

DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM

THE STATE AID GUIDE

Guidance for state aid
practitioners

OCTOBER 2007

URN 07/1496

The State Aid Guide

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PART I - What is State Aid?

Concept.

State aid is a Member State's financial aid to business which meets all the criteria in Article 87(1) of the updated European Community (EC) Treaty

Article 87(1)¹ declares that State aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is incompatible with the common market - unless the Treaty allows otherwise.

Key Criteria.

State aid in the sense of Article 87(1) has four characteristics:

i) It is granted by the State or through State resources. State resources includes public funds administered by the Member State through central, regional, local authorities or other public or private bodies designated or controlled by the State. It includes indirect benefits such as tax exemptions that affect the public budget.

ii) It favours certain undertakings or production of certain goods. It aids an undertaking, i.e. an entity engaged in economic activity. Economic activity is activity for which there is a market in comparable goods or services. It can include voluntary and non profit-making public or private bodies such as charities or universities when they engage in activities which have commercial competitors. It includes self-employed/sole traders, but generally not employees as long as the aid does not benefit the employers, private individuals or households.

The aid is available to certain undertakings but not others in the Member State, eg it selects individual businesses, sectors, areas, sizes of business, or production of certain goods (a benefit available to all businesses is not State aid but a general measure).

It favours them by conferring an advantage on them. An advantage may be direct or indirect, eg grants or favourable loan terms or services provided at less than market cost, or relief from charges a business would normally bear.

iii) It distorts or threatens to distort competition. It potentially or actually strengthens the position of the recipient in relation to competitors. Almost all selective aid will have potential to distort competition - regardless of the scale of potential distortion or market share of the aid recipient.

iv) It affects trade between Member States. This includes potential effects. Most products and services are traded between Member States and therefore aid for almost any selected business or economic activity is capable of affecting trade between States even if the aided business itself does not directly trade with Member States. The only likely exceptions are single businesses, eg hairdressers or dry cleaners with a purely local market not close to a Member State border. The case law also shows that even very small amounts of aid can affect trade.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E087:EN:HTML>

Forms of State Aid

State aid within the scope of Article 87(1) examples:

- State grants;
- interest rate relief;
- tax relief;
- tax credits;
- State guarantees or holdings;
- State provision of goods or services on preferential terms;
- direct subsidies;
- tax exemptions;
- preferential interest rates;
- guarantees of loans on especially favourable terms;
- acquisition of land or buildings either gratuitously or on favourable terms;
- provision of goods and services on preferential terms;
- indemnities against operating losses;
- reimbursement of costs in the event of success;
- State guarantees, whether direct or indirect, to credit operations preferential re-discount rates;
- dividend guarantees;
- preferential public ordering;
- reduction of, or exemption from, charges or taxes, including accelerated depreciation and the reduction of social contributions;
- deferred collection of fiscal or social contributions;
- assistance financed by special levies;
- capital transfers;
- certain State holdings in the capital of undertakings.

Less obvious examples where State aid might arise include:

- consultancy advice;
- advantages resulting from the activities of agencies for urban renewal;
- assistance to help companies invest in environmental projects;
- assistance to help a public enterprise prepare for privatisation;
- legislation to protect or guarantee market share;
- public private partnerships and contracts not open to competitive tendering;
- Receipt of landfill tax credit funding.

Some surprising examples of State aid:

- free advertising on State owned television;
- infrastructure projects benefiting specific users.

In sum, there may well be State aid in the Article 87(1) sense whenever Member States confer an advantage of a financial kind on some, but not all, undertakings by:

- providing grants or other forms of funding (eg National Lottery funding);
- waiving sums due (eg taxes, social security contributions, loan interest, dividends);
- selling assets, goods or services at below market value; or
- buying assets, goods or services at above market value.

Exceptions to the General Ban on State Aid

Article 87(1) acts as a general ban, but the Treaty then allows for certain aid. The following categories are the exceptions where the European Commission - which enforces State aid rules - may approve State aid:

• **aid categories that the Treaty declares compatible:** Article 87(2) specifies three types of aid that it declares compatible:

- social aid granted to individual consumers;
- aid to make good damage by natural disasters or exceptional occurrences;
- aid to certain areas of Germany affected by the division of Germany.

(Note: In practice, Article 87(2) categories will seldom arise).

• **aid categories that may be considered compatible:** Article 87(3) allows the possibility of approving State aid to:

- Facilitate development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions and competition to an extent contrary to the common interest;
- Promote economic development of areas of abnormally low standard of living or serious unemployment;
- Promote an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- Promote culture and heritage conservation;
- Other categories of aid the Commission may propose and the Council may specify.

• **other Treaty provisions for specific purposes:** The Treaty allows further possibilities for approval of State aid, under specific rules:

- aid necessary for the operation of the common agricultural policy;
- aid for public transport services;
- aid necessary for undertakings to provide services of general economic interest.

The Effect of Possible Exceptions

The possible exceptions under Article 87(3) mean that even where the proposed aid would be Article 87(1) State aid and there could be some effect on competition, the European Commission may, exceptionally, approve the giving of that State aid as being compatible in the common interest of the EU. However, please note:

- **Operating aid is not likely to be approved as an exception.** Aid for the normal costs of running a business, such as salary costs, is very unlikely to be authorised as an exception - apart from in certain very limited specific circumstances, such as those in the environmental State aid guidelines or in Article 87(3)(a) areas.

- **Requirement to notify the European Commission of proposed exceptional aid.** Article 88(3) of the EC Treaty requires you to notify the Commission of proposed State aid so that it can decide whether or not it is compatible with the Treaty.

You must notify and obtain Commission approval before offering State aid - unless it is exempted from advance notification by group or “block exemption” Regulations which specify certain types of State aid for SMEs, for training, and employment.

Note: Failure to notify and obtain advance Commission approval for a State aid which is not exempted makes it automatically unlawful and recoverable.

i) The Commission’s role: The Commission has wide power to control and monitor State aid. It may refuse approval. It may approve State aid under Article 87(3) or other possible exceptions, either by formal legal regulation or after individual scrutiny and approval of a proposed aid scheme or project.

ii) Commission uses formal guidelines and frameworks: In considering proposed aid, it is guided by criteria in published frameworks and guidelines that apply to particular aid categories or purposes and in all Member States.

iii) If relevant guidelines do not exist or if proposal does not fit guidelines: Even if a proposed State aid does not precisely fit formal frameworks or guidelines, or is in a category or for a purpose for which there are no relevant published frameworks or guidelines, the possibility exists that the Commission may still approve State aid for development of certain economic activities or areas if it considers that it does not affect competition and trade to an extent contrary to the common interest.

This is not to suggest a probability that it will do so: guidelines are not normally overridden and even where there are no relevant guidelines one would have to have a convincing case. However, if there are relevant guidelines and the scheme does not stick completely to it then the Commission will open an Article 88(2) investigation².

² See more on Article (88)2 Investigations on the BERR’s State aid website under ‘Complaints’ and the Commission’s website http://ec.europa.eu/comm/competition/state_aid/legislation/rules.html - 1

State Support Not Prohibited by Article 87(1)

State aid rules apply only to aid that has all four elements set out in Article 87(1). If it does not have all four, Article 87(1) does not forbid it.

Aid outside the scope of Article 87(1) (ie aid that does not have all four elements in Article 87(1)) includes:

- aid to public bodies not involved in economic activities;
- general measures available to all economic undertakings in all parts of the Member State, eg a tax exemption or credit available to all businesses;
- State measures that do not affect the public budget, eg regulatory measures;
- full market value purchases of goods and services (most effectively demonstrated by a competitive tender that accords with EU public procurement rules);
- support to public undertakings that satisfies the market economy investor principle (broadly, support that a private sector investor would provide in like circumstances (see (i) below for further details);
- support for general infrastructure projects that do not benefit specific users;
- aid to individuals or employees which does not directly benefit an undertaking;
- certain State guarantees – (see (ii) below);
- certain measures connected with the production of or trade in arms and ammunitions;
- damages which national authorities are ordered to pay by a Court.

i) Use of public funds in accordance with the private investor principle also known as Market Economy Investor Principle (MEIP).

If the State is acting in a way that a private investor would in a market economy, for example in providing loans or capital on similar terms to that of a private investor, it is not providing State aid within the meaning of Article 87(1). This can apply when the State is the main shareholder in an undertaking (eg Royal Mail). The onus is on the Member State to be able to demonstrate if challenged that the funding is on genuinely commercial terms. You are strongly recommended to commission an independent report from a reputable source to confirm that the actions you have taken are in accordance with the MEIP. The Commission would certainly expect nothing less in the event of challenge.

When it is a State-controlled company, the key question is whether a private investor - who would not take into account regional development or employment concerns, but who would expect to make an eventual return - would invest in this way.

The Commission does not expect you to act like an investor who is only out to make a quick return, but one who has a long-term commitment - for example the owner of a private factory. It will also not penalise you if you make a decision which later turns out to be wrong if at the time you had reasonable grounds to believe that the investment would come good.

However, the Commission is likely to make a distinction between scenarios where a public authority already owns or has a stake in a business, and may therefore need to protect existing investments or be able to benefit from longer term ownership rewards, and scenarios where the State is making a new investment (e.g. investing in a company for the first time or investing in a new venture) – see article on the Market Economy Investor Principle in the June 2002 edition of DG Competition's Competition Policy Newsletter³. This article argues that the most robust way of demonstrating that a State investment is on commercial terms is by ensuring that there is a matching investment by an actual commercial entity, provided that the risks and rewards are genuinely the same.

ii) State guarantees under certain circumstances

State guarantees⁴, whether of loans, coverage of losses, or through unlimited liability State holdings in an enterprise, will usually be considered to be State aid under Article 87 (1), whether or not the guarantee is called upon, because they remove the element of risk that the enterprise would otherwise have to bear.

Under the following conditions, State guarantees do NOT constitute State aid under 87(1):

a) In the case of an individual guarantee:

- i. The borrower is not in financial difficulty;
- ii. The borrower would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State;
- iii. The guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80 % of the outstanding loan or other financial obligation (except for bonds and similar instruments) and is not open-ended;
- iv. The market price for the guarantee is paid (which reflects, among other things, the amount and duration of the guarantee, the security given by the borrower, the borrower's financial position, the sector of activity and the prospects, the rates of default, and other economic conditions).

b) In the case of a guarantee scheme

- i. The scheme does not allow guarantees to borrowers in financial difficulty;
- ii. The borrowers would in principle be able to obtain a loan on market conditions from the financial markets without any intervention by the State;
- iii. The guarantees are linked to a specific financial transaction, are for a fixed maximum amount, do not cover more than 80% of each outstanding loan or other financial obligation (except for bonds or similar instruments) and are not open-ended;
- iv. The terms of the scheme are based on a realistic assessment of the risk so that the premiums paid by the beneficiary enterprises make it, in all probability, self-financing;

³ Competition Policy Newsletter – June 2002

http://ec.europa.eu/comm/competition/publications/cpn/cpn2002_2.pdf

⁴ Link to Commission Notice 2000/C71/07

http://ec.europa.eu/comm/competition/state_aid/legislation/instruments.html

- v. The scheme provides for the terms on which future guarantees are granted and the overall financing of the scheme to be reviewed at least once a year;
- vi. The premiums cover both the normal risks associated with granting the guarantee and the administrative costs of the scheme, including, where the State provides the initial capital for the start-up of the scheme, a normal return on that capital.

Seek advice: If there is any doubt as to whether a planned guarantee or scheme does constitute State aid, seek advice from your devolved administration or BERR's State Aid Branch, DEFRA or DfT.

iii) Services of general economic interest (SGEI)

What is a Service of General Economic Interest?

Services of General Economic Interest (SGEI) are not defined in the Treaty and it is for individual Member States to define and there is no overarching EU definition. The Commission and Court only have a role in determining manifest error. In general they tend to include such things as gas, electricity, telecoms, public service broadcasting and public transport but this is not an exhaustive list. An SGEI is usually a service which the market does not provide or does not provide to the extent or at the quality which the state requires AND is in the general and not the particular interest. This means that the beneficiaries of the service should be the community at large and not a specific sector of industry. Thus an incubator service for SMEs would not be an SGEI as it benefits a particular type of undertaking. It is perhaps helpful to think that in entrusting an undertaking with an SGEI you are asking it to do something which is beyond the normal call of duty.

What could not be supported under an SGEI umbrella?

The range of services which count as SGEI is very wide and is very much a matter for the Member State. However as a guide the sort of activities which would **not** qualify for support under SGEI would be capital grants to manufacturing plant to buy new equipment, R&D aid, rescue and restructuring aid, general capital investment or regional aid. These types of aid should be given under the normal guidelines and frameworks.

Aid or not aid

The UK takes the view that a contract for services at market rate – i.e. a supplier is being asked to give his best price for doing the service - does not lead to aid. However, if the procurement route is being used to hold a competition for subsidy - i.e. the supplier is being asked how little subsidy he will require to perform the service - then there is likely to be aid and the following guidance is relevant.

State Aid Treatment of SGEI

Funding of SGEI is in principle caught by the state aid rules which apply to state funding of economic activities. Article 86(2) is the normal means of approving aid to undertakings performing an SGEI. However, the state aid treatment of SGEI has varied over the years – at some points all funding of SGEI has been considered aid and at others nothing was thought to be caught.

In July 2003 the European Court of Justice (ECJ) gave a Decision in a case known as **Altmark** relating to German buses. This Decision said that funding which only compensated a company for performing an SGEI was not a state aid and set out criteria to decide whether a given aid measure was caught by the state rules. These are:

- The undertaking must have been given public service obligations to perform
- The parameters of funding must be set out transparently in advance
- Compensation cannot exceed what is necessary to carry out the service allowing for a reasonable profit
- If no tender exercise has been carried then the level of compensation must be arrived at by bench-marking with a similar well run undertaking.

These criteria are very exacting and a great deal of compensation is likely not to meet them and to be aid. In order to ensure legal certainty the Commission have therefore come forward with two texts: a Decision exempting from notification small SGEIs below a certain threshold and a Framework for everything else. The draft Decision also exempts all compensation for social housing and hospitals regardless of the amount.

DECISION - please refer to the full text of this decision as the following is only a summary.

http://ec.europa.eu/comm/competition/state_aid/legislation/sgei.html

What is exempt from notification?

Please note that this is only an exemption from the need to notify it is NOT an exemption from state aid rules. This compensation is still aid.

Annual aid for SGEI of less than 30 million euros given to undertakings whose annual turnover in the last two financial years was less than 100 million euros. Aid of any amount for hospitals and social housing – provided that they are carrying out SGEIs.

Compensation for air or maritime links to islands with annual traffic in the last two financial years of less than 300,000 passengers

SGEI compensation for ports and airports where annual average traffic in the last two financial years does not exceed 1 million passengers in the case of airports and 300 000 passengers in the case of ports.

The Decision does NOT apply to broadcasting or to land transport. These exemption criteria only apply when giving compensation for SGEI – they do not apply if for example you are giving capital investment aid.

What are my responsibilities if I am giving aid?

You must define the Service of General Economic Interest that you want to be provided. The Commission recommend that you consult on the terms of the SGEI and in particular seek the views of consumers – this is only a recommendation and not an absolute requirement. The definition should be as precise as possible.

You must entrust the SGEI to the recipient undertaking properly. Entrustment may be made by means of primary legislation, a contract or a Ministerial letter. However it is done it must set out the following:

- The nature and the duration of the public service obligations;
- The undertakings and the territory concerned;
- The nature of any exclusive or special rights assigned to the undertaking;
- The parameters for calculating, controlling and reviewing the compensation
- The arrangements for avoiding and repaying any overcompensation.

Ideally this entrustment document should be made publicly available. Competitors should be able to see exactly who you are funding, where, why and how much you are giving. If competitors are unaware of the terms of your entrustment they may complain to the Commission that you have given unnotified aid.

As entrustment requires a more detailed approach than has been the norm in most Member States the Commission will give Member States a year to bring their entrustment procedures into line. However you should really start as soon as possible and not wait until the deadline.

You must ensure that there is no over compensation – i.e. you must pay only the amount needed to discharge the service but allowing the undertaking to make a reasonable profit – reasonable profit is defined in article 5.4. Basically this involves a rate of return on capital based on the amount of risk that the undertaking is exposed to in carrying out the service. This should not exceed the normal profit levels of companies in the sector. SGEI funding is only supposed to ensure that the entrusted company is no worse off because it is carried out the service – it should not be significantly better off.

The costs that you can compensate are set out in Article 5.2 .You must make regular checks to ensure that there is no over-compensation. This is not fire and forget aid. However if there is over compensation and it is less than 10% of the annual compensation this can be carried over. If the undertaking also carries out non-SGEI activities the aid giver can decide that any profit from these should go towards the financing of the SGEI.

Member States have one year to bring their current practice into line with the requirements of the block exemption on over-compensation.

You must keep detailed records of the aid given. The UK will have to provide reports every three years on the working of the block exemption. These records are the only

way of proving that you have complied with the block exemption and have not given illegal aid. They must be kept for ten years and the Commission can ask to see them at any time. In addition, if an undertaking is performing SGEI and non-SGEI tasks there must be separate accounts for both activities.

Other Points

Even if aid meets the terms of Altmark you can still use the block exemption in order to give legal certainty.

FRAMEWORK - please refer to the full text of the framework as the following is only a summary

http://ec.europa.eu/comm/competition/state_aid/legislation/sgei.html

All compensation which does not meet either the terms of Altmark or the Decision must be notified to and approved by the Commission. The Framework sets out criteria the Commission will apply in clearing aid. These criteria are in the main *not* new – they are merely a formulation of the way the Commission has always applied Article 86(2).

What are the conditions for compatibility?

Definition of SGEI

As with the Decision you must have given the undertaking a public service task to perform. Again this should be precisely defined and the Commission recommend that you consult on the definition.

Entrustment

There must also be an entrustment document, which again can either take the form of primary legislation, contract or Ministerial letter. The entrustment document must contain the information listed above.

Compensation

The compensation must not exceed what is necessary for the undertaking to perform the service – allowing for a reasonable profit. Compensation must not be used by the undertaking to cross subsidise non-SGEI activity. (However it is perfectly legitimate to insist that profits from non-SGEI activities are used to reduce funding needed for SGEI.) A full description of the costs that can and cannot be met are given in article 13 of the Framework. The definition of reasonable profit is the same as for the Decision and is set out in Article 15.

Over-compensation

Aid givers must also check regularly for over-compensation. Aid givers need to be sure that the amount of aid is still needed and if not the parameters of aid must be redrawn. However over-compensation of less than 10% of the total aid can be carried over to the following financial year providing of course that there is a suitable

adjustment in the amount of aid awarded that year. Over-compensation of more than 10% must be repaid unless there are very exceptional circumstances. An undertaking cannot keep this money on the grounds that it is being used for a purpose which the Commission would normally approve – for example environmental protection or R&D. If the company is to be given money for this purpose it must be notified to and approved by the Commission in advance in the usual manner.

Other Points

Undertakings receiving aid and who also engage in other non-SGEI services must keep separate accounts for SGEI and non-SGEI activities as per the Transparency Directive.

All existing *notified and approved* schemes will have to be brought into line with the terms of the Framework within 18 months of its publication in the Official Journal – ie by June 2007. However, as the Framework codifies the Commission practice until now – and is in some respects more generous for example with over-compensation – this should not present a problem.

If you are giving support for an SGEI which has not previously been notified and approved and which would not fit the block exemption this should be notified now. The Commission will consider the case under the provisions that were in force at the time the aid was given, which may mean slightly less generous treatment.

iv) The Financial Transparency Directive

Summary⁵

The Financial Transparency Directive has created a reporting regime to aid the European's Commission's investigative capabilities in the area of illegal state aid. Collectively⁶, the Directives oblige public bodies (whose annual turnover – amongst other things – is at least €40m) engaged in commercial activities, to inform the Commission of the support they receive from public authorities. In addition, bodies (whether private or public) similarly engaged in commercial activities and in receipt of certain services from public authorities, are obliged to ensure that their management accounts are sufficiently separate to distinguish between these activities. Finally public bodies engaged in the manufacturing sector with an annual turnover of at least €250m are required to supply details of their annual reports and accounts to the Commission on an annual basis.

Purpose

The purpose of the FTD is to underpin the state aid regime by requiring such aid to be made transparent. Without such transparency, there is a real risk that the Commission's state aid regime will be unable to expose funding which is not easily identifiable as State aid and identify funding that may seep into an organisation's commercial activities, thereby cross-subsidising those areas with public funds.

⁵ Link to the Commission's website to the Transparency of Public undertaking http://ec.europa.eu/comm/competition/state_aid/legislation/transparency.html

⁶ The original Directive 80/723/EEC/, has been amended four times, the latest being Directive 2005/81/EC

PART II - Options for Dealing with State Aid

The first step is to assess whether or not a proposal for financial assistance constitutes State aid by ensuring that it meets all four tests as specified in the Key Criteria Section of “What is State Aid”.

If it may constitute State aid, the following proposals represent options for dealing with it:

- i. consider developing or adapting proposals to omit or minimise the element of State aid within the meaning of Article 87(1);
- ii. design or adapt the proposed aid to fit within the terms of one of the State aid schemes which the European Commission has approved for the UK⁷;
- iii. design or adapt the proposed aid to fit one of the existing “block” or group exemption Regulations which allow certain investment or consultancy aid to SMEs, training and employment aid to be paid under simplified procedures⁸;
- iv. design or adapt the aid to fit within the terms of published guidelines, frameworks, notices and communications which the Commission uses when deciding whether proposed State aid may, exceptionally, be compatible with the Treaty. (NOTE: This option requires you to obtain advance approval from the Commission⁹);
- v. design the assistance within other relevant permissible Articles of the Treaty. (NOTE: May require Commission advance approval);
- vi. design a proposal which, although it may not fit within existing approved schemes, Commission Regulations, frameworks or guidelines, may be capable of individual approval by the Commission. (NOTE: Advance approval required);
- vii. design or adapt the aid to fit within the de minimis regulation;
- viii. design or adapt the aid to fit relevant categories of State aid in Article 87(2) of the Treaty which are declared compatible with the Treaty. (NOTE: rarely arise);
- ix. consider under all options special sectoral rules, eg for agriculture, fisheries, transport and sensitive sectors, which may limit the possibilities. Certain sectors are excluded from block exemptions, for example, and sectoral rules are generally more restrictive than the guidelines and frameworks that apply across industry in general.

Unless you are certain, always consult your local source of advice such as your devolved administration, State Aid Branch or equivalent even before concluding that your plans do not involve State aid, or that your proposed plan to avoid it, really does escape the scope of Article 87(1).

Seek further advice at all stages of considering all the available options. Seeking advice is not a last resort: the earlier the better, to avoid problems later on.

⁷ See list of Approved schemes – the State aid branch has CD roms available containing a database of the UK approved schemes (industry and transport sectors only) which can be sent to you on request.

⁸ See notifications and procedures under the BERR’s State aid website.

⁹ See Notifications and procedures under the BERR’s State aid website and also the Commission’s website

http://ec.europa.eu/comm/competition/state_aid/legislation/rules.html

PART III - Regulations, Guidelines and Frameworks

Concepts¹⁰

(i) Regulations - aid not requiring advance notification and approval

The Commission has adopted “block exemption” legal Regulations for certain employment, SME / R&D, Regional and training State aid. In addition, the de minimis regulation covers small amounts of aid up to a certain limit, which may be paid for almost any purpose, subject to conditions set out in the Regulation. You do not have to notify and obtain prior approval from the Commission before awarding aid that complies with these regulations. There are however procedures to follow¹¹. A summary of the conditions to fulfil when giving aid under any of the block exemptions is provided for in the following sections of this guide. Also important to note when using the block exemption regulations are the reporting requirements as explained below.

- **Reporting requirements for block exemption schemes**

There are clear signals that the Commission is now attaching a higher priority to the information and reporting requirements attached to State aid approvals generally, and the use of block exemption regulations in particular, and will be prepared to take action where these are not met. This has to be seen in the context of the broader State aid review process where the Commission is promoting stricter obligations on transparency and reporting as a trade off for more generous state aid rules in some areas and expanded block exemption provisions which will remove the need for prior scrutiny by the Commission in a much greater range of cases than currently. We can expect in future:

- Much more active scrutiny of annual reports on schemes operated under individual approvals or block exemptions with follow up action from the Commission if these are late, incomplete or inaccurate
- More frequent ad-hoc enquiries into new and existing aid schemes, in particular where operated under block exemption provisions, where the responsible authorities will be required to produce evidence within fairly strict timescales that schemes are being run in accordance with State aid terms

For granting bodies we believe this makes it even more important that:

- Staff are aware of State aid requirements and check out the detailed operating conditions that apply to specific aid schemes both at the design stage and after schemes have been approved or registered under block exemptions
- There is effective record keeping on aid schemes once implemented to ensure that the annual reporting exercise goes smoothly and to enable quick and full responses to any ad-hoc enquiries

¹⁰ Copies of Regulations, Guidelines and Frameworks are available on the Commission’s website and on the BERR’s State aid website.

¹¹ See Block Exemption procedures under the BERR’s State aid website.

- There is always someone in the organisation who has responsibility for ensuring ongoing compliance with State aid on a scheme by scheme basis.

(ii) Guidelines, frameworks, communications - aid requiring notification and approval

The Commission has also developed a number of guidelines, frameworks and notices setting out the criteria that it applies in considering certain other categories of aid.

You must notify and obtain approval from the Commission for proposed schemes or payments under these. Awarding aid without doing so would make it unlawful aid¹².

The following notes summarises the main provisions of the most commonly used regulations, guidelines, frameworks and communications, and provide links to the original texts and to the special rules applying to particular sectors. These notes are intended to help but you should always check the wording of the original legal texts when developing policy proposals for aid to business. In particular, you should note that these instruments are subject to regular review by the Commission and the provisions may change accordingly¹³.

¹² For more information on notifying aid see our webpages at <http://www.berr.gov.uk/bbf/state-aid/notifications-procedures/index.html>

¹³ Link to the Commission's website http://ec.europa.eu/comm/competition/state_aid/legislation/

A. Regulations, Frameworks and Guidelines Applying to Most Industry sectors (“Horizontal” Aid)

1) Group or Block Exemption Regulations

i) Aid to Small and Medium Size Enterprises - for Investment, Consultancy or R&D

Scope¹⁴

State aid measures to support tangible and intangible investment in SMEs and R&D. This Regulation does not apply to:

- the production, processing or marketing of agricultural and fisheries products.
- aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of distribution networks or to other current expenditure linked to export activity¹⁵
- aid contingent upon the use of domestic over imported goods.

Concepts

Definition of SMEs¹⁶

- **Medium-sized enterprise** is an enterprise satisfying all of the following criteria:
 - has fewer than 250 employees and
 - has either an annual turnover not exceeding € 50 million or a balance-sheet total not exceeding €43 million and
 - is independent.
- **Small enterprise** is an enterprise that satisfies all of the following criteria:
 - has fewer than 50 employees and
 - has either an annual turnover or annual balance sheet not exceeding €10 million and
 - is independent.

The criteria must be applied to the company as a whole (including subsidiaries located in other Member States and outside the EU)

- **Micro enterprise** is an enterprise that satisfies all of the following criteria:
 - has fewer than 10 employees and
 - has either an annual turnover or annual balance sheet total not exceeding €2million and
 - is independent

¹⁴ Reference Commission Regulation (EC) No 70/2001 of 12 January 2001. See Regulations and Frameworks – SME block exemption – the above Regulation was amended in 2004 to include R&D by SMEs. Text of the amendment is available on the State Aid website under Regulations and Frameworks.

¹⁵ Aid towards the cost of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid.

¹⁶ See the SME definition on the Commission’s website

http://ec.europa.eu/comm/competition/state_aid/legislation/block.html - 4

Eligible cost¹⁷

Aid can be provided in relation to the following categories of expenditure:

- Tangible investment (land, buildings, plant /machinery);
- Intangible investment (expenditure related to technology transfer);
- Consultancy services (technology transfer, dissemination of knowledge, etc.
- Research and development, (personnel cost, instruments/equipments, building/land, consultancy, additional overheads and operating expenses);
- Costs of the first participation of an enterprise in a particular trade fair or exhibition.

Maximum Aid

	Non-assisted Regions (gross)	Art. 87.3(a) (gross)	Art. 87.3(c) (gross)
Investment ¹⁸ Small firms • Medium-sized firms	15.0% 7.5%	Regional aid ceiling +15% ¹⁹	Regional aid ceiling +10% ²⁰
Consultancy aid	Up to 50%	Up to 50%	Up to 50%
R&D aid	Up to 100% for fundamental research; 60% for industrial research and 35% for precompetitive development	Add 10% in the case of industrial research and precompetitive development	Add 5% in the case of industrial research and precompetitive development

Note: Additional bonuses are available (up to a total maximum of 75% for industrial research and 50% for precompetitive development) for research in accordance with the objectives of a specific project or programme undertaken under the EC's Framework Programme for R&D and for projects involving effective cross border co-operation, all co-operation between companies and public research bodies or where the results of a project are widely disseminated.

¹⁷ The eligible costs provided here are not an exhaustive list. State aid practitioners must familiarise themselves with the SME block exemption regulation to be able to apply it correctly.

¹⁸ In cases where the aid is calculated on the basis of jobs created, the amount of the aid shall be expressed as a percentage of the wages costs over a period of two years. Jobs shall be created within three years of the investment's completion. The employment created shall be maintained during a minimum period of five years.

¹⁹ Subject to a maximum aid ceiling of 75%. The higher regional aid ceiling shall only apply if the aid is conditional upon the investment being maintained for a minimum of 5 years.

²⁰ Subject to a maximum aid ceiling of 30%. The higher regional aid ceiling shall only apply if the aid is conditional upon the investment being maintained for a minimum of 5 years.

Entry into force and validity

This Regulation entered into force on 2 February 2001 and shall remain in force until 31 December 2006 (now extended until 31 December 2007).²¹ Aid measures meeting the conditions laid down in the Regulation are exempted from having to notify the proposed aid to obtain approval from the Commission before awarding it (but see **Large Projects** below).

Reporting requirement

Within 20 working days following the implementation of the exempted aid scheme or the granting of the exempted individual aid, the Member State must submit to the Commission, the summary form via the BERR's State Aid Branch. Please see the Block Exemption Procedures on the State aid website www.berr.gov.uk/bbf/state-aid/notifications-procedures/

Large projects - NOT exempted from notification requirement

However, large projects over the following thresholds are **not exempted** from the notification procedures to seek Commission approval before awarding aid:

- the total eligible costs of the whole project are at least €25,000,000 and the gross aid intensity is at least half of the applicable aid intensity ceiling, **or**
- the total gross aid amount is at least €15,000,000;
- in the case of research and development, the total eligible cost of the whole project are at least €25 million and the gross grant equivalent will be at least €5 million (and there are additional, higher ceilings in the case of Eureka projects).

Seek advice: Contact your devolved administration, State Aid Branch or equivalent before awarding aid under the Regulation as we can check the aid proposal before any aid is paid out and help you to ensure compliance.

²¹ The Commission are planning to replace the current Block Exemption Regulations with an expanded Block Exemption Regulation which will comprise the provisions in the current Regulations and exemptions for other types of aid. We expect this to come into effect in 2008. The Commission have decided to "roll forward" the existing Block Exemption Regulations so that they may continue to be used in the interim.

ii) Training Aid Block Exemption

Scope²²

The regulation covers public aid for training that favours one or more firms or sectors of industry by reducing costs they should normally have to bear when they want their employees to acquire new skills. It applies to State aid – in the Article 87(1) sense – or training whether the companies provide the training themselves or by public or private training centres.

Examples of training measures which are not Article 87(1) State aid:

- Schooling and initial training (including apprenticeships and day-release schemes);
- Training for unemployed people including traineeships in enterprises. This regulation applies to aid in all sectors (including agriculture), except coal;
- National Schemes which are not selective and apply to all businesses in the United Kingdom

Concepts

Specific training involves theoretical and practical tuition directly and principally applicable to the employee's present or future position in the assisted firm and providing qualifications that are not or only to a limited extent transferable to other firms or fields of work. Part of the training is normally given at the employee's work place.

General training includes tuition which is not applicable only or principally to the employee's present or future position in the assisted firm. It provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee²³.

Eligible Costs includes:

- trainers' personnel costs;
- trainers' and trainees' travel expenses;
- other current expenses;
- depreciation of tools and equipment, to the extent they are used exclusively for the training scheme in question;
- cost of guidance and counselling services with regard to the training project;
- trainees' personnel costs up to the total of the other eligible costs

²² Reference: Commission Regulation (EC) No 68/2001 of 12 January 2001. See Regulations and Frameworks – Training aid block exemption on the BERR's State Aid website <http://www.berr.gov.uk/bbf/state-aid/rules/frameworks/page28712.html>

²³ Training shall be considered "general" if, for example, it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training; or if it is recognised, certified or validated by public authorities or bodies or by other public bodies or institutions on which a Member State or the Community has conferred the necessary powers.

Maximum Aid

Gross Percentages ²⁴	Specific training	General Training
Standard rate (large firms outside assisted areas)	25%	50%
Increases in standard rate:		
SME ²⁵	+10%	+20%
Article 87.3 (a) region	+10%	+10%
Article 87.3 (c) region	+5%	+5%
Beneficiaries: categories of disadvantaged workers	+10%	+10%

iii) Employment Aid Block Exemption

Scope²⁶

The Regulation covers only aid schemes involving State aid for:

- the creation of jobs;
- the recruitment of disadvantaged or disabled workers;
- to cover the additional cost of employing disabled workers.

The regulation covers all sectors, except: coal mining; shipbuilding; and creation of employment in transport sector. It does not cover aid given outside schemes.

Concepts:

Disadvantaged workers: defined from a list in the regulation, including: young people below 25 years or within 2 years after completing full-time education; migrant workers moving to or within the EU; members of ethnic minorities and requiring development of linguistic, vocational training or working experience; people absent from working life and education for at least 2 years for family reasons; single adults looking after children; unemployed people without secondary qualification; unemployed people above 50 years; long-term unemployed people; people convicted and imprisoned for criminal charges; any person recognised under national law as an addict either now or in the past; women in certain areas of high unemployment.

Disabled workers: people recognised as disabled under national law; or having recognised serious physical, mental, or psychological impairment.

²⁴ Where the aid is granted in the maritime transport sector, it may reach an intensity of 100% under certain circumstances.

²⁵ New SME definition applies from 2005 - Text of the amendment is available on the BERR's State Aid website under Regulations and Frameworks.

²⁶ Reference - Commission Regulation (EC) No 2204/2002. See under Rules and Regulations on the BERR's State Aid website

Conditions: Conditions to be satisfied in the case of job creation aid:

- Application for aid has to be submitted before the jobs are created;
- Employment must represent a net increase in the number of jobs;
- Employment must be maintained for at least 3 years (2 years for SMEs);
- New employees must never have had a job or must have lost their previous job;
- Higher aid intensities in assisted regions can be applied only if the beneficiary's contribution to financing new employment is at least 25% and if the employment is maintained in the qualifying region.

Eligible cost

- Job creation aid: wage cost over a period of two years
- Aid for recruitment of disabled /disadvantaged workers: wage cost over one year
- Aid for additional costs of employing disabled workers: additional costs directly linked to the employment of disabled workers, including the costs of adapting premises, of employing staff to assist the disabled worker(s), and of adapting or acquiring equipment for disabled worker(s)

Maximum Aid

	Outside Assisted areas	Article 87(3) (c) Regions	Article 87(3) (a) Regions
Aid for net job creation: - Small enterprises - Medium-sized enterprises - Large enterprises*	15% GGE** 7.5% GGE -	Regional aid ceiling) + 10% GGE) (max.30% NGE)	Regional aid ceiling) +15% GGE) (max.75% NGE) -
Aid for recruitment of disadvantaged people	50%		
Aid for recruitment of disabled people	60%		
Aid for additional costs of employing disabled people	100%		

* Aid intensities under the multicultural framework for regional aid for large investment projects apply.

** GGE = Gross grant equivalent. NGE = Net grant equivalent.

Aid not exempted from the notification requirement:

- Aid to a single enterprise exceeding € 15 million over three years;
- Individual aid awards that are not granted under an aid scheme;
- Aid to maintain jobs as opposed to creating or converting temporary jobs into permanent ones;
- Aid schemes that are targeted at specific sectors;
- Aid for other types of employment-related measures that do not fall under any of the exempted categories in the regulation (eg aid for job sharing).

iv) Regional Aid Block Exemption²⁷

Scope

With the aim of enabling the Commission to focus on the most distortive aids, the new Regional Aid Block Exemption is designed to remove the need to formally notify most regional investment aid. Clearly such a block exemption needs safeguards and the primary one here, so that the Commission can satisfy itself what exactly is being granted, is that all schemes exempt from the notification requirements should be transparent – that means that you should be able to calculate the grant equivalent in advance. This is straightforward enough in the case of grants or interest rate subsidies, but were loans to be backed by the State then the Commission will only accept these as transparent following a risk assessment where we would submit our methodology to calculate the grant equivalent in advance.

Application

You must meet the terms of the block exemption regulation if you are not to notify formally the Commission under the Guidelines themselves. Aid granted under the block exemption regulation does not need to go through the formal notification procedure, but there are other notification and reporting requirements set out in the regulation. You must be in an assisted area to use the block exemption regulation and aid intensities are as laid down in the Regional Aid Guidelines.

v) De Minimis Aid Regulation

Scope²⁸

The Regulation covers small amounts of aid ("de minimis" aid) which do not count as State aid in the sense of Article 87(1).

The de minimis rule does not apply to:

- Undertakings active in the fishery and aquaculture sectors;
- Undertakings active in the primary production of agricultural products;²⁹
- Undertakings active in the processing and marketing of agricultural products (i) when the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; (ii) when the aid is conditional on being partly or entirely passed on to primary producers;
- Export-related activities towards third countries or Member States (namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity). **Note:** it **does** apply to the costs of participating in trade

²⁷ Reference Commission Regulation (EC) No 1628/2006: See Rules and Regulations on the State Aid website

²⁸ Reference Commission Regulation (EC) No 1998/2006 of 15 December 2006: See Rules and Regulations on the State Aid web site – de minimis aid regulation

²⁹ Separate, more restrictive de minimis rules exist for the de minimis sector

fairs or studies or consultancy services needed for the launch of a new or existing product on a new market.

- Aid contingent upon the use of domestic over imported goods;
- Undertakings active in the coal sector;
- Aid for the acquisition of road freight transport vehicles granted to undertakings performing road freight transport for hire or reward;
- Undertakings in difficulty.

Concept

The de minimis regulation sets a threshold figure below which Article 87(1) can be considered not to apply. As such the measure need not be notified in advance to the Commission. This is based on an assumption that in most cases, aid up to this amount will not affect trade and competition between Member States.

Criteria

The total de minimis aid granted to any one undertaking must not exceed €200,000 over any period of three fiscal years. For undertakings active in the road transport sector, the total de minimis aid shall not exceed €100,000 over any period of three fiscal years.

These ceilings shall be expressed as a cash grant. The figures should be gross, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid.

Aid payable in several instalments must be discounted to its value at the moment of its being granted. The interest rate to be used for discounting purposes and to calculate the gross grant equivalent shall be the reference rate applicable at the time of grant.

If aid given exceeds the de minimis ceiling, the de minimis regulation cannot be used, either at the time the aid is granted or subsequently, even for the part of the aid amount that does not exceed the ceiling.

This regulation applies only to 'transparent aid'. Transparent de minimis aid means: loans where the gross grant equivalent has been calculated on the market interest rates that apply at the time of the grant; aid given as capital injections where the total amount of the public injection does not exceed the de minimis ceiling; aid given in risk capital measures where only capital up to the de minimis ceiling is provided to each target undertaking; individual aid provided under a guarantee scheme when the guaranteed part of the underlying loan provided under the scheme does not exceed €1,500,000 per undertaking (€750,000 per undertaking when the undertaking is active in the road transport sector). The guarantee shall not exceed 80% of the underlying loan.

Cumulation

The above ceilings apply to the total amount of de minimis aid to a single recipient from all sources of de minimis aid.

De minimis aid cannot be given towards the same costs that are being

supported under another block exemption or notified scheme if it means that the aid intensity would exceed what is allowed under the block exemption or notified scheme.

Requirements of the Regulation ³⁰

Where an aid provider grants de minimis aid, it must:

- Inform the recipient in writing of the prospective amount of aid and of its de minimis character, referring to the de minimis regulation;
- Obtain from the recipient full information about any other de minimis aid received during the previous two fiscal years and the current fiscal year;
- Only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the undertaking during the relevant period of three years to a level above the permitted ceiling.

Record keeping

The Regulation requires Member States to record information necessary to demonstrate that the Regulation has been complied with, and to keep records of all de minimis aid paid for ten years from the last payment.

On written request, Member States must provide the Commission within 20 working days, or within a longer period fixed in the request, with all the information that the Commission considers necessary for assessing whether the conditions of this Regulation have been complied with.

Period of validity

This Regulation applies from 1 January 2007 until 31 December 2013.

³⁰ See Notification and Procedures section of the BERR's State aid website for more information

2) Regional Aid³¹

Article 87(3)(a) and (c) allow the possibility of State aid for tackling regional problems.

Article 87(3)(a) allows for regions disadvantaged compared with the EU average.

Article 87(3)(c) allows for regions disadvantaged compared with the national average.

Aim of regional aid - to promote the development of the less-favoured regions:

- mainly by supporting initial investment, or
- in exceptional cases, by providing operating aid.

The Guidelines cover investment and operating aid to establishments located in regions eligible for regional aid (see below).

Exceptions and special sectoral rules

The Guidelines do not apply to:

- the production, processing and marketing of agricultural and fisheries products listed in Annex I to the EC Treaty, nor to
- the coal industry.

Special rules apply to:

- transport, shipbuilding, and synthetic fibres;
- the steel industry (no regional aid is allowed to the steel industry);
- large investment projects

The Commission considers that aid to financial services (banking and insurance) brings little advantage in terms of regional development.

Concepts

Two categories of eligible regions:

- **Article 87(3)(a) regions:** These are regions where the standard of living is abnormally low or where there is serious underemployment (NUTS II regions with a GDP / cap lower than 75% of the EU average).
- **Article 87(3)(c) areas:** These are problem areas defined on the basis of national indicators proposed by the Member States.

³¹ Commission Guidelines on National Regional Aid for 2007-2013 (2006/C54/08: See Rules and Regulations on the State Aid website

Initial investment: Investment in fixed capital relating to the setting up of a new establishment, the extension of an existing establishment, or the starting up of an activity involving a fundamental change in the product or production process of an existing establishment;

Operating aid: Aid aimed at reducing a firm's current expenditure (eg salary costs, transport costs, rents).

Large investment projects: initial investment projects with eligible investment costs that are at least €50 million (eligible investment costs are defined below).

Aid for initial investment

Aid for initial investment can be calculated as a percentage of the investment's value or as a percentage of the wage-cost of the jobs linked to the initial investment

- **Investment:** material investment (land, buildings, plant/machinery) and a limited amount of immaterial investment (expenditure entailed by technology transfer). Expenditure on transport equipment in the transport sector is not eligible.
- **Wage-cost:** Gross wage-cost, calculated over a period of two years multiplied by the number of jobs created (net job creation in the establishment concerned).

Maximum Aid levels in the UK

Article 87(3)(a) region < 75%GDP & "statistical effect" region*	30%	40%	50%
Article 87(3)(c) "statistical effect" region	20%	30%	40%
Other Article 87(3)(c) region – higher cap**	15%	25%	35%
Other Article 87(3)(c) region – lower cap**	10%	20%	30%

*Statistical effect regions will be classified as Article 87(3)(a) from 1 January 2007. Their position will be reviewed during 2009. If their GDP per head has fallen to below the EU25 average, they will retain their Article 87(3)(a) status. Otherwise, their status will be downgraded to Article 87(3)(c) and a lower intervention rate will apply.

**The lower cap will apply in areas with both above average EU25 GDP per head and below average EU25 unemployment.

Cumulation

Aid intensity ceilings specified in the table above apply to total aid:

- Where assistance is granted under several regional aid schemes;
- Whether the aid comes from local, regional, national or Community sources.

Where expenditure eligible for regional aid is eligible for aid for other purposes (eg R&D), it will be subject to the most favourable ceiling under the schemes in question.

Operating Aid

Operating aid may be granted in Article 87(3)(a) regions, and only if all of the following conditions are satisfied:

- It is justified in terms of its contribution to regional development;
- Its level is proportional to the handicaps it seeks to alleviate;
- It is limited in time and progressively reduced.

Member State must demonstrate the existence and importance of these handicaps.

Transport aid

Aid to offset additional transport costs can be provided only in the outermost regions and in low population density areas qualifying for regional aid.

Further details on the 2007-13 Guidelines can be found at www.berr.gov.uk/bbf/state-aid/

3) Aid for Research and Development and Innovation

This State aid framework³² for R&D and Innovation allows Member States to fund business research and innovation projects, high-tech start-up companies, and research infrastructure and services. The current framework came into force on 1 January 2007 and significantly amends the rules that previously applied to State aid for R&D. The amended SME block exemption Regulation covers aid for R&D by SMEs.

1) R&D and Innovation support that is not considered to constitute State aid

- public funding of **university and other non-profit research organisations' core teaching, research, and result dissemination activities**. This still applies where organisations also provide economic services such as commercial research and consultancy, as long as there is no cross subsidy between the core and commercial activities and commercial services are charged at market rates
- public funding of **university/other non-profit research organisations' licensing and spin-off creation** where these activities are in-house and income generated is reinvested in the organisations' core public activities
- **university/non-profit research organisation participation in business research projects on commercial terms**: e.g. where the organisation is paid market rates by business partners for its share of the project work or results, or is given ongoing ownership of the results generated by its share of the work. Where these conditions are not met, the organisation's contribution to the project will constitute State aid (see below for terms on which State aid for projects can be approved)
- where **public bodies buy or commission research**, as opposed to subsidising businesses to carry out research projects (see below); provided the contract is at market rates, in particular where there has been a tender procedure in compliance with the EU procurement directives, there should be no State aid
- where **universities/research organisations or other not for profit intermediaries provide publicly funded services to businesses** (for example, incubator services to SMEs or open access research facilities), they will be regarded as a channel for State aid rather than a recipient of it themselves as long as they can show that they are not deriving an undue advantage as intermediaries. **Any aid to end user businesses must comply with normal State aid rules.**

³² Community Framework for State aid for Research and Development and Innovation 30.12.06 OJ C http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_323/c_32320061230en00010026.pdf

Sectors for which special rules apply

- **Agriculture & fisheries, shipbuilding and transport:** higher aid intensities and/or different definitions of fundable R&D and innovation projects apply in some cases.
- the framework does not allow aid to **undertakings in difficulty** as defined under state aid rules on rescue and restructuring.

2) Allowable state aid

i) R&D project aid. The framework allows state aid for the following levels of R&D:

- **Fundamental research:** defined as “experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view”.
- **industrial research:** defined as “planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services or for bringing about a significant improvement in existing products, processes or services” among other things.
- **experimental development:** this is an extension of the old pre-competitive development category and is defined among other things as “the acquiring, combining, shaping and using of existing scientific technological business and other relevant knowledge and skills for the purposes of producing plans and arrangements or designs for new, altered or improved products, processes or services”. This category now extends to the development of commercially usable prototypes and pilot projects where they would be too expensive to produce only for experimental purposes; where there is subsequent commercial use any revenue generated has to be deducted from eligible costs. As before, this category does not cover routine or periodic changes to produces and services.
- **technical feasibility studies** preparatory to industrial research and experimental development.

Eligible costs

- costs of staff, instruments and equipment, and land and premises, to the extent that these are related to the project;
- costs of contractual research, knowledge or patents, and consultancy services bought in for the project;
- additional overheads and operating expenses such as the costs of materials and supplies where directly incurred by the project;
- SMEs only: legal, translation and other costs that result from obtaining and validating patents and other IP rights.

Aid Intensities – Project Aid

	Small enterprise	Medium enterprise	Large enterprise
Fundamental research	100%	100%	100%
Technical feasibility study preparatory to industrial research	75%	75%	65%
Industrial research	70%	60%	50%
Industrial research projects involving collaborations* or where the results will be disseminated	80%	75%	65%
Technical feasibility study leading to experimental development	50%	50%	40%
Experimental development	45%	35%	25%
Experimental development projects involving collaborations*	60%	50%	40%

* collaborations between businesses and research organisations, or business to business collaborations which are cross border or involve at least one SME, provided that no one business partner carries more than 70% of the project costs

Notes

- Member states must demonstrate the incentive effect of all aid to large businesses (e.g. that the project would not go ahead at all, or to the same scale or timetable without the aid)
- Where aid is given in the form of a repayable loan the aid intensity ceilings are higher
- Large grants are subject to separate clearance and in-depth scrutiny requirements. The trigger points apply per grant per recipient and vary according to the level of R&D involved: €20 million for fundamental research projects, €10 million for industrial research projects, and €7.5 million for experimental development projects.

ii) Aid for young innovative enterprises: aid to hi-tech start up companies provided that:

- they are small enterprises in existence for less than 6 years at the time of the aid grant and

- they are engaged in products, services or processes which are technologically new or substantially in advance of the norm, and carry a risk of technological failure, and this has been evaluated by an independent expert, or their R&D expenses are or have recently been at least 15% of total operating expenses, as certified by an external auditor

YIE aid is allowable up to €1 million per recipient (€1.5 million in Article 87(3)(a) areas and €1.25 million in Article 87(3)(c) areas) but may only be given once.

YIE aid may not be cumulated with other state aids within three years of being granted, apart from risk capital or other forms of R&D and Innovation aid.

iii) Aid for process and organisational innovation in services: allows aid for non-technological innovation projects other than routine improvements. Organisational innovation projects must be related to the exploitation of ICT. Large companies are only eligible for grants as part of collaborative projects with SMEs; the SMEs must bear at least 30% of project costs.

Aid intensities: small enterprises 35%, medium enterprises 25%, large enterprises in collaboration with SMEs 15%

Eligible costs: as for R&D project aid, but for organisational innovation projects instrument/equipment costs must be related to ICT to qualify.

Note: Member States will be required to demonstrate the incentive effect of all grants/schemes in this category. Any aid over € 5 million per recipient per project will require separate clearance and in-depth scrutiny.

iv) aid for innovation advisory and support services: allows support to SMEs in the form of technical facilities or advisory services. Aid may be given either as a direct grant to SMEs or in the form of funding to non-profit intermediaries to provide innovation services at prices below the level a market based operator would require in order to gain commercial rates of return. The conditions are that:

- the advisory and support services covered by this category are: management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, protection and trade in Intellectual Property Rights and for licensing agreements, consultancy on the use of standards, office space, data banks, technical libraries, market research, laboratories, quality labelling, testing and certification.

- beneficiaries must be SMEs and the aid to them must not exceed €200 thousand over any three year period

- the service provider must have national or European certification; if not, the aid may not cover more than 75% of eligible costs

- services must be priced at market rates or, where the provider is a non-profit body, at a price that reflects full costs and a reasonable margin

- where this aid is delivered via funding to non-profit organisations, member states must ensure full transparency over the costs of the service as well as the price paid by service users, to ensure that the aid received can be measured and monitored

v) aid for the loan of highly qualified personnel: allows funding of staff secondments from universities/research organisations and large firms to SMEs provided that:

- the secondees are researchers, engineers, designers or marketing managers with tertiary education and at least 5 years relevant professional experience (this can include doctoral training) who will take on newly created functions in the SME, and who will have the right to return to their original employers after the secondment

- aid must not extend beyond three years per undertaking/secondee or exceed 50% of eligible costs, which are: all personnel costs of borrowing and employing the secondee, including the costs of using a recruitment agency, as well as a mobility allowance.

vi) aid for innovation clusters: these are defined in the framework as groupings of universities and other research organisations and businesses including innovative start-ups, SMEs and large businesses, which operate in a particular area and promote knowledge transfer by networking, sharing facilities and exchanging expertise.

This category allows the **commercial organisation** responsible for running a cluster to be granted investment and operating aid for **training and research facilities, open access research laboratories and testing facilities and broadband infrastructure.**

Conditions:

- investment aid is allowed up to an aid intensity of 15%/25%/35% for large/medium/small enterprises. There are further bonuses for facilities located in Article 87(3)(a) areas, outermost regions and statistical effect areas. The eligible costs are land, buildings, machinery and equipment.

- operating aid must normally be limited to a period of five years and must either be degressive (100% in the first year falling to zero by the end of year five) or must be limited to 50% throughout the period. The eligible costs are the personnel and administrative costs involved in marketing of the cluster to recruit new companies, management of the cluster's open access facilities.

- when notifying cluster aid, Member States must provide an analysis of the technological specialisation of the cluster, existing regional potential, existing research capacity, presence of similar clusters in the Community and potential market volumes of the activities in the cluster

Note: where Member States are funding **not-for-profit research organisations** to provide innovation infrastructure this is subject to the rules in section 3.1 of the Framework (see also final bullet in section 1 above). This

means that they may be funded up to 100% without being recipients of State aid themselves, provided they can demonstrate that they are not receiving any undue benefit themselves as intermediaries and that any aid to end users of the facility complies with State aid rules.

3) Reporting and transparency

In addition to the headline figures provided by Member States annually on all one-off aids and aid schemes, Member States are required to submit **detailed annual reports** on any aids approved under the R&D and Innovation Framework disclosing the names of beneficiaries, the aid amount per beneficiary, the aid intensity and the sectors where the aided projects are undertaken (in the case of fiscal aid schemes, beneficiaries need only be named where they receive aid over €200,000). Cluster aid reports must also cover the cluster's activity and success in promoting R&D and Innovation. **These reports will be published by the Commission.**

There are additional requirements to send **information sheets** to the Commission on large aids above €3 million. **These sheets will also be published by the Commission.**

Finally Member States are now required to publish details of R&D and Innovation aid schemes online.

Approval processes

The Commission will be introducing new extended block exemption provisions in 2007/8 to cover some of the aids allowed under the Framework – for the latest progress on this see DG Competition's state aid webpages.

Aids not covered by the block exemption will require prior approval by the Commission. The Framework applies in-depth scrutiny to notifications involving larger or more sensitive aids.

The amended SME block exemption regulation covers aid for R&D by SMEs.

4) Aid for Environmental Protection Measures

Scope

The Guidelines³³ cover aid for actions designed to remedy or prevent damage to our physical surroundings or natural resources or to encourage the efficient use of these resources.

The Guidelines do not apply to:

- aid for R&D and training in the environmental field (R&D framework, SME and training aid regulations apply);
- the production, processing and marketing of agricultural products listed in Annex I of the EC Treaty (Community guidelines for State aid in the agricultural sector apply).

The purpose of these guidelines is to allow the approval of only those costs of projects which contribute purely to the achievement of an environmental gain. Because of this overriding principle you should be aware when notifying a project under these guidelines, that it is extremely rare for all project costs to count towards the eligible costs.

In all cases, the Commission will look to subtract the costs of an “equivalent” non-environmental project and any savings accrued over the first 5 years of the project (eg cost of heating fuel saved by using industrial process waste gases as a heat source)

a) Investment aid & aid for advisory services

Eligible costs

The Commission views advisory/consultancy services as an important part in ensuring the continuous progression of environmental protection. It therefore takes the view that aid may be granted to SMEs under the provisions of the SME Block Exemption. In addition, SMEs in the environmental field are also eligible for Investment aid under the provisions of the SME Block Exemption³⁴.

³³ Currently under review - Reference Summary of the Community Guidelines on State aid for environmental protection. (Official Journal No C 37, 3.2.2001, p.3) http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/c_037/c_03720010203en00030015.pdf

³⁴ See regulation (EC) No 70/200138 on the BERR's State Aid website in Rules and Regulations

Maximum aid levels permissible under the guidelines

Maximum aid intensities as a percentage of eligible costs	Outside assisted areas (GGE)	In assisted areas (GGE)
(a) Investment to adapt to compulsory EU standards (SMEs only)	15%	15%
(b) Investment to improve on compulsory EU standards and relocation of firms	30%	40% or Regional aid ceiling + 10%
(c) Investment in energy saving and in CHP	40%	40% or Regional aid ceiling + 10%
(d) Investment in renewable sources of energy (°)	40%	40% or Regional aid ceiling + 10%
(e) Rehabilitation of polluted industrial sites	100% of eligible costs + 15% of the cost of the work	

Note:

- 1) (°) Where it is shown to be necessary, aid can be granted up to 100% of eligible costs
- 2) Where in the case of (b), (c) and (d), the investments are carried out by SMEs, the aid intensities may be increased by a further 10% GGE.
- 3) The bonuses for assisted regions and SMEs may be combined, but the maximum rate of aid should never exceed 100% GGE of the eligible costs
- 4) All aid intensities are expressed in gross grant equivalents (GGE)

b) Aid for investment to adapt to new compulsory EU environmental standards or to improve on such standards

Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the compulsory standards and/or to meet the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period³⁵.

Period of Validity: Aid for investment to adapt to new compulsory EU standards can be granted to SMEs only and can be made available only during a period of three years from the adoption of these new standards.

³⁵ (NOTE: These provisions are intended to provide for transitional arrangements for new environmental standards. As such, scope for their application is extremely limited.)

c) Aid for investment in energy saving, in renewable sources of energy and in combined heat and power installations (CHP)

Eligible costs: Strictly limited to the extra costs of the investments in land, buildings, equipment and intangible assets necessary to achieve the environmental objectives. In all cases, the eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period. In the case of renewables or CHP, the extra costs are defined as the extra cost compared to the cost of a comparable conventional power plant.

d) Aid for the rehabilitation of polluted industrial sites

Eligible costs: If the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the rehabilitation of the land may receive aid. The eligible costs are equal to the cost of the work to repair the environmental damage less the increase in the value of the land.

e) Aid for the relocation of firms

Aid for the relocation of companies can be granted only if the change of location is dictated on environmental protection grounds and if it is ordered by administrative or judicial decision. In addition, the company relocating must comply with the strictest environmental standards applicable in its new location. The eligible costs should be limited to the net costs of the relocation³⁶.

f) Operating Aid in environmental field

Under the Community Guidelines on State aid for environmental protection, Member States can also provide operating aid in a limited number of circumstances where such aid is shown to make a significant contribution to protecting the environment.

Specific conditions to be respected when granting operating aid in the environmental field are set out in detail in points 42 to 67 of the Community Guidelines on State aid for environmental protection.

Eligible activities

The following types of operating aid may be authorised under the Guidelines:

- Operating aid to promote environmentally-friendly forms of waste management and to promote energy saving.
- Operating aid in the form of reductions of or exemptions from taxes levied on certain activities for reasons of environmental protection (eg CO2 levy).
- Operating aid to promote renewable energy sources.
- Operating aid for the combined production of electric power and heat

³⁶ NOTE: The conditions for such aid are rare

Eligible costs

The eligible costs are strictly limited to the extra production costs by comparison with the market prices of the relevant products or services.

Maximum aid

Operating aid is limited to a duration of 5 years, although where aid has been granted, it is permissible to seek re- notification at the end of the 5 years. Where the aid is digressive, its intensity may amount to 100% of the eligible costs in the first year, falling to 0% in the 5th year in a linear profile. Where the aid is non-digressive, the intensity must be limited to 50% of the eligible costs.

For operating aid in the form of tax reductions or exemptions, specific criteria apply for new taxes and existing taxes.

Finally, on operating aid for renewable energy sources and Combined Heat and Power, the environmental guidelines offer four options for Member States to grant aid. These are set out in detail in the guidelines.

5) Aid for Rescuing & Restructuring Firms in Difficulty

Scope

The Guidelines³⁷ cover aid for the rescuing and/or restructuring of individual companies in difficulty.

- They do not apply to steel and coal mining. Specific rules apply for restructuring in the agricultural sector.
- **A company in difficulty** is a company that is unable to stem losses which without outside intervention by public authorities will almost certainly condemn it to go out of business in the short or medium term.
- **Rescue aid** is temporary assistance. It should make it possible to keep a company in difficulty afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time needed by the Commission or the competent national authorities to reach a decision on that plan (maximum six months).
- **Restructuring aid** is based on a feasible, coherent and far-reaching plan to restore a firm's long-term viability.
- A firm is not eligible for rescue or restructuring aid for the first three years following the start of operations in the relevant field of activity.

Conditions:

Rescue aid has to meet the following conditions:

- Consists of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates;
- Restricted to the amount needed to keep the firm in business (the guidelines contain a formula);
- Only for the time needed (max. 6 months) to devise the recovery plan;
- Be warranted on the grounds of social difficulties and have no adverse effects on the industrial situation in other Member States;
- Should be a one-off operation – one time last time principle;
- Rescue aid can be given before notification but notification must be made immediately afterwards.

Restructuring aid can be granted only if the following criteria are met:

- A viable restructuring/recovery programme is submitted to the Commission;
- Measures are taken to avoid undue distortions of competition (eg appropriate reduction of capacity);
- Aid is limited to the minimum needed for the implementation of the restructuring measures. **Beneficiaries have to make a significant contribution** - 50% for large companies, 40% for medium companies and 25% for small companies;
- The company has to implement the restructuring plan in full;

³⁷ Summary of Community Guidelines on State aid for rescuing and restructuring firms in difficulty (Official Journal No C288, 9.10.1999, p.2) http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/c_288/c_28819991009en00020018.pdf

- Restructuring aid can be granted once only (one time, last time principle);
- Strict monitoring and annual reporting is required.

Notification

- Aid in conformity with the de minimis regulation does **not** need to be notified;
- For large firms, individual notification of each award of rescue and restructuring aid is required;
- For SMEs, rescue and restructuring aid (up to €10,000,000) can be granted on the basis of notified and approved aid schemes.

6) Risk Capital/Venture Capital Aid

Aim

The aim of the Communication³⁸ is to set out the criteria under which the Commission may authorise risk capital measures, even if they are not compatible with other State aid regulations, guidelines or frameworks.

Scope

Measures principally designed to provide or promote risk capital or equity financing to enterprises in their start-up and development phases.

Where State aid is present:

When assessing risk capital funds, the Commission will examine whether State aid is present at each of the following levels:

- **Aid to the investors:** Where a measure allows investors to participate in a risk capital fund on terms more favourable than if they had undertaken this investment in absence of the measure, then those investors may receive State aid. The same applies where the investors participate in a fund on terms more favourable than public investors.
- **Aid to an intermediary vehicle or fund and/or its manager:** Normally, the fund is merely a vehicle for the transfer of aid, rather than being an aid beneficiary itself. However, in certain cases (notably existing funds with several investors), the fund may have the character of an independent enterprise.
- **Aid to the enterprises invested in:** The main test is whether investment in the enterprise has been made on terms acceptable to a normal economic operator in a market economy – the “market economy investor principle” (MEIP).

The above principle may also be applied to the investors in a fund. Where both public and private sector investors operate on the same basis with respect to both risks and rewards, it is likely that private sector investors may not be in receipt of aid. However, investors whose risks have been reduced, or whose rewards have been increased by a measure, may be said no longer to be such operators.

Criteria for assessing risk capital measures

Assessment of risk capital measures on the basis of existing State aid regulations, frameworks or guidelines:

- In some cases, risk capital investments can be approved under existing regulations, frameworks or guidelines. This would be the case

³⁸ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_194/c_19420060818en00020021.pdf

if the equity capital invested in a company is provided in conformity with the provisions laid down in one of these regulations, frameworks or guidelines (eg the de minimis or SME aid regulation).

- In most cases, this will not be possible for a number of reasons (eg the difficulty of establishing a grant equivalent of equity capital provided to companies, the difficulty of establishing a link with eligible costs, the fact that no State aid regulation, framework or guideline provides any basis for measures providing aid at the level of the investors).

In cases where risk capital measures cannot be cleared on the basis of existing State aid regulations, frameworks or guidelines, the Commission will assess the compatibility of State aid measures, primarily in relation to the existence and scope of the market failure.

In cases where it is envisaged that the measure will provide investments beyond the terms of the guidelines in particular with respect to the maximum investment of €1.5m pa per target SME, or where the private sector investment would drop below 50% (30% in assisted areas), clear evidence should be provided of the market failure and the risk of crowding out private investment. It should also be noted that in practice, the Commission will want to see some evidence of a market failure in all cases irrespective of investment size or private sector involvement.

The Commission will regard the following characteristics as positive elements in its evaluation:

- Existence and evidence of a market failure.
- Decisions to invest are profit-driven. This would be the case if there is a link between the financial performance of the fund and the remuneration of those responsible for the investment decisions. This will enable the reach the view that the measure encourages private risk capital investment.
- Aid is limited to the minimum necessary. An open call for tender for the establishment of any preferential terms given to investors and an open tender for managers would be considered positive elements.
- Presence of an investment committee.
- Presence of business angels.

Seek Advice: If you are intending to lend to a public body sector and you are unsure about how to apply the rules, please contact either the Treasury or the BERR's State Aid Branch for further advice.

B Rules Applying to Specific Sectors - (“vertical” aid measures).

The Treaty has additional provisions for certain sectors. The Commission has adopted frameworks and rules defining its approach to State aid in particular industries³⁹.

1) Agriculture, Fisheries and Aquaculture

The general State aid rules described here do not apply, or apply only to a limited extent, in the sectors producing and marketing products of agriculture and fisheries.

The rules applying to these sectors are laid down in Treaty Articles 32 and 36 and the Community Guidelines for State aid in the agricultural sector, adopted by the Commission in 2000 and in the Community Guidelines for the examination of State aid to fisheries and aquaculture⁴⁰. The Department for Environment, Food and Rural Affairs (DEFRA) provides advice on the rules applying in these sectors.

2) Transport

In the road transport sector, most general State aid rules apply, although there are exceptions (eg transport equipment is not eligible for aid; the de minimis regulation has restrictions in relation to transport; the job creation part of the employment block exemption does not apply to transport).

General State aid rules do not apply in the other transport sectors (rail, air, inland waterways and maritime transport). Article 73 of the Treaty includes provisions on State aid to transport⁴¹. The Department for Transport provides advice on the State aid rules for transport.

³⁹ These are obtainable on the Commission’s website
http://ec.europa.eu/comm/competition/state_aid/legislation/specific_rules.html
http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_070/c_07020020319en00080020.pdf

⁴⁰ These are obtainable on the Commission’s website
http://ec.europa.eu/agriculture/stateaid/leg_en.htm -
http://ec.europa.eu/fisheries/legislation_en.htm

⁴¹ Link to the Commission’s website for details of the rules applicable
http://ec.europa.eu/dgs/energy_transport/state_aid/index_en.htm

3) Sensitive Sectors

The Commission has adopted special rules for these sectors which have experienced particularly severe economic problems and are considered sensitive because of the level of distortion in competition that may arise if State aid is applied to the sector concerned:

- the coal and steel industry (ECSC and non-ECSC)
- synthetic fibres sector
- shipbuilding.

For these sectors, the State aid rules are, in general, more restrictive than the rules applying to other industries. In most cases, the possibility of aid for investment leading to increased production capacity is severely limited or even prohibited. In some cases, aid is allowed only on condition that it is accompanied by capacity reductions. In almost all of these sectors, special notification requirements are imposed on Member States (obligation to notify the Commission of each case individually, even if there is an approved national State aid scheme).

a) State aid to the coal industry

Under Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (applicable until 31 December 2010)⁴², the Commission **may** approve the following categories of State aid:

- State aid for the **reduction of activity** - to cover current production losses of production units with a planned closure date no later than 31 December 2007.
- State aid for **access to coal reserves**: production units may receive either aid for initial investment (for up to 30% of the initial investment costs of projects that contribute to maintaining access to coal reserves and ensure the viability of the units concerned, with a final payment no later than 31 December 2010), or current production aid (for current production losses of production units whose operations form part of a plan for access to coal reserves and where the aid contributes to maintaining access to coal reserves), but not both.
- State aid for **exceptional costs** (for certain costs resulting from the rationalisation and restructuring of the coal industry that are not related to current production (“inherited liabilities”)).

Undertakings in the coal industry may benefit from State aid for research and technological development, the environment and training. No other State aid may be granted. **NOTE:** R&D and environment aid require you to obtain advance approval from the Commission. Training aid that complies with the training block exemption regulation is exempt from this requirement – unless for very large projects.

⁴² http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_205/l_20520020802en00010008.pdf

b) State aid to shipbuilding, ship repairing and ship conversion
Council Regulation (EC) No 1540/98 of June 1998 (which established new rules on aid to shipbuilding) expired on 31 December 2003 and has been replaced by new Commission Framework 2003/C317/06.

Commission Framework 2003/C317/06 came into force on 1 January 2004 and applies until 31 December 2006. The Commission's objective in the new Framework is to simplify the application of state aid rules to shipbuilding (thereby removing the differences between the rules applicable to the shipbuilding sector and other industrial sectors in the sphere of state aid) by extending horizontal provisions to the shipbuilding sector.

Key aspects:

- **application of horizontal provisions**

Horizontal measures relating to training aid; de minimis; SME; rescue and restructuring; environmental and R&D may also apply to shipbuilding.

- **specific provisions**

- **aid to R&D and innovation** – the maximum aid intensity has increased from 10% to 20 %.

- **closure aid** – certain eligible costs arising from the total or partial closure of shipbuilding, ship repair or ship conversion yards are allowable. Undertakings receiving partial closure aid must not have benefited from rescue or restructuring aid in the past 10 years.

- **employment aid** – aid granted for the creation of employment as well as recruitment in shipbuilding; repair and conversion may be allowable if it complies with the rules set out in Commission Regulation (EC) No 2204/2002 of December 2002 on aid for employment.

- **export credits** - aid to shipbuilding in the form of government supported credit facilities granted to national or non-national ship-owners or third parties for the building or conversion of vessels may be allowable if it complies with the terms of the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits for Ships and with its Sector Understanding on Export Credits for Ships (including any future amendments).

- **development aid** – Aid related to shipbuilding and conversion granted, as development assistance to a developing country, may be allowable if it complies with the terms laid down in the OECD Arrangements on Guidelines for Officially Supported Export Credits and its Sector Understanding on Export Credits.

- **regional aid** – in Art 87(3)(a) regions, aid for investment is now limited to 22.5% of eligible costs. In Art 87 (3)(c) regions, aid for investment is now limited to 12.5% of eligible costs.

- **notification** – All plans for new aid (whether ad hoc or under scheme) must be notified.

- **cumulation** – Any combination of state aid or other funding should not exceed the aid intensity stipulated in the new Framework.

c) **State aid to the steel industry**

Under the Commission's 2002 Communication on a multilateral framework on regional aid for large investment projects⁴³ no investment by the steel industry is eligible for regional investment State aid during the life of the framework (until 31 December 2009).

The Communication on rescue and restructuring aid for the steel sector, indicates that the Commission regards the following **closure aid** as compatible with the common market:

- State aid to cover not more than 50% of payments to workers made redundant or accepting early retirement
- State aid to steel firms that permanently cease production of steel products of an amount not exceeding the residual book value of the plant to be closed

and that it regards **rescue aid and restructuring aid** to the steel industry as **incompatible** with the common market.

Undertakings in the steel industry may benefit from State aid for training, employment, environmental protection, and research and development as well as from "de minimis" aid.

Small and medium-sized enterprises in the steel industry may benefit from aid for SMEs at aid rates of up to 15% and 7.5% respectively under the Commission "block exemption" regulation for SMEs, but not from the higher rates otherwise available in Article 87(3)(a) areas and Article 87(3)(c) areas. The Commission will not approve large grants for investment not exempted by that regulation.

d) **State aid to the synthetic fibres sector**

Under the Commission's 2002 Communication on a multi-sectoral framework for large investment projects⁴⁴, no investment in the synthetic fibres sector is eligible for regional investment State aid.

The Commission is considering whether and to what extent the synthetic fibres sector is to be included in the list of sectors with serious structural problems (to which more restrictive rules apply from 1 January 2004).

⁴³ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0319\(03\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0319(03):EN:HTML)

⁴⁴ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/c_070/c_07020020319en00080020.pdf

4) Cinema Film and TV Programme Production

The Commission's Communication⁴⁵ sets out the criteria (valid until June 2007 but likely to be extended) against which it assesses State aid to cinema and TV programme production:

- the State aid must be directed to a product the content of which is cultural according to verifiable national criteria;
- the producer must be free to spend at least 20% of the film budget in other Member States without suffering a reduction in the State aid provided. ("Territorialisation" of up to 80% of the production budget is therefore permitted);
- the intensity of the State aid must not exceed 50% of the production budget. "Difficult and low budget films", defined according to national parameters, are not subject to this limit.
- State aid supplements for specific filmmaking activities (e.g. post-production) are not permitted.

No support may be provided from the EU Structural Funds for cinema and TV programme production.

As with other forms of State aid, the aid must also respect the "general legality" principle - that is, it must not be subject to conditions that are contrary to provisions of the Treaty other than those relating to State aid. In particular

- the State aid must not be reserved exclusively for nationals of the Member State concerned, require beneficiaries to have the status of a national undertaking established under national commercial law, or require workers of foreign companies providing filmmaking services to comply with national labour standards.
- where the State aid is financed by a parafiscal charge and benefits national producers either solely or to a greater extent than competitors in other Member States, then that charge must not be levied on imported production, and national production must not enjoy a lower rate of charge when exported.

Undertakings in the film and TV programme production sector may benefit from regional State aid or other State aid frameworks that apply across industry generally, for example, SMEs, research and development, training or employment.

⁴⁵ http://ec.europa.eu/comm/competition/state_aid/legislation/specific_rules.html

PART IV - Other Communications and Guidelines on State Aid

1) State Aid in Sales of Land and Buildings by Public Authorities

The Commission has set out guidelines on procedures for the sale of land by public authorities that automatically preclude the existence of State aid (the Communication on the State aid elements in sales of land by public authorities⁴⁶). If there has been a sufficiently, well-publicised, open and unconditional bidding procedure and the best offer is accepted, there would be no State aid involved in the transaction. If restrictions are placed on the use of the land, e.g that the development must include the provision of social housing, this may reduce the value of the land but does not mean that the land is not sold at market value as long as the planning constraints are transparent and the best offer is accepted. If public land is sold at less than market value State aid will be involved and the difference between the market value and the sale price will constitute State aid.

If land is sold for less than market value, you would then need to find a way of giving the aid in compliance with the State aid rules, usually under the regional aid guidelines in assisted areas or under the SME block exemption or de minimis regulation.

Land and property development / regeneration

There is no formal Commission framework as such for land and property regeneration, but there are several schemes in the UK which have either received Commission State aid approval, or which the Commission confirmed as not involving Article 87(1) State aid.

These are:

- Support for speculative developments
- Support for bespoke developments
- Historic environment regeneration scheme
- Support for remediation of derelict land
- Community Regeneration
- Environmental Regeneration
- Direct development

For further information and guidance about these schemes, please contact the Department for Communities and Local Government (DCLG). See the contact list on the website

2) Broadband

There are no specific guidelines on state aid for broadband but the Commission has published an analysis of the State aid issues around broadband in its Spring 2005 Competition Policy Newsletter. Please find this article under the BERR's State Aid

⁴⁶ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y0710(01):EN:HTML)

website under ‘Regulations and Frameworks – other measures’.

However, as with all aid projects please seek the State Aid Branch’s advice if you are unsure of how to apply the rules for broadband activities.

3) Reference Rate

Another overriding principle the Commission applies is the use of a “reference rate”⁴⁷ to calculate the equivalent of a “commercial rate of return” in loans and similar instruments. The Commission sets a reference rate each year for each Member State.

The reference rate represents the rate which should be used for secured loans to demonstrate that no aid is present in the interest rate applied to the loan. For unsecured loans, a formula of reference rate plus 400 base points (4%) is applied. Where a rate lower than the reference rate is to be applied the Commission will consider the value of difference between the reference rate and the rate being applied in determining whether or not the aid may be approved.

4) HMG’s Commercial Lending: Guidance on Lending to Sponsored Bodies

Concept

In order to regulate commercial lending rates for public sector bodies the Treasury has issued a Dear Accounting Officer’s (DAO)⁴⁸ letter to all Government Departments to ensure that Commercial Lending is in line with the Commission’s rules.

However, please note that although the requirement is that Government should ideally not lend to financially unhealthy bodies and if it did to ensure that it followed the commission’s guidelines regarding reference rates and that a credit rating should be obtained for companies borrowing, this does not apply to lending that is in compliance with approved schemes, for example under the Commission’s Rescue and Restructuring guidelines.

5) Use of Structural Funds as State aid

Structural Funds are the European Union’s main instruments for supporting **social and economic restructuring** across the Union. Further details can be found on the BERR’s State Aid website www.berr.gov.uk/bbf/state-aid/

Although a form of European funding, Structural Funds (SF) are still considered a State resource as the national government has an influence in how they are spent. The Structural Funds regulation requires the Managing Authority to ensure that all operations for an approved Structural Fund programme comply with the State aid rules.

Many uses of the Structural Fund do not come within the scope of the State aid rules eg support for an infrastructure project of general public benefit that has been tendered. Where individual application of the Funds does involve State aid, the

⁴⁷ http://ec.europa.eu/comm/competition/state_aid/legislation/reference.html

⁴⁸ <http://www.hm-treasury.gov.uk/media/698/21/6982130E-BCDC-D4B3-1C19D3292B571825.pdf>

Managing Authority must ensure that the SF contribution as well as the other public funding complies with State aid rules.

PART V - Which State Aid Rules Apply?

There are State aid guidelines relating to different types of aid. See Guidelines, Frameworks and Regulations for details of the most frequently used categories. For more detail refer to the Commission website or BERR's State Aid Branch www.berr.gov.uk/bbf/state-aid/

Other points to remember

- Where a block exemption applies, the aid must comply with every condition stated in the block exemption regulation.
- Where notification to the Commission applies, you should create a State Aid notification using the State Aid Notification Interactive (SANI). Further guidance is set out in the Notification and Approval Procedures on the BERR's State Aid website
- Special rules apply in particular sectors: steel; coal; agriculture, fisheries, synthetic fibres, and transport. These take precedence over the guidelines and frameworks which apply across industry generally⁴⁹.
- Very large individual awards of aid for initial investment must still be notified even if the (national) aid scheme concerned has been approved.

⁴⁹ For details see the Commission's website

http://ec.europa.eu/comm/competition/state_aid/legislation/specific_rules.html

For further advice on these sectoral rules refer to State Aid Branch in BERR (or DEFRA for agriculture and fisheries and DfT for transport).

Glossary

Aid	Short for State aid or public aid to business.
EC	European Community
EC Treaty	The founding treaty of the European Community
EU	European Union
European Commission	The EU body which enforces State aid rules and generally controls and monitors State aid
European Union	An evolution from the European Community
General measure	A Member State aid or benefit which is available to <u>all</u> businesses / economic activities in the State - and is therefore <u>not</u> State aid in the Article 87(1) sense
GGE	Gross grant equivalent
Member State	A nation state member of the EU
NGE	Net grant equivalent
“No aid”, or “Not aid”	Jargon for “not State aid as specified in the EC Treaty Article 87(1)”. Therefore the State aid rules do not affect it.
Public aid	A useful term for aid to business which is not “State aid” in the EC Treaty sense
State aid	Specific concept of Member State aid to business set out in Article 87(1) of the EC Treaty as updated by the EU Treaty
State aid rules	The rules that apply to Article 87(1) State aid – set out in Treaty provisions, European Commission legal regulations, guidelines, frameworks, notices, directives, communications, and in interpretations by the European Court of Justice.
Treaty of Rome	Another name for the founding treaty of the EC

Disclaimer

We provide the information on this website to help public officials understand the State aid rules that may affect their proposals and plans for giving aid to industry.

Our goal is to keep this information timely and accurate. If errors are brought to our attention, we will try to correct them. However the information is:

- of a general nature only and does not address the specific circumstances of any particular individual or entity;
- not necessarily comprehensive, complete, accurate or up to date;
- sometimes linked to external sites over which we have no control;
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End

State Aid Branch
Consumer and Competition Policy Directorate
Department for Business, Enterprise and Regulatory Reform
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October 2007