State Aid Regulations and European Structural and Investment Funds (ESIF)

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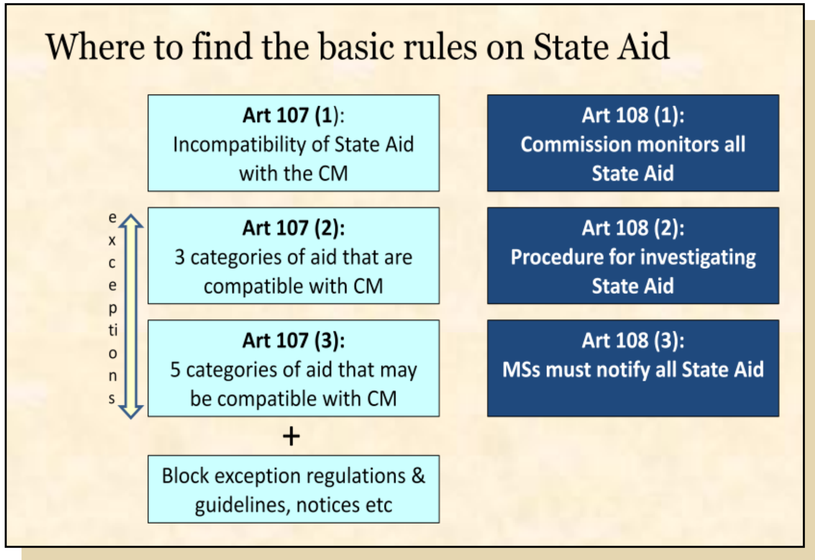
European Structural and Investment Funds are derived from contributions made by member states to fund the operations of the EU and in many cases the national match will also originate from national sources. Consequently any dealings with ESIF inevitable means that much of the support provided will be deemed to be a State Aid and an awareness of State Aid regulations is necessary for individuals structuring support programmes so that they comply with the regulations.

The breaching of state aid regulations means that the EU has the power to compel repayment of the aid by the ultimate beneficiary. Additionally as the provision of the ESIF support would be deemed an 'irregularity' the EU are likely to request repayment from the Managing Authority of the ESIF element of the aid. Those involved with State Aid therefore need not just to have an understanding of the regulations but to have access to professional and legal support to confirm compliance.

State Aid – basic principles

Article 107(1) of the Lisbon Treaty places a prohibition on all state aid. "Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market".



Articles 107(2) & (3) then provide categories of aid that are allowable and there are also certain 'block exceptions' that allow some aid as long as it falls within certain thresholds.

At the operational level in the design stage of any support intervention the provider of the support needs to confirm whether or not State Aid exists by reference to four tests that are linked to Article 107(1).

1. Is the measure (i.e. the form of support) being provided by the State or through State Resources?
2. Does the measure favour particular undertakings or the production of certain goods?
3. Does the measure affect tradable activity between member states?
4. Will the measure distort competition, or does it have the potential to distort competition? → If any of these tests are not met then there is no State Aid.

The State Aid questions need to be asked for all levels of an individual intervention. For example with the establishment of a Venture Capital or Loan fund there are potential State Aids at three levels. Firstly for a holding fund, secondly contracting for fund managers (and other advisers to the holding fund such as procurement specialists or legal advisers) and finally at the level of the ultimate beneficiary the SME receiving the loan / equity support.

If a State Aid is identified it is beholden on the designer of any support intervention to determine if it is allowable and if not to redesign the scheme to make it permissible or to seek clearance for the scheme from the EU Competition Commission before any aid is provided.

Permissible State Aid schemes

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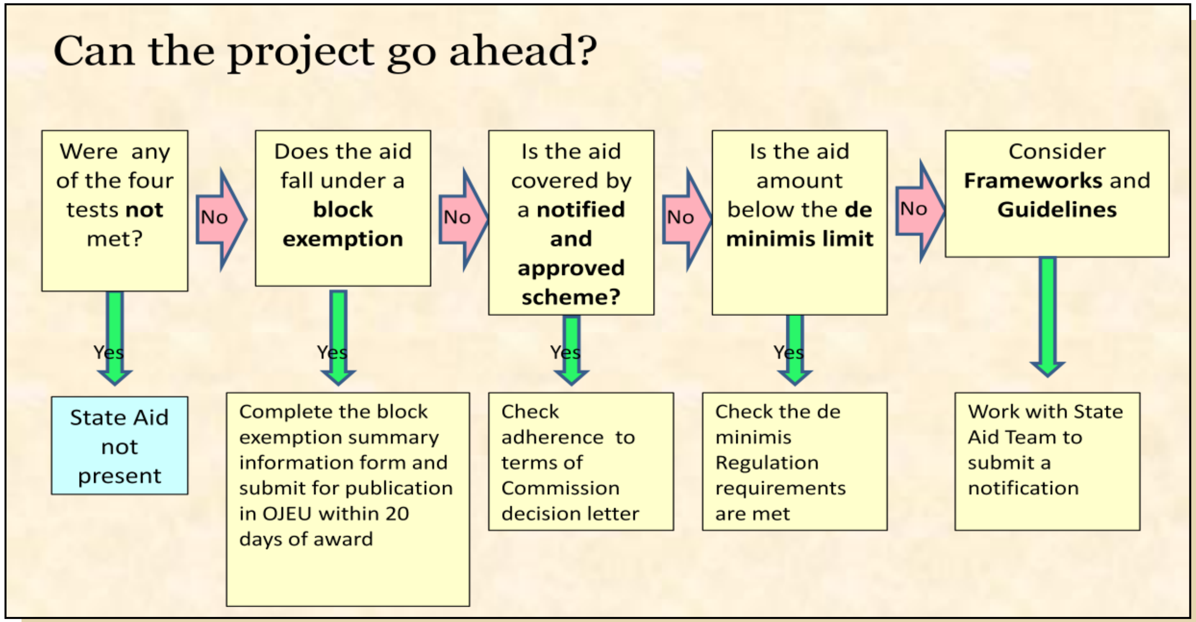
Most ESIF projects will rely upon either the Di minimus rules which allows grant aid to an organisation of up to the level of €200,000 over a rolling three year period or one by relying on one of the General Block Exemption Regulations (GBER) relating to Regional Aid, Research, Development and Innovation, and Training. There are other GBERs, such as for Risk Capital but these three will be the most commonly applied for ESIF.

Regional Aid – the Regional Aid Guidelines (RAG) for 2014 onwards were adopted by the EU in July 2013 but their applicability has been delayed until 1st July 2014. Until then the existing RAG will continue until 30 June 2014 and current Assisted Area Map of the UK will also remain until mid 2014. The new Assisted Area Map for 2014, which will define those areas under Article 107(3)a and 107(3)c as in need of special need has been the subject of recent consultations and BIS are currently reviewing this feedback. Categorisation as an Assisted Area enables much greater intensity of aid than is available outside of these 'disadvantaged' areas but aids can still be allowed under GBERs – as shown in the adjacent table.

The GBER guidelines are being redrafted and likely to be reissued in early 2014 but until then the current regulations will apply.

Examples for breadth of allowable State Aid – within thresholds

Aid for:	107(3)a area	107(3)c area	Other areas
Initial investment - LEs	Yes	Yes	No
Initial Investment - SMEs	Yes	Yes	Yes
R&D&I	Yes	Yes	Yes
Training Aid	Yes	Yes	Yes
Environmental Expenditure	Yes	Yes	Yes
General Economic Interest	Yes	Yes	Yes
Soft Aid SMEs	Yes	Yes	Yes



Within both BIS and DCLG there will be resource to support LEPs on routine State Aid matters and also the BIS State Aid Team to support the submission of any formal State Aid Notifications. They will re-emphases the need for matching the fundamentals of State Aid linked Project structures in all projects / programmes.

- Common Interest – e.g. growth, employment, cohesion,
  - Efficiency - correcting market failure; &
  - Equity (e.g. Employment of disabled workers or encouraging development in disadvantaged areas)
- Well Designed Instrument
  - Appropriate policy instrument - proven record
  - Incentive effect – changing behaviour
  - Proportionate to problem (minimum necessary)
- Balancing Positive & Negative effects