



# State Aid guidance – The Basics

An overview of State Aid rules and how they might apply to Social Investors providing finance to Charities and Social Enterprises via the Growth Fund

# State Aid – What is it all about?

## WHAT IS STATE AID?

- State Aid can occur **whenever state resources are used to provide assistance that, even theoretically could give an organisations an advantage over others.**
- This assistance can be provided by a range of public bodies – from government departments and local authorities to institutions such as the Big Lottery Fund
- The definition of State Aid is very broad as **assistance can take many forms** and includes, for example: Grant aid or subsidies, loans granted at preferential terms to market rates, debt write-offs etc.
- Essentially, State Aid is an inflow of resources which an undertaking (an organisation engaged in economic activity) could not get on the open market

## WHY WERE STATE AID LAWS INTRODUCED?

- A core principle of the European Union (EU) is **free trade between member states** – e.g. a company in one country is able to compete for business with a company in another country, free of state support potentially distorting the market or creating an advantage over others.
- In principle, with strong rules, those who receive advantages from the state won't become overly reliant on aid and will remain incentivised to innovate or make efficiencies. New market entrants are encouraged and weak companies are less likely to stay in the market. Ultimately, **State Aid rules promote a level playing field.**

## IS STATE AID ALWAYS PROHIBITED?

- Where there is a **genuine market failure, State Aid might be necessary and justified.**
- An exception is made for aid that really changes the behaviour of the organisation that receives it and which is the best way to address the failure and limit distortions, and where the benefits outweigh any negative effects on competition. This could be where charities and social enterprises come in.

---

## How to determine whether assistance is State Aid – The “4 Steps” Test

**Step 1:**  
Is the assistance granted by the State or through State Resources?

▶ **Step 2:**  
Does the assistance give an advantage to one or more undertakings over others?

▶ **Step 3:**  
Does the assistance distort or have the potential to distort competition?

▶ **Step 4:**  
Does the assistance affect trade between member states, even theoretically?

If the answer to **all four** questions is 'Yes', your assistance is almost certainly State Aid. If one of the tests is not met, it is unlikely it is State Aid, but seek advice.

# When will State Aid not apply? And what exemptions exist if it does?

## WHEN MIGHT STATE AID RULES NOT APPLY?

State Aid **will not apply if one of the 4 tests are not met**. Relevant examples in the context of the Growth Fund include:

- ▶ Investments or Loans made on purely *commercial terms* are not considered State Aid. WHY? They confer no commercial advantage to the Investee
- ▶ Charities receiving state resources as grants to provide charitable activities WHY? The state resources are not providing an economic advantage to this organisation over another
- ▶ Payment for the provision of Services of General Economic Interest (SGEI) – this is a service of an economic nature that public authorities identify as being of particular importance to citizens and that would not be supplied (or supplied under different conditions) if there were no public intervention. Four cumulative conditions need to be met in order for the assistance not to be deemed State Aid under SGEI. View detailed guidance for these four cumulative conditions.

## IF STATE AID IS GIVEN, WHAT EXEMPTIONS ARE AVAILABLE?

### THE DE MINIMIS REGULATION

Aid up to a **total of €200,000 to one organisation over a rolling three year period is exempt**. The Aid is considered sufficiently small that trade will not be significantly distorted as a result. If the organisation is providing **Services of General Economic Interest**, the De Minimis exemption rises to **€500,000**. De Minimis **applies to ALL public funded support in a three year period**, not just that from the Growth Fund.

### THE GENERAL BLOCK EXEMPTION (GBER) REGULATION

These exemptions outline the areas in which State Aid **investment is allowable due to social, development or growth goals of the EU**. The relevant articles for the Growth Fund are Article 21, 22 and 24. If met, there is no need to wait for approval from the EC, but they must be notified within 20 working days of the aid being granted. (Specific eligibility criteria included in detailed guidance)

### RISK FINANCE AID – (ARTICLE 21)

Risk Finance Aid is designed to encourage private investment into SMEs. Where other private co-investment is made alongside the Growth Fund on as close terms as possible, Article 21 could be relevant. View detailed guidance for more information and eligibility criteria.

### AID FOR START-UPS – (ARTICLE 22)

Provides aid for start-up finance in terms of loans offered below market rates. Designed to support organisations less than five years old and with a limited track record. This could fit with the Growth Fund charities and social enterprises. View detailed guidance for more information and eligibility criteria.

### AID FOR SCOUTING COSTS – (ARTICLE 24)

Allows for up to 50% of the initial screening and due diligence costs ('scouting costs') incurred by social investors for financing charities and social enterprises which meet Articles 21 and/or 22.

# Would assistance via the Growth Fund be considered as State Aid?

- The **Growth Fund** has been designed to meet the needs of smaller charities and social enterprises with **access to unsecured, flexible finance which is affordable and appropriate** for their needs.
- It is funded by **two public funders – Big Society Capital (BSC) and The Big Lottery Fund**. Both organisations administer some state resources.
- The Growth Fund **blends loan capital (from BSC) with grant funding (from The Big Lottery Fund)** to fill the gap in the social investment market that exists for smaller loans for small charities and social enterprises.

## **BIG SOCIETY CAPITAL**

BSC is partly funded through monies from dormant bank accounts released for social spending through the Dormant Accounts Scheme (because of the involvement of government, these funds are classified as State Resources) **NB:** BSC's use of funds to social investors has been cleared by the European Commission (EC), therefore there are no State Aid implications of BSC loans made to social investors. This clearance is only valid at social investor level and on-lending to charities and social enterprises by social investors must be considered for State Aid

## **BIG LOTTERY FUND**

Big Lottery Fund's resources are also considered public funds and are therefore subject to State Aid considerations. There is no clearance for use of grants at social investor level or at the charities and social enterprise level by the European Commission (EC).



## **Applying the “4 Step” Test to Growth Fund Assistance (From ACCESS to a social investor)**

### **Step 1:**

Is the assistance granted by the State or through State Resources?



Both BSC and Big Lottery Fund distribute State Resources

### **Step 2:**

Does the assistance give an advantage to one or more undertakings over others?



Support to social investor or charities and social enterprises may mean an unfair advantage compared to others in the industry, whether or not they are profit making

### **Step 3:**

Does the assistance distort or have the potential to distort competition?



The assistance strengthens the recipient relative to its competitors. The assistance does not have to be substantial or significant.

### **Step 4:**

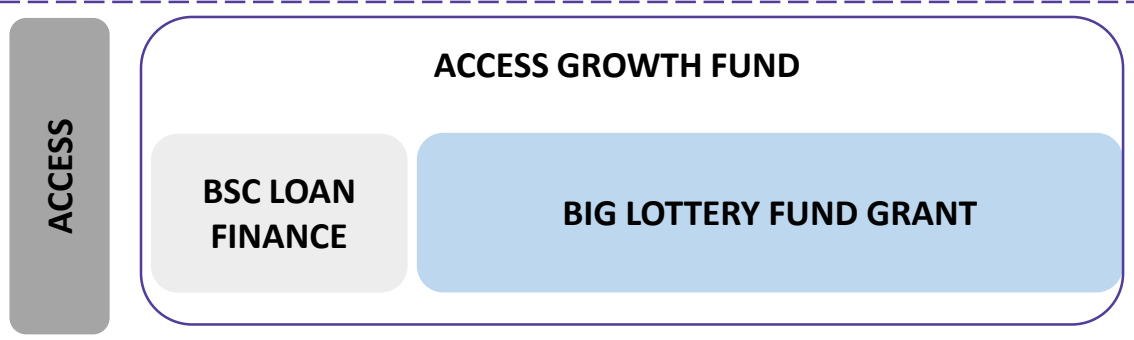
Does the assistance affect trade between member states?



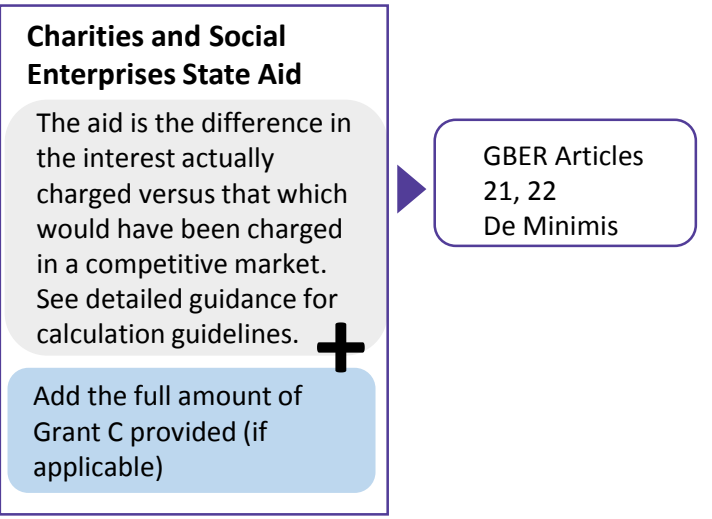
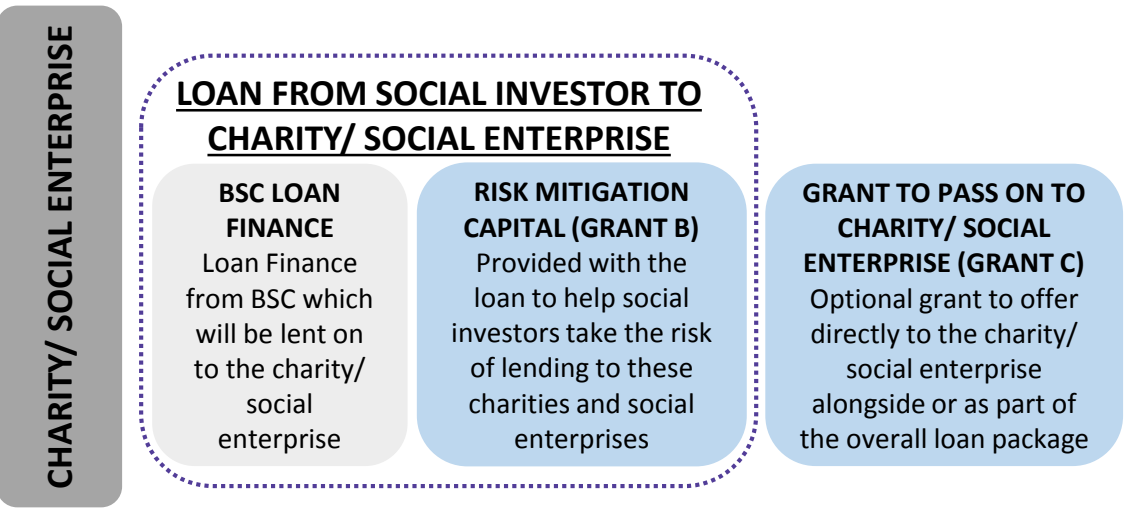
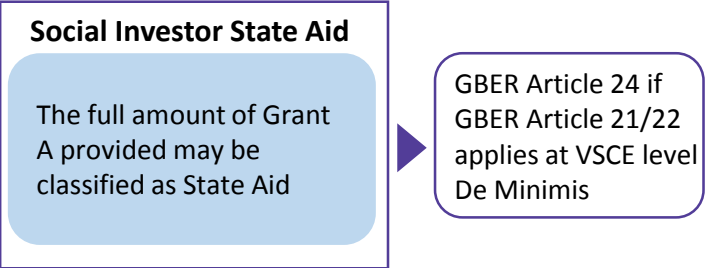
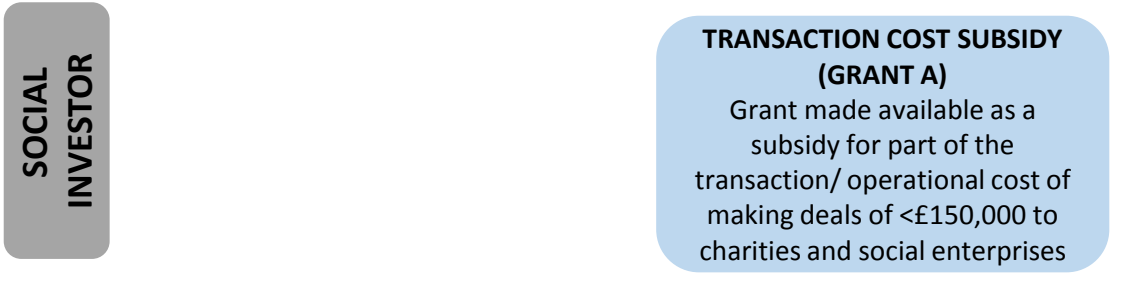
Other EU finance organisations, not in receipt of Growth Fund funds, could come to the UK and offer a similar financial product, however unlikely this may be.

# Growth Fund: State Aid implications and possible exemptions

## Growth Fund Flow of Funds

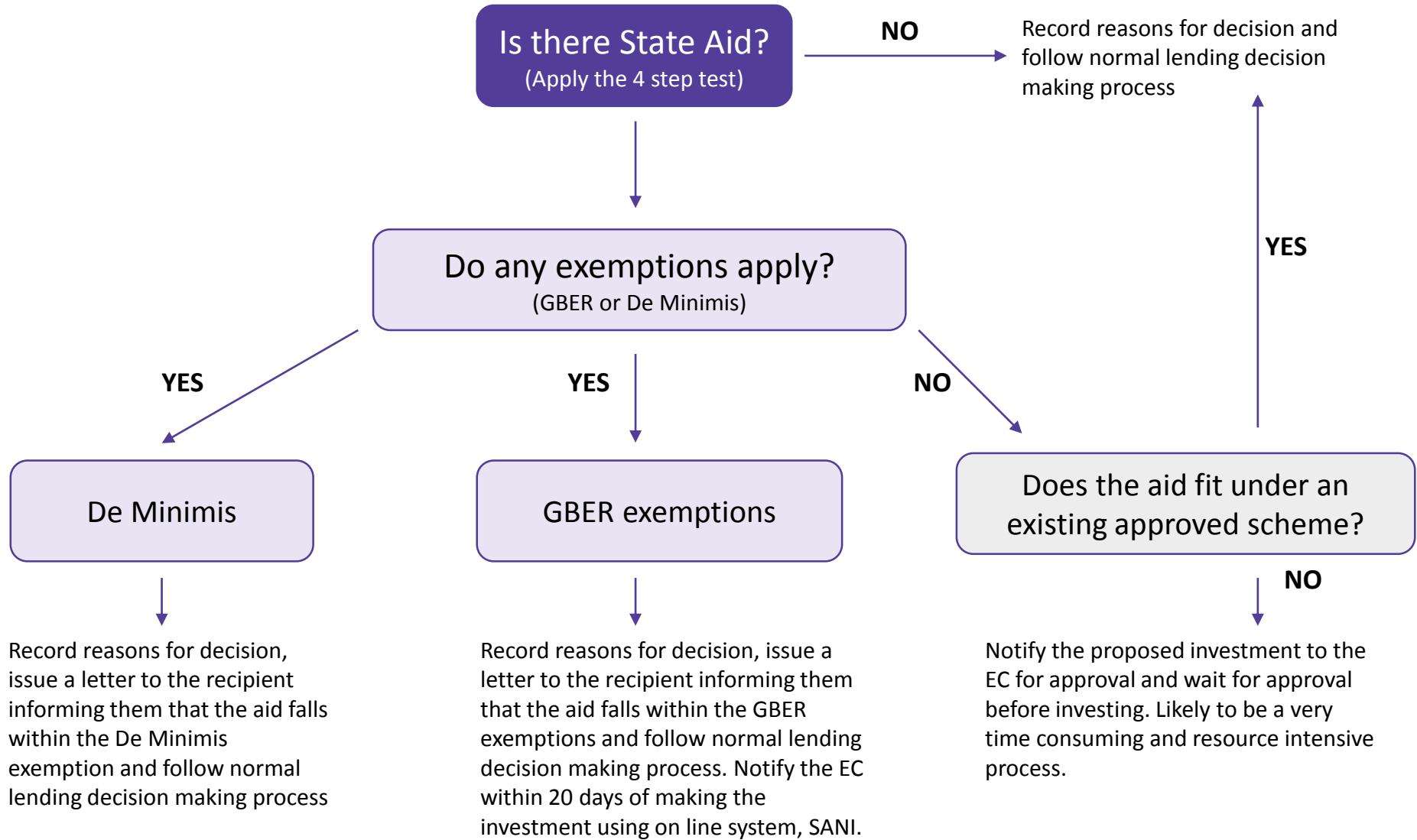


## State Aid Implications



# State Aid Decision Process

## State Aid Decision Process



**NOTE:** Reporting requirements are covered extensively in the Detailed Guidance.

## KEY PRINCIPLES AND CONSIDERATIONS FOR SOCIAL INVESTORS

▶ **Use the State Aid exemptions to maximum effect.** For example:

- Consider scheduling the finance to fit with the best use of the three year rolling De Minimis exemption  
NB: De Minimis applies to all public funded support received by an organisation in a three year period, not just from the Growth Fund. As long as all the aid is below the threshold in the three year period, the exemption holds.
- Remember that loan finance is less draining on the State Aid 'allowance' than grants
- Use all exemptions (especially under GBER) fully, leaving more headroom for De Minimis

▶ **Think about State Aid rules early and don't ignore it!** Check your financing plans comply with State Aid rules before you pay any money out. A scheme that does not follow the rules could be forced to close, even after it is launched. Giving State Aid illegally could result in the money having to be clawed back with possibly very serious consequences for the recipient. Social investors will need to demonstrate to Access that they have the appropriate systems, processes and controls in place to ensure that State Aid rules are adhered to as part of the terms and conditions of receiving the funding.

▶ State Aid can be complicated – **Access recommends that social investors seek independent legal advice** on their organisations and their lending to charities and social enterprises. In addition to this guide and the more detailed Access guide, there is guidance produced by the Department for Business Innovation & Skills as well as by the European commission

## OTHER SOURCES OF GUIDANCE

▶ Department of Business Innovation & Skills – State Aid Basics Guide:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443686/BIS-15-417-state-aid-the-basics-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443686/BIS-15-417-state-aid-the-basics-guide.pdf)

▶ Department of Business Innovation & Skills – The State Aid Manual

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443742/BIS-15-148-state-aid-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443742/BIS-15-148-state-aid-manual.pdf)

▶ European Funding Network guidance

<http://europeanfundingnetwork.eu/policy/eu-state-aid>