



European Commission
Directorate-General for Competition

Vademecum

Community law on State aid

30 September 2008

This handbook is also available on the European Commission's Competition website:
http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.cfm

Note of caution:

These factsheets give a concise, and sometimes simplified, summary of State aid legislation. Obviously, no rights can be derived from the summaries and tables presented in these factsheets. For a more authoritative version of the rules applying in each field, the reader is referred to the relevant full-length legislative texts, the exact references of which are specified in each factsheet.

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1. Introduction

The European Commission has recently adopted the General Block Exemption Regulation (the "GBER") under which numerous State aid measures are exempted from the obligation to be notified to the Commission. The introduction of the GBER represents one of the main pieces of the State aid reform undertaken by the Commission over the past few years. The reform is a major step towards cutting red tape and takes a modern approach to State aid control in order to contribute to the Lisbon Strategy of sustainable development, competitiveness of EU industry, more jobs as well as social and regional cohesion.

EU State aid control is an essential component of competition policy and a necessary safeguard for effective competition and free trade. By creating a common framework, State aid rules, first and foremost, ensure a level playing field for European companies and avoid that Member States engage in wasteful subsidy races, which are non-sustainable for individual Member States and detrimental to the EU as a whole. Secondly, the Commission encourages Member States and regions to prioritize action to strengthen the competitiveness of their economy as well as increase social and regional cohesion. State aid reform aims to redirect aid to Lisbon-related objectives, such as R&D&I, risk capital measures, training, renewable energy/climate change and other measures for protection of the environment. Finally, the EU rules require the stakeholders to verify whether State aid is an appropriate policy instrument to achieve the objectives of common interest. State aid control thus contributes to avoiding a wasteful use of public resources, for which, in the end, the taxpayers would have to pay the bill.

State aid control provisions are varied and stem from the Treaty, secondary legislation as well as court rulings. This *Vademecum* aims at giving a concise overview of the applicable State aid rules. It does not provide for an exhaustive description of such rules, nor the way in which they are applied. The *Vademecum* consists of two parts: (i) a general part setting out the basic State aid concepts and (ii) individual factsheets devoted to major individual aid instruments or topics.

Under the Commission's State Aid Action Plan, the roadmap for its State aid reform, a number of State aid regulatory texts were revised and adopted over the past three years, including, the Environmental Aid Guidelines (including Climate Change), the R&D&I Framework or Regional Aid Guidelines. The new GBER presents a special measure in this respect, unifying and simplifying the existing rules on block exemptions cutting across all instruments and sectors. As a result, a revision of the *Vademecum* was necessary to reflect such changes.

The State aid reform on which the Commission embarked in 2005 is now nearing its completion. With the General Block Exemption Regulation and the simplification package relating to procedural aspects of State aid control (comprising proposals for a simplified procedure for certain notifications, Best Practices Code and Notice on private enforcement in State aid proceedings before national courts) as a final step in the reform, the Commission continues to safeguard competition while Member States remain free to choose the support instruments which best fit their overall policy mix.

2. Measures covered by State aid rules

The point of departure of EU State aid policy is laid down in Article 87(1) of the Treaty establishing the European Community (hereinafter the “Treaty”). This article provides that State aid is, in principle, incompatible with the common market. Under Article 88 of the Treaty, the Commission is given the task to control State aid. This article also requires Member States to inform the Commission in advance of any plan to grant State aid (“*notification requirement*”).

The authors of the Treaty did not suggest that the Commission should try to monitor and control all types of measures that could affect companies.

State aid rules apply only to measures that satisfy all of the criteria listed in Article 87(1) of the Treaty, and in particular:

(a) Transfer of State resources

State aid rules cover only measures involving a transfer of state resources (including national, regional or local authorities, public banks and foundations, etc.).

Furthermore, the aid does not necessarily need to be granted by the State itself. It may also be granted by a private or public intermediate body appointed by the State. The latter could apply for example in cases where a private bank is given the responsibility to manage a state funded SME aid scheme.

Financial transfers that constitute aid can take many forms: not just grants or interest rate rebates, but also loan guarantees, accelerated depreciation allowances, capital injections, tax exemptions etc.

(b) Economic advantage

The aid should constitute an economic advantage that the undertaking would not have received in the normal course of business. Less obvious examples of transactions satisfying this condition are given below:

- A firm buys/rents publicly owned land at less than the market price;
- A company sells land to the state at higher than market price;
- A company enjoys privileged access to infrastructure without paying a fee;
- An enterprise obtains risk capital from the State on terms, which are more favourable than it would obtain from a private investor.

(c) Selectivity

State aid must be selective and thus affect the balance between certain firms and their competitors. “Selectivity” is what differentiates State aid from so-called “general measures” (namely measures which apply without distinction across the board to all firms in all economic sectors in a Member State (e.g. most nation-wide fiscal measures)).

A scheme is considered “selective”, if the authorities administering the scheme enjoy a degree of discretionary power. The selectivity criterion is also satisfied if the scheme applies to only part of the territory of a Member State (this is the case for all regional and sectoral aid schemes).

(d) Effect on competition and trade

Aid must have a potential effect on competition and trade between Member States. It is sufficient if it can be shown that the beneficiary is involved in an economic activity and that it operates in a market in which there is trade between Member States. The nature of the beneficiary is not relevant in this context (even a non-profit organization can engage in economic activities).

The Commission has taken the view that small amounts of aid (*de minimis* aid¹) do not have a potential effect on competition and trade between Member States. It therefore considers that such aid falls outside the scope of Article 87(1) of the Treaty.

This brief description of the criteria defining State aid shows that the scope of Community State aid rules is wide (but not open-ended).

3. Compatible State aid

According to Article 87(1) of the Treaty, aid measures that satisfy all the criteria outlined above are, in principle, incompatible with the common market. However, the principle of incompatibility does not amount to a full-scale prohibition. Articles 87(2) and 87(3) of the Treaty specify a number of cases in which State aid could be considered acceptable (the so-called “*exemptions*”). The existence of these exemptions also justifies the vetting of planned State aid measures by the Commission, as foreseen in Article 88 of the Treaty. This article provides that Member States must notify to the Commission any plan to grant State aid before putting such plan into effect. It also gives the Commission the power to decide whether the proposed aid measure qualifies for exemption or whether the “*State concerned shall abolish or alter such aid*”.

For the majority of State aid cases, the most relevant exemption clauses are those of Article 87(3)(a) and 87(3)(c) of the Treaty:

- Article 87(3)(a) covers “aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment”;
- Article 87(3)(c) refers to “aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions contrary to the common interest”.

In exercising its powers, the Commission has developed specific approaches depending on the size of the firm, its location, the industry concerned, the purpose of the aid, etc. In order to ensure transparency, predictability and legal certainty the Commission has made public the criteria it uses when deciding whether aid measures notified to it qualify for exemption. These publications have taken the form of regulations, “communications”, “notices”, “frameworks”, “guidelines”, and letters to Member States².

¹ See annex: factsheet 13 on the *de minimis* rule.

² All relevant regulations, communications, notices, frameworks and guidelines are available on the DG Competition web site: http://ec.europa.eu/competition/state_aid/legislation/legislation.html

We can distinguish three main aid categories under Articles 87(3)(a) and 87(3)(c) of the Treaty:

(a) Regional aid

Articles 87(3)(a) and 87(3)(c) of the Treaty both provide a basis for the acceptance of State aid measures aimed at tackling regional problems:

- Article 87(3)(a) of the Treaty applies to State aid to promote the development of “*areas where the standard of living is abnormally low or where there is serious underemployment*”. This is why Article 87(3)(a) status is granted on the basis of an EU criterion (NUTS II regions with a GDP/cap. (PPS) lower than 75% of the EU-25 average³). For the period 2007-2010, regions with less than 75% of the EU-15 average GDP/cap (PPS)⁴ are also eligible under Article 87(3)(a).
- Article 87(3)(c) of the Treaty covers aid to other types of (national) problem regions “*aid to facilitate the development of ... certain economic areas*”. This article gives Member States the possibility to assist regions which are disadvantaged *compared to the national average*. The list of regions qualifying for this exemption is also decided by the Commission, but on a proposal by Member States. Member States can use *national* criteria to justify their proposal.

The criteria used for the assessment of regional aid are brought together in the “Guidelines on national regional aid for 2007-2013”. The content of this document is summarized in the factsheet on regional aid in the annex.

(b) Other Horizontal rules

Cross-industry or “horizontal” rules set out the Commission’s position on particular categories of aid which are aimed at tackling problems which may arise in any industry and region.

To date, the Commission has adopted “frameworks”, “guidelines” or “block exemption regulations” setting out the criteria that are to be applied to the following categories of aid:

- Aid for climate change and for other environmental protection;
- Aid for research and development and innovation;
- Aid for the rescue and restructuring of firms in difficulty;
- Aid for small and medium-sized enterprises;
- Aid to employment;
- Training aid;
- Aid for risk capital; and
- Aid for services of general economic interest.

A summary of the “regulations”, “frameworks” and “guidelines” relating to each of the above categories of aid is also presented in the factsheets in annex.

³ To ensure consistency, EU-25 data is used for the whole of the period 2007-2013.

⁴ Equivalent to 82.2% of the average EU-25 DGP/cap.

(c) Sectoral rules

The Commission has also adopted industry-specific or “sectoral” rules defining its approach to State aid in particular industries. The most relevant in this context are the following:

- *General sectors*

Over the years, special rules have been adopted for a number of sectors featuring specific types of problems or conditions to be addressed by a specific set of rules. These currently include the sectors of audiovisual production, broadcasting, coal, electricity (stranded costs), postal services, and shipbuilding. There are also specific restrictions on granting aid to the steel and synthetic fibers industry.

- *Agriculture, forestry, fisheries and aquaculture*

The general State aid rules described in this Vademecum do not apply, or apply only to a limited extent, in the sectors involved in the production and marketing of products of agriculture and fisheries⁵. The rules applying to these sectors are laid down primarily in the Community Guidelines for State aid in the Agriculture and Forestry Sector for 2007-2013⁶ and in the Community Guidelines for the Examination of State Aid to Fisheries and Aquaculture⁷.

Further information on the rules applying in these sectors can be obtained from the State aid units of the Agriculture and Rural development DG and the Maritime Affairs and Fisheries DG.

- *Transport*

In the road transport sector, most general State aid rules apply (including the *de minimis* regulation, although there are a number of exceptions (e.g. transport equipment is in general not eligible for aid, aid for the acquisition of road freight transport vehicles is excluded from the *de minimis* regulation and the *de minimis* ceiling is decreased to EUR 100 000 for the road transport sector).

Sector-specific State aid rules apply in the other transport sectors (rail, air, inland waterways and maritime transport). Information on State aid rules in these sectors can be obtained in the State aid unit of DG Energy and Transport⁸.

DG Energy and Transport is also competent for the application of State aid rules to the coal sector⁹.

⁵The list of products concerned is specified in Annex I of the EC Treaty (Internet address: <http://eur-lex.europa.eu/en/treaties/index.htm>).

⁶ Official Journal C 319, 27.12.2006, p. 1.

⁷ Official Journal C 84, 3.4.2008, p. 10.

⁸ Please look at http://ec.europa.eu/dgs/energy_transport/state_aid/transport_en.htm

⁹ Specifically, DG Transport and Energy is responsible for hard coal which falls within the definition of the Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry, meaning high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal laid down by the United Nations Economic Commission for Europe.

(d) Specific aid instruments

For the use of specific aid instruments such as guarantees, fiscal aid, capital injections, or for the calculation of the aid content of a measure, guidance has been provided through the publication of a number of notices which are available at the European Commission Competition website site.

Summarising

Apart from the DG Agriculture, DG Fisheries and DG Energy and Transport competences mentioned above, DG Competition is competent for aid in all other sectors.

Table 1 provides an overview of the main categories of aid covered by “guidelines”, “frameworks” or “block exemption regulation” adopted by the Commission to date. The table also indicates for each of these categories whether exemption can be given across the entire EU territory or whether it is restricted to assisted regions. The last column in the table gives the title of the factsheet (see annex) in which the aid is treated.

Table 1. Main horizontal and regional aid categories allowed under EU guidelines, frameworks or regulations

Aid for:	Regional aid areas		Other areas	Relevant fact-sheet (see Annex)
	87(3)(a) areas	87(3)(c) areas		
Initial investment (large firms)	Yes	Yes	No	Regional aid + GBER
Initial investment (SMEs)	Yes	Yes	Yes	Regional + SME aid + GBER
Environmental expenditure	Yes	Yes	Yes	Environmental aid + GBER
R&D&I expenditure	Yes	Yes	Yes	R&D&I aid + GBER
Transport aid(*)	Yes(*)	Yes(*)	No	Regional aid
Soft aid (SMEs)	Yes	Yes	Yes	SME aid + GBER
Risk capital aid	Yes	Yes	Yes	Risk capital aid + GBER
Services of general economic interest	Yes	Yes	Yes	Services of general economic interest
Training aid	Yes	Yes	Yes	Training aid + GBER
Rescue and restructuring aid	Yes	Yes	Yes	Rescue and restructuring aid

* Aid to compensate additional transport costs incurred by enterprises located in the outermost regions or in regions of low population density.

4. Basic methodology used in State aid assessment

Building up on the experience developed and on the expertise acquired over time, the State aid reform package introduced a more refined economic approach in the assessment of State aid cases. Setting out more precise economic criteria and methodology to evaluate positive and

negative elements of a State aid measure aimed to achieve the goal of a "less but better targeted aid".

Economics plays an important role in State aid analysis both at the stage of the aid qualification under Art 87(1) of the Treaty and for the compatibility assessment of aid measures. As to the first stage, the Commission has reviewed the *de minimis* notice (Factsheet 13) and the guarantee notice (Factsheet 12) and is currently reviewing the Communication on the market economy investor principle.

The assessment of aid compatibility is essentially a balancing of the **positive effects** of aid (in terms of contributing to the achievement of a well-defined objective of common interest) and its **negative effects** (namely the resulting distortion of competition and trade) (the "**balancing test**"). In order to be declared compatible, aid must be necessary and proportionate to achieve a particular objective of common interest.

The refined economic approach, however, does not mean that each and every State aid case undergoes a specific in-depth assessment. Using the economic rationale of the balancing test, the Commission reflected the economic requirements when setting the general State aid rules, while at the same time allowing for the most appropriate control system. As a result, the least distortive cases are not considered to be State aid (see Factsheet 13 on *de minimis* aid). Secondly, cases for which it is possible to design easily applicable ex ante set of compatibility criteria are exempted from the notification requirement (see Factsheet 1 on the GBER). The next level, the standard assessment, allows the Commission to assess most cases through predefined conditions (including set aid intensities) which aim to ensure the proportionality and necessity of the aid and its limited distortive effects, i.e. for which the refined economic assessment is done *en bloc* in advance and is reflected in the legal assumptions of the rules. The last level of control - the detailed assessment - is applied for the potentially most distortive cases where the Commission verifies the economic rationale of the aid on a case by case basis.

Table 2. Graduation of the assessment:

1	No aid - De minimis
2	General Block Exemption Regulation (GBER)
3	Standard assessment
4	Detailed assessment

The basic element of the more refined economic approach is the **balancing test**. This is essentially a cost-benefit analysis of the proposed measure.

The balancing test sets forth the following elements of analysis:

1. Well-defined objective of the common interest

Aid should be aimed at a well-defined objective of a common interest (such as growth, employment, cohesion, environmental protection, etc). This can include both **efficiency** and **equity** objectives. The efficiency objective aims at correcting a market failure (e.g. externalities, imperfect information, coordination problems). The equity objectives can include, for example, the employment of disabled workers, or encouraging firms to set up

factories in disadvantaged regions. In some cases aid can also be authorised in order to promote the transition to better functioning markets.

2. Well-designed instrument

The basic issue here is to ascertain whether the aid is well designed to deliver the objective of the common interest identified above. In order to do that, the answers to the following three questions will be crucial:

- Is the aid an **appropriate policy instrument**? Without interfering with the Member States choice of policy instruments, State aid should be used where the advantages of using a selective instrument (such as State aid) are established and demonstrated.
- Is there an **incentive effect**? Does the aid change the behaviour of the beneficiary? The beneficiary should, as a result of the aid, engage in activities that it would (i) not carry out without the aid at all or (ii) carry out only in a restricted or different manner. The aim is to avoid State aid for an activity which the company would undertake in any case, even without the aid, in the same extent (e.g. a training which the company would have to do for its employees in any case in order to operate).
- Is the aid measure **proportionate** to the problem tackled? This question addresses whether the same change in behaviour could have been achieved with less aid. The amount and intensity of the aid must be limited to the minimum necessary for the activity to take place. Normally, aid is deemed proportional if the maximum aid intensities set by legislation are respected.

In order to perform the analysis, the Commission must identify a **counterfactual scenario**. The idea is to compare the aided project with a hypothetical situation that no aid was given. Only in such way can some of the objectives of the common interest (e.g. a market failure) and the incentive effect (did the behaviour of the beneficiary change?) be analysed.

3. Balancing of the positive and the negative effects/overall balance positive

This question addresses the possible negative effects of the aid and their magnitude against which its positive effects are balanced.

The negative effects are primarily distortive effects on competition and trade. They may include prevention of exit and keeping inefficient firms afloat, crowding out of private investment, disrupting dynamic incentives, costs of State aid linked to fiscal spending, etc.

In order for the aid to be found compatible, a high magnitude of negative effects needs to be sufficiently offset by a corresponding high level of positive effects of the aid. In order to perform such analysis, the effects on both sides of the equation should be expressed both in qualitative and, insofar as possible, in quantitative terms. The Commission will make an overall assessment of their impact on producers and consumers in the markets concerned by the aid measure. The overall outcome will depend on a series of features of the proposed aid measure and will be assessed on a case by case basis for measures subject to the detailed assessment.

5. Notification and authorization procedures

Community supervision of State aid is based on a system of *ex ante* authorisation. Under this system, Member States are required to inform (“*ex ante notification*”) the Commission of any plan to grant or alter State aid and they are not allowed to put such aid into effect before it has been authorised by the Commission (“*standstill-principle*”). Under the Treaty, the Commission is given the competence to determine whether or not the notified aid measure constitutes State aid in the sense of Article 87(1) of the Treaty, and if it does, whether or not it qualifies for exemption under Article 87(2) or (3) of the Treaty. Member States cannot grant any State aid unless it has been notified *and* authorised by the Commission. Any aid, which is granted in absence of Commission approval, is automatically classified as “*unlawful aid*”. Under the present procedural rules, the Commission is under the obligation to order the recovery from the beneficiaries of any unlawful aid that is found to be incompatible with the common market. Moreover, the European Courts have recognized that national judges are competent to decide whether the notification procedures have been complied with and if not, to order recovery of the aid and recovery of the relevant interest.

In recent years, the Commission has started a process of modernization and simplification of State aid procedures. To this end, the Council adopted Regulation (EC) No 994/98 of 7 May 1998, which enables the Commission to adopt so-called “*block exemption regulations*” for State aid. With these regulations, the Commission can declare some categories of State aid compatible with the Treaty if they fulfill certain conditions, thus exempting them from the requirement of prior notification and Commission approval. In the past, the Commission has adopted several block exemption regulations. In 2008, however, these regulations have been superseded by a new General Block Exemption Regulation which unifies the existing legal framework and introduces further new types of measures which are exempted from the notification obligation. As a result, Member States are able to grant aid that meets the conditions laid down in the GBER without the need for giving prior notification to and securing the agreement of the Commission. More information about the GBER can be found in the annex (Fiche 1). Another regulation codifies the application of the *de minimis* rule which establishes that aid to an enterprise that is below the threshold of €200,000 over a period of three fiscal years and that respects certain conditions, does not constitute State aid in the sense of Article 87(1) of the Treaty, since it is deemed not to affect trade or distort competition (Fiche 13). Therefore, any such measure does not need to be notified.

As a result of the modernisation process, a distinction needs to be made between two types of aid measures:

- **Aid measures that are exempted from the notification requirement**

Individual aid measures or aid schemes that satisfy all the conditions laid down in the GBER adopted by the Commission do not need to be notified to the Commission. The Member State is instead required to submit to the Commission a summary description of the aid measure within 20 working days *following* the implementation of the measure. Where the aid measure satisfies all the conditions laid down in the *de minimis* Regulation (Fiche 13), there is not even a requirement to submit such summary information (though Member States are obliged to monitor such aid in line with the *de minimis* Regulation). For measures exempted from notification under the GBER, the Member States also have an obligation to publish on the internet the full text of such measure and keep it posted as long as the measure is in effect.

- **Aid measures that are subject to the notification requirement**

On 22.03.1999, the Council adopted Regulation (EC) 659/1999 (as later amended)¹⁰, which sets out the procedural rules to be followed in the area of State aid. The Commission Regulation (EC) No 794/2004¹¹ followed, implementing the above mentioned Council Regulation. Below, a brief overview will be given of the rules applying to a normal notification case:

- **Notification**

It is the Member State concerned (central authorities), which must notify planned aid measures, through their Permanent Representation. In order to speed up treatment, the Commission has drawn up standard notification forms for most types of aid. A dedicated software ("SANI") has been made available to Member States to facilitate and accelerate the notification process.

Certain minor alterations to existing aid are subject to simplified system of notification and a faster decision making procedure. Such simplified arrangements can only be accepted if the Commission has been regularly informed on the implementation of the existing aid concerned.

- **Request for additional information**

If the notification is incomplete, the Commission will request further information. The Member State concerned is usually given 20 days to supply this information.

- **Examination and decision**

The Commission has two months within which to examine the proposed aid. The two-month period runs from the date that the Commission has received all the information it needs to assess the case and the notification can be considered as complete. This examination will normally be concluded either by a “decision not to raise objections” or by a “decision to initiate Article 88(2) proceedings”:

If the Commission decides not to raise any objection, the aid measure concerned can be implemented.

The Commission initiates Article 88(2) proceedings if it has doubts about the compatibility of the notified aid measure with the common market. In such cases, the Commission opens a “formal investigation”. It publishes a description of the aid in the Official Journal and on its website and invites the Member State concerned and interested parties to comment. At the end of the enquiry, the Commission adopts a final decision. This may be either positive (aid can be implemented), negative (aid can not be implemented) or positive, but subject to stated

¹⁰ Official Journal L 83, 27.3.1999, p.1.

¹¹ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, Official Journal L 140, 30.4.2004, p. 1-134.

conditions (aid can be implemented if certain conditions are met). The indicative maximum time-limit foreseen for such an enquiry is 18 months.

All decisions are subject to *review by the European Court of Justice* under Article 230 of the Treaty. National courts also play a role with respect to enforcement of Commission recovery decisions.

6. State aid in Structural Funds programs

The operational programs under the structural funds for 2007-2013 contain a standard form clause indicating "any public support under this programme must comply with the procedural and material State aid rules applicable at the point of time when the public support is granted". It is the responsibility of the managing authorities to ensure that this condition is fulfilled.

Annex: State aid factsheets

There are 13 factsheets each of which relates to a specific State aid topic organized either by a category of aid or aid instrument.

Each factsheet presents a concise summary of the main provisions applying to the topic concerned. It also gives the precise reference of the relevant Commission Regulation, Guideline, Framework, Communication or Notice, as applicable. A full-length version of the legal texts referred to in the factsheets is also available on the DG Competition web site (http://ec.europa.eu/competition/state_aid/legislation/legislation.html).

- Factsheet 1 General Block Exemption Regulation
- Factsheet 2 Aid for climate change and other environmental protection
- Factsheet 3 Aid for research, development and innovation
- Factsheet 4 Regional aid
- Factsheet 5 Aid for the rescue and restructuring of firms in difficulty
- Factsheet 6 Aid for small and medium-sized enterprises
- Factsheet 7 Employment aid
- Factsheet 8 Training aid
- Factsheet 9 Risk capital measures
- Factsheet 10 State aid elements in sale of land and buildings by public authorities
- Factsheet 11 Services of general economic interest
- Factsheet 12 Guarantee Notice
- Factsheet 13 The *de minimis* rule

Note of caution:

The factsheets attached give a concise, and sometimes simplified, summary of State aid legislation. Obviously, no rights can be derived from the summaries and tables presented in these factsheets. For a more authoritative version of the rules applying in each field, the reader is referred to the relevant full-length legislative texts the exact references of which are specified in each fact-sheet.

This version of the Vademecum was completed on 30 September 2008.

Factsheet 1 General Block Exemption Regulation

Reference

This factsheet summarizes the “Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation)” (Official Journal L 214, 9.8.2008, p. 3-47) (hereinafter only the "GBER").

Further details of the application of the GBER to individual categories of aid are included in different factsheets of this annex on the basis of the relevant topic.

Scope

The GBER applies to all sectors of the economy except for fisheries and aquaculture, agriculture and coal¹², and except for *regional* aid in the steel, shipbuilding and synthetic fibers sector as well as regional aid schemes targeted at specific sectors of economic activity (except tourism). It does not apply to export-related activities or to prefer use of domestic over imported goods. It does not apply to ad hoc aid to large undertakings, with the exception of regional investment and employment aid.

The GBER sets forth individual aid ceilings¹³ (per each category of measure) below which it is applicable.

Concepts

Measures which are listed in the GBER and comply with the conditions and criteria set forth therein will benefit from an exemption to the notification requirement. Member States are therefore free to implement them without additional Commission's assessment.

Aid not covered by the GBER continues to be subject of the notification requirement and the regular Commission's State aid assessment.

The GBER **consolidates** into one text and harmonises the rules previously existing in different regulations. It also **enlarges** the area covered by notification exemptions by five types of aid which have not been exempted so far (environmental aid, innovation aid, research and development aid for large companies, aid in the form of risk capital and aid for enterprises newly created by female entrepreneurs).

The GBER applies only to **transparent** aid, i.e. grants and interest rate subsidies, loans where gross grant equivalent takes account of the reference rate, guarantee schemes, fiscal measures (with a cap) and repayable advances under certain conditions.

Aid is only allowed if it has an **incentive effect**. The GBER provides different criteria for the verification of the incentive effect with ranging complexity: (i) for certain types of measures,

¹² However, training aid, risk capital, R&D&I, aid for disadvantaged and disabled workers and environmental aid might be applied in certain circumstances, subject to the GBER conditions.

¹³ E.g. environmental investment aid of max EUR 7.5 million, consultancy for SMEs of EUR 2 million, fundamental research of EUR 20 million, industrial research of EUR 10 million, disabled workers of EUR 10 million.

incentive effect is presumed; (ii) for SMEs, the incentive effect is present if the application for aid was submitted prior to the start of the project; (iii) and for large enterprises, in addition to the above, the Member State would have had to verify basic conditions of the documentation.

Categories of aid covered and aid intensities

The GBER authorises the following aid types:

- aid in favour of SMEs,
- aid for research and innovation,
- regional development aid,
- training aid,
- employment aid,
- aid in the form of risk capital,
- environmental aid,
- aid promoting entrepreneurship

Table 3. Categories of measures, relevant aid amounts and aid intensities applicable under the GBER.

Type of aid measure	Maximum allowable aid amount under the GBER	Aid intensity ceiling under the GBER
Regional investment and employment aid (available in assisted areas only), (Art. 13) (large, medium and small enterprises)	Aid less than 75% of maximum aid for investment with eligible costs of 100 m EUR	<ul style="list-style-type: none"> • Regional aid intensity under the respective regional aid map; AND • + 20 percentage points for small enterprises; • +10 percentage points for medium enterprises (except LIPs and transport)¹⁴
Aid for newly created small enterprises (Art. 14)	<ul style="list-style-type: none"> • 2 m EUR per undertaking in 87(3)(a) region • 1 m EUR per undertaking in 87(3)(c) region • <i>annual</i> amounts per undertaking - maximum 33% of the above aid amounts 	<p><i>87(3)(a) regions:</i></p> <ul style="list-style-type: none"> • 35% first three years after creation of an undertaking • 25% two years thereafter <p><i>87(3)(c) regions:</i></p> <ul style="list-style-type: none"> • 25% first three years after creation of an undertaking • 15% two years afterwards¹⁵
SME investment and employment aid (available outside assisted areas) (Art. 15) For investment in the processing and marketing of agricultural products	7.5 m EUR per undertaking per project 7.5 m EUR per undertaking per project	<ul style="list-style-type: none"> • 20% for small enterprises • 10% for medium enterprises <ul style="list-style-type: none"> • 75% in outermost regions • 65% in smaller Aegean Islands • 50% in 87(3)(a) regions • 40% in all other regions
Aid for small enterprises newly created by female entrepreneurs	1 m EUR per undertaking (max 33% of that per annum)	15% for the first five years
Aid for consultancy in favour of SMEs	2 m EUR per undertaking per project	50%

¹⁴ For agriculture, different intensities apply.

¹⁵ A further 5% of eligible costs top-up exists in certain cases.

Type of aid measure	Maximum allowable aid amount under the GBER	Aid intensity ceiling under the GBER
Aid for SME participation in fairs	2 m EUR per undertaking per project	50%
Risk capital aid	1.5 m EUR per target undertaking per 12 months	N/A
Research and development aid	<ul style="list-style-type: none"> • <i>fundamental research</i>: 20 m. EUR • <i>industrial research</i>: 10 m EUR • <i>others</i>: 7.5 m EUR per undertaking per project • 2x if EUREKA¹⁶ 	<p><i>large enterprises</i>:</p> <ul style="list-style-type: none"> • fundamental research: 100% • industrial research: 50% • experimental development: 25% <p><i>medium enterprises</i>:</p> <ul style="list-style-type: none"> • industrial research: 60% • experimental development: 35% <p><i>small enterprises</i>:</p> <ul style="list-style-type: none"> • industrial research: 70% • experimental development: 45% +15 percentage points (up to 80% total) if two or more cooperate
Aid for technical feasibility studies	<ul style="list-style-type: none"> • <i>fundamental research</i>: 20 m EUR • <i>industrial research</i>: 10 m EUR • <i>others</i>: 7.5 m EUR per undertaking per project • 2x if EUREKA 	<ul style="list-style-type: none"> • <i>SMEs</i>: 75% for industrial research studies, 50% for experimental development studies; • <i>large enterprises</i>: 65% for industrial research studies, 40% for experimental development studies
Aid for industrial property rights costs for SMEs	5 m EUR per undertaking per project	<ul style="list-style-type: none"> • <i>fundamental research</i>: 100% • <i>industrial research</i>: 50% • <i>experimental development</i>: 25%
Aid for young innovative enterprises	<ul style="list-style-type: none"> • 1 m EUR • 1.5 m EUR in 87(3)(a) regions • 1.25 m EUR in 87(3)(c) regions 	N/A
Aid for research and development in the agricultural and fisheries sectors	under specific conditions	100% under specific conditions
Aid for innovation advisory services and for innovation support services for SMEs	EUR 200 000 per undertaking within 3 years	75% unless a national or European certification
Aid for the loan of highly qualified personnel	N/A	50% per undertaking, for 3 years, per person borrowed
Training aid	2 m EUR per training project	<ul style="list-style-type: none"> • 25% specific training • 60% general training • +10 percentage points for disabled/disadvantaged workers • +20 percentage points for small enterprise • +10 percentage points for medium enterprise 100% for maritime transport
Aid for recruitment of disadvantaged workers in the form of wage subsidies	5 m EUR per undertaking per year	50%

¹⁶ Eureka is a pan-European network for market-oriented industrial research and development.

Type of aid measure	Maximum allowable aid amount under the GBER	Aid intensity ceiling under the GBER
Aid for employment of disabled workers in the form of wage subsidies	10 m EUR per undertaking per year	75%
Aid for compensating the additional costs of employing disabled workers	10 m EUR per undertaking per year	100%
Aid for investment to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards	7.5 m EUR per undertaking per project	Large enterprises: 35% Medium enterprises: 45% Small enterprises: 55%
Aid for acquisition of transport vehicles which go beyond Community environmental protection standards	7.5 m EUR per undertaking per project	Large enterprises: 35% Medium enterprises: 45% Small enterprises: 55%
Aid for early adaptation to future environmental standards for SMEs	7.5 m EUR per undertaking per project	If implementation more than 3 years before standard enters into force: <ul style="list-style-type: none"> • 15% for small enterprises • 10% for medium enterp. If implementation between 1-3 years before standard enters into force: 10% for small enterprises
Aid for investment in energy saving measures	7.5 m EUR per undertaking per project	Two ways to calculate: 1. <i>extra investment costs (net)</i> : <ul style="list-style-type: none"> • Large enterprise: 60% • Medium enterprise: 70% • Small enterprise: 80% 2. <i>extra investment costs (gross)</i> : <ul style="list-style-type: none"> • Large enterprise: 20% • Medium enterprise: 30% Small enterprise: 40%
Aid for investment in high efficiency cogeneration	7.5 m EUR per undertaking per project	Large enterprises: 45% Medium enterprises: 55% Small enterprises: 65%
Aid for investment in the promotion of energy from renewable energy	7.5 m EUR per undertaking per project	Large enterprises: 45% Medium enterprises: 55% Small enterprises: 65%
Aid for environmental studies	N/A	Large enterprises: 50% Medium enterprises: 60% Small enterprises: 70%
Aid for the environment, in the form of tax reductions	N/A	no intensity (only allowed if at least Community minimum paid, for maximum period of 10 years)

Cumulation

Cumulation of different measures of the GBER is possible as long as they concern *different* identifiable eligible costs. With respect to the same eligible costs, no cumulation is allowed for partly or fully overlapping costs as long as such cumulation would lead to exceeding the highest allowable aid intensity applicable under GBER.

Factsheet 2 Aid for climate change and other environmental protection

Reference

This factsheet summarizes the “Community Guidelines on State aid for Environmental Protection” (Official Journal No C 82, 1.4.2008, p.1) (hereinafter in this factsheet the “Guidelines”). It also includes information on the application of the GBER to environmental aid.

Scope

The Guidelines cover aid for actions designed to remedy or prevent damage to our physical surroundings or natural resources or to encourage the efficient use of these resources. State aid control in this field ensures that the measures will achieve a higher level of environmental protection than without the aid and that the positive effects of the aid outweigh the negative ones.

As a general rule, the Guidelines apply to all sectors governed by the Treaty, including the sectors which are subject to specific Community rules on State aid (unless such rules provide otherwise). However, the Guidelines do not apply to:

- Aid for R&D nor the design and manufacture of environmentally friendly products. However, investment aid for the acquisition of an eco-innovative asset (project) to reduce own pollution is covered by these Guidelines;
- Training aid in the environmental field;
- The field of agricultural primary production if the measures are already covered by the Community guidelines for State aid in the agricultural and forestry sector¹⁷;
- In fisheries and aquaculture they apply only if no other specific provisions exist;
- Stranded costs;
- District heating except if it leads to energy saving;
- Air, road, railway, inland waterway and maritime transport infrastructure;
- Design and manufacture of environmentally friendly products, machines or means of transport in order to operate with fewer natural resources as well as the improvement of safety and hygiene; and
- Carbon capture and storage.

Assessment

The Guidelines reflect the approach set forth in the State Aid Action Plan with respect to a more refined economic approach to State aid analysis and the introduction of a balancing test. As a result, the Guidelines provide rules under which the Commission will perform either a standard assessment (where State aid may be found compatible if it fulfils the simpler criteria set forth in Section 3 of the Guidelines) or a detailed assessment (set forth in Section 5 of the Guidelines), which requires a more thorough analysis of the measures and the performance of a balancing test on a case by case basis. As a matter of principle, the Guidelines provide for

¹⁷ Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013, OJ C 319 of 27.12.2006.

the Commission to look at the incentive effect, necessity and proportionality of the State aid measures in the environmental area.

Table 4. Thresholds triggering detailed assessment under the Guidelines*

Type of measure	Standard assessment	Detailed assessment
For measures covered by GBER	Yes (if GBER conditions not fulfilled)	All measures with duty to notify individually under GBER
For all investment aid (regardless of type)	Yes	7.5 m EUR per undertaking
Operating aid for energy savings	Yes	5 m EUR per undertaking for 5 years
Operating aid for production of renewable electricity and/or combined production of renewable heat	Yes	Resulting renewable electricity generation capacity exceeds 125 MW
Operating aid for production of biofuel	Yes	Resulting production capacity exceeds 150 000 t per year
Operating aid for cogeneration	Yes	Resulting cogeneration electricity capacity exceeds 200 MW
Aid in the form of reductions of or exemptions from environmental taxes	Yes	No

*All other environmental aid measures provided for by the Guidelines and not listed in the above table are subject to standard assessment only.

Aid measures

Aid for investment for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards

- Eligible costs: Strictly limited to the extra investment costs necessary to achieve a higher level of environmental protection. Operating benefits/costs are taken into account for 5 years. Eligible investments can be made in land, buildings, plant equipment and technology transfer. Aid may not be granted to achieve standards which have been adopted but are not yet in force.

Aid for investment in the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards

- Eligible costs: Strictly limited to the extra investment costs necessary to achieve a higher level of environmental protection. Operating benefits/costs are taken into account for 5 years. Aid for acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards that are not yet in force, if the new standards will not apply retroactively. Aid may also be granted for retrofitting of existing means of transport.

Aid for investment to early adaptation to future Community standards

- Eligible costs: Strictly limited to the extra costs necessary to achieve a higher level of environmental protection. Operating benefits/costs are taken into account for 5 years.

Eligible investments can be made in land, buildings, plant equipment and technology transfer. Aid is allowed if adaptation takes place at least 1 year before the Community standard enters into force.

Aid for energy saving

Investment aid

- Eligible costs: Strictly limited to the extra costs directly related to energy saving and a level of energy saving higher than Community standards are both identified. Furthermore, the operating benefits and operating costs arising during the first three years of the life of the investment (for SMEs), first four years (for large undertakings outside of the EU CO₂ ETS (Emissions Trading Scheme)) or first five years (for large undertakings which are part of the EU CO₂ ETS) are deducted and added respectively. Eligible investments can be made in land, buildings, plant equipment and technology transfer.

Operating aid

- The aid is limited to compensating for net extra production costs taking into account the benefits resulting from the energy saving. Investment aid granted is deducted from the production costs. It is limited to five years.

Aid for renewable energy sources

Investment aid

- Eligible costs: Strictly limited to the extra investment costs borne by the beneficiary compared with a conventional power plant or heating system with the same capacity. Eligible costs must be calculated net of any operating benefits and operating costs arising during the first five years of this investment. Eligible investments can be made in land, buildings, plant equipment and technology transfer.
- Aid for biofuels only allowed with regard to sustainable biofuels.

Operating aid

- To cover the difference between the cost of producing energy from renewable energy sources and the market price of the form of energy concerned.

Aid for cogeneration

Investment aid

- Eligible costs: limited to the extra investment costs necessary to realize a high-efficiency cogeneration plant as compared to the reference investment. To be calculated net of any operating benefits and costs arising during the first five years of the life of the investment. Eligible investments can be made in land, buildings, plant equipment and technology transfer.

Operating aid

- Same rules as for renewable energy apply. Eligible installations: undertakings distributing electric power and heat to the public where costs of producing exceed its market price. For industrial use only where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy.

Aid for investment in energy-efficient district heating

- Eligible costs: Strictly limited to the extra investment costs borne by the beneficiary compared with a conventional heating system with the same capacity. Eligible costs must be calculated net of any operating benefits and operating costs arising during the first five years of this investment. Eligible investments can be made in land, buildings, plant equipment and technology transfer.

Aid for waste management

- Eligible costs: Limited to the extra investment costs necessary to realize an investment leading to waste management and borne by the beneficiary compared to the reference investment. To be calculated net of any operating benefits and operating costs arising during the first five years of the life of this investment.
- Includes under certain conditions activities of re-utilization, recycling and recovery. Aimed at reducing pollution generated by other undertakings. Does not extend to pollution generated by the beneficiary of the aid.

Aid for the remediation of contaminated sites

- If the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the rehabilitation of the land may receive aid. "Polluter" is defined as person liable for the pollution under the law applicable in each Member State.
- The eligible costs are equal to the cost of the remediation less the increase in the value of the land.

Aid for the relocation of undertakings

- Aid for the relocation of certain undertakings to new sites can be granted only if the change of location is dictated on environmental protection grounds and if it is ordered by administrative or judicial decision or agreed between the undertaking and the competent public authority. In addition, the company relocating must comply with the strictest environmental standards applicable in its new location.
- The eligible costs should be limited to the net costs of the relocation. The Commission will take into account the benefits (i.e. yield from sale or renting of abandoned plant, compensation if expropriated) and costs (purchase of land, construction or purchase of new plant, contractual penalties).

Aid involved in tradable permit schemes

- The aid may be compatible only if the schemes are set up to achieve environmental objectives beyond mandatory Community standards, if there is a transparent and objective allocation, if the total amount of permits or allowance below market value per undertaking does not exceed its needs, if there is no favoring of new entrants and no undue barriers to entry.
- The necessity and proportionality of State aid will be assessed. Without the aid (i.e. full auctioning) the permit scheme must lead to a substantial increase in production costs which cannot be passed on to customers without leading to important sales reductions and it is not possible to reduce emission levels to make the price of the permits bearable.
- The necessity and proportionality test was not taken into account for the allocations related to the trading period for the EU CO₂ ETS (Emissions Trading Scheme) ending on 31 December 2012.

Aid in the form of reductions of or exemptions from environmental taxes

- Allowed if contributes at least indirectly to an improvement of the level of environmental protection and the reductions or exemptions do not undermine the general objective pursued by the tax.
- *Harmonized taxes*: aid compatible for 10 years if the beneficiaries pay at least the Community minimum and if the reduction or exemption is compatible with the relevant Community legislation.
- *Non-harmonized taxes and harmonized taxes if paid tax below Community minimum*: Any tax exemption or reduction must be necessary and proportional:
 - *Necessity of aid*: choice of beneficiary based on objective and transparent criteria, environmental tax without reduction must lead to a substantial increase in production costs which cannot be passed on to customers without leading to important sales reductions.
 - *Proportionality of aid*: each individual pays a proportion of the national tax depending on its performance with respect to the best performing technique within the EEA or 20% of national level (unless lower is justified due to limited distortion of competition) or environmental agreements are concluded between the Member State and the recipient undertakings.

Principle for calculation of extra investment cost

Extra investment costs are calculated in two steps:

1. Cost of investment established by reference to the counterfactual situation in the absence of State aid. The counterfactual scenario must be credible and at least meet applicable Community standards.
2. Any operating benefits arising during a fixed time period (normally five years) of the life of the investment are deducted and corresponding operating costs are added.

Maximum aid

Table 5. Overview of the maximum aid intensities as a percentage of eligible costs.

Type of aid measure	Investment aid	Operating aid
(a) Aid for investment for undertakings which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards and (b) acquisition of new transport vehicles going beyond the Community standard or which increase the level of environmental protection in the absence of Community standards	Small enterprise 70% Medium enterprise: 60% Large enterprise: 50% Tender: 100% Eco-innovation bonus: +10%	

Type of aid measure	Investment aid	Operating aid
(c) Aid for investment to early adaptation to future Community standards	<p>More than 3 years in advance:</p> <ul style="list-style-type: none"> • small enterprise: 25% • medium enterprise: 20% • large enterprise: 15% <p>Between 1 and 3 years in advance:</p> <ul style="list-style-type: none"> • small enterprise: 20% • medium enterprise: 15% • large enterprise: 10% 	
(d) Aid for environmental studies	<p>small enterprise: 70%</p> <p>medium enterprise: 60%</p> <p>large enterprise: 50%</p>	
(e) Aid for energy saving	<p>small enterprise: 80%</p> <p>medium enterprise: 70%</p> <p>large enterprise: 60%</p>	<ul style="list-style-type: none"> • 100% of extra costs with linear decrease to 0 over 5 years OR • 50% of extra costs for 5 years
(f) Aid for renewable sources of energy	<p>small enterprise: 80%</p> <p>medium enterprise: 70%</p> <p>large enterprise: 60%</p> <p>tender: 100%</p>	<ul style="list-style-type: none"> • Compensating difference between the production costs and the market price OR • 100% of extra costs with linear decrease to 0 over 5 years OR • 50% of extra costs for 5 years
(g) Aid for cogeneration	<p>small enterprise: 80%</p> <p>medium enterprise: 70%</p> <p>large enterprise: 60%</p> <p>tender: 100%</p>	Rules for renewables apply
(h) Aid for energy efficient district heating	<p>small enterprise: 70%</p> <p>medium enterprise: 60%</p> <p>large enterprise: 50%</p> <p>tender: 100%</p>	
(i) Aid for waste management	<p>small enterprise: 70%</p> <p>medium enterprise: 60%</p> <p>large enterprise: 50%</p>	
(j) Aid for remediation of contaminated sites	100% of eligible costs	
(k) Aid for relocation of undertakings	<p>small enterprise: 70%</p> <p>medium enterprise: 60%</p> <p>large enterprise: 50%</p>	

Notification

The GBER introduced new categories of environmental aid which are exempted from the notification requirement. Subject to the conditions laid down in the GBER (including special aid intensities), in some cases, investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards; aid for acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards; aid for early adaptation to future

Community standards for SMEs; investment aid for energy saving measures; investment aid for high-efficiency cogeneration; investment aid for the promotion of energy from renewable energy sources; aid for environmental studies; and aid in the form of reductions in environmental taxes do not need to be notified.

However, any such aid needs to be notified if it exceeds the individual notification thresholds of EUR 7.5 million per undertaking per investment project. Similarly, if the conditions of the GBER are not fulfilled, aid also needs to be notified and will be assessed on the basis of the Guidelines.

Factsheet 3 Aid for research, development and innovation

Reference

This factsheet summarizes the “Community Framework for State aid for Research and Development and Innovation” (Official Journal C 323 of 30.12.2006, p. 1) (hereinafter in this factsheet “Framework”). It also includes information on the application of GBER to research, development and innovation aid.

Scope

The Framework covers all measures under which State aid is provided for company research and development and innovation.

R&D&I support not considered to constitute State aid:

- Public financing of non-economic R&D&I activities by research organizations;
- R&D commissioned from firms by public authorities according to market conditions (open tender procedure).

Sectors for which special rules apply:

- Transport by rail, road and inland waterway
- Agriculture and fisheries: maximum aid intensity of 100% in all cases (subject to conditions)

Concepts

Fundamental research: Experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct practical application or use in view;

Industrial research: Planned research or critical investigation aimed at the acquisition of new knowledge or skills for developing new products, processes or services or bringing about a significant improvement in existing products, processes or services;

Experimental development: The acquiring, combining, shaping and using of existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services (including the creation of a commercially usable prototype or pilot projects under certain conditions).

Aid measures

The following measures are recognized under the Framework as eligible for compatibility under Article 87(3)(c) of the Treaty:

- Aid for R&D projects;
- Aid for technical feasibility studies;
- Aid for industrial property rights costs for SMEs;
- Aid for young innovative enterprises;
- Aid for process and organizational innovation in services;
- Aid for innovation advisory services and for innovation support services;

- Aid for the loan of highly qualified personnel; and
- Aid for innovation clusters.

Eligible costs

The eligible costs depend on the type of the proposed measure and are laid down in the relevant Sections of the Framework. By way of an example, the following types qualify as eligible costs for *Aid for R&D projects* (i.e. the first category of aid mentioned above):

- Personnel costs of staff to the extent employed on the research activity;
- Costs of instruments, equipment and land and premises to the extent and for the period used for the research project (subject to depreciation as applicable);
- Cost of contractual research, technical knowledge and patents brought or licensed from outside sources at a market price;
- Cost of external consulting and equivalent services used exclusively for the project;
- Additional overheads incurred directly as a result of the research;
- Other operating expenses incurred directly as a result of the research activity.

Aid intensities

Similarly as with the eligible costs, the aid intensities differ depending on the measure in question. By way of an example, the following table features aid intensities applying to the first type of the aid measure - *aid for R&D projects*:

Table 6. Aid intensities for R&D project aid

Type of R&D	Small enterprise	Medium-sized enterprise	Large enterprise
Fundamental research	100%	100%	100%
Industrial research	70%	60%	50%
Industrial research subject to: <ul style="list-style-type: none"> • collaboration between undertakings; for large undertakings: cross-border or with at least one SME or • collaboration of an undertaking with a research organization or • dissemination of results 	80%	75%	65%
Experimental development	45%	35%	25%
Experimental development subject to: <ul style="list-style-type: none"> • collaboration between undertakings; for large undertakings: cross-border or with at least one SME or • collaboration of an undertaking with research organization 	60%	50%	40%

Special conditions

The Framework provides for three types of assessment on the basis of a balancing test of the positive and negative effects of the aid:

(i) *standard assessment* – if the project satisfies conditions set out in Chapter 5 of the Framework, it is assumed that the balancing test would be positive. The following measures fall within this category (provided aid is granted only upon application to national authorities):

- project aid and feasibility studies if the aid beneficiary is SME and the aid amount is below EUR 7,5 million per SME for a project;
- aid for industrial property rights costs for SMEs;
- aid for young innovative enterprises;
- aid for innovation advisory services;
- aid for innovation support services; and
- aid for the loan of highly qualified personnel.

(ii) *standard assessment* plus *demonstration* of incentive effect and necessity - in accordance with Chapters 5 and 6 of the Framework: for all notified aid falling **below** the thresholds for the detailed assessment (mentioned below) **and** not falling within one of the categories of the standard assessment just under Chapter 5 (for which the incentive effect is presumed).

(iii) *detailed assessment* – due to a higher risk of distortion of competition, the Commission will carry out a detailed assessment for measures where the amount exceeds:

- for project aid and feasibility studies:
 - if the project is predominantly fundamental research, EUR 20 million;
 - if the project is predominantly industrial research, EUR 10 million;
 - for all other projects: EUR 7,5 million;
- for process or organisational innovation in services activities, EUR 5 million.
- for innovation clusters, EUR 5 million.

For each aid scheme, an annual report on implementation is required.

Table 7. Categories of aid measures, relevant aid amounts ceilings applicable under the GBER and thresholds triggering a detailed assessment under the Framework

Aid measure	Maximum allowable aid amount under GBER	Standard Assessment (Framework)	Detailed Assessment ¹⁸ (Framework)
Project aid and feasibility studies	<ul style="list-style-type: none"> • <i>fundamental research</i>: 20 m EUR • <i>industrial research</i>: 10 m EUR • <i>others</i>: 7.5 m EUR per undertaking per project • <i>2x if EUREKA</i>¹⁹ 	Yes (if GBER conditions not fulfilled)	<ul style="list-style-type: none"> • <i>fundamental research</i>: 20 m EUR • <i>industrial research</i>: 10 m EUR • <i>others</i>: 7.5 m EUR per undertaking per project • <i>2x if EUREKA</i>
Industrial property rights costs for SMEs	5 m EUR per undertaking per project	Yes	No
Young innovative enterprises	1 m EUR	Yes	No
Innovation advisory services and innovation support services	EUR 200 000 per undertaking per three years	Yes	No
Loan of highly qualified personnel	50% of eligible costs for 3 years per undertaking per person borrowed	Yes	No

¹⁸ All cases notified to the Commission following a duty to notify individually prescribed by the GBER are also subject to detailed assessment.

¹⁹ Eureka is a pan-European network for market-oriented industrial research and development.

Aid measure	Maximum allowable aid amount under GBER	Standard Assessment (Framework)	Detailed Assessment¹⁸ (Framework)
Process or organisational innovation	Not included in the GBER	Yes	In services: 5 m EUR per project per undertaking
Innovation clusters	Not included in the GBER	Yes	5 m EUR per cluster

Notification

The GBER introduced new categories of aid for research, development and innovation which are exempted from the notification requirement. Subject to the conditions laid down in the GBER (including special aid intensities), in certain cases aid for research and development projects, aid for technical feasibility studies, aid for industrial property rights costs for SMEs, aid for research and development in the agricultural and fisheries sectors, aid to young innovative enterprises, aid for innovation advisory services and for innovation support services and aid for the loan of highly qualified personnel do not need to be notified.

However, such aid always needs to be notified if the individual notification thresholds are exceeded as specified in the table above.

Similarly, if the conditions of the GBER are not fulfilled, aid also needs to be notified and will be assessed on the basis of the Framework.

Factsheet 4 Regional aid

References

This factsheet summarizes:

- the Guidelines on National Regional Aid for 2007-2013 (Official Journal C 54, 4.3.2006, p.13) (hereinafter in this factsheet the “Guidelines”).
- the application of the GBER to regional investment and employment aid and aid to newly created enterprises.

Aim

To promote the development of the less-favoured regions:

- by supporting initial investment and investment and employment linked to initial investment and newly created small enterprises or
- in exceptional cases, by providing operating aid.

Scope

The Guidelines cover investment aid, aid to newly created enterprises and operating aid to establishments in regions eligible for regional aid (see below).

The Guidelines do not apply to the primary production of agricultural products listed in Annex I of the Treaty. They generally apply to the processing and marketing of agricultural products²⁰. However, they do not apply to the fisheries sector nor to the coal industry.

Special rules apply to:

- transport and shipbuilding;
- no regional aid is allowed to the steel or synthetic fibers industry;
- large investment projects (see “concepts”).

Key conditions

In order to be eligible for aid under the Guidelines, the project has to comply with the following key conditions:

- new assets (except for SMEs);
- maintenance of the investment in the region for a minimum period of at least 5 years (3 years for SMEs) after its completion;
- financial contribution of the beneficiary of at least 25% of the eligible costs.

Concepts

Two categories of eligible regions can be distinguished:

- *Article 87(3)(a) regions*: These are regions where the standard of living is abnormally low or where there is serious underemployment (NUTS II regions with a GDP/cap lower than 75% of the EU average).
- *Article 87(3)(c) regions*: These are problem areas defined on the basis of (national) indicators proposed by the Member States, subject to a maximum population coverage and some minimal conditions to prevent abuse.

²⁰ See also Community Guidelines in the Agriculture and Forestry Sector 2007 – 2013 (OJ C 319 of 27.12.2006)

Initial investment: investment in material and immaterial assets relating to the setting up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products, or a fundamental change in the overall production process of an existing establishment;

Job creation linked to the investment: net increase of jobs created within 3 years from the completion of investment.

Operating aid: Aid aimed at reducing a firm's current expenditure (e.g. salary costs, transport costs, rents).

Large investment project: an initial investment project with eligible investment costs that are at least EUR 50 million in present value (eligible investment costs are defined below).

Individually notifiable LIP: is a large investment project where the total amount of aid from all sources exceeds 75% of the maximum amount of aid an investment with eligible expenditures of EUR 100 million could receive in the region concerned. The Member States are required to **individually notify** all cases that exceed that aid amount.

Gross grant equivalent (GGE): the nominal value of the aid granted discounted to its value at the date of granting the aid.

Aid intensity: GGE expressed as a percentage of the total eligible project cost.

Aid for initial investment

Eligible costs: Aid for initial investment can be calculated as a percentage of the investment's value or as a percentage of the wage-cost of the jobs linked to the initial investment.

- Investment: material investment (land, buildings, plant/machinery) and a limited amount of immaterial investment (expenditure entailed by technology transfer). Expenditure on transport equipment in the transport sector is not eligible.
- Wage-cost: expected gross wage-costs and the compulsory social security contributions, calculated over a period of two years multiplied by the number of jobs created (net job creation in the establishment concerned).

Maximum aid intensities

Table 8. Maximum aid intensities

Regional GDP as % of EU-25 GDP	Maximum aid rates for large companies	Aid rates in the outermost regions
> 75%	15% - 10%	40%
<75%	30%	50%
<60%	40%	60%
<45%	50%	n/a

So-called 'statistical effect regions' – which have less than 75% of EU-15 GDP but more than 75% of EU-25 GDP (3.6% of EU-25 population) – will benefit from transitional status and qualify for the lowest rates of aid under Article 87(3)(a) of the Treaty, with a 30% aid rate for large companies until 31.12.2010. The situation of these regions will be reviewed in 2010. If

their situation has declined below 75% of EU-25 average, they will continue to benefit from Article 87(3)(a) of the Treaty. Otherwise, they will be eligible under Article 87(3)(c) of the Treaty with an aid rate of 20%, as from 1.1.2011.

The eligible areas are identified in the regional aid maps for each Member State published on the website of DG Competition²¹.

Transitional arrangements are foreseen until the end of 2010 for regions suffering the biggest reductions in aid intensities and, until the end of 2008, for regions losing eligibility under the new Guidelines. These areas are also identified in the maps.

For **large investments** the regional aid intensity ceiling is reduced as follows:

- For the part of the eligible cost up to EUR 50 million, 100% of the applicable regional aid ceiling.
- For the part of the eligible cost between EUR 50 million – EUR 100 million, the intensity is reduced to 50% of the applicable regional aid ceiling.
- For the part of the eligible cost exceeding EUR 100 million, the intensity is reduced to 34% of the regional aid ceiling.
- **Example:** a large investment project with eligible costs of EUR 200 million and an applicable regional aid ceiling of 40% GGE can get maximum aid of **EUR 43.6 million** :
 - (i) Up to EUR 50 million: 100% of the applicable regional aid ceiling=> EUR 50 millions x 40%; that is EUR 20 million;
 - (ii) For the part between EUR 50 million – EUR 100 million: 50% of the applicable regional aid ceiling => EUR 50 million x (40% x 50%); that is EUR 10 million;
 - (iii) For the part exceeding EUR 100 million: 34% of the applicable regional aid ceiling=> EUR 100 million x (40% x 34%); that is EUR 13.6 million;**Total aid=> (i)+(ii)+(iii) =EUR 20 million + EUR 10 million + EUR 13.6 million = EUR 43.6 million**

Point 65 of the Guidelines contains provisions on the ex-post monitoring of State aid granted to **non-notifiable large investment projects**, also called the '**transparency mechanism**'. The non-notifiable large investment projects are projects for which the aid amount does not exceed the notification threshold, i.e. 75% of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid has been granted.

Under the transparency mechanism, whenever regional aid is granted on the basis of existing aid schemes²² for non-notifiable large investments projects, Member States must, within 20 working days starting from the granting of the aid by the competent authority, provide the Commission with the information requested in the standard form laid down in the Guidelines.²³ Summary information is then published on the DG Competition website²⁴.

Aid intensities can be increased in all assisted areas by 20 percentage points where aid is given to small enterprises and 10 percentage points where it is given to medium-sized enterprises.

²¹ http://ec.europa.eu/competition/state_aid/regional_aid/regional_aid.cfm

²² Individual aid granted outside approved schemes (*ad hoc* aid) always has to be notified to the Commission.

²³ The standardized reporting form is also available in Excel format on the DG Competition website: http://ec.europa.eu/competition/state_aid/legislation/forms.cfm

²⁴ <http://ec.europa.eu/competition>

However, no such SME bonus is permitted for large investment projects with eligible expenses over EUR 50 million.

Cumulation

Aid intensity ceilings specified in the table above apply to total aid:

- Where assistance is granted under several regional aid schemes;
- Whether the aid comes from local, regional, national or Community sources.

Where expenditure eligible for regional aid is eligible for aid for other purposes (e.g. R&D&I), it will be subject to the most favourable ceiling under the schemes in question.

Operating aid

General provisions

Except for certain exceptions, operating aid may only be granted in Article 87(3)(a) regions, and only if all of the following conditions are satisfied:

- It is justified in terms of its contribution to regional development;
- Its level is proportional to the handicaps it seeks to alleviate;
- It is limited in time and progressively reduced

Member States must demonstrate the existence and importance of these handicaps.

Transport aid: Aid to offset additional transport costs can be provided only in the outermost regions and in low population density areas qualifying for regional aid.

Aid to offset depopulation: Aid to offset depopulation may be granted on a permanent basis in the least populated regions with a population density below 8 inhabitants/km².

Aid to compensate the handicaps of the outermost regions: Aid may be granted on a permanent basis to offset the handicaps of the outermost regions (remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products).

Aid for newly established small enterprises

- Maximum EUR 3 million per enterprise in Article 87(3)(a) regions and EUR 2 million per enterprise in Article 87(3)(c) regions;
- 5% bonus for Article 87(3)(a) regions < 60% EU-GDP, low population density regions and small islands with a population of less than 5 000 and other communities of the same size suffering from similar isolation;
- Intensities:

Table 9. Maximum aid intensities

	Years 1-3	Years 4-5
Article 87(3)(a) regions	35%	25%
Article 87(3)(c) regions	25%	15%

Notification

The GBER exempts transparent regional investment and employment aid schemes which respect the rules on eligible expenses and the maximum aid intensities defined in the Regional aid Map for the Member State concerned from notification to the Commission. Except for large investment projects and aid in transport sector, such aid intensities may be increased by 20 percentage points for small enterprises and 10 percentage points for medium enterprises. Different aid intensities apply for investments in the processing and marketing of agricultural products.

Regional aid schemes targeted at specific sectors of economic activities, as well as regional aid for activities in the steel sectors, in the shipbuilding sectors, and in the synthetic fibres sectors should not be covered by the exemption from notification. However, measures in favour of tourism sector fall within the GBER.

The GBER does not apply to ad hoc aid granted to large enterprises, except as provided for in Article 13. Under this provision, transparent ad hoc aid granted to an individual company (including a large enterprise) is also exempt from notification provided it is used to top-up aid granted under schemes and the ad hoc component does not exceed 50% of the total amount of aid.

The aid for newly created small enterprises is now also automatically exempted from notification.

The material rules for investment aid are basically the same in both the GBER and the Guidelines, so that there is no advantage to be gained in notifying an aid measure which is exempt.

Individual notification of large investment projects is required where the aid exceeds 75% of the maximum amount of aid an investment with eligible costs of EUR 100 million can receive in the region concerned.

Similarly, if the conditions of the GBER are not fulfilled, aid also needs to be notified and will be assessed on the basis of the Guidelines.

Table 10. Categories of regional measures, relevant maximum amounts and aid intensity ceilings applicable under GBER²⁵, and thresholds triggering a detailed assessment under the Guidelines

Type of measure	Maximum allowable aid under GBER	Standard Assessment (Guidelines)	Detailed assessment (Guidelines)
Aid Schemes (large, medium and small enterprises)	<ul style="list-style-type: none"> Art. 13: <i>assisted regions only</i>: Aid < 75% of maximum aid for investment with eligible costs of 100 m EUR 	Yes	Not for the scheme itself but only to individually notifiable LIPs: <ul style="list-style-type: none"> market share over 25% capacity increase over 5% in declining markets
Ad hoc aid SMEs	Yes <ul style="list-style-type: none"> Art. 13 - <i>assisted regions</i>: only if to supplement a scheme, maximum 50% of total aid 	Yes	Only for individually notifiable LIPs: <ul style="list-style-type: none"> market share over 25% capacity increase over 5% in declining markets

²⁵ Individually notifiable LIPs are not covered by the GBER.

Type of measure	Maximum allowable aid under GBER	Standard Assessment (Guidelines)	Detailed assessment (Guidelines)
Ad hoc aid large enterprises	<ul style="list-style-type: none"> • in principle, not exempted under GBER one exception: allowed in assisted regions only if it supplements aid granted under a scheme and the maximum amount does not exceed 50% of the total aid granted, provided the aid is not individually notifiable 	Yes	Only for individually notifiable LIPs: <ul style="list-style-type: none"> • market share over 25% • capacity increase over 5% in declining markets
Aid for newly created small enterprises (schemes only)	<ul style="list-style-type: none"> • 2 m EUR per undertaking in 87(3)(a) region • 1 m EUR per undertaking in 87(3)(c) region • <i>annual</i> amounts per undertaking - maximum 33% of the above aid amounts 	Yes	N/A

Factsheet 5 Aid for the rescue and restructuring of firms in difficulty

References

This factsheet summarizes the “Community Guidelines on State aid for rescuing and restructuring firms in difficulty” (Official Journal C 244, 01.10.2004, p. 2) (hereinafter in this factsheet the “Guidelines”).

Scope

The Guidelines covers aid for the rescuing and/or restructuring of individual companies in difficulty.

They do not apply to steel and coal mining. With some exceptions, they apply to fisheries and aquaculture sector. Specific additional rules apply for restructuring in the agricultural sector.

Concepts

A **company in difficulty** is a company that is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which without outside intervention by public authorities will almost certainly condemn it to go out of business in the short or medium term.

Rescue aid is temporary and reversible assistance. It should make it possible to keep a company in difficulty afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time needed by the Commission or the competent national authorities to reach a decision on that plan.

Restructuring aid is based on a feasible, coherent and far-reaching plan to restore a firm’s long-term viability.

Conditions

Rescue aid has to meet the following conditions:

- the firm must qualify as a firm in difficulty;
- consists of reversible liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates (and at least comparable to the reference rates adopted by the Commission);
- restricted to the amount needed to keep the firm in business;
- only for the time needed (max. 6 months) to devise the recovery plan;
- be warranted on the grounds of social difficulties and have no adverse effects on the industrial situation in other Member States;
- be accompanied, on notification, by an undertaking by the Member State to communicate to the Commission a restructuring or liquidation plan or proof that the loans has been reimbursed or guarantee terminated, not later than within 6 months after granting the aid;
- should be a one-off operation (the “one time, last time” principle).

The Guidelines provide for a simplified procedure if the aid is based on past operating results according to a formula set in the Guidelines and does not exceed EUR 10 million.

Restructuring aid can be granted only if the following criteria are met:

- the firm must qualify as a firm in difficulty;
- a restructuring/recovery programme is submitted to the Commission to restore viability in a reasonable time period;
- compensatory measures are taken to avoid undue distortions of competition (e.g. appropriate reduction of capacity);
- aid is limited to the minimum needed for the implementation of the restructuring measures. Beneficiaries have to make a significant own contribution, free of aid;
- the company has to implement the restructuring plan in full and observe all attached conditions;
- restructuring aid can be granted once only (“one time, last time principle”);
- strict monitoring and annual reporting is required;
- SMEs and firms in assisted regions: the capacity reduction/own contribution criteria can be applied with a greater degree of flexibility;
- the Commission takes a favourable view of State aid to cover the social costs of restructuring.

For large firms, individual notification of each award of rescue and restructuring aid is required.

For SMEs, rescue and restructuring aid (up to EUR 10 million per undertaking) can be granted on the basis of notified and approved aid schemes.

Factsheet 6 Aid for small and medium-sized enterprises

Reference

This factsheet summarizes the application of the GBER to State aid to small and medium-sized enterprises (SMEs).

Scope

The GBER provides special rules for SMEs support²⁶. This factsheet includes categories of aid given exclusively to SMEs. Special rules applicable to SMEs in the case of risk capital aid, R&D&I, regional aid and environmental aid are analyzed in the relevant factsheets covering those topics²⁷.

Concepts

Definition of SMEs

The definitions of SMEs are included in the Annex 1 to the GBER.

- A **medium-sized enterprise** is an enterprise satisfying all of the following criteria:
 - has fewer than 250 employees and
 - has either an annual turnover not exceeding EUR 50 million, and/or a balance-sheet total not exceeding EUR 43 million.
- A **small enterprise** is an enterprise that satisfies all of the following criteria:
 - has fewer than 50 employees and
 - has either an annual turnover and/or a balance-sheet total not exceeding EUR 10 million.
- A **micro-enterprise** is an enterprise that satisfies all of the following criteria:
 - has fewer than 10 employees and
 - has either an annual turnover and/or a balance-sheet total not exceeding EUR 2 million.

The criteria must be applied to the company as a whole (including subsidiaries located in other Member States and outside the EU). The Regulation provides definitions of an *autonomous* enterprise, *partner* enterprise and *linked* enterprise in order to assess the real economic position of the SME in question.

The GBER sets forth conditions for the exemption from notification of the following main aid types exclusively for SMEs:

²⁶ The Commission is currently preparing a separate Vademecum on State aid to SMEs aimed at providing a concise and systematic summary of State aid rules applicable to SMEs.

²⁷ These include aid to aid for early adaptation to future Community environmental standards for SMEs; aid in the form of risk capital in favour of SMEs; aid for industrial property rights costs for SMEs; aid for the loan of highly qualified personnel or aid for establishing new SMEs.

- SME investment and employment aid;
- aid for small enterprises newly created by female entrepreneurs;
- aid for early adaptation to future Community standards for SMEs;
- aid for consultancy in favour of SMEs;
- aid for SME participation in fairs;
- aid for industrial property rights costs for SMEs;
- aid for innovation advisory services and innovation support services.

In addition to these measures which are exclusive to SMEs, SMEs are also eligible for the other types of aid listed in the GBER.

Eligible cost

Aid can be provided in relation to the following categories of expenditure:

- For SME investment and employment aid, investment in tangible assets (land, buildings, plant/machinery) and in intangible assets (expenditure entailed by technology transfer) and wage costs;
- In case of aid for small enterprises newly created by female entrepreneurs, the eligible costs shall be the legal, advisory, consultancy and administrative costs directly related to the creation of the enterprise, as well as certain costs incurred within the first five years of its creation (e.g. interest on external finance and dividends, fees for renting production facilities/equipment; energy, water, heating, taxes (not VAT and corporate tax) and administrative charges; depreciation, fees for leasing production facilities, wage costs, child and parent care costs);
- For aid for early adaptation to future Community standards for SMEs, the eligible costs are the extra investment costs necessary to achieve the level of environmental protection required by the Community standard compared to the existing level of environmental protection required prior to the entry into force of this standard.
- For consultants and participation in fairs, the costs of services provided by outside consultants and the costs of the first participation of an enterprise in a particular fair or exhibition;
- For aid for industrial property rights costs, the eligible costs include all costs preceding the grant of the right in the first jurisdiction (including preparation, filing and prosecution of application, renewing the application), translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions, costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings (even if incurred after the right is granted).
- For aid for innovation advisory services, the eligible costs are costs relating to management consulting, technological assistance, technology transfer services, training, consultancy for acquisition, protection and trade in IPRs and for licensing agreements, consultancy on the use of standards. For innovation support services, the costs include office space, data banks, technical libraries, market research, use of laboratory, quality labelling, testing and certification.

Maximum aid intensities

Table 11. Maximum aid intensities

Measure	Aid intensity
Investment and employment²⁸	20%
<ul style="list-style-type: none"> • Small enterprises • Medium-sized enterprises 	10%
Female entrepreneurship	15%
<ul style="list-style-type: none"> • Small enterprises 	
Early adaptation to future Community standards	15%
<ul style="list-style-type: none"> • Small enterprises • Medium-sized enterprises 	10%
Services by outside consultants and participation in fairs	50%
Industrial property rights costs	100%
<ul style="list-style-type: none"> • fundamental research • industrial research • experimental development 	50% 25%
Innovation advisory services and innovation support services	75% unless a national or European certification

Notification

Aid measures satisfying the conditions laid down in the GBER are exempted from the ex ante notification requirement. However, large projects satisfying the following thresholds are *not exempted* from individual notification when the gross grant equivalent of an individual aid exceeds EUR 7.5 million per undertaking per investment project. For SME participation in fairs and aid for consultancy in favour of SMEs, the threshold is set at EUR 2 million per undertaking per project. For industrial property rights costs for SMEs, the threshold is EUR 5 million per undertaking per project. For innovation advisory and support services, the threshold is a maximum of EUR 200 000 per beneficiary within any three years.

²⁸ Higher aid intensities apply if the investment concerns the processing and marketing of agricultural products.

³¹ The Commission is currently working on a comprehensive communication on the application of the market private economic investor test which would incorporate the present rules.

Factsheet 7 Employment aid

Reference

This factsheet summarizes the application of the GBER to State aid for employment. Specific rules for regional investment and employment aid and for SME investment and employment aid are set out in the relevant factsheets.

Scope

The GBER section on employment covers only aid which is granted for the following purposes:

- the recruitment of disadvantaged workers in the form of wage subsidies;
- the employment of disabled people in the form of wage subsidies;
- to cover the additional cost of employing disabled people.

By way of exception to the general scope of the GBER, it allows employment aid even for fisheries and aquaculture sectors, as well as for the primary production of agricultural products.

Concepts

Disadvantaged workers: any person for whom any of the following applies:

- has not been in regular paid employment for the previous 6 months;
- has not attained an upper secondary educational or vocational qualification;
- is over the age of 50 years;
- lives as a single adult with one or more dependents;
- works in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic sectors in that Member State and belongs to that underrepresented gender group; or
- is a member of an ethnic minority and requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment.

Severely disadvantaged workers: any person who has been unemployed for 24 months or more.

Disabled workers: any person who is recognized as disabled under national law or has a recognized limitation which results from physical, mental or psychological impairment.

Conditions

Conditions to be satisfied in the case of aid for *recruitment of disadvantaged workers and employment of disabled workers in the form of wage subsidies:*

- Employment must represent a net increase in the number of jobs or, if not, the posts shall have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct and not as a result of redundancy;

- Employment must be maintained for at least the minimum period consistent with national legislation or collective agreement;

Eligible cost

Aid for recruitment of disadvantaged worker: wage cost over a period of one year 24 months for severely disadvantaged workers (if the period of employment is shorter than 12/24 months, the aid shall be reduced pro rata accordingly).

Aid for employment of disabled worker: wage costs over any given period during which the disabled worker is being employed (if shorter than 12 months, aid reduced pro rata).

Aid for additional costs of employing disabled workers: additional costs directly linked to the employment of disabled worker (except wage), including the costs of adapting premises, of employing staff solely to assist the disabled worker(s), and of adapting or acquiring equipment for disabled worker(s), if the beneficiary provides sheltered employment, also the costs of constructing, installing or expanding the establishment and any administration and transport costs result directly from the employment of disabled workers.

Maximum aid

Table 12. Maximum aid intensities

Measure	Aid intensity
Aid for recruitment of disadvantaged workers	50%
Aid for employment of disabled workers	75%
Aid for additional costs of employing disabled workers	100%

Notification

Table 13. Aid not exempted from the notification requirement

Measure	GBER individual notification threshold
SME investment and employment aid	EUR 7.5 million per project per enterprise
Recruitment of disadvantaged workers	EUR 5 million per undertaking per year
Employment of disabled workers in the form of wage costs	EUR 10 million per undertaking per year
Additional costs of employing disabled workers	EUR 10 million per undertaking per year
Other types of employment related measures that do not fall under any of the exempted categories	N/A

Factsheet 8 Training aid

Reference

This factsheet summarizes the application of the GBER to training aid.

Scope

By way of exception to the general scope of the GBER, it allows training aid even for fisheries and aquaculture sectors, as well as for the primary production of agricultural products and in the coal sector.

The GBER covers all public support for training which favours one or more firms or sectors of industry by reducing costs they should normally have to bear when they want their employees to acquire new skills. It applies to training aid whether the training is provided by companies themselves or by public or private training centres.

Concepts

Specific training: Training involving tuition directly and principally applicable to the employee's present or future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work.

General training: Training involving tuition which is not applicable only or principally to the employee's present or future position in the undertaking, but which provides qualifications which are largely transferable to other undertakings or fields of work and thereby substantially improve the employability of the employee. Training is considered 'general' if, e.g. it is jointly organised by different independent enterprises, or if employees of different enterprises may avail themselves of the training. It is also considered 'general' if it is recognised, certified or validated by public authorities or bodies on which the Member State or the Community conferred the necessary powers.

If the project involves both specific and general training components which cannot be separated or the character of the project cannot be established, the specific training aid intensities apply.

Eligible cost

- Trainers' personnel costs;
- trainers' and trainees' travel expenses including accommodation;
- other current expenses (materials, supplies, etc.);
- depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
- cost of guidance and counseling services with regard to the training project;
- trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) up to the amount of the total of the above eligible costs. As regards the trainees' personnel costs, only the hours during which the trainees actually participate in the training, after deduction of any productive hours, may be taken into account.

Maximum aid

Table 14. Maximum aid intensities

	Specific training	General Training
Standard rate	25%	60%
Others:		
Medium enterprises	35%	70%
Small enterprises	45%	80%
Beneficiaries: disadvantaged or disabled workers	35%	70%
Maritime transport sector	100%	100%

Notification

Training aid exceeding EUR 2 million per training project is not exempted from individual notification.

Factsheet 9 Risk Capital Measures

References

This factsheet summarizes the “Community Guidelines on State Aid to Promote Risk Capital Investments in Small and Medium-sized Enterprises” (Official Journal C 194, 18.08.2006, p. 2) (hereinafter in this factsheet the “Guidelines”). It also includes information on the application of GBER to risk capital measures.

Aim

The aim of the Guidelines is to set out the criteria the Commission will apply in the compatibility assessment of the risk capital measures in accordance with Article 87 (3)(c) of the Treaty.

Scope

Application to risk capital schemes targeting only SMEs. Measures designed to provide or promote risk equity and/or quasi-equity financing to enterprises in their start-up and expansion phases.

Risk capital measures must exclude the provision of aid to enterprises in difficulties and companies in the shipbuilding, coal and steel industry. The Guidelines do not apply to aid to export-related activities.

The Commission will pay particular attention to the need to prevent the use of these guidelines to circumvent the principles laid down in existing frameworks, guidelines and regulations.

Presence of State aid

When assessing risk capital measures, the Commission will examine whether State aid is present at each of the following levels:

- Aid to the investors: Where a measure allows investors to participate in a risk capital fund on terms more favourable than if they had undertaken this investment in absence of the measure, then those investors may receive State aid. The same applies where the private investors participate in a fund on terms more favourable than public investors.
- Aid to an investment vehicle or fund and/or its manager: Normally, the fund is merely an intermediary vehicle for the transfer of aid, rather than being an aid beneficiary itself. However, in certain cases (e.g. regarding fiscal measures or other measures involving direct transfers in favour of an investment vehicle or fund with the character of an independent enterprise) aid may be present unless the investment is made on terms which would be acceptable to a normal economic operator.
- Aid to the enterprises invested in: Enterprises will not be considered as aid recipients if the investment is made on terms which would be acceptable to a private investor in a market economy in the absence of any State intervention. For this purpose, the Commission will examine, inter alia, whether investment decisions are profit-driven, linked to a reasonable business plan, and subject to a realistic exit strategy.

Criteria for assessing risk capital measures

The Commission will assess the compatibility of risk capital measures taking into account the incentive effect, necessity of aid, existence of market failure and proportionality of aid.

The Guidelines set out a set of conditions under which the Commission will consider that aid in the form of risk capital is compatible with Article 87(3)(c) of the Treaty. For measures fulfilling these criteria it will be assumed that incentive effect, the necessity and proportionality of aid are met and that the overall balance of the aid measure is positive. These criteria include:

- maximum level of investment tranches of EUR 1.5 million per target SME over each period of twelve months;
- restriction to seed, start-up and expansion financing or to start-up phase for medium enterprises outside of assisted areas;
- prevalence of equity and quasi-equity investment instruments (at least 70% of the budget of the measure);
- obligatory participation by private investors (at least 50% of the funding, or 30% in assisted areas);
- profit-driven character of the investment decisions;
- commercial management.

Risk capital measures which do not satisfy all the conditions laid down above are subject to a *detailed compatibility assessment* based on a balancing test, in order to verify the targeting of the relevant market failure, the higher risks of potential crowding-out of private investors, and distortion of competition.

The Commission will regard the following characteristics as positive elements in its balancing test evaluation:

- existence and evidence of market failure;
- appropriateness of the instrument;
- incentive effect and necessity of aid:
 - commercial management;
 - presence of an investment committee;
 - size of the measure/ fund;
 - presence of business angels;
- Proportionality (including open tender for managers, call for tender or public invitation to investors).

The Commission will balance these positive elements against the following potential negative effects of the aid:

- crowding-out of private investment;
- other distortions of competition, as it cannot be excluded that risk capital measures might have the effect of keeping inefficient firms or sectors afloat or of artificially increasing their valuation and thus, distorting the market for risk capital. Sector specific aid may also maintain production in non-competitive sectors, whereas region-specific aid may build up an inefficient allocation of production factors across regions.

Notification

The GBER introduced aid in the form of risk capital measures amongst the categories of aid which are exempted from the notification requirement. Subject to the conditions laid down in the GBER, aid in the form of participation into a profit driven private equity investment fund managed on a commercial basis does not need to be notified.

If the conditions of the GBER are not fulfilled, such aid needs to be notified and will be assessed on the basis of the Guidelines.

Factsheet 10 Aid elements in the sale of land and buildings by public authorities

References

This factsheet summarizes the “Commission Communication on State aid elements in sale of land and buildings by public authorities” (Official Journal C 209, 10.7.1997, p.3) (hereinafter in this factsheet the “Communication”)³¹.

Aim

The aim of the Communication is:

- to outline a simple procedure that allows Member States to handle the sale of land and buildings in a way that automatically precludes the existence of State aid
- to specify cases of sales of land and buildings that should be notified to the Commission.

Principle

The Commission presumes that the sale of land or buildings by a public authority does not contain aid if either one of the two procedures below has been followed:

- the sale was concluded on the basis of a sufficiently well-publicized, open and unconditional bidding procedure, accepting the best or only bid.
- the sale is conducted at the market value as established by independent valuers.

The price at which the land or buildings concerned are sold should conform **at least** to the price indicated by an independent “asset valuer” in his expert evaluation.

If after a reasonable effort to sell at the value indicated in the expertise it is clear that the land/building cannot be sold at that price, a divergence of up to 5% from the original value can be deemed to be in line with market conditions.

Member States should notify to the Commission, without prejudice to the *de minimis* rule (see Factsheet 13) any sale which was not concluded in conformity with either one of the procedures described above.

Factsheet 11 Services of general economic interest

References

This factsheet summarizes the “Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest” (2005/842/EC) (Official Journal L 312, 29.11.2005, p. 67-73), the “Community Framework for State aid in the form of public service compensation” (2005/C 297/04) (Official Journal C 297, 29.11.2005, p. 4-7), and the Commission Directive 2006/111/EC of 16 November 2006 on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (Official Journal L 318, 17.11.2006, pages 17 – 25) (hereinafter in this factsheet the “Decision”, the “Framework”, and the “Transparency Directive” respectively).

Aim

The aim of the Decision and Framework is to provide greater legal certainty for the financing of services of general economic interest. They follow the Court of Justice's *Altmark* ruling³² and are designed to ensure that companies can receive public support to cover all costs incurred, including a reasonable profit, in carrying out public service tasks as defined and entrusted to them by public authorities, whilst making sure that there is no over-compensation of public service costs and no cross-subsidization in favour of commercial activities which are liable to distort competition.

Scope

By definition, the Decision and Framework only apply to undertakings providing services in the general economic interest as defined in the Treaty, the secondary legislation and the applicable case law. They only apply to undertakings conducting *economic* activities, as financial support granted to entities not conducting economic activities does not constitute State aid.

Concepts

Services of general economic interest (or SGEI) mean economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there was no public intervention. The activity must exhibit special characteristics as compared with the general economic interest of other economic activities.

Altmark criteria mean the conditions set by the landmark Court judgement under which compensation for a SGEI should not be considered as State aid. In brief:

- (i) the activity qualifies as SGEI and its tasks and obligations are clearly defined;
- (ii) the parameters for compensation of the public service's costs are objective, transparent, and are established in advance;

³² C-280/00, 24.7.2003.

(iii) compensation does not exceed the net costs of providing the service plus a reasonable profit (i.e. no over-compensation); and

(iv) the compensation is determined either through *public procurement* or if no public tender has taken place, the company entrusted with the SGEI is compensated on the basis of the costs of a typical well-run company.

Measures

1. Decision

The Decision specifies the conditions under which compensation to companies for the provision of SGEI is compatible with State aid rules and *does not have to be notified* to the Commission in advance.

Conditions:

- a clearly defined public service mandate;
- no over-compensation;
- compensation of less than EUR 30 million per year per undertaking; and annual turnover of less than EUR 100 million per undertaking.
- no limits for amount of compensation:
 - hospitals;
 - social housing;
 - air and sea transport to islands;
 - airports and ports below specific thresholds defined in passenger volumes.

2. Framework

The Framework specifies the conditions under which compensation not covered by the Decision is *compatible* with State aid rules. Such compensation will have to be notified to the Commission due to the higher risk of distortion of competition.

The rules are designed to ensure that there is ***no overcompensation*** (compensation that exceeds the net costs of the public service) and ***no cross-subsidizing*** (compensation that is used on other markets open to competition) as such circumstances could not be found compatible with the Treaty.

3. Transparency Directive

The Transparency Directive clarifies that companies receiving compensation and operating on both public service and other markets must have separate accounts for their different activities, so that the absence of over-compensation can be established.

Factsheet 12 The Guarantee Notice

Reference

This factsheet summarizes the “Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees” (Official Journal No C 155, 20.6.2008, p. 10-22 and corrigendum to p. 15 in Official Journal No C 244, 25.9.2008, p. 32) (hereinafter in this factsheet only the "Notice").

Scope

The Notice applies to *individual guarantees* as well as *guarantee schemes*. It applies to all sectors of economy, including agriculture, fisheries and transport, without prejudice to specific rules relating to guarantees in the sectors concerned.

The Notice does not apply to export credit guarantees.

The Notice sets rules on when a guarantee is considered as market-conform and thus, not constituting aid. It also provides for the assessment of guarantees with an aid element.

Concepts

Guarantees are usually associated with a **loan or other financial obligation** to be contracted by a borrower with a lender. The same rules apply also to other types of guarantees where a similar transfer of risk takes place (e.g. equity investments).

The Notice sets forth rules for clear and transparent **methodologies** for the calculation of the aid element in a given guarantee or in a guarantee scheme. Simplified rules for SMEs are introduced in order to help to address the particular difficulties of SMEs with access to finance.

Guarantees which meet the conditions of the part 3 of the Notice are considered not to bring an advantage to the beneficiary, and hence, not constitute State aid. The assessment for the State aid element in the guarantee is based on the Market Economy Investor Principle³³, as it relies on proper **risk assessment** through **rating**. The rating does not have to be done by an international agency but can be performed by the bank of the beneficiary.

For guarantees with a State aid element, the State aid is deemed to be the difference between the appropriate market price of the guarantee and the actual price paid for that measure.

Criteria

In order to rule out the existence of aid, the guarantee has to satisfy the following criteria:

³³ According to this principle, investments or other funding by public authorities in companies can be acceptable if they are made under conditions that a private market investor would have accepted for a comparable transaction.

(a) Individual guarantees:

- the borrower is not a company in difficulty (see Factsheet 5. NB: New SMEs are not considered as companies in difficulties for the purposes of the application of this Notice.);
- linked to a specific financial transaction and limited in time and amount;
- maximum coverage - 80% of the outstanding loan (or other financial obligation);
- proportionality in repayments and decrease of guarantee and in sharing losses;
- market-oriented price paid for the guarantee (taking into account specificities of the transaction);
- **SMEs:** possibility to use predefined safe-harbour premium (linked to credit rating of the SME). Possibility to demonstrate lower market-conform premium. A safe-harbour premium of 3.8% per year is applicable, even in absence of rating, for start-up companies.

(b) Guarantee schemes:

- closed to companies in difficulties;
- guarantees linked to specific transaction and are limited in time and amount;
- not more than 80% of the outstanding loan (or other financial obligation);
- premiums to be reviewed at least once a year;
- premiums to cover normal risks, administrative costs and yearly remuneration of an adequate capital;
- transparent terms for future guarantees (e.g. eligible companies);
- **SMEs:** safe-harbour premiums or possibility of a single premium (avoiding the need for individual ratings of beneficiary SME) for guaranteed amount up to EUR 2.5 million per company in a given scheme (allows for a risk-pooling effect in favour of low-amount guarantees for SMEs).

Other

The 80 % ceiling does not apply to guarantees covering debt securities or provided to companies supplying certain local SGEIs.

NB: Guarantees lower than EUR 1.5 million can benefit of the *de minimis* regime set forth by the *De minimis* Regulation³⁴.

³⁴ Without prejudice to the possibility of Member States to notify methodologies, as provided by Article 2.4(d) of the *De minimis* Regulation. See Factsheet 13.

Factsheet 13 The "*de minimis*" rule

Reference

This factsheet summarizes the “Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid” (Official Journal No L 379, 28.12.2006, p. 5) (hereinafter in this factsheet the “Regulation”).

Scope

The Regulation covers small amounts of State aid (“*de minimis* aid”) which do not constitute State aid in the sense of Article 87(1) of the Treaty and which are therefore not subject to the notification requirement.

The *de minimis* rule does not apply to the undertakings active in the fishery and aquaculture sectors, in the coal sector, and in the primary production of agricultural products listed in Annex I to the Treaty. It applies, with a certain number of additional conditions, to undertakings active in processing or marketing of agricultural products. In the transport sector, *de minimis* aid cannot be used for the acquisition of road freight transport vehicles. Finally, undertakings in difficulty are not covered by this Regulation.

Concept

The *de minimis* rule sets a threshold figure for aid below which Article 87(1) of the Treaty can be said not to apply, so that the measure need no longer be notified in advance to the Commission. The rule is based on the assumption that, in the vast majority of cases, small amounts of aid do not have an effect on trade and competition between Member States.

Criteria

To benefit from the *de minimis* rule, aid has to satisfy the following criteria:

- The ceiling for the aid covered by the *de minimis* rule is in general EUR 200 000 (cash grant equivalent) over any three fiscal year period. The relevant period of three years has a mobile character, so that for each new grant *of de minimis*, the total amount *of de minimis* aid granted during three consecutive fiscal years (including the then current fiscal year) needs to be determined.
- The ceiling will apply to the total of all public assistance considered to be *de minimis* aid. It will not affect the possibility of the recipient obtaining other State aid under schemes approved by the Commission, without prejudice to the cumulation rule described below.
- The ceiling applies to aid of all kinds, irrespective of the form it takes or the objective pursued. The only type of aid which is excluded from the benefit of the *de minimis* rule is export aid.
- The regulation only applies to “transparent“ forms of aid which means aid for which it is possible to determine in advance the gross grant equivalent without needing to undertake a risk assessment. This implies a certain number of restrictions on certain forms of aid like, for example, guarantees. Only guarantees lower than EUR 1.5 million can be covered by the Regulation³⁵.

³⁵ Without prejudice to the possibility of Member States to notify methodologies, as provided by Article 2.4(d) of the Regulation.

Cumulation

The above ceiling (EUR 200 000 *of de minimis* aid over a three fiscal year period) applies to the total amount *of de minimis* aid granted to a single company. The amount is lowered to EUR 100 000 in the road transport sector.

When granting a *de minimis* aid to a particular undertaking, the Member State concerned must check whether the new aid will not raise the total amount *of de minimis* aid received by that undertaking during the relevant three year period above the EUR 200 000 (or EUR 100 000, as applicable) ceiling.

The Member State is responsible for establishing the instruments needed to ensure an effective control of the respect of the *de minimis* cumulation ceiling. This can be done in two ways:

- Either the Member State sets up a central register of *de minimis* aid containing complete information on all *de minimis* aid granted by any authority within the Member State.
- Alternatively, the Member State explicitly informs the enterprise about the *de minimis* character of the aid and obtains from the enterprise concerned full information about other *de minimis* aid received during the two previous fiscal years and the current fiscal year. Under all conditions, the Member State remains responsible for ensuring the respect of the cumulation ceiling.