

Discover England Fund - State Aid Compliance

Applicants to the Discover England Fund need to ensure that their project activities comply with State aid rules. We appreciate that this can appear complicated but it can be worked through.

We will have an initial discussion with you to ensure your understanding of the facts. When you submit your application to the Discover England Fund you will need to be satisfied that the funding you receive for your project (1) is not state aid, or (2) is state aid, but meet the conditions for legal state aid. You will need to seek independent legal advice to provide you with this assurance.

(1) Not state aid

The State aid rules only apply where the beneficiary of a measure is an 'undertaking'. It could be possible that some activities funded through the Discover England Fund will not be State aid because the recipient will not be acting as an undertaking.

The Court of Justice has consistently defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. The classification of a particular entity as an undertaking thus depends entirely on the nature of its activities. To clarify the distinction between economic and non-economic activities, the Court of Justice has consistently held that any activity consisting in offering goods and services on a market is an economic activity.

Additionally, it is theoretically possible that no aid arises where the recipient can show there is no effect on trade between EU member states. However, in practice it is unlikely that recipients will be able to show no effect on trade between EU member states where they are targeting international tourism.

Examples

Promoting tourism - promoting a region or a country and providing tourist information - is not acting as an undertaking. Tourism promotion of a region or country may make secondary reference to undertakings e.g. as examples of things to do in the area, or places to stay or eat. By contrast, buying and selling holidays and accommodation, advertising or booking facilities are likely to be economic activity and will not qualify for the no-aid argument.

However, in order to take advantage of the no-aid argument, the primary purpose must be providing tourist information and promoting the relevant area. It must not promote particular businesses in a way that competes with activities carried out by private sector organisations in the tourist industry.

If the funding recipient has some economic activities as well as its non-economic activities and it wishes to argue that it is not in receipt of aid then care is required: it needs to show that the activities being funded are non-economic and that there is strict separation of the accounting of the economic and non-economic activities, so that the recipient can prove there is no cross-subsidisation of economic activity and no possible leakage of the grant funding to the economic activities of the recipient.

Support for culture or heritage conservation - if aid is to support culture, or heritage conservation, and the activity is organised in a non-commercial way (free of charge to the public, or where charges only cover a fraction of the true costs of the activity) then the activity is likely to be considered non-economic.

Please refer to the [Commission's Notice on the notion of State Aid](#) for further details and explanation of non-aid arguments.

(2) Is state aid, but meets the conditions of legal state aid

In short, using taxpayer-funded resources to provide assistance to one or more organisations in a way that gives an advantage over others may be State aid. Some State aid is illegal under EU rules because it distorts competition in a way that is harmful to consumers and companies in the EU. But State aid can be given legally by using one or more of a set of approved EU mechanisms for state aid.

Round 2 projects activities that do amount to state aid will need to work within this **set of approved EU mechanisms for state aid**. These are the European Commission's General Block Exemption Regulation (GBER). Applicants must therefore ensure that the various elements of their project are compliant with the specific articles of the GBER.

Examples of the General Block Exemptions that could be relevant include:

- Art 56 GBER - Aid for local infrastructure
- Art 53 GBER - Aid for culture and heritage conservation.
- Art 25 GBER - Aid for research and development projects
- Art 31 GBER - Training aid

Please review the [full list and details of all the exemptions](#) and consider all that may apply to your project. Please note that under some of the exemptions in the GBER there are thresholds for what percentage of a given project can be state funded.

De Minimis Regulation (applicable to 1 year projects and pilots)

Please note that 1 year projects and pilots can also take advantage of the De Minimis Regulation of 200,000 euro over a three year period. You will need to provide assurances via a legal letter that you have not been in receipt of other public funds that could take you over the De Minimis threshold.

Working within these exemptions will impact on the design and scope of your activities and will require careful consideration and independent legal advice. It is also worth emphasising that, due to the scale and potential multi-faceted nature of 2 year projects, different exemptions may apply to different activities and this could also impact on match levels and requirements.

Services of General Economic Interest Regulation

A higher de minimis ceiling applies to Services of General Economic Interest (SGEI) under a separate regulation. SGEI are public services (e.g. public transport links) that the market does not provide to the extent or quality that the State requires and are in the general interest, and so are open to the public. The ceiling in this case is €500,000 over any 3 year period.

The rules on SGEI are complex and any grant recipient seeking to rely on this should take detailed legal advice at an early stage in the application process.

Discover England Fund – State Aid Application Requirements

- A compulsory statement must be provided in your application form on how your project activities are state aid compliant. This statement should clearly set out how your activities are either not state aid or which exemption(s) are applicable and why.
- If you are successful in your application, a full legal report will be required from a specialist law firm and your grant offer won't be finalised until this has been produced and received.

Please note that Legal advice does not have to be expensive and there are a wide range of regional law firms that can provide this.

If your current lawyers do not have state aid expertise, you may want to search one of the main directories of legal providers such as Chambers and Partners. They have a specific regional list of firms. It is worth bearing in mind that state aid law is often included within "EU and competition law". <http://www.chambersandpartners.com/guide/uk/1/2529>

Further Guidance

The Department for Business, Energy and Industrial Strategy (BEIS) has published guidance on State aid which includes details of GBER.

Please see [A good introduction is the State Aid: The basics guide.](#)

For full details refer to the [State Aid Manual](#).

You and your advisers may also find it helpful to refer to the open [letter dated 22 November 2013 from the Department for Culture Media & Sport to Destination Management Organisations regarding public funding for tourism and state aid rules.](#)