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Frequently Asked Questions (FAQ): State Aid

Just Transition Fund (JTF)

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gov.ie

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Frequently Asked Questions (FAQ): State Aid

Please note that this FAQ document is for advisory purposes only. It is not intended nor does it purport to be legal advice from the Department of the Environment, Climate and Communications.

For additional guidance, please also refer to two presentations on State Aid which provide overviews of State Aid, the State Aid Costs Template and provides worked examples. Both are available on the **Just Transition gov.ie** page.

Use of State aid for JTF

1 Can JTF aid be granted by reference to Article 107(3) TFEU instead of GBER?

No, that is not possible. Aid that is granted by reference to a ground set out in Article 107(3) of the Treaty on the Functioning of the European Union ("**TFEU**") requires prior notification to the European Commission ("**Commission**") so that the Commission can decide whether or not the measure in question is compatible with the TFEU. As a general rule, State aid must be notified to and cleared by the Commission before it is granted. The Department of the Environment, Climate and Communications ("**DECC**") is relying on **Commission Regulation (EU) No 651/2014** (the "**General Block Exemption Regulation**" or "**GBER**") which exempts Member States from this notification obligation, as long as all the GBER criteria are fulfilled. GBER simplifies the procedure for aid-granting authorities at national, regional and local level.

2 Other measures such as the Rural Regeneration and Development Fund and Regional Enterprise Development Fund appear to take a different approach to the award of funding. Why can't the JTF use the same mechanisms to administer funding?

There are a number of ways in which State aid may be provided. GBER is the most regularly used method to permit aid-granting authorities at national, regional and local level to provide funding to third-party undertakings. As per the response to question 1, GBER exempts Member States from having to notify, and seek the approval of, the Commission, so long as all GBER criteria are fulfilled. DECC has therefore chosen to rely on GBER, which is used for efficient provision of aid across the European Union for schemes similar to that of the

JTF. In an Irish context, organisations and funds such as the Sustainable Authority of Ireland (the "SEAI") and the Regional Enterprise Development Fund regularly rely on GBER for their funding schemes.

3 Our request for funding relates to a proposed service in a market where there is no competition. We do not believe there will be any distortion of competition in such circumstances. How can this trigger State aid?

The **Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union** (C/2016/2946) (the "**Commission Notice**") provides helpful guidance on the interpretation of issues relating to the State aid. The Commission Notice highlights how the **"distortion of competition"** criterion is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is or could be competition. As a general rule, State aid is deemed to take place where an advantage arising from State resources is conferred on an undertaking on a selective basis which strengthens the position of that beneficiary relative to competitors and potential competitors. This means that although an applicant may be of the view that no, or limited, competition exists, State aid rules apply in circumstances where there could be a properly functioning market in the future.

4 Our application is a charity or "not for profit" organisation. Do we fall within the rules on State aid?

Yes, a charity or "not for profit" organisation can be an undertaking for State aid purposes. There is no strict definition of an "undertaking" in EU law but it is generally taken to be any entity engaged in economic activity. The nature of the activities of the project are the relevant factor. For example, the Commission Notice highlights how cultural attractions will come under State aid rules where the attraction in question is predominantly financed by visitor or user fees or by other commercial means. Even if an entity has charitable status, it may still be considered an undertaking for the application of State aid rules. Engagement in an economic activity is key. For example, the likes of private homeowners would not be considered undertakings for the application of State aid rules but organisations providing services to homeowners are engaged in an economic activity and would, therefore, be undertakings. See State aid presentations on the **Just Transition gov.ie** page for more information on the State aid criteria.

5 Which criteria were used to identify our project as falling under GBER?

The Department applied the below criteria to each project to determine if projects come under State aid GBER. This approach is consistent with the guidance set by the Department of Enterprise, Trade and Employment in relation to determining if State aid applies. Questions 1 to 5 must all apply for State aid to be eligible:

Pre-Question: Is there an incentive effect

a) Transfer Of State Resources: State resources are the funds, rights and assets in the control of central and local government (includes ESIF, Local Growth Fund, Tax rebates)

b) To An Undertaking: Any entity carrying out economic activities (includes public sector organisations, charities). Certain activities, e.g. Defence, Maritime safety and other national functions are outside scope. Individuals are not undertakings (unless sole traders).

c) Selective: The aid is selective (i.e. only benefits a specific undertaking or a group of undertakings or targets a particular location). General measures affect all equally (like a public road or a general tax exemption).

d) Strengthens Position Of Beneficiary Relative To (Potential) Competitors And Potential To Distort Competition.

e) An Effect Upon Trade Between Member States: a business trading in another Member State could be affected.

See the State aid presentation on the **Just Transition gov.ie** page for more information in relation to the State aid criteria.

GBER

6 Can our project be covered under a GBER article not mentioned in the State Aid Template?

This is not possible. DECC has set out eleven GBER articles for applicants to choose from and these provide a wide scope of different types of eligible costs. The scheme is based on these eleven articles and they must therefore be relied upon by an applicant in completing the State Aid Template (the “**Template**”).

7 Our application was submitted on the basis of 85% funded from JTF and the remaining 15% match funded by another organisation. Do we base our eligible costs in the Template on the 100% value or the 85% value of the project?

Match funding should be ignored for the purposes of calculating an applicant's eligible costs when completing the Template. It is not relevant to the specific analysis under GBER whether beneficiaries of State aid have matched-funding for aspects of the project. The focus should be on calculating eligible costs in full by reference to the relevant GBER articles set out in the Template and which apply in the context of an applicant's project. You should base eligible costs on their full value (which may be higher than the actual amount sought from the JTF). The match funding amounts and sources will be identified and evidenced in the next stage of the process, the Verification Document. Please also note response to Q4 on VAT and Q7 on cumulation rules.

8 If an applicant's project has been provisionally approved for funding, can the applicant assume that the provisional expenditure in its application form is deemed as qualifying expenditure?

Unfortunately, this is not possible. As referenced to applicants at all stages of this process, the provisional grant is subject to State aid rules being applied. Applicants will need to determine which of the GBER articles set out in the Template should be applied in the context of their project and determine the relevant eligible costs and maximum aid intensity.

9 Does Value Added Tax ("VAT") apply to our eligible costs in the Template?

GBER states that "all figures used shall be taken before any deduction of tax or other charges." Thus, where VAT applies and it is a real cost, in the sense that it cannot be recovered, then it is part of the eligible costs and therefore eligible for support under GBER. If VAT can be recovered by an applicant, however, it is not considered a real cost and therefore should not be entered as an eligible cost under GBER.

10 DECC has requested that we give our project’s final costs before issuing a final offer. The costs included in our submission are cost estimates, completed by a qualified engineer. We will only know final costing once design and procurement procedures are completed. Is this acceptable under GBER funding?

Yes, this is acceptable under GBER funding. GBER allows eligible costs to be calculated ex ante on the basis of reasonable projections - this means that forecasting of the eligible costs which are likely to arise over the course of the project must take place before the project commences. Applicants will have certain reporting obligations to DECC following the JTF grant being awarded and will include actual and forecasted spend. Note that disaggregated costings and evidence of costings will be requested at verification stage.

11 Can aid intensity levels be increased by reference to items outside of GBER?

Unfortunately, this is not permitted. GBER is a standalone legal framework to permit aid-granting authorities at national, regional and local level to provide funding to third-party undertakings. The aid intensity levels set out in the Template are the maximum permissible limits in this instance.

12 Can you explain how the rules of cumulation work?

Aid for identifiable eligible costs exempted pursuant to GBER may be cumulated in two scenarios.

Firstly, with any other State aid as long as those measures concern different identifiable eligible costs. This means that if you are in receipt of separate State aid for, e.g., sports infrastructure (Article 55) but you are seeking to rely on training aid (Article 31) for the JTF, this aid can be cumulated with the other aid (within the respective aid intensity limits of the two GBER articles etc.).

Secondly, JTF funding can be cumulated with any other State aid in relation to the same eligible costs, partly or fully overlapping, but only if such cumulation does not result in an applicant exceeding the highest aid intensity or aid amount applicable under GBER. In other words, an applicant may rely on two alternative State funding sources for the same eligible costs but only if this means the applicant does not exceed the highest aid intensity or aid amount to which the applicant would be entitled under the relevant article of GBER.

13 Can you provide an example to explain the rules of cumulation?

Worked example - funding through SEAI (€1,400,000 provided) and JTF (€1,000,000 sought) under Article 38 (Investment aid for energy efficiency):

First, work out the cost of the investment and whether there was a similar, less expensive, energy efficient measure that could have been taken (i.e., the counterfactual). To find out the eligible costs you subtract the cost for the less expensive energy efficient measure from the total cost of the investment. If there is no such less expensive energy efficient measure, the total investment costs will be total eligible costs available. In this example let's say the applicant is a large enterprise which means the maximum aid intensity rate allowed under GBER **would be 30%.**

If an applicant is in receipt of SEAI funding, which was granted pursuant to Article 38 of GBER, it will be necessary to ascertain whether the SEAI funding has exhausted the amount now available to the project under Article 38 by reference to the eligible costs.

Let's say the total eligible costs for the project are €5m and the maximum aid intensity amount allowed is 30%, then relevant total will be determined by multiplying the eligible costs by the applicable aid intensity rate: €5m x 30% = €1.5m. If an applicant is already in receipt of SEAI funding, and the amount of such funding was €1.4m, the applicant will only be able to claim funding through JTF up to a maximum amount of €100,000 (i.e., to meet the relevant total of €1,500,000) rather than the requested amount of €1,000,000 so as not to breach the rules of cumulation.

It is therefore important that applicants check the funding which it has or may receive from other relevant State bodies/authorities to be used in the proposed project to determine whether GBER is the legal basis for the provision of such funding. If GBER is the basis for any separate award, applicants must consider whether the funding relates to the same or different eligible costs in the context of their proposed project and take into account the rules of cumulation.

14 Is De Minimis Aid applicable to my project?

Applicants may be able to rely on aid pursuant to Commission Regulation (EU) No 1407/2013 (the "**De Minimis Regulation**"). De Minimis aid allows State aid of up to €200,000 to be granted to an undertaking over any three-year period (subject to certain sector specific exemptions).

Questions in relation to Specific Articles

15 Aspects of our project are in Kildare. Can we qualify for JTF funding using Article 14 GBER considering that Kildare does not appear to be one of the "specified areas" for regional aid under that article?

Article 14 of GBER (**Regional Investment Aid**) states that regional investment aid shall be granted in "**assisted areas**". Kildare is not one of the "assisted areas" specified. To be eligible for this type of aid under Article 14, the project activities must focus on assisted areas which encompasses all of the counties covered by the JTF with the exception of Kildare. However, projects, or elements thereof, that do not occur within an "assisted area" can still qualify for aid pursuant to GBER if that project falls within one or more of the remaining ten articles of GBER referenced in the Template.

16 Article 18 - is there a definition of consultancy services as it applies to Article 18?

No definition of consultancy services is provided in GBER by reference to Article 18. The consultancy services for aid for consultancy services under Article 18 must, however, be provided by external consultants (as opposed to internal consultants) and must not involve a "continuous or periodic activity nor relate to the undertaking's usual operating costs, such as routine tax consultancy services, regular legal services or advertising."

17 Article 25 - what constitutes fundamental research under Article 25?

As defined in GBER, "**fundamental research**" means "experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any direct commercial application or use in view."

18 Article 31 - can you define the eligible costs within Article 31?

The eligible costs with respect to Article 31 are broken into four categories:

- **a)** Trainers' personnel costs, for the hours during which the trainers participate in the training;

b) 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;

c) Costs of advisory services linked to the training project. The advisory services linked to the training project may include consultancy fees for the preparation of the project; and

d) Trainees’ personnel costs and general indirect costs (administrative costs, rent, overheads) for the hours during which the trainees participate in the training.

Commission guidance in relation to training aid states that the purpose of this aid is to allow for the support of training measures undertaken by enterprises with the purpose of developing and updating the knowledge and skills of their workforce (e.g., management trainings, language trainings etc.). For the purposes of clarity, the training in question must be provided for the benefit of the applicant’s own workforce and not, in this context, to or for the benefit of third parties.

It is important to be aware that mandatory training - such as health and safety training (Safe Pass Training etc.) - is not covered under Article 31 due to the fact that such training would have to be pursued anyway, even in the absence of such aid.

19 What is the period of time for calculating operating profit for Articles 53, 55 or 56?

The relevant period of time for calculating operating profit, where relevant in the context of an application, is the economic lifetime of the investment. An applicant must therefore prepare a forecast calculating the operating profit for this period. This definition is a common provision that applies to “operating profit” as mentioned throughout GBER (notably in Articles 53, 55 and 56).

As set out in the Template, Articles 53 and 55 (but not Article 56) allow an applicant to apply for a maximum amount of aid at 80% of eligible costs for aid not exceeding €2 million. In such circumstances, an applicant does not need to ascertain its operating profit.

20 Can you provide a worked example of how the rate of aid would be calculated under Article 55?

In determining whether Article 55 is applicable, consider whether the project will result in sport infrastructure or multifunctional recreational infrastructure. Determine whether the aid will be categorised as investment aid (i.e., investment in tangible assets such as land, buildings, plant/machinery and investment in intangible assets) or operating aid (i.e., aid aimed at reducing an undertaking's expenditure/assisting the undertaking to continue operating by covering some of the operating costs).

	When the aid exceeds €2 million	**When the aid does not exceed €2 million**
Eligible costs for investment aid	For investment aid, the eligible costs shall be the investment costs in the assets	For investment aid, the eligible costs shall be the investment costs in the assets.
Aid amount for investment aid	The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment	80% of eligible costs
Eligible costs for operating aid	The operating costs of the provision of services by the infrastructure	The operating costs of the provision of services by the infrastructure
Aid amount for operating aid	The aid amount shall not exceed the operating losses over the relevant period	80% of eligible costs

"Operating profit" means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

Worked Example:

You determine that your project will result in sport infrastructure/multifunctional recreational infrastructure and that the total costs of the project will be €145,000.

Out of these total costs, you deem that €74,000 of these costs comes under investment aid and €10,000 comes under operating aid.

As the aid being granted does not exceed €2 million, 80% of the total eligible costs can be awarded under GBER - €84,000 X 80% = €67,200

The eligible costs shall be	Enter eligible costs (€)	Enter the applicable aid intensity rate(s)	Apply the applicable aid intensity rates and enter totals (€)
For investment aid the eligible costs shall be			
a) the investment costs in tangible and intangible assets	**€74,000**	**80%**	**€59,200**
For operating aid for sport infrastructure, the eligible costs shall be			
b) the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment aid.	**€10,000**	**80%**	**8,000**
Total:			**€67,200**

21 Can you provide a worked example of how the rate of aid would be calculated under Article 56? Please share the funding rates as they pertain to Article 56.

In determining whether Article 56 is applicable, consider whether the project will result in construction or upgrade of local infrastructures which concerns infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base.

No specific aid intensity rate applies under Article 56. The eligible costs shall be the investment costs in tangible and intangible assets and the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs ex ante, i.e., on the basis of reasonable projections, or through a claw-back mechanism.

"Operating profit" means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

Worked Example:

You determine that your project will result in local infrastructure and that the total costs of the project will be €145,000 comprised fully of investment costs. This means that eligible costs will be €145,000.

You estimate that the operating profits based on forecasts will be €90,000. The total aid allowed, therefore, will be €145,000 - €90,000 = €55,000

The eligible costs shall be	Enter eligible costs (€)	Enter the applicable aid intensity rate(s)	Apply the applicable aid intensity rates and enter totals (€)
Investment costs in tangible	**€145,000**	**N/A**	**€145,000**

and intangible assets.			
Operating profit of the investment			
Operating profit of the investment	**€90,000**	**N/A**	**-€90,000**
Total:			**€55,000**

22 Article 56 – can consultancy costs/project management be listed as costs under Article 56?

Article 56 relates to financing for the construction or upgrade of local infrastructures (i.e., infrastructure that contributes at a local level to improving the business and consumer environment and modernising and developing the industrial base). Eligible costs for the purposes of Article 56 are the investment costs in tangible and intangible assets.

All costs in this regard must be directly related and necessary to the construction or upgrade of the infrastructure in question and such funding does not extend to preliminary or preparatory studies or general consultancy costs (which may, however, be eligible costs under alternative articles of GBER).

23 We are still unclear as to which article(s) our project falls under and/or how to identify eligible costs, what do we do?

If after reviewing this FAQ document, the two State aid presentations and other materials online (including the GBER Scheme document), you are unclear as to what to do, please email **JTF@decc.gov.ie** with your query. We will follow up and can arrange a call to discuss further if useful.

General JTF Queries

24 Can we make changes to our original project proposal?

It is accepted that project costings may have changed since the JTF applications were submitted in July 2020. Note that the total amount of funding sought cannot be greater than the amount set out in the provisional letter of offer.

In addition, having considered the State Aid Template, projects may wish to amend an element of project delivery to better align with the eligible costs and to ensure that cumulation rules are met.

Project changes are permissible in this regard but should not significantly change the project which has been approved on the basis of the Application Form submitted. Where an aspect of the project proposal has altered, this should be communicated to DECC when the Costs Template is submitted. At Verification stage projects might be asked to provide an updated Application Form which sets out the final project content.

25 How much funding can a project receive under the JTF?

The Just Transition Fund is offering funding of up to 85% of the total costs of a project, not exceeding €1 million. Applicants are obligated to provide a minimum 15% match funding. All project applicants were given a provisional funding amount in the provisional letter of offer.

26 Is the Department allowing for projects to change their timelines?

Yes, projects can amend their original project timelines. However, funding may only be granted up to December 31st 2023 as per the JTF terms and conditions. Further details will be provided in the final Funding Agreement. Note that a draft Funding Agreement is available for review on the **gov.ie Just Transition** page.

27 When does the Department intend to issue final contracts to successful projects?

The State aid process is currently ongoing. After the State Aid Templates have been submitted and reviewed, projects will be requested to complete a Verification Document and provide supporting documentation and evidences. If this is approved, final letters of offer and Funding Agreements will be issued.

28 Can Applicants start projects without final contracts being agreed between them and the Department?

No, this is not possible. As stated in the provisional letter of offer, in order to remain eligible for funding, work must not have commenced on the project, no work should have commenced on foot of the provisional offer and no costs should be incurred in relation to the project until a Funding Agreement is in place.

29 Is it possible to hire specialised roles for a project before contract signing stage?

No, this is not possible. Please see response to Q5 above.

30 Can the Department outline the reporting obligations for projects?

Reporting obligation details will be contained in the Funding Agreement between grantees and the Department. A draft Funding Agreement can be viewed on the **gov.ie Just Transition** page.

31 What is the process for payments to successful projects?

Payment and details in relation to the drawdown process will be contained in the Funding Agreement. A draft Funding Agreement can be viewed on the **gov.ie Just Transition** page.

32 Will claims be paid on a pre or post funding basis?

As stated in the Information Booklet, payments will be made over the course of the project on the basis of milestones being achieved by the project organisations and on the basis of submitting vouched expenses. Payment and details in relation to the drawdown process will be contained in the Funding Agreement. A draft Funding Agreement can be viewed on the **gov.ie Just Transition** page. Pre-funding can be provided to Lead Applicants in very limited circumstances and on a case-by-case basis of up to 25%. Pre-funding will be primarily considered for community and voluntary organisations and will only be approved where a clear need has been identified and evidenced by the applicant. Requests should be made through the Verification Document.

33 Can projects apply for pre-funding to assist with cash-flow at the start of the project?

Pre-funding can be provided to Lead Applicants in very limited circumstances and on a case-by-case basis of up to 25%. Pre-funding will be primarily considered for community and voluntary organisations and will only be approved where a clear need has been identified and evidenced by the applicant. Requests should be made through the Verification Document.