



Fact Sheet 16 – State Aid

	Valid from	Valid to	Main changes
Version 2	27.04.15	...	Clarification in relation to the use of de minimis and GBER in connection with fisheries, aquaculture, and agricultural sector projects

Core message: Beneficiaries can participate in the programme in a way that gives a competitive advantage. For example, an SME might be supported to develop a new product. There are, however, strict rules regarding the nature of participation, the amounts that can be claimed, and the documentation that has to be provided. You will be asked to explain how any companies are participating in the application. This Fact Sheet explains in detail what the requirements are. Note that although State Aid is mainly a concern for private sector beneficiaries, public sector organisations can also be affected and must therefore know these rules.

Background

The Cooperation Programme of the North Sea Region indicates that partnerships can include private partners insofar as they increase the value of the project. The inclusion of private sector participants can in many cases help ensure the relevance of the projects and it is envisaged that at least 10% of programme funding will go to the private sector. It is however crucial that the inclusion of private sector beneficiaries is done without violating the ‘State Aid’ rules. These rules are in place to ensure that public aid is not used to give enterprises from one country an unfair competitive advantage over other companies.

Important note: Definition of beneficiaries in State aid

If your project involves State aid, you have to use a wider definition of ‘beneficiary’ than is the case in other programme documents. Normally, in the North Sea Region programme, a ‘beneficiary’ is any partner listed in the approved project application. In State aid, however, a ‘beneficiary’ is any operator receiving a benefit from the aid grant.

For example, the beneficiary stated in the application might be a trade association receiving a grant to provide free innovation support services to SMEs. It is the SMEs which will receive the final benefit of the grant. The programme’s assessment of State aid will therefore go down to the level of the final beneficiary of the grant (the SMEs) and use the criteria described below to assess whether they are receiving State aid.



General concepts behind State aid

State aid is a concept presented in the Treaty on the Functioning of the European Union (TFEU), Articles 107 and 108. State aid is usually understood to be aid given to an economic undertaking that is seen as distorting or threatening to distort competition in the internal market. For example, granting aid to support an SME developing a smartphone application in the Netherlands could distort competition for a similar SME in Germany as it would reduce the actual costs of development of the product. When assessing whether State Aid is present, it is very important to be aware of the definitions of a number of key terms:

- Undertaking: An undertaking is an entity carrying out an economic activity, regardless of the legal status of the entity and whether it aims to make a profit. Participating in an economic activity is enough to determine whether an entity is an undertaking or not. As such, private and public bodies and NGOs can be undertakings¹.
- An economic activity is defined as any activity involving the offer of goods or services on a given market.
- Non-economic activities are understood as activities that can only be carried out by the state, such as issuing passports and the provision of similar public goods for which there is no market. This is a fluid term, and understanding is subject to frequent modification. Many North Sea Region project activities could be considered economic activities but are not considered State Aid because they do not confer a competitive advantage².
- Competitive advantage is defined as any economic benefit the undertaking would not normally gain under normal market conditions.

Assessing the risk of State aid

An assessment of whether a measure (activity) constitutes State Aid is based on five criteria. If the answer to all five questions below is 'Yes', there is a very high risk of State Aid and appropriate action must be taken. As can be seen, the answer to three of the five questions is always 'Yes'!

1. Is the measure imputable to the state and financed through state resources? In the North Sea Region programme, the answer to this question is always YES.
2. Is the measure selective? In the North Sea Region programme, the answer is always YES.

¹ EC Regulation (EU) No 1403/2013 of 18.12.2013, paragraph 4.

² State Aid Rules for the Baltic Sea Region 2014-20, Fiona Wishlade, European Policy Research Centre, p. 5.



3. Does it have the potential to affect trade between the member states? In the North Sea Region programme always YES, as ETC projects aim at transnational effects.
4. Does the measure confer an advantage on the undertaking? This needs to be considered for each beneficiary.
5. Does the measure distort or threaten to distort competition? Yes, if there is an economic or potential economic advantage (closely related to question 4).

Criteria 1, 2 and 3 will always be answered 'Yes' in North Sea Region projects, as the funds come from the state, there is a selection process, and effects are intended not to be local³. In assessing possible cases of state aid, the assessment will therefore focus on whether the measure in question is an economic activity which confers an economic advantage to the beneficiary and whether there is any distortion or potential distortion of competition resulting from the grant. Should the answer be no to one of these two questions, there is no risk of State aid. Should the answer to both these questions be yes, then there is a very high risk of State aid and the programme will require that the beneficiary concerned uses one of the three options outlined below.

Managing State aid – three options

In cases of State aid, three options are available:

1. Negate the economic advantage
2. If the amount of aid granted is small (under €200,000), the de minimis regulation may apply.
3. If the amount is over €200,000, the measure may be exempted under the General Block Exemption Regulation (GBER). In the North Sea Region only SMEs may use this option

OPTION 1: Negating economic advantage

Should a beneficiary's participation in a project pose a risk of State aid, the programme may advise the partnership to re-focus its application with a view to removing any potential economic advantage and thereby the risk of State Aid. This is done by ensuring that the project complies with four demands (see Fact Sheet 15 for additional information):

- Absolutely all findings must be made public free of charge. This also includes background documents, data and methodologies. It should be possible for any organisation or enterprise outside the partnership to duplicate the project's work from the material provided.

³ State Aid Rules for the Baltic Sea Region 2014-20, Fiona Wishlade, European Policy Research Centre, p. 13.



- No intellectual property rights can be claimed by a beneficiary or by the project. The project or a beneficiary may require that it is cited as the original source of material but it cannot limit access to material or make any kind of charge for this.
- Beneficiaries including private enterprises must act on a not-for-profit basis for all project activities. This means that all expenditure must be charged to the project at cost and without profit.
- All EU, national and organisational tender procedures must be followed when buying external expertise, services or other goods for the project. This also applies to private sector enterprises and organisations, which are not normally subject to tendering rules (see Fact Sheet 11).

Beneficiaries that are private profit-generating companies should normally make use of option 2 or option 3 presented below.

OPTION 2: The de minimis option

de minimis is State aid granted to an undertaking but for such a small amount that it is deemed not to distort or threaten to distort competition. The European Commission has set this amount at €200,000 per undertaking over a period of three years with a few exceptions⁴.

At application stage, a project must indicate whether one or more beneficiaries are applying under the de minimis scheme. This beneficiary(ies) must submit the de minimis Self-Declaration along with the application form.

Before de minimis aid can be granted:

The project must request a self-declaration from the relevant beneficiaries confirming that they have not received public grants in the 3 previous fiscal years which would take them over the de minimis ceiling. Any type of enterprise may receive de minimis aid including large enterprises.

The period of three years to be taken into account should be assessed on a rolling basis⁵, meaning that the amount of aid granted in the current fiscal year and the two previous years is always taken into account. In the North Sea Region programme de minimis aid cannot be cumulated with any other aid grant.

Once de minimis aid has been granted:

Should an undertaking be granted de minimis aid, a formal notification to the undertaking and project will be issued, referring to the de minimis Regulation (EU) No 1407/2013, paragraph 21. This notification is generated automatically when a project with a de minimis grant is approved.

⁴ If the beneficiary applying for the grant is in the field of freight/ transport for hire or reward, the ceiling is set at €100,000 per undertaking over a period of three years.

⁵ EC Regulation (EU) No 1407/2013 §10



This notification is issued by the programme, on behalf of the Member State where the beneficiary is based. The de minimis aid is considered as being granted by the country where the beneficiary is located.

Further monitoring:

On behalf of the Member States, the programme compiles and records all information regarding the application of grants under the de minimis regime in the programme to ensure continuing compliance of all beneficiaries with the €200,000 limit. These records will be kept for 10 fiscal years, from the date on which the last individual aid was granted. Beneficiaries must keep project records for the same period.

These records are shared with the national authorities via the online monitoring system⁶.

Requirements for beneficiaries:

All beneficiaries receiving State Aid must:

- Ensure that the self-declaration is filled out accurately and in full
- Note that the limits refer to all grants of public funds and not just North Sea Region grants
- Immediately inform the programme of any grants of public funding received after completion of the self-declaration
- Keep all project records for a minimum of 10 years after receiving the final project payment⁷

OPTION 3: The General Block Exemption Regulation (GBER) Option

The GBER is essentially a long list of different types of aid which serve a useful public function (exemptions) and can therefore be accepted provided that a number of conditions are met. Only one exemption is in use in the North Sea Region programme. This is set out in Article 20 of the GBER: Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects.

The eligible costs exempted under this part of the GBER are those of participating in a project. These are:

- Staff and office costs provided that these are directly linked to the project
- Advisory and support services linked to cooperation and provided by external consultants or service providers. This means consulting, assistance and training for the exchange of knowledge and experience and for improvement of cooperation⁸

⁶ Data should be entered into national schemes for monitoring de minimis aid if the Member State in question has such a scheme

⁷ de minimis regulation 1407/2013 §6.4 'Records regarding individual *de minimis* aid shall be maintained for 10 fiscal years from the date on which the aid was granted'.



- Travel and costs of equipment and investment directly related to the project, and depreciation of tools and equipment used directly for the project

All expenditure under all cost categories (e.g. staff) must comply with other programme rules as set out in the other fact sheets (see below on revenue, however).

As for all other beneficiaries, SMEs participating under the GBER will receive a grant covering 50% of their total costs. In accordance with the GBER, the ceiling for SME aid is €2 million per project⁹. It should be noted that in the North Sea Region programme, any aid granted to an undertaking cannot be 'cumulated' with de minimis aid for the same eligible costs, i.e. if the grant is over €200,000 then the whole amount will need to be under the GBER.

Before GBER aid can be granted

The main requirement for receiving aid under Article 20 of the GBER is that the beneficiary is an SME according to the definition in the regulations. The criteria for this are laid out in Annex I of the GBER 10. The project must obtain a self-declaration from the relevant beneficiaries confirming that they are SMEs.

Once GBER aid has been granted

All information pertaining to the GBER scheme and its beneficiaries is forwarded to the European Commission (or the EFTA Surveillance Authority in Norway) and is made available to the public. This means that information about every beneficiary under the GBER in the North Sea Region programme will be published on the programme's website

Further monitoring

All beneficiaries receiving aid under the GBER must retain all documents for at least 10 years after the date of the final aid payment to the project¹¹.

Undertakings in the fisheries, aquaculture, and agricultural sectors

Programme funding cannot be used for the direct support of undertakings involved in fisheries, aquaculture, or primary agricultural production. The limitations for the fishery and agricultural sectors include all activities of production, processing and marketing of fishery and aquaculture products, while the regulations preclude undertakings that are active in the primary production of agricultural products only. This applies to both de minimis and GBER. Aid may, however, be provided to undertakings in the sector of processing and marketing of agricultural products where the aid complies with the terms of the de minimis or of Article 20 of Commission Regulation

⁸ 651/2014 §2 Definition 64

⁹ Commission Regulation (EU) No 651/2014 §4.

¹⁰ Ibid Annex I

¹¹ 651/2014 §9.4



(EU) 651/2014 of 17 June 2014 (GBER) declaring certain categories of aid compatible with the internal market.¹²

Exemption from programme rules on tendering and revenue generation

Beneficiaries participating in the programme under the de minimis or GBER rules may not need to follow programme rules on tendering (see Fact Sheet 11) or revenue generation (see Fact Sheet 9) and may retain rights to products and services developed as part of a project. Nevertheless the requirements of the Financial Regulation for transparency, equal treatment, non-discrimination and sound financial management always apply to all beneficiaries at all times.

¹² In the sector of processing and marketing of agricultural products, Article 20 GBER is applicable if neither of the two conditions under letters (i) and (ii) of Article 1(3)(c) GBER is fulfilled. In other words, 'where the amount of the 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; or where the aid is conditional on being...passed on to primary producers.'