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JUST TRANSITION FUND
STATE AID PRESENTATION

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Agenda

- DECC introduction
- Objectives of this session:
  - Overview of EU State aid rules & how they apply in the context of the Just Transition Fund
  - GBER as main exception to prohibition on State aid and current focus for Just Transition Fund
  - Worked examples for purposes of completing Application Form
- Questions & Answers

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Disclaimer

- This presentation is not intended nor purports to be legal advice (from either DECC and/or Philip Lee)
- All applicants are advised to seek independent legal advice on any issues arising in respect of their applications to the Just Transition Fund
- **NB: Applicants are obliged to provide complete and accurate applications by reference to verifiable information.**

What is State aid?

- State aid is the name given in the EU to a subsidy or any other aid provided by a government (including State bodies) to an **undertaking** that distorts competition.
  - An "undertaking" is any entity engaged in an economic activity (i.e., offering goods or services on a given market), regardless of its legal status and the way in which it is financed
- Defined by reference to the prohibition set out in Article 107(1) TFEU (*EU Treaty*):

"Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market."

The characteristics of State aid

- The four main characteristics of Article 107(1) are:

  1. The aid is imputable to / granted by the State or through <u>State resources</u>:

     - Essentially public assistance — but this takes a wide variety of forms

     - Grants – as envisaged, for example, by the Just Transition Fund – are considered a form of public assistance

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The characteristics of State aid

- The four main characteristics of Article 107(1) are:

2. The aid favours certain undertakings or the production of certain goods:

   - The intervention gives the recipient an advantage on a selective basis
   - E.g., to specific companies or industry sectors, or to certain companies located in specific regions (e.g., in the Midlands region for the Just Transition Fund)

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The characteristics of State aid

- The four main characteristics of Article 107(1) are:

3. It distorts or <u>threatens to distort competition</u>:

   - Not necessary to prove actual distortion / no need to prove any anti-competitive practices on part of aid recipient

   - Sufficient to show <u>measure threatens to distort competition</u> (*i.e.*, aid releases a business from costs it would ordinarily have to bear in normal market conditions)

The characteristics of State aid

- The four main characteristics of Article 107(1) are:
  4. It affects <u>trade between Member States</u>:
     - Low threshold in this regard
     - Met if the aid could be said to strengthen the position of a business compared with competitors
     - EU courts have found that State aid may affect any competing business whether established in the same Member State (i.e., in Ireland for the Just Transition Fund) or another MS

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Why do we control State aid?

- First, a business which receives government support gains (in theory) an advantage over its competitors.

- Second, State aid goes to the issue of moral hazard.
  - The principle is that State aid may make a recipient less inclined to adopt difficult measures required to become more efficient and/or could encourage excessive risk taking.

How do we control State aid?

- European Commission has exclusive competence in relation to State aid
- Member States must ordinarily notify the Commission in advance if they wish to obtain clearance to grant State aid
- Aid is prohibited by Article 107(1), unless falling within an exemption or subject to meeting certain criteria

Exceptions to the general prohibition on State aid (relevant to the Just Transition Fund)

- No mandatory notification is necessary where:
  - Aid is covered by the General Block Exemption (Reg. 651/2014) – which gives automatic approval for a wide range of defined aid measures (*see next slide*)
  - *de minimis* aid provided (i.e., not exceeding €200,000 per undertaking over any 3 fiscal year period, though specific rules/amounts apply to road transport sector, agriculture and fisheries) (De Minimis Reg. 1407/2013)
- See further DECC presentation of December 2020, available on [gov.ie - Just Transition Fund (www.gov.ie)](www.gov.ie)

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General Block Exemption or "GBER"

- GBER was introduced as part of the European Commission's reform and modernisation of State aid rules
- GBER sets out categories of State aid where the benefits to society of public funding are considered to outweigh possible distortions of competition
- It exempts such funding from the requirement of prior notification to the European Commission

Application of GBER to Just Transition Fund

- Objective of fund is "*to assist innovative projects that contribute to the economic, social and environmental sustainability of the wider Midlands region and which have employment and enterprise potential*."

- GBER applicable to the Just Transition Fund as the legal basis (from a State aid perspective) by which the public funding can be provided.

- DECC has reporting obligations in this context and analysis must be done on applications to ensure GBER rules are met.

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General Block Exemption or "GBER"

- GBER's criteria and conditions have to be applied systematically as the Regulation applies uniformly in all Member States

- The criteria of the GBER determine:
  - eligible beneficiaries (*i.e., who can benefit*)
  - eligible expenses (*i.e., what costs can funded/aided*)
  - maximum aid intensities (*i.e., the max proportion of eligible costs of a project that can benefit from aid*)

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Application of GBER to Just Transition Fund

- For GBER to apply, you must be able to show that the Just Transition Fund is providing you with an **incentive effect** to carry out the project. (*If you would have been able to carry out the project in the absence of the Just Transition Fund, then there is no incentive effect being provided.*)

- Specific rules on **cumulation** apply (*i.e., if you cumulate aid from different sources for the same eligible costs, this cannot exceed the highest aid intensity or aid amount applicable under GBER*)

State Aid Template - General Approach (1 of 2)

1. Pick the **<u>GBER article(s)</u>** the project is most likely to fall under by deciding the main outcomes your project will result in (e.g., training programmes, energy efficiency measures, innovation etc.).

   - Note the project may be separated into a number of GBER articles but costs cannot be double counted

2. You will then need to assess the **<u>eligible costs</u>** which can be covered under the selected GBER article(s) (*the relevant eligible costs applicable to each GBER article are set out in the State aid template form)*

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State Aid Template - General Approach (2 of 2)

3. Next you must determine the **aid intensity rate** that will apply to the identified eligible costs. This will be done by reference to the size of your business group (e.g., wholly-owned subsidiaries must consider parent groups etc.):
   - A small enterprise (*i.e., has fewer than 50 employees and has either an annual turnover and/or balance sheet total not exceeding EUR 10 million*)
   - A medium sized enterprise (*i.e., has fewer than 250 employees and has either an annual turnover not exceeding EUR 50 million and/or balance sheet total not exceeding EUR 43 million*)
   - A large enterprise (*i.e., has 250 employees or more*)

NB: The State Aid Template sets out the applicable levels of aid intensity for each GBER article. Cross refer to that doc.

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Worked Example – Article 38 (Energy Efficiency)

1. Will your project result in a **higher level of energy efficiency** (retrofitting materials, installation of solar panels etc.)?

   - If so, the eligible costs for the energy efficiency aspect of the project up to the maximum aid intensity rate can be covered under Article 38.

2. **Eligible Costs**: these are the extra investment costs necessary to achieve the higher level of energy efficiency. The eligible costs are demonstrated by reference to the counterfactual for Article 38's purposes (*see next slide*).

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Worked Example – Article 38 (Energy Efficiency)

3. **Counterfactual:** the counterfactual under Article 38 is the similar less energy efficient investment that would have been credibly carried out without the aid **or** the energy efficiency project simply not being pursued in the absence of the JTF.

   - **N.B - The difference between the counterfactual and the total project costs will determine the eligible costs.**

4. **Maximum Aid Intensity Rate:** the maximum aid intensity rate covered is 50% of the total eligible costs for small enterprises, 40% for medium enterprises, and 30% for large enterprises.

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Article 38 - Worked Example:

You determine that you are a large enterprise and that the total costs of the energy efficient aspect of your project is €100,000. You further assess that a similar lesser energy efficient counterfactual project would cost in the region of €30,000. The total eligible costs would, therefore, be €100,000 - €30,000 = €70,000.

These total eligible costs would be covered up to a maximum aid intensity of 30% (as you are a large enterprise). €70,000 x 30% = €21,000.

Therefore €21,000 would be the maximum grant amount covered by the Just Transition Fund for the energy efficient project aspect under Article 38, GBER in this worked example.

The eligible costs shall be the extra investment costs necessary to achieve the higher level of energy efficiency. They shall be determined as follows:	Enter eligible costs (€)	Enter the applicable aid intensity rate(s)	Apply the applicable aid intensity rates and enter totals (€)
(a) where the costs of investing in energy efficiency can be identified in the total investment cost as a separate investment, this energy efficiency-related cost shall constitute the eligible costs;			
(b) in all other cases, the costs of investing in energy efficiency are identified by reference to a similar, less energy efficient investment that would have been credibly carried out without the aid. The difference between the costs of both investments identifies the energy efficiency-related cost and constitutes the eligible costs.	**€70,000** ***€100,000 - €30,000 = €70,000, the eligible costs that GBER covers under Art. 38***	**30%** ***As you are a large enterprise.***	**€21,000** ***€70,000 X 30% = €21,000***
Total:			**€21,000**

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Worked Example 2 – Article 31 (Training aid)

1. Does your project involve training (such training **not** being of a mandatory kind in Ireland: e.g., relevant health and safety etc.)? If so, the eligible costs for the training aspect up to the maximum aid intensity rate of Art. 31 can be covered.

2. **Eligible Costs**: the trainer and trainee's personnel costs, the trainer and trainee's operating costs, advisory services costs.

3. **Aid Intensity:** again, this will depend on the size of your enterprise (max rate is 50% of the total eligible costs for large enterprises which may be increased to 60% if training given to workers with disabilities, 60% for medium sized enterprises which may be increased to 70% if training given to workers with disabilities, and 70% small enterprises).

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Article 31 - Worked Example:

You determine that you are a small enterprise and that the total costs of the training aspect of your project is €10,000 and that training is not a mandatory requirement as a matter of Irish law.

The total eligible costs would, therefore, be €10,000.

These total eligible costs would be covered up to a maximum aid intensity of 70% (as you are a small enterprise). €10,000 X 70% = €7,000.

€7,000 would be the maximum amount covered for this project under Article 31, GBER in this worked example.

The eligible costs shall be the following:	Enter eligible costs (€)	Enter the applicable aid intensity rate(s)	Apply the applicable aid intensity rates and enter totals (€)
a) trainers' personnel costs for the hours during which the trainers participate in the training;	**€2,000**	**70%**	**€1,400**
a) trainers' and trainees' operating costs directly relating to the training project such as travel expenses, accommodation costs, materials and supplies directly related to the project, depreciation of tools and equipment, to the extent that they are used exclusively for the training project.	**€2,000**	**70%**	**€1,400**
a) costs of advisory services linked to the training project;	**€4,000**	**70%**	**€2,800**
a) trainees' personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.	**€2,000**	**70%**	**€1,400**
Total			**€7,000**

Operating Aid and Investment Aid

- Articles 53 and 55 GBER each draw a distinction between "investment aid" and "operating aid"
- Investment Aid: is investment in tangible assets (land, buildings, plant/machinery) and limited types of investment in intangible assets (technology investment); and
- Operating Aid: is aid aimed reducing an undertaking's expenditure/assisting the undertaking to continue operating by covering some of the operating costs (salary, costs, rents etc.).
- The maximum aid intensity for investment aid and operating aid is calculated differently under Articlse 53 and Article 55.

Be careful that you are applying the correct aid intensity by reference to whether the assistance constitutes investment aid or operating aid.

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Questions & Answers

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