

## European Structural Funds – State Aid Guide for Funding Bodies.

This note is to provide guidance on State aid for the bodies who will be the lead partners in managing strategic interventions – especially those who are recommending awards of SF money to the Delivery Agents who will be implementing projects. It is also useful for operational applicants who plan to run challenge funds, or give out subsequent grants or loans. The advice is non-exhaustive and it is the responsibility of each LP and Operational Applicant/Delivery Agent to ensure that the State aid position is reflected in assessment paperwork and any subsequent award of grant does not exceed what is permissible. There are two Annexes with this Guide:

**Annex A** explains the four State aid tests and how they should be applied with respect to SF cases, as well as explaining the roles & responsibilities of aid givers when making awards using GBER or De Minimis.

**Annex B** is a template which should be completed by the aid giver and accompany every individual award to demonstrate that the tests have been applied and the funding awarded appropriately. This should be kept for your records and easily accessible for Structural Funds staff for audit purposes.

### Background

State aid is an EC term which refers to forms of public assistance, given to undertakings on a discretionary basis, which have the potential to distort competition and affect trade between Member States of the EU.

Under the Structural Funds Programmes (SF's), there may be State aid present in awards made by public authorities to the Lead Partners (LP's) or in subsequent awards made to Delivery Agents/Final Recipients. **Where this is the case, these awards must comply with EC State aid rules and the lead partners/funding bodies must ensure that robust processes are in place to ensure compliance.** The EC has placed an increasing burden on public authorities and approved funding bodies to ensure State aid compliance, as well as compliance in other areas such as procurement. **The funding body is therefore responsible for assessing the likely presence of State aid in any award.**

### Is the beneficiary an undertaking?

The first step in assessing whether State aid is present is to determine whether the beneficiary of any award is an 'undertaking'. An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic activity (placing goods/services on a market where there is a market in comparable goods or services). Organisations such as universities/colleges will be regarded as undertakings where they use public funds to engage in activity beyond their public remit. Third sector organisations/charities will also be regarded as undertakings where they engage in any commercial activity.

If you are satisfied that the beneficiary is not an undertaking there is no need to assess the measure for State aid. **However if you believe the beneficiary may be an undertaking, you must assess for the presence of State aid and if necessary ensure the award is made in compliance with the EC's rules (see Annex A).**

### State aid at different 'levels'

There may be State aid at different levels of an SF project. State aid therefore needs to be considered from the level of the initial grant recipient (LP) through to the level of the Delivery Agents and Final Recipients. It is important to note at this point that the European Court has sole competence on the presence of State aid. In practice this means that if we decide, on balance, that there is no State aid present in any measure, a small risk that competitors of the beneficiary could complain to the EC that the award represented illegal State aid will exist. Therefore if we are ever challenged by the EC on your approach to a specific case, you must have adequate evidence to support your decision.

### If State aid is present

Where public monies constitute State aid, all public funding (including match funding) must comply with the EC's State aid rules and be provided as compatible aid where possible. In Scotland, for those awarding grants using Structural Funds which include State aid, it is paid to the end beneficiary in accordance with the EC's General Block Exemption Regulation (GBER), or in some limited cases using the EC's de minimis Regulation - whichever is appropriate. Full records of all State aid awards will be reported to the State Aid Team on an annual basis for

submission to the EC (see Annex A for further detail on the State aid tests and the responsibilities of aid givers in administering GBER or de minimis aid).

### General Block Exemption Regulation (GBER)

The following schemes have been notified to the EC under the GBER providing the legal cover under which compatible State aid can be awarded to LP's, across all of the potential activities which can be supported under the current programmes. These schemes (and links to the full scheme text) are listed below:

ESIF 2014-2020 - SMART Growth - [SA.43048](#)

ESIF 2014-2020 - Inclusive Growth - [SA.43103](#)

ESIF 2014-2020 - Sustainable Growth - [SA.43144](#) – under which we also have; LCITP - [SA.41844](#)

In addition to the above, for Operational Applicants, existing GBER schemes such as those managed by Local Authorities, HIE, SE and Zero Waste Scotland can be used provided these schemes are amended to reflect the use of match funding from European Structural Funds. This will be addressed and updated in due course.

### Maximum Aid Intensity

This is the maximum proportion of public funding that can be awarded towards any given State aid project's costs. Under GBER there are different aid intensities set out for different activities, depending on the GBER Article (for example the maximum aid intensity for Training aid is 50%). All public funding must be cumulated to ensure that aid intensities are not exceeded. A couple of examples have been provided below on how to apply the aid intensities to different projects which have been assumed to be State aid:

**Example 1** – An operation providing wage subsidies to encourage employers to recruit long term unemployed people.

There is likely to be State aid at the level of the individual companies who take on staff under this scheme – these companies will benefit from a selective wage subsidy not available to all companies across the UK.

This activity is covered under GBER Article 32 'Aid for the recruitment of disadvantaged workers in the form of wage subsidies'. Article 32.2 states that "*eligible costs shall be the wage costs over a maximum of 12 months for a disadvantaged worker and 24 months for a severely disadvantaged worker*" (including those defined as unemployed > 24 months). Article 32.6 states that "*The aid intensity shall not exceed 50% of the eligible costs*".

Therefore if we are supporting the salary costs of 5 new workers in a company, each with an annual salary of £15k, the eligible costs are  $5 \times £15k = £75k$ . Of that £75k the maximum aid we can provide from all public sources (including our SF intervention) is 50% of £75k = £37.5k.

Every operation must be interrogated to ensure that its other funding does not come from public sources (Lottery, local authorities etc.) thereby ensuring that the aid intensity is not breached.

**Example 2** – An operation costing £200k towards the production plant of new district heating networks across Scotland.

There is likely to be State aid at the level of the selected beneficiary (unless the work is tendered).

In this example a grant is being awarded and the project will be funded Article 46 'Investment Aid for Energy Efficient District Heating and Cooling'. Article 46.3 states that 'The aid intensity for the production plant shall not exceed 45% of the eligible costs. The aid intensity may be increased by 20% for aid granted to Small undertakings and by 10% for aid granted to Medium-sized undertakings'

The applicant, a Small Enterprise, states that it will receive match funding of £100k from the Carbon Trust (public resource) towards project costs. The maximum aid intensity is 65%, which equates to £130k of the project costs. This means that the maximum aid which could be awarded by ESF for this project is £30k as the public funding from both ESF and CT cannot exceed £130k. This also results in a hole in the project funding of £70k.

This second example illustrates the problems that can sometimes arise when cumulating all public project funding.

### Where do you go from here?

If you have any questions regarding to State Aid and your application, or the on-going running of your operations then you should contact the appropriate Structural Funds Portfolio Manager or lead partner in the first instance. They can then liaise with the State Aid Unit to answer any of your questions.

In addition further information on things such as: GBER, De-Minimis, Approved Schemes can be found on our website - [click here](#)

## Annex A

### State Aid Tests Summarised

#### 1) *Is the aid from a member state or through state resources?*

Grants awarded via ESF would normally meet this test as the member state ultimately decides who receives the awards.

#### 2) *Does it confer a selective economic advantage on an undertaking?*

This test is likely to be met in ESF-funded projects as the beneficiary will have been selected and the 'aid' will alleviate that beneficiary of costs that non-funded competitors would have to meet themselves.

#### 3) *Does it have the potential to distort competition?*

Ordinarily if Test 2 is met this test is also met - by definition, if you have provided a selective economic advantage to a beneficiary it will almost certainly distort competition to some extent, even if only on a local basis. It should be noted that if a service is procured via an OJEU process and there is no subsidy, then it is highly likely that Tests 2 and 3 will not be met and no State aid will be present.

#### 4) *Is it likely to affect intra-community trade?*

If a measure strengthens the competitive position of the recipient compared to other undertakings that compete in intra-EU trade then this test will be met. There may be scope, however, for this test not to be met where public resources are used to fund activities where the goods/services are purely local in nature and where there is unlikely to be a material impact on trade between EU member states. Examples such as hairdressers, motorcycle repair shops, marinas or swimming pools are essentially services which would not and could not credibly be bought from an undertaking in another member state.

**The tests are cumulative and all four must be met for State aid to be present.**

### General Block Exemption Regulation (GBER)

- Each LP is named as administrators on the SF schemes, and therefore has a responsibility to ensure compliance. Operational Applicants/Delivery Agents will share this responsibility.
- LP's and Operational Delivery Agents should familiarise themselves with eligible costs, aid intensities and uplifts under each Article when checking what they are eligible to fund.
- In-kind contributions – Must be actual costs incurred by the beneficiary if being included in project costs. E.g.) backfill cost of a member of staff.
- Cumulation – Funders need to remember when identifying the appropriate aid intensity that this refers to the total public funding which can be funded for the project. Therefore for those who are also working with SE, HIE and other public bodies you will need to check if they are funding the same costs and include this in the calculation for funding.
- Applicants should be asked to list the total project costs towards which they are seeking assistance.
- Applicants should also be asked to list all funding secured to finance the project, including funder and amount (in GBP).
- Transparency – Funders must have a link to the ESF GBER information page on their website so that the industry partners and any other interested party is aware of the cover in place. The EC is now placing public authorities under significantly greater scrutiny and funding bodies must be thorough in their decision making and record-keeping.
- Reporting – SF Division in SG will ask you on an annual basis (April/May each year) how much money you have awarded under each Article so that the State Aid Team can inform the EC.

#### De Minimis Regulation

- Max €200k over a three year rolling fiscal period per beneficiary.
- Useful for funding of small projects, or where aid intensities in GBER do not neatly fit.
- Certain administrative requirements when using this regulation which can be found on the State Aid Team's website. Specifically, applicants should be asked: *"Please declare any aid you have been awarded under the EC's de minimis regulation in the current and last two completed fiscal years. Please provide details of the amount (in Euros), the funder and the date of funding."*

**Further detailed information on State aid can be found on the State Aid Team's website here [Annex B](#)**

## State Aid Compliance Template

**Beneficiary -**

**Project Reference Number -**

Before deciding to apply the four State aid tests, please comment on whether the aid beneficiary meets the definition of an undertaking:

An **undertaking** is defined as any entity, regardless of its legal status, which is engaged in economic (commercial/competitive) activity. **Economic activity** is defined as offering goods and/or services on a given market and which could, at least in principle, be carried out by a private operator for remuneration in order to make profits.

*Please provide commentary here on whether this specific beneficiary is a beneficiary:*

If the beneficiary *is* an undertaking, we must apply four tests to ascertain the presence of State aid. The tests are cumulative and all four must be met for State aid to be present.

*Please provide commentary under tests 2-4 (Test 1 will always be met in the case of SF-funded projects):*

1.	<b>There has been an intervention by the State or through State resources.</b> Yes – European Structural Fund awards are regarded as a transfer of State resources as Scottish Government decides on the projects to be supported.
2.	<b>The intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions.</b>
3.	<b>Competition has been or may be distorted.</b>
4.	<b>The intervention is likely to affect trade between Member States.</b>

Is State aid likely to be present? (Please delete as appropriate): Yes/No

If State aid is present, how will the aid be delivered compliantly?