



State Aid Information For Third Sector Organisations

INTRODUCTION

Raise awareness of the state aid rules and how they European Union state aid rules are designed to regulate competition in order to maintain a level playing field in the European single market. The rules apply to any public funding (not just European funding) that is given to organisations carrying out economic activity. Public authorities have a duty to ensure that any public assistance awarded complies with the state aid rules.

With increasing pressures to become self-sustainable and an increase in the delivery of public services by the third sector, more and more third sector organisations are now engaging in some form of economic activity and therefore come under the scope of state aid rules.

The purpose of this information sheet is to:

- apply to the third sector;
- Help third sector organisations to determine whether state aid rules may apply to them;
- Provide information on possible solutions to state aid queries; and
- Explain the possible consequences of ignoring the state aid rules.

WHAT DOES THE TERM 'STATE AID' MEAN?

The Government of each European Member State must comply with European Community (EC) rules when giving subsidies/grants for commercial activities operating in the European Union (EU). If these subsidies have the **potential** to distort competition and affect trade between Member States they are known as 'state aid'. The overall aim of the state aid rules is therefore to maintain a level playing field for free and fair competition in the European single market.

Guidance on state aid can be found here:

- [European Commission – competition and state aid](#)
- [UK Government – guidance on state aid](#)
- [Welsh Government – state aid](#)

WHY CAN IT CAUSE A PROBLEM IF AN ORGANISATION RECEIVES SUPPORT FROM THE GOVERNMENT?

State aid rules apply to support (in any form) that is given out by public bodies to an “undertaking”, i.e. an organisation that is engaged in economic activity.

State aid may provide an advantage to businesses at the expense of its rivals; it can mean that loss-making businesses remain in the market longer than they should, and that other businesses do not enter the market. This can ultimately result in higher prices for consumers. By controlling the level of state aid awarded, the EC can ensure a level playing field for businesses across the European Economic Area, a dynamic and effective single market and reduced prices for consumers.

HOW DO STATE AID RULES AFFECT THE THIRD SECTOR?

State aid rules apply to organisations that receive public support for carrying out economic activity ('undertakings'). Public support is provided to a wide range of third sector organisations including charities, social enterprises, co-operatives, voluntary organisations and community groups. Many of these carry out economic activity. The fact that third sector organisations have social objectives and are 'not-for-private-profit' in ethos is irrelevant; state aid is considered purely in terms of the impact on competition across the single market.

State aid will be assessed in relation to the **activity** that is being delivered rather than the **type** of organisation or sector that is delivering it. Third sector organisations will be considered to be undertakings when they are delivering economic activities.

Where funding is given to support third sector undertakings, consideration needs to be given to whether the support provided is classed as state aid by reference to the five tests identified below. This does not necessarily mean that all support will be classed as state aid. It may for example be possible to argue under certain circumstances that one or more of the tests are not met.

Even where state aid is identified there is wide scope to develop appropriate support packages in line with provisions set out under the state aid rules. Support for Small and Medium Size Enterprises (SMEs) is one of the European Commission's priorities for economic growth, job creation and economic and social cohesion. The State aid rules allow for generous level of state aid to be awarded to SMEs in relation to specific objectives.

Most third sector organisations seeking support will be classed as SMEs with generous allowance and simpler rules now in place to enable award of state aid where it is appropriate.

Public authorities are responsible for ensuring that their policy measures and projects comply with the rules and best practice is to inform the recipient of the nature of the aid awarded. Aid recipients also have a responsibility of ensuring that they understand the state aid position of any aid received. If you are unsure of the status of the aid you have been granted, we recommend that you seek confirmation from the funding organisation, or seek specialist advice.

5 KEY QUESTIONS

There are five criteria or questions that need to be considered in order to find out whether a subsidy constitutes state aid. If **all five** criteria are met, state aid is present and the rules apply. Where one or more of the criteria appears not to be met, then the public support/subsidy is unlikely to be state aid.

The five state aid questions to ask are:

1. Is the measure granted by the State or through State resources?

Funding from Central Government, Welsh Government, Local Authorities and other public bodies is classed as being granted by the State. In addition, funding will be classed as State resource where the State has discretion on the use of funds, for example Big Lottery funding and European funding awarded through the Welsh European Funding Office (WEFO) are classed as State resources.

The Aid can take a variety of forms, including:

- grants or subsidies
- tax reliefs and rate rebates
- low interest loans
- State guarantees
- provision of goods and services free of charge or at preferential rates

2. Does the measure give advantage to an undertaking that it would not otherwise have?

An undertaking will receive an advantage when it receives support for free or on favourable (non-commercial) terms. This includes the direct transfer of resources, such as grants and low interest loans, and also indirect assistance - for example, relief from charges that an undertaking normally has to bear, such as a tax exemption or the provision of free or subsidised consultancy support or training

3. Is the measure selective, favouring certain undertakings over others?

Aid that targets particular businesses, locations, types of enterprise (e.g. small and medium enterprises (SMEs)), or sectors is considered selective. A **general** measure affecting the whole of the State's economy, such as nation-wide fiscal measures, is not considered as selective.

4. Does the measure distort or threaten to distort competition?

If support strengthens the position of the beneficiary relative to other competitors, this criteria is likely to be met. The potential to distort competition does not have to be substantial or significant. Competition is likely to be distorted where an undertaking receives an advantage.

Most interventions therefore have the **potential** to distort competition.

5. Is the activity affecting trade between Member States?

The European Commission's interpretation of this test is broad. It is sufficient that the product or service is tradable across Member States. The aid beneficiary does not need to be involved in cross border activities itself.

Consequently, most activities are viewed as tradable across Member States

See [Appendix 1](#): state aid decision-making chart

SOME EXAMPLES OF STATE AID

Examples of state aid include:

- Grants to enterprises for investment, research and development, employee training etc
- Loans and guarantees below market rates
- Free or subsidised consultancy advice
- Cash injections to and writing off losses of public enterprises
- Sale or lease of public land or property at discounted rates
- Discretionary deferral of or exemption from tax, social security and other payments to the State
- Legislation to protect or guarantee market share
- Funding/cash injections to non-profit social enterprises, community companies and some charities
- Public funding of privately owned infrastructure.

Support that is **not** state aid includes:-

- Aid to individuals, charities, organisations and public bodies that are not involved in an economic activity
- Commercial payments for services rendered, where a company is contracted by a public body in accordance with competitive tendering requirements
- General measures, which can apply to all firms throughout the UK, with no discretionary power.

GRANTING STATE AID LEGALLY

The EC accepts that under certain circumstances the state needs to intervene and so has published a set of guidelines, frameworks and regulations, known as the state aid rules. These set out the conditions under which public authorities can legally award state aid.

Key rules applicable to third sector organisations include:

- the General Block Exemption (GBER) regulation
- De minimis regulation
- State aid rules relating to Services of general economic interest (SGEI)

Recent revisions to these rules makes it quicker and easier for aid administrators to award state aid across a wide range of objectives without the need to notify the Commission directly.

GENERAL BLOCK EXEMPTION REGULATION

The General Block Exemption Regulation (GBER) allows direct award of aid to support key activity. The regulation sets out the specific rules under which the aid can be awarded. It covers:

- The activity that can be supported
- The eligible costs that can be funded
- The percentage of support that can be awarded
- The maximum amount of support that can be provided
- Specific criteria for each area of support

26 areas of activity are covered by the GBER and these include:

- Capital investment and employment aid
- Aid for SME's for one-off consultancy and participation in fairs/exhibitions
- Environmental aid
- Research and development
- Innovation aid
- Risk capital
- Training aid
- Aid for disadvantaged and disabled workers
- Culture and heritage conservation
- Sport and multi-functional recreational infrastructures
- Local infrastructure.

The UK Government has produced [State aid – general block exemption guidance](#) and the Welsh Government publishes details of [registered GBER schemes in Wales](#).

DE MINIMIS AID

De minimis aid is a generic term for small amounts of public funding awarded to a single recipient. The current de minimis threshold is set at €200,000 (approx. £160,000) over a rolling three fiscal year period. The EC considers that this level of funding has little impact on trade and competition, and does not therefore constitute state aid. The threshold applies cumulatively to all de minimis aid received by an individual organisation from all sources.

De minimis aid can be used for any purpose and is not linked to specific objectives or activity. Some sectors are however excluded including agriculture, fisheries and road freight transport.

There are strict administration requirements associated with the award of de minimis aid for both funder and recipient of the aid.

Recipients should be informed by the public authority about the de minimis nature of the aid that they are receiving. Aid can only be awarded if the de minimis threshold is not breached and aid beneficiaries will often be required to self-certify the level of previous de minimis aid received.

Further [guidance on de minimis aid](#) is published by the Welsh Government.

SERVICES OF GENERAL ECONOMIC INTEREST (SGEIS)

Services of general economic interest (SGEI) are economic activities that public authorities identify as being of particular importance to citizens, and that would not be supplied (or would be supplied under different conditions) if there were no public intervention. The concept of services of general interest is to ensure that a quality service is provided at an affordable price everywhere for everyone, and this can be especially relevant in a rural country such as Wales. Examples are large commercial services providing support to the entire population at affordable conditions e.g. public transport networks, postal services, social housing and a wide range of health and social services.

Public authorities provide compensation to organisations for the delivery of SGEIs (i.e. public services). Specific state aid rules have been introduced to ensure that compensation for the delivery of such public services does not unduly distort competition in the market place. The Commission seeks to ensure that there is a clear public service obligation requirement entrusted to the operator of the service and that there is no overcompensation provided.

There is a [European Commission guide to SGEIs](#) (in the FAQ section) explaining how EU rules in the fields of state aid, public procurement and the internal market apply to SGEIs. The guide provides simple and comprehensive answers to the most frequent questions asked by public authorities, service users and providers and other stakeholders. The Welsh Government has also published [information on SGEI](#).

STRUCTURAL FUNDS AND STATE AID

Projects receiving grants through the Structural Funds programmes must be assessed under the state aid rules by reference to the five state aid tests. Where support is deemed to be state aid, then all public funding received (Structural Funds and match funding from other public authorities) must have the appropriate cover in place.

GETTING IT WRONG

The EC considers state aid to be incompatible with the common market and to damage competition and trade across the EC area. Consequently, the European Commission takes a serious view of aid provided without its approval and a particularly serious view of aid that breaks state aid rules.

In these circumstances, there can be serious repercussions:

- the aid payment could be halted;
- the recipient could be required to repay the aid, **plus interest**;
- aggrieved competitors may seek legal action for damages; and
- the Commission could commence infringement procedures against the UK, possibly resulting in a fine.

In recent years the European Commission has given increasing importance to state aid rules, so it is extremely important to establish whether your project constitutes state aid and, if so, how it could be funded within the rules.

DON'T PANIC!

If you have applied the five questions and think that state aid may apply to your project(s), don't panic! It is important to seek expert advice from someone who can consider your individual case, and perhaps make recommendations as to how potential problems could be overcome. Projects can be restructured to eliminate state aid or to bring funding in line with what is allowable under the state aid rules.

This information sheet is intended as a resource to get you thinking about state aid and the implications, it is not meant to be a definitive guide. No two examples are the same and each case will require a different approach.

For further information, please contact WCVA's Helpdesk to speak to a member of the Funding Advice Team on: 0800 2888 329 or e-mail help@wcva.org.uk

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State aid Decision Process – Direct award of aid to Beneficiaries

