Rialtas na hÉireann
Government of Ireland

Ireland's response to review of Guidelines on State aid for climate, environmental protection and energy (CEEAG)

August 2021

Review of the Guidelines on State aid for climate, environmental protection and energy (CEEAG)

Introduction

Ireland recognises the importance of reviewing and revising the State Aid Rules to ensure they remain appropriate and proportionate. In that regard we welcome the draft revised Guidelines and thank the Commission for their work in evaluating the effectiveness, efficiency, relevance and coherence of the Guidelines on State aid for environmental protection and energy.

Ireland welcomes the opportunity to participate in the European Commission's consultation on the revised Guidelines on State Aid for Climate, Environmental Protection and Energy 2022 (CEEAG), and supports the objective of ensuring the revised guidelines are consistent with the increased energy and climate ambition of the European Green Deal.

This document represents the Irish national position on various aspects of the draft CEEAG.

In the current difficult economic conditions as businesses cope with the impacts of BREXIT and the restrictions on trading arising from the COVID-19 pandemic, a significant step change in focus on the enterprise sector's emissions reduction will be required and supports will be necessary in the post pandemic period to reduce the payback period and make these investment commercially viable for many businesses, whilst also contributing to meeting our national and international climate commitments to 2030.

Likewise, a significant step change is also required in the focus on climate action. Currently investment in climate action is seen by many enterprises as 'discretionary spend' and many enterprises have taken on significant debt burdens. Post pandemic and in the context of Brexit and its impacts, enterprises will be less inclined to incur further debt burdens and therefore state supports will be even more important to incentivise the necessary changes to meet climate targets and a green economy. Therefore, supports in the form of grants will be necessary in the post pandemic period to reduce the payback period and make these investments in carbon reduction technologies commercially viable for many businesses. Decarbonisation of industrial activities is a transformation process and will require significant investments and operating costs as will the transition to a carbon neutral economy. It is therefore essential that financial assistance, advice, and guidance is put in place for businesses to help them adapt and to ensure a just transition.

The level of public and private investment required to decarbonise the economy will rely on Ireland sustaining a very productive, profitable private sector over the next decade. Given the scale of capital and operational expenditure which will likely be required to decarbonise the enterprise base (manufacturing processes but also transport and buildings), the challenge will be to maintain viable, competitive businesses while incentivising an acceleration in private sector investment.

Ireland’s High-Level Recommendations

Ireland recommends that the CEEAG should:

- Retain sufficient flexibility to account for the circumstances of individual EU Member States. The need for flexibility is particularly relevant for small, geographically isolated countries, with very high proportions of intermittent renewables and limited interconnection, such as Ireland, which inevitably present challenges in term of simultaneous decarbonising power generation and maintaining security of electricity supply.
- Align with the EU Clean Energy Package, including provisions for Capacity Mechanisms and Renewable Energy Communities, and any likely future amendments to climate and energy acquis introduced through the ‘Fit for 55’ package.
- Provide for supports for specific technologies, such as electricity storage, through targeted competitive procurement, in circumstances where this can be demonstrated as facilitating faster decarbonisation and system security.
- Facilitate supports for community renewable energy projects, in order to empower local communities to participate in and deliver upon EU and national climate objectives, and to increase societal acceptance of renewable energy infrastructure.

Specific Observations and Recommendation

1. Definitions

- Eco-Innovation Activities

Under the aid measures set out in Part 4.4 and Part 4.5 of the draft guidelines, the maximum aid intensities for these measures is increased by 10 percentage points for eco-innovation activities. The inclusion of this provision is welcomed and will incentivise companies to be more ambitious in their efforts to improve environmental protection and reduce the environmental impacts of pollution.

However, clarity is sought on the scope of the definition of eco-innovation activities. In particular, it is asked whether the definition refers only to activities that develop entirely new products, processes or services or does it also refer to eco-innovative activities that promote the use of existing innovative technologies by an individual company which would bring significant improvement on the environmental impact of existing products, processes or services at the level of the undertaking?

- Resource Efficiency

The definition of Resource Efficiency within the CEEAG is excessively narrow. The EU Roadmap for a Roadmap for a Resource Efficient Europe (Com 2011 571) has defined Resource efficiency as follows:

“Resource efficiency: is a way to deliver more with less. It increases aggregate economic value through more productive use of resources over their life cycle. It requires using those resources in a sustainable way, within the planet's long-term boundaries. This includes minimising impacts of one resource's use on other resources, including the environment.”

Ireland suggests that this document should be referenced to assist with the interpretation of resource efficiency.

- "Most polluting Fossil Fuels"

Guidance is needed as to the Commission's determination of what amounts to the "most polluting fossil fuels"; A specific definition of what fuels fall into this category is required.

Recommendation:

Ireland recommends that the definitions above be further clarified.

2. Proposed application of the Guidelines to existing schemes (Section 7, Paragraph 414)

Ireland has significant concerns regarding the proposal in the CEEAG (paragraph 414) that Member States must "amend, where necessary, their existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023".

Amending schemes that have already been approved for State Aid purposes under the existing EEAG 2014-20 would appear to be incompatible with Article 6 of the revised Renewable Energy Directive (2018/2001) on the financial stability of investment, and would undermine contracts awarded under existing schemes. This would risk increasing the cost of capital for Member States at a time when attracting capital into climate and low carbon energy investments is critical for delivering on the EU's 2030 and 2050 climate targets.

Clarification Required

- Ireland will require further clarification from the European Commission as to the intention of Paragraph 414, and whether this may impact upon existing State Aid approved schemes.
- **Given the significance of this issue for Ireland, we are seeking early clarification on this point, in advance of the adoption of the CEEAG. Ireland cannot support this clause in the CEEAG and is happy to engage further with the Commission this important issue, as necessary.**

3. Community Energy Projects

The CEEAG aims to enable Member States to fulfil the EU's ambitious environmental objectives of the European Green Deal. In this regard, Ireland considers that community renewable energy projects must not be excluded from the revised guidelines, noting that this could have significantly negative repercussions in the delivery of the Green Deal objectives. In particular, the ambition to empower energy communities to deliver some of the transformation required and increase societal acceptance of renewable energy infrastructure requires that supports for energy community projects are facilitated in the CEEAG.

In order to facilitate greater recognition for aid to support community owned renewable energy projects within the guidelines, Ireland considers that exemptions for community owned energy projects from a competitive bidding process should also be considered by the Commission, subject to appropriate protections against over-compensation. The need for this exemption reflects a number of disadvantages imposed on community projects versus commercially developed projects, including:

- Difficulties managing early-stage project development to the same extent as developers, which disadvantages these projects in competitive auctions.
- An inability to spread development risk – they have only one locality and perhaps limited options within it, whereas commercial developers have no such limitations.
- Smaller projects, which result in smaller economies of scale and limited access to capital.
- Lower levels of experience and professional acumen when compared to commercial developers.
- Limited access to professional expertise – such expertise is costly and commercial developers often have such expertise in-house, or readily contractible.
- Differing commercial objectives.

The Green Deal also stipulates that the EU and its Member States should help clean energy co-ops to develop innovative financing schemes, that procedures for bidding on wind and solar projects should be simplified for co-ops, and that local community benefits should be considered when awarding bids for renewables projects. With the threshold for competitive bidding being set at 400KWs in the CEEAG and being lowered to 200KWs in 2026, this will impact an even greater amount of energy communities negating the stated aim of ensuring public support for community green energy projects.

Further to the above, acknowledgement of renewable energy communities within the CEEAG will ensure consistency and alignment between the State Aid guidelines and the EU energy acquis, most notably the revised Renewable Energy Directive. In this regard, it is important to note that article 22 (7) of the revised Renewable Energy Directive requires Member States to account for specificities of renewable energy communities in the design of support schemes to facilitate their competitiveness versus fully commercial projects. Further provisions to support development of renewable energy communities are contained in Article 22.4. In order to align with this, Ireland considers that the CEEAG should include provisions recognising the role of renewable energy communities.

In respect of renewable energy under section 4.1, we would like to see greater recognition for aid to support community owned renewable energy projects in this section of the CEEAG. Exemptions for Community owned energy projects from a competitive bidding process should also be considered, subject to appropriate protections against over-compensation. Communities are not able to manage the financial risks of early-stage project development to the same extent as developers and therefore are at a disadvantage when competing in auctions. This is important in order to increase societal acceptance of renewable energy infrastructure.

Recommendation

Ireland recommends that in respect of Community Energy Projects:

- Exemptions to competitive bidding requirement for renewable support schemes based on diversity of ownership grounds (Renewable Energy Communities).
- Explicit allowance in the CEEAG for small scale community schemes without need for competitive bidding.

4. Natural gas infrastructure and natural gas as a transition fuel

Ireland believes that renewable gases (such as biomethane and hydrogen produced from renewable sources) injected into and supplied through gas networks have a key role to play in the decarbonisation of the energy sector. The Guidelines should ensure investments in natural gas networks are not made unless they are aligned with the EU energy and climate targets. Ireland supports the requirements under section 4.9 of the proposed Guidelines for gas infrastructure to be fit for use for hydrogen and renewable gases, or otherwise not create a lock-in effect.

While the avoidance of lock-in is clear for energy infrastructure, Ireland considers that more information as to how lock-in for gas can be avoided in other measures. For example, for a measure under section 4.2 where a manufacturing facility is transitioning from a high-emission fuel source to natural gas, there are cases where this can make a substantial positive contribution towards 2030 emissions reduction targets.

Recommendation

- The CEEAG should provide specific examples of what is needed in order to demonstrate the lack of "lock in". For example, it should state clearly if it would be sufficient for the investment to be future-proofed to have the capacity to use alternative gases such as hydrogen or biogas as the supply of those renewable sources ramps up over time and becomes a viable alternative for the company.

5. Capacity Mechanisms and Electricity Security of Supply

The radical overhaul of Ireland's all-island Single Electricity Market (SEM)[1], that took place during 2017-18, is a clear demonstration of its commitment to the integration of European electricity markets.[2] Notwithstanding Ireland's support for deeper EU internal energy market integration, it considers that the CEEAG should remain sufficiently flexible to account for the circumstances of individual EU Member States, most notably small, geographically isolated Member States, like Ireland, with limited electricity interconnection.

[1] Established in 2007, the SEM is the cross jurisdictional, dual currency wholesale electricity market for the island of Ireland. It is located in Ireland and Northern Ireland.
[2] For further details of these reforms that took place under the ISEM Project see - https://www.sem-o.com/documents/general-publications/I-SEM-Industry-Guide.pdf

Noting the above, Ireland welcomes the recognition in the CEEAG of the importance of electricity security of supply but would highlight that there must be sufficient flexibility in the State Aid guidelines to allow for expeditious additional transitional measures to be taken to ensure security of supply, if existing measures fail to deliver. In this regard, the Guidelines must continue to provide for the deployment of State Aid approved capacity mechanisms, in circumstances where this can be justified, due to concerns regarding electricity generation adequacy and future energy sector investment required for adequate security of supply and operational reliability.

Recommendation

- Consistent with the recast EU Electricity Market Regulation, the position of Ireland is that the CEEAG must ensure that, in certain circumstances, appropriately designed capacity mechanisms can be deployed to ensure generation adequacy and security of supply in certain wholesale electricity markets where these concerns arise. It is therefore essential that the new guidelines allow for the use of capacity mechanisms, in certain circumstances, to ensure a stable and commercially viable environment for long term energy sector investment and to facilitate achievement of the ambitious decarbonisation objectives on the island of Ireland in a cost effective and efficient manner.

6. Target for a reduction primary energy demand in Section 4.2

Ireland welcomes Section 4.2, Aid for the improvement of the energy and environmental performance of buildings, that incentivises the attainment of targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions. Ireland would like to draw the Commission's attention to paragraph 118, which asks for a reduction in primary energy demand of 20%.

This is not an insignificant request, particularly for SMEs. Post-works "comfort taking" is a significant consequence of Irish retrofit schemes. This 20% primary energy demand reduction requirement would negatively impact the development of retrofitting schemes.

Recommendation

- Ireland requests that the target for a minimum reduction in primary energy demand be reduced to 10% and that flexibility be extended to its attainment to allow schemes time to gradually scale up to the increased ambition.
- Ireland also wishes to highlight the very significant challenges to implement the 30% minimum reduction in primary energy demand for staged renovation over 3 years. This would impose a substantial administrative burden that could only be feasibly implemented on large projects.
- Ireland asks the Commission to reduce this requirement to 20% for staged renovations to be implemented over a 5 year period.
- Ireland seeks clarity on whether this is a reduction in equivalent primary energy demand at the point of energy use (i.e. primary energy conversion in reduction of energy demand/final

energy), or whether this takes into account offsetting energy supply through alternative RE sources.

7. Relationship between CEEAG and the Emissions Trading System

It is appreciated that the intersection between the draft guidelines and market-based mechanisms such as the Emissions Trading Scheme (ETS) is addressed in Paragraph 40.

Ireland seeks clarity that this could be interpreted that a measure under the guidelines could allow for Member States to accelerate the trajectory of emissions reduction for undertakings participating in the ETS at a rate in line with the targets set by national policy which may be higher than the caps set for the ETS. Further clarity on whether this represents a correct interpretation and what exactly is meant by "residual market failures" in relation to point 40 would be beneficial.

In pursuit of the objective of a 55% reduction in emissions by 2030, there will need to be focus on encouraging the large emitters to transfer from fossil fuel use to electrification/biofuel. To achieve this, we consider there should be as much scope as possible to incentivize emissions abatement in a situation where there are unlikely to be commercial market incentives.

Many of these large fossil fuel users are in the Emissions Trading Scheme. It would be of serious concern for Ireland should participation in the ETS, or any change to the ETS, reduce our ability to provide support to Undertakings involved. In many cases, where investment is targeted narrowly at the "residual market failures", there may not be sufficient incentives for Undertakings to invest, even with State Aid, as they are bearing the costs of the negative externalities, nor will they achieve any benefit from the positive externalities.

Recommendation

- The Commission to provide clarification as set out in Para 2 above.
- As much scope as possible should be provided to incentivize emissions abatement in a situation where there are unlikely to be commercial market incentives, specifically in the context of large emitters in order to transfer from fossil fuel use to electrification/biofuel.
- Participation in ETS, or changes to ETS, must not reduce the ability to provide support under the Guidelines to Undertakings as result of their ETS participation.

8. Eligibility for Undertakings in the Construction sector to receive aid for the improvement of the energy and environmental performance of buildings (section 4.2)

Ireland welcomes the inclusion of new buildings in section 4.2. We consider that section 4.2.2 setting out the Scope and Supported Activities should clarify that Undertakings active in the Construction sector can receive aid in respect of both residential and commercial building projects.

The Construction sector is a significant part of the Irish economy and due to the increasing costs of building materials, faces high costs to include any additional energy efficiency measures for the buildings they construct. As this is above what is required by regulation, there is no market incentive to add further costs to construction that are then passed on to prospective buyers. Aid to cover the costs of additional energy efficiency measures for new-build property should therefore be set out clearly in Section 4.2.2.

Ireland also considers that as the increasing costs affects the prices of residential buildings that Aid to SMEs and Small Mid-caps in the residential construction sector should be facilitated in the revised GBER, with an aid intensity sufficient to cover all the additional costs less the expected profit generated by being able to market a more energy efficient house.

Recommendation

- The Commission clarifies that Undertakings active in the Construction sector can receive aid in respect of both residential and commercial building projects.
- Aid to cover the costs of additional energy efficiency measures for new build property should be set out clearly in Section 4.2.2 of the Guidelines.
- As part of the revision of the GBER, the aid intensity for SMEs and Small Mid caps should be revised to cover all the additional costs less the expected profit generated by being able to market a more energy efficient house.

9. Proportionality Assessments in the CEEAG

Ireland is supportive of broadening the scope of the guidelines and increasing the allowance for funding (up to 100% of the funding gap). In addition, Ireland welcomes the provisions for new instruments such as carbon contracts for difference to support renewable energy and climate targets.

Ireland considers that the proposal in the CEEAG to lower the threshold for exemptions to the competitive bidding process is problematic. This is based on similar ‘de minimis' levels in the 2019 Electricity Regulation for balancing responsibility. Competitive bidding processes introduce specific temporal risks to early-stage investments (planning consent, grid consent) for smaller locally owned projects which are not the same as managing balancing risks in the market. Ireland recommends that this proposal is removed from the guidelines or that an exemption to the new threshold is made for community owned projects.

The requirements to either calculate the funding the gap or undertake a competitive bidding process to ascertain the aid amount required will create a significant burden for many Undertakings, particularly for SMEs and Small Mid-Caps. Such a burden could disincentivize participation in schemes and therefore impact the effectiveness of Aid schemes in contributing towards the Green Deal objectives.

From our experience the disadvantages of calculating the counterfactual is that it is costly, it typically involves hiring a third party to evaluate and frequently the complexity involved is off-putting particularly for SMEs. This may dissuade companies (particularly smaller ones) from engaging in projects that will bring increased environmental benefits. Providing a more detailed methodology of the calculation would alleviate certain aspects of these barriers by providing increased clarity for Member States in designing effective incentives. It would therefore be helpful if the Commission provide a methodology to credibly establish the cost of the 'non-green' investment, at a time, when it is not possible to undertake that investment.

Ireland requests that the definition provided is further clarified as much as possible, ideally with the inclusion of some practical examples which the European Commission believes to be of an appropriate level of detail for different project sizes.

Similar challenges in terms of the complexity, and the need for engaging external consultation, arise for Undertakings partaking in a competitive bidding process. As with the requirement to identify a Funding Gap, the workload required to develop a tender for a competitive bidding process can dissuade companies (particularly smaller ones) from engaging in projects that will bring increased environmental benefits

The criteria for a competitive bidding process outlined in the CEEAG seem focused on competitions open to all eligible beneficiaries rather than specific categories of beneficiaries. From a public policy perspective, there are instances where a competition narrowed to specific categories of beneficiaries may be more efficient. For example, the type of technical assessment needed on applications may vary greatly by size and sector as may the level of support required to incentivise accelerated investments in the available decarbonisation technologies.

The guidelines do recognise that there are instances where competitive bidding processes limited to specific categories of beneficiaries are justified. However, it would be helpful if further elaboration on these justifications is provided as well as a more open approach to competitive bidding processes for specific categories of beneficiaries (e.g. sectors or types of enterprise with particular characteristics) rather than providing for these competitions as an exception to the norm.

Ireland considers that there should be an exemption provided for SMEs and Small Mid-Caps from the requirement to demonstrate the funding gap and the competitive bidding process. For these companies, there should instead be a maximum aid intensity set for projects with a level of grant support below an appropriate threshold.

For example, the competitive bidding process or funding gap analysis would be unsuitable for the residential rental sector due to the complexity of diverging interests and incentives among investors, or "split incentives", and the consequent asymmetric information problems.

The provision of centralised environmental taxonomies or allowing specific aid intensities for certain types of expenditure would in many cases lead to a more pragmatic approach and enable mobilisation of a much wider range of companies and sectors to invest in decarbonisation or environmental sustainability projects, which ultimately can lead to more effective use of State funding and contribute to the "fit for 55" ambitions.

When determining the proportionality of Aid, it must be considered that the reduction of the negative externalities and the benefits of the positive externalities of decarbonisation do not accrue to the beneficiary of the aid. Therefore, a burdensome process of calculating a funding gap, or entering a competitive bidding process, which will add costs that will be not covered by the Aid, is a disincentive for Undertakings to invest in such projects.

Recommendation

- Ireland requests that the definition provided for the calculation methodology is further clarified as much as possible, ideally with the inclusion of some practical examples which the European Commission believes to be of an appropriate level of detail for different project sizes.
- Further elaboration is required on the justifications needed for limiting competitive bidding to specific categories of beneficiaries as well as a more open approach to competitive bidding processes for specific categories of beneficiaries (e.g. sectors or types of enterprise with particular characteristics).
- Ireland considers that there should be an exemption provided for SMEs and Small Mid-Caps from the requirement to demonstrate the funding gap and the competitive bidding process. For these companies, there should instead be a maximum aid intensity set for projects with a level of grant support below an appropriate threshold.
- The burdensome process of calculating a funding gap or entering into a competitive bidding process in order to determine the proportionality of Aid, as set out in the final Para above, needs to be addressed in order to ensure that Undertakings are not disincentivized to invest in projects.

10. Increased Aid Intensities where appropriate to reward "effective collaboration" between Large Enterprises and SMEs.

Globally there has been an acceleration in the number of businesses and investors committing to deep emissions reductions. Many global companies are now focused on how long-term net zero commitments can become a road map for 2030 with interim targets, clear actions and regular progress reports. For many companies and industries, the path to net zero emissions is becoming clearer but will still require major investment in innovation, research and development to drive faster adoption of solutions during the 2020's. Leading companies - including multinationals and indigenous companies, target emissions reductions covering the full scope of a business's direct and indirect emissions, from its own operations to energy supply, transport and distribution, use of products and the rest of the value chain. This means they increasingly need to work with their suppliers to measure and identify opportunities to reduce emissions embodied in their inputs. Many smaller indigenous companies are at the start of their sustainability journey and will need significant support to fully grasp the risks and opportunities arising from climate change.

Ireland is of the view that it is appropriate for the CEEAG provisions to be widened from a focus on incentivising specific technological solutions or specific parts of production. We welcome the provisions which encourage activities by enterprises that will produce broader positive environmental outcomes, i.e. to promote changes that fully incorporate a company's entire product footprint from design, supply chain, environmental impact of purchases, production, distribution and end of life solutions. Recognising the increasing role for collaboration in solving environmental challenges, we believe it would be appropriate for environmental supports for companies to seek to incentivise decision making and investments by undertakings that both directly (e.g. capital investment in energy efficiency) and indirectly (e.g. supply chain decisions) lead to improvements in environmental and firm-level outcomes.

Recommendation

- Ireland proposes that a suitable mechanism to promote efforts to improve environmental protection and reduce the environmental impacts of pollution of a supply-chain may be to offer increased aid intensities where appropriate to reward activities involving "effective collaboration" (taking a similar definition to the definition of effective collaboration provider by Article 2(90) of the General Block Exemption Regulation). Such a mechanism will allow for an appropriate reduction in the financial risks faced by smaller enterprises wishing to engage in environmental projects, while also incentivising large enterprises to engage in projects that improve the environmental impact of their entire supply chain rather than just at the level of the individual undertaking. Overall, it is envisioned that such a measure would incentivise more activities that will have a more significant beneficial impact for the environment than would otherwise have been undertaken.

11. Increased Aid Intensities for Small Mid-Cap and Mid-Cap Enterprises

For certain aid measures proposed by the draft CEEAG Guidelines SMEs are treated favourably in comparison to large undertakings when allocating maximum aid intensities, recognising the advantages that large enterprises have over SMEs.

The equal treatment of all large companies does not distinguish between marginally large enterprises and truly large multinational companies. Treating enterprises with 250 employees the same as those with 10,000 employees fails to recognise the relative disadvantage that relatively small enterprises that are categorised as large enterprises face when compared to truly large multi-national corporations. Smaller large companies have less resources at their disposal, are more affected by market failures, and are more in need of State support to incentivise activities that would reduce their impact on the environment. Increasing the maximum aid intensity for smaller large companies would result in more projects to reduce emissions being undertaken, having the potential to improve environmental outcomes whilst not necessarily being so large to result in the distortion of competition in the single market. It would also provide a more level-playing field for smaller large companies which compete with truly large multinationals.

Recommendation

Ireland proposes that small mid-cap undertakings (those with up to 499 employees) and mid-cap undertakings (those with up to 1,500 employees) are allowed preferable maximum aid intensities by distinguishing them as a separate type of enterprise to large companies. Where the maximum aid intensity that can be granted to an enterprise is differentiated by size it is proposed that:

- Aid for small mid-cap sized enterprises is 7.5 percentage points higher than aid for large enterprises.

- Aid for mid-cap sized enterprises is 5 percentage points higher than aid for large enterprises.

12. Assisted areas in the 2014-2021 Regional Aid Map

The draft CEEAG allows for the maximum aid intensity for certain aid measures to be increased for beneficiaries in “assisted areas’”. This is a welcome inclusion and recognises that regional underdevelopment creates market failures for undertakings looking to engage in more environmentally friendly economic activity.

Ireland notes that the “assisted areas” for which this applies is derived from the Regional Aid Guidelines and applies only to areas which at the time of the granting of the aid are designated in an approved regional aid map. (Point 18 (3)). However, Ireland considers that the Commission must recognise that the new Regional Aid maps are only due to come into force at the same time as the CEEAG, and that some areas that were previously “assisted areas” may cease to be designated as such in the new Regional Aid maps. Such areas are still more likely to have a higher level of regional underdevelopment than other non-assisted areas and extra aid intensity may be needed in these areas.

Recommendation

- Ireland recommends that the meaning of “assisted areas” under the CEEAG should refer to areas that were designated in an approved Regional Aid map during the period 2014-2021, as well as those designated in the Regional Aid maps in force from January 2022.

13. The Definition of Undertakings in Difficulty

Point 13 of the draft CEEAG excludes “undertakings in difficulty” from the scope of the Guidelines: “Aid for environmental protection and energy may not be awarded to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty”

A particular challenge in the context of providing timely and adequate incentives for enterprises looking to reduce their environmental impact and contribute to the objectives of the Green Deal is the definition of Firms in Difficulty and the definition of Undertaking in Difficulty, as set out in Article 2(18) of Commission Regulation (EU) No 651/2014 (GBER). While Ireland fully endorses the underlying position that State funding should not be directed towards businesses that are likely to fail, it is our experience that, in certain circumstances, application of the current definition is leading to the exclusion of viable businesses with real growth potential from much needed support. In essence, many high-growth companies’ Balance Sheets continue to fail the undertaking in difficulty Balance Sheet test for a number of years beyond three years from incorporation, for the very reason that these R&D intensive companies are investing in the future and have the highest chance to scale ambitiously and provide sustainable employment underpinned by deep disruptive proprietary knowledge gained through investment for a number of years. This experience is particularly true for start-up enterprises and those in high tech sectors whose business model depends on the creation of valuable proprietary R&D in their early years. Such businesses are not dependent on State support for their survival. However, intervention by the State can be the necessary catalyst to accelerate their development.

The exclusion of a large cohort of viable businesses with real growth potential from the scope of environmental aid inhibits the ability of Member States to effectively deliver the objectives of the Green Deal by incentivising these businesses to accelerate their sustainability journey.

Ireland considers that limiting the exclusion from the definition of Undertakings in Difficulty to new SMEs in their first three years of existence is too short a timeframe for many High Potential Start-Ups (HPSU). Many HPSUs will continue to show a diminished balance sheet for longer than three years, as the Undertaking invests heavily in development. Such investments could also include those aimed at improving energy and resource efficiency.

Recommendation

- Ireland proposes that this exemption be extended from three to seven years in existence for Aid under the CEEAG and the corresponding articles of the revised GBER.
- In addition, based on actual patterns of company growth in certain sectors, we consider that the extension of the three-year timeframe to ten years for R&D intensive companies should be given serious consideration. In the high tech and med tech industries it is unusual for ultimately successful companies to generate meaningful sales figures within seven years.
- Supporting Undertakings at an early stage of the life-cycle to adopt energy efficient production processes, could help create a positive lock-in of clean technology.
- Furthermore, we are proposing that the Guidelines are altered to allow support to undertakings that became undertakings in difficulty between 1 January 2020 and 31 December 2021 if they were not in difficulty on 31 December 2019. While the newly extended GBER Regulation, which came into effect on 27 July 2020, provided that undertakings classed as undertakings in difficulty between 1 January 2020 and 30 June 2021, can still receive aid if they were not in difficulty on 31 December 2019, it is now clear that the disruption to economic activity due to the pandemic will not have subsided by June 2021 and will continue into Q3 and Q4 2021.

14. Transparency Obligation Publication Threshold

Ireland considers that the reduction of the Transparency Publication threshold from EUR 500,000 to EUR 100,000 will be very burdensome and onerous and recommends that this should remain unchanged at EUR 500,000 in both the CEEAG and any consequent amendments to the GBER.

Ireland has reverted to the findings of the Fitness Checks to better understand the Commission's rationale for lowering the threshold for triggering the transparency obligation. IE note that as presented in the Commission Staff Working Document on the Fitness Check Evaluations (SWD(2020) 258 final), this finding in terms of the effectiveness of the SAM reforms, states:

'As regards the threshold triggering transparency obligation, 70% of the respondents in the public consultation believe that the EUR 500,000 threshold is appropriate or even too high.' (SWD(2020) 258 final pg. 82)

However, Ireland has also examined the data underpinning this finding and note from the Synopsis Report of the Publication Consultation provided in Annex 2 that the EUR 500,000 ceiling is seen as appropriate by 54% of respondents, while 30% of respondents consider that the ceiling is too low, and 16% consider that it is too high. (page 17) The finding drawn from this data could equally and accurately be presented as:

'…84% of the respondents in the public consultation believe that the EUR 500,000 threshold is appropriate or even too low.'

Ireland therefore does not consider that this finding is sufficient to merit the reduction of the transparency threshold from EUR 500,000 to EUR 100,000 and would ask DG Competition to clarify the position it has taken in its own findings.

Additionally, there are other relevant conclusions and recommendations presented in the Final Report of the Fact-finding study on the implementation of the transparency requirements under the GBER and relevant guidelines, commissioned by DG Competition and carried out by Prof. Fiona Wishlade,

Ireland notes that a conclusion of this report is that the transparency requirements are not perceived to offer any benefits to Member States using the TAM other than to fulfil the transparency requirement. The data collected is not used by Member States for any other purpose and is not considered as having improved other aspects of the public administration in any way.

Ireland also notes that a specific recommendation for improvement in the study from case study countries who utilise the TAM system (CZ, DE, NE, IT, EE) was to 'Maintain the current €500,000 threshold or even increase it".

On the basis of the evidence presented above, IE does not consider that there is sufficient grounds for the Commission to revise downwards the Transparency Publication Obligation Threshold from EUR 500,000 to EUR 100,000, particularly when there is a significant administrative burden associated with such a change. Reducing the threshold from EUR 500,000 to EUR 100,000 will add significant labourhours and consequent labour costs for Public Administrations.

Recommendation

- Ireland recommends that the transparency publication threshold remains at €500k and, noting that there is no clear basis for such a change, that the threshold of €500k should apply more widely across the State aid Framework as a whole.

15. Proposal for a New Measure “Aid for research and development that contributes significantly to the objectives of the European Green Deal”

While the draft CEEAG proposes several ambitious aid measures that aim to promote energy efficiency, we suggest that some broader measures that also contribute to the objectives of the Green Deal are considered. In particular, Ireland considers that the Guidelines should consider measures that further incentivise research and development into new products, process and services that will contribute to the objectives of the Green Deal.

The Temporary Framework for State Aid Measure to Support the Economy in the Current COVID-19 Outbreak provided for accelerated research into medicinal products, treatments, devices, and equipment which were fundamental to advancing research into COVID-19 and contributed to Europe’s strong public health response to the Pandemic. A similar measure aimed at accelerating research projects tackling the climate crisis would incentivise disruptive research that will significantly contribute to the objectives of the Green Deal.

Aid for research and development into products, processes or services that contribute to the objectives of climate neutrality, climate change adaptation, resource and energy efficiency, circularity, zero pollution and recovery of biodiversity could be eligible under this measure.

In particular it is proposed that eligible costs would include the following:

- All the costs necessary for the R&D project during its duration, including personnel costs, costs for instruments and equipment, costs for buildings and land, for data collection and processing tools, for R&D services, for pre-clinical and clinical trials (trial phases I-IV), for obtaining, validating and defending patents and other intangible assets.

- The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research (as is currently the case for Article 25 of GBER) and shall not exceed 90% of eligible costs for industrial research and experimental development;

- The aid intensity for industrial research and experimental development may be increased by 10 percentage points, if the research relates to research and development into new products, process and services that will contribute to the objectives of the Green Deal.

Recommendation:

It is proposed that a new aid measure is included in the CEEAG which provides “Aid for research and development that contributes significantly to the objectives of the European Green Deal”. It is proposed that this measure would take a similar form to measure 3.6 of the Temporary Framework for State Aid Measure to Support the Economy in the Current COVID-19 Outbreak “Aid for COVID-19 relevant research and development”.

16. The importance of expanding the scope of the GBER for Aid for Environmental Protection for decarbonisation of the enterprise sector

While we are aware that consultation on the revision of the General Block Exemption Regulation is due to commence at the end of the Summer and that we will have a opportunity at that point to provide our inputs on the energy and environmental articles of the GBER, given the synergies between both the GBER articles and the CEEAG, we consider it important to raise some issues in this context.

Ireland intends that decarbonisation of the enterprise sector will contribute towards moving to a low carbon economy and assist with the achievement of the Irish Programme for Government target of an average annual 7% reduction in GHG to 2030.

The enterprise sector's enhanced abatement will prove very challenging. Early and responsive action is essential. Therefore, increasing the scope of the GBER is imperative for decarbonisation across the enterprise sector (SMEs and manufacturing operations), to get accelerated action on potential cost savings and abatement to ensure they remain resilient and competitive in domestic and international markets. The ability to put schemes in place quickly under the GBER will ensure that supports can be implemented in a timely manner.

Consultations with enterprises at a national level identified that the payback period is a key metric that determines whether investments in new technologies are made. In research commissioned by the Irish Ministry for Enterprise, Trade and Employment, respondents were asked to select the desired payback for energy efficiency projects. The most commonly desired payback period from investment is 3-5 years. It is challenging to identify abatement opportunities which meet this criterion without capital support/incentives due to the low cost of fossil fuel (particularly gas).

Paragraph 121 states:

The Commission considers that, in principle, aid to projects with a payback period of less than five years does not have an incentive effect. However, the Member State may provide evidence to demonstrate that aid is needed to trigger a change in behaviour, even in the case of projects with a shorter payback period.

Ireland supports the five-year payback period in paragraph 121 and considers that the same payback period should also apply to the GBER.

Ireland considers that given the current climate of Brexit/COVID, the willingness of companies to make large investments in technologies that they may consider as "discretionary spend" could provide a risk to generating demand needed for the successful roll out of a key "Green" element of the National Recovery and Resilience Fund (NRRF). The Carbon Reduction Fund element of the NRRF is planned to operate under the GBER, to ensure a timely implementation.

In order to incentivise the early adoption of technologies to deliver on CO2 abatement in the manufacturing combustion sector – the NRRF programme will focus on those businesses using fossil fuels that could install new technologies that will lead to significant reductions in CO2.

This will require significant awareness raising amongst smaller enterprises as many SME's are not at all engaged in the Climate Action agenda given the current focus on Brexit & COVID. It is expected the proposed financial incentives will increase awareness, improve the case for investment and encourage the early adoption of the low carbon solutions.

Direct financial support will need to include Aid in the form of direct grants to Undertakings wishing to undertake substantial decarbonisation investments, such as the installation of Carbon Metering & Control systems and RD&I projects.

This, however, does not mean that the companies will actually incur the capital expenditures outlined, as analysis shows that there is no pent-up demand. Significant communications will be necessary to generate interest in climate action at company level. The allocation of funding for decarbonisation of industry is therefore deemed necessary and appropriate, but in isolation may not be sufficient, to stimulate demand for this initiative. Annual Climate Action Plans will include other initiatives including taxation, increased regulations etc., that may encourage companies on this decarbonisation agenda. Administrative and financial barriers to Undertakings must be removed.

Recommendation:

- Due to the lack of demand, awareness and incentives, Ireland recommends that the revised corresponding GBER articles must allow sufficient aid intensities, and simple application, (i.e. without the need for a funding gap analysis or competitive bidding), to ensure that Aid measures are effective at facilitating decarbonisation of the enterprise sector.
- The revised GBER articles should allow appropriate eligible costs to facilitate process transformation, investment in specific technologies and manufacturing innovations. To be effective at facilitating decarbonisation, the Aid will need to increase the commercial viability of carbon reduction technologies by reducing the payback period for individual businesses and achievement from large CO2 emitters
- The revised GBER articles should also allow for broadly defined eligible costs, to assist with the installation of one technology or potentially a combination of relevant complimentary technologies. For example, it should be possible to grant aid from a single scheme or from multiple schemes to install both a Monitoring and Tracking system and a new heat pump or biomass boiler.

17. Concluding Remarks

Ireland is open to further engagement and would welcome any specific clarifications that may be available for any of the points that we have raised. In particular, we would welcome clarification in respect of the requirement to apply the CEEAG retroactively to existing schemes as set out in paragraph 413. We would also welcome further elaboration regarding the interaction of the CEEAG with the ETS and how the residual market failure is to be identified. These two issues are of the utmost concern to Ireland, and as such we welcome early engagement from the Commission on these points.

In the context of further engagement, and given the breadth and complexity of the CEEAG, we consider that MS should have an opportunity to view an updated version of the CEEAG in advance of adoption. From our perspective, this would be highly beneficial regarding what further engagement may be necessary.

Finally, Ireland would like to reiterate our thanks to the Commission for their work in revising the Guidelines and giving us the opportunity to provide comments as part of the public consultation.

18. Contact Details

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6th August 2021