Rialtas na hÉireann
Government of Ireland

Ireland's response to review of the State Aid Risk Finance Guidelines

August 2021

Review of the Risk Finance Guidelines

1. Introduction

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

Ireland supports the targeted amendments to make the Risk Finance Guidelines less complex and easier to apply.

2. Scope correspondence with the GBER

Ireland welcomes and supports the change and clarity of scope for Notifiable Aid from “*more than 7 years after their first commercial sale”* to *“more than ten years following their registration*” expressed in point 32(c) of the draft Guidelines.

However, it supports this change, only on the assumption that the GBER Eligibility Requirements are to be changed from *“less than 7 years”* to “*less than 10 years*” to correspond to this. Ireland could not support a situation in which Undertakings who are between 7 and 10 years since registration could not be supported under the Guidelines or the GBER.

Ireland therefore asks that the Commission provides clarity on this issue at the earliest opportunity and before the revised Risk Finance Guidelines are adopted. We note that it is the Commission’s intention to open a public consultation on the revision of the GBER at the end of the Summer and therefore this clarity may be provided at that time. However, we would welcome your response to our request for clarification as part of your consideration of this submission.

In the circumstances that the change to the GBER will not occur for a period of time following the adoption of the Risk Finance Guidelines, Ireland considers that transitional arrangements should be put in place for Undertakings who are between 7 and 10 years since registration.

3. 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 Risk Finance Guidelines and any consequent amendments to the GBER.

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

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

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

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

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

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

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

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

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

4. The market economy operator test

Ireland agrees with the position taken by other Member States at the Multilateral meeting on 6th July 2021 that the specific description of how a Risk Finance measure can comply with market terms, set out in section 2.1 of the current Guidelines, should be retained in the revised Guidelines.

Given the unique nature of Risk Finance investments compared to more general Aid measures, the specific description contained within the current Risk Finance Guidelines is valuable to State controlled Investors, such as the Ireland Strategic Investment Fund, and should not be deleted in the revised Guidelines.

5. Contact Details

[redacted]

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