



State aid

Sarah Livestro – June 2014

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 (new Regulation as of 1 July 2014)

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 on 1 July 2014
- Commission's aim is for 90% of aid to be covered by GBER
- This to be achieved by
 - Increased thresholds
 - Inclusion of a greater number of measures within GBER
- To be balanced by enhanced measures to check compliance
- Focus Commission resources on most distortive cases

GBER – the structure

- Replaced a number of existing block exemption regulations
- Extended block exemption to “guideline” areas
- Extended block exemption to new areas
- Extended block exemption to areas previously covered by other types of exemption
- Developed a range of common horizontal principles
- Aid thresholds and aid intensities

GBER – the result

- Exempts 40+ individual aid measures
- Arranged into 13 chapters
 - Regional aid
 - Aid to SMEs
 - Aid for access to finance for SMEs
 - Aid for R&D&I
 - Training aid
 - Aid for disadvantaged workers and for workers with disabilities
 - Aid for environmental protection
 - 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
 - Aid for local infrastructures

Measures to ensure compliance

- Transparency: national (or regional) public registers of individual aid awards
 - Summary information
 - Full text of aid measure
 - Additional information on aid awards exceeding €500,000
- Monitoring – maintenance of records for 10 years
- Evaluation of large aid schemes (with an average annual budget exceeding €150 million) in certain categories

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 new GBER, certain aid instruments are SME specific (e.g. investment aid to SMEs; aid for consultancy to SMEs; aid to SMEs for participation in fairs))
 - Other general aid instruments are more generous to SMEs (e.g. aid for R&D projects)

Questions?

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