European Union
European
Social Fund

European Social Fund 2014-2020 - Guidance on State Aid

February 2017

This document contains guidance on handling State Aid issues in projects involving European Union funds. The information contained within this document does not constitute legal advice. The Department for Work and Pensions does not accept any liability with regard to the use of the contents of this document. Links to Department of Business, Energy and Industrial Strategy (the Department with responsibility for State Aid policy within Whitehall) and to relevant European Union publications are provided at appropriate places in the text.

1. Introduction

1.1 State Aid rules aim to ensure fair competition and a single common market. Giving favoured treatment to some businesses would:

- harm business competitors;
- risk distorting the normal competitive market; and
- hinder the long-term competitiveness of the Community.

1.2 The European Community founding Treaty generally forbids State-funded aid that would favour certain businesses or goods production. The State Aid rules contribute to the effective functioning of the Single Market and European Union economic reform in two key ways:

- They prevent State Aid that would seriously distort competition - thereby helping to achieve a fair market for businesses in all Member States; and
- They allow State Aid that promotes economic development and other legitimate policy objectives, where this benefit outweighs any distortion of competition.

1.3 State Aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union.

2. De Minimis Regulation

2.1 By way of an exemption to the general prohibition on state aid, the de minimis Regulation (Regulation (EU) No 1407/2013) enables an enterprise to receive up to €200,000 euros in aid (any public resources including European Social Fund) over three fiscal years. Providing such aid is given within the de minimis rules there is no requirement to notify it to the Commission.

2.2 To ensure that the requirements of the de minimis regulation are met, scheme administrators must ensure that any award of European Social Fund and other public match funding to an enterprise given under the terms of the de minimis block exemption does not breach the €200,000 (approximately £178,000 at € = 89p exchange rate) ceiling over three fiscal years. The Managing Authority requires the aided enterprise to keep detailed records of any de minimis aid received for 10 years. Checks will be made at initial verification meetings that organisations are aware of these rules.

2.3 Organisations using the de minimis rules must put in place a monitoring system to ensure the limit is not breached. Typically, such a monitoring system will involve:

- asking enterprises receiving support under their scheme to identify all other sources of support (either in cash or in kind) that they have received in the last three years;
- checking if previous de minimis aid is involved, to ensure that the combined assistance does not exceed €200,000 over any three-year rolling period. If the limit is breached, the aid may have to be reduced or refused to ensure the limit is not breached.

2.4 The Department for Business, Energy and Industrial Strategy (formerly Business Innovation and Skills) State Aid branch advises writing to each recipient in the following terms:

"The assistance for […] constitutes State Aid as defined under Articles 107 and 108 of the Treaty on the Functioning of the European Union of Rome and is being granted as 'de minimis' aid under Commission Regulation (EU) No 1407/2013. European Commission rules prohibit any undertaking from receiving more than €200,000 euros (approximately £147,000) 'de minimis' aid over a rolling three-year period. Any 'de minimis' aid granted over the €200,000 limit may be subject to repayment with interest. If you have received any 'de minimis' aid over the last three years (from any source) you should inform us immediately with details of the dates and amounts of aid received. Furthermore, information on this aid must be supplied to any other public authority or agency asking for information on 'de minimis' aid for the next three years."

2.5 Whilst de minimis rules are straightforward in principle they are difficult and complex to operate in practice because they are not project related and as such rely on individual enterprises being able to identify how much aid and under which schemes they have received support over a rolling three-year period. Where enterprises have exhausted their aid ceilings under de minimis, there is no capacity for further aid through European Social Fund. The European Social Fund project granting the aid must follow up with the aided enterprise once the assistance is finished to confirm the amount of aid received.

3. General Block Exemption Regulation (GBER)

3.1 The European Social Fund Managing Authority has now notified the European Commission that the General Block Exemption Regulation (GBER) is available for European Social Fund applicants to use if appropriate.

3.2 European Social Fund applicants are reminded that Aid to individuals does not constitute State Aid. This excludes therefore nearly all Priority Axis 1 interventions. Aid to public and not-for-profit organisations, such as voluntary, charitable and cultural bodies, are not affected by State Aid rules where they are not engaged in an “economic activity”. “Economic activity” means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.

3.3 For most of the 2014 -2020 European Social Fund programme the European Social Fund and public match funding provided to providers in Priority Axis 2 may not constitute State Aid because all aid “flows through” to individuals and is not retained by the provider - this means that the test for aid is not met as there is no benefit to the intermediary. It is for the provider to be able to show that there is genuinely no benefit. However for those elements of the programme in Priority Axis 2 which provide support to individuals in employment there may be State Aid implications because their employers are receiving support towards the costs of training. Where European Social Fund supports individuals in employment to achieve full or part qualifications this may constitute an aid and so consideration should be given to the application of any exemptions. Likewise in Priority 1 interventions where a small and medium enterprise (SME) is paying the salary/wage costs for individuals undertaking work placements for them then there may be an aid. Prospective applicants may wish to take legal advice on these areas.

4. Groups not included

4.1 State Aid branch in the Department for Business, Energy and Industrial Strategy has concluded that the following should not be treated as giving a State Aid when delivered in the workplace:

- Full funding for literacy and numeracy at all levels
- Shared investment (employer and public funding) for English for Speakers of Other Languages (ESOL) at all levels
- Full funding for all Apprenticeships (including Advanced) delivered to 16-18 year olds
- Co-funding for Apprenticeships
- Co-funding for first Advanced Apprenticeships
- Full funding for first Level 2
- Full funding for Level 3 jumpers (people who miss out level 2)

- Full funding for first full level 3 for 19-25 year olds.

5. What the GBER covers in ESF

5.1 The GBER notification covers:

- Training Aid (Article 31 of the GBER);
- Aid for disadvantaged workers and workers with disabilities (Articles 32 to 35 of the GBER)

5.2 The notification is available to European Social Fund applicants from **1 March 2016**. This means that any European Social Fund activity that took place before that date cannot be covered by the GBER as the regulation is clear that the intention is that it has an 'incentive' effect in changing behaviours in beneficiaries.

5.3 State Aid is a very complex area and any European Social Fund applicant who is considering using either of the State Aid regulations for their project **must** read the Guidance on State Aid law and how it is applied to Structural Funds.

5.4 It contains copies of both the 'De Minimis' regulation and the GBER. It also contains many helpful hyperlinks including the very useful Department for Business, Energy and Industrial Strategy and Skills guidance and details of the aid intensity thresholds that are fundamental to the operation of the GBER.

5.5 The difference between the two available regulations may be stated simply – The 'de minimis' regulation is a financial ceiling (€200,000 in aid in a rolling three year period) with applicants being required to provide declarations confirming the amount of 'de minimis' aid received. The GBER is not a financial ceiling regulation – it is rather based on a funding percentage or aid intensity. Applicants should refer to Schedule 2 of the guidance for details of the allowable intensities for the activities permitted under the European Social Fund GBER notification. Essentially what this means is – if the allowable intensity is 50% then the enterprise must provide the other 50% of funding and this cannot be supported by European Social Fund.

5.6 European Commission rules require the Managing Authority to submit an annual report on the GBER. Applicants should tell us how much they have committed under each of the notified schemes quarterly as part of their claim. Aid is deemed to be granted when the legal obligation is put in place. So even if an applicant spends £0, they should still provide a quarterly report.

5.7 State Aid rules allow organisations to combine both de minimis and GBER.