



This note provides a brief overview of the State aid rules that apply to public funding provided to community groups.

A separate guidance note is available on FITs and RHI when receiving public funding.

What is State aid?

State aid is financial assistance (direct or indirect) provided by government to businesses that meets all the following four criteria:

- it is granted through State resources;
- it favours certain undertakings or the production of certain goods;
- it distorts or threatens to distort the competition; and
- it affects trade between EU Member States.

Examples of State aid include:

- grants or other forms of funding;
- guarantees or loans on non-commercial terms.
- public bodies selling assets, goods or services at below market value;
- public bodies buying assets, goods or services at above market value.

The first consideration when addressing any question of potential State aid is to determine whether all the four criteria are met. If any criterion is not met, State aid will not be present.

What are "State resources"?

The notion of "State resources" is interpreted widely and includes public funds administered through central, regional and local government authorities, or through public or private bodies designated or controlled by the State such as the Big Lottery Fund.

Is a community group an "undertaking"?

One of the tests under the second State aid criterion is for the recipient of the aid to be classified as an "undertaking". An undertaking is an entity that is engaged in an activity for which there is a market in comparable goods and services. A charity or a not-for-profit body can be an undertaking, depending on the activities in which it is engaged. An entity can be an undertaking in respect of some of its functions and not in respect of others.

In general, a community group that is delivering a project relating to energy generation and energy use is likely to be viewed as an undertaking for State aid purposes, although this should be considered on a case-by-case basis.

Methods for establishing compliance

Even where the four criteria are met, and therefore State aid is present, there are a number of exemptions that can be relied upon to establish compliance. The exemptions that are likely to be of particular relevance to community groups are:

- the De Minimis Exemption;

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- the General Block Exemption Regulation (**GBER**).

De minimis exemption

The de minimis exemption permits aid of up to the value of 200,000 Euros to an individual recipient in any rolling three year period. The threshold applies in relation to aid received by the recipient from all sources in that period.

GBER

The GBER exempts certain categories of aid in respect of certain activities, subject to various conditions. The parts of the GBER (referred to in the GBER as Articles) that may be relevant to community energy projects include:

- aid for start ups (Article 22);
- investment aid for energy efficiency measures (Article 38);
- investment aid for high efficiency cogeneration (Article 40);
- investment aid for the promotion of energy from renewables (Article 41);
- investment aid for energy efficient district heating and cooling (Article 46);
- investment aid for energy infrastructure (Article 48).

The GBER does not provide a blanket exemption for aid for these activities. The aid can only be provided in relation to defined "eligible costs" to a particular "aid intensity". The aid intensity is expressed as a percentage and represents the maximum amount of grant funding in respect of the eligible costs that is permitted under the relevant Article.

The maximum aid permitted under a GBER Article = the aid intensity multiplied by the eligible costs.

The aid intensity may be increased in certain circumstances, for example if the recipient is a SME or if the project is being carried out in an assisted geographical area as determined by the European Commission.

Reliance on more than one exemption

It is possible to rely on more than one GBER Article provide that different eligible costs are funded under each different Article relied upon.

Aid granted under one GBER Article may be added to aid under a different GBER Article in relation to the same identifiable eligible costs, partly or fully overlapping, only if such aggregation does not result in exceeding the highest aid intensity or aid amount applicable in the relevant Articles.

De minimis aid cannot be given towards the same costs that are being supported under the GBER if it means that the aid intensity would exceed what is allowed under the GBER.

Consequences of unlawful State aid

The primary consequence of unlawful State aid is that the European Commission can order that the aid be repaid to the State with interest. The significant part of the risk for unlawful State aid therefore rests with the recipient. It is therefore in the recipient's interest to be satisfied as to the State aid compliance of any public funding.

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