

What is State Aid?

Any form of aid to a commercial undertaking through “state resources” that distorts or threatens to distort competition within the European Union.

In practice it means that any co-financed funding support we give to enterprises that could be construed as giving them a competitive advantage over other enterprises in the European Union will fall under the European rules regarding state aid. We have no choice but to comply with these rules.

How does this guide work?

The following guide will explain state aids as simply as possible. To get the most from this guidance start by considering a specific project, by using the [quick step guide](#) on page 3. Follow the questions to ascertain if your project has a state aid issue, and follow the links (click on the blue underlined text) to find the appropriate rule and a model process to comply with the regulations. Please note that this document represents guidance only and it is up to each Local LSC to comply with the rules. If your current systems comply and you are happy with them there is no need to change your processes.

Before issue this guidance has been cleared with:

National Audit	Peter Finney
DWP (ESF Dept)	Stephen Briggs

What are the rules?

“De Minimis”

This rule allows companies to receive up to €200,000 (approximately £120,000) of aid over a three-fiscal year rolling period. Whilst this appears to be an easy approach, in practice it is difficult to monitor because all De Minimis State Aid, from whatever source must be taken into account. Potentially, any assistance from a public body might be an “aid”. A list of possible sources of “aid” is included on page 2 of the ‘Company Level Data Capture Form (De Minimis)’. This is not comprehensive – if there are any doubts please refer to your Government Office for further information.

Therefore, in order to comply with this rule the supported enterprises must complete a declaration confirming how much aid they have had over the last three years. This needs to be regularly updated and monitored to ensure that no single enterprise breaches the €200,000 limit over a three fiscal year rolling period.

In practice we will ask our Providers to undertake this work on our behalf but it is the LSC that needs to evidence compliance. Contract managers will need to monitor and review to ensure appropriate documentation is in place. The LSC has to keep records for 10 years.

To complicate matters further, in the case of Agriculture and Transport De Minimus operates in a different way:

Transport

- A reduced De-Minimus limit of €100,000 applies. In addition aid cannot be given under the terms of the Regulation for the acquisition of road freight transport. This has little impact from an LSC point of view because we only provide activities related to training with our interventions.
- Transport is taken to mean anything that moves goods or people about. For example: road haulage, freight, rail and bus services, ferry services etc. If we seek to engage SME’s undertaking this kind of activity then the Training Aid Block Exemption would be the appropriate route.

Agriculture

De Minimus cannot be used for undertakings engaged in the primary production of agricultural products or to undertakings active in the processing and marketing of agricultural products.

This latter one is rather complex because on farm activities necessary for preparing a product for first sale (such as harvesting, cutting and threshing of cereals, packing of eggs etc) are ineligible.

Similarly, aid related to the first sale to resellers or processors are ineligible. If you have any specific queries it would be best to pass these to the State Aid Working Group for a view.

Other restrictions

Unfortunately, De Minimis rules cannot be applied to enterprises engaged in the following:

- aid to export related industries
- aid to undertakings active in the coal sector
- aid contingent upon the use of domestic over imported goods (i.e. aid that is offered on the condition that imported goods are excluded e.g. component parts in a manufacturing process)
- aid granted to undertakings in difficulty

This restriction means, for example, that coal mining cannot benefit from the De Minimis rule.

De Minimis aid has the advantage of being able to be offered at 100%; as long as the company has not breached the €200,000 they are not required to make a contribution towards the assistance.

Please Note:

- If a project runs over more than 12 months there will be a need to refresh the De-Minimis information held. Providers will need to update the rolling three fiscal year figure by getting a new form completed and signed by the SME. If this exercise identifies that the limit has been exceeded then Training Aid will need to be used.
- SMEs should be advised in writing of the amount of aid they have received. This is because, should they receive aid from another source in the three fiscal year rolling period following our intervention, they will need to include the aid they have received from us. The rules say that this notification should include the regulation number – 1998/2006 (this is on the De-Minimis Form)

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Training Aid

If De Minimis cannot be used because enterprises have exceeded the three-year rolling limit or because they are in the three categories below, then Training Aid rules can be used.

- Activities linked to the production, processing and marketing of agricultural goods
- Aid to export related industries
- Aid contingent upon the use of domestic over imported goods (i.e. aid that is offered on the condition that imported goods are excluded e.g. component parts in a manufacturing process)

Training Aid rules can be applied to any enterprise and allow aid up to €1,000,000. However, once it has been decided that the Training Aid rules will be followed then a contribution must be provided by the enterprise receiving the aid. Contribution rates vary according to the size of the enterprise and the type of training being offered.

In practice most of our activity will be aimed at Small and Medium Sized Enterprises (SME) and will offer General Training. General Training is defined as:

“Training that is not only applicable to the benefiting employees present or future position within the assisted firm but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee”

An example of specific training may be training relating to a company that would not be transferable i.e. training on a unique piece of equipment, or unique service, which only that company produces or offers.

An SME is defined as:

“An enterprise which:

- *employs fewer than 250 employees at the time the application is made including part-time, seasonal and temporary staff;*
- *has either a balance sheet at their accounting date with assets, less liabilities, worth no more than 43 million Euros, or an annual turnover of not more than 50 million Euros; and*
- *is not more than one quarter owned by firms that do not qualify as SMEs under the above requirements.”*

Some Voluntary/community sector organisations may not be affected by State Aid rules unless they are involved in commercial activities or compete with commercial activities. Further detail is in the DWP ESF Applications Guide, July 2003, (Blue and Yellow Book), page 57.

Contribution rates from beneficiary enterprises vary depending on the size of the organisation and whether they are in an area defined as “assisted”. For a complete list of “assisted areas” contact your local Government Office.

Please note that companies supported, rather than individual beneficiaries, must be based in the assisted area in order to earn the extra funding available.

An additional factor in calculating training aid intervention is that support for “disadvantaged workers” earns a better intervention rate for the company.

The definition of a disadvantaged worker is:

- “- any young person under 25 who has not previously obtained his first regular paid employment;*
- any person with serious disabilities which result from physical, mental or psychological impairments and yet capable of entering the labour market;*
- any migrant worker who moves or has moved within the Community or becomes resident in the Community to take up work and who needs professional and/or language training;*
- any person wishing to re-enter working life after a break of at least three years, and particularly any person who gave up work on account of the difficulty of reconciling his working life and family life, for the first six months after recruitment;*
- any person older than 45 who has not attained an upper secondary educational qualification or its equivalent;*

Under the Training Aid rules, companies assisted areas are required to contribute to the cost of the training for their employees. This can be in the form of cash or “in-kind”.

Cash contributions can be made directly to the provider delivering the training, but if this contribution covers costs already paid out through ESF profiled payments, then that amount should be “clawed back” from the provider.

“In-kind” contribution can be evidenced by costing out the time spent by an employee undertaking training or/and costing out the time spent by an SME in supporting that employee. Time recording will need to be undertaken and costed out in order to evidence the “in-kind” contribution. However, not more than 50% of total eligible costs can be in the form of beneficiary staff time, so if you are giving specific training, the employer would still need to provide some cash

As with De Minimis Aid, the onus for collecting and recording the SME contribution and the evidencing of that contribution will be passed to the Provider and should form part of the pre-contract negotiations.

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Employment Aid

At the outset it should be noted that, in practice, it is most unlikely that the LSC will utilise the Employment Aid exemption because most support will fall within the De Minimis rules or the Training Aid block exemption and, for reasons outlined below, the benefit to an enterprise being supported only arises where they have exceeded the De Minimis threshold. However, it remains an option that could be explored.

Employment Aid is a new block exemption that is only available in the Objective Three area. It has been introduced to cover schemes that will support Small and Medium sized companies to create new jobs and is particularly focused on employing disadvantaged and disabled workers (note - support is not available for Large companies under this exemption).

Under this exemption the employment created must be new jobs in addition to the companies existing employees, i.e. it is not to support workers who would otherwise be made redundant, or to convert temporary positions into permanent ones.

Please note that Employment Aid is not an option for enterprises in the following four areas:

- Coal;
- Shipbuilding;
- Transport; or
- Aid to export related industries

Only Small and Medium-sized Enterprises can be supported and the definitions are:

Small Enterprises: - Fewer than 50 employees and an annual turnover of less than €10m, or, an annual balance sheet of less than €10m

Medium-sized Enterprises: - Between 50 and 249 employees and an annual turnover of less than €50m, or, an annual balance sheet of less than €43m

Please note that no single enterprise may receive more than €15 million (£9.3 million approx) over a three-year period.

Two Options are available under the Employment Aid rules:

Option 1. Creation of Employment

Please note: It is unlikely that Objective Three ESF will provide significant support for the creation of employment directly. There may be occasion where, for example, ESF wage subsidies are used to support the recruitment of workers into job creating sectors. In such circumstances, the rules and aid intensity percentages must be adhered to.

As with Training Aid, the support available depends on the size of the enterprise being helped and on where that enterprise is located.

	Small Enterprises	Medium-sized Enterprises
Outside an assisted area	15%	7.5%
Within an Assisted area	25%	17.5%

The remainder of the costs must be met by the enterprise. Evidence of the enterprise's contribution (otherwise known as private match funding) will be required

Employment created must represent a net increase in the number of employees and must be maintained for two years. New workers must be employed as a result of the creation of employment, must never have had a job or have lost / be losing their previous job.

The "Creation of Employment" option does not include:

- Aid to retain workers who would otherwise have been laid off
- Aid to convert temporary or fixed term contracts into permanent jobs
- Aid for job sharing, working parents and similar employment measures.

Option 2. Recruitment of Disabled and Disadvantaged Workers

Note: Objective Three ESF is far more likely to support the recruitment of disabled and disadvantaged workers. This will impact on projects providing, for example, wage subsidy schemes, projects delivered by specialist training providers, job trials and supported job placements.

Wage subsidy is already an eligible expense under ESF rules and for appropriate schemes it is possible to claim up to 45% of the minimum wage (currently £3961.20 p.a.). Employment Aid allows this percentage to be increased to 50% of the individual's salary for disadvantaged workers or 60% for disabled workers (even if this salary is in excess of the minimum wage).

However, the amount claimable from ESF remains at 45% of the minimum wage and the shortfall needs to be made up from public or private contribution. On the face of it, therefore, there seems little advantage in utilising the Employment Aid block exemption.

The one area where a benefit can be identified is where an SME has exceeded the De Minimis threshold of €100,000 (approx £62,000) over three years. The Employment Aid block exemption will allow them to access ESF over and above the De Minimis threshold for individuals employed under the Employment Aid criteria albeit at a maximum of the 45% of minimum wage figure.

The support available under Option Two depends on the type of worker being supported:

Disadvantaged Workers	Up to 50% of wage costs over a period of one year (Maximum ESF 45% of Minimum Wage – Currently £3961.20)
Disabled Workers	Up to 60% of wage costs over a period of one year (Maximum ESF 45% of Minimum Wage – Currently £3961.20)

The remainder of the costs must be met by the enterprise. Evidence of the enterprise's contribution (otherwise known as private match funding) will be required.

The definition of Disadvantaged Worker is:

- people under 25 or within two years of full time education who have not previously obtained their first regular paid employment;
- migrant workers
- any member of an ethnic minority who requires development of their linguistic, vocational training or work experience profile to enhance their prospects of gaining access to stable employment;
- returners to work who have been absent from work or education for at least two years;
- lone parents;
- unemployed people without educational qualifications or those about to lose their jobs;
- any person over 50 who does not have or is losing a job;
- long term unemployed people;
- people with addiction problems;
- ex-offenders;
- women from areas of high unemployment where women are more likely to be unemployed than men.

The definition of a Disabled Worker is:

- a person recognised as disabled under national law;
- having a recognised serious physical mental or psychological impairment.

Please note: Additional costs of employing disabled workers can be claimed including:

- costs of employing staff or time spent solely on the assistance of disabled workers;
 - costs of adapting or acquiring equipment for their use;
 - the costs of administration and transport costs which result in the employment of disabled workers (these additional costs must be within ESF eligibility rules).

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How Do We Make It Work?

De Minimis

The Provider will need to complete Company Level Data Capture Forms (De Minimis) and maintain these as evidence that the three fiscal year rolling limit of €200,000 has not been exceeded (€100,000 for the transport sector).

If the Company Level Data Capture Forms reveal that this amount will be exceeded then a new state aid model must be sought, through the [quick step guide](#).

Similarly, if the enterprise being supported falls into the categories outlined that are not eligible under de-minimis (e.g. Coal) then another model must also be found.

Please remember that the responsibility for adherence to State Aid rules rests with the LSC, so Contract Managers must ensure that Providers are undertaking the required record keeping as part of their review process.

Please Note:

- If a project runs over more than 12 months there will be a need to refresh the De-Minimis information held. Providers will need to update the rolling three fiscal year figure by getting a new form completed and signed by the SME. If this exercise identifies that the limit has been exceeded then Training Aid will need to be used.
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Training Aid

If Training Aid Rules apply the Provider will need to complete Company Level Data Capture Forms – Training Aid. They will need to determine the level of the SME contribution and have a system for accepting and recording that contribution.



Training Aid.doc

In order that the contribution cannot be construed as providing revenue it is important that the Provider maintains records that evidence that the ESF and SME contribution make up the total cost of the training and no more. This calculation should be based on the cost of the training to an individual.

For example if the unit price expressed in the Providers original bid was, e.g. £2000 but the actual cost of the training for one individual was £1000 (the other £1000 being made up of admin/overhead costs etc. within the application) then the contribution at 30% would be £300 (30% of the £1000 cost of training for that individual).

If “in-kind” contribution is being provided then a simple time recording sheet should be provided by the SME and maintained by the Provider as evidence that contribution rates have been met.



Training Aid -
Monthly Timesheet.d



Training Aid - Weekly
Timesheet.doc

As with De Minimis, the responsibility for adherence to State Aid rules rests with the LSC, so Contract Managers must ensure that Providers are undertaking the required record keeping as part of their review process.

Use the self-calculating spreadsheet, so that the providers can calculate intervention rates for company contribution levels.



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Employment Aid

The Provider will need to complete Company Level Data Capture Forms (Employment Aid) and maintain these as evidence that the three-year rolling limit of €15,000,000, has not been exceeded.



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company capture form

If the Company Level Data Capture Forms reveal that this amount will be exceeded then a new state aid model must be sought, through the [quick step guide](#).

Similarly, if the enterprise being supported falls into the categories outlined that are not eligible under Employment Aid (e.g. Shipbuilding) then another model must also be found.

The Provider will also need to determine the level of the SME contribution and have a system for accepting and recording that contribution.

As with De Minimis and Training Aid, the responsibility for adherence to State Aid rules rests with the LSC, so Contract Managers must ensure that Providers are undertaking the required record keeping as part of their review process.

If required by a LLSC, National Office will produce a self-calculating spreadsheet as has been produced for the Training Aid Exemption.

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Guidance/Support

Detailed information on State Aid can be found in Section 3.13 of the ESF Operations Guide. If further details are required please contact the ESF State Aid Working Group. Alternatively, your Government Office can provide guidance and support where necessary to help you through this process.

Other

Should none of the above schemes fit your project, but a state aid issue remains, you may need to get a specific exemption clause created. This should be a rare event, but if you find yourself requiring an exemption you should forward a copy of your project details to the ESF Team at National Office as a starting point and National Office will assist you to comply with state aid regulations. Expect this process to take a minimum of 6 months to complete, as EC agreement is needed for a new exemption to be created.

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