

# **Fáilte Ireland State Aid Handbook**

**February 2018**

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## **Introduction to the Handbook**

As a statutory agency frequently disbursing public funds through grant aiding tourism related projects, Fáilte Ireland is concerned to ensure compliance with the State aid rules wherever they apply to its activities.

The purpose of the Fáilte Ireland State Aid Handbook is to inform all intending applicants for Fáilte Ireland funding about the general principles of State aid law and of specific exemptions that may be relevant for projects depending on the nature and design of particular schemes. That will be done in all cases by Fáilte Ireland by drawing attention to particular sections of this Handbook as being of special relevance with respect to a given scheme.

While every effort is made to keep this Handbook comprehensive and complete, readers should be aware that it is not a substitute for legal advice. State aid law is an evolving area, continuously affected by case law from the European Courts as well as changes in legislation and official guidance such as European Commission ('Commission') notices and guidelines. In order to assist the reader, there is a glossary of defined terms included at Annex I.

Finally, while this Handbook reproduces to some degree extracts from applicable EU regulations and other legal instruments, in the event of any doubt, readers are referred to the original text of the underlying legal instrument, which will be specified in all cases. Given that many such instruments may make arrangements for purposes that are not relevant for Fáilte Ireland in the discharge of its remit, or may permit exemptions that Fáilte Ireland does not propose to rely upon because they concern matters that are not a priority for it having regard to its objectives and desired outcomes, they may not be reproduced or referred to in this Handbook. This is not an exhaustive statement of the law, but instead a summary of relevant applicable law in so far as it likely impacts upon the functions and powers of Fáilte Ireland. As a result, applicants are free (and encouraged) to take legal advice as appropriate on how State aid rules apply in their particular situation.

As stated above, only those applications that demonstrate they meet Fáilte Ireland's objectives for a scheme will be considered for funding, notwithstanding that the applicant may be eligible under State Aid Rules. Similarly, the amount of funding (if any) shall be determined at the discretion of Fáilte Ireland having regard to the available funds (for any scheme or round thereof), Fáilte Ireland's statutory functions and objectives, and the extent to which applications contribute to their realisation in and of itself and by comparison with other applications.

This Handbook has been revised to take into account recent amendments to Regulation (EU) No. 651/2014, ('General Block Exemption Regulation') by way of Council Regulation (EU) 2017/1084, and the Commission Notice on the notion of State aid of 19<sup>th</sup> July 2016<sup>1</sup> ('the Notice'). The Notice is not and cannot be a definitive statement of law. Instead, it represents the understanding of the Commission of the current law, as well as indicating its likely approach to

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<sup>1</sup> 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

technical matters falling within its discretion. Subject to those limitations, it will be used to inform Fáilte Ireland's approach to these matters.

## Chapter 1 - An Introduction to the State Aid Rules

State aid law is a series of EU rules that regulate when, how and to what extent a Member State of the European Union may provide assistance to undertakings. In this context, the term 'undertaking' refers to any entity (no matter what its legal form) that is engaged in economic activity. The kinds of assistance that are covered is wide in terms of scope, and covers everything from direct financial payments, through to loans and guarantees, as well as arrangements for relieving undertakings of liabilities in certain circumstances.

The fundamental rule of EU State aid law which arises from Article 107 and 108 of the Treaty on the Functioning of the European Union ('TFEU') is that in principle any assistance that meets the definition of aid is illegal unless it is deemed compatible with the operation of the internal market or is of a kind that may be found by the European Commission to be compatible with its operation. In principle, all State aid must be notified in advance (i.e. prior to any beneficiary becoming legally entitled to it) to the European Commission. The fact that the aid is subsequently found to be compatible does not excuse a failure to notify to begin with.

In order for State aid to arise, the following are the qualifying criteria. It involves:

1. The commitment of State resources or resources that are imputable to it (*State Resources*),
2. in favour of one or more undertakings, as direct or indirect beneficiaries (*Undertakings*),
3. on a basis that is selective (*Selectivity*),
4. such that it confers an advantage (*Advantage*), where
5. there is an actual or potential competitive distortion (*Competitive Distortion*), and
6. it affects trade between Member States (*Affects Trade*).

The rules on State aid apply to the Member States of the European Union and given that Fáilte Ireland is a statutory agency of the Irish State, it is under a duty to observe those rules in all cases, not least when it provides grant aid to projects. Recipients of funds from Fáilte Ireland will no doubt be concerned that any funding that they receive complies with the State aid rules, not least because illegal aid is liable to recovery. Although Fáilte Ireland carries a certain set of responsibilities as to compliance, there is a significant responsibility on applicants to observe and comply with the terms of any funding scheme at all stages.<sup>2</sup> At

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<sup>2</sup> While this handbook is provided for information purposes only, no duty of care arises as to whether funding is or is not State aid, is exempted or not, or is otherwise unlawful or not under the TFEU. In no event should Fáilte Ireland be regarded as representing or warranting (including by way of any implied term) that any particular funding is not unlawful under the State aid rules. Moreover, Fáilte Ireland does not accept any liability for loss of any kind that is claimed to be suffered by any applicant or any interested party by reason of the treatment of particular funding under State aid law and any attendant processes including recovery, claw-back or the triggering of any associated security.

the application stage, Fáilte Ireland will need to take its own view on the applicability of particular exemptions to your project or whether for its purpose you should be treated as an undertaking. Those assessments will be critically dependent on factual and other representations made by applicants, including responses to questions in the Application Form. Subsequently, your adherence to any funding agreement is vital, since any breaches of it or misuse of funds may create serious issues as to compliance with the State aid rules.

As a general policy, Fáilte Ireland has a strong preference for designing its funding schemes so that they can avail of a number of exemptions that exist in relation to State aid that are contained within what is referred to at the General Block Exemption Regulation ('GBER'). The GBER is a piece of delegated legislation that the Commission has been authorised to adopt by the Council and once in force it is directly applicable and binding without need of national implementing legal measures. In seeking to maximise reliance on the GBER, that is not to be taken as an acknowledgement by Fáilte Ireland that in any given case there is in fact State aid (as defined) being awarded, but instead, this is an administrative approach that seeks to achieve the greater legal certainty both for it and recipients. In respect of many projects that exist, either the underlying activity is not economic and/or the nature of it is such that either there is no effect on completion, or trade between the Member States is not adversely affected.

As identified above, a necessary criterion for the existence of State aid is that the direct or indirect beneficiaries be an 'undertaking'. Where a recipient would not be an undertaking with respect to a proposed project then the State aid rules do not apply and it may be eligible for more funding than would otherwise be the case. In order to consider the status of applicants, the Application Form includes a small number of questions that may be supplemented by further questions taken from the Undertaking Questionnaire included at Appendix 10. Applicants should be aware that ordinarily, Fáilte Ireland will assume that an applicant is an undertaking unless it is satisfied to a high degree of certainty that it is not. The burden of demonstration is on the applicant but the ultimate decision rests with Fáilte Ireland.

An important feature of the Notice is the characterisation of certain activities related to culture and heritage conservation (including nature conservation) as not being economic in nature. As a result, an entity engaged in such activity is not likely to be treated as an 'undertaking' by the Commission. In its Notice, the Commission has identified two situations where that arises. The first is a case where the activity is not 'predominantly' financed through a system of charges or other commercial revenues<sup>3</sup>, or where conservation benefits the general public rather than certain undertakings. The second is where, on account of the uniqueness of the collection, there are no real substitutes for it and as a result the underlying activity is not economic.

With respect to the issue of predominant financing, and pending further clarification by the Commission (and possibly by the courts), as a general rule, Fáilte Ireland consider that an entity is predominantly financed through charges or other commercial revenue streams where at least 50% of its fully allocated

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<sup>3</sup> Or where conservation benefits the general public rather than certain undertakings.

operating costs are covered by those charges. With respect to projects, the assessment that Fáilte Ireland must make will be prospective in respect of the operative period. In order to ensure that the position stays within this exception, it may be necessary to stipulate conditions to any funding that require monitoring of the position and, if necessary, corrective action.

The second exception identified in the Notice concerns the uniqueness of a cultural or heritage collection. That is on the basis that its provision does not take place within a market as such. The Commission cites by way of example cases where there is a public archive holding unique documents. In this context, Fáilte Ireland would emphasise that the Notice requires that the collection have a degree of non-substitutability that sets it apart. In that regard, official recognition of the nature of a collection could be a decisive factor in favour of treating a particular situation as falling within this exception.

Applicants should note that these two exceptions, although having some basis in prior caselaw, are new and their application has yet to be applied by the Commission. While Fáilte Ireland welcomes any relevant precedent being brought to its attention when considering these matters, it must proceed with caution. As a result, exceptionally, Fáilte Ireland reserves the right to treat activity as economic where, even when the predominant cost recovery through charges test is not met, nevertheless, the actual level of charges taken in combination with nature of the attraction is such as to suggest that it is in competition with undertakings. In other words, as per the Notice, the fundamental test is the participation in market-centric activities

Finally, in order to assess whether these exception applies, it may be necessary for Fáilte Ireland to request further information from applicants going beyond that provided in any application. That may include requiring applicants to answer one or more of the questions specified in Appendix 10. Applicants should note that where further information is requested replies should be consistent with and reconcile to information already provides, including financials.

## Chapter 2 – The System of Exceptions and Exemptions for EU State Aid

In a situation where one or more of the qualifying criteria set out in Chapter 1 are not present, then there is no State aid. Where that is not the case, and aid is present it must be notified to the Commission, unless it falls within one of a restricted number of exemption regulations for State aid.

The principal exemptions that are relevant for applicants are the De Minimis Regulation and the GBER. The De Minimis Regulation exemptions concerns limited amount of aid that an undertaking may receive that is exempted from notification through the European Commission deeming that it is compatible with the operation of the internal market.<sup>4</sup> There are, however, a number of restrictions in relation to its use, the terms of which are set out in Chapter 3 and any referenced appendices.

Another series of exemptions that may apply are those contained in the GBER.<sup>5</sup> In very general terms they concern support for particular types of activities and projects, several of which may be relevant for tourism activities<sup>6</sup>. The GBER has different thresholds of permitted aid, a key driver of which is the concept of 'eligible' costs of which a specified percentage may be supported, the so called 'aid intensity'. In addition, under the GBER an important distinction is made between investment and operating aid. In reading either the summaries of the GBER contained in the next chapter or further details set out in various appendices, applicants are reminded that indicated amounts of aid intensities are simply a summary of what the EU permits by way of maxima. In many instances and by reason of funding constraints and the need to deploy them optimally in line with statutory functions and objectives and the limits of funding for any scheme or round thereof, Fáilte Ireland may offer lesser or lower amounts or intensities of support.

Where State aid does not fall within those TFEU exceptions or regulation based exemptions, the measure must be notified to the European Commission (and may not be put into effect pending review), which enjoys a broad discretion as to whether aid is compatible with the operation of the internal market. Under the TFEU, the Commission is directed as to certain types of aid that may be considered compatible. Among those is an exception for aid for culture and heritage conservation. Despite the existence of this (and other exemptions) intended applicants should note that none operate as a *carte blanche*. They have, over time, become subject to a significant body of law concerning, among

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<sup>4</sup> Commission Regulation (EU) No. 1407/2013

<sup>5</sup> Readers should note however that the interaction of the GBER and the De Minimis Regulation is complex. As a result, no general assumption should be made that in respect of a given project each may be separately availed up to their individually specified maximum.

<sup>6</sup> Under the GBER, for the purpose of regional aid, tourism activities are defined quite restrictively. It includes: accommodation, food and beverage, travel agency and certain related services, creative arts, libraries, archives and museums, and sports and amusements. Note, however, that many of these may not be eligible for funding depending on Fáilte Ireland's policy objectives as identified in various schemes.

other things, an objective assessment of necessary aid, the choice of policy intervention and the competitive effects.

Finally, under the State aid rules there are a number of provisions that regulate the extent to which exemptions under different provisions may be applied. They are referred to as 'cumulation' rules and they are dealt with as part of a general explanation of the GBER contained in Chapter 4, which should be read in conjunction with Appendix 11.

### **Chapter 3 – The De Minimis Exception**

This is dealt with in what is referred to as the De Minimis Aid Regulation which is distinct from the GBER. Although there are sectoral variations, the basic rule is that the total amount of de minimis aid that an undertaking may qualify for under its terms is €200,000 over any period of three fiscal years. Where it is proposed to award de minimis aid then certain formal requirements apply in relation to notification to recipients which must include reference to its full formal title. Furthermore, intended recipients must provide a declaration as to any other de minimis aid that they have received in the then current fiscal year and in the previous two such years.

Technically speaking, de minimis aid is not State aid, since it refers to a situation where on account of the amount of aid, the Commission has made a prior general assessment that its provision is too small to affect competition or trade between the Member States. Despite that, and as will be further outlined in Chapter 4 and Appendix 11, for the purposes of cumulation, de minimis aid for the same eligible costs goes towards the calculation of whether or not the maximum permissible aid intensity has been reached under the GBER.

Finally, in order to ensure that the thresholds in the De Minimis Aid Regulation are not defeated through a business incorporating or acting through different but related entities, the De Minimis Aid Regulation contains a definition of what constitutes a 'single undertaking' which are set out in the de Minimis Exemption. These are set out in Appendix 8.

## Chapter 4 - The General Block Exemption Regulation

### A. The Purpose of the Block Exemption Regulation

The European Commission is given quite wide powers under the TFEU and by way of enabling legislation, both to declare particular kinds of aid compatible either by way of individual decision and more generally through the mechanism of a block exemption. At present the GBER which dates from 2014 is in force and it was amended in 2017. It provides for the exemption of aid schemes and in some cases ad hoc aid such that once its requirements are met, it is not necessary to obtain a prior positive ruling from the European Commission that the aid is compatible with the internal market. By contrast with De Minimis aid, aid that is exempted under the GBER is State aid. With respect to GBER measures, the Commission is generally satisfied that both because of the issues that they target and the manner in which they do so, they will serve general interest goals in a proportionate manner that avoids undue competition or trade distortions. Critical to the limitation of permissible assistance under the GBER are rules in relation to eligible costs with the aid intensities being determined (in general) as a maximum proportion of those costs.

While the GBER operates on the basis of defining certain activity or projects that may be funded, it also incorporates certain requirements in relation to what are termed 'incentive effects'. This is a fundamental principle of EU State aid law and it simply requires that the aid must be such that without it, the funded activity would not have otherwise occurred. In many instances under the GBER, proof of the incentive effect is deemed to arise through the provision of certain information concerning the project, and this is reflected in the Application Form that exists for a given scheme. As such, the provision of comprehensive and accurate information is critical.

### B. Rules on Cumulation (Double Funding)

Separately, applicants should be mindful of the rules on cumulation, which are also referred to as those concerning 'Double Funding'. Those rules concern situations in which aid of different kinds may be combined. The precise rules on cumulation are to be found in both the De Minimis Regulation and in the GBER, relevant extracts from which are reproduced in Appendix 11. The following is a summary of the most significant of them. It is possible to cumulate aid for identifiable eligible costs under the GBER with any other State aid with respect to different identifiable eligible costs.<sup>8</sup> By contrast, aid previously granted for the same eligible costs (whether partially or fully overlapping) will be added to any aid to be granted, and must not exceed the highest aid intensity under the relevant GBER exemption.<sup>9</sup> Finally, where a project has already availed of aid for certain eligible costs under the De Minimis Regulation, then in respect of the same eligible costs, the highest aid intensity (by exemption) set out in the GBER

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<sup>8</sup> Note, however, that the other State aid would need to fall within the GBER, or otherwise be covered by a permissive Commission decision.

<sup>9</sup> Any excess means that the funding of the project as a whole must be notified to the Commission and it may not be committed to without its prior approval.

must be respected. Applicants are also reminded that whatever may be permitted under the cumulation rules is restricted by the limits of particular schemes (as to maximum awards) in all cases.

Applicants should note that compliance with the cumulation rules (which Fáilte Ireland regards as crucial (and a material condition of any funding arrangement) can only be guaranteed through full disclosure by applicants and through the diligence of both applicants and ultimately of successful awardees in actively cooperating with Fáilte Ireland to ensure compliance. That, for example, includes providing Fáilte Ireland with the details of any aid that your project has already received, including under the De Minimis Regulation. Where there is any doubt as the funding or assistance (e.g. on the basis that it might not fall strictly within questions included in any Application Form), full particulars should be provided on a good faith basis.

### C. Notification and Publication of Awards

While State aid that falls under the GBER does not need to comply with the requirement of prior notification and scrutiny by the Commission, applicants should note that under its requirements details of schemes relying on its terms must be notified to the European Commission by the State and by the provision of pro-forma particulars within 20 days of the entry into force of the scheme, which ordinarily is the date of its publication. The preparation of the requisite notice must be completed prior to the effective date of any scheme. In addition, applicants should be aware that certain disclosure requirements apply under the GBER with respect to individual awards exceeding €500,000. Those are separate from and additional to other reporting requirements and practices of Fáilte Ireland with respect to its use of funds.

### D. The Specific Treatment of Tourism under the GBER

While the GBER contains a number of exemptions, some of which concern specified forms of activity, there is no general category labelled 'tourism'. Instead, the GBER provides that funding of specified tourism activities only may qualify for regional aid. Further detail on the regional aid exemption is provided below. In addition, there are a number of exemptions that may be regarded as relevant for the purpose of funding particular tourism projects. Chief among them are exemptions for aid for culture and heritage conservation and separately for sport and multi-functional recreational activities. Applicants should note that where the GBER provides detailed prescription as to what may or may not fall within an exemption, then they must design and propose their projects so as to bring them within the terms of one of those exemptions. Although as a general rule Fáilte Ireland does not wish to be prescriptive (so as to focus on desired outcomes thereby encouraging the fullest possible originality and range of ideas), there may be situations where adjustments are necessary at the application stage or thereafter to bring a proposed project into line with activities that may be permissibly funded under the GBER.

## E. The Nature of Exemptions and the Issue of Commercial Activities

There are some 43 different categories of exemption that may be availed of under the GBER. Fáilte Ireland has identified the exemptions that are likely to be relevant to project proposals that it will call for from time to time. Those are:

1. Regional Investment Aid
2. Culture and Heritage Conservation and Consultancy Aid in the context of aid for Culture and Heritage Conservation
3. Aid for Sport and Multifunctional Recreational Infrastructures
4. Aid for Local Infrastructures
5. Consultancy Aid in favour of SMEs

While the exemptions 1-5 referred to above are the subject of individual appendices to this Handbook describing their terms (including the issues of eligible costs and support levels), a number of restrictions that are particular to regional investment aid should be highlighted. While fuller details of these exemptions are included in various annexes to this Handbook, these are not complete and are paraphrased and contextualised given the focus of Fáilte Ireland's activities. It should also be noted that the relevant exemption that Fáilte Ireland proposes to rely on is for investment and not operating aid. In addition, whether or not regional investment aid is available depends on what part of Ireland the project will be implemented in, since only certain parts of the national territory are eligible for regional aid. In terms of its intensity, it also depends on whether the recipient undertaking is a small, medium or large enterprise. Among the identified exemptions, the rules applying to regional aid are especially complex. They include, for example, requirements in relation to matching funds (calculated by reference to eligible costs).

As a general rule, Fáilte Ireland will not consider the possibility of availing of one of the other exemptions contained in the GBER (i.e., other than those identified in 1-5) since to do so requires further administrative formalities to be followed in advance at European level. Applicants should also note that although the possibility of providing aid under more than one of the identified exemptions exists, it is not Fáilte Ireland's policy to do so, but it reserves the right to do so, exceptionally.

Where it is proposed to rely on one of the specified exemptions, it is crucial that any proposed project is presented as a bona fide concept that falls or is capable of falling within its terms and that if it is funded it is subsequently implemented in a compliant manner. By way of example, a project that concerns culture and heritage conservation must have that concern at its core and in its realisation so as to be capable of delivering a corresponding experience for the visitor or user. A project will not be eligible under a particular exemption when reliance on it is pre-textual or appears to be contrived.<sup>10</sup> In that regard, Fáilte Ireland reserves the right to require further information (including evidence of relevant expertise)

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<sup>10</sup> Applicants should note that for culture and heritage conservation separate requirements may apply with respect to authentication.

to ensure the faithfulness of the project to the exemption being invoked, and ultimately to impose conditions as a condition of any funding.

Fáilte Ireland recognises that many projects that legitimately fall within certain of the specified exemptions often incorporate a commercial component. It may be, for example, that a particular project is subsequently made accessible to the public through a commercial charge that ultimately underpins significant accessibility. In addition, the project may entail the provision of customary amenities such as parking, restaurants etc. Provided that the provision of access represents a typical commercialisation strategy and that any ancillary commercialisation is ordinarily incidental to the principal activity, then that should not prevent an applicant seeking to rely on recourse to the underlying GBER exemption.<sup>11</sup>

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<sup>11</sup> It should, however, be noted that Fáilte Ireland may not, as part of setting its own priorities, be willing to provide funds to defray costs for incidental activities. In that regard, applicants are referred to the details of eligible costs and project costs (a portion of which may be funded) specified in the relevant scheme.

## **Chapter 5 – Prohibited Aid and Aid recipients**

Under the GBER there are a number of restrictions on certain types of State aid, including, for example, aid that is tied to the use of domestic products in preference to imports. The reasons for those restrictions stem from the requirements of compatibility with the operation of the internal market and they must be respected in all instances. Full particulars are provided in Appendix 7.

Separately, the GBER identifies a class of undertakings that are disqualified from the receipt of State aid under its terms. Those restrictions are, for example, intended to prevent or mitigate any waste of State aid through its provision to firms in financial difficulty where there may be a concern that it is disguised rescue or restructuring aid and for which there are special EU rules. Full particulars are provided in Appendix 6 to which the attention of applicants in particular is drawn. Applicants should also note that Fáilte Ireland may as part of a scheme operate other restrictions on eligibility for applicants in the light of a number of considerations, including its experience with respect to previous schemes or funding arrangements.

Finally, under the GBER there are distinctions made for certain purposes between small, medium and large enterprises. Although not generally relevant with respect to the identified exemptions, they may be with respect to regional investment aid. As such, they are set out in Appendix 9.

## **Annex I**

### **Defined Terms under the GBER**

“Large investment projects” are those with an initial investment with eligible costs exceeding €50 million, calculated at prices and exchange rates on the date of granting the aid;

“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.

## **Annex II**

### **Relevant GBER Exemptions and Associated Provisions**

## Appendix 1

### Regional Investment Aid<sup>12</sup>

1. To be considered for support, applications must first demonstrate that they are eligible for this aid. Schemes aimed at Tourist Activities are eligible for Regional Investment Aid. While individual undertakings may benefit from regional aid, the overall purpose of it being permitted is to provide for economic and social development of regions, either on the basis that they are especially disadvantaged (in comparative EU terms) or where they have been identified by the Member States as requiring development. This Aid is only available to projects located in certain areas of the Country referred to in the Regional Aid Map for Ireland 2014-2020 as "Assisted Areas" and which has been approved by the European Commission. If your project is located outside of the Assisted Areas, your project is not eligible for Regional Investment Aid.

Should your project be deemed to have met all the criteria for this grant and be eligible for Regional Investment aid Fáilte Ireland has discretion to provide grant assistance for eligible costs in the following terms:

#### 1.1 Level of Support:

Minimum Grant Level	Type of activity proposed	Maximum Possible Grant Rate
€200,001	Small enterprise (fewer than 50 employees and annual turnover/balance sheet does not exceed €10million.)	30% of eligible costs
€200,001	Medium enterprise (fewer than 250 employees and annual turnover not exceeding €50million and/or an annual balance sheet total not exceeding €43million)	20% of eligible costs
€200,001	Large enterprise (over 250 employees)	10% of eligible costs

#### 1.2 Eligible costs include:

- (a) Investment costs in tangible and intangible assets, or
- (b) Estimated wage costs arising from job creation as a result of the initial investment, calculated over a period of two years.

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<sup>12</sup> Please note that this is a summary only of the provisions of Article 14 of the GBER and is not intended to substitute for a reading of the actual provision.

It is open to an applicant to calculate eligible costs from both (a) and (b) provided that they do not exceed the higher of (a) or (b). For example if investment costs were €3million and estimated wage costs over two years were €500,000, it is open to an applicant to submit for eligible costs for €2.5million investment costs and €500,000 wage costs, therefore totalling €3 million.

The investment must be maintained in the area for at least five years<sup>13</sup> or three years for SMEs after the completion of the investment. Plant and machinery the subject of the investment can be replaced during this period if outdated or broken within the period, provided that the economic activity remains in the area.

### 1.3 **Leases**

The assets shall be new except for SMEs and costs related to the lease of tangible assets may be taken into account where for land and buildings the lease must continue for at least five years<sup>14</sup> for large undertakings and for three years for SMEs. For plant or machinery the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset upon expiry of the term of the lease.

To be eligible the assets must be bought from third parties unrelated to the buyer (with the exception of the takeover of a small enterprise by a family member or employee) and the transaction shall take place under market conditions.

There are specific rules for aid granted for a fundamental change in the production process.

### 1.4 **Eligible intangible assets**

To be eligible costs Intangible assets must:

- (a) Be used exclusively in the establishment receiving the aid
- (b) Be amortisable
- (c) Be purchased under market conditions from third parties unrelated to the buyer and
- (d) Be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years or three years for SME's.

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<sup>13</sup> As it is entitled to do, Fáilte Ireland will set longer periods for the maintenance of investment for the operative period, and possibly for longer where this is required to ensure overall compliance with the GBER.

<sup>14</sup> As it is entitled to do, Fáilte Ireland will set longer periods for the maintenance of investment.

For large undertakings the costs of intangible assets are eligible only up to a limit of 50% of total eligible investment costs for the initial investment.

### 1.5 **Wage costs**

- (a) Net increase in the number of employees
- (b) Each post filled within 3 years of completion of works
- (c) Each job shall be maintained in the area for 5 years or 3 years for SMEs.

### 1.6 **Large investment projects**

The formula to calculate the adjusted aid available for such projects is set out at Article 2(20) of Regulation 651/2014.

For large enterprises there must be a demonstration that the activity/project is new. This can be demonstrated by confirming the NACE code for any existing activity and the NACE code for the proposed activity. (see list of NACE codes Article 2(47\_ GBER).

### 1.7 **Financial Contribution**

The applicant must provide a contribution of at least 25% of eligible costs, either through its own resources or external financing in a form free from public support.

- 1.8 Any initial investment started by the same beneficiary (at group level) within a period of three years from the dated of start of works on another aided investment in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total aid amount for the single investment project shall not exceed the adjusted aid amount for large investment projects.

See Annex 4 for the Regional Aid Map for Ireland 2014-2020

## **Appendix 2**

### **Culture and Heritage Conservation and Consultancy Aid<sup>15</sup>**

2. Applicants may receive funding for following cultural purposes and activities:
- (a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, cinemas, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
  - (b) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage;
  - (c) intangible heritage in any form, including folklorist customs and crafts;
  - (d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
  - (e) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;

#### **2.2 Level of Support**

The funding amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period.

For aid not exceeding €2 million, the maximum amount of funding may be set at 80% of eligible costs.

#### **2.3 Investment Aid**

For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets. A tangible asset means assets consisting of land, buildings, plant and machinery and equipment. Intangible assets means assets that do not have a physical or financial embodiment

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<sup>15</sup> Please note that this is an edited summary only of the provisions of Article 53 of the GBER and is not intended to substitute for a reading of the actual provision. In addition, this summary does not include particular projects covered by Article 53 which Fáilte Ireland does not intend to fund.

including for example; patents, licences, know-how or other intellectual property. Eligible costs include:

- (a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80% of either the time or the space capacity per year is used for cultural purposes;
- (b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- (c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
- (d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
- (e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project;

#### 2.4 **Level of Support**

The funding 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, on the basis of reasonable projections, or through a claw-back mechanism.

For aid not exceeding €2 million, the maximum amount of funding may be set at 80% of eligible costs.

## **Appendix 3**

### **Aid for Sport and Multifunctional Recreational Infrastructures<sup>16</sup>**

3. For an undertaking to avail of this support, the proposed infrastructure must also fulfil the criteria of promoting tourism in the State. The rules in relation the eligibility for this exemption are set out below;

Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20% of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.

Multifunctional recreational infrastructure shall consist of recreational facilities with a multifunctional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.

Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.

If sport infrastructure is used by professional sport clubs, Member States shall ensure that the pricing conditions for its use are made publicly available.

Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

The aid may take the form of investment aid, including aid for the construction or upgrade of sport and multifunctional recreational Infrastructure.

For investment aid for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.

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<sup>16</sup> Please note that this is a summary only of the provisions of Article 55 of the GBER and is not intended to substitute for a reading of the actual provision

### 3.1 **Level of Support**

For investment aid for sport and multifunctional recreational infrastructure, 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*, on the basis of reasonable projections, or through a claw-back mechanism.

For aid not exceeding EUR 2 million, the maximum amount of aid may be set, alternatively to the method referred to in the previous two paragraphs, at 80% of eligible costs.

## Appendix 4

### Aid for Local Infrastructures<sup>17</sup>

4. Local infrastructure for the purpose of this grant scheme is infrastructure that contributes at a local level to improving the business and consumer environment. In addition to this criteria Fáilte Ireland require that proposed projects for Local Infrastructure promote tourism in the local area.

Aid under this provision is available to applications for projects which may also be eligible for Regional Aid.

If your project falls within the exemption for culture and heritage conservation or sport and multifunctional recreational infrastructures and it incorporates an infrastructure element it will **not be eligible** for Local Infrastructure Aid.

Separately, airports and ports do not qualify for local infrastructure aid.

The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall be at market price. Any assignment of operation shall be on an open, transparent and non-discriminatory basis and have due regard to the applicable procurement rules.

If you believe your project may be eligible as a local infrastructure project, the cost of tangible and intangible assets are eligible subject to Appendix 1.

#### 4.1 Level of Support

Should your project be deemed to have met all the criteria for this grant and be eligible for Local Infrastructure aid then Fáilte Ireland has discretion to award a grant for an amount that does not exceed the difference between eligible costs and the operating profit of the investment. This is calculated by deducting the operating profit (based on reasonable projections) from the eligible costs.

This aid is not available for dedicated infrastructure which is built for ex-ante identifiable undertakings and tailored for their needs.

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<sup>17</sup> Please note that this is a summary only of the provisions of Article 56 of the GBER and is not intended to substitute for a reading of the actual provision.

## **Appendix 5**

### **Aid for Consultancy in favour of SMEs<sup>18</sup>**

5. If stage one of your project does not qualify for aid as a Culture and Heritage Conservation project, it may be eligible for Aid in the form of Consultancy Aid in favour of SMEs. Aid in the form of Consultancy Aid in favour of SMEs will not exceed €2 million.

This aid applies to costs of consultancy services provided by external consultants.

Costs that are continuous or periodic or relate to the applicants usual operating costs such as routine tax consultancy services, regular legal services or advertising are excluded and not eligible costs for this aid.

#### **5.1 Level of Support**

Should your project be deemed to have met all the criteria for this grant and be eligible for Aid for Consultancy in favour of SMEs then Fáilte Ireland has discretion to award a grant for up to 50% of the eligible costs.

Fáilte Ireland will not provide grant aid in this category of over €2million per undertaking per project.

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<sup>18</sup> Please note that this is a summary only of the provisions of Article 18 of the GBER and is not intended to substitute for a reading of the actual provision.

## **Appendix 6**

### **Undertakings in Difficulty**

6. An undertaking in difficulty is defined as follows:
  - 6.1 In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU and 'share capital' includes, where relevant, any share premium.
  - 6.2 In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.
  - 6.3 Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
  - 6.4 Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.
  - 6.5 In the case of an undertaking that is not an SME, where, for the past two years: the undertaking's book debt to equity ratio has been greater than 7.5 and the undertakings EBITDA interest coverage ratio has been below 1.0.

## **Appendix 7**

### **Prohibited Aid**

7. The following are prohibited under the GBER:
- (a) Aid to export related activities towards third countries or other Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to the other current expenditure linked to export activity;
  - (b) Aid contingent upon the use of domestic over imported goods;
  - (c) Aid granted in the fishery and aquaculture sector, as covered by Regulation (EU) 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council regulations (EC) 1184/2006 and (EC) 1224/2009 and repealing council regulation (EC) 104/2000 with the exception of aid in the field of research and development and innovation aid for SMEs;
  - (d) Aid granted to the primary agricultural production sector, with the exception of aid for research and development and innovation aid for SMEs;
  - (e) Aid granted in the sector of processing and marketing of agricultural products, in the following cases:
    - (i) where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned; or
    - (ii) where the aid is conditional on being partly or entirely passed on to primary producers;
  - (f) Aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787;
  - (g) The categories of regional aid excluded in Article 13 of Regulation 651/2014;
  - (h) Where an undertaking is active in the excluded sectors as referred to in points (c), (d) or (e) above, and in sectors which fall within the scope of this Scheme, this Scheme applies to aid granted in respect of the latter sectors or activities, provided that appropriate means, such as separation of activities or distinction of costs, are taken to ensure that the activities in the excluded sectors do not benefit from the aid granted in accordance with this Scheme;

- (i) Aid where the grantee of aid is subject to the obligation for the beneficiary to have its headquarters in Ireland or to be predominantly established in Ireland, although the requirement to have an establishment or branch in Ireland at the moment of payment of the aid is allowed.
- (j) Aid subject to the obligation for the beneficiary to use nationally produced goods or national services;
- (k) Aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States;
- (l) Aid to undertakings in difficulty, except in very narrow circumstances<sup>19</sup>
- (m) Aid in favour of an undertaking which is subject to an outstanding recovery order following a previous European Commission decision declaring an aid illegal and incompatible with the internal market

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<sup>19</sup> See Article 4© of GBER.

## **Annex 3**

### **Other Relevant Concepts**

## **Appendix 8**

### **Single Undertakings**

8. 'Single undertaking' includes, for the purposes of the GBER, all enterprises having at least one of the following relationships with each other:
- (a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
  - (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
  - (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
  - (d) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

## **Appendix 9**

### **Small, Medium and Large Enterprises**

9. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
- 9.1 Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
- 9.2 Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

## **Appendix 10**

### **Undertaking Questionnaire**

10.

#### **10.1 Preliminary Questions**

1. Describe the nature of any service or amenity that will be provided arising from the project?
2. Will the services provided arising from the project compete with any other such services or amenity in the area (30km radius)? If so please provide details.<sup>20</sup>
3. Will there be charges for services? If so, how will they be set or varied, and what are the assumed charges for the operative period?
4. Apart from any requirement that Fáilte Ireland may impose and any taxation driven obligations, will your terms of access (including charges) be subject to any other legally binding requirements that apply to you?
5. Will the implementation of this project involve the granting by you of a concession, franchise or other operating rights, exclusive or otherwise? If so, how will they be granted? If such rights will be granted, to what extent and on what terms will you seek to regulate any subsequent commercial use?

#### **10.2 Functions of the applicant**

6. Are you performing any governmental (local or otherwise) or State related function with respect to the project? If so, please specify in outline.
7. What public or other official function will be discharged by your organisation through the proposed project? Please provide your response by reference to specific provisions
8. With respect to the proposed projects are there any externally imposed constraints on your organisation as to the terms on which access is subsequently provided to the public? If so, please specify details in accordance with provisions to be referenced in reply to Question 7.

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<sup>20</sup> A general assertion that given the unique nature of the amenity that it does not compete with any other attractions will not suffice for that purpose.

9. Independently of the funding that you are seeking, is there any aspect of this project that could not, as a matter of feasibility or practicality, be undertaken without the involvement of you or a public authority? For example, does it entail use of compulsory purchase powers or other statutory privileges?
10. Is this project similar to any other project undertaken by your organisation over the past 10 years? If so, please provide summary details.

### 10.3 **Cost Recovery for the Proposed Project**

11. Is the underlying activity capable of being run on a profitable basis even with the maximum permissible level of support under the Scheme?
12. In particular, is the underlying activity capable of being run on a profitable basis having regard to the terms on which access will be or must be provided to the public?
13. What proportion of your total operating costs will be covered by the various income streams that are anticipated for the operative period of the Project, being a period of at least 10 years?<sup>21</sup> Calculations should be prepared and provided for each of those ten years, together with a demonstration of how those figures reconcile with financials previously submitted that are also being relied upon with respect to the proposed project.

### 10.4 **Culture and Heritage**

14. Where the amenity or the attraction is or will comprise wholly or substantially of a collection of tangible or intangible cultural or heritage materials, please provide details of:
  - (i) the nature of the collection by type, together with an indication of any items that are either unique or very rare
  - (ii) any official (including legal) recognition of the nature of the collection, including any signifier of its importance or uniqueness

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<sup>21</sup> With respect to what are operating costs, and although this analysis takes place outside the GBER, applicants are referred to the definition of operating profit in Annex 1 with a view to identifying operative costs. Further guidance as to this issue may be given to an applicant who is required to answer one or more of the questions from Undertakings Questionnaire included in this Appendix, in connection with this issue.

(iii) an assessment of the general replicability of the collection having regard to available sources.<sup>22</sup>

#### 14.5 **Miscellaneous**

15. Please provide details of any situation in the past 5 years in which your organisation has asserted that it is not an undertaking for the purpose of EU Competition Law, including where any such assertion has been accepted by the European Commission or any court of competent jurisdiction in respect of you or any comparable entity. Copies of relevant correspondence etc. that are sought to be relied upon should be provided.
  
16. Please provide details of any situation in the past 5 years in which your organisation has asserted that it has been entrusted with the operation of a service of general economic interest under EU law as well as indicating the outcome of the assertion of any such claim. Copies of relevant correspondence etc. that are sought to be relied upon should be provided.

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<sup>22</sup> Fáilte Ireland reserve the right to require that such an assessment be prepared by an independent folklorist or other expert in matters of culture and heritage.

## **Appendix 11**

### **Cumulation**

#### **Article 8 GBER**

##### **Cumulation**

1. In determining whether the notification thresholds in Article 4 and the maximum aid intensities in Chapter III are respected, the total amount of State aid for the aided activity or project or undertaking shall be taken into account.
2. Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.
3. Aid with identifiable eligible costs exempted by this Regulation may be cumulated with:
  - (a) any other State aid, as long as those measures concern different identifiable eligible costs,
  - (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under this Regulation.
4. Aid without identifiable eligible costs exempted under Articles 21, 22 and 23 of this Regulation may be cumulated with any other State aid with identifiable eligible costs. Aid without identifiable eligible costs may be cumulated with any other State aid without identifiable eligible costs, up to the highest relevant total financing threshold fixed in the specific circumstances of each case by this or another block exemption regulation or decision adopted by the Commission.
5. State aid exempted under this Regulation shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in Chapter III of this Regulation.
6. By way of derogation from paragraph 3(b), aid in favour of workers with disabilities, as provided for in Articles 33 and 34 may be cumulated with other aid exempted under this Regulation in relation to the same eligible costs above the highest applicable threshold under this Regulation, provided that such cumulation does not result in an aid intensity

exceeding 100 % of the relevant costs over any period for which the workers concerned are employed.

## **Article 5 De Minimis Regulation**

### **Cumulation**

1. De minimis aid granted in accordance with this Regulation may be cumulated with de minimis aid granted in accordance with Commission Regulation (EU) No 360/2012 up to the ceiling laid down in that Regulation. It may be cumulated with de minimis aid granted in accordance with other de minimis regulations up to the relevant ceiling laid down in Article 3(2) of this Regulation.
2. De minimis aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measure, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. De minimis aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.

## **Annex IV**

### **Regional Aid Map 2014-2020**

**Applicable from 01 July 2014 to 31 December 2020**

**Commission Decision – SA.38509**

#### **1. Background**

The EU Regional Aid Guidelines (RAGS) allow each Member State to provide enhanced rates of State Aid in the least economically developed areas of each country.

This enables the State's enterprise development agencies to grant State aid, at enhanced rates, to businesses in order to support new investment and new employment in productive projects in Ireland's most disadvantaged regions. Regional aid is also provided under schemes for tourism grants, marine tourism, urban and rural renewal and other tax-based development schemes.

Grants and other State aid under Regional Aid are funded from the exchequer, i.e. there is no EU or other external funding. Regional Aid is distinct from other forms of State aid, such as aid for research, development and innovation, training, energy, agriculture or for environmental protection which are covered under different State aid guidelines. It is important to note that the State, through its industrial development agencies and other State Departments and bodies, can provide support to both Irish and foreign companies under a range of State Aid measures

The 2014-2020 Regional Aid Guidelines enter into force on 01 July 2014. Under the terms of the RAGS, regions covering 51.28% of Ireland's population are to be designated as 'assisted areas'.

#### **2. Eligible Areas (map attached as annex)**

<b>Name of Zone</b>	<b>NU TS</b>	<b>Name of NUTS/LAU Region</b>	<b>Counties/Regions</b>
South-East + Arklow	IE0 24	South-East	Carlow, Kilkenny, South Tipperary, Wexford, Waterford
	IE0	Mid-East (partly)	Arklow LEA
Border + Kells	IE0 11	Border	Cavan, Donegal, Leitrim, Louth, Monaghan, Sligo
	IE0	Mid-East (partly)	Kells LEA
Midland + Athy	IE0	Midland	Laois, Offaly, Longford, Westmeath
	IE0	Mid-East (partly)	Athy LEA
West	IE0	West	Mayo, Roscommon, Galway
Mid-West	IE0	Mid-West	Clare, North Tipperary, Limerick
South-West (Partly)	IE0	Kerry	Kerry

South-West (Partly)	IE0	Eligible inhabited islands off Cork	List of designated islands in Annex 2
Dublin (Partly)	IE0	Eligible inhabited islands off Dublin	List of designated islands in Annex 2

The three LEAs designated in the Mid-East are:

- I. Kells
- II. Athy<sup>1</sup>
- III. Arklow

These priorities reflect an emphasis on the future development potential of specific counties with a view to optimising the potential of aid for the development of the nation as a whole. This map will cover all of Ireland's 51.28% population coverage.

In summary, all counties will be designated for Regional Aid apart from:

- Dublin City and County (apart from the named Islands in the memo)
- Cork City and County (apart from the named Islands in the memo)
- The Mid-East generally, i.e. Kildare, Meath and Wicklow. The only exceptions to the Mid East's exclusion is the designation of the below three Local Electoral Areas (LEAs), which contain Electoral Divisions with amongst the highest unemployment rates in the country.

SMEs in non-assisted areas (Dublin, Cork & Mid-East) can receive support for capital and employment under **Investment Aid for SMEs**. All enterprises can be supported under **De Minimis Aid**<sup>2</sup>. De Minimis Aid is small amounts of State Aid given to an enterprise which cannot exceed €200,000 over any three fiscal years to any company irrespective of size or location. De Minimis Aid can come from any State body, agency or department.

### 3. Applicable Aid Intensity Rates

Aid intensity rates will be maintained at their current levels. Both the current 2007-2013 Regional Aid Guidelines and the upcoming 2014-2020 Guidelines outline that the aid intensity in Ireland must not exceed:

Period 2014-2020			
Enterprise Type	Small Firm	Medium Firm	Large Firm <sup>3</sup>
Max Aid Rate (Gross Grant)	30%	20%	10%

See Appendix Three for definitions of enterprises in terms of size, turnover etc.

<sup>1</sup> All of the Local Electoral Area of Athy has been added to the upcoming 2014-2020 RAG Map, with the exception of the Electoral District of Ballymore Eustace (population of 1,475). Ballymore Eustace was excluded from the designated map in order to ensure Ireland adhered to its overall allocated national coverage of 51.28% of population

<sup>2</sup> De Minimis Aid are regarded as falling outside the category of State aid and can be awarded to an enterprise without notification to or clearance from the European Commission. De Minimis Aid can be in the form of grant or equity.

<sup>3</sup> Restrictions in place for aid to large enterprises – see point four attached below. The maximum regional aid ceilings proposed for large enterprises, as well as the ceilings for small and for medium sized enterprises are only applicable to projects with eligible expenditure below €50 million.

#### 4. Investment to Large Enterprises Restricted

The new guidelines adopt a stricter approach on aid for investments made by large enterprises in the more developed assisted areas. The revised guidelines assert that large enterprises tend to be less affected than SMEs by regional handicaps for investing or maintaining economic activity in a less developed area.

The compromise agreed with the Commission will allow Member States to provide investment aid to large enterprises for **new economic activities** and/or **diversification of existing enterprises into new products or new process innovation**.

DJEI has engaged with the Commission regarding the practicalities of implementing the above restriction. The Commission has stated that it will assess the two categories of 'new product' and 'new process innovations' on a case-by-case basis and in an open minded way. Investment provided to a large enterprise must be notified to the Commission for **case by case approval**.

#### 5. Other State Aid Measures

The State, through its industrial development agencies and other State Departments and bodies, can provide support to both Irish and foreign companies under a range of State Aid measures, including:

- Research, Development and Innovation Aid
- Environmental Aid
- Risk Finance
- Training Aid

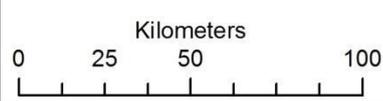
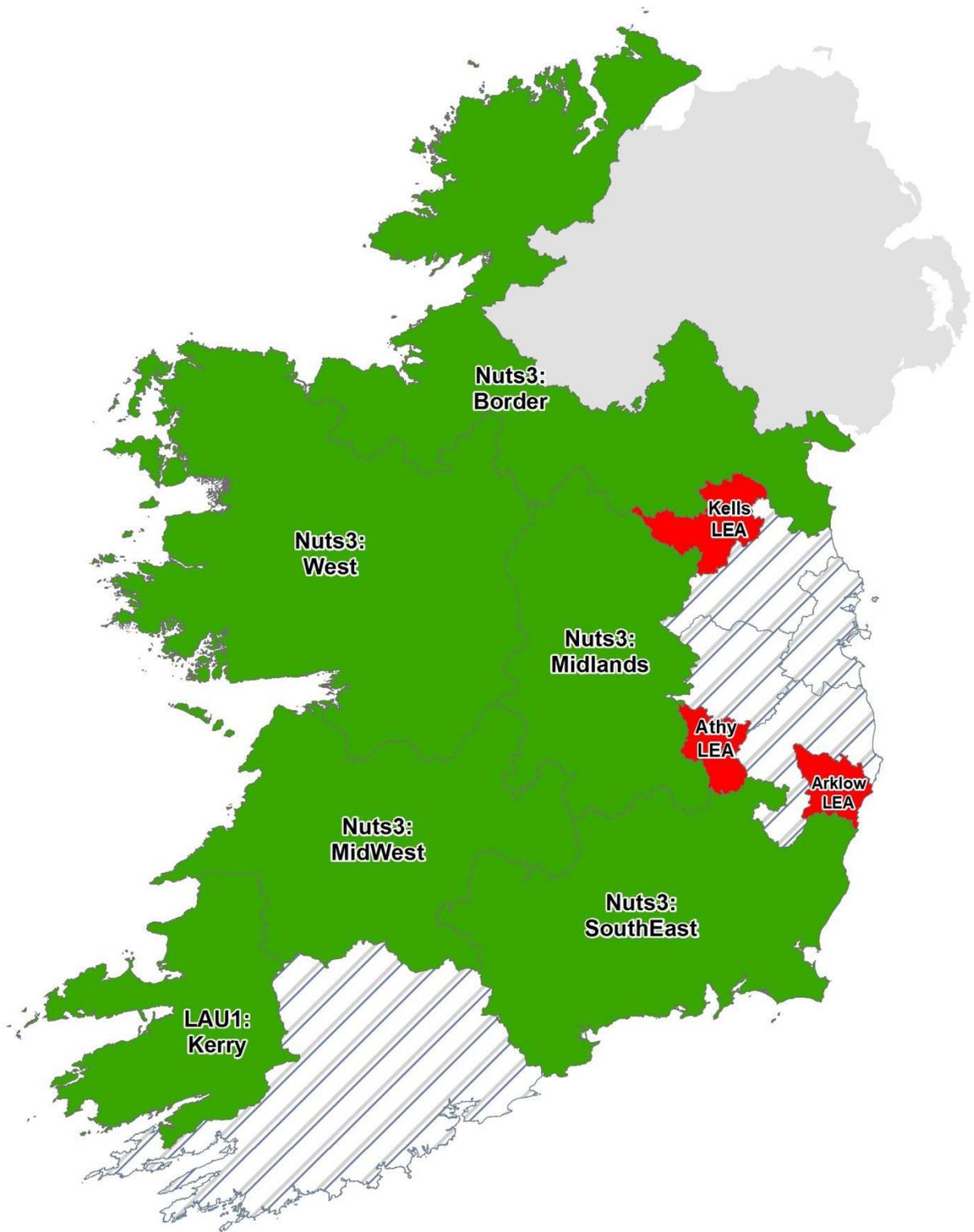
Such aid measures are available in every county in Ireland.

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#### State Aid Unit

Department of Jobs, Enterprise & Innovation

# Regional Aid Map for Ireland (2014-2020)



-  LAU 2
-  Nuts 3 and LAU 1
-  Other Counties Not Designated Aid
-  Northern Ireland

## Appendix 1: Local Electoral Areas (LEAs) Designated

### Non-predefined 'c' area proposed under criterion 1 of paragraph 168 of the RAG

#### Kells

Name of zone proposed	NUTS Code	Name of NUTS 3 region concerned
Border + <b>Kells</b>	IE011	Border
	IE022	Mid-East (partly)

NUTS 3 Region Code	Name of eligible NUTS 3 / LAU 1 area
IE022	Mid-East (Partly - Kells)
<b>Kells:</b> Kells Rural; Athboy; Oldcastle; Kells Urban; Drumcondra; Grennanstown; Rathmore; Newtown; Teltown; Kilmainham; Nobber; Ardagh; Martry; Moynalty; Balrathboyne; Maperath; Carrickleck; Castlekeeran; Crossakeel; Kilbride; Moylagh; Newcastle; Staholmog; Loughan; Kilskeer; Girley; Killeagh; Cruicetown; Trohanny; Crosskeys; Boherboy; Killallon; Burry; Moybolgue; Stonefield; Ballinlough; Knocklough; Posseckstown.	

#### Athy

Name of zone proposed	NUTS Code	Name of NUTS 3 region concerned
Midland + <b>Athy</b> <sup>4</sup>	IE012	Midland
	IE022	Mid-East (partly)

NUTS 3 Region Code	Name of eligible NUTS 3 / LAU 1 area
IE022	Mid-East (Partly - Athy)
<b>Athy:</b> Athy East Urban; Athy Rural; Kilcullen; Athy West Urban; Ballyshannon; Castledermot; Ballymore Eustace(excluded); Ballitore; Nurney; Giltown; Narraghmore; Graney; Skerries; Kilrush; Carrigeen; Kilberry; Grangemellon Ballybrackan; Churchtown; Usk; Dunmanoge; Moone; Harristown; Fontstown; Kilkea; Burtown; Belan; Inschaquire; Ballaghmoon; Johnstown; Bert.	

#### Arklow

Name of zone proposed	NUTS Code	Name of NUTS 3 region concerned
South-East + <b>Arklow</b>	IE024	South-East
	IE022	Mid-East (partly)

NUTS 3 Region Code	Name of eligible NUTS 3 / LAU 1 area
IE022	Mid-East (Partly - Arklow)
<b>Arklow:</b> Arklow No. 1 Urban; Arklow No. 2 Urban; Aughrim; Carnew; Tinahely; Arklow Rural; Ballyarthur; Kilbride; Avoca; Ballinaclash; Shillelagh; Coolboy; Cronebane; Coolballintaggert; Kilpipe; Ballingate; Ennereilly; Kilballyowen; Killinure; Ballinacor; Coolatin; Rath; Knockrath; Ballinglen; Aghowle; Ballybeg; Cronelea; Money.	

<sup>4</sup> Electoral District of Ballymore Eustace excluded

## Appendix 2: Islands Designated

### Non-predefined 'c' areas proposed under criterion 3 of paragraph 168 of the RAG

NUTS 3 Code	Name of the eligible island
Cork (Part of IE025 South-West)	Bear
	Cléire
	Dursey
	Haulbowline
	Inchidoney
	Inishbeg
	Inishodriscol (or Hare)
	Long
	Ringarogy
	Sherkin
	Whiddy
Dublin IE021	North Bull (ED 038 Clonfarf East B)
	North Bull (ED 087 Raheny – St. Assam)
	Lambay

\* Islands off the coast of designated counties are deemed to be automatically included in the map and are eligible for regional aid.

### **Appendix 3: Company Size Definitions**

A ***small enterprise*** is an enterprise that satisfies all of the following criteria:

- has fewer than 50 employees and
- has either an annual turnover and/or a balance-sheet total not exceeding EUR 10 million.

A ***medium-sized enterprise*** is an enterprise satisfying all of the following criteria:

- has fewer than 250 employees and
- has either an annual turnover not exceeding EUR 50 million, and/or a balance-sheet total not exceeding EUR 43 million.

A ***large enterprise*** is one with 250 employees or more.