

STATE AID: BLOCK EXEMPTION REGULATIONS ON AID FOR SMES; AID FOR TRAINING; DE MINIMIS AID

Guidance for aid administrators

The advantage of designing aid to fit block exemption regulations is that you do not have to notify the aid in advance to the European Commission and await their approval before you can implement it. But, please note: the regulations do not give exemption from all the State aid rules! (The "exemption" is from the prior notification requirement set out in Article 88(3) of the EC Treaty.)

This guidance provides summary information on what each of the Block Exemption Regulations contains and advice on handling. Scroll down to see the whole guidance; or for quick reminders, please click on one of the headings below.

Common features

Specific requirements

- SMEs aid

- training aid

- de minimis

Aid outside the regulations

A downloadable copy of each of the block exemption regulations is on the State aid pages of the DTI website; they are also on the Commission's website http://www.europa.eu.int/comm/competition/index_en.html

A summary of the main features of each block exemption regulation, and on all other State aid legislation, can be found in DTI's guidance booklet on State aid which is available for viewing and downloading on the DTI website.

Common features of the regulations

- There is no need to notify the European Commission of aid which fits all the terms of a regulation. However there are reporting requirements. Please see below.
- The regulations are legally binding and directly applicable in Member States. This means that aggrieved third parties could bring actions in a national court eg if they considered that the aid granted does not fall within the terms of the regulation and the aid should therefore have been notified. If the court were to agree, the aid would be unlawful and might have to be repaid with interest.
- The regulations remain in force until 31 December 2006 and aid schemes exempted will continue to benefit from exemption from six months after that date.
- When implementing a scheme with an indefinite duration, or a duration greater than that indicated in the regulations, please insert in the official publication [of the scheme] a provision to the effect that exemption under the Regulation will expire automatically on 30 June 2007.

In the event of the validity of the regulations being extended, please note that:

- Aid schemes with an indefinite duration or a duration greater than that indicated in the regulations [ie 30 June 2007] will have to be brought into line with all the conditions of future regulations, including any amendments.
- In all cases, you should confirm that you have established a system for keeping detailed records of all aid paid under the regulation(s) for 10 years as required in those regulations.

Specific requirements

SME and training aid regulations

- Aid administrators must provide summary information of aid exempted under the regulation to the Commission. This is a legal requirement in the regulations. The information is to be with the Commission within 20 working days of implementation of the aid with a view to publication in the Official Journal of the European Communities (OJ).
- The form for completion is at Annex II in each of the training aid and SME block exemption regulations. Please send the completed forms in good time to meet the 20 days overall deadline to DTI's State aid policy unit (SAPU), who will arrange onward transmission to the European Commission (via UKRep - the UK permanent representation in Brussels).
- DTI's State aid policy unit is responsible for compiling an annual UK return for the Commission. On receipt of the request from the Commission, we will ask administrators to provide us with details of aid paid in the case of the SME and training aid regulations. These should be in the format set out in Annex III to those regulations
- Provide the Commission with the text of the legal basis **or** an exact reference to the legislation on which the aid scheme or individual aid is based so that the Commission can readily acquire a copy.
- It will be up to aid administrators – not DTI's State aid policy unit – to ensure the requirements above are met.

Training aid (only)

- The documentation certifying the general nature of training as required by the regulation (68/2001) should always be attached to the summary form to be sent to the Commission (provided at Annex II to the regulation).

Please note that even where the documentation has already been sent to other Directorates-General for different reasons eg the structural funds, a copy must be sent to the Competition Directorate-General (DG COMP), together with the form (Annex II).

- A description of the project should normally be provided to demonstrate that the project is "general " in nature, as defined in 2(e) of regulation 68/2001; or, if this is not possible.
- A description of the monitoring procedures so as to ensure from the outset that the higher aid intensity authorised for general training will only be allowed for projects in that category. This must be ex-ante monitoring, not ex-post monitoring. The Commission will not accept ex-post monitoring procedures. If there are doubts as to whether training is actually eligible for aid, those procedures should guarantee that only the lowest aid intensity, namely that for specific training, is applied (see Article 4 of Regulation 68/2001).

De minimis

- You must inform the enterprise that the aid is *de minimis* and ensure that the new award does not breach the €100,000 (approx £60,000) ceiling over a rolling three period. This means getting information from the enterprise concerned about *de minimis* aid received over the previous 3 years.
- You must maintain detailed records of aid paid for 10 years.

Please note that the *de minimis* cumulation requirements described above are not new. They are clearly stated in the Notice on *de minimis* aid which this regulation replaces; and they have always been clearly set out in standard guidance “*European Community State Aids – Guidance for all Departments and Agencies*” produced by DTI's State aid policy unit (available on the DTI website).

Ensuring compliance with *de minimis* requirements

Aid administrators need to think carefully how they will ensure compliance with the regulation's requirements. It may be quicker and easier to provide the aid in another form eg under the SME block exemption regulation or under a notified scheme. If *de minimis* is the chosen route, we offer the following suggestions. These are for guidance. There may be a more effective solution in particular cases.

The first requirement is to tell the firm it is in receipt of a *de minimis* aid. One way of doing this is to include a statement in any offer letter along the following lines:

“Under EC Regulation 69/2001 (“*de minimis*” aid regulation), this is a *de minimis* aid. There is a ceiling of €100,000 (approx £ 60,000) for all *de minimis* aid provided to any one firm over a three year period. Any *de minimis* aid awarded to you under this offer letter will be relevant if you wish to apply, or have applied, for any other *de minimis* aid. For the purposes of the *de minimis* regulation, you must retain this letter for 3 years from the date on this letter and produce it on any request by the UK public authorities or the European Commission. (You may need to keep this letter longer than 3 years for other purposes.)”

Where there is no “offer letter” as such, the same wording could be provided in a standard letter which specifies the amount of *de minimis* aid and its purpose.

The second requirement is to obtain from each firm information about other *de minimis* aid received (as opposed to offered) during the previous 3 years. This may be difficult because firms may not know if the public support they have received is a *de minimis* aid. There is no central register of *de minimis* aid. One possibility might be to require applicants to give details, including a scheme title if known, of all the public financial assistance they have received over the past 3 years below €100,000 (say £60K). Aid administrators would need to isolate the *de minimis* aid from any aid received under a notified and approved aid scheme eg SMART, RSA.

The third requirement is to check *before* granting the *de minimis* aid that it will not, when cumulated with any other *de minimis* aid, exceed the threshold of €100,000 over 3 years. You will need to rely on information provided by the intended recipient, bearing in mind that they take the risk of incomplete or inaccurate information. Aid administrators will need to make this clear to aid recipients.

The *de minimis* rule is deceptively simple. In practice *de minimis* is not an easy option, given the requirement to cumulate with other *de minimis* aid from all other public sources, and the exceptions to the regulation. Aid administrators should bear this in mind when considering the design of the aid.

Final points

Used correctly, the block exemption regulations ensure that certain aid can be paid more quickly than when it was subject to prior notification and approval. Given that they place the onus on "getting it right" on the Member State administrator rather than on the Commission, you may wish to ask your departmental lawyers and your EU contact person to check that your proposals and administrative arrangements meet all the terms of the respective regulation *before* proceeding.

Should a proposal not fall within the terms of a block exemption regulation, all is not lost. It could either be amended to fit the regulation; or it could be notified in the usual way – assuming it is an aid that can be approved. In the latter cases the usual rules and the normal Commission timetable would apply. For details please see standard DTI State aid guidance booklet or refer to the Commission website.