

APSE Big Energy Summit

State Aid Issues and Grant Applications

8 March 2018
Kate Webster



This is not legal advice and cannot be relied upon. It is provided for information purposes only.

WALKER
MORRIS



Topics

- European Structural Investment Funds & the role of Ministry of Housing, Communities and Local Government
- What is State Aid? Is it an issue for public bodies?
- Non-Aid options
- Lawful State Aid options
- Completing the State Aid section of an ESIF application
- Resources

European Structural Investment Funds & the role of MHCLG

- EU Priority Axis Areas for ESIF cover energy
 - 4 – supporting the shift towards a low carbon economy in all sectors
 - 5 – promoting climate change adaptation, risk prevention and management
 - 6 – preserving and protecting the environment and promoting resource efficiency
- MHCLG is the “managing authority” for ERDF
- The role of the managing authority is to make sure your application meets the criteria
- The managing authority won’t give you an opinion on state aid compliance – It will scrutinise your case but will not take responsibility

What is State Aid? Is it an issue for public bodies?

4 conditions have to be met for state aid to exist:

- Assistance granted by the state or through state resources
- It favours an undertaking engaged in economic activity
- It gives a selective advantage and thereby distorts or threatens to distort competition
- It affects trade between member states

Non-Aid options

- The state is acting as a “rational private investor” –the Market Economic Operator Principle
 - Investments?
 - Loans?
 - Guarantees?
 - Subsidies?
- Context of an investor with a long term commitment
- Evidence of MEOP
 - Investment alongside a private investor on same terms
 - Benchmarking
 - Independent assessment

Lawful State Aid options

- **Notification and Approval by the Commission**
- **Services in the General Economic Interest**
- **De Minimis Aid**
 - €200,000 of “De Minimis Aid” over 3 fiscal years
 - Beneficiary not insolvent
- **General Block Exemption Regulation**
 - Regional Investment Aid
 - Local Infrastructure Investment Aid
 - Environmental Aid

Tips for Completing the State Aid section

- The state aid section will be scrutinised and the state aid advice needs to be mirrored in the application
- Get early external advice on state aid treatment and use this to inform the structure of the project and the application
- Don't automatically look to rely on "De Minimis" exemption
- Clearly identify all potential beneficiaries and set out robust state aid treatment for each beneficiary
- Make sure capital and revenue investments are clearly separated out – they have different treatments
- Design the project with audit in mind – schemes will be audited and funds clawed-back

Resources

- BIS State Aid Manual July 2015
<https://www.gov.uk/government/uploads/.../bis-15-148-state-aid-manual-update.pdf>
- Commission Notice on the Notion of State Aid 2016
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC

Contact



Kate Webster, Director, Energy, Infrastructure & Government

+44 (0)113 283 2572

kate.webster@walkermorris.co.uk



Disclaimer

The information contained in this document is confidential to you; it is not to be shown, quoted or referred to, in whole or in part without our prior written consent. It has been prepared for the purposes of information only and is only valid as at today's date. It serves only to alert the reader to recent legal developments or provide general information regarding a legal topic and to act as a guide; it is not a comprehensive or definitive statement of the law. It should therefore not be relied upon in place of specific legal advice. We exclude all liability (in negligence or otherwise) arising from any reliance placed on the information contained within this document by you (or any third party) for any purpose, to the maximum extent permitted by law.

WALKER
MORRIS

