fi-compass State aid survey

Final report

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European Commission

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The EU bank

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1 Introduction

"fi-compass" was set-up by the European Commission (EC) and the European Investment Bank (EIB) to support Member States in understanding and making better use of financial instruments (FIs) that utilise European Structural and Investment Funds (ESI Funds or ESIF).

This *fi-compass* State aid survey was initiated by DG REGIO with contributions from DG COMPand conducted by the EIB as part of its role under the EC-EIB contractual framework. The objective of the survey was to provide feedback to the EC from Member States on their experience with the application of State aid rules in ESIF FIs. The focus of the questionnaire on State aid matters was limited to the application of existing State aid rules and did not seek respondents' views on the overall legal framework governing the use of ESIF FIs.

fi-compass stakeholders were asked to provide feedback on their experience of State aid in relation to FIs. The survey requested respondents to share their views regarding the overall framework of rules and support in relation to State aid and ESIF FIs, together with more detailed feedback on the application of the four key State aid compliance options being:

(i) the *de minimis* rule

(ii) the General Block Exemption Regulation (GBER),

(iii) notification to the Commission and,

(iv) market conditions.

The survey informed respondents that feedback from Member States was sought by the EC services who were assessing the interaction between ESIF FIs and the applicable regulatory frameworks in order to facilitate the implementation of ESIF FIs. The results of this survey will be considered by the EC as part of this wider assessment.

2 Methodology

2.1 Design and format

The survey was developed by the EC and provided to the EIB who formatted it for use with the digital platform. The aim of the questionnaire was to gather Member States' experience of working with the existing State aid rules. Respondents were encouraged to complete the survey with as much concrete information as possible to inform the findings. In order to encourage openness, respondents were informed that the survey would be used solely to inform the findings of the survey and responses would be reported in an aggregated and anonymised way. The experience of individual managing authorities would not be identified in the outputs of the survey.

The survey is structured in the following blocks of questions:

- General Information regarding the profile of respondents
- Use of ESIF FIs
- ESIF FIs under the *de minimis* rule
- ESIF FIs under GBER
- ESIF FIs under a notification to the Commission
- ESIF FIs under market conditions
- State aid Guidance.

To minimise the impact on respondents and encourage participation, the survey was web based and was made up of a total of 52 questions. The web based survey allowed questions to be targeted to respondents based on their relevant experience. For example, a respondent who indicated that they have a *de minimis* instrument would be asked several additional questions regarding the operation. The vast majority of the questions were optional, allowing respondents to skip questions they did not wish to answer. There were two mandatory questions that respectively asked respondents to indicate the country in which they are based and whether or not they had or planned to implement one of more ESIF FIs in the current programming period.

Given the technical nature of the questions, recipients of the survey were advised in the introductory text to prepare their answers before completing the online survey. A pdf version of the survey was provided for that purpose.

2.2 Distribution and timescale

The survey was targeted to individual *fi-compass* users that represent Managing Authorities and Intermediate bodies. A link to the survey was also provided it to the EC for sharing with their stakeholders, including competition and other authorities responsible for State aid compliance in their Member State or region.

The *fi-compass* State aid survey was launched on 17th May 2018 by an email alert from *fi-compass*. A reminder email was sent out on the 6th June which also extended the deadline for responses to Friday 22nd June. The extension of the deadline was requested by the EC to allow additional time for respondents contacted by the EC to provide their response.

3 Profile of respondents

3.1 Introduction

The initial part of the survey requested respondents to provide information in relation to their profile. The objective of these questions was to understand the representation of different places, functions, sectors and ESI Funds in the respondents.

Respondents were asked to answer multiple response questions, to indicate the type of institution, Member State, ESI Fund and Thematic Objective that are most relevant to them. Respondents were able to provide multiple answers where they are involved in more than one area, to ensure that the responses fully represented the profile of the individual stakeholders.

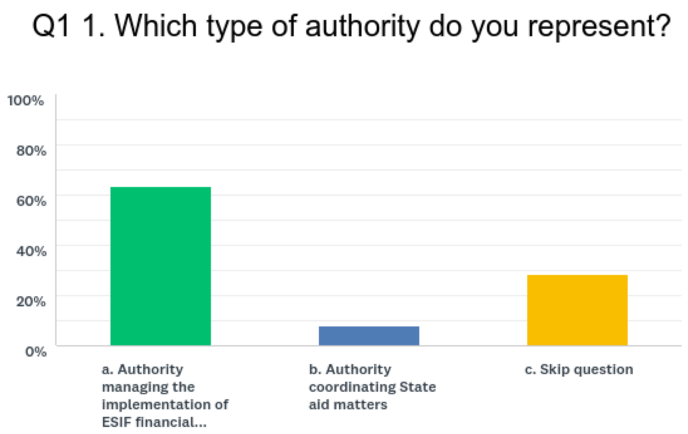
Key Findings

- 324 replies from 25 Member States.
- Most of the responses were from ESIF Managing Authorities and Intermediate Bodies.
- Respondents represent all ESI Funds and all Thematic Objectives.

3.2 Types of institution

Respondents were asked to indicate whether they represented either an authority managing ESIF FIs or, alternatively one co-ordinating State aid matters. Of the 200 respondents that provided an answer, 22 represented State aid authorities with the remainder being ESIF Managing Authorities or Intermediate Bodies.

Figure 1 Type of authority represented



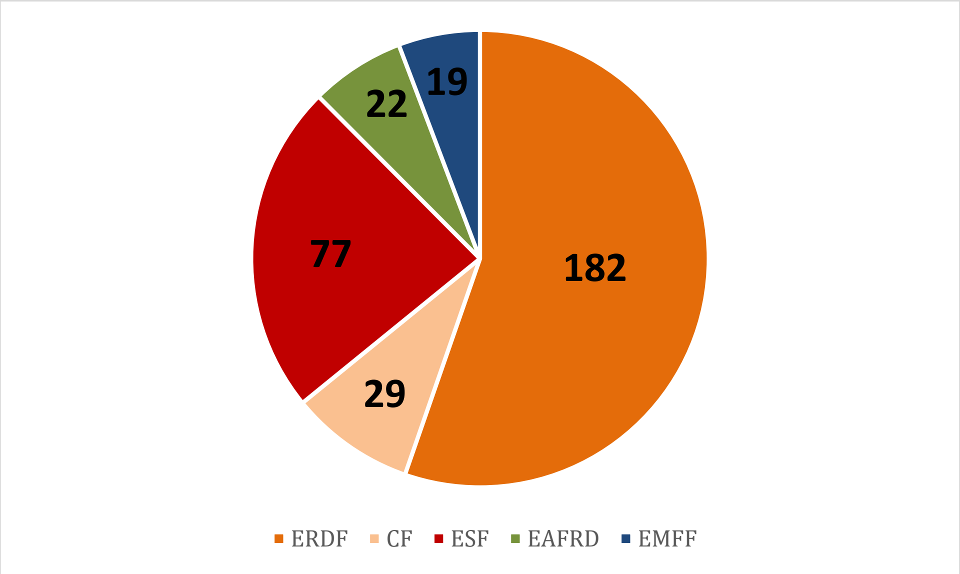
3.3 Geographical spread

Respondents were invited to indicate which Member State they were based in. The responses received showed that the respondents come from 25 of the 28 Member States, with Cyprus, Ireland and Luxembourg, not being represented in the sample. From the information provided by Member States, it would seem no FIs have been implemented or planned in Ireland or Luxembourg and Cyprus similarly have not yet implemented any FIs although still have resources planned for FIs under its Operational Programme. The Member States that have the highest representation amongst the respondents are Italy, Spain, Poland, Portugal, and the Czech Republic.

3.4 Relevant ESI Funds

Respondents were asked to indicate which ESI Fund(s) they were in charge of. The survey allowed them to select multiple ESI Funds to reflect the individual respondent's range of involvement, including potentially with more than one fund. The proportion of the total number of responses given for each of the different ESI Funds are shown at Figure 2.

Figure 2 ESI Fund interest



As would be expected the best represented fund was ERDF, reflecting that financial instruments have been used in connection with this fund for a longer period of time than in relation to other funds. Nevertheless, the responses show that all sectors are represented indicating FIs are increasing their impact across funds such as EAFRD and EMFF.

3.5 Conclusion – profile of respondents

The total number of respondents was 324 which indicates a high level of interest in and importance of the topic of State aid.

The profile of the respondents reflects well the relative distribution of FIs in geographical, sectoral and ESI Fund terms. This would suggest the responses are relevant to the current experience of those bodies implementing FIs in the 2014-2020 programming period.

4 Use of ESIF Financial Instruments

4.1 Introduction

The survey requested respondents to provide feedback about whether they are planning to implement or already implementing one or more ESIF FIs. For those respondents that indicated that they were implementing FIs, further questions were asked about how they were dealing with State aid compliance. For those not implementing FIs an additional question sought to understand why they were not proposing to use FIs.

Key Findings

- Of the 247 respondents 203 (82%) are implementing or planning to implement ESIF FIs.
- *De minimis* is the most commonly used State aid rule amongst the sample population.
- Besides the three dedicated FI articles in the GBER, stakeholders use a wide range of other GBER articles for their FIs.

4.2 Under which State aid rules are the FIs set up?

The survey requested that respondents indicate how many FIs involved each of the different State aid rules. Table 1 below shows the numbers of FIs that involve the different rules.

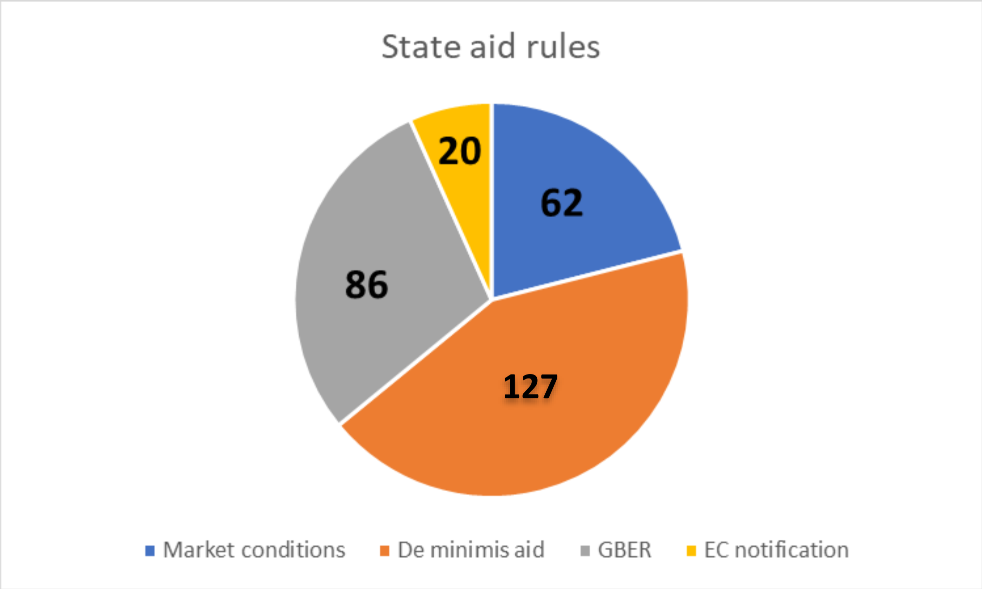
Table 1 No. of FIs using each State aid rule

Rule	No.
De minimis	127
GBER	86
Notification	20
Market conform	62

The total number of FIs reflected in the responses is 295. This should not be taken as an accurate number of the total FIs represented in the survey because analysis of the responses show that, for example, more than one respondent may refer to the same FI, and a single FI may employ more than one State aid rule in its operation. Nevertheless a conservative estimate of FIs represented would be in excess of 200. The sample therefore manages to capture a large proportion of ESIF FIs currently being implemented. Based on the reporting of the Member States to the European Commission, at the end 2017 there were 376 FIs either in the process of being set up or already operational. Thus it is reasonable to conclude that the sample reflects at least 50% of the ESIF FIs currently being implemented.

The relative distribution between the different rules is shown in Figure 3.

Figure 3 Use of different State aid rules



The results in Figure 3 show that *de minimis* FIs represent 43% of all FIs captured by the survey. GBER (29%) and market conform (21%) are both well represented, with notification representing only 7% of the FIs covered. The relatively low representation of notification is unsurprising given the relatively exceptional nature of this approach. When comparing the ratio of notified to block exempted (i.e. together compatible aid) FIs, the ratio reflects the EC's objective that ca. 80-90% of the compatible aid measures are block exempted.

The EC introduced 3 FI articles in the GBER in 2014 for the first time (Article 16, 21 and 39, together the "Financial Instrument GBER Articles") trying to capture the growing need for implementation of aid measures in the form of FIs (the predecessor 2008 GBER contained only risk capital aid for SMEs). The significant use of GBER in relation to FIs shown in this survey seems to confirm the need for such a framework, although it is interesting to see that the use of GBER is not confined to the Financial Instrument GBER Articles, with extensive use also being made of other GBER articles for FI operations.

The results also suggest that respondents may use more than one State aid legal basis within the same FI. This is confirmed by some of the comments received through the survey. For example one respondent commented, "*If the Final Recipient fails to meet any of the conditions for granting de minimis aid, financing is granted on market terms" another states, "Nine other … financial instruments … provide loans, equity and/or quasi-equity to SMEs and have seen their state aid regime … placed cumulatively under three different schemes: GBER …, de minimis as well as absence of aid*."

4.3 Thematic Objectives and State aid rules

The survey asked respondents to provide feedback in relation to the distribution between the most common ESIF thematic objectives of the FIs implemented under each state aid rule. Table 2 and Figure 7 show for each State aid legal base the percentage of respondents working across the six main thematic objectives (respondents could choose multiple answers):

The results, which are shown in Figure 4 below, show the percentage of respondents for each type of State aid legal base that indicated that their FIs covered the different thematic objectives. The six main TOs featuring in the responses were:

TO1. Strengthening research, technological development and innovation

TO3. Enhancing the competitiveness of small and medium-sized enterprises (SMEs)

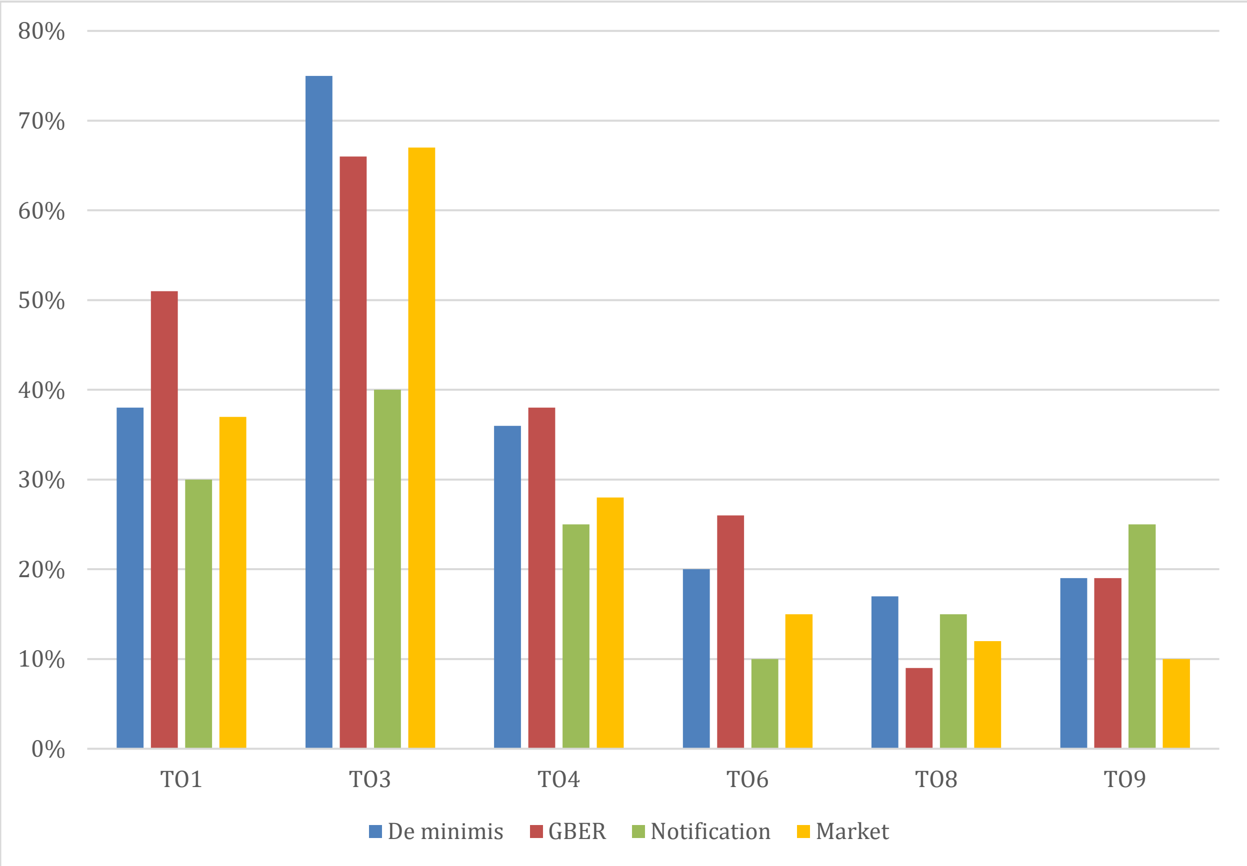
TO4. Supporting the shift towards a low-carbon economy in all sectors

TO6. Preserving and protecting the environment and promoting resource efficiency

TO8. Promoting sustainable and quality employment and supporting labour mobility

TO9. Promoting social inclusion, combating poverty and any discrimination

Figure 4 Table to show distribution of State aid legal base by Thematic Objectives



As respondents could provide multiple answers it is difficult to analyse and compare directly the different results for each different State aid approach. The results show, however, that *de minimis* and market conform FIs are mostly important for TO3 (enhancing the competitiveness of SMEs), whereas GBER and notification are more important for TO1 and TO4 (although TO3 remains the most numerous, reflecting the overall success of FIs in this sector). This suggests that the additional flexibility of GBER (and, exceptionally, notifications) may be more important to the support of policy priorities such as Research Development and Innovation and Energy Efficiency where products must be designed to meet sector specific funding needs. Such FIs may not easily fit within FIs set up under *de minimis* or market condition frameworks, for instance because the amounts needed are higher than allowed under *de minimis*, or there is pronounced market failure hence a market-conform FI would fail to meet the financing demand and/or attract private investors.

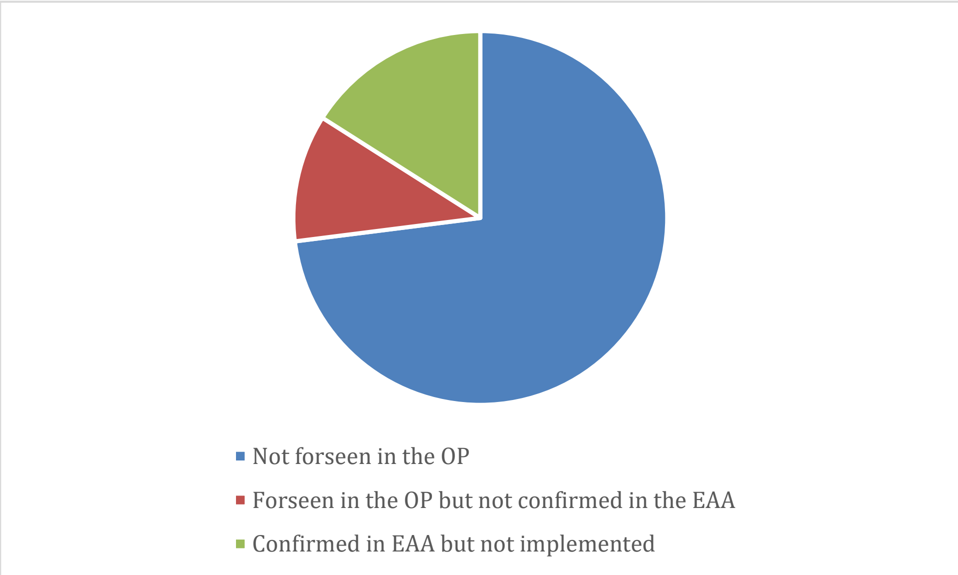
4.4 Reasons for not implementing FIs

In total 44 respondents indicated that they were not planning to implement FIs in the current programming period. The survey asked those respondents to indicate the reasons for not implementing FIs. There were three possible responses that could be selected as follows:

- FI operations were not foreseen in the operational programme
- FI operations were foreseen in the operational programme but their need was not confirmed in the ex-ante assessment
- The need was confirmed in the ex-ante assessment but the FI was not implemented for other reasons

Figure 5 below shows the responses received.

Figure 5 Reasons for not implementing FIs



Over 70% of the responses (27) fell into the first category and a further four authorities indicated that the outcome of the ex-ante assessment did not support an operation. A further six respondents indicated that FIs did not proceed for other reasons. Given the relatively small number of responses it is difficult to draw any significant conclusions from this data although further consideration of the barriers to implementation may be justified.

5 The *de minimis* rules

A total of 127 respondents indicated that they had or proposed to implement FIs under the *de minimis* rules. The survey asked them to provide details of those operations

Key Findings

- *De minimis* FIs are mainly offering loan and guarantee products in TO3 and to a lesser extent TO1 and TO4.
- *De minimis* is perceived as attractive due to its simplicity which allows for efficient and fast implementation.
- Practitioners generally can calculate the aid amounts (GGE), especially where a methodology approved by EC has been published.
- Comments disclose uncertainty regarding aid at investor level which may be a constraint in use/design of FIs under *de minimis* and may result in the authority opting for another legal basis.

5.1 How many and what type of FIs use *de minimis*?

The survey asked respondents to indicate the number of FIs they have that use *de minimis*. Figure 6 shows the number of times respondents indicated each of the different types of financing.

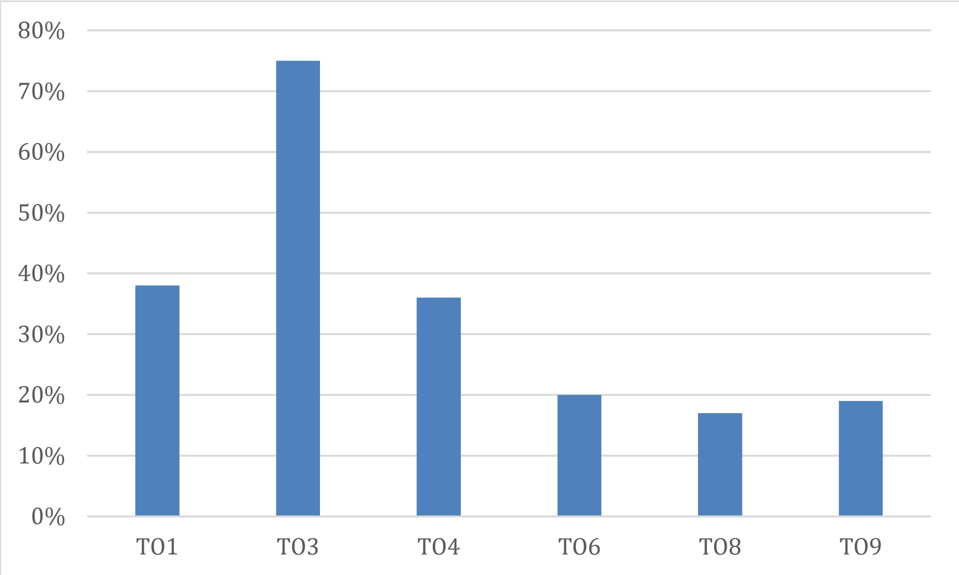
Figure 6 What type of FIs use *de minimis*

The survey suggests that *de minimis* is used extensively for both loan and guarantee operations, including micro-loans and portfolio guarantees. Equity products are relatively less prominent in the sample, probably due to the fact that the *de minimis* threshold is insufficiently low for equity instruments, and/or that private equity investors are more readily available to co-invest in market-conform structures.

5.2 Which thematic objectives are covered by *de minimis* FIs?

The respondents were asked in the survey to indicate which thematic objectives are covered by *de minimis* FIs. In the 99 responses received all 11 thematic objectives were represented. Figure 7 shows the main thematic objectives and the percentage of respondents who selected each one (respondents could select multiple TOs).

Figure 7 Which thematic objectives are covered by *de minimis* FIs

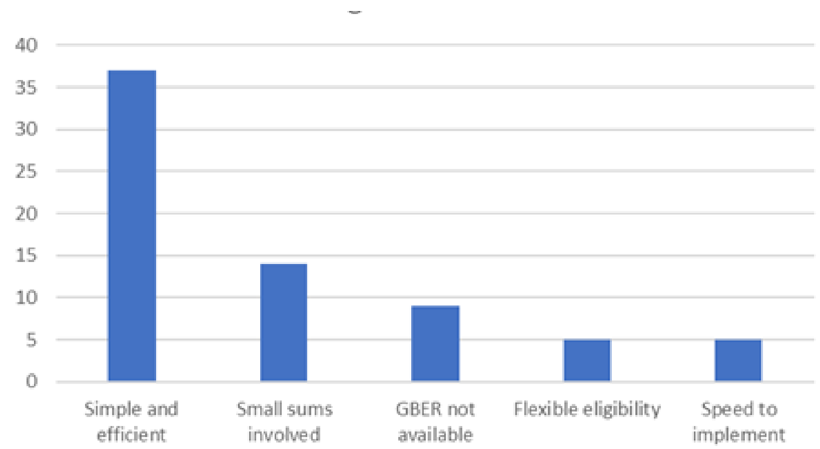


As TO3 is the most common thematic objective for FI operations generally, it is unsurprising that it is the most common sector in which *de minimis* FIs are deployed. Other sectors are reasonably well represented and in addition to TO1 and TO4, there is reasonable representation of FIs used in connection with environmental protection (TO6), sustainable employment (TO8) and social inclusion (TO9), perhaps suggesting that the wide eligibility criteria of *de minimis* allows its use across all sectors and type and size of final recipients which may not be eligible under GBER's eligibility conditions.

5.3 Which are the elements that have driven the choice to use *de minimis* ?

The survey requested the respondents to provide feedback in relation to the factors that led them to use *de minimis* for ESIF FIs. The responses were given in free text and have been grouped into themes to reflect the main themes in the comments. Figure 8 below shows the key themes in the responses.

Figure 8 Elements driving the choice of *de minimis*



The responses emphasised the simplicity and flexibility of the *de minimis* rule. The comments indicate that another important factor that drives the use of *de minimis* for FIs is where the loans being provided by the operation are relatively small. Finally, the fact that *de minimis* is not subject to detailed eligibility restrictions associated with GBER is also cited as an advantage, in particular in sectors and types of borrowers that do not fall within GBER eligibility criteria.

5.4 Calculation of GGE/Safe Harbour threshold

The survey asked respondents to indicate whether they found the application of the methodology for calculating the Gross Grant Equivalent (GGE), i.e. the amount of aid, and/or application of the safe harbour thresholds challenging. In both cases there was a strong response to suggest that practitioners are comfortable in applying these rules when operating *de minimis* ESIF FIs although the detailed comments indicated that the position is more challenging where no approved calculation methodology exists (see para. 5.7.2). The results are shown in Figures 9 and 10.

Figure 9 Was it challenging to calculate GGE

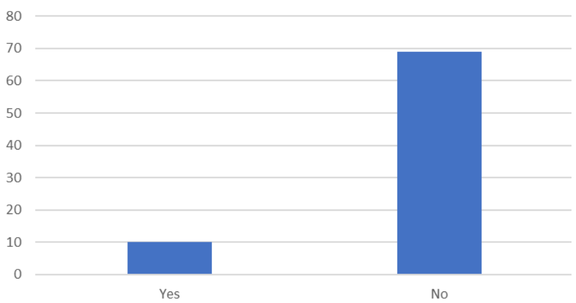
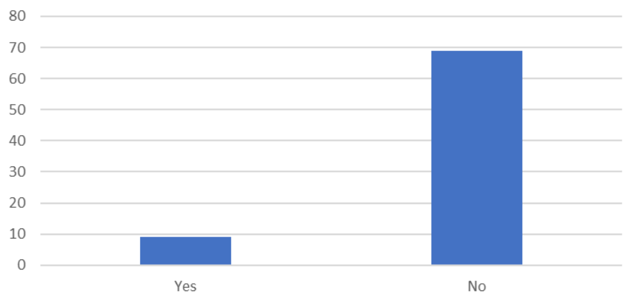


Figure 10 Was it challenging to use safe harbour



5.5 Aid at the level of FIs and private investors

Two similar questions were asked in the survey on this topic as follows:

- Do you find it difficult to exclude aid at the level of financial intermediaries/co-investors in order to comply with the *de minimis* rule?
- Do you consider that if is there is private participation, the ESIF FI may give State aid to the co-investors.

The responses are shown in Figures 11 and 12 below.

Figure 11 Is it difficult to exclude aid

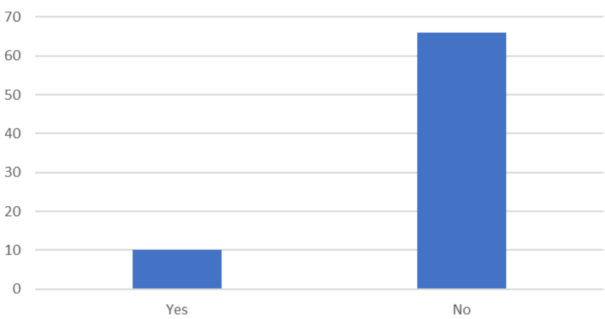
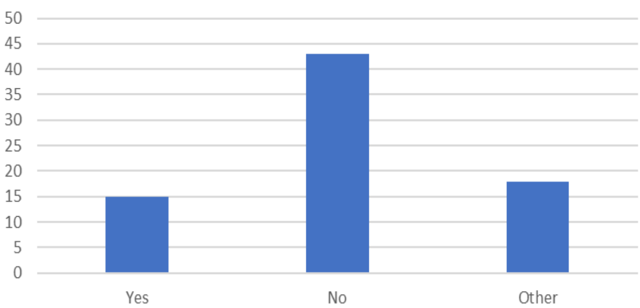


Figure 12 private participation, and State aid



The survey suggests that respondents with *de minimis* FIs are familiar with the need to demonstrate that there is no aid at financial intermediary and co-investor levels. However, whilst the responses to the two questions are broadly consistent the feedback is different to interpret. In many cases there is no explanation about why the issue is not a concern and it may be the case that many of these responses are from the 43%

of respondents who do not have co-financing at a fund level (see 5.6 below). Analysis of the detailed comments suggests that the issue does lead to challenges and constraints in the implementation of FIs. This is considered further at paragraph 5.7.3.

5.6 Private participation in FIs under *de minimis*

The results showed that 57% of the respondents have *de minimis* FIs with private participation with 56 financial instruments identified (Figure 13). The split between financial intermediaries and third parties providing private funds is also shown at Figure 14.

Figure 13 Private participation in *de minimis* FIs

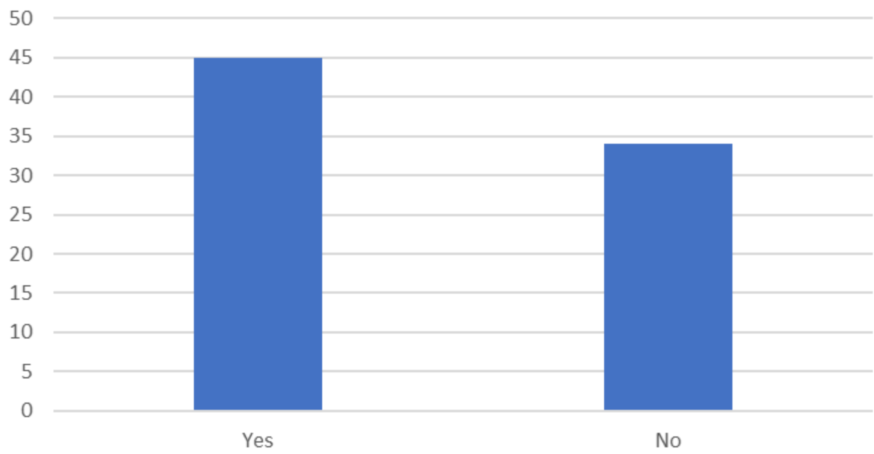
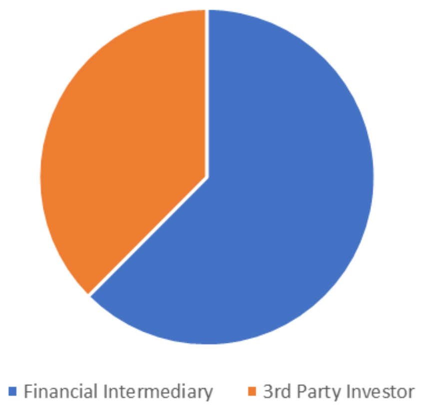


Figure 14 Source of private participation



5.7 Insights and experience

The survey allowed respondents a lot of flexibility for sharing their experience not captured by the questions, with free text boxes being used extensively. The insights shared by respondents in relation to *de minimis* FIs reveals a number of issues that recur and may help identify areas of focus for the EC services when considering the regulatory frameworks for implementation of ESIF FI. These include:

5.7.1 Cumulation Rules

One recurrent comment in response to the question about challenges encountered highlights the difficulty in applying the cumulation rules. The respondent comments, "*the biggest challenges arise from the obligation to follow the cumulation rules*" adding that this is particularly difficult for private sector intermediaries who are not experienced in these matters. Some respondents highlight that it is more challenging where there is no central register, so the intermediaries are left to collect information about past aid by other more administrative-intensive means, such as declarations by the borrowers. Another respondent highlights the difficult interaction between this rule and the *de minimis* threshold, commenting that "*the thresholds become insufficient…due to the accumulation of the different aids*".

5.7.2 GGE Calculation Methodology

The responses in relation to this issue were mixed. A number of responses demonstrated a high level of confidence in applying the rules. This was often associated by a reference to an "*agreed methodology*" for example due to a "*calculation method notified by [the Member State]*" or a predefined formula published by the EC, for instance for the SME Initiative or the so-called "off the shelf" FIs. Where respondents reported experiencing challenges it was often due to a lack of a standard formula. For example, one respondent stated, "*the challenges of quantifying the gross grant equivalent of aid are related with lack of legal certainty due to no generally accepted formulas and/or examples*."

Another area of uncertainty that was highlighted was the relationship between the reference rates in the Reference Rate Communication and real market rates used by banks, i.e. whether "*the interest rate charged to the bank's part of the loan* [could be used] *as reference rates*" in risk-sharing loan structures where the private investment is provided by a bank. The respondent commented that this was not clearly included in the EC's guidance.

5.7.3 Co-investment at Fund Level

The level of co-investment at fund level (57%) was lower than that for GBER FIs (64%). The comments disclose a mixed position which can be difficult to interpret. A large number of respondents simply answer "no" in response to the question 9d, "*do you have any difficulties excluding aid at the level of financial intermediaries*?" Where more detailed responses are received, however, they disclose a number of challenges in seeking to attract private investors at fund/intermediary level with *de minimis* FIs.

Some responses suggest that the restrictions have led them to proceed without fund level co-investment with one respondent referring to their "*tailor-made design (i.e. no co-investor …) applying…de minimis…[and] not encountering the issue",* another stating *"it is an impossible task…without asymmetric profit or risk sharing it is not possible to attract private investors*". The potential impact of the issue on the design of FIs is well described by one respondent who states, *"In some cases providing state aid to co-investors may attract significant amount of private contribution and further enhance the use of financial instrument. However, with given restrictions for granting aid to co-investors … it is safer for fund manager to establish market orientated [FI] … even with less private contribution as a result."*

The responses to question 9f about the possibility of aid at investor level show a recognition of the issue and taken together with 9d a similar pattern can be identified amongst the more detailed comments. This pattern suggests that in addition to the issue acting as a barrier, often resulting in FIs being designed without co-investment, in many cases where co-investment is secured the primary method of addressing State aid is an "*open selection procedure…under the market conditions*" for intermediaries. Some responses show a recognition of the overall need to demonstrate that the benefit is passed on to the final recipients (e.g. "*there will be no state aid…as the benefits are transferred to the final recipients*") and others highlight the challenges and request "*more detailed guidance*".

The responses overall demonstrate a range of different approaches and interpretations that are being applied by operational FIs. Although this suggests participants have a growing experience of dealing with

State aid issues in the context of State aid there is also evidence that the impact of the risk is having a negative effect on the scale of FIs, particularly in relation to their ability to attract leverage. One respondent states that *"the level of difficulty is related to experience. It needs a lot of reading between the lines. Clarifications could be very meaningful."* In their response they go on to highlight a number of areas where they may benefit from further guidance including management cost and fees, the market operator test and minimum levels of co-investment.

5.7.4 Consistency between *de minimis* and other regulations

A number of comments highlighted inconsistencies between ESIF and State aid rules. One issue highlighted by some respondents is the limited duration of the *de minimis* regulation. One respondent commented "*the period of application of the regulation which shall apply until 31 December 2020. This specified period conflicts with the eligibility period under the ESIF rules and the life-cycle of the financial instruments.*" Other respondents indicated that ESIF and State aid rules were not fully aligned in terms of eligible costs and selection of intermediaries.

Reference was made to the interaction between the *de minimis* rule and Art 21 para 18 GBER. One respondent indicating that due to the difficulty of excluding aid at fund level "*de minimis is being used only for final recipients under par. 18 art. 21 GBER*."

Another issue raised was "*what is meant by Article 1d Regulation 1407 aid to export related activities…*" in the context of loans for working capital support given to manufacturing companies who may sell goods abroad.

5.7.5 Raising the *de minimis* threshold

Several comments suggest the EUR 200,000 threshold is too low for FIs. For example one respondent states in response to question 91 (other challenges) "*ceiling of 200,000 eur. Probably it should be increased in the period 2021-2027.*" Similarly a large number of responses to question 9c (elements driving the choice of *de minimis*) highlight how FIs may be designed so that the threshold forms a maximum ceiling for investment, suggesting that increasing the threshold might significantly extend the scope to use FIs in the future.

6 General Block Exemption Regulation

A total of 86 respondents indicated that they have ESIF FIs that operate under the General Block Exemption Regulation (GBER).

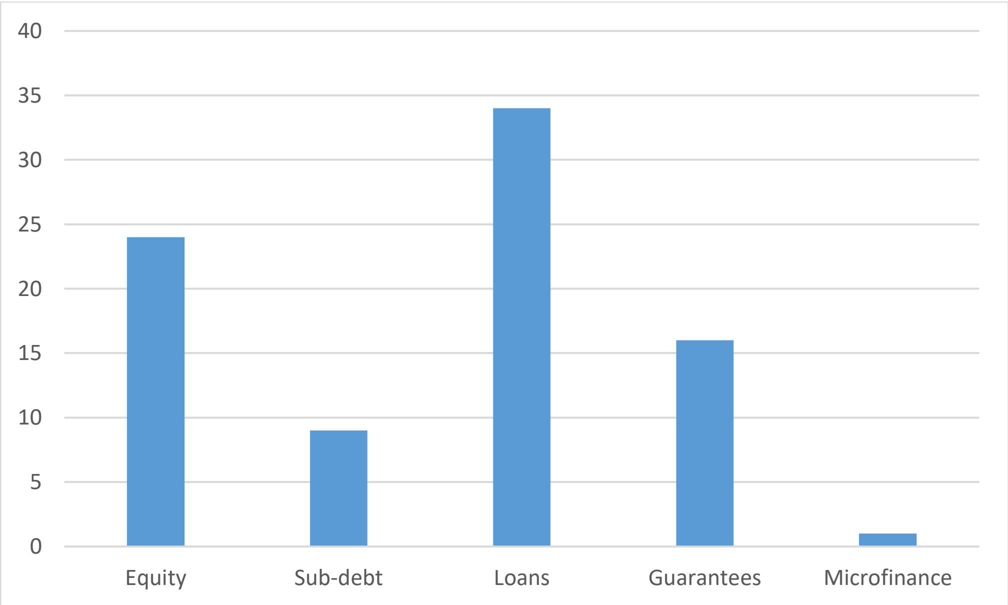
Key Findings

- GBER supports a greater number of equity and subordinated debt products than *de minimis*.
- The main instrument used to attract private investors is asymmetric risk sharing. However, below market price of the public investment and asymmetric returns are also important.
- Use of GBER is not limited to the Financial Instruments GBER Articles (ie Articles 16, 21 and 39 GBER). Respondents prefer other articles which seem to offer greater flexibility.
- Complexity of the rules, in particular the Financial Instruments GBER Articles, is a significant concern that may restrict use of the Financial Instrument GBER Articles

6.1 How many and what type of FIs use GBER?

The survey asked respondents to indicate the number of FIs they have that use GBER. There was a range of different types of response to the question reflecting the use of a "free text" box. Therefore whilst it is difficult to ascertain an accurate absolute number, Figure 15 shows the number of times respondents indicated each of the different types of financing.

Figure 15 Type of FIs using GBER

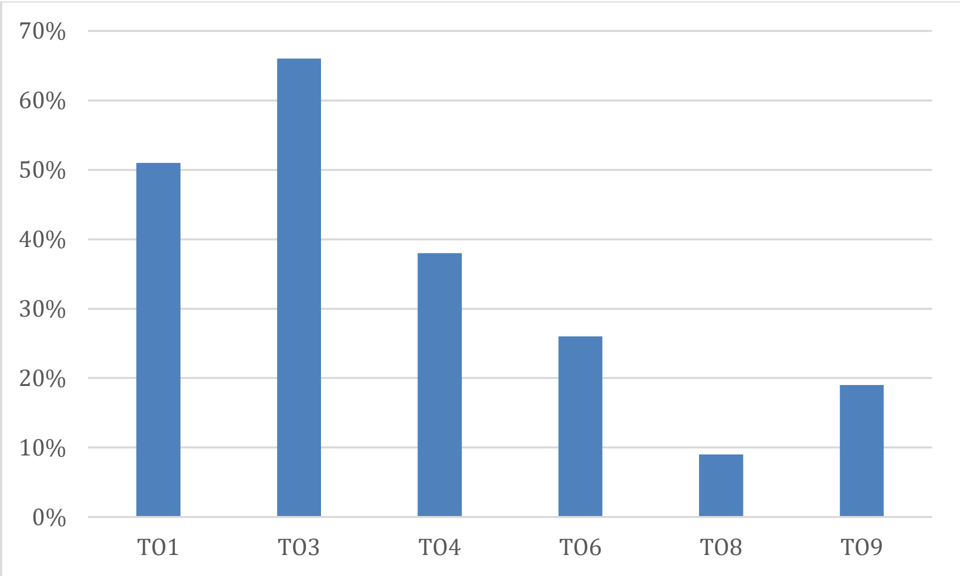


The survey suggests that GBER is used extensively with equity operations in addition to loan and guarantee operations. This contrasts somewhat with the feedback received in relation to *de minimis*.

6.2 Which thematic objectives are covered by GBER FIs?

The responses received show the use of GBER in relation to all thematic objectives, although in line with other categories the main thematic objectives are TOs 1, 3 and 4 while TOs 6, 8 and 9 are also represented significantly. Figure 16 shows the percentage of respondents who selected each thematic objective (respondents could choose multiple TOs).

Figure 16 Type of FIs using GBER

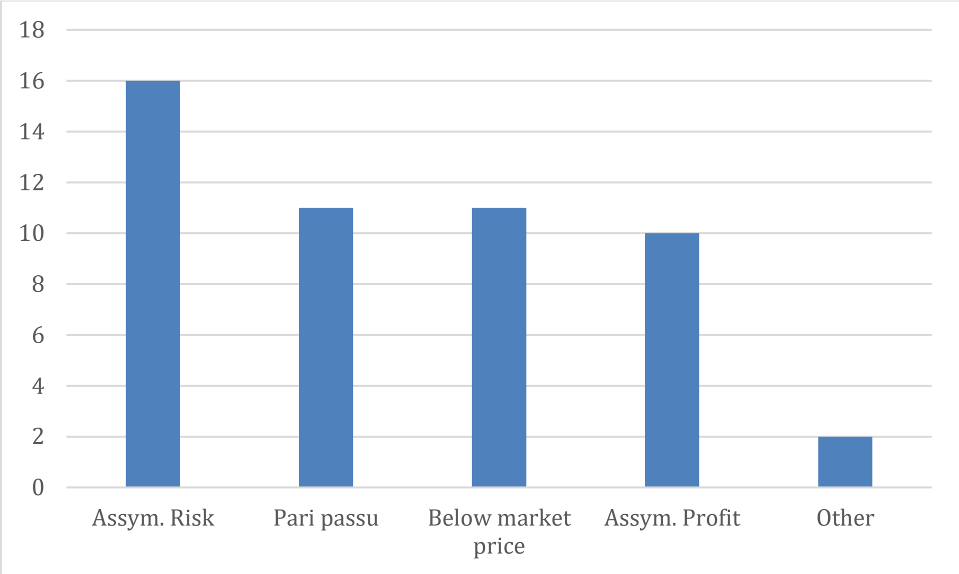


As expected TOs 1, 3 and 4 are the main TOs. The graph shows the distribution. TO1 is more strongly represented than under *de minimis*.

6.3 How are ESIF FIs designed to attract investors and support final recipients and investors?

This question asked respondents to describe the measures in the design of the FI that encouraged private leverage and supported final recipients. Figure 17 shows the number of times each measure was identified by respondents

Figure 17 Measures to support recipients and investors



The responses emphasised the importance of asymmetric risk/reward sharing and below market rate prices for the public investment. However pari-passu support is also identified as useful by a number of respondents, with one indicating that the additional volume of business generated as a result of a market-conform FI may be sufficient incentive for the intermediaries. The two responses categorised as "other" described the simplicity in management and a requirement for "less assurances" respectively.

6.4 Requirements of Articles 16, 21 and 39

The survey asked respondents to identify challenges and issues encountered with the use of the Financial Instruments GBER Articles. Out of 58 responses, 23 identified problems with the articles' requirements (40%).

The key issues highlighted for each of the different measures are as follows:

Table 3 Difficulties with meeting the requirements of Arts 16, 21 and 39

Art 16 - Regional urban development aid
Eligibility is restricted to assisted areas – limiting the geographic scope of the intervention
Eligibility excludes transport - while urban development plans typically encompass the development of transport as an integral urban plan
Art 21 - Risk finance aid
Paragraph 13 – open and transparent selection requirement (for example, one comment refers to uncertainty of how to apply this requirement in the co-investment model where co-investors are joining at the level of the final recipient).
Eligibility largely restricted to SMES <7 years from commercial sale
Too high private participation required for SMEs post 7 years from commercial sale (minimum 60%)
Private investment rate for tranches/follow on investment to a growing company are difficult to calculate or modify after closing for investors

Need to simplify the language
Calculating GGE for equity investments/VC fund para 10 restrictions
Art 39 - Investment aid for energy efficiency projects in buildings
Eligibility of industrial buildings, business sector and social housing
Calculation of aid to natural persons in residential blocks and/or at project level?
Eligibility unclear - whether interest rate subsidies and guarantees are eligible
Requirement for open and transparent call – no Art 21(17) equivalent. Not clear how to apply selection rules to in-house direct award
The definition of certain terms such as “Union standards”

6.5 The wider use of GBER outside Articles 16, 21 and 39

Respondents were asked to indicate whether they implemented FIs using other articles of GBER and, if so, which provisions they used and why.

The responses showed a wide range of Articles under GBER were employed in connection with FIs. The articles identified were Articles 13, 14, 17, 18, 19, 22, 25, 26, 28, 29, 36, 37, 38, 39, 40, 41, 46, 49, 53 and 56. The most commonly mentioned were:

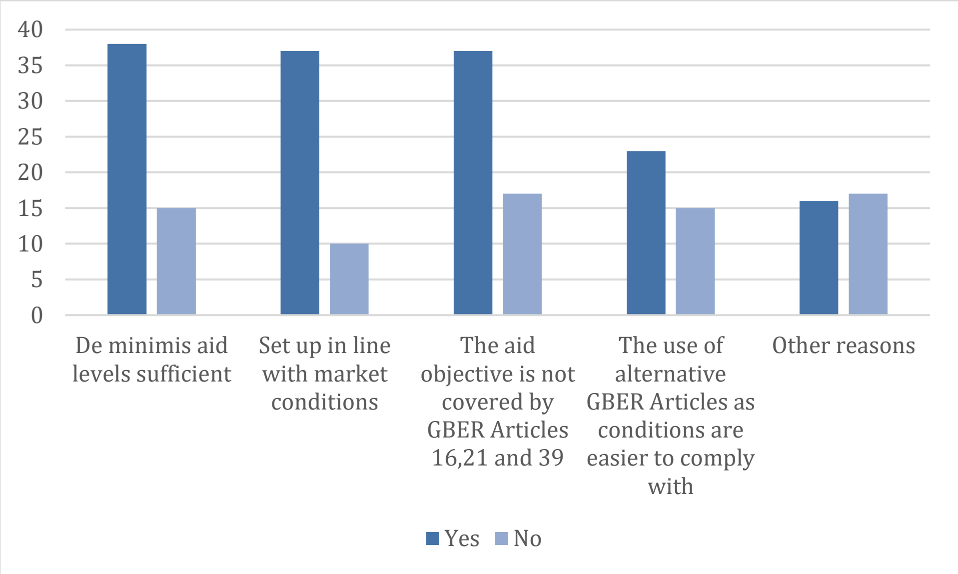
- Art 22 - Aid for start-ups
- Art 17 - Investment aid to SMEs
- Art 14 – Regional Investment aid
- Art 38 - Investment aid for energy efficiency measure

Respondents were also asked to identify the reasons for not using Arts 16, 21 and 39. Answers were selected from a menu which had the following options:

- *De minimis* aid levels are sufficient
- Set up in line with market conditions
- The aid objective is not covered by GBER articles 16, 21 and 39
- The use of alternative GBER Articles are easier to comply with
- Other reasons.

The results are shown below in Figure 18. Respondents who provided more details produced a range of responses from which it is not possible to identify any common themes. The only recurring issue was the lack of flexibility of Art 21. A small number of respondents indicated that they prefer Art 22 for that reason.

Figure 18 Reasons for not using Articles 16, 21 and 39 GBER



The responses show that all four of the potential reasons are relevant to the experience of FI practitioners. They show that *de minimis* or market conditions will often be preferred options where they are available, having regard to the nature of the needs being addressed by the FI. In addition, the use of other GBER articles and the non-application of Articles 16, 21 and 39 to the aid objective can also be a barrier to the use of the Financial Instrument GBER Articles.

6.6 Insights and experience

The key themes found in the written comments regarding GBER can be found in section 6.4 above in relation to the Financial Instruments GBER Articles. The further issues that have been identified from the comments are shown below.

6.6.1 Greater flexibility under general GBER articles

A number of respondents comment that they use a wide range of articles under GBER, to support FIs targeting different thematic objectives/sectors. Some of the responses show that, where respondents encounter difficulties they have used available resources to allow them to resolve them. For example, one response states, "*These articles are well understood and applied and, in case of uncertainties, the clarifications provided on State aid E-Wiki and in the GBER FAQ have proved to be very useful*. Some of the most common articles referred to include Article 22 for SMEs and Article 53 for heritage buildings. Most striking, however, is the large number of different articles referred to by respondents, suggesting that the sectoral scope of the existing Financial Instruments GBER Articles may be too narrow, as well as too restrictive in terms of eligibility or compatibility conditions. It may also suggest that FIs can potentially be a deployment method used for almost any objective and article in GBER.

Another response highlights how the requirements of the Risk Finance Aid Article 21 GBER is not sufficiently flexible to work with a VC fund established under industry norms where capital is raised through a series of closings. The respondent comments, "*In order [that] the rules under art 21 par.10 [are] respected the exact number, the amount and the development stage of each investment and follow on investment has to be known before the final closing. On the other hand, the specified information becomes known at the end of the investment period and cannot be exactly forecasted during the fund raising period.*"

6.6.2 Complexity of applying the rules

One respondent provided a clear insight into their experience of working with the wider GBER articles (for infrastructure investment) describing the difficulties being, *"- Uncertainty in designing the product* *parameters…, - Excluding aid for private investors …, - Complex calculations of the maximum aid amount…, - Complying with requirements for limited number of identifiable eligible costs compared to … requirements for…risk finance aid*".

Similarly a respondent working with Article 39 GBER commented, "*we encountered many difficulties…since it is not clear from the GBER definition how to calculate the amount of aid*", i.e. for reporting purposes.

6.6.3 Consistency between GBER and other regulations

As with the comments on the *de minimis* regulation, the limited duration of GBER up to 31 December 2020 was highlighted. One respondent commented that, "*due to the longer lifecycle of the financial instruments … it would add more certainty…if the provision of art 58 par.4 is widened*".

Another issue highlighted is the restricted eligibility of types of investment within sectors. For example, one respondent commented, "*the difficulties encountered under Article 16 were related to the sectors eligible and moreover recommended under ESIF…in urban development projects. As the transport [and other] sectors may not be supported by regional aid…a de minimis component had to be included…The latter leads to complexity, administrative burden and legal uncertainty*."

Another inconsistency highlighted relates to the exclusion in the ERDF regulations of support of undertakings in difficulty. The respondent commented that "*this contradicts the Commission's guidelines on State aid for restructuring non-financial undertakings.*"

7 Notification

The survey asked respondents to indicate the number of FIs they have that use a notification. The total number of FIs under this category was 20.

Key Findings

- Notified ESIF FIs most commonly support the thematic objectives TO3, TO4, TO1 and TO9.
- The respondents had a mixed experience of the process with 40% saying they encountered difficulties with setting up notified FIs.
- Due to the small number of detailed responses it is difficult to identify trends save that the risk finance guidelines are mentioned several times.

7.1 How many and what types of FIs use notifications?

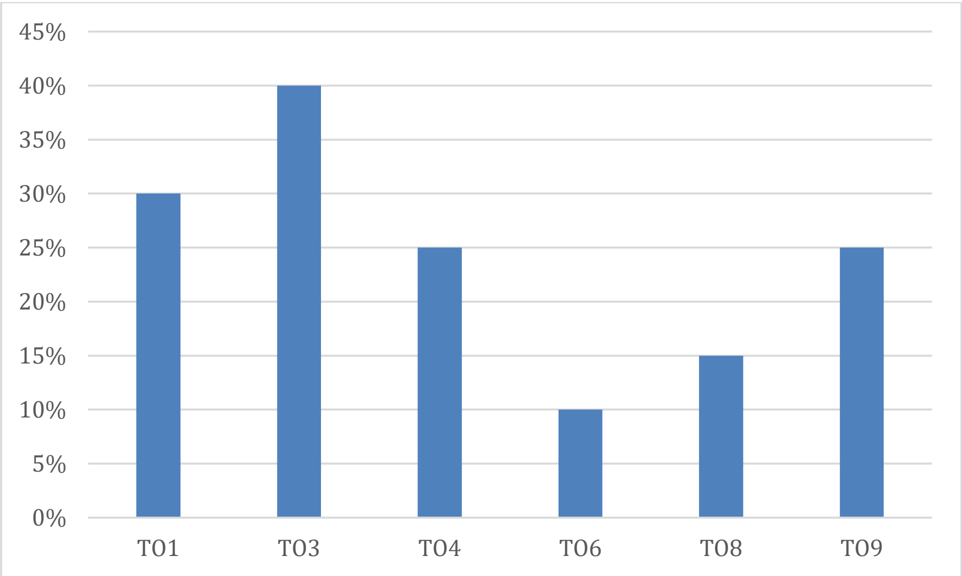
There was a range of different types of response to the question reflecting the use of a "free text" box and due to the relatively small number there are no real trends. The areas of operation identified were:

- VC under the Risk Finance Guidelines (3)
- Energy
- Urban development
- Culture/heritage.

7.2 Which thematic objectives are covered by notified FIs?

Respondents were asked to indicate the thematic objectives that were covered by notified ESIF FIs. Figure 19 shows the percentage of respondents that selected each thematic objective (respondents could choose multiple TOs).

Figure 19 Thematic objectives covered by notified FIs

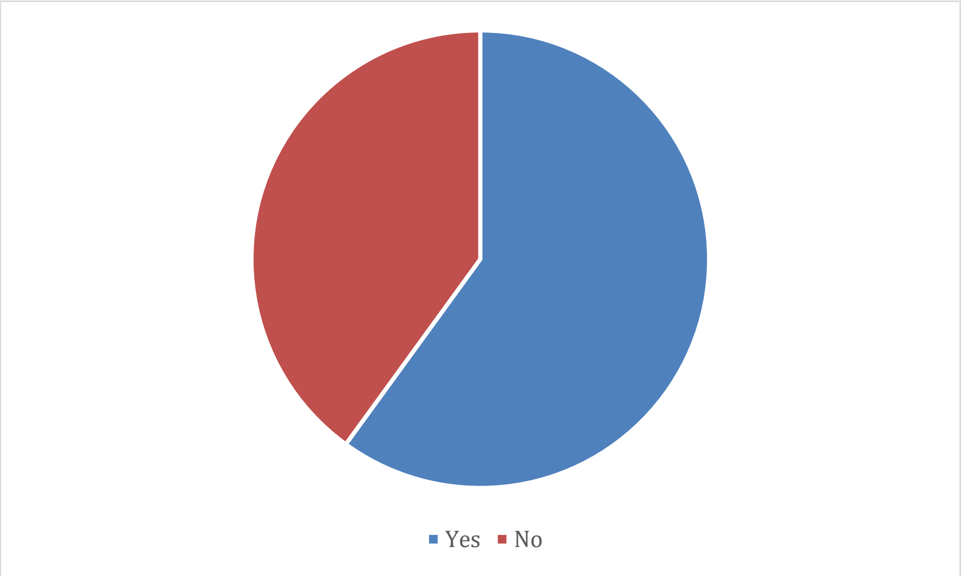


Although the sample size of respondents is small (20) the responses show how notification is used for a variety of sectors with TO4 (Energy Efficiency), TO8 (sustainable employment) and TO9 (Social Inclusion) featuring relatively prominently compared with other State aid approaches.

7.3 Difficulty in setting up notified FIs

Respondents were asked whether they experienced difficulties in the set-up of ESIF FIs in compliance with the applicable rules. The results showed that of the 20 respondents 12 did experience difficulty setting up notified FIs, while the other 8 indicated that they had not experienced difficulties with the issue.

Figure 20 Difficulty in setting up notified FIs



Respondents were also invited to describe the difficulties encountered. There were a small number of comments which are summarized below:

- Difficulty in estimating the amounts of support in advance
- Notification used to extend the flexibility of Articles 16 and 39 GBER
- Difference of interpretation of State aid requirements for fund manager to also be risk taker between Risk Finance, GBER, and ESIF regulations
- Notification used to extend Article 53 GBER
- Notification needed to allow the implementing FI according to Article 38 (4)(b)(ii) of Regulation (EU) No 1303/2013

7.4 Insight and experiences

Finally, respondents were asked to add any other comments or concrete examples of difficulties encountered that had not been covered by the questions in the survey. Respondents provided a range of examples that should be considered individually. Some of the key themes are as follows:

7.4.1 State aid and combination of FIs with grant

One respondent commented, "*the combination of grants with financial instruments at project level is one of the main difficulties encountered at project level*" highlighting how two different bodies the fund manager of the FI and grant making Managing Authority both have to make State aid assessments for the same combination of support.

7.4.2 Need for FI specific State aid rules

One respondent concluded a very thorough contribution by calling for a, "*more coherent and systematic approach to State aid control for FIs in order to ensure that especially private operators are fully aware (e.g. through training, information campaigns) and committed to the EU State aid law obligations*." Another respondent commented that, "*there is a strong need for grouping State aid rules applicable to financial instruments in a clearer manner*." The respondent goes on to say "*Rules applicable to intermediate levels are often missing or are difficult to apply to more complex instruments*."

7.4.3 Other issues

Finally, a number of more specific issues were identified including:

- The administrative burden/knowledge required of financial intermediaries
- The lengthy notification process
- The need for more clarity about the definition of expressions such as "signing" (a VC agreement) and "first commercial sale".
- Establishing market price in replacement capital.

8 Market conditions

The number of respondents that indicated they have implemented or intend to implement FIs that operate under market conditions is 62. This reflects approximately 20% of the sample of ESIF FIs captured in the survey.

Key Findings

- Equity based FIs are commonly set up under market conditions.
- The most common way of demonstrating market conformity is pari passu investment.
- The guidance contained on market-conform FIs in the Risk Finance Guidelines are cited as being important in demonstrating no aid – lack of similar guidance may inhibit use of market conform FIs in other sectors

8.1 How many and what type of FIs use market conditions?

The survey asked respondents to indicate the number of FIs they have that are implemented under market conditions. The total number of FIs under this category was 62. Figure 21 shows the number of times respondents indicated each of the different types of financing.

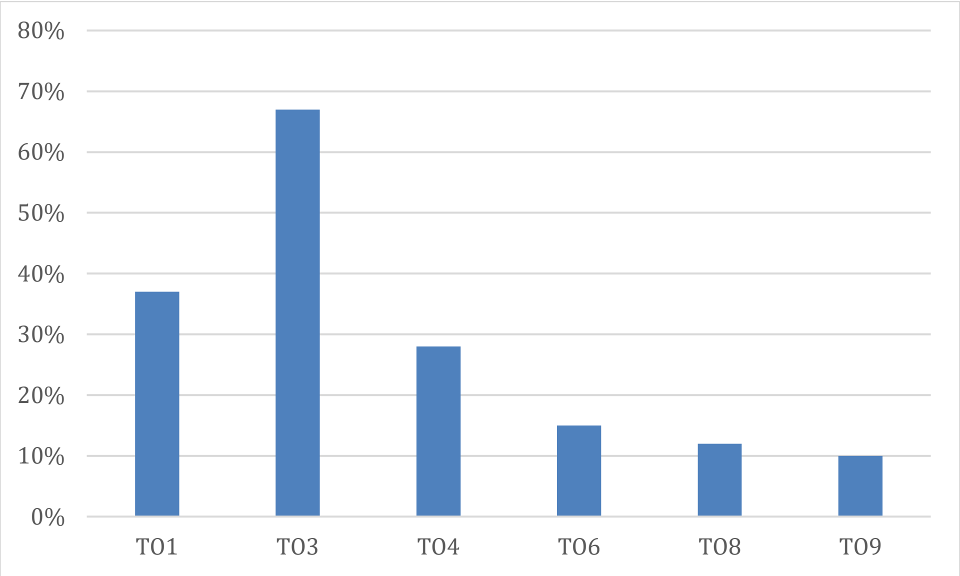
Figure 21 FIs under market conditions

The survey suggests that FIs under market conditions are used extensively with equity, quasi-equity (QE) and venture-capital (VC) operations followed by loan and guarantee operations. This contrasts significantly with the feedback in relation to FIs established under other State aid rules. This may suggest several issues, such as that the framework under GBER and *de minimis* may not cover fully the equity investment needs or that it is relatively straight-forward to set-up market-conform equity FIs as opposed to market-conform loan or guarantee FIs. It may also be that the market-failure for access to equity investments is more volume than risk related, and private equity investors are more readily available to co-invest with public investors in market-conform equity structures.

8.2 Which thematic objectives are covered by FIs under market conditions?

Figure 22 shows the percentage of the 60 respondents that answered this question that operate within the different thematic objectives.

Figure 22 Thematic Objectives for FI under market conditions

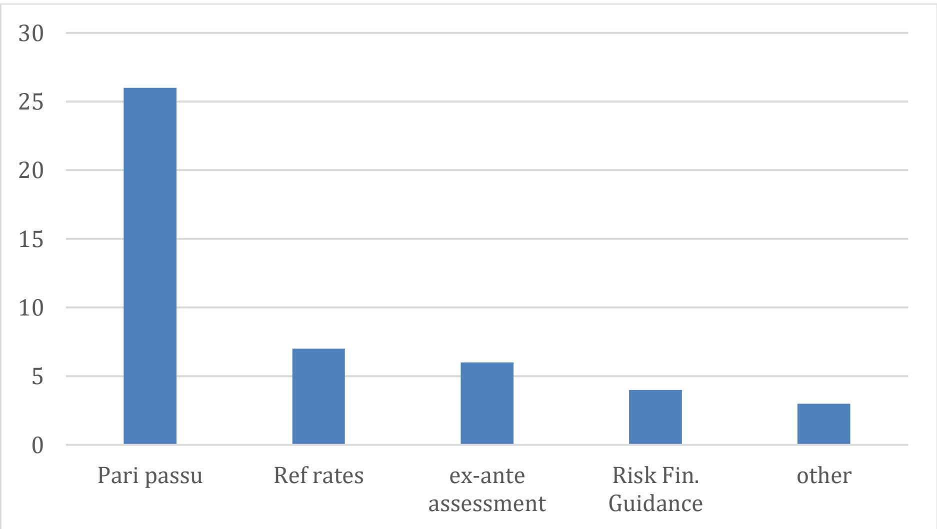


In this case the vast majority of FIs are under TOs 1, 2 and 4. When combined with the feedback in relation to the types of product the FIs under market conditions aim to provide more equity/VC support for SMEs and RD&I when compared with *de minimis* and GBER FIs.

8.3 How to establish FI is in line with market conditions

The responses were given in free text and have been grouped into themes to reflect the comments. Figure 23 shows the key themes featured in the responses.

Figure 23 How market conditions are established



The responses emphasised the importance of the pari passu private investment in demonstration of market conformity. The risk finance guidelines were cited in relation to this in several comments as useful guidance.

8.4 Is it difficult to establish a FI using market conditions?

The responses indicated that it is not difficult to do this with only 8 of 45 responses (17%) answering yes/sometimes. Reasons highlighted include:

- Definition of pari passu
- Identifying the MEO benchmark
- Need for better guidance

In a number of cases the Risk Finance Guidelines were cited as being helpful in designing market conform FIs. This might be because the guidelines include a section explaining existing rules for market conform FIs at each level of the implementation chain. Given the calls from respondents for further guidance on such issues, it may be the case that the Risk Finance Guidelines could provide a useful template for advice to support implementation in other sectors in the future.

8.5 Insights and experience

Respondents also provided additional insight into their experience with market conform FIs in the free text boxes provided in the survey.

8.5.1 Establishing market conditions

Several comments highlighted that it can be difficult to establish that an FI is set up in accordance with market conditions. One respondent commented, "it is hard to prove that the FI is set-up in line with market conditions …there are situations where the market does not exist (or is small)". Another gave several examples of the challenging questions for a market conform VC fund, for example, "if we have invested in the company pari-passu with Investor A, do we need to exit at the same time?"

8.5.2 Need for further guidance

Several respondents requested further guidance on this topic. For example, one respondent commented "it would be easier …if more detailed guidance [was] provided in relation to (a) the specifics of pari-passu…(b) which assessment method for which level of…the financial instrument." Another respondent commented, "we would appreciate a separate guidance and a eligibility test evaluating…the market economy principles."

9 State aid guidance

Respondents were invited to provide feedback in relation to the guidance on compliance of ESIF FIs with State aid rules. This asked whether respondents were familiar with the Commission Staff Working Document "Guidance on State aid in European Structural and Investment (ESI) Funds Financial Instruments in the 2014-2020 programming period". Further questions sought comments on the guidance and other materials, together with suggestions for other resources for the future.

Key Findings

- 132 of 324 respondents (41%) answered that they are aware of the guidance.
- 83% of respondents aware of the guidance responded to say they find it useful.
- Demand for more guidance on State aid is high

9.1 Commission Staff Working Document

From the total number of 324 respondents, 163 respondents answered this question while 161 respondents skipped it. 132 indicated that they are familiar with the Commission Staff Working Document and 31 respondents indicated that they are not familiar with this document.

From the 132 respondents who answered that they were familiar with the document of the Commission, 115 answered this question, of which 96 respondents (83%) found it useful.

Respondents were also asked to suggest reasons why the Commission Guidance Document was not helpful. Table 4 shows the comments received.

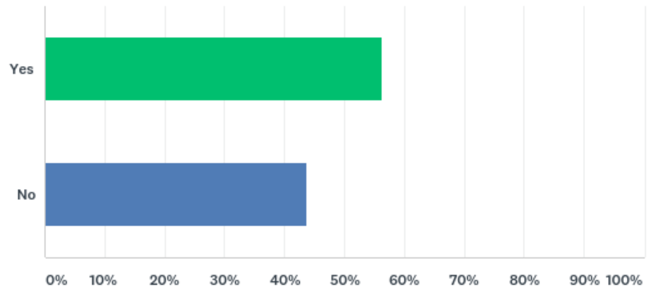
Table 4 Commission Staff Working Document

Commission Staff Working Document
Content - very general and theoretical, more examples and specific cases are needed.
Timing – the guidance documents are published too late.
Information exchange – exchange tool (similar to e-Wiki in state aid) in the area of FIs in order to be able to exchange or gain continuously.
Translation – the guidance are not provided in all the EC Member States' languages.

9.2 Do you have sufficient guidance to design ESIF FIs in accordance with State aid rules?

This question was answered by 135 respondents. Figure 24 shows the responses received.

Figure 24 Do you have sufficient guidance



The responses show a division between the sample population. 56% of respondents answered that there is sufficient guidance. Nevertheless, there remains a large proportion of respondents who are seeking additional guidance.

Respondents were also asked to indicate the topics on which they consider more guidance is needed. A range of comments were received and are summarised below in Table 5.

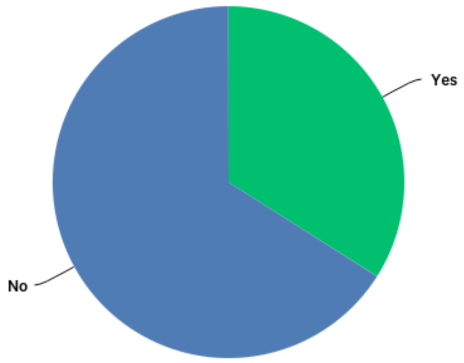
Table 5 Future guidance needs

Topics in which more guidance is needed
Basic concepts – calculating GGE, agriculture guidance, combination of resources, more real practical examples, State aid rule for financial intermediaries.
Market conform – clarification on how to set up a market-conform FI, more examples of good practices, special tools for calculating GGE, more examples for SMEs and large enterprises, more guidance in the scope of research/evaluation.
De *minimis* – cases in order to compare the forecasted aid with the structure allowed by the different regulations, additional guidance on the applicable state aid rules at all levels of the implementation and types of the FIs, calculating GGE.
GBER – Articles: 16, 21, 22, 23, 24, 31, 38, 38(3), 39, and 41.
Other topics- calculating extra-costs in Energy Efficiency projects, FAQ service, methodology to calculate State aid, guidance dedicated to ETC, guidance about the possibilities of applying SGEI rules.

9.3 Other comments and examples

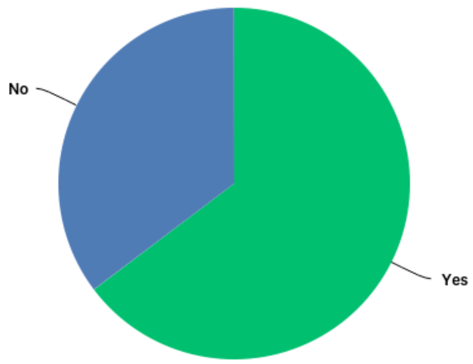
The survey asked for feedback on guidance needs in relation to specific topics. Respondents have provided a range of examples that should be considered individually. The feedback is shown below.

Figure 25 Is more guidance needed on basic concepts of State aid?



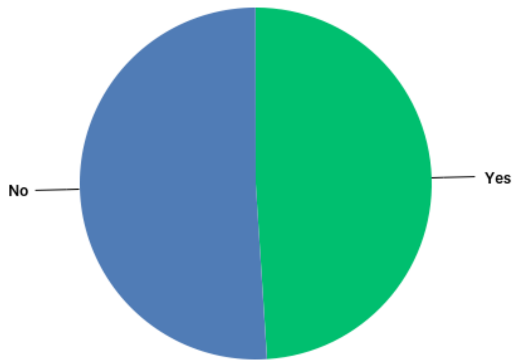
Basic concepts issues highlighted – calculating GGE, agriculture guidance, combination of resources, more real practical examples, State aid rules for financial intermediaries.

Figure 26 Is more guidance needed on how to set up market conform instruments?



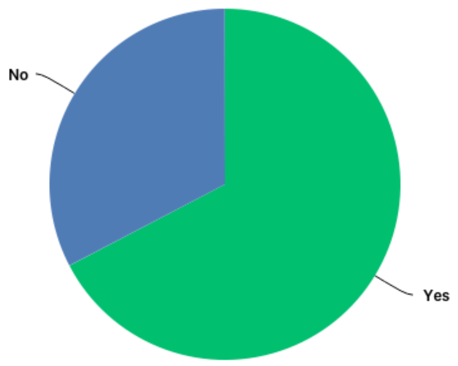
Market conform issues highlighted – clarification of what a FI set up under market conditions is, more examples of good practices, special tools for calculating GGE, more examples for SMEs and large enterprises, more guidance in the scope of research/evaluation.

Figure 27 Is more guidance needed on how to set up *de minimis* instruments?



De minimis issues highlighted – cases in order to compare the forecasted aid with the structure allowed by the different regulations, additional guidance on the applicable state aid rules at all levels of the implementation and types of the FIs, calculating GGE. This relatively high demand is in contrast to the replies described at section 5 above which suggested a reasonable degree of confidence within the respondent group in relation to working with the *de minimis* rules

Figure 28 Is more guidance needed on GBER – which articles



Articles highlighted – 16, 21, 22, 23, 24, 31, 38, 38(3), 39 and 41

The results show an increasing demand for more detailed guidance on technical questions that are not addressed by existing guidance, reflecting growing expertise amongst practitioners. It also reinforces the feedback in relation to the use of de minimis and GBER (other than the Financial Instrument Articles) suggesting that practitioners require greater flexibility so that GBER articles can generally apply to FIs, as well as grants.

Respondents were also asked if there were other issues on which they require guidance. Responses included calculating extra-cost in Energy Efficiency projects, a FAQ service, methodology to calculate State aid, guidance dedicated to ETC, and guidance about the possibilities of applying SGEI rules.

10 Conclusions

10.1 Findings

The survey provides a good insight into the current experience of practitioners in relation to ESIF FIs and the State aid rules.

The survey shows that *de minimis* (127 FIs) is the most common method of compliance for State aid operations. Some of the key drivers to the use of *de minimis* are the relative simplicity of the rule, which practitioners report is easy to understand and apply, the speed of implementation of FIs under this rule due to the familiarity of practitioners with the framework and relative simplicity of administration and flexibility of the rule which can apply across all sectors.

On the other hand, the results also show limitations of the *de minimis* rule, both in relation to types of products and sectors that can be supported. In general, most *de minimis* FIs are loan and guarantee products supporting operations that provide small amounts of support to SME operations. The use of *de minimis* in these sectors may be one reason for the relative success of ESIF FIs in this area of activity.The use of FI in other sectors may accelerate if State aid legal bases other than "de minimis" rules would be as straightforward to implement. Some respondents also raised issues in relation to cumulation, calculation methodology and co-investment at fund level, highlighting further avenues for possible improvement.

GBER is also relatively well used (86 FIs) and the responses indicate that it has application across a greater range of products, particularly equity funds, and sectors, notably RD&I compared with *de minimis.*

GBER is also slightly better at securing leverage (64%) when compared with *de minimis*. The results suggest therefore, that where GBER can be used there is scope to develop a wider range of FIs to support harder to reach sectors. However, the results also show that practitioners do experience challenges working with the Financial Instruments GBER Articles (Arts 16, 21 and 39) due to the perceived lack of flexibility, complexity and narrow eligibility rules (also echoed in some justifications for use of *de minimis*). As a result, other parts of GBER are also used to overcome the restrictions of the Financial Instruments GBER Articles. The wider use of GBER is also in part due to the increasing sectoral breadth of FIs, which goes beyond the sector coverage of the Financial Instrument GBER Articles, and suggest that FI as a deployment method could potentially be used for any objectives and GBER articles.

It is interesting to consider whether FI specific measures with detailed eligibility requirements are helpful additions to the rest of GBER which provides general rules which can be applied to both grant and FI operations. Although the intention was to address the issue of potential aid at fund/intermediary level, the responses of practitioners would suggest that the sectoral limitations (i.e. of the three articles) and the specific requirements within each article both restrict the use of GBER for FIs. Consideration could be given to developing more general rules for financial instruments to be deployed alongside the rest of GBER's sectoral rules.

Although notification is less common (20 FIs) it does remain an option utilised by practitioners in certain specific circumstances. The Risk Finance Guidelines are also referred to as being used in the notification process and as guidance in relation to market conform operations. Other sectors that have benefited from notified FIs include energy and urban development.

There were 62 FIs set up under market conditions under the survey. The most common type of investment was equity and QE/sub debt although loans and guarantees were also covered. The different TOs were quite evenly represented.

Pari passu private participation was the most common way of showing market conformity, although reference rates and benchmarking are also used in some cases. The prevalence of equity/VC funds under market conform may suggest that these products are currently underserved by the other rules (in particular GBER). However, it is possible that the prevalence of equity instruments under market conform highlights the relative straight-forwardness of setting up market-conform equity structures compared to the difficulties in developing loan and guarantee FIs that are market conform. This may be due to the absence of guidelines similar to those found in the Risk Finance guidelines, suggesting that extending such guidance may help further mobilise investment in sectors such as urban development and infrastructure.

The responses on guidance give an indication of the current needs of respondents. About one third of respondents are aware of the Staff Working Document, which is lower than might have been expected, given that the respondent population have self-selected to respond to a State aid survey. Although most respondents that use the guidance have found it useful, the results would suggest that there is a need to further raise awareness of the availability of existing resources. The responses in relation to areas cited for further guidance reflected an appetite for more detailed guidance.

This suggests that there are twin needs in relation to support. The existing guidance on basic concepts of State aid needs to continue to be promoted and highlighted. At the same time more detailed guidance could be developed for practitioners addressing issues such as the use of other GBER articles and setting up FIs under market conditions. Such detailed guidance should seek to address key issues around the definition of terms and calculation of aid for equity type products. Additionally training and other capacity building activities would also help address the need to raise awareness and develop more specialist expertise across Managing Authorities and their partners.

10.2 Next Steps

The survey raises a number of interesting issues which merit further consideration. In particular the insight gained from the comments received in the free text boxes was particularly rich and helped provide greater understanding of the current experience than the quantitative results generated by the survey. Some of the topics highlighted by the results that should be considered further include:

- **The difficulty of ensuring no aid at investor level** when working with financial instruments established under the *de minimis* and GBER. Given the importance of these two sets of rules to FIs this should be considered as a priority for development of the regulatory framework in the future. It may also be the subject of further guidance, possibly following the model in the Risk Finance Guidelines (e.g. Para 37-43);
- **The need for simplification of the State aid rules for financial instruments**. This could include a number of measures identified in the survey including: grouping the rules in a single place; using more straightforward language; aligning with other regulations such as the ESIF rules and procurement regulations; clarifying defined terms; and, importantly, reducing the complexity of the eligibility requirements; and
- **The need for further guidance** (translated into other languages), supported by training and other information campaigns to raise awareness of the rules and flexibilities and build capacity within the practitioner community.

In order to continue to capture insight from practitioners it is recommended that one or more focus groups made up of active MAs, IBs and State aid agencies are convened to seek more detailed feedback on key issues. This would help refine the EC services understanding of the issues and allow potential new measures to be developed and/or tested.