



# Fact Sheet 17 – State Aid for final recipients

	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:**

SMEs that are not listed in the project partnership but still get a benefit from the project may still fall under state aid rules as ‘final recipients’ of aid. This factsheet outlines cases in which this may happen, and the associated rules and requirements. Note that the rules and comments made here **do not apply** to project beneficiaries! Project beneficiaries must consult Fact Sheet 16 to learn how to use state aid within the partnership.

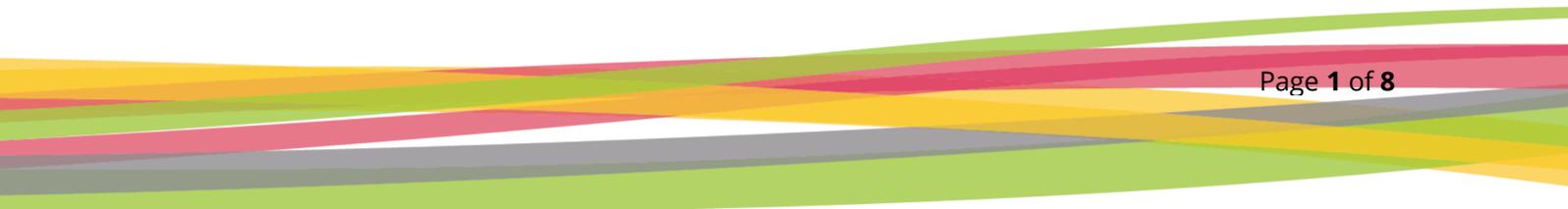
## Other relevant fact sheets

The issue of state aid is a cross-cutting issue that appears in a number of fact sheets and is most often linked with the inclusion of private sector beneficiaries. To familiarise yourself with the issue, please also refer to Fact sheet 15 – Private Sector Beneficiaries, Fact sheet 16 – State Aid, and Fact sheet 27 – Intellectual Property Rights. The information provided in these fact sheets will give you the general regulatory background for state aid in the programme. This fact sheet focuses only on state aid granted to final recipients, not to actual project beneficiaries.

## Background

The programme allows private partners to participate in projects when they provide a clear benefit to the project. It is crucial, however, 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.

In some cases, the inclusion of private sector companies does not happen at partnership or project level, but a level down at ‘final recipient’ level through the activities that the project carries out. A final recipient is defined as an aid recipient that is not officially listed as a beneficiary in the project but which, through the activities carried out by the project, receives an advantage compared to other companies. In other words, the benefits conferred by the project are passed on to undertakings that are not part of the project. For this reason, these final recipients may have to be placed under a state aid scheme.





## Support to final recipients: What counts as aid and what does not count as aid?

Two types of support may be provided to SMEs and create different requirements.

- General support such as workshops and training which are open to all relevant SMEs and which target general knowledge and capacity development for these SMEs may be offered free. All such services must be offered in full compliance with the programme rules governing 'No economic advantage' as described in Fact Sheet 16 on State Aid.
- Services for specific SMEs which involve the provision of services with a clear value count as state aid. Examples would include consultancy, research and development, coverage of travel costs etc. The full cost of all such services must be documented by the project and the beneficiary must ensure that the SMEs comply with all relevant terms of the GBER or de minimis schemes (see below).

## How to manage aid to final recipients

The programme offers two different schemes for managing risks of state aid in the case of final recipients being granted aid: GBER and de minimis (please see fact sheet 16 for more details on these 2 schemes).

### Using the General Block Exemption Regulation (GBER)

The General Block Exemption Regulation (GBER) requires that beneficiaries ensure that final aid recipients comply with all of the terms for the programme's GBER scheme (which only allows activities under Article 20 - see below). The core advantage is that beneficiaries only need to monitor the value of services offered directly by the project and ensure that these do not exceed the limit.

There are a number of disadvantages as well however. GBER only applies to SMEs, while de minimis may apply to larger companies. Most importantly, services provided under the GBER scheme must be 50% financed from the SME's own funds. The project beneficiary providing the service will therefore have to provide evidence of the full value of the service and of the fact that only 50% of the value has been covered by the project. The SME's contribution **cannot** be used as part of the beneficiary's co-financing. A number of other limitations apply and are listed below.

### Article 20 (GBER) limits to activities

SMEs receiving assistance under the project must be:

- (a) micro enterprises (fewer than 10 employees, annual turnover and/or annual balance sheet < € 2 million)



(b) small enterprises (fewer than 50 employees, annual turnover and/or annual balance sheet < € 10million) or

(c) medium sized enterprises (fewer than 250 employees, annual turnover < € 50 million, annual balance sheet < € 43 million)

The project cannot provide assistance to any undertaking in difficulty (as defined in §2 (18) Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market). The aid granted under article 20 may only cover the cooperation costs incurred by SMEs participating in European Territorial Cooperation projects (see §20 Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market).

Aid should be limited to supporting organisational cooperation, advisory and support services, travel expenses, costs of equipment, tools and investment provided in all cases that these are directly related to the project and linked to cooperation.

Larger enterprises can under no circumstances receive support under a GBER scheme. The aid is legal only when given to SMEs.

### **Co-funding requirement**

In order for the final recipient to receive the aid, they will have to document that half of the value of the goods or services received has been financed from the SME's own funds. The full cost of all such services must be documented by the project together with evidence that the SME concerned has paid half of these costs from its own funds (i.e. private co-financing). These arrangements must be specifically verified by the project's first level controllers during reporting. The financing provided by the SMEs cannot be used as co-financing by project beneficiaries.

### **Reporting requirements**

The programme has developed a self-declaration form for all final recipients under GBER. The beneficiary(ies) organising and carrying out an activity where final recipients are involved should provide a list of all SMEs that received this indirect aid and must archive all of the self-declaration forms. This should be documented through using the final recipient self-declaration (available below) and will need to be uploaded to the Online Monitoring System as part of reporting.

### **The self-declaration**

In order to facilitate the reporting and monitoring of aid awarded to final recipients, the programme has developed a self-declaration form for final recipients under GBER. The template of this self-declaration is available on the following pages and should be printed on the letterhead stationery of the beneficiary providing the support.



## Use of the General Block Exemption Regulation (EU) 651/2014 for SME participation – Final Recipients

As part of project XXX, you are receiving state aid under Article 20 of the General Block Exemption Regulation (Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects). In order for this aid to be legal, you must confirm that you meet all requirements for the aid scheme and that you will provide 50% of the value of the aid from your own resources. For this purpose, please fill out this declaration with the requested information.

XXX (final recipient) hereby confirms that:

- XXX (final recipient) is an SME, as defined in Annex I of EC Regulation (EU) no 651/2014<sup>1</sup>.
- XXX (final recipient) is NOT in one of the following sectors:
  - o Fisheries and aquaculture
  - o Primary production of agricultural products
  - o Processing and marketing of agricultural products, as defined in Art.1, paragraph 3(c)(i and ii) of regulation EU no 651/2014.
- XXX (final recipient) is NOT subject to any of the following:
  - o An outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the Common Market
  - o A “firm in difficulty” within the meaning of EC Regulation (EU) no 651/2014.
- All eligibility rules, thresholds, procedures, etc, as described in the Fact Sheets are and will continue to be respected

Please state the type of aid received (for example, training, travel and accommodation, consultancy services...) XXX

XXX (final recipient) confirms that the aid received does not exceed 50% of total value of the service.

Further information:

- SME name, address, website, contact details:
- Date of aid received:

Please note that providing false or incomplete information is a criminal offence and may lead to criminal proceedings.

Date, place, signature.

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<sup>1</sup> “... enterprises which employ fewer than 250 persons and have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million”.



Completing the self-declaration above is the full extent of the administrative work required for final recipients' participation in the activities of the project. The responsible beneficiary's First Level Controller will, however, need to confirm that all self-declarations signed by final recipients are in place. The self-declaration forms will not be subject to normal First Level Control as the information provided in them is not part of the audit trail supporting claims for payment and as such do not trigger ERDF or ERDF equivalent from Norway.

### **de minimis**

As noted above, the main value of using de minimis is that the service provided to the final beneficiary may be funded 100% without the need for the business to provide any contribution. In addition, de minimis allows aid to be given to large enterprises. There is, however, a significant risk. The de minimis rules allow any enterprise or related group of enterprises to receive no more than €200,000 of public support from de minimis schemes over three fiscal years. This limit applies to all de minimis public funding regardless of source (i.e. not just from the North Sea programme) and covers not just direct grants but also indirect support such as favourable terms for taking up loans.

This risk is managed by asking all final recipients receiving de minimis aid to sign a self-declaration confirming that they have not received aid exceeding the limit. If it is later found that this self-declaration is incorrect, the enterprise concerned will have to pay back any *new* aid received over the last three fiscal years<sup>2</sup>. Exceeding the limit by even one euro means that the whole amount can no longer be considered as de minimis aid and has therefore been granted illegally. Furthermore, any new grant of aid to an undertaking after it has received support from the project will have an impact on the de minimis self-declaration as it is considered by the European Commission to be assessed on a "rolling basis". This means that aid provided legally during the project could become illegal if an enterprise receives a grant exceeding the limits after the end of the project.

This means that enterprises receiving de minimis aid must be made fully aware of the limits and the implications of signing the self-declaration.

### **The self-declaration**

In order to facilitate the reporting and monitoring of aid awarded to final recipients, the programme has developed a self-declaration form for final recipients under de minimis. The template of this self-declaration is available on the following pages and should be printed on letterhead paper of the beneficiary providing the support.

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<sup>2</sup> Article 3(7) of the *de minimis* regulation. If, for example, the recipient has already been granted EUR 190,000 during the past three years, and then receives EUR 15,000 more as part of aid for an NSRP project, the recipient will have to pay back the entire EUR 15,000 – not just the EUR 5,000 in excess of the EUR 200,000 limit.



**Use of the de minimis Regulation (1407/2013) for participation of an enterprise – Final Recipients**

As part of project XXX, you are receiving state aid under the de minimis Regulation (1407/2013). In order for this aid to be legal, you must confirm that you meet all requirements for the aid scheme, especially that you have not received more than €200,000 of de minimis public support over the last three fiscal years. For this purpose, please fill out this declaration with the requested information.

**Subject: information on the grants received de minimis<sup>3</sup>**

Please complete this declaration of previous State aid received under the *de minimis* rule. Please note that having received previous aid under the *de minimis* Regulation does not automatically disqualify you from receiving further *de minimis* aid from the Territorial Cooperation Programme.

**Declaration**

I, the undersigned, representing XXX (final recipient) and receiving aid in the project XXX (name of project) declare that<sup>4</sup>:

The institution I represent and all other entities belonging to the same company group as my institution<sup>5</sup> have not received any contribution falling under the *de minimis* Regulation during the previous three fiscal years (the current fiscal year and the previous two fiscal years);

**or**

The institution I represent and all other entities belonging to the same company group as my institution<sup>6</sup> have received the following contribution(s) falling under the *de minimis* Regulation during the previous three fiscal years (the current fiscal year and the previous two fiscal years) and this amount together with the current support does not exceed €200,000:

Organisation providing the de minimis aid	Beneficiary (as defined in Regulation 1407/2013)	Country which granted the de minimis	Amount of the contribution in EUR <sup>7</sup>	Date of grant

<sup>3</sup> Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty and the Functioning of the European Union to *de minimis* aid (the 'de minimis regulation').

<sup>4</sup> Please select the applicable option.

<sup>5</sup> Article 2(2) of the *de minimis* regulation defines when a group of undertakings are considered as a single undertaking (and therefore belong to the same company group).

<sup>6</sup> *ibid*

<sup>7</sup> Please also indicate in which form aid was granted. If aid was granted in a form other than grants (e.g. guarantee and loans) please explain how the conditions of Article 4 of (EC) No 1407/2013 (Calculation of gross grant equivalent) are complied with.



<b>TOTAL</b>				

Date, place, signature.

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## Detailed rules and requirements

### 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 (EU) 651/2014 of 17 June 2014 (GBER) declaring certain categories of aid compatible with the internal market.<sup>8</sup>

### The audit trail

In order to fulfill the requirements for the audit trail, the following should be respected:

- The self-declarations for GBER and de minimis need to be kept by the beneficiary(ies) organizing the activities offering the advantage. The final recipients may retain a copy but the original should be available at the beneficiary organization in case of audit or control.
- Confirmation by the First Level Controller of the checks carried out, ensuring that the self-declarations are in place.
- In the base of GBER, evidence of the full value of the service and the final recipient's financing of 50% of the value, again controlled by the First Level Controller.

### 10 year retention period

For all state aid documents, whether relating to final recipients or direct recipients, all evidence must be kept on file for 10 years after 31 December in the year in which the final payment is made to the project.

### Important warning on co-funding

The 50% private financing provided by final recipients under GBER cannot count as project co-financing. Any funding provided by final recipients cannot be counted towards project or beneficiary match-funding, and all beneficiaries must be able to demonstrate this at any time, should the need arise. First Level Controllers will need to make this a part of their checks.

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<sup>8</sup> 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.'