

IMPACT OF EU STATE AID RULES ON THE RURAL DEVELOPMENT PROGRAMME FOR ENGLAND

Introduction

1. This guidance sets out the legal framework and rationale for applying state aid rules to payments made under axes 1, 3 and 4 of the Rural Development Programme for England (RDPE). It is primarily designed to be used by Regional Development Agencies (RDAs) and others, such as Local Action Groups, who are involved in making decisions about applications for support under those three axes. However, potential beneficiaries of such support may also find this guidance helpful as a means of understanding the implications of the state aid rules for public support their businesses may receive under the RDPE or from other sources.

2. Responsibility for oversight of state aid in England rests with the Department for Business, Enterprise and Regulatory Reform (BERR). For agricultural issues, including agricultural processing and marketing, responsibility rests with Defra and for transport the Department for Transport.

What is a state aid?

3. State aid is a member state's financial aid to business which meets the criteria in Article 87(1) of the European Treaty. That article declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is incompatible with the common market – unless the Treaty allows otherwise.

4. The state aid rules only apply to aid to undertakings which falls within four criteria:

- It is granted by the State or through State resources¹.
- It favours certain undertakings or production of certain goods.
- It distorts or threatens to distort competition.
- It affects trade between Member States.

5. The first step in considering a proposal for financial assistance is whether it fits within all four of these criteria. (It should be noted that financial assistance does not have to be in the form of a direct monetary payment, it could be provided indirectly, for instance as tax incentives or services in kind). If it does not meet all the criteria then it is not a state aid. In determining whether an aid is present it should be noted that the thresholds for meeting the third and fourth criteria on distortion of competition and effect on trade between Member States have been set very low by Commission precedent and decisions of the European courts. This is especially true of the agricultural producers who are mainly small enterprises.

Why is it important?

6. The European Commission takes a serious view of aid provided without its approval and a particularly serious view of aid in contravention of the state aid rules. In these circumstances there can be serious repercussions, for instance:

- the aid payment could be halted;
- the recipient could be required to repay the aid, plus interest;
- aggrieved competitors may also seek legal action for damages;

¹ The BERR publication "Guidance for state aid practitioners" gives more information on these criteria and other state aid concepts referred to in this document (see **further guidance** on page 9).

- the Commission could commence infraction procedures against the Member State, possibly resulting in a fine.

What types of state aid apply to support under rural development programmes?

7. The state aid rules apply to funding under rural development programmes in different ways, depending on whether the support is for agriculture, forestry or other industrial products or sectors.

8. The Rural Development Regulation (EU Regulation 1698/2005) is the basis of state aid coverage for many of the measures. Article 88 of the Regulation says that normal state aid rules apply unless the Rural Development Regulation makes a specific provision to the contrary. This guidance sets out details of the specific provisions in the Regulation. These are of particular relevance to Axis 1 measures.

9. Where coverage is drawn from a block exemption registered with the European Commission that is shown in the Measures table below.

Agriculture

10. *Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013* (2006) ([guidelines](#)) set out the rationale for applying state aid rules to payments made to the agricultural sector. The guidelines distinguish between the structure of primary agricultural production, on the one hand, and processing and marketing of agricultural products, on the other. They also distinguish between the processing and marketing of agricultural products and other industrial activities and products, in particular where “processing of agricultural products “ means any operation on an agricultural product resulting in a product which is also an agricultural product (so-called annex 1 in / annex 1 out).²

11. The application of state aid rules to agriculture and agricultural products can therefore be summarised as falling within three distinct categories:

- i. Primary agricultural production, which includes (a) on-farm activities necessary for preparing a product for the first sale, such as harvesting, cutting and threshing of cereals, packing of eggs etc., and (b) the first sale to resellers or processors;
- ii. Processing and marketing activities relating to annex 1 in / annex 1 out products;
- iii. Other processing and marketing activities where the output is non-annex 1.

12. Co-financed payments under the Rural Development Regulation are covered for state aid purposes provided they fall within the scope of (i) or (ii) above³ (i.e. they are concerned with primary production or annex 1 in / annex 1 out). Activities where the output is non-annex 1, however, are covered by the general rules applying to other industrial products.

13. For a number of measures, the way in which state aid rules are applied will also depend on the size of the enterprises being supported.

Forestry

14. The *Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013* seek to align support for the environmental and recreational aspects of forestry with the rules governing agri-environment support. However, the majority of activity under Axis 1 will be in

² The Defra state aid web pages give further information on agricultural state aids (including the definition of annex 1 products). See also **further guidance** on page 9 of this document.

³ Article 88(1) of Council Regulation 1698/2005.

relation to economic support for forestry and thus covered by the rules common to industrial products. Certain changes to how the RDR impacts on state aids in the forestry sector have been agreed in Brussels. Those changes are set out in [Commission Regulation \(EC\) No 1175/2008 of 27 November 2008](#). However, those changes will not impact retrospectively and the forestry activities included in the RDPE as it was approved in the first place by the European Commission will not be affected. Any new forestry activities added to the RDPE subsequently will however need to comply with the new state aids rules.

Other types of support

15. Support for the food sector under Axis 1 and all support provided under Axis 3 is covered by the common rules relating to state aided industrial products. For Axis 3 projects, consideration will need to be given to whether the activity being funded falls within the scope of the state aid rules (see the criteria above). This is more likely to be of relevance to measures 321, 322, 323 and 341.

16. Paragraphs 18 and 19 and the accompanying table show how state aid rules apply to each measure within the RDPE.

Options for dealing with state aid

17. Where it is established that state aid rules apply to an investment proposal (whether under the Rural Development Regulation or otherwise), the options for dealing with it are:

- a) Consider developing or adapting proposals to omit or minimise the element of state aid;
- b) Design or adapt the proposal to fit within the terms of one of the state aid schemes which the European Commission has already approved for the UK.
- c) Design or adapt the proposal to fit within one of the existing block or group exemptions which allow state aid to be approved under simplified procedures.
- d) Design or adapt the aid to fit within *de minimis* rules (note that agriculture has its own *de minimis* rules).
- e) Design a proposal which may be capable of individual approval by the Commission.

18. Options (a) and (b) should normally be considered first, although in practice there may be limited scope to redesign activities funded under RDPE measures. If neither of those two options is feasible, then options (c) to (e) need to be considered. Appendix 1 of this note gives further information about the regulatory framework for block exemptions, *de minimis* provisions, and individual state aid approval.

Application of state aid rules to axes 1 and 3 measures

19. The following table sets out the conditions that should be applied to payments made under Axis 1 and Axis 3 RDPE measures in order to apply state aid rules to the Programme in accordance with EU requirements.

20. It should be noted that this table may be amended over time. Changes will need to be carefully handled to ensure that the Commission are given the appropriate notifications in accordance with conditions laid down in the Rural Development Regulation (Reg 1698/2005).

Application of state aid rules to Axes 1 and 3.

Axis 1

Measure	Conditions	Legislative framework
(111) vocational training, information actions, including diffusion of scientific knowledge and innovative practices for persons engaged in the agricultural, food and forestry sectors.	Aid intensity: agriculture and forestry Up to 100%.	There is no additional national funding so, for people engaged in agriculture, Article 88(1) of 1698/2005 applies. For forestry, the Community guidelines for state aid in the agriculture and forestry sector 2007 to 2013 (2006/C 319/01) VIIC apply (para.179). This means that Article 15 of 1857/2006 governs the aid intensity and eligibility conditions for forest owners and forestry workers.
	Aid intensity: food sector <ul style="list-style-type: none"> • Up to 80% for general training for small enterprises • Up to 70% for general training for medium enterprises • Up to 60% for general training for large enterprises. • Up to 45% for specific training for small enterprises • Up to 35% for specific training for medium enterprises • Up to 25% for specific training for large enterprises • The rates can be increased by a further 10% for disabled or disadvantaged workers up to a maximum of 80% Registration – awaiting confirmation	For the food sector, Articles 38 and 39 of 800/2008. ⁴
(114) use by farmers and forest holders of advisory services.	Aid intensity and rates Up to 80% of the eligible costs per advisory service, subject to a maximum of €1500. This measure is only being used for forestry advice.	Article 24 and the annex to 1698/2005 apply. For forestry, the Community guidelines for state aid in the agriculture and forestry sector 2007 to 2013 (2006/C 319/01) VIIC apply (para.179). This means that Article 15 of 1857/2006 governs eligibility conditions for forest owners and forestry workers.
(115) setting up of farm management, farm relief and farm advisory services, as well as forestry advisory	Aid intensity 75% in the first year, 50% in the second year and 25% in the third year, with no support beyond that.	This measure cannot be considered as an Annex 1 activity. Thus, support is subject to <i>de minimis</i> provisions of 1998/2006.

⁴ See Appendix 2 of this document.

services.	<p>Aid ceiling Total de minimis aid granted to any one undertaking shall not exceed €200,000 over any period of three fiscal years.</p>	
(121) farm modernisation	<p>Aid intensity Up to 40% (50% in LFA), but can be higher for investments undertaken predominantly in the public interests and relating to the conservation of traditional landscapes and relocation of farm buildings, or investments for the protection and improvement of the environment, improvement of the hygiene conditions of livestock undertakings, animal welfare and occupational safety in the workplace.</p> <p>Aid ceilings No upper aid ceilings apply to this measure</p>	<p>There is no additional national funding so, for people engaged in agriculture, Article 88(1) of 1698/2005 applies.</p> <p>Article 88(2) of 1698/2005 sets the conditions for varying the aid intensity rates outlined in the annex to 1698/2005.</p>
(122) improving the economic value of the forest	<p>Aid intensity</p> <ul style="list-style-type: none"> • 60% in LFA and Natura 2000 areas • 50% in other areas 	<p>Aid intensity established by Article 27(3) and the annex to 1698/2005.</p>

Measure 123 – adding value to agricultural and forestry products			
	Activity		
Size of enterprise	Primary agricultural production, which includes (a) on-farm activities necessary for preparing a product for the first sale, such as harvesting, cutting and threshing of cereals, packing of eggs etc, and (b) the first sale to resellers or processors	Processing and marketing activities relating to annex 1 in / annex 1 out products	Other processing and marketing activities where the output is non- annex 1
SME	Up to 50% in Convergence areas (Cornwall and the Isles of Scilly); Up to 40% in other areas. NB. In view of the definition it is more likely that Measure 121 should be used for this activity	Up to 50% in Convergence areas Up to 40% in other areas	Up to 20% in the case of small enterprises; Up to 10% in the case of medium sized enterprises; Registration X46/2008
Intermediate	Up to 25% in Convergence areas (Cornwall and the Isles of Scilly); Up to 20% in other areas. NB. In view of the definition it is more likely that Measure 121 should be used for this activity	Up to 25% in Convergence areas Up to 20% in other areas	<i>De minimis</i> aid only can apply. Thus no maximum aid intensity rate laid down
Large	<i>De minimis</i> aid under Article 3 of Commission Regulation 1535/2007 applies. Maximum aid not to exceed €7,500 over a period of three fiscal years. NB. In view of the definition it is more likely that Measure 121 should be used for this activity	<i>De minimis</i> aid under Article 2 of 1998/2006 applies. Maximum aid not to exceed €200,000 over a period of three fiscal years.	<i>De minimis</i> aid under Article 2 of 1998/2006 applies. Maximum aid not to exceed €200,000 over a period of three fiscal years.
Aid to forestry is restricted by Article 28(3) of 1698/2005 to micro-enterprises and for wood as a raw material, limited to working operations prior to industrial processing under Article 19(2) of 1974/2006. Rate of aid: Up to 50% in Convergence areas; Up to 40% in other areas.			

(124) cooperation for development of new products, processes and technologies in the agricultural and food sector.	Aid intensity 1) <u>For cooperation between primary agricultural producers or in the case of annex 1 in / annex 1 out processing of agricultural products.</u> Up to 100%	There is no additional national funding so, for people engaged in agriculture, Article 88(1) of 1698/2005 applies.
	For research and development aid will be subject to fulfilment of conditions set out in Article 34 of the General Block Exemption Regulation 800/2008.	If the conditions of Article 34 of 800/2008 do not apply, the aid intensity rates noted in 2) below apply. ⁵
	2) <u>For cooperation involving enterprises not engaged in primary agricultural production or annex 1 in / annex 1 out processing of agricultural products For the purpose of research and development and innovation</u> <ul style="list-style-type: none"> • Up to 100% for fundamental research; • Up to 50% for industrial research; • Up to 25% for experimental development. Registration X41/2008	Articles 30 and 31 of the General Block Exemption Regulation (800/2008) provide definitions of research along with certain higher rates of aid depending on the size of the enterprises (eg SME). It also sets out eligible costs.
(125) improving and developing infrastructure related to the development and adaptation of agriculture and forestry	Aid intensity 1) For agriculture : <ul style="list-style-type: none"> • Up to 50% in LFAs • Up to 40% elsewhere 	There is no additional national funding so, for people engaged in agriculture, Article 88(1) of 1698/2005 applies.
	2) For forestry, <i>de minimis</i> applies.	In line with Commission guidance Article 2 of the <i>de minimis</i> regulation (1998/2006) applies.
	Aid ceilings For forestry, aid should not exceed €200,000 over any period of three fiscal years	Article 2 of 1998/2006.

⁵ The General Block Exemption Regulation (800/2008) gives further details, including conditions that have to be met to qualify for the aid intensity rates quoted.

Axis 3⁶

Measure	Conditions	Legislative framework
(311) diversification into non-agricultural activities	<p>Aid intensity Up to 20% for small enterprises Up to 10% for medium enterprises Registration X44/2008 OR <i>de minimis</i> up to 50% of eligible costs dependent on the extent of commercial return</p>	Article 15 of the General Block Exemption Regulation (800/2008).
(312) support for the creation and development of micro-enterprises	<p>Aid intensity Up to 20%. Registration X42/2008 OR <i>de minimis</i> up to 50% of eligible costs dependent on the extent of commercial return</p>	Articles 14 &15 of the General Block Exemption Regulation (800/2008).
(313) encouragement of tourism activities	<p>Aid intensity Up to 20% for small enterprises Up to 10% for medium enterprises Registration X43/2008 OR <i>de minimis</i> dependent on the extent of commercial return</p>	Articles 14 &15 of the General Block Exemption Regulation (800/2008)
(321) basic services for the economy and rural population	<p>Aid intensity Up to 100%. Variable rate depending on the extent of commercial return.</p> <p>Aid ceiling Aid should not exceed €200,000 over any period of three fiscal years</p>	Article 2 of 1998/2006. Maximum aid not to exceed €200,000 over a period of three fiscal years.
(322) village renewal and development	<p>Aid intensity Up to 100%. Variable rate depending on the extent of commercial return.</p> <p>Aid ceiling Aid should not exceed €200,000 over any period of three fiscal years</p>	Article 2 of 1998/2006. Maximum aid not to exceed €200,000 over a period of three fiscal years.
(323) conservation and upgrading of the rural heritage	<p>Aid intensity Up to 100%. Variable rate depending on the extent of commercial return.</p> <p>Aid ceiling Aid should not exceed €200,000 over any period of three fiscal years</p>	Article 2 of 1998/2006. Maximum aid not to exceed €200,000 over a period of three fiscal years.
(331) training and information for economic actors operating in the fields covered by Axis 3	<p>Aid intensity⁷</p> <ul style="list-style-type: none"> • Up to 80% for general training for small enterprises • Up to 70% for general training for medium enterprises • Up to 60% for general training for large enterprises. • Up to 45% for specific training for small enterprises • Up to 35% for specific training for 	Article 39 of the General Block Exemption Regulation (800/2008).

⁶ Note that many axis 3 payments, especially those relating to social projects or capacity building within communities, may fall outside the four state aid criteria.

⁷ See Appendix 2 for definitions of general and specific training.

	<p>medium enterprises</p> <ul style="list-style-type: none"> • Up to 25% for specific training for large enterprises • The rates can be increased by a further 10% for disabled or disadvantaged workers up to a maximum of 80% <p>Registration X45/2008</p>	
(341) skills acquisition and animation with a view to preparing and implementing a local development strategy	<p>Aid intensity Up to 100%. Variable rate depending on the extent of commercial return.</p> <p>Aid ceiling Aid should not exceed €200,000 over any period of three fiscal years</p>	Article 2 of 1998/2006. Maximum aid not to exceed €200,000 over a period of three fiscal years.

Further guidance

An amendment to the RDPE Programme document (as initially approved by the European Commission) will be made as a result of the use of the General Block Exemption Regulation 800/2008.

The State Aid Guide (guidance for state aid practitioners) provides details of non-agriculture / forestry state aids. It is available on the BERR website. <http://www.berr.gov.uk/bbf/state-aid/>

The Commission have published Community Guidelines for state aid in the agricultural and forestry sectors 2007-2013 (2006/C 319/01). Further information about agricultural state aid can be found on the Defra website <http://www.defra.gov.uk/farm/policy/state-aid/index.htm>

A new General Block Exemption Regulation (800/2008) came into force on 29 August 2008 which provides the conditions under which certain state aids are deemed compliant with the EU Treaty (see appendix 1)

Regulatory framework for block exemptions, *de minimis* state aid and individual state aid notification

Block exemptions

The General Block Exemption Regulation (800/2008) allows certain types of investment or consultancy aid to be paid under simplified procedures, provided that the conditions of the regulation are met. Block exemptions can only be used in relation to the RDPE if they are listed and approved in the Programme document. Table 9B in chapter 9 of the RDPE lists those block exemptions which are currently approved.

If it is proposed to use block exemptions for any other measures (for example, because the alternative options of using *de minimis* rules or an individual notification are not considered appropriate) the exemption will need to be registered with the European Commission through an amendment to the RDPE.

De minimis

The assumption behind the *de minimis* rules is that small amounts of aid will not affect trade and competition between Member States. However, the production of agricultural products is subject to different *de minimis* rules than those that apply to other industrial products. The rationale for this is that, in the Commission's experience, even low levels of state aid in the primary agricultural production sector may distort competition. Where funded activity involves both agricultural and non-agricultural processes, both 1998/2006 and 1535/2007 can apply.

Commission Regulation No.	De minimis rules
1998/2006	<p>Covers small amounts of aid (<i>de minimis</i>) which do not count as state aid. However, it does <u>not</u> cover undertakings active in the primary production of agricultural products or, in very limited circumstances, to some marketing and processing of primary agricultural products. It also does not apply in the fishery and aquaculture sector.</p> <p>The total <i>de minimis</i> aid to any one undertaking from all sources must not exceed €200,000 over any period of three fiscal years. The three fiscal years relate to the current year and the previous two fiscal years of the undertaking receiving the aid (Article 2.2 of Regulation 1998/2006).</p>
1535/2007	<p>Regulation 1535/2007 allows agricultural <i>de minimis</i> to be paid to agricultural concerns involved in the production of annex 1 products. The aid must not exceed €7,500 over a 3 year rolling period.</p>

The advantage of using *de minimis* rules instead of a block exemption is that there is no limit on the aid intensity rate. However, where aid could equally well be granted under an approved scheme or a block exemption we recommend that these routes are used rather than *de minimis*. This is because each enterprise's *de minimis* allowance is a limited and finite resource.

It should be noted that *de minimis* covers funding under *de minimis* from other public sources as well as the RDPE. Thus those administering the grants will need to know of any other *de minimis* funding an enterprise has received in the previous three years. Grant awards based on *de minimis* must be carefully explained to beneficiaries as *de minimis* funding.

Individual state aid approval

If other options for dealing with a state aid proposal are not appropriate, then the Commission can be asked to approve an individual notification of state aid.

This approval process will usually take at least 6 months and approval must be obtained in advance of implementing the proposal.

Past experience demonstrates that the Commission will only approve activities that are well defined, so that it can be sure that unforeseen and unacceptable distortions of competition will not arise from Government business support. Given the wide range of potential activities covered by the RDPE, particularly under Axes 1 and 3, this limits the usefulness of the notification procedure. However, it may be feasible for a limited range of activities where the aid intensity rates are considered too low under block exemption, the *de minimis* rules are not considered appropriate, and the outcomes sought are considered desirable in terms of a common European interest or serious economic problem.

Definitions of terms used in this guidance

Training

Article 38 of Commission Regulation 800/2008 defines “specific” and “general” training.

- *Specific training* means 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* means 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 that are largely transferable to other undertakings or fields of work. Training shall be considered general if, for example,
 - it is jointly organised by different independent undertakings, or where employees of different undertakings may avail themselves of the training,
 - it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

Research and development and innovation

Article 30 of Commission Regulation 800/2008 defines three categories of research and development, which in turn, determine aid intensity rates.

- ‘*fundamental research*’ means 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*’ means planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new products, processes or services for bringing about a significant improvement in existing products, processes or services. It comprises the creation of components parts to complex systems, which is necessary for the industrial research, notably for generic technology validation, to the exclusion of prototypes;
- ‘*experimental development*’ means the acquiring, combining, shaping and using 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. These may also include, for instance, other activities aiming at the conceptual definition, planning and documentation of new products, processes or services. Those activities may comprise producing drafts, drawings, plans and other documentation, provided that they are not intended for commercial use;

Definition of small and medium enterprises
(Extract from annex 1 of Regulation 800/2008)

Article 1

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a **small enterprise** is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a **micro-enterprise** is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

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