DEP4ALL
THE NCP NETWORK FOR THE DIGITAL EUROPE PROGRAMME

Funded by the European Union

DEP4ALL Legal and Financial Infosheet

State Aid in Digital Europe

OBJECTIVE AND CONTENT OF THE INFOSHEET

The infosheet aims to summarise the main rules and requirements for co-funding projects under the Digital Europe Programme (DEP). It provides applicants, beneficiaries, and national authorities with guidance on the legal requirements to take into account when discussing possible co-funding through their national, regional or local authorities.

LEGAL BASIS AND OTHER DOCUMENTS TAKEN INTO ACCOUNT

- Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 – DEP Regulation
- Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) – Financial Regulation
- Treaty on the Functioning of the European Union (TFEU)
- General Block Exemption Regulation - Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty
- Regulation (EU) 2023/2831 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid
- Relevant Work Programmes and Call Conditions

WHAT IS STATE AID?

State Aid has been defined in the Treaty on the Functioning of the European Union as “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”. (Art. 107(1) TFEU)

However, state aid may be permitted if justified by objectives of general interest, such as to promote the development of disadvantaged areas or for services of general economic interest, small and medium-sized enterprises, research and development, environmental protection, training, employment and culture. EU countries must notify the European Commission of the aids that they grant - except in certain specified instances.

STATE AID AND DIGITAL EUROPE

Most projects under Digital Europe require co-funding from Member States and/or the private sector to complement Union funding. If the co-funding of a project involves public resources (national or regional level), it needs to be assessed whether the co-funding is possible under the ‘de minimis’-regulation or constitutes State aid falling within the scope of Article 107(1) TFEU.

EU LEGISLATION

De minimis-rule

In case of smaller grants to undertakings, in particular to SMEs, the **‘de minimis’** regulation often is the best solution. Even though funding under the De minimis rules also refers to public funding support specific undertakings, measures that fulfil the criteria of the de minimis Regulation do not constitute "State aid" within the meaning of Article 107(1) TFEU. They therefore do not need to be notified to the Commission for approval before they are implemented.

Each Member State has to verify that the amount of the ‘de minimis aid’ provided to any given beneficiary does not exceed the ceiling of EUR 300 000 per Member State over any period of 3 years. ‘De minimis aid’ needs to be registered in a central register at national or EU level.

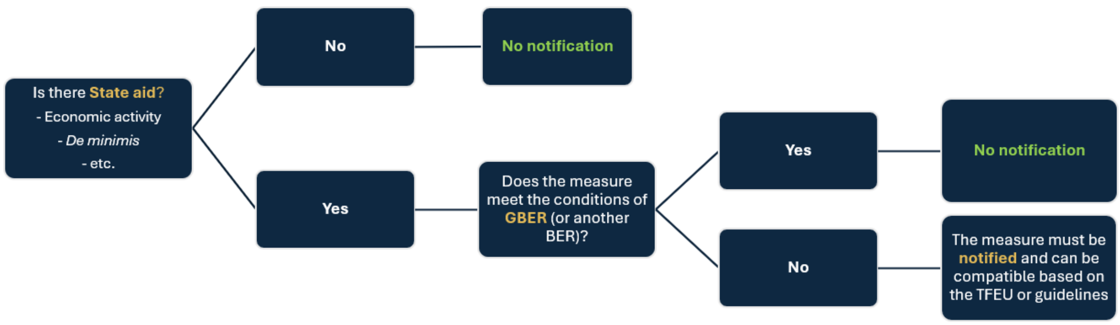
General Block Exemption Regulation (GBER)

If co-funding under the De minimis-Regulation is not possible, it needs to be assessed if the aid provided by an authority constitutes State aid.

When co-funding provided by national or regional authorities has been assessed as constituting state aid, its compatibility with the TFEU will have to be ensured. In many cases, co-funding provided by Member State that constitutes State aid may still fall under the General Block Exemption Regulation (GBER). State aid which complies with the general and specific conditions of the GBER does not need to be notified to the Commission prior to its implementation.

It is the responsibility of the Member State to ensure that block exempted State aid is implemented in compliance with the GBER. If State aid is not covered by the GBER, Member States must submit a notification pursuant to Article 108(3) TFEU to the Commission and State aid cannot be granted by the Member State before the Commission adopts its decision.

The following overview provided by the European Commission helps to analyse if GBER provisions apply or if State aid has to be notified:



Member States that provide support under the GBER need to ensure compliance with its general and specific provisions. This includes, among others, that Member States need to verify that the receiving party is not an undertaking in difficulty.

Furthermore, midcaps or large enterprises are not always eligible for support under GBER. When they are excluded, they may still be able to receive aid upon the Commission's clearance (following the notification procedure pursuant to Article 108(3) TFEU) based on the applicable State aid instrument (for example, Framework for State aid for research and development and innovation) or be supported under the de minimis Regulation.

No notifications are needed if:

- The aid amount is below a notification threshold
- The aid is necessary and targets a market failure
- The aid has an incentive effect
- The aid amount is proportionate, i.e. usually expressed in terms of aid intensity as a proportion of eligible costs.

CUMULATION RULES AND MOST FAVOURABLE FUNDING RATE

Digital Europe funding is centrally managed EU funding and thus does not constitute State aid. However, when Digital Europe funding is combined with state aid to cover the same eligible costs, state aid cumulation rules have to be respected. In these cases, Union funding has to be taken into account as the total amount of public funding granted to fund the same eligible costs must not exceed the most preferential funding rate (Article 8(2) GBER). Member States have to verify at project level that the combined Digital Europe and national support for **State aid eligible costs** does not exceed the most preferential funding rate as set in the Digital Europe Regulation and Digital Europe Work Programme.

In some cases, costs eligible to be funded by the Digital Europe programme are not eligible under state aid rules. These costs (i.e. costs which are not eligible under state aid rules) shall not be considered in the State aid assessment applicable to State resources used by Member States to fund projects.

The State aid assessment is done at the level of the single project. If a project gets support from multiple public sources (e.g. from Digital Europe, ERDF, RRF funds), it will continue to be treated as support for one single project. Thus, Member States will check compliance with state aid rules at the level of the whole project.

DIFFERENT LEVELS OF STATE AID

There can be different/several levels of State aid beneficiaries of public funding. State aid can be granted to a legal entity (or the consortium of legal entities) that owns, sets up and operates a European Digital Innovation Hub (EDIH), a competence centre or similar projects. However, State aid can also be passed to, for example, SMEs that use the services provided by the hubs or the competence centres at reduced fees or for free. Member States are responsible to identify the aid beneficiary and the applicable compatibility basis, as well as respect the applicable State aid procedure.

When state aid is passed on, meaning that all/some State aid granted initially to a beneficiary is passed on to, for example, the users of an EDIH or a competence centre), detailed accounting records need to be kept by the aid beneficiary to account for the State aid it has received .

In the context of the Digital Europe, support provided to SMEs in the form of reduced service fees or services “*for free*”, could be granted on the basis of Article 28 GBER (Innovation aid for SMEs), Article 25 GBER (Aid for research and development projects), or Article 22 GBER (Aid for start-ups).

OTHER SPECIFIC CASES UNDER THE GBER

Aid for R&D projects (Art 25 GBER)
State aid under art. 25 can be provided to R&D activities and necessary costs incurred for the duration of the R&D project up to TRL8 and costs of feasibility studies carried out prior to the R&D project.

Under this article, the basic aid intensity varies according to the kind of research conducted and the related technology readiness levels (TRL), namely:

- 100% for fundamental research (TRL 1)
- 50% for industrial research (TRL 2-4)
- 25% for experimental development (TRL 5-8)

In the case of Digital Europe, as the programme does not found research as such, article 25 can only apply for piloting, prototyping and comparable activities that can be defined as experimental development.

In some cases, bonuses are applicable with a cap of 80% per research category:

- 20pp SME bonus (20pp for small and 10pp for medium enterprises)
- 15pp for for dissemination and/or effective collaboration
- 25pp for cross-border activities.

Investment aid for testing and experimentation infrastructures (Art 26a GBER)
Digital Europe actions that are compatible with the definition of ‘testing and experimentation infrastructures’ might be able to get state aid under the provisions of Article 2(98a) GBER.
For investment aid under Article 26a GBER, the supported costs made by such infrastructures have to be investment costs in tangible and intangible assets. Moreover, access to these infrastructures must be granted to several users under open, transparent and non- discriminatory conditions and provided on market terms (the price charged for the operation or use of the infrastructure shall correspond to a market price or reflect their costs plus a reasonable margin in the absence of a market price).

Aid for innovation clusters (Art 27 GBER)
For Digital Europe actions that are compatible with the definition of ‘innovation clusters’ in Article 2(92) GBER, investment aid can be granted to the owner of the innovation cluster. Operating aid can be granted to the operator of the innovation cluster for personnel and administrative costs. In cases where the operator differs from the owner, the operator can either have a legal personality or be a consortium of undertakings without a separate legal personality. Separate accounting for the costs and revenues of each activity (ownership, operation and use of the cluster) has to be kept in all cases according to the applicable accounting standards by each undertaking.

Innovation aid for SMEs (Art 28 GBER)
Some Digital Europe funded projects (i.e. European Digital Innovation Hubs, AI competence centres) are set up to serve their customers. Their services needs to be granted on a transparent and non-discriminatory basis and on market terms, or on a cost-plus-reasonable-margin basis

for large undertakings. Access to such services at reduced prices or access *"for free"* (even if it is granted to SMEs) is considered to be State aid. However, such State aid may be compatible with the internal market if the conditions set out, for example, in Article 28 GBER are fulfilled. Such projects set up to serve their customers should, in their proposal, draw up an indicative price list for all their services. The price list would apply to all stakeholders, but only large enterprises and other entities pursuing an economic activity (such as Research organisations carrying out economic activities) would need to pay according to the price list. The reduction of the prices for entities pursuing non-economic activities or SMEs, has to be made public as well, similarly to the prices charged on market terms.

Article 28(2) GBER specifies that innovation aid for SMEs may cover costs such as:

- costs for obtaining, validating and defending patents and other intangible assets,
- costs for secondment of highly qualified personnel from a research and knowledge-dissemination organisation or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel,
- costs for innovation advisory and support services, including those services provided by research and knowledge dissemination organisations, research infrastructures, testing and experimentation infrastructures or innovation clusters, as defined Article 2 (94) and (95) GBER.

CAVEAT: RESPONSIBILITY OF MEMBER STATES
It is the responsibility of the Member States to design State aid measures which are compatible with Union's State aid rules, including the GBER, when the latter is applicable. Any State aid relevant questions should be addressed to the national authorities or contact points dealing with State aid matters who can address interpretation questions to DG Competition on the dedicated eState aid Wiki platform or, in especially challenging situations, could initiate a direct contact with the services of DG Competition.

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