

State Aid Aspects of State Guarantees

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State Aid Aspects of State Guarantees

State guarantees may be granted by

- the State itself (central or regional authorities)
 - local authorities
 - State owned financial institutions
 - other institutions under the dominant influence of the State
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State Aid Aspects of State Guarantees

Possible benefits from a State guarantee:

- The State takes over the risk of the loan.
 - The borrower pays a premium below market rates or no premium at all.
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- The borrower gets better credit terms from the bank (lower interest rate, less security needed, longer duration etc.)

 - A borrower gets a loan who would not get a credit at all without the guarantee.
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The Commission Notice distinguishes between two main types of State guarantees:

- Individual guarantees**
Have to be notified if they contain State aid elements.
 - State guarantee programs = schemes**
Only the schemes need to be notified, individual guarantees which correspond to the terms of the scheme do not need to be notified
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The basis for the assessment of State guarantees under State aid aspects is:

Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 71/14 of March 11, 2000)

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Legal relations in State guarantee cases:

- ❑ borrower – bank: loan contract
 - ❑ borrower – State: guarantee promise
(administrative act)
 - ❑ State – bank: guarantee award
 - ❑ State – Commission: notification
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Beneficiaries of a State guarantee:

the borrower

(lower premium, lower interest rate, better conditions)

the lender

(retroactive reinforcement of the security)

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Calculation of the cash grant equivalent:

□ Individual State guarantees:

- Normally the difference between the interest rate on the market and the rate obtained after deduction of premiums paid to the State
 - Exceptionally:
The whole amount of the loan covered by the guarantee
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□ State guarantee schemes:

- Difference between the guaranteed sum, multiplied by a risk factor, and the premium paid to the State
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Individual State guarantees are NOT State aid if

- ❑ the borrower is not in financial difficulty;
 - ❑ the borrower is able to get a loan on market conditions without guarantee;
 - ❑ the guarantee is connected to a financial transaction;
 - ❑ the guarantee does not cover more than 80 % of the credit amount.
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- ❑ the guarantee is limited to a maximum amount;
 - ❑ the guarantee has a limited duration;
 - ❑ The borrower pays for the guarantee a premium which corresponds to market conditions
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State guarantee schemes do not contain State aid if

- ❑ borrowers who are in financial difficulty are excluded;
 - ❑ borrowers are able to get a credit on the financial market without State guarantee;
 - ❑ the guarantee is linked to a financial transaction;
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- ❑ the guarantee does not cover more than 80 % of the credit amount;
 - ❑ the guarantee is limited to a maximum amount;
 - ❑ the guarantee has a limited duration;
 - ❑ the conditions of the guarantee are based on a realistic risk assessment;
 - ❑ premiums cover risks and costs;
 - ❑ annual review of the scheme.
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Flexibility clause:

- ❑ An individual State guarantee or a State guarantee scheme is not **AUTOMATICALLY** regarded as State aid if one of the above mentioned criteria is absent.
 - ❑ In this case the scheme must be assessed on the background of the specific situation.
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If an individual State guarantee or a State guarantee scheme contains State aid, its compatibility with the Common Market will be examined according to the same rules

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as

applied to other forms of aid:

- horizontal aid
 - regional aid
 - sectoral aid
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In accordance with the various guidelines and frameworks, the following criteria will be taken into account:

- ❑ the objectives pursued by the State guarantees
 - ❑ the characteristics of the beneficiaries
 - ❑ the aid intensity of the State guarantee
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The Member States have to submit annual reports on State guarantees to the Commission.
