



Rialtas na hÉireann  
Government of Ireland

# **Ireland's response to the targeted review of the GBER**

## **December 2021**



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# Targeted Review of the GBER

## 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 modernising the State Aid Framework.

Ireland welcomes the opportunity to participate in the European Commission's targeted review of the GBER. Ireland also supports the objective of ensuring the GBER remains consistent and complementary with the revised State Aid Guidelines.

The GBER is the most important part of the State Aid framework and Irish Granting Authorities rely on the GBER to set the parameters for a variety of State Aid measures. Therefore, Ireland considers that the GBER must be accurately aligned to the relevant Guidelines, and set out meaningful definitions and methodologies that shape the practical implementation of State Aid schemes.

Currently the EU faces major challenges with climate change, the COVID-19 pandemic and rising energy and transport costs affecting competitiveness. At the same time that Ireland strives to address the economic shock brought about by the pandemic, it is also being uniquely and significantly impacted by Brexit. It is therefore vital that the GBER provides a straightforward framework to support the implementation of the European Green Deal and Industrial and Digital Strategies.

Aid schemes that are designed in compliance with the GBER, use the terminology and methodologies provided by the GBER as the guiding template. Therefore, the GBER must provide as much clarity as possible in terms of definitions and scope.

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 are likely to 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 and 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.

Many of the comments raised in this Position Paper relate to clarifications, elaborations and examples we hope these will be addressed during the further engagement period prior to adoption. We understand that some of the terminology and definitions in the GBER can be interpreted broadly. Also, some conditions require complex assessments, (such as identifying and calculating counterfactual scenarios). We understand that the broad definitions and assessments can be useful for allowing flexibility. However, it is the experience of the Irish Granting Authorities that as State Aid is generally prohibited, any ambiguity in what can be aided is a direct barrier to granting aid. We acknowledge that the intention is to provide scope to apply a broad interpretation. However, with the GBER in place since 2014, the overall experience during these years has been that open and broad definitions and complex assessments, (such as identifying and calculating counterfactual scenarios) is an impediment, not an enabler.

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## Ireland's High-Level Recommendations

- Ireland considers that the administrative complexity involved with environmental protection aid is a major barrier to granting much needed environmental aid. We ask the Commission to consider simplifying some of the conditions and to consider the development of templates and worked examples to provide clarity on specific terminology for the GBER. The Commission has done this in the past, with Best Practice Codes and Analytical Grids for Infrastructure. The benefits of such guiding templates and worked examples, would see a reduction in the workload for Granting Authorities, National State Aid Offices, and of course the Commission, with less time dedicated to legal analysis and addressing interpretation questions. Climate change is a very pressing issue, and administrative complexity creating barriers for Granting Authorities is unhelpful.
- Ireland has significant concerns regarding the proposal to lower the threshold for transparency publication from EUR 500,000 to EUR 100,000. The lower threshold applying to the Temporary Framework, gave us the opportunity to “test-drive” the lower threshold, and we have found that it was a significant administrative burden and cost to our Granting Authorities. Ireland recommends that the transparency publication threshold remains at EUR 500,000 and, noting that there is no clear basis for such a change, that the threshold of EUR 500,000 should apply more widely across the State Aid Framework as a whole.
- In respect of renewable energy in Article 43, the proposed reduction in size thresholds for small scale installations and renewable energy communities (with a further reduction planned in 2026) means that wind energy installations are unlikely to be supported to any extent under this article. The Commission's reasoning here is unclear, as wind is an important form of renewable energy. We ask the Commission to change the proposed revised text accordingly.
- Ireland recommends that the Commission extend the transition period for existing GBER schemes until 31 December 2023 when they will expire. During this time MS should not be required to amend existing schemes to the revised GBER parameters but also should not be inhibited from developing and launching new schemes or amending existing schemes to take advantage of the new opportunities brought in with this review. This would be particularly relevant for Digitalisation projects and environmental protection measures.

- Ireland recommends that the Commission take into consideration the administrative complexity for SMEs for accessing environmental GBER aid.
- Ireland recommends that an additional category of 'Small Mid-Cap' undertakings be introduced in the GBER. Aid intensities for this category could set at a level in between those applicable for SMEs and large Undertakings to take account of their specific size.

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# Summary of Recommendations and Clarification Questions

## Recommendations

### Topic: The Definition of Undertakings in Difficulty

#### Recommendation:

*Ireland recommends that the derogation from the UID rule which allows Member States to support companies in their first three years regardless of their Balance Sheet figures should be replaced to allow Member States to support companies for up to five years following their first commercial sale*

*Undertakings should be required to meet the Going Concern accounting standard (or an equivalent standard recognised by accounting bodies) as externally certified by an auditor in line with relevant financial reporting standards instead of being subject to a single formula across a diverse range of accounting systems.*

*Where an R&D project is granted the Seal of Excellence, Member States should be facilitated to support the enterprise free from application of the Undertaking in Difficulty test. This would ensure a more consistent approach, particularly in the context of R&D supports.*

### Topic: Transparency Obligation Publication Threshold

#### Recommendation:

*Ireland recommends that the transparency publication threshold remains at EUR 500,000 and, noting that there is no clear basis for such a change, that the threshold of EUR 500,000 should apply more widely across the State Aid Framework as a whole.*

### Topic: Development of templates and worked examples

#### Recommendation:

*Ireland recommends that the Commission develop templates, case studies and worked examples for some of the more complex areas of the GBER and develop this as an*

*accompanying User Guide. This will enhance the ability of SMEs to access the aid measures needed to achieve the Green and Digital objective.*

*The topics that should be covered should include:*

- *Feasibility studies*
- *Digitalisation projects*
- *Counterfactual scenarios for environmental aid*
- *Net Present Value for environmental aid*
- *Aid to a company participating in the Emissions Trading System*
- *Calculating emissions reductions*
- *Competitive bidding for environmental aid*
- *Enabling 'another entity' to increase the level of environmental protection*
- *Typical examples of what can be considered additional overheads and other operating expenses.*

#### **Topic: The need for an extended post-adoption Transition Period**

Recommendation:

*Ireland recommends that the Commission extend the transition period for existing GBER schemes until 31 December 2023 when they will expire. During this time MS should not be required to amend existing schemes to the revised GBER parameters but also should not be inhibited from developing and launching new schemes or amending existing schemes to take advantage of the new opportunities brought in with this review. This would be particularly relevant for Digitalisation projects and environmental protection measures.*

#### **Topic: Investment aid to SMEs – Intangible asset requirements**

**Recommendation:**

*Ireland recommends that the requirement that the assets remain associated with the project for which the aid is awarded for at least three years is removed and instead proposes for the guidelines to remain as they are by requiring undertaking to record these assets for a time period of three years. Associating these assets to a project would not be supported by Ireland. An exception to the requirement for aid in the form of loan guarantees channelled through financial intermediaries would also be favoured by Ireland.*

**Topic: SMEs and Small Mid-Caps**

**Recommendation:**

*Ireland recommends that the scope of the GBER be expanded so that the category of 'Small Mid-Cap' undertakings is used widely in the different categories of aid in the GBER. Aid intensities for this category could be set at a level in between those applicable for SMEs and large Undertakings to take account of their specific size.*

**Topic: Innovative Enterprise Definition**

**Recommendation:**

*Ireland recommends that the distinction for 'innovative enterprises' is removed from paragraph 3 (b) of the revised Article 21.*

**Topic: Aid for Start-Ups**

**Recommendation:**

*Ireland recommends that the maximum amount for grants, including equity or quasi equity investment, interest rate and guarantee premium reductions that can be awarded to a start-up under GBER Article 22 is increased from EUR 400,000 to EUR 800,000.*

**Recommendation:**

*Ireland also recommends that Article 22 is amended with eligible undertakings being any unlisted small enterprise up to eight years following its registration.*

### **Topic: Definitions and Digitalisation**

Recommendation:

*Ireland recommends that the next layer of definitions and interpretations in respect of 'Digitalisation', (including how this applies to 'experimental development') is provided by the Commission to equip Granting Authorities to design appropriate aid schemes to support the Digital Strategy.*

### **Topic: Aid Intensities for Innovation Clusters**

Recommendation:

*Ireland recommends that the maximum aid intensity for initial investment aid for innovation clusters in non-assisted areas is increased from 50% to 65%*

Recommendation:

*Ireland recommends that the aid intensity for operating aid for innovation clusters is amended as follows, allowing for higher aid intensities to innovation clusters at early stages of their development:*

- *100% aid intensity available for innovation clusters in their first year of operation.*
- *80% aid intensity available for innovation clusters in their second and third year of operation.*
- *50% aid intensity for all innovation clusters older than three years.*

### **Topic: Effective Collaboration Requirement for aid for process and organisational innovation**

Recommendation:

*Ireland recommends that the requirement in paragraph 2 in Article 29 that requires large undertakings to effectively collaborate with SMEs in the aided activity, and that the collaborating SMEs incur at least 30 % of the total eligible costs for the aid to be*

*compatible, is removed and replaced with other ways to promote spill-over, such as different aid intensities for effective collaboration.*

#### **Topic: Administrative complexity for SMEs for GBER Environmental Aid**

##### **Recommendation:**

*Ireland recommends that the Commission take into consideration the administrative complexity for SMEs for accessing environmental GBER aid. Ireland proposes some recommended solutions to the challenges:*

- *The development of templates and worked examples, for both Granting Authorities and for SMEs (As discussed in more detail in our General Points).*
- *The inclusion of a new block exemption exclusively for environmental aid for SMEs that permits small amounts of aid for environmental protection purposes without any of the complex administrative requirements, (such as competitive bidding, or calculating the counterfactual) normally required for environmental aid.*
- *Higher aid intensities and the costs of consultancy service to assist the SME with the application be included as an eligible cost for SMEs, to provide a sufficient compensation for the necessary costs involved in meeting the complex administrative challenges for accessing environmental aid.*

#### **Topic: Relationship between the GBER and the Emissions Trading System**

##### **Recommendation:**

*The Commission to provide “worked examples” or case studies, describing a situation in which GBER aid is provided to Undertakings participating in the ETS.*

#### **Topic: Renewable Energy**

##### **Recommendation:**

*The CEEAG/GBER should maintain the 2014 thresholds – no competitive process for installations with an installed electricity capacity of less than 1 MW, or demonstration projects, except for electricity from wind energy, for installations with an installed electricity capacity of up to 6 MW.*

*Alternatively, alongside the 1MW proposal in GBER there should be a separate 3MW proposal specifically for Wind.*

**Topic: Article 38 Investment aid for energy efficiency measures**

*Recommendations:*

*Ireland recommends that a minimum reduction in primary energy demand of 10% that takes account of increased activity and comfort taking would represent a more realistic and appropriate threshold that could be met by energy efficiency investments. This would facilitate more projects to be delivered.*

*Ireland also recommends an alternative numbering of paragraphs under Article 38 as evident difficulties arise when two separate paragraphs in the same article are titled 3(a) and 3a.*

**Topic: Recruitment and salary costs for specialist experts as an eligible cost**

*Recommendation:*

*Ireland recommends that recruitment and salary costs for specialised technical experts who provide the expertise need for undertakings to implement improvements for environmental protection be listed as an eligible cost in Articles 36, 38 and 39.*

**Topic: Possibility to aid the beneficiary to enable 'another entity' to increase the level of environmental protection**

*Recommendation:*

*Ireland recommends that the Commission elaborate further on the scenarios that could apply for 'another entity' under Article 36. Ireland recommends that this could be achieved by:*

- Adding a 'menu' of examples of possible scenarios*
- Provide a worked example or case study template*

- *Provide a detailed definition for 'another entity' that provides the clarity in this specific context.*

**Topic: Eligible Technologies for Article 38**

Recommendation:

*Ireland recommends that the Commission makes specific reference to eligible technologies to clarify permitted use.*

**Topic: "Definition for "zero direct emissions"**

Recommendation:

*Ireland recommends that the Commission include a definition for "zero direct emissions" in Article 2 of the revised GBER.*

**Topic: Collaboration between SMEs and Large Enterprises**

Recommendation:

*Ireland recommends that a higher maximum aid intensity is available where appropriate to reward activities involving "effective collaboration" between SMEs and Large Undertakings.*

## Clarification Questions

### Topic: Definition for 'initial investment that creates a new economic activity'

Clarification questions:

*Does the new proposed wording of Article 2, point (51) imply that, whilst an acquisition of shares would not qualify as an initial investment that creates a new economic activity, both the acquisition of assets as well as the leasing of such assets could qualify as an "initial investment that creates a new economic activity" as defined in Article 2 point (51)?*

*If so, does this assessment change if the assets:*

*are leased from an independent third party that did not itself carry out the "same or similar activity" previously carried out at the leased establishment,*

*or,*

*are leased from a company that did carry out the "same or similar activity" previously carried out at the leased establishment?*

### Topic: Digital Transformation Projects within the definition of Experimental Development

Clarification question:

*Ireland asks the Commission to provide a clarification as to how digital transformation projects can be aided as part of "Experimental Development".*

### Topic: Feasibility Studies

Clarification question

*Ireland asks the Commission to further elaborate on the definition for 'feasibility studies' to enable a clearer delineation between the study and the subsequent development process. Some worked examples would be useful in this regard.*

## **Topic: District Heating and Waste Heat**

### **Clarification Question:**

*Can the Commission clarify whether district heating schemes using waste heat, or a combination of renewable energy/green cogenerated energy/waste energy would also qualify for the allowable 15% additional aid intensity?*

## **Topic: Article 38 - Investment aid for energy efficiency measures**

### **Clarification Questions:**

In the proposed revision, paragraph 3(a) states that “*where the counterfactual consists in a less energy-efficient investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment and the costs of the counterfactual investment.*”

Question: *can the Commission precisely define what is meant by “normal commercial practice” and explain how this is to be efficiently determined and quantified? A worked example would be helpful.*

Paragraph 3(b) states that “*where the counterfactual consists in the same investment being undertaken at a later point in time, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the costs of the counterfactual investment, discounted to the point in time when the aided investment would be undertaken;*”

Question: *can the Commission define the discount rate that is to be used as part of this NPV calculation? A worked example would be helpful.*

Paragraph 3(c) states that “*where the counterfactual would result in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the maintenance, repair and modernisation costs of the counterfactual investment, discounted the point in time when the aided investment would be undertaken;*”

Question: *can the Commission define what is meant by “maintenance, repair and modernisation costs” and to what extent would the NPV of maintenance and repair costs incorporate the need for ongoing repairs? A precise definition of “modernisation costs” is especially sought. A worked example would be helpful.*

Paragraph 3(d) states that *“In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in NPV between the leasing of that equipment and the leasing of the equipment that would be used in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;”*

Question: *Do the eligible leasing costs include the finance costs involved? A worked example would be helpful.*

Paragraph 3(e) states that *“In all situations listed under (a) to (d), the counterfactual shall correspond to an investment with the same output capacity and economic lifetime that complies with applicable Union standards. The counterfactual shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.”*

Question: *what Union standards are being referred to? A worked example would be helpful.*

Paragraph 3(f) states that *“Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency in the building, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total costs related to environmental protection.”*

Question: *can the Commission define precisely what standard or metric is being used to compare environmentally-friendly investments? A worked example would be helpful.*

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## General points

### The Definition of Undertakings in Difficulty

The current definition for Undertakings in Difficulty creates 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 and the Industrial and Digital Strategies.

Ireland considers that the existing Undertaking in Difficulty (UID) definition is not fully aligned to the purpose of the rule. International analysis of high growth companies that would have been deemed Undertakings in Difficulty a number of years ago demonstrates that a significant number of these enterprises are still viable today, with a significant portion of them being outstanding drivers of economic growth and job creation<sup>1</sup>. The current UID definition relies solely on a single point in time measurement based on a Balance Sheet statement that is not sensitised to context or stage of development, or the impact of funding pathways for new enterprises. The targeted GBER Review is an opportunity to ensure a more targeted methodology is applied in order to underscore sound competition principles whilst facilitating Member States to support enterprises that will drive the future economy of Europe.

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 many cases, a Balance Sheet deficit is a necessary by-product of the long-term investment strategy in technology and growth adopted by the entrepreneurs that are seeking ambitious sustainable success in favour of short-term profits. 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, often with lengthy commercialisation timelines. This will typically be true for the most disruptive new enterprises. Such businesses are not dependant on State

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<sup>1</sup> A VLAIO (Flanders Development Agency) portfolio analysis was carried out with support granted using a scheme that was based on a full notification procedure with approval from the Commission on 25 August 2011. When the conditions of the present GBER definition are applied to this portfolio in a simulation study, an important group of companies appear to be classified as Undertakings in Difficulty. Compared to the control group, this group contains mainly young companies and a high number of "cash burners". Around 90% in this group were still active in 2019, indicating that these companies, although qualified as 'Undertaking in Difficulty', are in fact financially healthy/economically viable. A study performed in the Netherlands came to a similar conclusion and found no evidence for a predictive value of the Art 2(18) conditions towards failure rate of companies.

support for their survival; however, intervention by the State can be the necessary catalyst to accelerate their development. In the experience of Enterprise Ireland, the current definition of Undertaking in Difficulty prevents essential funding from being provided to businesses which are likely to succeed, but – due to their stage in the development cycle – have not yet had the time to achieve Balance Sheet growth. These are the very businesses that will be the generators of sustainable economic growth for Europe.

For example, under the Horizon Europe initiative, the EU Commission, following robust analysis, recognises initiatives that the Commission would be prepared to invest in. Given the disruptive nature of these projects, the viability of the underlying business is based on factors beyond a current net value test. Therefore, the Undertaking can be regarded as viable but still fail the “undertaking in difficulty Balance Sheet test”.

The exclusion of a large cohort of viable businesses with real growth potential from the scope of the GBER inhibits the ability of Member States to effectively facilitate the development of certain economic activities or of certain economic areas. This is particularly true in permanent structural changes to the economy due to Brexit, Climate Change and the rapid growth of industrial and digital competitors in emerging markets. Supporting Undertakings at an early stage of their life-cycle to adopt energy efficient production processes, could help create a positive lock-in of clean technology.

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 digitalisation, energy and resource efficiency.

Ireland considers that the current UID rule which allows Member States to grant aid to undertakings in their first three years regardless of their Balance Sheet figures should be replaced to allow Member States to grant aid to companies for the period leading up to the company's first commercial sale + five years regardless of their Balance Sheet figures. This would continue to limit State intervention in failing companies whilst recognising modern business models for ambitious, disruptive businesses that are investing in ambitious long-term growth.

A further issue in respect of the existing Undertaking in Difficulty rule is that it applies a single formula uniformly across all 27 Member States in order to determine the viability of companies. This can lead to distortive consequences across the Union as different Member States utilise different accounting rules and commercial investment models.

### *Recommendation*

*Ireland recommends that the derogation from the UID rule which allows Member States to support companies in their first three years regardless of their Balance Sheet figures should be replaced to allow Member States to support companies for up to five years following their first commercial sale*

*Undertakings should be required to meet the Going Concern accounting standard (or an equivalent standard recognised by accounting bodies) as externally certified by an auditor in line with relevant financial reporting standards instead of being subject to a single formula across a diverse range of accounting systems.*

*Where an R&D project is granted the Seal of Excellence, Member States should be facilitated to support the enterprise free from application of the Undertaking in Difficulty test. This would ensure a more consistent approach, particularly in the context of R&D supports.*

## **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.

### **Lack of evidence in support of a change**

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. Ireland notes 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 findings 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 Wislade.

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 EUR 500,000 threshold or even increase it’*.

On the basis of the evidence presented above, Ireland does not consider that there are 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 labour hours and consequent labour costs for Public Administrations.

### **Commercial sensitivity and personal data**

Recently, we have been made aware by Irish Granting Authorities that the publication of aid awards is causing concerns among beneficiaries regarding commercial sensitivity. While turnover and other such figures are not published, where the aid award under a scheme is calculated relative to turnover, or project costs, it would be possible for a competitor to learn about the finances of a competitor, and potentially use this to their own advantage, such as by undervaluing bids.

In the case of sole-trader businesses, the details of the beneficiary may be the same as their own natural person identity. It would be unlikely and rare that a sole-trader would be

receiving above EUR 500,000, in an individual aid award, however, it is not uncommon for a sole-trader to receive an aid award above EUR 100,000. This means that publication of the aid award could now involve the publication of personal data.

### **Inconsistency with the De Minimis Regulation**

It is a significant anomaly that an Undertaking could conceivably receive an aid award of up to EUR 200,000 under the De Minimis Regulation with no requirement for reporting or publishing of this aid award, yet the same beneficiary, could receive the same aid award, for the same purpose under the GBER, and the Granting Authority would be required to publish the full details of the aid award. This discrepancy is incongruous and creates a significant inconsistency within the State Aid Framework.

#### *Recommendation*

*Ireland recommends that the transparency publication threshold remains at EUR 500,000 and, noting that there is no clear basis for such a change, that the threshold of EUR 500,000 should apply more widely across the State Aid Framework as a whole.*

## **Development of templates and worked examples**

Ireland welcomes the numerous revisions to definitions and wider text that simplify and clarify many interpretation questions within the GBER. As the most important part of the State Aid legal framework and the one in which Granting Authorities have the autonomy and responsibility to ensure compliance, a user-friendly and easy to interpret GBER is vital. The 2012 Communication on the SAM describes the importance of '*simplifying the administrative treatment of well-designed measures with relatively low amounts of aid*' to deliver '*a clearer and more coherent architecture of State aid control*'. The SAM Communication sets out the objectives of the overall SAM process:

- (i) to foster sustainable, smart and inclusive growth in a competitive internal market;*
- (ii) to focus Commission ex ante scrutiny on cases with the biggest impact on internal market whilst strengthening the Member States cooperation in State aid enforcement;*
- (iii) to streamline the rules and provide for faster decisions.*

Therefore, a simple to use and easily interpretable GBER is possibly the most important ingredient to support the objectives of the SAM.

In addition to supporting the objectives of the SAM, EU case law also states that Member State's National Authorities do not have the legal power to interpret the

provisions of the GBER.<sup>2</sup> Therefore, it is very important that the Commission provide detailed guidance and interpretation.

The complexity of many of the parameters of the GBER create challenges at the implementation level of GBER schemes. This is particularly the case for micro and small companies, who may not have the necessary expertise in-house to undertake the complex financial analysis and appraisal required in many circumstances. This is most evident in areas such as environmental aid where identification and valuation of counterfactual scenarios is required for eligible costs and quantification of emissions reductions is required to come within the scope.

Another example exists within Aid for RDI in terms of delineating between work of a “Feasibility study”, “experimental development” and “industrial development”. This is also challenging for Digitalisation projects, which could fall under “process innovation” or “experimental research”.

A further example would be *“Additional overheads incurred directly as a result of the project”* and *“other operating expenses”*, for R&D projects. The broad terminology creates confusion around what is intended by DG COMP with this cost. An expansive definition of “incurred directly as a result of the project” and guidance on how a cost can be considered to have incurred directly as a result of a project would be very beneficial.

In this regard, Ireland welcomes the revision of definitions and the clarifications provided throughout the GBER by this targeted review. Ireland would ask the Commission to take this one-step further by developing an accompanying User Guide, containing templates, case studies and worked examples.

The Commission has done something similar in the past, with Best Practice Codes and Analytical Grids for Infrastructure. The benefits of such a guide, with templates and worked examples, would see a reduction in the workload for Granting Authorities, National State Aid Offices, and of course the Commission, with less time dedicated to legal analysis and addressing interpretation questions. Such an approach would address many of the questions currently posed on the e-State Aid Wiki site.

More importantly, this would benefit SMEs who, unlike their larger competitors, may not have the required expertise in-house, or the funding for consultancy to access the expertise required to access State Aid supports. The type of measures that will

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<sup>2</sup> Case T-745/17 Kerkosand spol. s r. o. v European Commission

contribute most to the Green Deal and Digital Strategies, come under some of the most complex parts of the GBER, such as RDI and environmental protection.

### *Recommendation*

*Ireland recommends that the Commission develop templates, case studies and worked examples for some of the more complex areas of the GBER and develop this as an accompanying User Guide. This will enhance the ability of SMEs to access the aid measures needed to achieve the Green and Digital objective.*

*The topics that should be covered include:*

- *Feasibility studies*
- *Digitalisation projects*
- *Counterfactual scenarios for environmental aid*
- *Net Present Value for environmental aid*
- *Aid to a company participating in the Emissions Trading System*
- *Calculating emissions reductions*
- *Competitive bidding for environmental aid*
- *Enabling 'another entity' to increase the level of environmental protection*
- *Typical examples of what can be considered additional overheads and other operating expenses in the context of Article 25*
- *Components of a business plan for Risk Finance Aid*

## **The need for an extended post-adoption Transition Period**

In July 2020, the Commission adopted Regulation 2020/972 to prolong the validity of the GBER by three years until 31 December 2023. Subsequently, Member States updated Schemes to run concurrently with the GBER until 31 December 2023.

Once this amendment is adopted, and comes into force, many schemes will once again need to be adjusted to ensure compliance with the revised articles. In some cases, this will require legislative changes. Ireland considers that the Commission should allow for a post-adoption transition period before the amendments would come into force for existing schemes.

Early adoption would be very beneficial for Granting Authorities in developing new schemes, allowing them to take advantage of the updated GBER parameters, particularly to support digitalisation and environmental protection.

While Ireland considers that a longer transition period should apply to all existing schemes, we would highlight a particular need for a transitional arrangement for schemes under Article 44. A cliff-edge change in this area to completely exclude fossil fuels from the scope would pose significant difficulties for the haulage sector and indeed for public transport operators, both of which are key to enabling economic activity. These sectors are making progress in transitioning away from fossil fuels, but this transition takes time. A cliff-edge halt to Article 44 schemes including fossil fuels is expected to have a detrimental impact on supply chains, already under strain due to the COVID-19 pandemic.

We acknowledge the transitional arrangement present in Article 58; however, we consider that this may not be sufficient for such significant changes. Some schemes, such as those that involve fossil fuel subsidies will need to be completely replaced. Additionally, the beneficiaries of such aid are often freight and logistics transport operators, who require time to replace their fleet with environmentally cleaner alternatives. The freight transport sector is facing significant challenges at this time with fuel costs and supply chain delays. This is significantly exacerbated in Ireland by Brexit.

The abrupt removal of supports for the haulage sector would inevitably lead to reduced capacity and higher costs. This would increase the cost of intra-EU imports. And in effect create a barrier to free trade within the Union, as the relative cost of local goods would become comparatively cheaper. A cliff-edge ending to supports for this sector would be counter-productive to the objectives of modernising the transport sector and promoting economic growth and trade across the EU.

Taking these points together, it would not be optimal for the revised GBER to come into force immediately for existing schemes, nor to delay until 2023 for new schemes. Ireland therefore proposes that a transitional period apply to existing schemes to allow time to amend where needed, and to let them expire naturally in December 2023, while also enabling the Granting Authorities to move forward with developing and implementing new schemes made possible by the amendments introduced in this targeted review.

### *Recommendation*

*Ireland recommends that the Commission extend the transition period for existing GBER schemes until 31 December 2023 when they will expire. During this time MS should not be required to amend existing schemes to the revised GBER parameters but also should not be inhibited from developing and launching new schemes or amending existing schemes to take advantage of the new opportunities brought in with this review.*

*This would be particularly relevant for Digitalisation projects and environmental protection measures.*

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## Regional Aid

Ireland welcomes the revised definitions concerning Regional Aid and the clarifications provided in respect of the Notification Thresholds for Regional Investment Aid for the different aid intensity levels that may apply.

### Definition for 'initial investment that creates a new economic activity'

While the revised definitions are welcome, Ireland asks that some further clarity is provided in respect of the revised definition for 'initial investment that creates a new economic activity'.

We wish to better understand the applicability of Regional Aid under GBER for a company concluding a new lease with an independent landlord for a premises where previously the same economic activity was exercised (but not by the landlord).

In that context, the queries arising from the revised wording of the GBER and which we would like raised with the Commission are as follows:

*Clarification questions:*

*Does the new proposed wording of Article 2, point (51) imply that, whilst an acquisition of shares would not qualify as an initial investment that creates a new economic activity, both the acquisition of assets as well as the leasing of such assets could qualify as an "initial investment that creates a new economic activity" as defined in Article 2 point (51)?*

*If so, does this assessment change if the assets:*

*are leased from an independent third party that did not itself carry out the "same or similar activity" previously carried out at the leased establishment,*

*or,*

*are leased from a company that did carry out the "same or similar activity" previously carried out at the leased establishment?*

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## Aid to SMEs

### Investment aid to SMEs – Intangible asset requirements

The Commission has proposed to tighten the scope of paragraph 4(d) of Article 17 by requiring that intangible assets are required to remain associated with the project for which the aid is awarded for at least three years. This tightens the scope, as up until now, it was only required that the assets would remain included in the Undertakings assets for three years. Therefore, Ireland would be supportive of the current guidelines and oppose the addition of the association with a project.

This change in scope could create a barrier to many projects being aided, as it disincentivises any projects shorter than three years in duration. While the rationale is understood as that the Undertaking should not receive a significant benefit from an aided asset for an alternative purpose beyond the scope of the GBER, however many worthwhile projects of between two and three years in duration may not be aided as a consequence of this amendment.

Moreover, this provision is highly challenging from an administrative perspective. There is administrative burden attached to the current three-year requirement. As it stands, the Granting Authority must review the accounts of the beneficiary to ensure that asset is still recorded on the balance sheet of the undertaking. It is a much greater challenge to confirm if the asset is still associated with a particular project.

Associating these assets to a project would not be supported by Ireland.

This is particularly challenging for aid schemes using a guarantee instrument. Many such schemes are channelled through financial intermediaries, who have the primary engagement with the beneficiary. It is contradictory to market practice that banks or other lenders would check with their customers after three years to assess whether the conditions were fulfilled.

#### *Recommendation*

*Ireland recommends that the requirement that the assets remain associated with the project for which the aid is awarded for at least three years is removed and instead proposes for the guidelines to remain as they are by requiring undertaking to record these assets for a time period of three years.*

*An exception to the requirement for aid in the form of loan guarantees channelled through financial intermediaries would also be favoured by Ireland.*

## SMEs and Small Mid-Caps

Ireland considers that the binary approach to defining and delineating SMEs and Large Undertakings is inadequate. In the GBER, an Undertaking is either an SME (<250 employees) or large undertaking (>250 employees). The additional layer of 'small mid-cap' (>250 <500 employees) more widely used within the GBER would be beneficial to promote employment and expansion.

The GBER defines "small mid-caps" in Article 2 103(e). Ireland considers that this category should be within the scope for all parts of the GBER, and to delineate these relatively small Undertakings from large companies.

As smaller large companies have fewer resources at their disposal and are more affected by market failures, they are more in need of State support to incentivise much needed investment in areas such as regional development, and RDI. Increasing the maximum aid intensity for smaller large companies would result in more balanced regional development and ground-breaking RDI being undertaken, having the potential to improve the quality of life of all Europeans whilst not necessarily being so large to result in the distortion of EU competition.

Small mid-caps as well as mid-cap companies are not so large that their activities would present a distortion to EU competition, but under the present rules they are treated in the same manner as truly large corporations with many thousands of employees.

We consider that this category of undertakings would be appropriate for all sections of the GBER, however, it would be most beneficial in Article 17 and Article 25 to 29.

### *Recommendation:*

*Ireland recommends that the scope of the GBER be expanded so that the category of 'Small Mid-Cap' undertakings is used widely in the different categories of aid in the GBER. Aid intensities for this category could be set at a level in between those applicable for SMEs and large Undertakings to take account of their specific size.*

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## Risk Finance Aid

### Definitions

Ireland welcomes and supports the revised definitions throughout but particularly the revised definitions for *'initial investment'*, *'financial intermediary'* *'innovative enterprise'* and *'independent private investor'*

### Alignment with the change of scope in the Risk Finance Guidelines

Ireland welcomes the adjustment of scope for eligibility for GBER Risk Finance aid for Undertakings to be operating from “less than 7 years” to “less than 10 years”. This corresponds with the change to the eligibility conditions in the revised Risk Finance Guidelines, as was requested by Ireland in our Position Paper in respect of the revised Risk Finance Guidelines.

Ireland thanks the Commission for taking this recommendation on board but notes that this excludes *'innovative enterprises'*.

### Innovative Enterprise Definition

Ireland welcomes the introduction of a new definition for “innovative enterprise” and the inclusion of recipients of the Seal of Excellence quality label by the European Innovation Council in accordance with Horizon 2020.

However, we do not understand why a separate scope of 7 years applies to *'innovative enterprises'*. As there is no corresponding reference in the revised Risk Finance Guidelines, this effectively leaves a gap for years 8, 9 and 10, between eligibility under the GBER and eligibility under the Guidelines for these *'innovative enterprises'*.

There are examples of companies that can qualify for the Horizon Europe programme, or can obtain the Seal of Excellence under that programme, and yet would be ineligible for State Aid due to this mismatch of scope.

*Recommendation:*

*Ireland recommends that the distinction for 'innovative enterprises' is removed from paragraph 3 (b) of the revised Article 21.*

## Aid for Start-Ups

The proposed changes put forward by the Commission in relation to GBER Article 22 are welcomed as they will further enable Member States to address market failures facing highly innovative start-ups. However, Ireland considers that further amendments are necessary to ensure start-up businesses with high potential are given every opportunity to succeed. These businesses will be drivers of job creation and productivity in the post pandemic recovery while also having the potential to develop the disruptive technologies needed to deliver the EU's ambitious digital and green objectives.

Delivering disruptive products, processes and services that are drivers of sustainable job creation and increased productivity requires significant investment. When the required investment to realise these innovative solutions is not always provided by the market, GBER Article 22 facilitates Member States seeking to address the market failure created by the investment gap. However, in certain cases the maximum amounts set by GBER Article 22 are not enough for Member States to sufficiently address the market failure facing these highly innovative enterprises and projects that would increase the economic welfare of all Europeans.

Under GBER Article 22 the maximum amount for grants, including equity or quasi equity investment, interest rate and guarantee premium reductions that can be awarded to a start-up are EUR 400,000, EUR 600,000 (in a 'c' area in a regional aid map) or EUR 800,000 (in an 'a' area in a regional aid map). These amounts can be doubled for small and innovative enterprises. Ireland considers that these amounts could be higher to allow Member States effectively address the market failures facing start-ups, particularly in the context of rising energy and transportation costs currently being experienced across all MS.

The adoption of the revised Regional Aid Guidelines in 2021 sees a decrease in population coverage for 12 Member States in 2022. This reduces capacity across several Member States to sufficiently address the market failure facing small and innovative enterprises in accessing seed and early-stage finance.

In addition to the maximum amounts for grants, including equity or quasi equity investment, interest rate and guarantee premium reductions, the five-year scope can also be an impediment to supporting highly innovative start-ups developing disruptive products, processes or services. Additionally, the growth trajectory for many Start-ups has been impacted by the COVID-19 pandemic.

To achieve the Commission's ambitious Green and Digital objectives, Europe will need an ecosystem of highly innovative start-ups developing disruptive products, processes or services. These start-ups will also deliver sustainable, fulfilling employment. To enable this, start-ups should be given every opportunity to succeed. In many technology intensive sectors such as the Life Science industry, it can take 7-10 years following its registration for

a company to develop its product, requiring significant investment before commercial returns can be delivered.

### *Recommendations*

*Ireland recommends that the maximum amount for grants, including equity or quasi equity investment, interest rate and guarantee premium reductions that can be awarded to a start-up under GBER Article 22 is increased from EUR 400,000 to EUR 800,000.*

*Ireland also recommends that Article 22 is amended with eligible undertakings being any unlisted small enterprise up to eight years following its registration.*

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## Aid for Research, Development and Innovation

### Definitions and Digitalisation

Ireland welcomes the revised definitions and the inclusion of digitalisation within many definitions pertaining to aid of RDI. In many instances, the definitions set the scope of the relevant article and therefore the clarity provided by definitions is very important for Granting Authorities to satisfy themselves that their schemes are compliant with the GBER.

However, it is considered by our Granting Authorities that there are still some practical challenges with applying broad, high-level definitions to wide ranges of activities and technologies. Ireland considers that the Commission could further elaborate on definitions in respect of Aid for RDI, particularly for digitalisation. Several definitions contain multiple layers, so often the terminology within definitions also requires a clear definition.

#### *Recommendation*

*Ireland recommends that the next layer of definitions and interpretations in respect of 'Digitalisation', (including how this applies to 'experimental development') is provided by the Commission to equip Granting Authorities to design appropriate aid schemes to support the Digital Strategy.*

### Digital Transformation Projects within the definition of Experimental Development

An example of a broad definition that is problematic in practice is the definition for 'experimental development'. This definition is proposed in the draft text to include 'developing new or improved products, processes or services, including new or improved digital products, processes or services' and the definition for 'process innovation' will include 'the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), for instance by making use of novel or innovative digital technologies'.

In the short and medium term, a significant number of enterprises across Europe will be looking to engage in large digital transformation projects. This will involve enterprises becoming data driven, leveraging cloud technologies such as IoT, Cloud systems for Finance, ERP and CRM, with all of these technologies linking together to transform the enterprise in line with the EU Digital Decade/Digital Compass aims.

Experimental development involves acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services, including digital products, processes or services. Digital transformation in an enterprise will result in fundamental change in how the enterprise operates and result in radically improved products, processes and services being produced while also increasing production capacity of the enterprise.

However, this level of transformation requires significant investment to deliver, while also carrying a high degree of risk/technical uncertainty. In a recent report from Deloitte, it was found that around 70% of digital transformation projects fail (deloitte-uk-digital-transformation-are-people-still-our-greatest-asset.) This risk leads to market failures in the delivery of these projects especially for smaller mid-cap enterprises who have less resources and digital expertise than large multinational corporations.

In order to provide Granting Authorities with a GBER text that is fit-for-purpose to support economies in their pursuit of the objectives of the Digital Strategy, it would be useful if the next layer of definitions could be provided to show the delineation between different types of digitalisation projects and under which Article they can be supported.

Ireland asks that the Commission provide further clarity around these definitions for digitalisation projects, as the distinctions between them impact on the aid measures, and consequently aid intensity, that apply. Ireland seeks additional clarity as to whether digital transformation projects would be eligible under this definition and if not, further amendment of the definition to include digital transformation under the definition of Experimental Development.

#### *Clarification query*

*Ireland asks the Commission to provide a clarification as to how digital transformation projects can be aided as part of “Experimental Development”.*

## **Digital Innovation Hubs**

In our submission as part of the consultation on the RDIF, Ireland raised concerns with the inclusion of Digital Innovation Hubs within the definition of ‘Innovation Clusters’. The concerns were that this would limit the ability of Granting Authorities to support the growth and development of European Digital Innovation Hubs (EDIHs) using only Article 27 of the GBER.

Ireland considers that the Commission has responded to this by clarifying in Article 5, how aid can be channelled through Digital Innovation Hubs to SMEs under Article 28 and can be

considered transparent aid. Additionally, indirectly, the inclusion of 'services of innovation clusters' as an eligible cost under Article 29, also facilitates supporting EDIHs.

Ireland thanks the Commission for this thorough response and for providing adequate clarification and scope for Granting Authorities to support the development of EDIHs.

*Ireland welcomes these clarifications and thanks the Commission for addressing our concerns raised during the RDIF consultation in this review of the GBER.*

## Aid Intensities for Innovation Clusters

The GBER sets the maximum aid intensity for innovation clusters at 50% for investment aid (with increased provisions for clusters in assisted areas) and 50% for operating aid.

The aid intensities set out for aid for innovation clusters do not appear to be sufficiently high to incentivise investment to a significant extent. Growing and supporting innovation clusters have been proven to increase collaboration at sectoral and regional level between SMEs, large companies and research institutions, leveraging greater economies of scale and enhancing the skills levels of SMEs beyond that which would be achieved by enterprises operating by themselves. Overall, increasing the visibility of engagement with, and utilisation of, clustering structures will lead to a strengthened European SME and entrepreneurship base. However, there are significant investment and operating costs associated with cluster formation and development. In particular, an issue that has arisen is the difficulty SMEs face in paying membership subscriptions to co-funded innovation clusters.

### *Recommendations*

*Ireland recommends that the maximum aid intensity for initial investment aid for innovation clusters in non-assisted areas is increased from 50% to 65%*

*Ireland recommends that the aid intensity for operating aid for innovation clusters is amended as follows, allowing for higher aid intensities to innovation clusters at early stages of their development:*

- *100% aid intensity available for innovation clusters in their first year of operation.*
- *80% aid intensity available for innovation clusters in their second and third year of operation.*
- *50% aid intensity for all innovation clusters older than three years.*

## Feasibility Studies

In addition to the definitions described above, Ireland also seeks further clarity on the practical implementation of a “Feasibility Study”. Our Granting Authorities have found this type of aid measure difficult to deliver in practice, based on the definition as currently stated in the GBER. We note that there is no proposal to amend this definition at this time.

Granting Authorities find that, in practice, it is difficult to delineate between the feasibility study and the development stages of the project, as the findings of the study direct and inform the subsequent stages. The way ‘feasibility study’ is defined in the GBER describes a situation in which the study is carried out as a standalone research project, however, in practice, it is far more integrated into the development process.

### *Clarification question*

*Ireland asks the Commission to further elaborate on the definition for ‘feasibility studies’ to enable a clearer delineation between the study and the subsequent development process. Some worked examples would be useful in this regard.*

## Effective Collaboration Requirement for aid for process and organisational innovation

Paragraph 2 in Article 29 requires large undertakings to effectively collaborate with SMEs in the aided activity and that the collaborating SMEs incur at least 30 % of the total eligible costs for the aid to be compatible. Ireland considers that this clause is problematic and counter-productive to the objective of encouraging spill-over effects to SMEs. Irish Granting Authorities have found, through their experience, that this can actually inhibit collaboration, as it is such a challenge to implement and thus the investment does not occur, which is counter-productive to the overall objective of the aid.

Practical operation of this clause is unclear and problematic, in terms of what contractual arrangements should be in place between SMEs and the large undertakings. The attribution of Intellectual Property Rights is also very challenging, when different entities are contributing different parts of the project and bearing different proportions of the costs.

Ireland understands that the rationale for this clause is to limit the granting of aid to large undertakings except where an SME will also obtain a benefit from the aid awarded, and to drive positive spill-over effects from the large undertaking to the SME. However, the practical challenges mean, that in reality, large undertakings are not accessing aid in this manner, resulting in no innovative benefit nor spill-over benefit. Ireland acknowledges that due to

inherent financial advantages of large undertakings, the low aid intensity of 15% is appropriate, but that the collaboration clause is inhibitive.

Ireland considers that there are other ways to aid large undertakings where the spill-over effects could be promoted and the level playing field protected. For example, different aid intensity rates for large undertakings who collaborate and those that do not. Another suggested opportunity would be a requirement for large undertakings to demonstrate and aid process innovation to SMEs at trade fairs. Furthermore, a shorter period during which the innovation is protected by patent for large undertakings who have been aided under Article 29 should be considered.

Any of these approaches would be more straightforward for Granting Authorities to administer and still limit the amount of aid large undertakings can receive, whilst also promoting collaboration.

#### *Recommendation*

*Ireland recommends that the requirement in paragraph 2 in Article 29 that requires large undertakings to effectively collaborate with SMEs in the aided activity and that the collaborating SMEs incur at least 30 % of the total eligible costs for the aid to be compatible is removed and replaced with other ways to promote spill-over, such as different aid intensities for effective collaboration.*

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## Aid for Environmental Protection

### The importance of the GBER for Environmental Protection for decarbonisation of the enterprise sector

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).

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 spending" could provide a risk to generating the demand needed for a 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 CO<sub>2</sub> 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 CO<sub>2</sub>.

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.

## **Administrative complexity for SMEs for GBER Environmental Aid**

The administrative complexity involved in developing a project that can receive environmental aid is a significant burden for SMEs and in some cases is a barrier for them to undertake the investment. Irish Granting Authorities have found that the up-take of environmental aid schemes is low due to the complexity involved. It is acknowledged that supporting Undertakings in the vital task of decarbonising is necessary to achieve ambitious targets for reducing emissions. There is little point in designing block exemptions in the GBER that are undeliverable to Undertakings in practice. The Commission can, as part of this review, include the necessary clauses to overcome these challenges.

The consensus among Irish Granting Authorities is that calculating the counterfactual is costly for Undertakings. It typically involves hiring a third-party evaluator 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 definition of the calculation would alleviate certain aspects of these barriers by providing increased clarity for Member States in designing effective incentives. It is suggested that the definition provided is further clarified, 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.

While the increased clarity on quantification of the funding gap provided by the draft text is welcomed, it is questioned whether it is appropriate to require Small Mid-Caps and SMEs to demonstrate the funding gap in the same manner as larger multinational companies. When required to demonstrate a counterfactual scenario, a disproportionate administrative burden is placed on smaller enterprises, which may dissuade them from planning and executing environmental improvement projects. This is particularly true for projects that only require a

small amount of funding but will have significant positive impacts for the environment and/or which would result in the company building momentum internally or with suppliers and partners in realising the business benefits from environmental improvement projects.

There are possible solutions, such as the development of guiding templates and worked examples as described in our General Points. Another potential solution would be a new article exclusively for environmental aid for SMEs, in which small amounts of aid for environmental purposes do not require the complex administrative conditions. This would be similar to De Minimis Aid, but with the requirement that the eligible costs must relate to environmental protection and that a higher threshold and all other conditions of the GBER must be fulfilled.

### *Recommendation*

*Ireland recommends that the Commission take into consideration the administrative complexity for SMEs for accessing environmental GBER aid. Ireland proposes some recommended solutions to the challenges:*

- The development of templates and worked examples, for both Granting Authorities and for SMEs, (As discussed in more detail in our General Points)*
- The inclusion of a new block exemption exclusively for environmental aid for SMEs that permits small amounts of aid for environmental protection purposes without any of the complex administrative requirements, (such as competitive bidding, or calculating the counterfactual) normally required for environmental aid.*
- Higher aid intensities and the costs of consultancy service to assist the SME with the application be included as an eligible cost for SMEs, to provide a sufficient compensation for the necessary costs involved in meeting the complex administrative challenges for accessing environmental aid.*

## **Relationship between the GBER and the Emissions Trading System**

Ireland thanks the Commission for clarifications provided to date on the relationship between GBER aid and the ETS. We note that the ETS is not a Union Standard and that Member States are therefore free to support under Article 36 decarbonisation investments of undertakings covered by the EU ETS.

However, further clarity on the practical aspects of the grant aiding Undertakings participating in the Emissions Trading System would be welcome.

In pursuit of the objective of a 55% reduction in emissions by 2030, there will need to be a focus on encouraging 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 incentivise 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 any 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 “worked examples” or case studies, describing a situation in which GBER aid is provided to Undertakings participating in the ETS.*

## **Renewable Energy**

DG Comp's remit is, of course, focussed on promoting competition. However, the review of the environmental aid provisions of the GBER is a rare example of something that is more important than competition i.e. climate action. Given this, we seek to work with DG Comp in ensuring we are not putting barriers in front of efforts to promote more renewable electricity?

Specifically, Ireland has concerns around the deletion of paragraph 8, in Article 42, which provided an alternative to competitive bidding. This is a challenge, as competitive bidding will be required in all circumstances. The existing GBER exemption level for notification for operating aid in Article 42 paragraph 8 was 6MWs for Wind and 1MW for all other forms of renewables. The proposed new GBER exemption, now in Article 43, at 400KW dropping to 200KW in 2026 is a major change, particularly given the supposed aim of enabling Member States to fulfil the EU's ambitious environmental objectives of the European Green Deal.

GBER & The Guidelines for Climate, Environment and Energy (CEEAG) seems to be getting more restrictive just as the ambition is supposed to be increasing. This would seem to be counter intuitive. Why reduce the support options when we are increasing the ambitions?

The proposed GBER changes do have an exemption for Renewable Energy Communities (RECs) up to a limit of 1MW, but in reality, this just mirrors the pre-existing provision and will in effect remove wind generation as a realistic option for communities, given the current size of wind turbine generators and economies of scale. So, this is still not an improvement and will reduce options for communities, rather than increasing them.

The proposed reduction in size thresholds in Article 43 for small scale installations and renewable energy communities (with a further reduction planned in 2026) means that wind energy installations are unlikely to be supported to any extent under this article. The Commission's reasoning here is unclear, as wind is an important form of renewable energy.

A typical turbine today would be 2.5MW or 3MW in size. It would be desirable for there to be a corresponding threshold established for wind in GBER or in the CEEAG. Proposed RECs will likely be relegated to a niche portion of the solar PV sector which appears discriminatory against wind and does not align with DG Competition's public position of seeking to maintain technological neutrality.

*Recommendation:*

*The CEEAG/GBER should maintain the 2014 thresholds – no competitive process for installations with an installed electricity capacity of less than 1 MW, or demonstration projects, except for electricity from wind energy, for installations with an installed electricity capacity of up to 6 MW.*

*Alternatively, alongside the 1MW proposal in GBER there should be a separate 3MW proposal specifically for Wind.*

## District Heating and Waste Heat

Ireland welcomes the changes to Article 46 for District Heating and would ask for some additional clarity in respect of Article 46 Paragraph 4 and waste heat for District Heating schemes.

Article 46(4) states that aid intensity for district heating schemes may be increased by 15% where the project uses only renewable energy or green cogenerated energy. We are unsure how this would apply to waste heat. Under the Energy Efficiency Directive, efficient district heating means 'a district heating or cooling system using at least 50 % renewable energy, 50 % waste heat, 75 % cogenerated heat or 50 % of a combination of such energy and heat'.

*Clarification question*

*Can the Commission clarify whether district heating schemes using waste heat, or a combination of renewable energy/green cogenerated energy/waste energy would also qualify for the allowable 15% additional aid intensity?*

## **Article 38 Investment aid for energy efficiency measures**

The current GBER guidelines provide clarity on energy efficiency eligible costs under Article 38 paragraph 3(a) as being “costs of investing in energy efficiency can be identified in the total investment cost as a separate investment.” The removal of this clarity and its replacement with new paragraphs 3(a)-(f) raise questions and potential challenges for the development of investment aid for energy efficiency measures in Ireland.

Ireland highlights the difficulties that arise from the removal of the current approach as provided for in paragraph 3(a) and the introduction of NPV calculations and counterfactual investment scenarios which add a new level of complexity and subjectivity to energy efficiency investment supports that did not previously exist. This level of complexity will introduce new overheads and will penalise supports for energy efficiency measures in the SME sector and smaller projects that comprise the majority of projects under the longstanding and flagship Irish scheme - the Communities Energy Grant Scheme (formerly known as the Better Energy Communities Scheme).

This will tend towards a diminution of investment in energy efficiency measures as it reduces the incentive for early action and introduces a complex judgment call on the probability of the same investment happening at a future date. Consequently, Ireland has strong reservations about the proposed changes and proposes that the current Article 38 paragraph 3(a) should remain unchanged in the GBER revision.

Ireland would also like to draw the Commission's attention to Article 38 paragraph 3a. which proposes increased aid for projects that reach a reduction in primary energy demand of at least 20% for residential buildings, education and social services buildings, public administration buildings, and buildings related to justice, law enforcement, fire-fighting and civil protection.

A 20% minimum reduction in primary energy demand is not an insignificant request. How is it envisaged that the proposed 20% reduction in PEC is to be measured/assessed? Under Ireland's Communities Energy Grant Scheme, none of the energy efficiency projects that fall under the categories of buildings listed under 3a currently reach a reduction in primary energy demand as high as 20% and it would be extremely difficult for them to reach this reduction under current conditions and technologies.

Most public building projects under the Communities Energy Grant scheme save significantly less than 10% primary energy demand post-works and some have a negligible reduction in primary energy demand. An example of this is a sports club that installs a heat pump as part of a package of energy efficiency measures. The building was used three hours per day before works but after works there is increased use and activity in the building as new groups take advantage of the increased warmth and comfort in the building throughout the day and weekend. Post-works 'comfort taking' has also shown itself to be a significant consequence of retrofit upgrades. Another example is a social services or education building like a school that has low occupancy rates and consequently savings are a significant challenge. This is especially the case when a heat pump is installed that is on all day and night even though the building (e.g., a school) is not in use for much of this time.

Energy efficiency measures on buildings that fall under the categories listed in 3a comprise over one-third of the projects of the flagship Communities Energy Grant scheme yet none of these non-domestic projects would be eligible for the increased supports afforded by paragraph 3a. As the nature of Communities Energy Grant scheme is to combine both domestic and non-domestic projects together in project contracts, these changes will also have wider negative implications on domestic energy efficiency investments.

As the proposals would reduce the number of qualifying projects and lead to less energy efficiency gains, an allowance does not appear to have been made for wider benefits arising from such projects. Ireland requests that the proposed target for a reduction in primary energy demand be adjusted downward to take account of increases in use, activity and comfort taking that occurs naturally after energy efficiency measures have been completed on such buildings.

#### *Clarification questions*

In the proposed revision, paragraph 3(a) states that *"where the counterfactual consists in a less energy-efficient investment that corresponds to normal commercial practice in the sector or for the activity concerned, the eligible costs shall consist in the difference between the costs of the investment and the costs of the counterfactual investment."*

- *Question: can the Commission precisely define what is meant by "normal commercial practice" and explain how this is to be efficiently determined and quantified? A worked example would be helpful.*

Paragraph 3(b) states that *"where the counterfactual consists in the same investment being undertaken at a later point in time, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the costs of the counterfactual investment, discounted to the point in time when the aided investment would be undertaken;"*

- Question: *can the Commission define the discount rate that is to be used as part of this NPV calculation? A worked example would be helpful.*

Paragraph 3(c) states that “where the counterfactual would result in maintaining the existing installations and equipment in operation, the eligible costs shall consist in the difference between the costs of the investment and the NPV of the maintenance, repair and modernisation costs of the counterfactual investment, discounted the point in time when the aided investment would be undertaken;”

- Question: *can the Commission define what is meant by “maintenance, repair and modernisation costs” and to what extent would the NPV of maintenance and repair costs incorporate the need for ongoing repairs? A precise definition of “modernisation costs” is especially sought. A worked example would be helpful.*

Paragraph 3(d) states that “In the case of equipment subject to leasing agreements, the eligible costs shall consist in the difference in NPV between the leasing of that equipment and the leasing of the equipment that would be used in the absence of aid; the leasing costs shall not include costs relating to the operation of the equipment or installation (fuel costs, insurance, maintenance, other consumables), irrespective of whether they are part of the leasing contract;”

- Question: *Do the eligible leasing costs include the finance costs involved? A worked example would be helpful.*

Paragraph 3(e) states that “In all situations listed under (a) to (d), the counterfactual shall correspond to an investment with the same output capacity and economic lifetime that complies with applicable Union standards. The counterfactual shall be credible in the light of legal requirements, market conditions and incentives generated by the EU ETS system.”

- Question: *what Union standards are being referred to? A worked example would be helpful.*

Paragraph 3(f) states that “Where the investment consists in a clearly identifiable investment solely aimed at improving energy efficiency in the building, for which there is no less environmentally-friendly counterfactual investment, the eligible costs shall be the total costs related to environmental protection.”

- Question: *can the Commission define precisely what standard or metric is being used to compare environmentally-friendly investments? A worked example would be helpful.*

*Ireland asks the Commission to define which buildings are categorised as social services and are they only considering social service buildings that are owned by central and local government.*

#### *Recommendations*

*Ireland recommends that a minimum reduction in primary energy demand of 10% that takes account of increased activity and comfort taking would represent a more realistic and appropriate threshold that could be met by energy efficiency investments. This would facilitate more projects to be delivered.*

*Ireland also recommends an alternative numbering of paragraphs under Article 38 as evident difficulties arise when two separate paragraphs in the same article are titled 3(a) and 3a.*

## **Recruitment and salary costs for specialist experts as an eligible cost**

To develop and implement improvements for environmental protection, companies need to assemble teams of qualified experts; therefore, employment and associated resources should be an eligible cost for environmental aid to accommodate this.

This would equip undertakings, particularly smaller undertakings with the expertise needed to implement changes and would be a straightforward calculation for Granting Authorities.

#### *Recommendation*

*Ireland recommends that recruitment and salary costs for specialised technical experts who provide the expertise need for undertakings to implement improvements for environmental protection be listed as an eligible cost in Articles 36, 38 and 39.*

## Possibility to aid the beneficiary to enable 'another entity' to increase the level of environmental protection

Ireland welcomes the increase in scope for Article 36 to include the ability to support a beneficiary to enable 'another entity' to increase the level of environmental protection resulting from its activities. Ireland considers that this could apply to a variety of scenarios, some of which may or may not be considered compatible. This opens interesting an perspective on supply-chain, or tenant/occupier, or ESCO potentially.

In this regard, Ireland asks the Commission to provide further text to elaborate on the scenarios to which this would apply. There are different approaches that such an elaboration could take, as set out in the following recommendation.

### *Recommendation*

*Ireland recommends that the Commission elaborate further on the scenarios that could apply for 'another entity' under Article 36. Ireland recommends that this could be achieved by:*

- *Adding a 'menu' of examples of possible scenarios*
- *Provide a worked example or case study template*
- *Provide a detailed definition for 'another entity' that provides the clarity in this specific context.*

## Eligible Technologies for Article 38

Paragraph 3d of Article 38 excludes natural gas-fired energy equipment from the scope of the block exemption but allows for "*more energy-efficient gas-fired*" energy equipment. Ireland finds that this makes it unclear as to which technologies are eligible for support under Article 38. We ask the Commission to specify which technologies are eligible for support under the revised GBER Article 38.

### *Recommendation*

*Ireland recommends that the Commission makes specific reference to eligible technologies to clarify permitted use.*

## Definition for “zero direct emissions”

During the consultation on the CEEAG, Ireland requested that the scope of the GBER be widened to support environmental protection. We consider that the additional 10% aid intensity for an investment that results in zero direct emissions is an example of this and we thank the Commission for this point. Given the high aid intensity of 50% that applies, while welcome, we consider it very important that Granting Authorities in all MS, can be certain as to when they grant 50% aid intensity. Ireland considers that that a definition for “zero direct emissions” be included in Article 2.

### *Recommendation*

*Ireland recommends that the Commission include a definition for “zero direct emissions” in Article 2 of the revised GBER*

## Collaboration between SMEs and Large Enterprises

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 2020s. Leading companies - including multinationals and Irish-owned 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 Irish-owned 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.

A suitable mechanism to further 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” (definition provided by GBER Article 2(90)). 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.

*Recommendation*

*Ireland recommends that a higher maximum aid intensity is available where appropriate to reward activities involving “effective collaboration” between SMEs and Large Undertakings.*

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## Concluding Remarks

Ireland thanks the Commission for their work in revising the GBER and for taking the time to review the comments and queries in this submission. The GBER is the most important regulation in the State Aid legal framework with 97% of aid granted under the GBER. The GBER is especially important to smaller Member States, who do not have the resources to develop complex notified schemes or grant large amounts of aid beyond the GBER thresholds.

It is particularly welcome that the Commission is revising the GBER to enable Member States to use State Aid to address the challenges of Climate Change and the digital transition. We welcome the broadening of the scope for environmental and energy aid.

During this consultation, we have had significant engagement with all Granting Authorities and stakeholders who interact with the day-to-day practical operation of State Aid Schemes in Ireland. In these discussions, the common, over-arching theme that consistently emerged was the challenge of administrative complexity inherent in GBER aid. Such administrative complexity is contrary to the objectives of the SAM.

This paper has provided specific queries in respect of the complex conditions, as well as some recommendations in how the administrative complexity could be addressed. The Irish State Aid team would be happy to engage with the Commission in any work programme such as the development of templates and worked examples, with a view to delivering an overall simpler GBER text.

Ireland fully recognises and wholeheartedly appreciates the significant effort that the Commission Services make in formulating, and revising the GBER and the other elements of the State Aid Framework and stand ready to support the Commission in any effort to further improve the State Aid Framework and deliver the objective of the SAM.

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