

# A

## ANNEX 4.9 STATE AIDS

**While a great deal of public expenditure is not classified as State Aid, any funding favouring a particular company or sector could be subject to the EU rules and, in certain circumstances, require notification to the Commission.**

**A4.9.1** Article 87 of the EU Treaty prohibits in principle any form of preferential government assistance – state aid - to commercial undertakings. The underlying concern is to prevent distortion of competition within the EU.

**A4.9.2** There is no precise definition of state aid. Article 87(1) (box A.4.9A) provides a statement of principle. Its battery of tests may need to be applied to a wide variety of policies since for these purposes commercial undertakings can include public organisations, charities and not-for-profit organisations if they engage in economic activities or compete with commercial organisations. And the Commission may judge that even small amounts of aid could distort competition. It is sometimes possible to escape the last test on tradable activity for very small scale and localised assistance.

### **box A.4.9A characteristics of state aids**

- the aid is granted by a member state or through state resources (including eg lottery distributions and European funds)
- it favours certain commercial undertakings
- it distorts or threatens to distort competition
- the activity is tradable between Member States.

All four tests have to be met for the state aid rules to apply.

**A4.9.3** However, a measure meeting all the tests in box A4.9A is not automatically illegal. Article 87 sets out circumstances when State aid can be considered permissible – eg to encourage cultural and regional development. European Commission frameworks and guidelines enable Member States to target market failures in order to achieve desirable policy outcomes, eg to facilitate competitiveness through research spending, improve access to venture capital for small firms, support the environment, help provide access to training, or encourage regional development.

**A4.9.4** Before state aid can be given, the public organisation responsible should notify the Commission and obtain approval. This process can take 4-6 months, sometimes longer.

**A4.9.5** There is a range of cases where European block exemption regulations exempt member states from the notification process. For these, aid may not have to be notified in advance. These apply to aid to small firms, training aid and employment aid. As long as the aid meets the strict conditions set out in the regulations, member states simply have to inform the Commission and confirm compliance with the regulation within 20 days of implementing it, rather than going through the notification process.

**A.4.9.6** There is also a de minimis regulation which allows member states to give small amounts of aid (200,000 euros over a three-year period) to any enterprise of any size (with certain restrictions) as long as a number of administrative procedures are completed.

**A.4.9.7** When designing policies, it is wise to consider the question of whether the state aids rules are engaged early. This allows time to work out whether any exemptions may apply; or if necessary to seek Commission agreement. The sources in box A.4.9B are a good place to start. Depending on the context, it may be useful to consult BERR, Defra or DfT.

**box A.4.9B further guidance**

The DTI State Aid Unit website – [www.berr.gov.uk/bbf/state-aid/](http://www.berr.gov.uk/bbf/state-aid/)

State aid approval process flowchart – [www.berr.gov.uk/files/file32882.pdf](http://www.berr.gov.uk/files/file32882.pdf)

European Commission State aid website – [www.ec.europa.eu/comm/competition/index\\_en.html](http://www.ec.europa.eu/comm/competition/index_en.html)

Email enquiries on State aid to [sapu@berr.gsi.gov.uk](mailto:sapu@berr.gsi.gov.uk)