



Department
for Business
Innovation & Skills

State Aid

The Basics

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Contents

Contents	2
State Aid: The Basics	3
Introduction	3
Step 1: Is it state aid?.....	4
Figure 1. Is it state aid?.....	5
Step 2: What do I do if it might be state aid?	6
1. Redesign it	6
2. Take a well trodden path.....	6
3. Think “state aid” early.....	6
4. Don’t ignore it.....	6
5. Seek advice.....	6
Figure 2. What do I do if it might be state aid?.....	7
Step 3: How can state aid be granted legally?.....	8
<i>De minimis</i>	8
The General Block Exemption Regulation (GBER).....	8
Other mechanisms	9
Export & Operating aid.....	9
A risk-based approach to state aid.....	9
Further help.....	9
Contacts.....	10

State Aid: The Basics

Are you planning to give money to an organisation that does anything commercial?

For example:

Are you creating a fund to give loans where the banks do not?

Are you providing incentives to companies to help drive down costs to the consumer?

Are you setting up a publicly funded body?

Are you planning to set up a scheme or body to give financial assistance?

Are you setting up a scheme to stimulate growth in a target sector or region?

Are you building pay-to-use infrastructure?

These are just some examples of when state aid rules might apply. This guide will help you to decide whether you are in state aid territory, and what to do next.

Introduction

State aid can occur whenever state resources are used to provide assistance that gives organisations an advantage over others. It can distort competition, which is harmful to consumers and companies in the EU. Where there is a genuine market failure, state aid might be necessary and justified. In general, aid that really changes the behaviour of the organisation that receives it, which is the best way to address the failure and limit distortions, and where the benefits outweigh any negative effects on competition, is approvable.

The UK and EU support strong state aid rules to ensure aid is well targeted to address market failures and avoid negative effects on competition. With strong rules, those who receive advantages from the state won't become overly reliant on aid and will remain incentivised to innovate or make efficiencies. New market entrants are encouraged and weak companies are less likely to stay in the market. Ultimately, it's a better deal for consumers.

State aid rules promote a level playing field and ensure we invest well. Navigating them takes time and resource, but it also helps policy-makers ensure value for money and avoid unwanted effects. This guide has 3 steps to help you answer the 3 basic questions all policy-makers need to ask:

Step 1: Is it state aid?

Step 2: What do I do if it might be state aid?

Step 3: How can state aid be granted legally?

While reading, remember:

- A scheme can be state aid even if it is designed to benefit society.
- If your policy includes state aid, it doesn't necessarily mean you can't do it; it does mean you will need to devote time and resource to ensuring it is legal.
- There are people across government who are experienced in working with state aid and can give advice.

Step 1: Is it state aid?

If your answer to all four of these questions is “yes”, your assistance is almost certainly state aid. If some of your answers are “no” or if you are unsure, seek advice. See also Figure 1.

1. Is the assistance granted by the state or through state resources?

- “Granted by the state” means by any public or private body controlled by the state (in the UK, this means national or local Government).
- “State resources” is broad: tax exemptions, Lottery funding and the EU Structural Funds over which the state has significant control are all included.

2. Does the assistance give an advantage to one or more undertakings over others?

- An “undertaking” is any organisation engaged in economic activity.
 - This is about activity rather than legal form, so non-profit organisations, charities and public bodies can all be undertakings, depending on the activities they are involved in.
 - Support to an organisation engaged in a non-economic activity isn’t state aid, e.g. support to individuals through the social security system is not state aid.
 - This can also include operators and ‘middlemen’ if they benefit from the funding
- “Economic activity” means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.
- An “advantage” can take many forms: not just a grant, loan or tax break, but also use of a state asset for free or at less than market price. Essentially, it is something an undertaking could not get in the normal course of business.

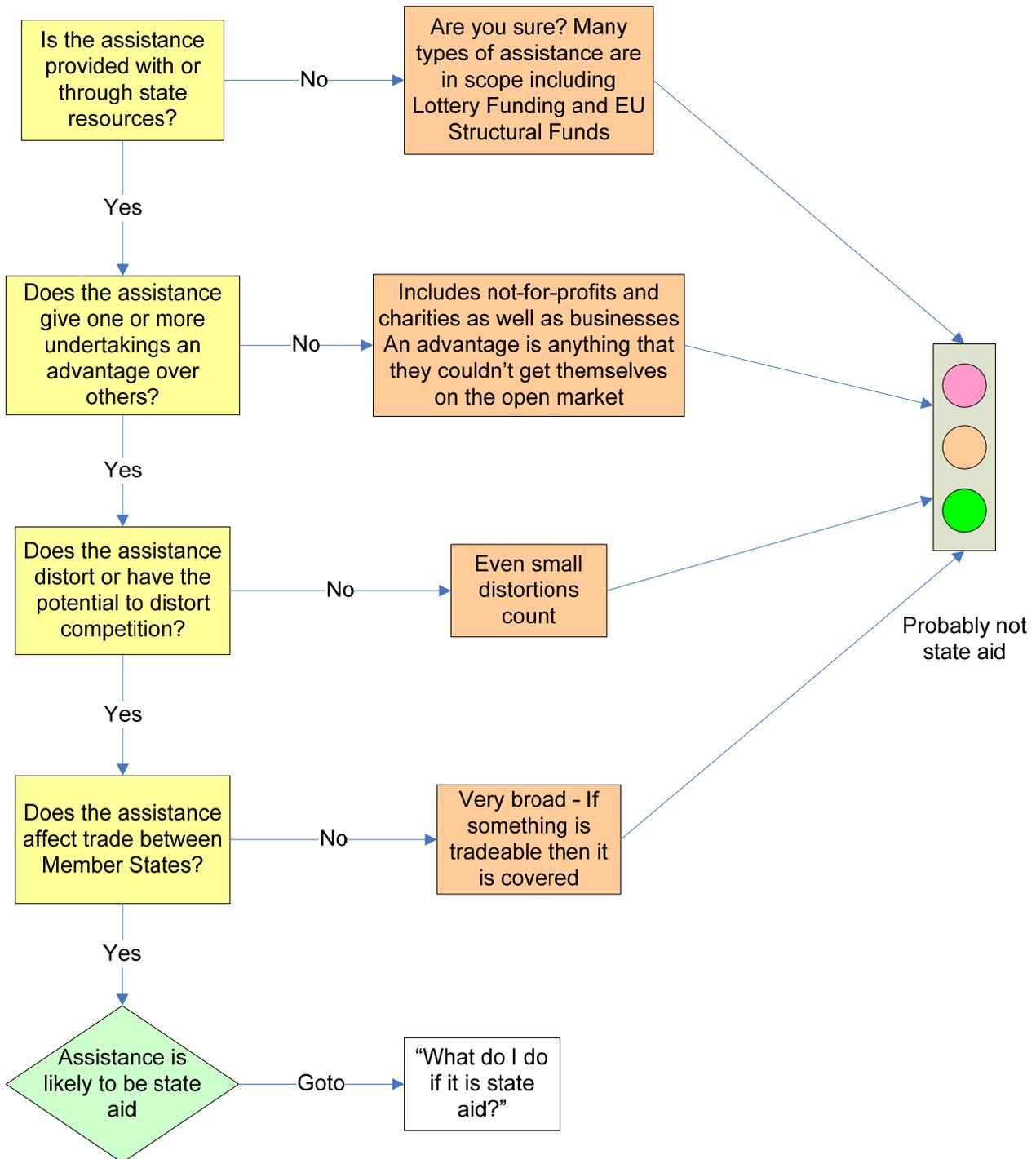
3. Does the assistance distort or have the potential to distort competition?

- If the assistance strengthens the recipient relative to its competitors then the answer is likely to be “yes”.
- The “potential to distort competition” does not have to be substantial or significant: may include relatively small amounts of financial support and firms with modest market share.

4. Does the assistance affect trade between Member States?

The interpretation of this is broad: it is enough that a product or service is tradeable between Member States, even if the recipient does not itself export to other EU markets.

Figure 1. Is it state aid?



Step 2: What do I do if it might be state aid?

1. If you can, redesign it so that it isn't!

Complying with the state aid rules can add time to your project and mean that you are limited in the size of award you can make. Can you use other mechanisms such as public procurement to achieve your goal?

2. If you can't avoid state aid, take a well trodden path

Use one of the approved mechanisms set up to allow state aid in particular circumstances. Introductory information about this is given below and the detail is in the State Aid Manual. Keeping it simple can save you 2 years compared to taking a novel approach.

3. Always think “state aid” early

Giving state aid will nearly always be more time consuming and difficult than designing assistance in a way that is not state aid. The focus in UK policy-making is on being innovative in the way policies are delivered, but this can mean there is no “well-trodden path”. Thinking about the state aid rules early on will help minimise delays to the project. Most importantly, check your project complies with state aid rules before you pay any money out. This protects you from the worst case scenario: having to claw back money from your recipients because it was paid before the necessary approvals were obtained.

While working through state aid issues for immediate projects, please also think about your team's pipeline of work: is there anything else in the next year that is going to need approval?

4. Don't ignore it

A scheme that does not follow the rules could be forced to close, even after it is launched. Giving state aid illegally could result in the money having to be clawed back with possibly very serious consequences for the recipient.

5. Seek advice

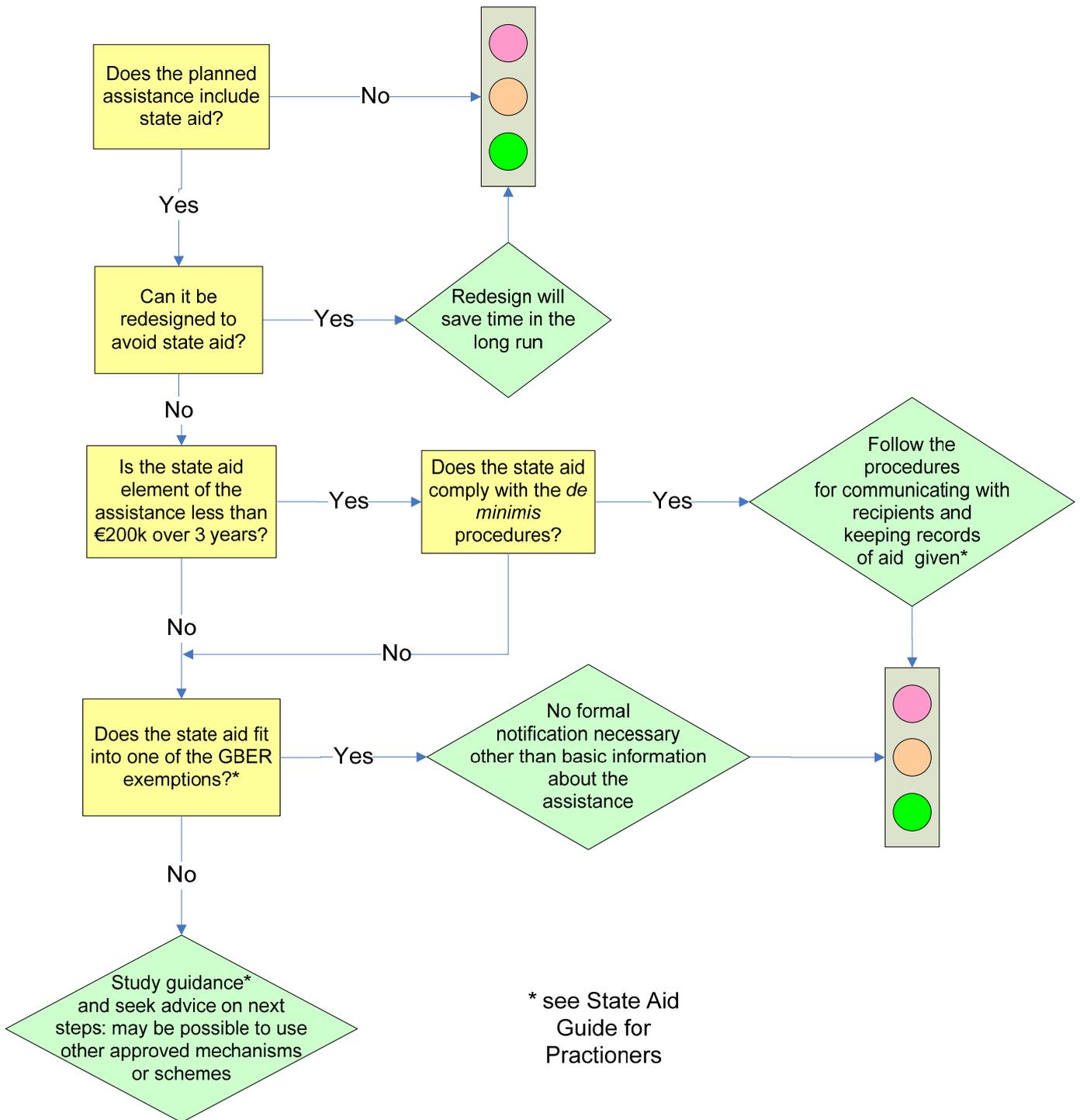
Any public body developing a policy measure that could affect people operating in a market should consider the possibility that the measure will involve state aid. This guide gives only the basics, and will not be enough to help you navigate state aid rules. The **State Aid Manual**¹ and the EU Commission website² provide further detail. They describe all available mechanisms for giving state aid legally, and how to use them.

Public bodies can seek advice from specialist teams in relevant Government Departments, Devolved Administrations or the BIS State Aid team. Contact details are included at page 10. If you are in any doubt about whether your assistance will comply with the rules, seek advice as early as possible. Private sector organisations and individuals should seek independent legal advice.

¹ <https://www.gov.uk/state-aid>

² http://ec.europa.eu/competition/state_aid/overview/index_en.html

Figure 2. What do I do if it might be state aid?



Step 3: How can state aid be granted legally?

Where there is a genuine market failure, state aid might be necessary, justified, and compatible with EU rules. Generally, the Commission bases approvals on whether aid is:

- the minimum necessary to remedy the failure (proportionate)
- really changing the behaviour of the organisation that receives it (incentive effect)
- the best way to address the failure (appropriate)
- beneficial enough to outweigh any negative effects on competition (balancing test)

The Commission's experience has led it to develop regulations and guidelines setting out common ways of meeting these tests. These approved mechanisms make it quicker and easier to implement schemes, and reduce the need for the Commission to consider every case individually. So state aid can be given legally in two ways:

- by complying with one of a set of approved EU mechanisms for state aid; or
- by seeking approval for the particular scheme from the EU Commission on the basis that it meets the above tests.

De minimis

1. A useful approved EU mechanism for state aid is the *de minimis* regulation, based on the Commission's view that small amounts of aid are unlikely to distort competition.
2. The De Minimis Regulation allows small amounts of aid – less than €200,000 over 3 fiscal years – to be given to an undertaking for a wide range of purposes.
3. If you use this mechanism, you don't need to notify or get approval, but records of aid granted must be kept and all the rules of the *de minimis* regulation must be followed. The State Aid Manual gives more detail and standard text for communications.

The General Block Exemption Regulation (GBER)

1. The GBER is a useful mechanism. It provides a simple way of providing assistance for a range of aid measures considered not to unduly distort competition.
2. If you use this mechanism, you don't need prior approval, but you must notify the Commission using the online system (SANI) within 20 working days of giving the aid.
3. It is important to meet the terms and maximum aid amounts set out in the regulation. These are different for each of the 26 areas it covers. The most relevant areas are:
 - Aid for Environmental Protection
 - Aid for Research, Development and Innovation
 - Aid to Disadvantaged and Disabled Workers
 - Regional Aid
 - Risk Capital Aid
 - SME Aid
 - Training and Employment Aid

Other mechanisms

1. The EC Treaty provides other ways for Member States to grant state aid legally where it helps market or equity objectives that the market would otherwise fail to deliver. These objectives include promotion of Research, Development & Innovation, Environmental Protection, access to venture capital, access to broadband, investment in SMEs and support for public services – such as rural transport and social housing.
2. If you use these mechanisms, aid must be given within the parameters of the rules set out by the Commission, and in most cases must be notified and approved by the Commission before it can be given. A standard notification takes at least 6-9 months to be approved. Notifications that present new issues, are contentious or do not fall under existing rules usually take longer, especially if a formal investigation is needed.
3. Further information is in the State Aid Manual and you should seek advice if you want to use one of these mechanisms.

Export aid & Operating aid

1. Aid for “export-related activities” is not allowed. This includes assistance linked to exported quantities, assistance to establish or operate a distribution network, and other current expenditure linked to exporting, but you can support attendance at trade fairs.
2. In general, operating aid is not allowed except under the de minimis regulation. “Operating aid” means aid to cover costs which a company could expect to pay in the normal course of business, such as rates, rent and utilities bills. If you are planning to give this kind of assistance, seek advice at an early stage.

Taking a risk-based approach to state aid

4. Policy-makers need to understand and manage the risks state aid might pose to their projects. The impact of any un-notified measure being later found incompatible by the Commission is fairly uniform – removal of the scheme and possible recovery of aid already given. However, this does not mean all potential state aid measures should be handled in the same way.
5. The credibility of the argument that a measure is not aid will depend on how much supporting precedent there is from other cases, and how consistent the argument is with the Commission’s state aid policy as set out in its communications. More guidance is available in the State Aid Manual, but please **seek advice**: do not attempt to take a risk-based approach alone.

Further help

1. Public funders should study the following guidance, ideally at an early stage in developing the assistance, and then seek advice if they are in doubt:
 - The State Aid Manual: <https://www.gov.uk/state-aid>
 - FAQs: <https://www.gov.uk/state-aid>
 - Commission website: ec.europa.eu/competition/state_aid/overview/index_en.html

2. Specialist state aid teams can advise on the process and comment on documents, but will have to prioritise and won't be able to hand-hold every case. There is a self-assessment form in The State Aid Manual that will help structure the information the teams will need in order to provide advice.
3. Tailored advice can usually only be given to public bodies. Private sector organisations, individuals or other recipients should seek independent legal advice.

Contacts

For advice on state aid in the transport sector, contact the DfT state aid team:

ola.thompson@df.t.gsi.gov.uk

For advice on state aid in the agriculture, fisheries and aquaculture sectors, contact the DEFRA state aid team: [gov.uk/state-aid-for-agriculture-and-fisheries#contact-your-local-state-aid-expert](https://www.gov.uk/state-aid-for-agriculture-and-fisheries#contact-your-local-state-aid-expert)

For advice on state aid in other sectors, contact the BIS state aid team: sapu@bis.gsi.gov.uk

Devolved Administrations

Northern Ireland state aid team: stateaid@detini.gov.uk

Scotland state aid team: <http://www.scotland.gov.uk/Topics/Government/State-Aid/SAU/contacts>

Wales state aid team: <http://wales.gov.uk/topics/businessandconomy/stateaid/?lang=en>

You can also contact your departmental state aid champion: <https://www.gov.uk/state-aid>

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