

# State aid

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**Confidentiality note**

The contents of this document should be treated as strictly confidential

## State aid – an overview

## State aid policy and how the rules affect you

- Single market and the “level playing field”
- “Financial assistance” from State to business
- Key part of ERDF approval process
- Consequences of failure to comply?

## What is State aid?

- Article 107 TFEU
- “Simple” definition, but.....
- Cumulative conditions:
  - ☑ Aid
  - ☑ To undertakings
  - ☑ Granted by Member State and/or through State resources
  - ☑ Selectivity
  - ☑ Affects trade between Member States

**= State aid**

## “Aid”

- “Uncommercial” benefit
- Any advantage – transfer of resources or relief from charges
  - Direct subsidy
  - “Uncommercial” investment in a project
  - Loan at preferential rate
  - Commercial assistance below cost
  - Non-commercial - commercial cross subsidy
  - Tax break
  - Free or below cost training
  - Reduced rent
- Not an exhaustive list!

## “To undertakings”

- What is an “undertaking”
  - Goods and services on a market
- Substance not form
  - Charities
  - Non-profit making bodies
  - Voluntary sector
  - Social enterprises
- “Mixed” status?

## “By the State and/or through State resources”

- All public funds
  - Directly by State
  - Through other bodies
- Structural funds?
- Big Lottery funding?

## Is the measure selective?

- Only selective, not general, measures
  - Particular businesses
  - Particular locations
  - Particular types of firms
  - Sector specific measures
- Selective or general?
- Substance not form



## Affecting trade between Member States

- Relevant question:
  - NOT does this business trade with other Member States; BUT
  - Is this product or service traded between Member States.
- Broad interpretation (e.g. *English Partnerships*)
- In practice.....

## Summary

- Aid?
- To businesses?
- By the State or through State resources?
- Selective?
- Potential to affect trade between Member States?

**= State aid**

## Is State aid always illegal?

- Can be permitted
- Treaty conditions
- Only Commission can apply exemptions
  - Individual
  - Scheme
  - Block
- Aid unlawful until approved

## What if unlawful aid is granted?

- Commission investigation
- Order Member State to recover aid + interest
- Unnotified aid
- Relevance?

## Applying the rules in practice

## In practice?

- Most likely “justification” routes:
  - “No aid”
  - *De minimis*
  - GBER

## No aid?

- When are you most likely to use it?
  - Not a commercial activity?
    - Public functions of public bodies
    - State education
    - Health services
  - Not a selective measure?
    - General training schemes
    - General campaigns or promotion of best practice
  - No advantage?
    - General infrastructure projects (but treat with caution!)
    - Beneficiary is an individual
    - MEIP or purchase at market value
  - (Possibly) in combination with an approved scheme or exemption (e.g. *de minimis*)
- Advantages?
- Disadvantages?

## *De minimis*

- What is it?
- Thresholds
- How to apply them
- Advantages?
- Disadvantages?



# GBER

- What is the GBER?
- How does it work?
- Advantages?
- Disadvantages?

## GBER reform

- New GBER will come into force “by July 2014”
- Commission’s aim is for 90% of aid to be covered by GBER
- This to be achieved by
  - Proposed increased thresholds
  - Inclusion of a greater number of measures within GBER
- Focus Commission resources on most distortive cases

## GBER – the structure

- Replaced (with some changes) 5 existing block exemption regulations
- Extended block exemption to “guideline” areas
- Extended block exemption to new area
- Developed a range of common horizontal principles
- Aid thresholds and aid intensities
- Note that “new” GBER will exempt further measures (see below)

## GBER – the result

- (Currently) exempts 26 (rising to 38 under “new” GBER) individual aid measures
- (Currently) arranged into 9 chapters
  - Regional aid
  - SME investment and employment aid
  - Aid for female entrepreneurship
  - Aid for environmental protection
  - Aid for consultancy in favour of SMEs and SME participation in fairs
  - Aid in the form of risk capital
  - Aid for R & D & I
  - Training aid
  - Aid for disadvantaged and disabled workers
- New GBER reorganises and adds further measures to some of these categories.....
- ..... and adds new categories
  - Aid to make good damage caused by natural disasters
  - Social aid for transport for residents of remote regions
  - Aid for broadband infrastructures
  - Aid for culture and heritage conservation
  - Aid for sport and multifunctional recreational infrastructures

## GBER – SME aid

- Definition?
  - medium (employees < 250; TO < €250 million or balance sheet < €43 million)
  - small (employees < 50; TO and/or balance sheet < €10 million)
- Why focus on SMEs?
  - Small Business Act and Lisbon Strategy
  - importance to EU economy
- Specific problems faced by SMEs
  - Under both “old” and “new” GBER, Certain aid instruments are SME specific (e.g. SME investment aid; risk finance aid; aid for start-ups (small enterprises only))
  - Other general aid instruments are more generous to SMEs

## Questions?

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