



Department
for Business
Innovation & Skills

State Aid: The Basics Guide

JULY 2015

Withdrawn

This publication was withdrawn on 1 January 2021.

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State aid: The Basics

Purpose of the guide

This State aid basics guide is intended to assist public sector officials understand the basic State aid concepts and rules. Some of the material has previously been published separately and has been revised and updated in this document.

Figure 1: Are you planning to give money to an organisation that does anything commercial?

 Are you planning to give money to an organisation that does anything commercial? For example:		
Are you creating a fund to give loans where the banks do not?	Are you planning to set up a scheme or body to give financial assistance?	Are you setting up a publicly funded body?
Are you setting up a scheme to stimulate growth in a target sector or region?	Are you providing incentives to companies to help drive down costs to the consumer?	Are you building pay-to-use infrastructure?

These are just some examples of when State aid rules might apply. This guide will help you to decide whether you are in state aid territory, and what to do next.

Introduction

State aid can occur whenever state resources are used to provide assistance that gives organisations an advantage over others. It can distort competition, which is harmful to consumers and companies in the EU. Where there is a genuine market failure, State aid might be necessary and justified. In general, aid that really changes the behaviour of the organisation that receives it, which is the best way to address the failure and limit distortions, and where the benefits outweigh any negative effects on competition, is approvable.

The UK and EU support strong State aid rules to ensure aid is well targeted to address market failures and avoid negative effects on competition. With strong rules, those who receive advantages from the state won't become overly reliant on aid and will remain incentivised to innovate or make efficiencies. New market entrants are encouraged and weak companies are less likely to stay in the market. Ultimately, it's a better deal for consumers.

State aid rules promote a level playing field and ensure we invest well. Navigating them takes time and resource, but it also helps policy-makers ensure value for money and avoid unwanted effects. This guide has 3 steps to help you answer the 3 basic questions all policy-makers need to ask:

Step 1: Is it state aid?

Step 2: What do I do if it might be state aid?

Step 3: How can state aid be granted legally?

While reading, remember:

- A scheme can be state aid even if it is designed to benefit society.
- If your policy includes state aid, it doesn't necessarily mean you can't do it; it does mean you will need to devote time and resource to ensuring it is legal.
- There are people across government who are experienced in working with state aid and can give advice.
- Please get in touch with BIS State aid Team as soon as possible if you believe you have a notifiable aid measure.

Step 1: Is it State aid?

If your answer to all four of the following questions is “yes”, your assistance is almost certainly State aid. If some of your answers are “no” or if you are unsure, seek advice. See also Figure 1.

1. Is the assistance granted by the state or through state resources?

- “Granted by the State” means by any public or private body controlled by the state (which, in the UK, means national or local Government).
- “State resources” is broad: any measure with an impact on the state budget or where the state has significant control are included, for example, tax exemptions, Lottery funding and the EU structural Funds.

2. Does the assistance give an advantage to one or more undertakings over others?

- An “undertaking” is any organisation engaged in economic activity.
 - This is about activity rather than legal form, so non-profit organisations, charities and public bodies can all be undertakings, depending on the activities they are involved in.
 - An undertaking can also include operators and ‘middlemen’ if they benefit from the funding
- “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.

- Support to an organisation engaged in a non-economic activity isn't State aid, e.g. support to individuals through the social security system is not state aid.
- An "advantage" can take many forms: not just a grant, loan or tax break, but also use of a state asset for free or at less than market price. Essentially, it is something an undertaking could not get in the normal course of business.

3. Does the assistance distort or have the potential to distort competition?

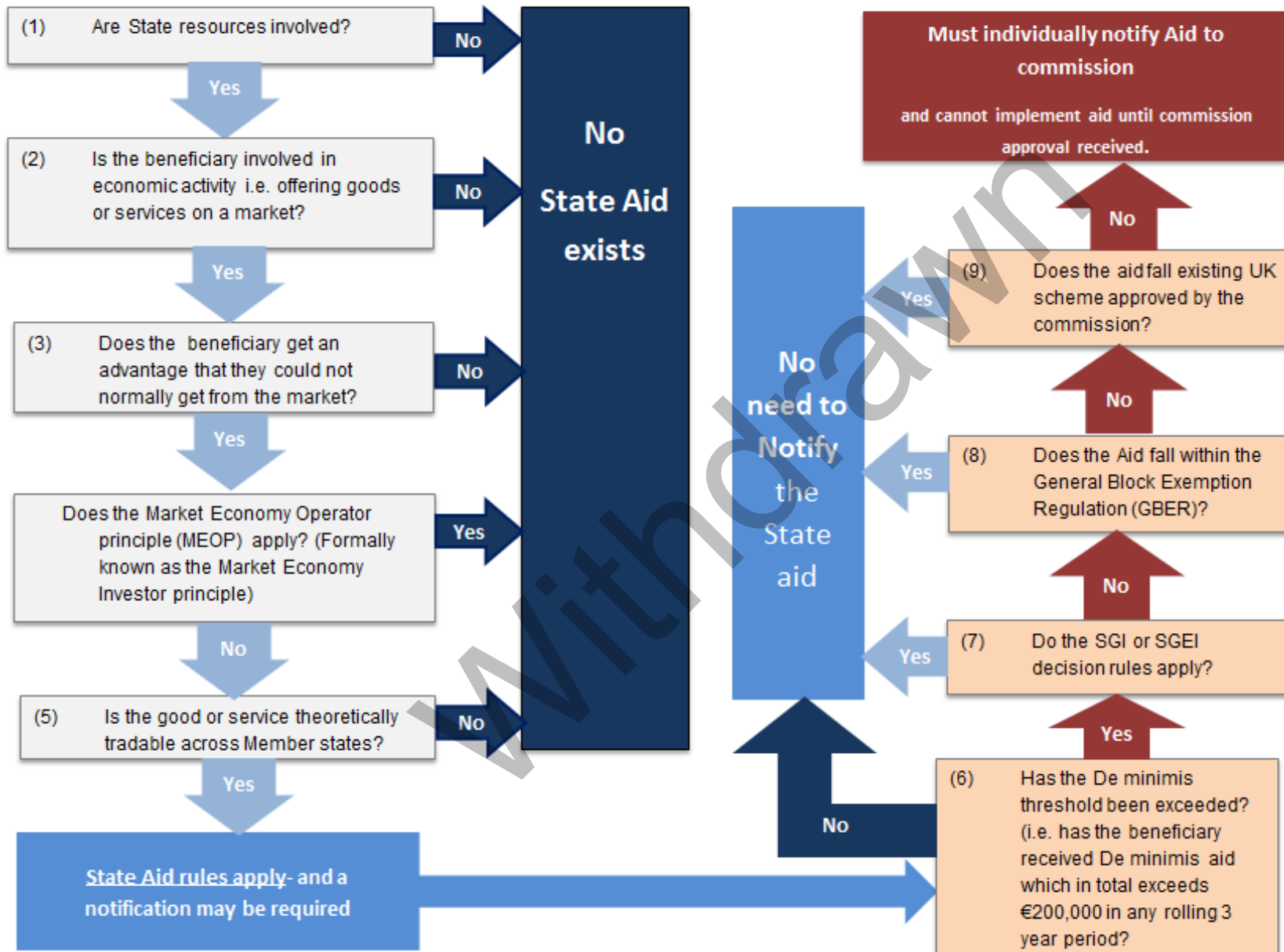
- If the assistance strengthens the recipient relative to its competitors then the answer is likely to be "yes".
- The "potential to distort competition" does not have to be substantial or significant: may include relatively small amounts of financial support to firms with modest market share.

4. Does the assistance affect trade between Member States

The interpretation of this is broad: it is enough that a product or service is tradable between Member States, even if the recipient does not itself export to other EU Markets.

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Figure 2- State aid flow chart:



Step 2: What do I do if it might be State aid?

1. If you can, redesign it so that it isn't!

Complying with the State aid rules can add time to your project and mean that you are limited in the size of award you can make. Can you use other mechanisms such as public procurement to achieve your goal?

2. If you can't avoid State aid, take 'a well-trodden path'

Use one of the approved mechanisms set up to allow State aid in particular circumstances. Introductory information about this is given below and the detail is in the State Aid Manual. Keeping it simple can save you 2 years compared to taking a novel approach.

3. Always think "State aid" early

Giving State aid will nearly always be more time consuming and difficult than designing assistance in a way that means it is not State aid. However the focus in UK policy-making is often on being innovative in the way policies are delivered. This can mean there is no "well-trodden path". Thinking about the State aid rules early on will help minimise delays to the project. Most importantly, check your project complies with State aid rules before you pay any money out. This protects you from the worst case scenario: having to suspend your policy measure and claw back money from your recipients because it was paid before the necessary approvals were obtained.

While working through State aid issues for immediate projects, please also think about your team's pipeline of work: is there anything else in the next year or longer term that is going to need approval?

4. Don't ignore it

A scheme that does not follow the rules could be forced to close, even after it is launched. Giving State aid illegally could result in the money having to be clawed back with possibly very serious consequences for the recipient.

5. Seek advice

State aid can be complicated, it is important to seek advice from the right bodies and early to help avoid problems and save time in the future.

Any public body developing a policy measure that could affect people operating in a market is responsible for considering state aid implications and ensuring compliance with the rules.

This guide gives an introduction, but will not in itself be enough to help you navigate State aid rules. The **State Aid Manual** and the EU Commission website¹ provide further detail. They describe all available mechanisms for giving State aid legally, and how to use them.

¹ http://ec.europa.eu/competition/state_aid/overview/index_en.html

However, you should always consult the original EU legislation you are relying on to satisfy yourself that you are in compliance with these.

Public bodies can seek advice from specialist teams in relevant Government Departments, Devolved Administrations or the BIS State Aid team. Contact details are included at page 10. If you are in any doubt about whether your assistance will comply with the rules, seek advice as early as possible.

Private sector organisations and individuals should seek independent legal advice

Step 3: How can state aid be granted legally?

Where there is a genuine market failure, state aid might be necessary, justified, and compatible with EU rules. Generally, the Commission bases approvals on whether aid is:

- The minimum necessary to remedy the failure (proportionate)
- Really changing the behaviour of the organisation that receives it (incentive effect)
- The best way to address the failure (appropriate)
- Beneficial enough to outweigh any negative effects on competition (balancing test)

The Commission's experience has led it to develop regulations and guidelines setting out common ways of meeting these tests. These approved mechanisms make it quicker and easier to implement schemes, and reduce the need for the Commission to consider every case individually. So State aid can be given legally in two ways:

- by complying with one of a set of approved EU mechanisms for state aid; or
- by seeking approval for the particular scheme from the EU Commission on the basis that it meets the above tests.

The State aid approval process is resource intensive and involves risk to delivery of projects and policies. Therefore you should always seek to deliver state aid under an existing scheme, the De minimis regulation or block exemption regulation in the first instance. If you think that you may have a notifiable aid measure please speak to the BIS State aid team as soon as possible about this so we can advise on risk and process.

De minimis

A useful approved EU mechanism for State aid is the *de minimis* regulation, based on the Commission's view that small amounts of aid are unlikely to distort competition.

The De Minimis Regulation allows small amounts of aid – less than €200,000 over 3 rolling years – to be given to an undertaking for a wide range of purposes.

If you use this mechanism, you don't need to notify or get approval, but records of aid granted must be kept and all the rules of the *de minimis* regulation must be followed. The State Aid Manual gives more detail and standard text for communications.

The General Block Exemption Regulation (GBER)

The GBER is a useful mechanism. It provides a simple way of providing assistance for a range of aid measures considered not to unduly distort competition.

If you use this mechanism, you don't need prior approval, but you must notify the Commission using the online system (SANI) within 20 working days of giving the aid. The managing authority will need to inform the BIS State aid team to be able to use SANI.

The Regulation authorises aid in favour of the following activities. Those marked in red are new categories of aid which were not in the previous GBER and would previously have required Commission approval.

- Regional aid;
- aid to SMEs in the form of investment aid, operating aid and SMEs' access to finance;
- aid for environmental protection;
- aid for research & development & innovation;
- training aid;
- recruitment and employment aid for disadvantaged workers and workers with disabilities;
- aid to make good the damage caused by certain natural disasters;
- social aid for transport for residents for remote regions;
- aid for broadband infrastructures;
- aid for culture and heritage conservation;
- aid for sport and multifunctional recreational infrastructures; and
- aid for local infrastructure.

It is important to meet the terms and maximum aid amounts set out in the regulation. Please see the State aid Manual- Chapter 5.

Other mechanisms

1. For aid in excess and outside of GBER and de minimis, the EC Treaty provides other ways for Member States to grant state aid legally where it helps market or equity objectives that the market would otherwise fail to deliver. These objectives include promotion of Research, Development & Innovation, Environmental Protection, access to venture capital, access to broadband, investment in SMEs and support for public services – such as rural transport and social housing. The Commission has put in place guidelines and frameworks setting out what they consider to be permissible.
2. If you use these mechanisms, aid must be given within the parameters of the relevant guidelines and frameworks set out by the Commission, and must be notified and approved by the Commission before it can be given. A standard notification takes at least 9-12 months to be approved. Notifications that present new issues, are contentious or do not fall under existing guidelines usually take longer, especially if a formal investigation is needed.
3. Further information is in the State aid Manual and you should seek advice from State aid Team as soon as possible if you want to use one of these mechanisms.

Export aid & Operating aid

1. Aid for “export-related activities” is not allowed (including under the de minimis regulation), in particular assistance which is linked to exported quantities,

assistance to establish or operate a distribution network, and other current expenditure linked to exporting, but you can support attendance at trade fairs.

2. In general, operating aid is not allowed except under the de minimis regulation or exceptional circumstances. “Operating aid” means aid to cover costs which a company could expect to pay in the normal course of business, such as rates, rent and utilities bills. If you are planning to give this kind of assistance, seek advice at an early stage.

Taking a risk-based approach to state aid

1. Policy-makers need to understand and manage the risks state aid might pose to their projects. The impact of any un-notified measure being later found incompatible by the Commission is fairly uniform – removal of the scheme and possible recovery of aid already given. However, this does not mean all potential State aid measures should be handled in the same way.
2. The credibility of the argument that a measure is not aid will depend on how much supporting precedent there is from other cases, and how consistent the argument is with the Commission’s State aid policy as set out in its communications. More guidance is available in the State aid Manual, but please **seek advice**: do not attempt to take a risk-based approach alone.

Further help

1. Public funders should study the following guidance, ideally at an early stage in developing the assistance, and then seek advice if they are in doubt:
 - The State aid Manual: <https://www.gov.uk/state-aid>
 - FAQs: <https://www.gov.uk/state-aid>
 - Commission website: ec.europa.eu/competition/state_aid/overview/index_en.html
2. Specialist State aid teams can advise on the process and comment on documents, but will have to prioritise and won't be able to hand-hold every case. There is a self-assessment form on the BIS State aid website that will help structure the information the teams will need in order to provide advice.
3. Tailored advice can usually only be given to public bodies. Private sector organisations, individuals or other recipients should seek independent legal advice.

Contacts

For advice on state aid in the transport sector, contact the DfT state aid team: Stateaid-Transport@dft.gsi.gov.uk

For advice on state aid in the agriculture, fisheries and aquaculture sectors, contact the DEFRA State aid team: gov.uk/state-aid-for-agriculture-and-fisheries#contact-your-local-state-aid-expert For advice on State aid in other sectors, contact the BIS State aid team: sapu@bis.gsi.gov.uk

Devolved Administrations

Northern Ireland State aid team: stateaid@detini.gov.uk

Scotland State aid team: <http://www.scotland.gov.uk/Topics/Government/State-Aid/SAU/contacts>

Wales State aid team: <http://wales.gov.uk/topics/businessandconomy/stateaid/?lang=en>

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BIS/15/417