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| **RURAL TOURISM AND STATE AID** |

**1. Introduction**

Article 81 of the Rural Development Regulation (RDR)[[1]](#footnote-1) establishes that the ‘State Aid’ rules apply to grants to rural tourism projects under the NIRDP 2014-2020.

Article 59.9 of the RDR also prescribes that **all** public expenditure granted as aid to enterprises must comply with the aid limits stipulated in the relevant ‘State aid’ rules[[2]](#footnote-2). Therefore public expenditure from other sources such as Councils or the Heritage Lottery Fund must be considered as well as EU/DARD funding for this purpose.

This document aims to provide DARD staff with guidance regarding the ‘State aid’ rules which apply to rural tourism and the steps which must be taken to ensure compliance.

**2. What is ‘State Aid’?**

‘State aid’ is a European Commission term which refers to forms of assistance from a public body or publicly-funded body, given to ‘undertakings ‘on a selective basis, with the potential to distort competition and affect trade between Member States of the European Union.

‘State aid’ is prohibited by EU rules unless it has been specifically approved by the Commission and implemented in accordance with that approval or has been paid in compliance with so-called ‘de minimis’ or ‘block exemption’ rules (which are explained later in this Guidance Note).

**3. How do I Identify ‘State Aid’?**

The definition of ‘State Aid’ derives from Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). This Article states that:  
  
*“Save as otherwise provided in this Treaty, 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 production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market.”*

Not all aid granted under the rural tourism measure fits this definition therefore it will be necessary to determine whether ‘State aid’ is present on a case-by-case basis. To do so, five questions derived from Art 107(1) must be considered.  
  
**4. ‘State Aid’ Checklist**

Appendix 1 provides a rural Tourism ‘State aid’ Checklist (with guidance). This should be completed in all cases in order to ensure that there is compliance with all relevant EU ‘State aid’ rules and that an adequate audit trail is maintained. A copy of the completed Checklist must be retained in project files.   
  
If the answer to any question in sections 1 or 2 of this Checklist s is ‘No’ the aid is not ‘State aid’ and it will not be necessary to consider the options for funding ‘State aid’ explained in paragraph 6 and sections 3-8 of the Checklist.   
  
**5. Circumstances when Question 4 of the Checklist will not be satisfied**

Question 4 in Section 2 of the checklist asks you to consider whether the grant aid affects or has the potential to affect trade between Member States.   
  
Aid granted to an undertaking operating in a market which is open to competition will normally be assumed to distort competition and also be liable to affect trade between Member States. However, the Commission has in certain specific cases ruled that due to the specific facts and circumstances of the aid application the activities grant-funded had a purely local impact and consequently did not affect trade between Member States.

While many Rural Tourism projects will market to other Member States and have the potential to affect intra-Community trade, it is possible that others may be able to demonstrate that they have only a local impact and therefore funding these will not constitute ‘State aid’. However, this is a complex area of ‘State aid’ law and careful consideration is required before a determination that this is the case is reached.

In order to determine whether a project’s impact is limited to the local area it is necessary to refer to and apply Commission guidance to the specific circumstances of the case in question.

The European Commission’s draft ‘Notice on the notion of State aid[[3]](#footnote-3)’ provides guidance – see relevant extracts at Appendix 2 of this Guidance;

Common features of such decisions are that:

* 1. the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;
  2. the goods or services produced by the beneficiary are purely local or have a geographically limited attraction zone (the project’s application form / business case may indicate that it targets customers from other Member States);
  3. there is at most a marginal effect on the markets and on consumers in neighbouring Member States

Staff should be extremely cautious when considering whether a project has purely local impact and document their reasons for such a determination. A careful consideration of the guidance at Appendix 2 is essential.  
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**6. Aid is ‘State Aid’**

If the aid is ‘State aid’ it must be granted in compliance with one of 2 options approved by the Commission in Chapter 13 of the NIRDP (2014-2020) Programme document. These are:

1. *To fund in compliance with ‘de minimis rules’ where the total de minimis aid received by a single undertaking is less than €200,000 over any period of 3 fiscal years);* “  
     
   De minimis aid” is a term used to describe small amounts of State aid that have a negligible impact on trade and competition, and conforms to the rules set out in the EU De Minimis Regulation[[4]](#footnote-4). The total de minimis aid which can be given to a single undertaking is €200,000 over a 3-year fiscal period. It is therefore necessary to check whether the grant applicant has received de minimis aid from any other source during the relevant 3 year period to determine whether this ceiling is respected. This is explained in Section 3 of the Checklist at Appendix 1.
2. *To fund in accordance with the ‘block exemption rules’* ‘  
     
   Block exemption’ is aid which has been registered with the Commission as compliant with the rules set out in the EU Block Exemption Regulation[[5]](#footnote-5). Rural Tourism can use this option if the project being funded falls under any one of the following three categories:   
   1. Aid for culture and heritage conservation
   2. Aid for sport and multifunctional recreational infrastructures
   3. Aid for local infrastructures.

**7. Deciding which Option to Use?**

The facts and circumstances of a specific project application must be taken into account when deciding which option to choose. It is for RDD to decide which option is most suitable in any given circumstance. The following sub-paragraphs offer guidance to inform this decision:

1. If the grant is less than €200,000 it is recommended RDD should first consider option 1 ‘de minimis aid’. This is because the de minimis rules allow 100% of the project costs determined to be eligible to be funded from public expenditure up to the maximum ceiling of €200,000.
2. If de minimis aid received over the three year period would exceed €200,000 and the aid falls into categories (ii) – (iv) listed at paragraph 6(2) above it is recommended RDD should consider using option 2 ‘block exemption’. If this option is chosen it is important to note that the RDR states the total public expenditure must comply with the ‘State aid’ rules (see paragraph 1).   
     
   **NB:** The block exemption rules limit ‘State Aid’ to culture and heritage conservation’ and to sport and multifunctional recreational infrastructures 80% of the total eligible costs. As DARD / EU will fund 75% of all eligible costs under these categories, match funding from other public sources (e.g. Councils, Heritage Lottery Fund) must be taken into account. Please seek advice from RDD regarding the rules on cumulating de minimis aid with block exemption aid if public aid would exceed the 80% ceiling (see paragraph 8 below).

Once an option has been chosen the RDD should go on to complete the Checklist at Appendix 1.

**8. Rules on Cumulation**

Both the EU Block Exemption and the De Minimis Regulations stipulate rules regarding the cumulation of block exempted / de minimis aid with other State aid, as follows:  
  
 Aid paid in accordance with Block Exemption Rules:

* may be cumulated with any other State aid, as long as those measures concern different identifiable eligible costs
* may be cumulated with any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity stipulated by the Commission (see the Table at Section 3 below)
* must not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding the highest aid intensity stipulated by the Commission (see the Table at Section 3 below).

Aid paid in accordance with the De Minimis Rules:

* may be cumulated with *de minimis* aid granted in accordance with other *de minimis* regulations up to the €200,000 ceiling. RDD therefore need to take into account any de minimis aid awarded to the farming sector under ‘agricultural de minimis Regulation (EU) 1408/2013 or to the fisheries and aquaculture sector under Regulation (EU) 717/2014.
* must not be cumulated with State aid in relation to the same eligible costs, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or under a Commission decision.   
    
  De minimisaid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or under a Commission decision.

**9. European Commission Monitoring and Record Keeping**The European Commission can carry out audits on NIRDP expenditure and these can include a check on the compliance with State aid rules. The Commission can also check on how block exemption schemes or de minimis are being implemented and have wide-ranging investigative powers.

In order to allow the Commission to monitor block exempted State aid and de minimis aid detailed records must be maintained with the information and supporting documentation necessary to establish that the conditions set out in the Block Exemption / De Minimis Regulation have been adhered to. This documentation must be kept for 10 years from the date of the last aid was awarded under the Rural Tourism measure.  
  
  
**10. State Aid Annual Report**

The Commission requires each Member State to provide a yearly report on State aid paid out under approved state aid schemes and individually approved state aid.

DARD will be asked once a year to provide details of State aid paid under the block exemption rules. Consequently RDD must note the database accordingly.

**11. Roles and Responsibilities**

RDD (including Programme Compliance Section)

RDD must carry out administrative checks on all applications for support and payment claims submitted under Rural Tourism in accordance with Article 48 of Commission Regulation (EU) 809/2014. Article 48(2) specifically states that the checks must ensure the compliance of the operation with State aid rules. These checks should adhere to Commission recommendations on State aid compliance testing (see paragraph 12).  
  
Programme Compliance Section will carry out quality assurance checks on the administrative checks.

DARD European Services Branch Verification Unit (ESBVU)

ESBVU must carry out on the spot checks on at least 5% of EAFRD expenditure in accordance with Article 49 to 51 of Commission Regulation (EU) 809/2014 and ex post checks in accordance with Article 52. Art 51(1) of Commission Regulation (EU) 809/2014 and Art 71(1) of Commission Regulation (EU) 1303/2013 make it clear these checks should ensure compliance with the State aid rules. As with the administration checks these checks should adhere to Commission recommendations on State aid compliance testing.

**12. Commission Guidance - Checks on State aid compliance**

In its (draft) document on “Control and Penalty rules in Rural Development” the Commission provides the following guidance on the checks required by Member States regarding State aid compliance relevant to the NIRDP:

“The main compliance tests with State aid rules are recommended to be carried out during the administrative checks on applications for support. In addition, complementary tests could be carried out during the administrative checks on payment claims and during on-the-spot checks.

For instance:

* in respect of the general de minimis rule, it is possible to check the beneficiary's accounts to ensure that the total amount of EUR 200 000 de minimis aid threshold is not exceeded in three fiscal years and to verify the other conditions of the Regulation (e.g. where a farmer is active in the non-agricultural sector and in the primary production sector at the same time, it is ensured that there is a separation of activities or distinction of costs so that the activities in the primary agricultural sector do not benefit from the general de minimis aid)
* in respect of the block exemptions, particular attention should be paid to the definition of the SMEs, to the common provisions applicable to all kind of measures (incentive effect, etc) and the specific provisions for the different categories of aid (maximum amounts, maximum intensity, eligible costs, etc)

Example of most common issue identified by the Commission in the area of State aid:

• lack of verification of de-minimis rules.”

**13. Getting it wrong – potential consequences**

The Commission is the body with legal competence to decide whether aid constitutes State aid or not. It can audit schemes to check on compliance with the rules or investigate aid following a complaint from another Member State or from a competitor of an aid beneficiary who feels aid may have been provided unfairly.

A scheme that does not follow the rules could be forced to close even after it has been launched. Giving State aid unlawfully can result in the money having to be clawed back from the aid recipient (with compound interest) with possible serious consequences for that recipient (e.g. it could put an enterprise out of business).

**Appendix 1 - State Aid Checklist for Applications**

This Checklist is intended to be used by RDD considering applications for funding projects under Priority 6 of the NIRDP (2014 – 2020). In order to maintain a sufficient audit trail to demonstrate that adequate EU checks on State aid required by Article 48(2) of Regulation (EU) 809/2014 have been conducted a Checklist should be completed for each eligible project as part of the assessment process and held on file.

**Section 1 – Is the project an ‘undertaking’**

The State aid rules will only apply if the grant applicant is an ‘undertaking’ i.e. any organisation engaged in ‘economic activity.’

“Economic activity” means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.

Therefore it is the activities intended to be carried with grant support that must be considered in order to determine whether the applicant should be treated as an ‘undertaking’. It does not matter for example whether the applicant is a not-for-profit organisation, a charity or a public body

Please answer the following question from the information provided in the grant application:

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| ***Question:*** | ***Answer (Y/N):*** |
| ***Does the grant application request support for economic activity?*** |  |

If the activities being grant aided are economic in nature the grant applicant should be classified as an ‘undertaking’ and Section 2 below must be completed. .

If the answer to this question is ‘No’ no further Sections need be completed as the aid is not State Aid.

NB. It is possible that a project application may include both economic and non-economic activity. In such cases, the grant applicant will be considered as an undertaking and Sections 2 and 3 below must be considered in respect of the economic activities only

**Section 2 – Will grant support constitute State aid?**

“State aid” is aid which meets 4 conditions established by the EU Treaty. These conditions are set out in the Table below. If **any one** of these conditions is **not** satisfied the support will **not** constitute State aid.

Conditions 1 to 3 will always be satisfied when a grant is awarded to an undertaking under Priority 6 of the NIRDP. Please consider Condition 4 carefully in conjunction with the guidance provided on ‘local activities’ in paragraph 6 and Appendix 2 of this Guidance and decide whether this condition is satisfied. If you decide Condition 4 is **not** satisfied please provide adequate reasons for your determination.

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| **No.** | **Condition** | **Answer** | **Notes** |
| 1. | Is the aid granted by the State or through State resources? | Y | Support from the EAFRD and DARD’s co-financing are both regarded as ‘State Resources’. Under the NIRDP the answer to this question will always be ‘Yes’. |
| 2. | Does the aid provide a ‘selective advantage’ by favouring certain undertakings or production of certain goods? | Y | Support under the NIRDP is ‘selective’ as e.g. it is available only to applicants in rural areas. The grant aid provides an advantage as it offsets costs which would otherwise have to be borne by the undertaking itself. The answer to this question will always be ‘Yes’ |
| 3. | Does the intervention distort or threaten to distort competition? | Y | This will occur if the aid potentially or actually strengthens the position of the aid recipient in relation to competitors. Almost all selective aid will have potential to distort competition - regardless of the scale of potential distortion or market share of the aid recipient. The distortion of competition does not have to be substantial or significant. The answer to this question will always be ‘Yes’ |
| 4 | Does the intervention affect Trade between member States | Y/N  (delete as  appropriate) | This includes potential effects. Most products and services are traded between Member States and therefore aid for almost any selected economic activity is capable of affecting trade between Members States even if the undertaking does not directly trade with Member States. The only likely exceptions are single undertakings with a purely local market (see guidance at Appendix 2) |
| **Conclusion (delete as appropriate):**   * **Aid is State Aid (award aid in accordance with the options provided under Sections 3 &4 below).** * **Aid is not State Aid (Reasons must be given below) .**   **Reasons**  **Signed:**  **Date:**  **Position:**  **Counter signed by Manager:**  **Date:** | | | |

**Section 3– State Aid Option 1 – De Minimis Aid**

This Section should be completed if you have decided to fund under Option 1 ‘ De Minimis Aid’. It is intended to ensure you award de minimis aid in accordance with Regulation (EU) 1407/2013.

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| Question | Answer | Notes |
| |  | | --- | | Does the application concern activities in any one of the following sectors:   * fishery and aquaculture * primary production of agricultural products * processing and marketing of agricultural products where the amount of aid is fixed upon the basis of the price or quantity of products purchased or put on the market | | Y/N | |  | | --- | |  |   Reg (EU) 1407/2013 does not permit aid to these sectors. |
| Will the aid:   * provide support to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;  |  | | --- | | * aid contingent upon the use of domestic over imported goods. | | Y/N | Reg (EU) 1407/2013 prohibits such aid. |
| Is the undertaking an ‘undertaking in difficulty’ |  | Under DARD rules Undertakings in difficulty’ cannot be funded under de minimis. See appendix 4 |
| Does the grant applicant have any links with other enterprises?  This information is necessary to establish whether de minimis aid received by the other enterprises should be counted towards the €200,000 de minimis ceiling which applies to a ‘single undertaking’ (see Notes).. | Y/N | A ‘Single undertaking’ includes all enterprises having at least one of the following relationships with each other:  (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;  (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;  (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;  (d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.  Enterprises having any of the relationships referred to in points (a) to (d) through one or more other enterprises shall also be considered to be a single undertaking. |
| Has a declaration been obtained from the undertaking to confirm the amount of de minimis aid that has been received in current and previous two fiscal years? A standard declaration is provided at Appendix 3.  For applicants with links enterprises you must take into account all de minimis aid granted to the ‘Single Undertaking’ | Y/N  Total de minimis aid received was € | The total de minimis aid awarded to any single undertaking during any period of three fiscal years must not exceed €200,000.  The grant award notices previously received by the single undertaking should provide this information. |
| Please state the award of de minimis aid now being considered and confirm that when added to any de minimis aid already awarded during the relevant three fiscal year period will not exceed the €200,000 limit | The total de minimis aid now awarded during the 3 year period is € | You should convert to € using the exchange rate current on the day the Letter of Offer is issued – this can be found [here](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm) |
| * Is there any cumulation of de minims aid with State aid or other de minimis aid? * If so, have the rules on cumulation been respected? | (i)  (ii) | See paragraph 8 of Guidance note |
| Has the undertaking been advised that the grant now awarded is de minimis aid using the standard award notice provided below? | Y/N |  |

**Section 4 – State Aid Option 2 – Block Exemption**

This Section should be completed if you have determined that the grant applicant is an undertaking (Section 1) and that the four State aid Conditions are satisfied (Section 2) and the project should be funded under Option 2 ‘block exemption’.

**NB** **RDD rules at any point in time may be more restrictive than the block exemption rules as to the costs which can be funded under the categories listed below. Where this is the case RDD rules take precedent.**

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| **Category** | **Yes/No** | **If ‘Yes’** | **DARD/EU Contribution** | **Maximum Grant** | **State Aid**  **Intensity**  **(Maximum)** |
| Aid for culture and heritage conservation |  | Complete Section 5 | 75% of eligible costs | £500k | 80% of eligible costs |
| Aid for sport and multifunctional recreational infrastructures |  | Complete Section 6 | 75% of eligible costs | £500k | 80% of eligible costs |
| Investment Aid for local infrastructures |  | Complete Section 7 | 75% of eligible costs | £500k  Note: The aid amount must not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism | 100% of eligible costs |

**Section 5– Aid for Culture and Conservation (Article 53 of Regulation (EU) 651/2014)**

DARD rules on the activities that may be funded under this category are set out within the Scheme Sheets within the EU approved Rural Development Programme. Where these are more restrictive than the block exemption rules, DARD rules take precedent

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| Question | Answer  Y/N | Notes |
| Is the undertaking subject to an outstanding State aid recovery order from the European Commission? |  | If the answer is ‘Yes’ the project cannot be funded under block exemption – seek advice from RDD |
| Is the undertaking an ‘undertaking in difficulty’ |  | Undertakings in difficulty’ cannot be funded under block exemption see appendix 4 |
| Has the aid intensity and eligible costs been calculated before any deduction of tax or other charge? |  | The aid intensity and the eligible costs of the operation must be calculated before any deduction of tax or other charge. The eligible costs must be supported by documentary evidence which shall be clear, specific and contemporary. |
| * Is there any cumulation of de minims aid with State aid or other de minimis aid? * If so, have the rules on cumulation been respected? | (i)  (ii) | See paragraph 8 of Guidance note |
| Does the aid intensity exceed €500,000 |  | New Commission rules require Member States to publish on the internet details of all individual awards exceeding €500,000. This requirement comes into force from 1 July 2016. Departmental instructions will be issued at a later date. |
| Is the aid being given for an eligible purpose or activity?  . |  | The following cultural purposes and activities are eligible for funding:   1. museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions; 2. tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State; 3. intangible heritage in any form, including folklorist customs and crafts; 4. art or cultural events and performances, festivals, exhibitions and other similar cultural activities; 5. cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies; 6. writing, editing, production, distribution, digitisation and publishing of music and literature, including translations. |
| Are all investment costs eligible? |  | The eligible costs are the investment costs in tangible and intangible assets, including:   * 1. costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80 % of either the time or the space capacity per year is used for cultural purposes;   2. costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;   3. costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;   4. costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, Braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;   5. costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project; |
| Are all operating costs eligible? |  | The eligible costs are limited to:   * 1. the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;   2. costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;   3. costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;   4. operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment aid;   5. costs for personnel working for the cultural institution or heritage site or for a project;   6. costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project. |
| For publishing of music and literature (writing, editing, production, distribution, digitisation and publishing of music and literature, including translations) – have the rules regarding aid intensity been respected?  **Note: - Aid to press and magazines** is not eligible for funding (includes publications in print or electronic) under block exemption. |  | The maximum aid amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70 % of the eligible costs. The revenues shall be deducted from the eligible costs *ex ante* or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre-press costs and printing or e-publication costs. |

**Section 6 - Aid for Sport and Multifunctional Recreational Infrastructures (Art 55 of Regulation (EU) 651/2014)**

DARD rules on the activities that may be funded under this category are set out within the Scheme Sheets within the EU approved Rural Development Programme. Where these are more restrictive than the block exemption rules, DARD rules take precedent

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| Question | Answer  Y/N | Notes |
| Is the undertaking subject to an outstanding State aid recovery order from the European Commission? |  | If the answer is ‘Yes’ the project cannot be funded under block exemption – seek advice from RDD |
| Is the undertaking an ‘undertaking in difficulty’ |  | Undertakings in difficulty’ cannot be funded under block exemption. see appendix 4 |
| Has the aid intensity and eligible costs been calculated before any deduction of tax or other charge? |  | The aid intensity and the eligible costs of the operation must be calculated before any deduction of tax or other charge. The eligible costs must be supported by documentary evidence which shall be clear, specific and contemporary |
| * Is there any cumulation of de minims aid with State aid or other de minimis aid? * If so, have the rules on cumulation been respected? | (i)  (ii) | See paragraph 8 of Guidance note |
| Does the aid intensity exceed €500,000 |  | New Commission rules require Member States to publish on the internet details of all individual awards exceeding €500,000. This requirement comes into force from 1 July 2016. Departmental instructions will be issued at a later date. |
| Does the project comply with the rules on professional / non-professional sports users? |  | The funded sport infrastructure must not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users must annually account for at least 20 % of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage must be calculated.   If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available. |
| Does the project have a multi-functional character |  | Multifunctional recreational infrastructure must consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities. |
| Does the project comply will the rules on access? |  | Access to the sport or multifunctional recreational infrastructures must be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30 % of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available. |
| Concessions or entrustments to 3rd parties (if applicable) |  | Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on a open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules. |
| Are all Operating Aid costs eligible? |  | The eligible costs are limited to the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid. |
| Are the Aid intensities within limits (Investment Aid and/or Operating Costs)? |  | Aid for (i) Investment Aid and (ii) Operating Costs is capped at 75% |

**Section 7 - Investment Aid for Local Infrastructures (Art 56 Reg (EU) 651/2014)**

DARD rules on the activities that may be funded under this category are set out within the Scheme Sheets within the EU approved Rural Development Programme. Where these are more restrictive than the block exemption rules, DARD rules take precedent

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| Question | Answer  Y/N | Notes |
| Is the undertaking subject to an outstanding State aid recovery order from the European Commission? |  | If the answer is ‘Yes’ the project **cannot** be funded under block exemption – seek advice from RDD |
| Is the undertaking an ‘undertaking in difficulty’ |  | Undertakings in difficulty’ **cannot** be funded under block exemption.  see appendix 4 |
| Has the aid intensity and eligible costs been calculated before any deduction of tax or other charge? |  | The aid intensity and the eligible costs of the operation must be calculated before any deduction of tax or other charge. The eligible costs must be supported by documentary evidence which shall be clear, specific and contemporary |
| * Is there any cumulation of de minims aid with State aid or other de minimis aid? * If so, have the rules on cumulation been respected? | (i)  (ii) | See paragraph 8 of Guidance note |
| Does the aid intensity exceed €500,000 |  | New Commission rules require Member States to publish on the internet details of all individual awards exceeding €500,000. This requirement comes into force from 1 July 2016. Departmental instructions will be issued at a later date |
| Does the construction or upgrade of local infrastructures concern infrastructure that contributes at a local level to improving the business and consumer environment and modernising and developing the industrial base? |  | If the answer is ‘No’ block exemption cannot be used. Please consider using de minimis aid. |
| Will the infrastructure be ‘dedicated infrastructure’? |  | “Dedicated infrastructure” cannot be funded under block exemption. |
| Will the infrastructure be open to users in accordance with the rules? |  | The infrastructure must be made available to interested users on an open, transparent and non-discriminatory. The price charged for the use or the sale of the infrastructure shall correspond to market price. |
| Are there any concessions or other entrustments to a third party to operate the infrastructure? If so do they meet the relevant conditions? |  | Any concession or other entrustment to a third party to operate the infrastructure must be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules. |
| Can the costs identifiable be classified as tangible and/or intangible investments? |  | Only tangible and/or intangible investments are eligible under this category of block exemption. |

**Appendix 2 – Draft Commission Notice – Effect on Trade and Competition**

The guidance below is copied directly from a draft Commission Notice on the “Notion of Aid” and should be considered if RDD are considering whether operations fall to be treated as engaged only in local activity.

1. **General principles**

Public support to undertakings is only prohibited under Article 107(1) TFEU if it “distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods” and only insofar as it “affects trade between Member States”.

These are two distinct and necessary elements of the notion of aid. In practice, however, these criteria are often treated jointly in the assessment of State aid as they are, as a rule, considered inextricably linked.

1. **Distortion of competition**

A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For all practical purposes, a distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.

The fact that the local authorities assign a public service to an in-house provider (even if they were free to entrust that service to third parties) does not as such exclude a possible distortion of competition. However, a possible distortion of competition is excluded if (i) a given service is subject to a legal monopoly (established in compliance with EU law) and is not in competition with similar (liberalised) services and (ii) the service provider cannot be active (due to regulatory or statutory constraints) in any other liberalised (geographical or product) market.

Public support is liable to distort competition even if does not help the recipient undertaking to expand and gain market shares. It is enough that the aid allows it to maintain a stronger competitive position than it would have had if the aid had not been provided. In this context, for aid to be presumed to distort competition, it is normally considered sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day to-day business operations. The definition of State aid does not require that the distortion of competition or effect on trade is significant or material. The fact that the amount of aid is low or the recipient undertaking is small will not in itself rule out a distortion of competition or the threat thereof, provided however that the likelihood of such a distortion is not merely hypothetical.

1. **Effect on trade**

An advantage granted to an undertaking operating in a market which is open to competition will normally be assumed to distort competition and also be liable to affect trade between Member States. Indeed, “*where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid*”.

Public support can be considered capable to affect intra-EU trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply.

Even a public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States where undertakings from other Member States might provide such services (also through the right of establishment) and this possibility is not merely hypothetical. For example, where a Member State grants a public subsidy to an undertaking for supplying transport services, the supply of these services may, by virtue of the subsidy, be maintained or increased with the result that undertakings established in other Member States have less of a chance of providing their transport services in the market in that Member State. Such an effect may however be less likely where the scope of the economic activity is very small, as may be evidenced by a very low turnover.

In principle, trade can also be affected even if the recipient exports all or most of its production outside the Union, but in such situations the effect is less immediate and cannot be assumed from the mere fact that the market is open to competition.

In establishing a distortion of competition or an effect on trade, it is not necessary to define the market or to investigate in detail the impact of the measure on the competitive position of the beneficiary and its competitors. All that must be shown is that the aid is such as to be liable to affect trade between Member States and to distort competition.

However, the Commission has in several cases considered that, due to their specific circumstances, certain activities had a purely local impact and consequently did not affect trade between Member States. Common features of such decisions are that

1. the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;
2. the goods or services produced by the beneficiary are purely local or have a geographically limited attraction zone;
3. there is at most a marginal effect on the markets and on consumers in neighbouring Member States;

Some examples are:

* swimming pools and other leisure facilities intended predominantly for a local catchment area (N 258/2000 *Leisure Pool Dorsten)*;
* museums or other cultural infrastructure unlikely to attract visitors from other Member States (N 630/2003 *Local Museums Sardinia &* SA.34466 *Cyprus – Center for Visual Arts and Research;*
* hospitals and other health care facilities aimed at a local population ( N543/2001 *Ireland – Capital allowances for hospitals*,& SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*);
* news media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience (N 257/2007 *Subsidies for theatre productions in the Basque country;*  N 458/2004 *Editorial Andaluza Holding;* SA.33243 *Jornal de Madeira)*;
* a conference centre, where the location and the potential effect of the aid on prices is unlikely to divert users from other centres in other Member States (N 486/2002 *Sweden – Congress hall in Visby)*
* concerning the financing of cable ways (and in particular ski lifts), the Commission practice clarified that the following factors should typically be taken into account to draw a distinction between installations liable to have a local catchment area and others262: a) the location of the installation (e.g. within cities or linking villages); b) operating time; c) predominantly local users (proportion of daily as opposed to weekly passes); c) the total number and capacity of installations relative to the number of resident users; d) other tourism-related facilities in the area. Similar factors could, with the necessary adjustments, also be relevant for other types of facilities.

Appendix 3 **De-Minimis Declaration**

To Be Completed by Applicant (variables to be completed by admin Unit)

**Standard Declaration**

*In order to minimise distortion of competition the European Commission sets limits on how much assistance can be given without its prior approval to organisations operating in a competitive market.*

*This letter sets out what is needed to ensure compliance with those limits. You should note carefully the requirements and the obligations. If you have any queries please discuss them with [the aid administrator].*

*Under EU Regulation 1407/2013 (De Minimis Aid Regulation) as published in the Official Journal of the European Union on 24 December 2013, [OJ L 352 24.12.13, p1 – 8 ] the support provided is a De minimis aid.*

*There is a ceiling of €200,000 [€100,000 for undertakings in the road freight transport sector] for all De minimis aid provided to any single undertaking over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years).*

*Any De minimis aid provided to you under this scheme will count towards the €200,000 ceiling and will be relevant if you wish to apply, or have applied, for any other De minimis aid. The value of the aid under this scheme is €xxxx / £xxxxx .*

*You will need to declare this amount to any other aid awarding body who requests information from you on how much De minimis aid you have received. For the purposes of the De minimis regulation, you must retain this letter for 10years from the date on which the aid is granted and produce it on any request by the UK public authorities or the European Commission. (You may need to keep this letter longer than 10 years for other purposes)*

***Please advise us now of any other De minimis aid*** *which your enterprise and any enterprises linked to it may have received during your current and previous two fiscal years, as we need to check that our support added to that previously received, will not exceed the threshold of €200,000 (€100,000 for undertakings in the road freight transport sector) over the last 3 fiscal years.   
  
De Minimis Aid includes not only grant but also assistance such as free or subsidised consultancy services, marketing advice etc. If you are in any doubt about whether previous assistance received classes as De minimis assistance please include it. Please sign the attached statement confirming your eligibility for support.*

***Statement of De minimis aid received***

*I confirm that I have / have not received the following De minimis aid during the previous 3 fiscal years (i.e. current fiscal year and the previous two fiscal years):*

|  |  |  |
| --- | --- | --- |
| Body providing the assistance/aid | Value of assistance (calculating the Gross Grant Equivalent) | Date of assistance |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

*Declaration*

I acknowledge that if I fail to meet the Eligibility Requirements, I/we shall become liable to pay the full price that would otherwise be payable in respect of the services received.

|  |  |
| --- | --- |
| *Company* |  |
| *Client Name* |  |
| *Signature* |  |
| *Date* |  |

**Appendix4 – Definitions**

The following definitions are relevant to this Guidance and associated checklist.

**Common Definitions (Relevant to all block exemptions)**

* **‘intangible assets’** means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property
* **‘tangible assets’** means assets consisting of land, buildings and plant, machinery and equipment;
* **‘undertaking in difficulty’** - The definition of an ‘undertaking in difficulty’ is set out in Article 2(18) of the Regulation and means:-

“an undertaking in respect of which at least one of the following circumstances occurs:

* In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and ‘share capital’ includes, where relevant, any share premium.
* In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, ‘a company where at least some members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.
* Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
* Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.
* In the case of an undertaking that is not an SME, where, for the past two years:
  + - the undertaking's book debt to equity ratio has been greater than 7,5 and
    - the undertaking's EBITDA interest coverage ratio has been below 1

**Culture and Heritage Conservation (Article 53 of Regulation (EU) 651/2014)**

The following definitions are relevant to Aid for culture and heritage conservation

* **‘difficult audiovisual works’**: means the works identified as such by Member States on the basis of pre-defined criteria when setting up schemes or granting the aid and may include films whose sole original version is in a language of a Member State with a limited territory, population or language area, short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works.

**Sport and Multifunctional Infrastructures (Article 55 of Regulation (EU) 651/2014)**

The following definitions are relevant to aid to multifunctional infrastructures:

* **‘professional sport’** means the practice of sport in the nature of gainful employment or remunerated service, irrespective of whether or not a formal labour contract has been established between the professional sportsperson and the relevant sport organisation, where the compensation exceeds the cost of participation and constitutes a significant part of the income for the sportsperson. Travel and accommodation expenses to participate to the sport event shall not be considered as compensation for the purposes of this Regulation.

**Investment Aid for Local Infrastructures (Article 56 of regulation (EU) 651/2014**

There is no definition of ‘local infrastructure’ within the block exemption Regulation however the wording of the Article makes it clear that such infrastructure must contribute at a local (rather than national or regional level to improving the business and consumer environment and modernising and developing the industrial base. Infrastructure that is built to benefit only a specific business and which is tailored to its needs is regarded as ‘dedicated infrastructure’ and is ineligible for funding under this block exemption.

1. Regulation (EU) 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural fund for Rural Development (EAFRD) and repealing Council Regulation (EC) 1698/2005 [↑](#footnote-ref-1)
2. ‘Public expenditure’ isdefined as “ any public contribution to the financing of operations the source of which is the budget of national, regional or local public authorities, the budget of the Union related to the ESI Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies ..” (Art 2(15) of Regulation (EU) 1303/2013 refers). [↑](#footnote-ref-2)
3. <http://ec.europa.eu/competition/consultations/2014_state_aid_notion/draft_guidance_en.pdf> [↑](#footnote-ref-3)
4. Commission Regulation (EU) 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid [↑](#footnote-ref-4)
5. Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [↑](#footnote-ref-5)