

NW Objective 2 Programme 2000-6

Information Note No: 6

State Aids

(April 2001)

The “Information Notes” Series

These notes aim to help applicants through the processes of putting together and completing a successful application. They should also assist in the proper appraisal of projects. Copies may be obtained from the address on the front page. The aim is to answer the most frequently asked questions, and concentrate on areas where applicants often misunderstand what is required and so provide insufficient or inaccurate information. If your question is not answered in this series of notes, please let us know in the Secretariat and we will try to provide you with an answer (it isn't always possible to be definitive immediately) and consider whether these guides need to be amended or added to.

Note There are also two notes for guidance on Action Plans published by DETR which the Secretariat can supply.

Note of Caution

This note aims to give a concise and simplified summary of State Aid legislation.

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Introduction

1. The Commission encourages actions to strengthen the competitiveness of the regional economy, and recognises the important part that the provision of State aid to companies can play in this respect. However, such aid is considered to distort competition between companies and pose a threat to the operation of the internal market. Community rules on State aids limit the support which may be provided from public funding to assist projects in the commercial sector.

2. A State aid has the following 4 characteristics. It:

- (1) is granted by a Member State or through State resources
- (2) favours certain undertakings or the production of certain goods
- (3) distorts or threatens to distort competition
- (4) supports activity which is tradable between Member States i.e. the trade activity also exists in other Member States and therefore has a theoretical possibility to be traded

3. State aid issues are **likely** to arise where the project involves direct grants (or subsidised loans etc) to business or directly subsidised benefits through business support schemes (eg reduced cost business consultancy, subsidised rents, training).

4. State aid issues are **unlikely** to arise if the assets being supported by ERDF grant remain in the public sector; and where a company is only acting as a sub-contractor and complying with competitive tendering requirements and normal conditions for a sub-contractor (eg paid for work done rather than a share in the profits).

5. It is the responsibility of public sector organisation applicants to ensure compliance with the State aid rules.

6. A project involving the granting of State aid can only be approved if:

- the aid relates to one of the Commission's adopted frameworks which has "exemption" status
- the aid is granted under a notified or approved aid scheme
- the aid granted satisfies the de-minimis rule, or
- the project has been notified separately and authorised by the Commission (ad hoc aid)

Frameworks

7. Cross-industry or “horizontal” rules set out the Commission’s position on particular categories of aid. To date, the Commission has adopted guidelines or frameworks that describe the criteria it applies to these categories. The existence of these frameworks only precludes projects covered by them from having to be notified if the Commission awards block exemption status to the frameworks. Fortunately, the frameworks likely to have most relevance to the NW Objective 2 programme have received block exemption. They are:

- Regional Aid
- SME Aid
- De-minimis Aid

Other frameworks that do not have block exemption include Aid for Research and Development, Aid for Environmental Protection, Aid for Undertakings in Deprived Urban Areas and Aid Elements in the Sale of Land and Buildings by Public Authorities. Any project coming within one or more of these frameworks will need to be notified to the Commission. Although this will involve some delay and uncertainty, a Commission decision on a notified scheme which does not comply with frameworks may take up to 18 months. For those that do, the time taken is likely to be some 5 months.

Regional Aid

8. This framework effectively determines the ceilings for the Assisted Areas map governing Regional Selective Assistance. Unlike the NW Objective 2 programme, RSA envisages support for large, as well as small and medium enterprises. The maximum aid ceilings for large companies can be enhanced under the SME aid framework for small and medium enterprise.

SME Aid

9. This framework allows the provision of aid for:

material investment (land, buildings, plant & machinery);
 immaterial investment (expenditure on technology transfer);
 soft aid (e.g. consultancy services, dissemination of knowledge).

10. The maximum public sector intervention rates for SME aid projects are set out below:

Maximum Aid (all public expenditure, including ERDF)

Table 1

Commission frameworks		Non-assisted areas (i.e. parts of Obj 2 not covered by the Regional Aid framework)	Assisted Areas
SME Aid: material and immaterial investment	Small firms (0-49 employees)	15%	West Lancs and Wigan - 30%
	Medium firms (50-250 employees)	7.5%	Cumbria – 20% Other – 25%
SME Aid: Soft aid	SMEs	50%	50%

The table at Annex A shows the ward coverage for Objective 2 and Tier 2 assisted areas

De-minimis aid

11. Small amounts of aid are not considered to have a potential effect on competition. Under the de-minimis rule:

- aid must not exceed 100,000 euros per company over 3 years
- such aid must be cumulated with other de-minimis aid (from all other local, regional and national resources) up to the 100,000 euro limit (approx. £60K)
- companies may be assisted many times, provided the ceiling is not breached: programme authorities must establish machinery to ensure this does not occur.
- aid received by companies from notified and approved schemes does not count towards the de-minimis ceiling
- companies which fall under sectoral restrictions cannot receive de-minimis aid

12. Projects involving State aid which do not fall under the notified schemes or frameworks, and which will not be notified to the Commission separately as an ad hoc scheme, can proceed under de-minimis arrangements, subject to certain provisions.

Projects submitted under the de-minimis rules

13. Any company supported by a project operating under the de-minimis rule must be informed that the aid is de minimis and ensure that the new award does not breach the 100,000 euro ceiling over a rolling three period. This means getting information from the enterprise concerned about de minimis aid received over the previous 3 years. Also, detailed records of aid paid for 10 years must be maintained.

14. The de minimis rule is deceptively simple. In practice de minimis is *not* an easy option, given the requirement to cumulate with other de minimis aid from all other public sources, and the exceptions to the regulation. Aid administrators should bear this in mind when considering the design of the aid. It may be quicker and easier to provide the aid in another form eg under the SME block exemption regulation or under a notified scheme. If de minimis is the chosen route, the following suggestions may help.

15. The first requirement is to tell the firm it is in receipt of a de minimis aid. One way of doing this is to include a statement in any offer letter (or other terms of grant letter) along the following lines:

16. “Under EC Regulation 69/2001 (“de minimis” aid regulation), this is a de minimis aid. There is a ceiling of 100,000 euro (approx £ 60,000) for all de minimis aid provided to any one firm over a three year period. Any de minimis aid awarded to you under this offer letter will be relevant if you wish to apply, or have applied, for any other de minimis aid. For the purposes of the de minimis regulation, you must retain this letter for 3 years from the date on this letter and produce it on any request by the UK public authorities or the European Commission. (You may need to keep this letter longer than 3 years for other purposes.)”

17. The second requirement is to obtain from each firm information about other de minimis aid received (as opposed to offered) during the previous 3 years. This may be difficult because firms may not know if the public support they have received is a de minimis aid. There is no central register of de minimis aid and none is being planned. One possibility might be to require applicants to give details, including a scheme title if known, of all the public financial assistance they have received over the past 3 years below 100,000 euro. Aid administrators would need to isolate the de minimis aid received from any aid which had been received under a notified and approved aid scheme eg SMART, SRB.

18. The third requirement is for aid administrators to check before granting de minimis aid that it will not, when cumulated with any other de minimis aid, exceed the 100,000 euro threshold over 3 years. This may involve reliance on information provided by the intended

recipient, bearing in mind that they take the risk of incomplete or inaccurate information. Aid administrators will need to make this clear to aid recipients.

Monitoring and reporting arrangements - SME and de-minimis schemes

19. The regulations require:
- (i) In the case of the SME aid regulation, a copy of the summary information intended for publication in the OJ to the format set out in Annex II of each regulation.
 - (ii) In the case of use of the de minimis regulation, details of how the monitoring and cumulation requirement will be fulfilled.
 - (iii) In both cases, confirmation of a system for keeping detailed records of all aid paid under the regulation(s) for 10 years as required in those regulations.
 - (iv) The DTI State Aid Policy Unit is responsible for compiling an annual UK return. They will ask Government Offices once a year (around March/April) to provide details of aid paid in the case of the SME aid regulations.

Notified Schemes

EU State Aid policy requires Member States to notify the Commission in advance of any scheme to grant State aid to companies. A notified scheme authorised by the Commission - i.e. deemed to be an acceptable form of State aid - enables aid to be given to companies up to prescribed aid ceilings.

Table 2 below shows those schemes which have been notified and approved by the Commission to date, and which are likely to interact with the new objective 2 programme.

Notified (and approved) State Aid Schemes

Table 2

TITLE	STATUS	DURATION
Regional Selective Assistance	Approved	Ongoing to next map review in 2006
Enterprise Grant Scheme	Approved	To May 2003
Regional Development Agencies: SRB Rural Development Programme Economic Grant Rural Development Programme Redundant Building Grant	RDA schemes to be applied in conformity with the new Regional Aid guidelines: the new assisted Areas map and the aid ceilings.	To end 2006
Local Authorities Assistance for SMEs		Renotification in Feb 2005
BL/TEC Schemes		Indefinite
SMART		To March 2002

Projects submitted under notified schemes or frameworks (except de-minimis)

The rates set out in Table 1 are the established rates for projects covered by the Regional Aid and SME frameworks. These are the rates normally adopted for notified schemes, unless the particular scheme approval says otherwise. If it does, and where the expenditure eligible for

regional aid is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable ceiling under the schemes in question.

ERDF as a notified aid

DTI State Aid Policy Unit have advised that structural funds (ERDF) can be treated as authorised aid, requiring no notification to the Commission provided the relevant regional aid ceilings (Table 1) and any other conditions are observed. This means that projects that involve no public funding other than ERDF are acceptable in a state aid context up to the regional aid ceilings. However, where project funding includes other public money, it is still necessary to determine whether that other public money is an aid and, if so, whether it has been notified and approved. Aid not approved will need to be notified in the normal way and await approval, or comply with a block exemption.

Sectoral restrictions

Industry-specific rules governing certain sectors are more restrictive, the possibility of aid leading to increased production being severely limited or prohibited. Special notification requirements are imposed. The sectors affected are: agriculture, fisheries, synthetic fibres, shipbuilding, motor vehicles, coal and steel. Companies within these sectors cannot be supported under the de-minimis rule. The same applies to export aid.

Infrastructure Works

In most cases, the building of infrastructure by the public sector is a general measure and does not normally fall within the scope of State aid rules provided access to the infrastructure is available to all users on equal terms. All investments projects involving over 50 meuro of total aid have to be notified separately.

Notified Schemes - successors to PIP (Partnership Investment Programme)

Five schemes have been approved by the Commission as a partial replacement to PIP. PIP was closed in December 1999 following a ruling by the EC that the programme was in breach of the State aid rules. The schemes are:

- (i) The direct development scheme
- (ii) Partnership support for regeneration (bespoke developments)
- (iii) Partnership support for regeneration (speculative developments)
- (iv) Environmental regeneration scheme for soft end uses
- (v) Neighbourhood renewal

Since these relate to activities which will be operated by the Regional Development Agencies and English Partnerships, further information is available from the North West Development Agency.

Of (i): The direct development scheme

This scheme sets out guidelines where the RDA or EP acquire a site and undertake reclamation and remediation work either directly or in partnership with another public body. Direct development is not confined to assisted areas. Disposals may be speculative or bespoke, but must not involve risk or profit sharing with, or assistance to, the intending or eventual purchaser/occupier. It covers:

- Acquisition of land/buildings
- Preparation of land
- Provision of services and infrastructure
- Development/refurbishment of buildings
- Sale or lease of land/buildings

Of (ii) and (iii): Partnership support for regeneration (bespoke and speculative developments)

these schemes will allow RDAs and EP to support SMEs involved in a variety of regeneration projects. Larger firms will be eligible for support if the project is located in

an Assisted Area. In both cases, the amount of financial aid available will be subject to the Commission's aid intensity ceilings. Under a gap-funding scheme, the public sector bridges the gap between development costs and the likely end value, allowing property developers to bring contaminated, derelict and disused sites back into full economic use.

Developments for a known end-user (bespoke):

Three forms of support are permitted:

provision of land and commercial property;
business and commercial premises improvement; and
physical regeneration services.

Developments for disposal on the open market (speculative):

Four forms of support are permitted:

regeneration grant;
Joint regeneration body/private sector projects;
regeneration financing aid;
regeneration services.

Of (iv) : Environmental regeneration scheme for soft end uses

A 'soft end use' is defined as one that is designed primarily to improve the environment often by providing a cover of vegetation. Examples include public open spaces, nature conservation and playing fields. The scheme is designed to offer support for the reclamation of derelict or potentially directed land for 'soft end use'. The scheme may not be used to support the redevelopment of land for 'hard end uses, e.g. office and commercial buildings or housing.

Of (v) : Community regeneration scheme

Designed to offer support to local communities to enable them to participate more effectively in small-scale regeneration projects. Funding is only available to projects which are put forward by non-profit making bodies working in the community or voluntary sectors.

Summary of tests to apply

1. Does the project involve a State Aid i.e. do the following conditions apply:

The aid will be granted by the Member State or through state resources
the aid will favour certain undertakings or the production of certain goods
it will distort or threaten to distort competition
the proposed activity is tradable between member states

If no state aid is involved, the following tests need not apply. Otherwise:

2. Will the aid be compatible with the block exemptions (regional aid, SME aid, de-minimis aid) which allow aid to be given within certain limits?

If yes, OK. If no.....

3. Will the aid be compatible with the terms of existing notified schemes which have been approved by the Commission (see table at page 4 of this note)

If yes, OK. If no.....

4. The scheme must be notified to the Commission (contact EPS for advice).

It is recommended that businesses seeking advice on State aids regulations generally should consult project applicants / intermediaries who can in turn seek

advice from the European Programme Secretariat, with DTI's State Aid Unit being the ultimate arbiters.

Further information is available from:

*The European Programmes Secretariat (Objective 2)
GONW
Manchester*

Tel: 0161 952 4371 Fax: 0191 952 4389

NW Objective 2 wards (fully eligible and transitional areas) with assisted area (tier 2) status

Local Authority	Objective 2 wards with Assisted Area Status
Allerdale	All <u>except</u> All Saints, Binsey, Boltons, Crummock, Derwent Valley, Keswick, Marsh, Wampool, Warnell and Wigton
Barrow-in Furness	All
Copeland	All
South Lakeland	The following only: Broughton, Crake Valley, Low Furness, Pennington, Ulverston (all),
Blackburn	All
Hyndburn	The following only: Altham, Clayton-le-Moors, Huncoat
Lancaster	The following only: Alexandra, Bulk, Castle, Caton, Heysham (all), Overton
West Lancashire	All
Bolton	The following only: Astley Bridge, Blackrod, Bromley Cross, Burnden, Central, Derby, Halliwell, Tonge
Manchester	The following only: Ardwick, Beswick & Clayton, Bradford, Central, Cheetham, Gorton N, Harpurhey, Hulme, Newton Heath
Oldham	All <u>except</u> Failsworth E & W, SaddleworthE, St. Pauls
Rochdale	The following only: Balderstone, Castleton, Central & Falinge, Middleton C, N & W, Milnrow, Newbold, Smallbridge & Wardleworth
Salford	The following only: Bartob, Blackfriars, Broughton, Kersal, Langworthy, Ordsall, Pendlebury, Pendleton, Weaste & Seedley
Tameside	The following only: Ashton St Peters, Audenshaw, Droylsden E & W
Trafford	The following only: Clifford, Davyhulme E, Park, Talbot
Wigan	All <u>except</u> Bedford-Astley, Langtree, Tyldesley E
Ellesmere Port & Neston	All
Halton	All
Vale Royal	The following only: Frodsham NW, Helsby C, Helsby S & Alvanley