph 8.

44. Every grant recipient is strongly advised to create and retain a record of the State Aid assessment which can be produced in the event of an investigation.

Chapter 2: Lawfully awarding State Aid

44. The process in the previous chapter should allow you to identify all the potential beneficiaries of State Aid in a project and to determine those which are in receipt of State Aid. This chapter gives an overview of ways in which state aid can be given lawfully.

45. An award of State Aid will be unlawful unless:

a. The project is delivered in accordance with the terms of an **exemption** which the European Commission has authorised as compatible with the European internal market; or

b. The project been individually approved by the European Commission through the **notification** process as compatible with the European internal market and is delivered in accordance with the terms of the approval.

46. Where the relevant terms of an exemption are not fully met, the subsidy will have no State Aid cover and therefore be subject to recovery. This means it is in the interests of all parties to understand the relevant requirements at the outset and to put in place appropriate processes to meet these.

47. When considering how to award State Aid lawfully we suggest you consider the options in the following order:

a. is it possible to restructure the project so that the recipient is not receiving a State Aid?

b. could you use one or more of the 46 exemptions set out in the GBER⁹?

⁹ General Block Exemption Regulation 651/2014. Schedule 2 gives a brief summary.

- c. does the measure fit under one of the other regulations?
- d. does the measure meet one of the existing notified schemes?

- e. could the measure be provided under the *De Minimis* Regulation?

- f. could you notify the proposal to the European Commission¹⁰?

Restructuring so that the recipient is not receiving a State Aid

48. Prior to the award of the grant it may be possible to restructure the proposal. Sometimes it is possible that these changes bring one or more recipients outside Article 107(1) of TFEU.

49. As State Aid is present when steps 2 to 7 are met, the process of reorganising involves taking steps to ensure that one or more of those steps is not met (and therefore there is no State Aid) in the new arrangement.

Using the GBER

50. The [General Block Exemption Regulation](#) ("GBER") is a set of 46 State Aid exemptions for lower value and regularly encountered forms of State Aid. These provisions have been extended to the end of 2023.

51. The exemptions can be used with a comparatively low level of bureaucracy and without delay. GBER is now used for a high proportion of awards of State Aid in the European Union.

52. To use the GBER it is necessary to meet all the Common Provisions (set out in Chapter 1 of the GBER, Articles 1 to 11) and the requirements set out in at least one of the 46 Specific Conditions (set out in Chapter 3, Articles 13 to 56c). Where more than one Specific Condition is met,

¹⁰ Notification is a process through which a project or scheme can apply to the European Commission for express approval. In the UK all applications must go through the State Aid Unit at the Department for Business, Energy and Industrial Strategy.

steps should be put in place to segregate the eligible costs in line with the cumulation rules at Article 8 of the GBER).

53. The main common provisions are:

Article 1 – Scope: sets out the categories of aid which may be supported by GBER, conditions which will invalidate awards, sectoral prohibitions and other requirements.

Article 4 – Notification Ceilings: sets out the maximum values which shall apply to GBER awards.

Article 5 – Transparency of aid: explains that aid may only be compliantly awarded where it is possible to identify its value, without the need for a risk assessment.

Article 6 – Incentive Effect: explains that all awards must demonstrate the incentive effect (with the exception of those listed at Article 6(5) which are presumed already to demonstrate this).

Article 8 – Cumulation: explains how to apply more than one exemption to a measure.

Article 9 – Publication and Information: sets out the requirement to publish awards above €500,000 (€1m for tax¹¹).

Article 11 – Reporting¹²: there is an obligation to report a new scheme or ad hoc award of aid under the GBER to the Commission within 20 days and there is also an annual monitoring exercise.

54. Particular care should be taken with the Incentive Effect requirement because it is easy to get wrong and for this reason has been the basis for a disproportionately high percentage of European Court of Auditors' recovery cases. There are seven requirements listed at Article 6(2) (including that the application is in writing) and an applicant should ensure they have submitted all the information before they start any works.

¹¹ The conversion rate for Euro can be found [here](#).

¹² This is actually in Chapter 2 (Monitoring) but is also a mandatory requirement so listed alongside the Common Provisions.

55. An overview of the 46 Specific Conditions is set out at Schedule 2¹³.

However popular GBER exemptions used for MHCLG awards include:

Article 14 - Regional Investment Aid: this encourages investment into areas which are underperforming economically (the [assisted areas map](#));

Article 21 – Risk Finance Aid: enables awards of equity, loans, guarantees and quasi equity through financial instruments;

Article 25 – Aid for Research and Development projects: allows investment in fundamental research, industrial research, experimental development and feasibility studies;

Article 26 – Investment Aid for Research Infrastructures: allows 50% subsidies to build and operate testing centres;

Article 27 – Aid for innovation clusters: construction, upgrade and operation costs;

Article 28 – Innovation Aid for SMEs: allows the provision of innovation advisory and support services.

Article 31 – Training Aid: allows subsidies for courses to upskill employees;

Article 53 – Culture and Heritage Conservation: covers the costs of building, maintaining and improving museums, archives, libraries, artistic centres, theatres, cinemas, opera houses, concert halls and archaeological spaces, subject to a netting off provision; and

Article 56 – Investment Aid for Local Infrastructures: covers subsidies to build and operate infrastructure which contributes at a local level to improving the business and consumer environment and modernising and developing the industrial base.

56. Many of the GBER provisions are concise and self-explanatory. Where there are questions about how the conditions should be interpreted it is recommended that you read the Commission guidance at DG COMP's

¹³ Although, of course, this is only a précis and in order to achieve compliance, it is necessary to read the Article).

GBER FAQ,

https://ec.europa.eu/competition/state_aid/legislation/gber_practical_fa_q_en.pdf refer to the relevant decisions at the [DG Competition website](#) and check the case law at the [Court of Justice website](#).

57. MHCLG has 9 GBER schemes notified for use by ERDF projects (which can be found [here](#)). Unfortunately due to the reporting requirements attached to the schemes, it is not possible for local authorities, Local Enterprise Partnerships, Mayoral Combined Authorities or other public bodies to use these schemes for their own funding. If they wish to use GBER they should obtain the appropriate log in codes from the Department for Business, Energy and Industrial Strategy and set up their own schemes.

Other State Aid exemptions

58. The GBER is not the only set of State Aid exemptions available, although our experience is that others rarely apply to grant programmes such as ERDF.

59. For example, the [Specific Aid instruments legislation](#) is useful where guarantees are used to provide support, but the Export Credit Insurance options are rarely used for MHCLG initiatives. The [Service of General Economic Interest](#) regime is used for some MHCLG initiatives, but is rarely used for grant programmes such as ERDF because this regime applies where the State outsources an activity, whereas the grant programmes involve the organisation applying for support for a particular activity.

Does the measure meet one of the existing notified schemes?

60. The United Kingdom has notified a number of aid schemes which can be found [here](#). If you believe one of these schemes may provide cover for your project, please contact the scheme owner for permission to use the scheme and to understand how you will provide information for the annual report.

Using the *De Minimis* Regulation

61. The *De Minimis* Regulation¹⁴ allows up to €200,000¹⁵ to be provided to an undertaking in a rolling three year period¹⁶, provided certain administrative steps are fulfilled. This exemption will continue until the end of 2023.

62. The undertaking will be required to submit a declaration recording the previous awards of *de minimis* aid (in the previous two fiscal years and the current fiscal year) and declaring that this award will not result in the threshold of €200,000 (€100,000 for undertakings in the road transport sector) being exceeded.

¹⁴ Commission Regulation (EU) 1407/2013

¹⁵ The exchange rate for calculating this is the one applying at the date of the Grant Funding Agreement.

¹⁶ The current fiscal year and the two previous fiscal years of the undertaking.

63. Where the aid is awarded in any other form than a grant, it is necessary to work out the value of the aid. A premium for guarantees can be found [here](#). A proxy for working out the interest on loans can be found [here](#). For in-kind support it is necessary to calculate the gross grant equivalent (the sum which would need to be provided to the beneficiary to purchase the support, or substantially similar support, from a business).
64. An example *de minimis* declaration is set out in Schedule 3 of this guidance. Note that the declaration is made on behalf of the undertaking, not solely the company receiving aid.
65. The organisation awarding the aid must write to the aid recipient confirming that (a) a *de minimis* award of aid was made to them (expressly referring to the gross amount of aid and to Commission Regulation (European Union) No 1407/2013, OJ L352/1) and (b) setting out the value of the aid declared.
66. The *De Minimis* Regulation can be used in many situations but only for a limited amount of aid. For this reason MHCLG policy is to use the *De Minimis* Regulation only when the previous State Aid options have been properly considered.

Conclusion

67. Where an award of public funding constitutes State Aid to a beneficiary, it is necessary to investigate whether there is an available exemption.
68. When applying an exemption, make sure all the terms and conditions are met. Failure to do so will invalidate the State Aid cover.

Schedule 1 - TFEU relevant articles

Article 107

1. Save as otherwise provided in the Treaties, 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.
2. The following shall be compatible with the internal market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.
3. The following may be considered to be compatible with the internal market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely

- affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
 - (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 108

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.
2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.
3. If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.
4. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances.
5. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

6. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.
7. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

Schedule 2 - General Block Exemption Regulation 2014-2020 Summary Table

Aid Measure & State Aid Number	Maximum Aid Intensity for Large Enterprise (%)	Maximum Aid Intensity for Medium and Small enterprises	Notification Threshold (€)
Art 14: Regional Investment Aid SA 39211	Article 107(3)(a) areas (Cornwall & IoS) - maximum of 25% Article 107(3)(c) pre-defined ¹⁷ areas - maximum of 15% Article 107(3)(c) not pre-defined – maximum of 10%	Medium – Art 107(3)(a):35% Art 107(3)(b) pre- defined:25% Art 107(3)(b) not pre-defined:20% Small – Art 107(3)(a): 45% Art 107(3)(b) pre- defined: 35% Art 107(3)(b) not pre-defined: 30%	€100m (note tapering)
Art 15: Regional Operating Aid SA 39211	100%	100%	N/A
Art: 16: Regional Urban Development Fund SA 39211	N/A	70% at fund level	€20m
Art 17: Investment Aid to SMEs SA 39064	N/A	10% ME 20% SE	€7.5m per undertaking per investment project

¹⁷ Those which were 'a' regions in 2011-2013 or are sparsely populated, as defined in para 158 of Regional Aid Guidelines 2014-2020

Art 18: Aid for consultancy in favour of SMEs SA 39064	N/A	50%	€2m per undertaking per project
Art 19: Aid for SMEs to participate in fairs SA 39064	N/A	50%	€2m per undertaking per year
Art 20: Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation Projects SA 39064	N/A	50%	€2m per undertaking per project
Art 21: Risk Finance Aid SA 39065	N/A	40 – 90% (subject to form of investment)	€15m
Art 22: Aid for Start Ups SA 39065	N/A	Aid not provided on an aid intensity basis	As laid out in Article 22(3), (4) and (5)
Art 23: Aid for alternative trading platforms specialised in SMEs SA 39065	N/A	Aid not provided on an aid intensity basis	N/A
Art 24: Aid for scouting costs SA 39065	N/A	50%	N/A
Art 25: Aid for research and development projects SA 39161	100% for fundamental research 50% for industrial research (max 80% with	+10% ME +20% SE + Conditional bonus 15%	€40m for fundamental research per undertaking, per project €20m for industrial research

	additional %s) 25% for experimental development 50% for feasibility studies		per undertaking, per project €15m if experimental development per undertaking, per project €7.5m feasibility studies per study
Art 26: Investment aid for research infrastructures SA 39161	50%	50%	€20m per infrastructure
Art 27: Aid for innovation clusters SA 39161	50% + Assisted area uplift	50% + Assisted area uplift	€7.5m per cluster
Art 28: Innovation aid for SMEs SA 39161	N/A	50%	€5m per undertaking, per project
Art 29: Aid for process and organisational innovation SA 39161	15%	50%	€7.5m per undertaking, per project
Art 30: Aid for research and development in the fishery and aquaculture sector SA 39161	100%	100%	N/A
Art 31: Training Aid SA 39061	50% + 10% Disabilities/Disadvantaged Workers	+10% ME +20% SE + 10% Disabilities/Disadvantaged Workers	€2m per training project

Art 32: Aid for the recruitment of disadvantaged workers in the form of wage subsidies 39062	50%	50%	€5m per undertaking, per year
Art 33: Aid for the employment of workers with disabilities in the form of wage subsidies SA 39062	75%	75%	€10m per undertaking, per year
Art 34: Aid for compensating the additional costs of employing workers with disabilities SA 39062	100%	100%	€10m per undertaking, per year
Art 35: Aid for compensating the costs of assistance provided to disadvantaged workers SA 39062	50%	50%	€5m per undertaking, per year
Art 36: Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards	40% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€15m per undertaking, per investment project

SA 39316			
Art 37: Investment aid for adaptation to future Union standards SA 39316	5-10% + Assisted area uplift	10-15% ME 15-20% SE + Assisted area uplift	€15m per undertaking, per investment project
Art 38: Investment aid for energy efficiency measures SA 39316	30% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€10m
Art 39: Investment aid for energy efficiency projects in buildings SA 39316	70% at fund level	70% at fund level	€10m
Art 40: Investment aid for high-efficiency cogeneration SA 39316	45% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€15m per undertaking, per investment project
Art 41: Investment aid for the promotion of energy from renewable sources SA 39316	30 – 45% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€15m per undertaking, per investment project
Art 42: Operating aid for the promotion of electricity from renewable sources SA 39316	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	€15m per undertaking, per project
Art 43: Operating aid for the promotion of energy from renewable sources in small scale	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	€15m per undertaking, per project

installations SA 39316			
Art 44: Aid in the form of reductions in environmental taxes	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	N/A
Art 45: Investment aid for the remediation of contaminated sites SA 39316	100%	100%	€20m per undertaking, per investment project
Art 46: Investment aid for energy efficient district heating and cooling SA 39316	45% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€20m per undertaking, per investment project
Art 47: Investment in waste recycling and re-utilisation SA 39316	35% + Assisted area uplift	+10% ME +20% SE + Assisted area uplift	€15m per undertaking, per investment project
Art 48: Investment aid for energy infrastructure SA 39316	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	€50m per undertaking, per investment project
Art 49: Aid for environmental studies SA 39316	50%	+10% ME +20% SE	N/A
Art 50: Aid schemes to make good the damage caused by certain natural disasters	100%	100%	N/A
Art 52: Aid for broadband	Aid not provided on an aid intensity	Aid not provided on an aid intensity	€70m total costs per project

infrastructures	basis	basis	
Art 53: Aid for culture and heritage conservation SA 39066	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	Investment aid €100m per project Operating aid €50m per undertaking, per year
Art 54: Aid schemes for audio-visual works SA 39066	60% cross border 100% difficult audio visual works	60% cross border 100% difficult audio visual works	€50m per scheme, per year
Art 55: Aid for sport and multifunctional recreational infrastructures	For aid under €1m the aid intensity is 80%.	For aid under €1m the aid intensity is 80%.	Investment aid €15m or total costs exceeding €50m per project Operating aid €2m per infrastructure per year
Art 56: Investment aid for local infrastructures SA 39063	Aid not provided on an aid intensity basis	Aid not provided on an aid intensity basis	€10m or total costs exceeding €20m for the same infrastructure
<i>This table summarises some of the main points of the General Block Exemption Regulation 2014-2020, but does not provide all the relevant detail. Any organisation seeking to award or receive aid under the General Block Exemption Regulation 2014-2020 should read the relevant regulations.</i>			

Many of the State Aid schemes apply different aid levels based upon the size of the recipient enterprise. Enterprise is defined at Annex 1 of the General Block Exemption Regulation as “any entity engaged in an economic activity irrespective of its legal form”.

This definition encapsulates all forms of business from self-employed persons to multinational companies. Particular care should be taken by each applicant to provide accurate data establishing its status, and the effect of consolidation of accounts if the enterprise is part of a group. Under State Aid law, ‘enterprise’ - like ‘undertaking’ - applies to the entire business. A company in a larger business group should be seen in context so that the

enterprise is the business group. The table below contains the main information to determine the status of an enterprise.

Enterprise category	Headcount	Turnover	or	Balance sheet total
medium-sized	< 250	≤ € 50 million		≤ € 43 million
Small	< 50	≤ € 10 million		≤ € 10 million
Micro	< 10	≤ € 2 million		≤ € 2 million

Where a practitioner has any questions about an enterprise they should refer to the [European Commission user guide](#). This guide contains a pro-forma assessment form which can be used when establishing the category of enterprise. If they have further questions they should speak to their legal department or compliance unit.

Schedule 3 - *De Minimis* Form

This form can be used to determine the value of any relevant aid previously received by a potential beneficiary, in order to ascertain whether there is scope to provide further aid under the *de minimis* exemption.

Dear []

[SCHEME TITLE (IF APPLICABLE)] - STATE AID: *DE MINIMIS* AID

The support we plan to provide will comply with the State Aid rules using the *de minimis* exemption (in accordance with Commission Regulation (EU) No 1407/2013, OJ L 352/1). Under this exemption a single undertaking may receive up to the limit of €200,000 of De Minimis aid from the Member State within which it does business and which provides the aid over any period of three fiscal years.

Please complete the Statement of Previous Aid received under the De Minimis exemption and arrange for a director of your business to sign it. Using this information we will assess your eligibility to receive assistance.

The value of the aid under this initiative is £[] which at the current European conversion rate is €[]. You may need to declare this amount in the future.

Yours faithfully

[]

Statement of Previous Aid Received Under the *De Minimis* Exemption

I acknowledge receipt of notification from the [xxxx] that it intends to grant *de minimis* aid to [NAME OF UNDERTAKING].

I confirm that the financial year of [NAME OF UNDERTAKING] runs from to.....

I further confirm that [NAME OF UNDERTAKING] has received the following *de minimis* aid during this financial year [INSERT RELEVANT DATES] and the previous two fiscal years (ie [INSERT RELEVANT DATES]):

Organisation providing the assistance/aid	Value of assistance	Date of assistance	Nature of assistance

I warrant that [Name of undertaking] can receive this award in line with the *de minimis* award.

I warrant that I am authorised to sign on behalf of [NAME OF UNDERTAKING] and I confirm that I understand the requirements of *De Minimis* (Commission Regulation (EU) No. 1407/2013). I acknowledge that if [NAME OF UNDERTAKING] fails to meet the eligibility requirements, [NAME OF UNDERTAKING] may become liable to repay the full value of the assistance provided.

The information set out above is accurate for the purposes of the *de minimis* exemption.

SIGNATURE:

NAME:

BUSINESS:

POSITION:

DATE:

Follow up Letter

Dear []

[SCHEME TITLE (IF APPLICABLE)]

STATE AID: *DE MINIMIS* AID

Further to our letter of [Date] we are pleased to confirm that, being satisfied that the amount of aid we intended to give to [Name of Undertaking] would not, taking into account any aid provided during the relevant period of three fiscal years, exceed the limit of EUR 200,000 specified in Article 3 of the *De Minimis* Regulation (Commission Regulation (EU) No 1407/2013), [Name of Undertaking] received assistance to the value of £[] which at the European conversion rate on the date of the award was €[] under [Scheme Title].

This was provided as *de minimis* Aid under EC Regulation 1407/2013

A copy of the declaration which is dated [Date] is attached. You will need to keep this information as your business may need to provide it in the event that your business applies for any funding which uses the *de minimis* exemption to comply with the State Aid rules.

Yours faithfully

[]

Schedule 4 - Useful State Aid Links

Department of Business, Energy and Industrial Strategy, State Aid Unit

<https://www.gov.uk/guidance/state-aid>

(beware that not all the guidance is fully up to date – click on the list of updates to be sure of accessing the right materials)

European Commission Competition Pages

https://ec.europa.eu/competition/state_aid/overview/index_en.html

State Aid Cases

https://ec.europa.eu/competition/state_aid/register/

State Aid News

https://ec.europa.eu/competition/state_aid/newsletter/index.html

State Aid Cases Search Engine

<https://ec.europa.eu/competition/eljade/isef/index.cfm>

State Aid: What is possible under the European Union Rules?

<https://ec.europa.eu/dorie/fileDownload.do;jsessionId=tYGIi-BU89dBqoiwU2BX87PMI0dnSIVCpjQyooAFqXicBxcUFdoP!-83065915?docId=869911&cardId=869910>

State Aid: Frequently Asked Questions concerning the European Union rules

https://ec.europa.eu/commission/presscorner/detail/en/MEMO_08_660

European Commission Conversion Rate

https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en

European Commission Loan Reference and Discount Rate

http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html

DEFRA, State Aid branch

<https://www.gov.uk/guidance/state-aid-for-agriculture-and-fisheries>

The General Block Exemption Regulation and related legislation

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

ERDF State Aid Law Guidance
ESIF-GN-1-006, Version 4
Date published 20 October 2020

The *De Minimis* Regulations

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1595955131644&uri=CELEX:32013R1407>