



Structural Funds and State Aid Rules

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Article 107(1) TFEU

“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 the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”

Applicability of Art 107(1): Four criteria

- Aid from public funds [granted by MS] or through state resources to undertakings [not individuals or households]
- Aid confers advantage [provides favour]
- Aid is selective [to certain undertakings or production of certain goods]
- Aid affects trade & distorts competition between MS [criteria are cumulative, not alternative]

EC system of state aid control

European Commission

Principle: state aid in any form is in general incompatible with the common market

Procedure: notification, standstill, authorisation [plus, register, reports, recovery, etc.]

Existence of state aid

two fundamental issues

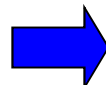
Exceptions applicable?

Exceptions

Options



Conditions



Regulation on de minimis aid
=> no aid in meaning of Art 107(1)

Article 107(2): compatible with CM

- aid to individuals
- natural disasters; exceptional occurrences
- division of Germany

Article 107(3): may be compatible with CM

- underdevelopment
- European projects; serious disturbance
- certain economic activities or areas
- culture & heritage
- other

Article 106(2): SGEI
Article 93: transport

Guidelines: Horizontal

- regional development
- environmental protection
- R&D&I
- rescue & restructuring
- fiscal aid
- risk capital for SMEs
- PSC framework
- Temporary framework

Guidelines: Sectoral

- agriculture & fisheries
- transport
- broadcasting
- electricity
- shipbuilding
- banking

Regulations

- General block exemption regulation
- agriculture & fisheries
- coal

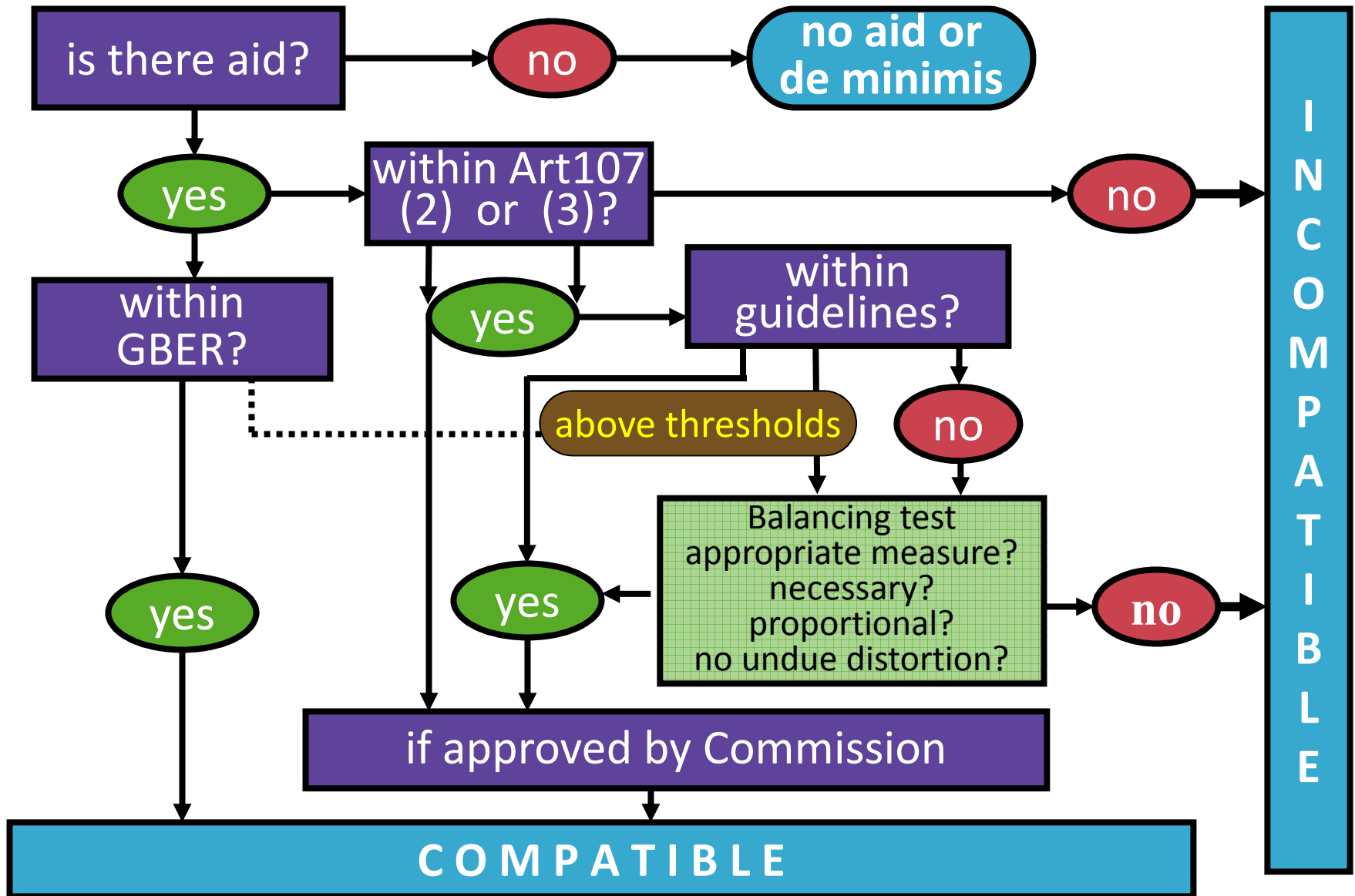
Decision on PSC

Balancing test

Aid outside guidelines must be within Art 107(2 or 3)

- necessary & proportional
- in EU's interest
- not contrary to other provisions in EC Treaty

State aid decision sequence



Principal Question

Do Structural Funds constitute State Aid?

Commission position

N201/2006: Commission Decision on National broadband project (Greece)

*“The measure is partly financed with European structural funds, which qualify as state resources once they come under the **control** of Member States”*

cont.

N 672/2007 – Investment aid scheme for the reduction of VOC emissions (Czech Republic)

*“In the case at issue the resources from the Cohesion Fund will be made available to the competent national authorities and constantly remain under their control. [...]. **No direct transfer between the Community budget and the beneficiaries may take place.** Therefore, in the case at issue, the resources from the Cohesion Fund qualify as State resources. For obvious reasons, this is also the case for the resources of national origin”*

cont.

*“The award of grants under the notified scheme will be imputable to the State. The activities of the Cohesion Fund [...] take the form of Operational Programmes, one of them being the Environmental Operational Programme. Operational programmes [...] set out general objectives and priorities, and consequently leave **significant margin of discretion** to the Member States for the use of the resources from the Structural Funds. In the case at issues, the Ministry of the Environment [...] will be responsible for the selection of the projects and the attribution of financial means to the beneficiaries. Therefore, the measures [...] will be imputable to the State”.*

cont.

N342/2008: Housing and Social Programme for problematic districts (Czech Republic)

*“The scheme grants support by means of ERDF funds and funds from the State’s budget which are awarded by managing authority of the Integrated Operational Programme [...], it appears that the resources of the scheme and decisions of the managing authority of the IOP **are directly imputable to the State** and thus constitute State resources within the meaning of Article 87(1)EC”*

Basic Principles

- *“For State aid to enterprises within the meaning of Article 87 of the Treaty, public aid granted under operational programmes shall observe the ceilings on State aid”*. [Article 54(4)]



When?



- *“The managing authority shall be responsible for [...] ensuring that operations [...] comply with applicable Community and national rules [...]”*. [Article 60(a)]

Three questions

- What is public aid?
 - it is the sum of EC and MS aid
- How much public aid may be granted?
 - only up to the state aid ceilings
- When do SF operations create a SA situation?
 - when the conditions of Art 107(1) are satisfied

Article 55 & State aid

- Revenue-generating projects: any operation involving an investment in infrastructure the use of which is subject to charges borne directly by users or any operation involving the sale or rent of land or buildings or any other provision of services against payment
- Article 55 sets out how revenues from such projects should be taken into account when calculating eligible expenses
- Article 55(6): this article shall not apply to projects **subject to the rules on State aid within the meaning of Article 107 of the Treaty**
 - where a revenue-generating project **is subject** to the rules on State aid, it is not subject to paragraphs 1 to 5 of Article 55
 - where a revenue-generating project **is not subject** to the rules on State aid, it is subject to paragraphs 1 to 5 of Article 55

Article 55 & de minimis aid

Operations in receipt of de minimis aid should be considered as “projects subject to the rules on State aid”, although such aid is not subject to Article 107

- otherwise managing authorities would have the administrative burden to take into account de minimis aid when calculating eligible expenditure for funding purposes

Other state aid provisions in SF Regulation 1083/06

- Art 2(5): ‘public expenditure’: any public contribution ...whose origin is the budget of the State [...] of the EC related to the SF [...]
- Art 9(2): SF operations must conform with competition rules
- Art. 37(e)(ii): Each OP should contain information on state aid
- Article 53(1): Contributions from the SF shall be calculated with reference to [...] public eligible expenditure

cont.

- Art 60(a): Managing authorities must ensure that operations comply with applicable EC rules, including State aid, or whether it is a revenue-generating project
- Art 78: Statement of expenditure for aid schemes
- Art 90 [3-year availability of documents]: Without prejudice to Art 107 TFEU => 10 years
- Art 101 [obligations of MS]: Financial correction by Commission does not prejudice obligations for recovery under Art 107 TFEU



Notification of OPs

Justification for public contribution [1]

Competition

Does this project involve State Aids?

Yes

No

If yes, please give in the table below the amount of aid, and, for approved aid the state aid number and the reference of the approval letter, for block-exempted aid the respective registry number, and for pending notified aid the state aid number [1].

[1] This application does not replace notification to the Commission under Article 108 (3) of the Treaty. A positive decision by the Commission on the major project under Regulation (EC) No 1083/2006 does not constitute state aid approval.

Justification for public contribution [2]

Sources of aid (local, regional, national and Community):	Amount of aid euro	State Aid number/ registry number for block-exempted aid	Reference of approval letter
Approved aid schemes, approved ad hoc aid, or aid falling under a block exemption regulation : <ul style="list-style-type: none"> • • 			
Aid foreseen under pending notifications (ad hoc aid or schemes) : <ul style="list-style-type: none"> • • 			
Aid for which a notification is outstanding (ad hoc aid or schemes) <ul style="list-style-type: none"> • • 			
Total aid granted:			
Total cost of the investment project			



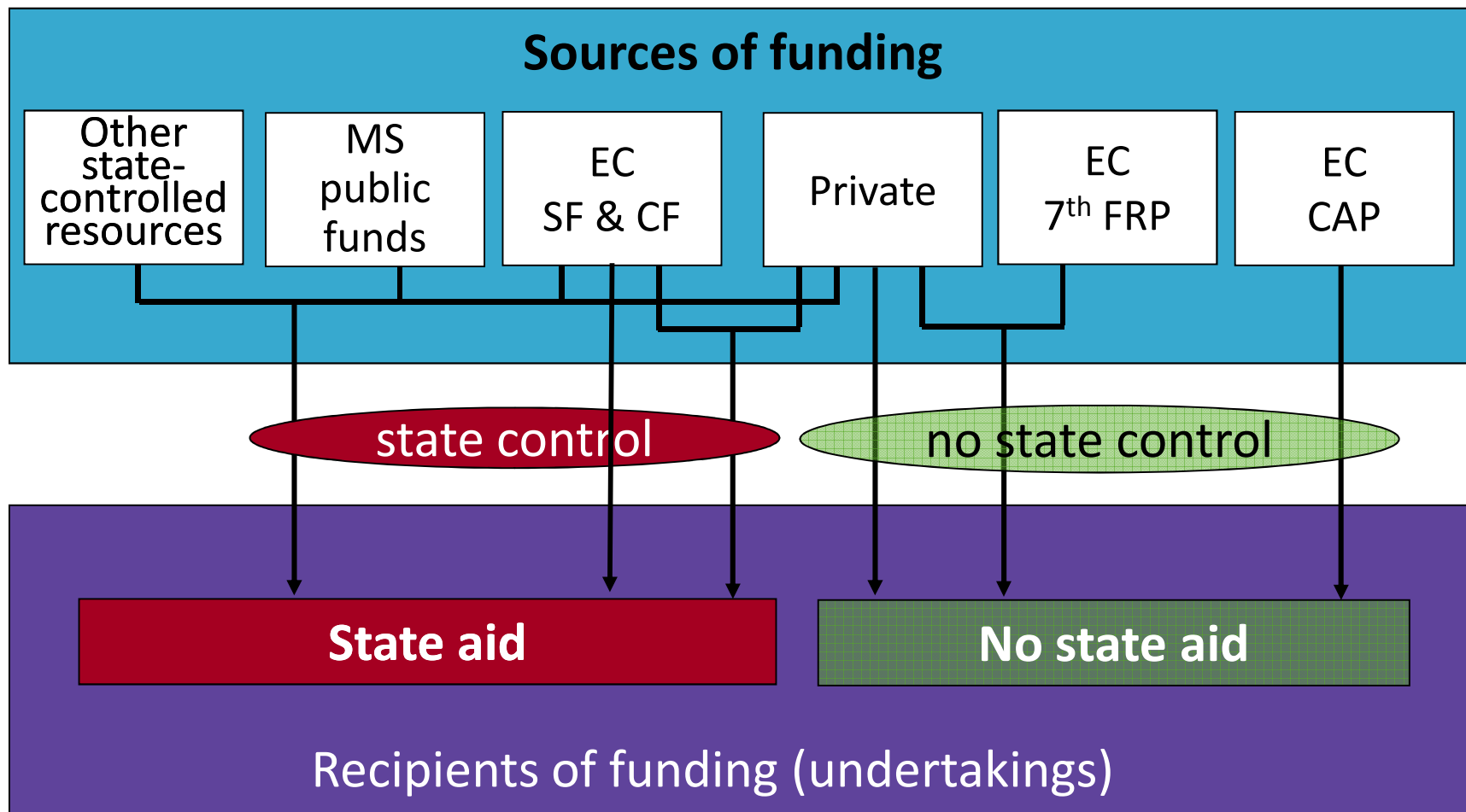
OP & state aid – SUM UP

- Approval of OP by DG REGIO does not prejudice DG COMP position on state aid
- Submission of OP does not replace normal notification requirement for state aid
 - **Norm: separate notification/approval is necessary**
- State aid granted under the OP must be
 - either in conformity with GBER
 - or notified to and approved by Commission
- No interim or final payments for measures containing state aid which is not yet cleared

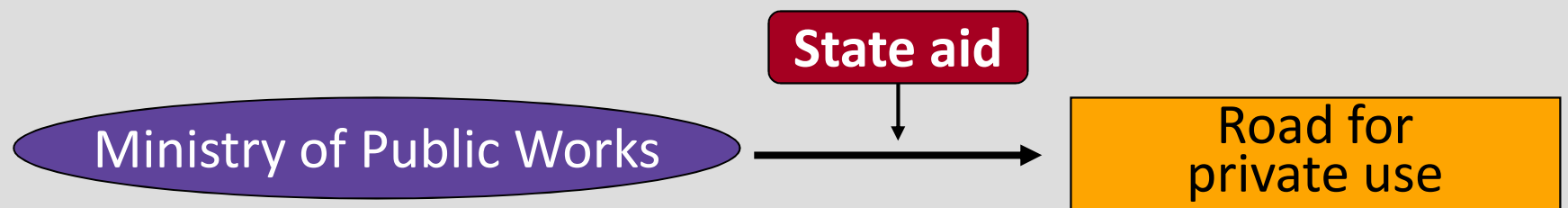
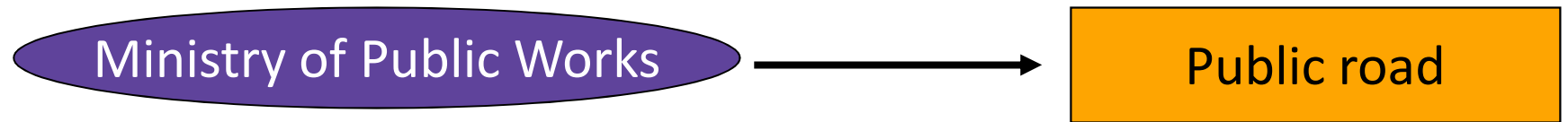


Examples

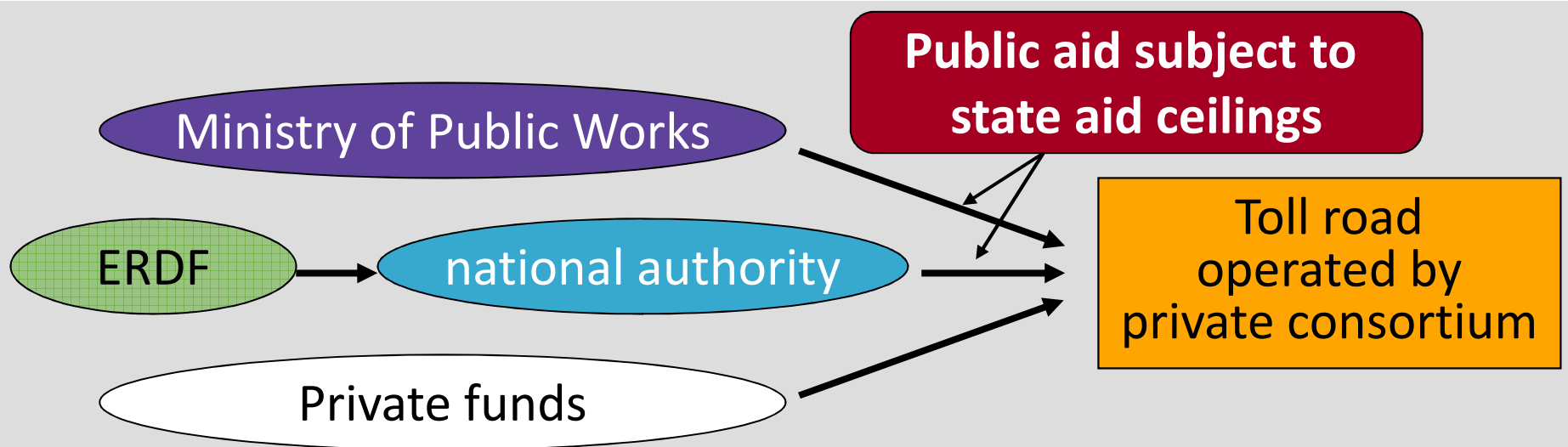
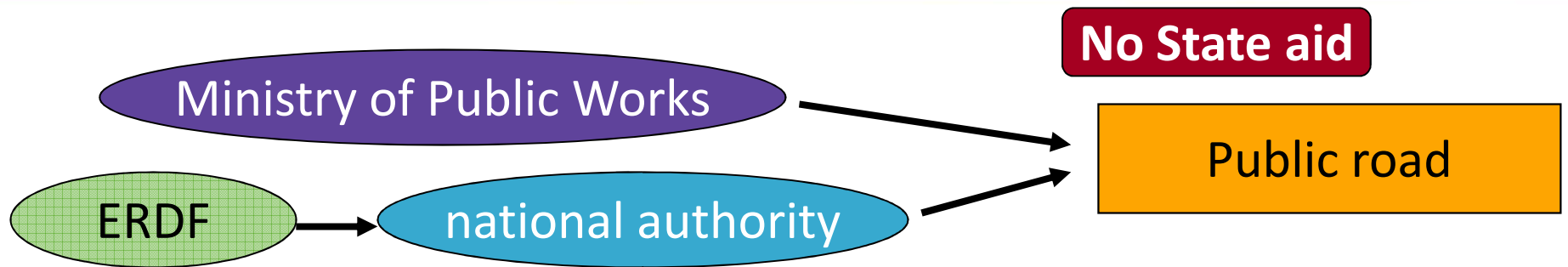
Sources of funding and state aid situations



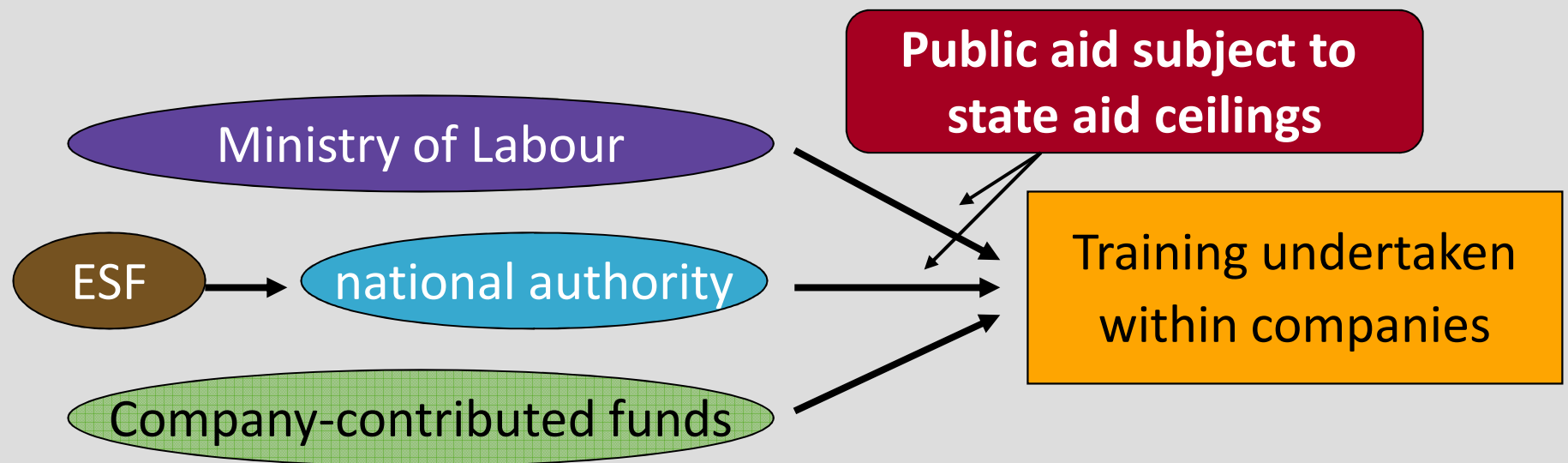
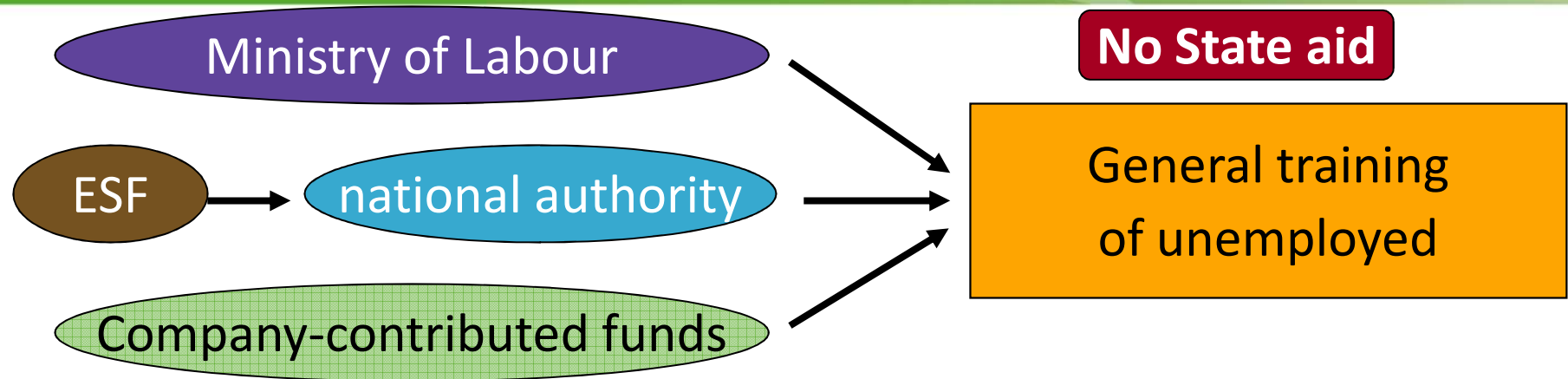
Examples of projects with & without state aid



Examples of state aid & ERDF



Examples of state aid & ESF



Conclusions

- State aid rules apply to any project which is funded by national public money and is for the benefit of an undertaking
- Action approved by DG REGIO that includes state aid must also receive the approval of DG COMP
 - except in cases of de minimis or general block exemption regulation
- State aid ceilings and conditions must be respected in all cases where there is public aid



Do You Have Any Questions?

We would be happy to help.