



State aid -Technical background for discussion points

**State aid workshop FI Campus
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State aid legal bases

TFEU - Existence of aid (4 cumulative conditions)

a) State resources – imputability

- COSME = Union resources
- NPB= State resources

b) Undertaking – economic activities

c) Selective advantage

- No advantage if market-conform = no State aid e.g. Guarantee Notice

d) Distortion of competition + effect on trade

- De minimis aid = legal presumption of no State aid (does not cover intermediary level)

State aid legal bases

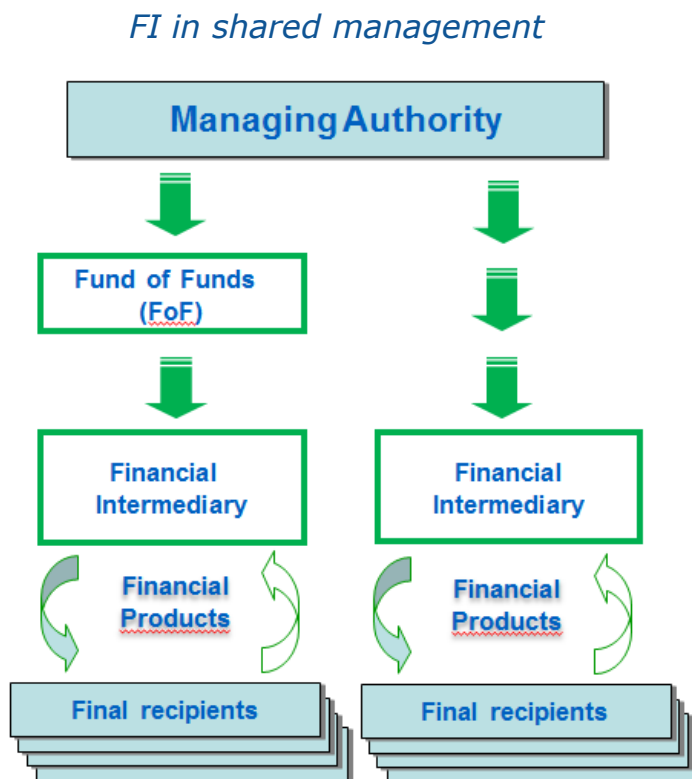
If State aid is present - assess compatibility of aid

a) Block exemption (GBER/ABER/FIBER)

- Common provisions GBER (notification threshold/aid intensities, incentive effect, cumulation, publication, reporting)
- Specific provisions of each GBER article (eligible costs, aid intensity...)
 - Financial instrument GBER articles (16, 21 and 39)
 - Advantage: covers the intermediary level as well, transparency of aid met
 - Disadvantage: not covering every policy area
 - Other GBER Articles
 - Advantage: generally easier to comply with because of fewer conditions
 - Disadvantage: generally requires transparency of aid and does not cover intermediary levels

b) Assessment under State aid guidelines (or TFEU in absence of guidelines) – Notification

Question 1: Aid at investor/fund level?



- *Financial instruments under shared management have to comply with State aid rules.*
- *Compliance with State aid rules at final recipient level is not enough.*
- *Compliance with State aid rules at intermediary level as well.*
- *Different perspectives (fund manager, financial intermediary, third party investor)*
- *Available tools under State aid rules:*
 - Market Economy Operator Principle ("MEOP")
 - Full pass-on of aid at intermediary level and "De minimis" aid or GBER at final recipient level
 - GBER (FI articles or articles which require aid quantification and a full pass on)
 - Notification (e. g. the Risk Finance Guidelines)

Question 1: Aid at investor/fund level?

- What are the challenges in using these financial instruments involving financial intermediaries?
- How do you as practitioners ensure that no aid remains at the intermediary level and that all aid ends up with the final recipient?
- How do you demonstrate fully passing on of aid?
- What are the challenges of using non-transparent aid instruments, where by definition a full pass on is not possible?

Question 2: Use of GBER?

- GBER is used less often than "De minimis" rules based on survey feedback but at the same time "De minimis" ceiling is considered too low. GBER had advantages over "De minimis".
- FI Survey indicated that both Financial instrument GBER articles (Art. 16, 21 and 39) and other GBER articles are used.
- Other GBER articles only cover aid at the final recipient and not the intermediary level
 - Financial instruments can be used under other GBER articles, but aid at their intermediary level has to be excluded
- Other GBER articles also require transparency of aid.
 - Calculation of GGE can be difficult in case of complex financial instruments (e.g. capped loan portfolio guarantee covering only part of the underlying loans).
 - Tranching of the risk further complicates the calculation of the aid element.
- Why are the Financial Instrument GBER articles (Art. 16, 21 and 39) not used more extensively?
 - Not covering the policy area?
 - Some of the conditions difficult to comply with?

Question 3: Need for further guidance?

- *State aid rules work well in general at the level of the final recipient.*
- *Less than half of respondents were aware of Commission Staff Working Document covering ESIF Financial instruments....*
- *...but more need for guidance on a broad range of topics requested.*
- *Need for more detailed examples but can every complex financial instrument be covered in such a way?*
- *The survey also indicated need for additional guidance for "De minimis"?*
- *Use guidance already available*
 - SWD, previously approved calculation methodologies...
 - National State aid contact