



Appendix A

Guidance for Applicants – Organisation Eligibility and State Aid Compliance Requirements

Circular Economy Investment Fund

Date: February 2020

1 Eligible organisations

The following types of organisation are eligible to apply for funding:

1.1 SME's

The definition of SME and enterprise are provided in Annex 1, Articles 1 and 2 of Commission Regulation No. 651/2014 (the General Block Exemption Regulation), i.e. an SME is an enterprise which employs fewer than 250 persons, and which has an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million; and an enterprise is any entity engaged in an economic activity, irrespective of its legal form, including, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity. All enterprises must be registered with Companies House. Zero Waste Scotland (ZWS) will not contract with individuals who do not have a company registration number. If the enterprise is partly owned or controlled by another organisation, or partly owns or controls another organisation, then the calculation of employees, turnover and balance sheet has to take this into account. If this applies to your enterprise then you may want to consult the Commission's guidance on what is an SME, including the revised User Guide to the SME Definition¹

1.2 Registered Third Sector organisations

Third sector means a range of institutions which occupy the space between the State and the private sector. These include small community and voluntary groups, registered charities that conform to SME standards (as above: number of employees, turnover and annual balance sheet total), foundations, trusts and social enterprises and cooperatives.

¹ http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/index_en.htm

1.3 Community Interest Companies

A community interest company (CIC) is a company introduced by the United Kingdom government in 2005 under the Companies (Audit, Investigations and Community Enterprise) Act 2004, designed for social enterprises that want to use their profits and assets for the public good.

2 State Aid Compliance Requirements

Please note that you cannot combine the two funding mechanisms, i.e. De Minimis and General Block Exemption.

- 2.1 Any grant received through the Fund is likely to constitute State Aid. As the applicant you must demonstrate in your application that any such grant is compliant with any applicable EU State Aid requirements. The recipient of any grant received through the Fund that is subsequently found to be incompatible with State Aid requirements may be fully liable to repay the grant in full with interest.

The information in this guidance document relating to State Aid issues does not constitute legal advice, and ZWS does not accept any liability with regard to its use.

- 2.2 Applications must state which State Aid compliance route the applicant is selecting, and demonstrate that their project complies with any requirements applicable to that route, such as: qualifying project objective, eligibility criteria on costs (including whether capital investment or operating/revenue funding), co-funding requirements (including the source and nature of co-funds), funding limits, Small or Medium sized Company declaration, and other factors such as geographic location of the project). This means that as a potential Fund applicant you should consider your State Aid compliance route options from the start of the design of the project for which you intend to apply.

- 2.3 The different routes available to you for receiving Aid from the Fund are described in more detail below. Please note that it is the responsibility of the applicant to determine their State Aid status and eligibility and you are advised to take independent advice should you be uncertain. ZWS will not act in an advisory capacity with regards to the provision of any advice and if you are subsequently deemed to have made an incorrect declaration you may be required to reimburse any funding that has been made.

a) Use the State Aid Exemption Declaration where the applicant considers that there is no State Aid present in the project;

b) Use the 1407/2013 De Minimis Regulation;

c) Use the State Aid scheme SA39221 (“ZWS Funding Support Scheme”), which falls under the General Block Exemption Regulations.

2.3.1 Where the project is deemed to be exempt from State Aid Regulations

In certain circumstances relating to the project proposal, the grant Aid to be received will not be classified as State Aid. There are four tests as to whether an aid is State Aid, all of which have to be met. The first three of the tests are likely to be met in most cases of funding provided under the Fund: that the assistance is provided by state resources, that it gives an advantage to an undertaking and that it has the potential to distort competition. However it is possible that the fourth test (“Does the assistance affect trade between Member States”) may not be met, for example in cases of a small enterprise involved in: construction; maintenance

and repair of motor vehicles; repair of personal and household goods; hotels and restaurants; or other community social and personal service activities². This is because there could be an argument that the activity is purely local in nature not trying to attract customers from other member states. As all tests are cumulative, if the fourth test is not met in these cases then a “no aid” position can be reached. Each project proposal will need to be assessed against all of the four tests in order to identify if State Aid is likely to be present or not. A communication from the Commission provides more detail on this point³. The Commission has sole competence on the presence of State Aid so any decision to adopt a “no aid” position is one which is risk based and should it be subsequently deemed that State Aid is present you may be required to repay part of all of the grant received.

2.3.2 Use the De Minimis Regulation

The De Minimis Regulation (EC Regulation 1407/2013) offers a State Aid compliance route through which 100% funding can be provided subject to the applicant's De Minimis threshold not being exceeded as a result of the grant. Both capital/investment and operating costs are covered, which include capital costs for infrastructure, plant and equipment and any eligible operating costs that are directly related to the project.

The De Minimis Regulation allows provision of financial support of up to €200,000 per single undertaking⁴ over a rolling three year fiscal period. So you must confirm the amounts of De Minimis funding that your organisation has received over the past two fiscal years and the current one to determine that you have not exceeded and will not exceed the threshold as a result of the ZWS intervention. Equally any amount received in the current fiscal year will reduce what you can receive under De Minimis in the next two fiscal years.

If you are selecting the De Minimis State Aid compliance route, please ensure that you complete the De Minimis declaration as part of your Outline Project Proposal it will be rendered non-compliant. More detailed guidance on using the De Minimis Regulation is included in Chapter 4 of the BIS State Aid Manual.

2.3.3 Use the State Aid scheme SA39221 (“ZWS Funding Support Scheme”)

The General Block Exemption Regulation (EC Regulation 651/2014)⁵ provides a number of options for achieving State Aid compliance. Each option is defined by an article of the regulation, for example “Aid for consultancy in favour of SMEs” (Article 18) and “Investment Aid for waste recycling and re-utilisation” (Article 47). Each article defines the project scope, applicable sectors, eligible costs, including whether investment and/or operating costs are covered, the funding intensity (sometimes with an additional bonus for small companies and for so-called assisted areas) and exclusions.

The options are listed as articles in Table 1 below and can also be viewed in the SA39221 itself⁶. More detailed guidance on using the GBER is included in Chapter 5 of the BIS State

² The State Aid Manual, BIS, July 2015, (p73); <https://www.gov.uk/government/publications/state-aid-manual>

³ Draft Commission Notice on the notion of State aid pursuant to Article 107(1) TFEU, 2014 (section 6.3); http://ec.europa.eu/competition/consultations/2014_state_aid_notion/draft_guidance_en.pdf

⁴ "Single undertaking" includes, for the purposes of the Regulation, 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 on 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.

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0651>

⁶ <http://www.gov.scot/Topics/Government/State-Aid/if-its-aid/Approved-schemes> and http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39221_200211CEIFS2APPAv8

Aid Manual. For full details on the eligible and ineligible costs please refer to the National Rules on Eligibility of Expenditure which is downloadable alongside this document.

- 2.4 For all projects where the Aid intensity is less than 100%, the balancing co-funding must be provided from private sources, e.g. reserves, bank loans, venture capital, etc. No public funding sources can be used as this would be deemed further State Aid. Also, any loan offered must be at commercial rates as a sub-commercial loan (i.e. no interest) will involve State Aid. In all such cases, as the applicant you must demonstrate in your application that this funding is available by providing a letter of intent from the co-funder or proof of reserves within your annual accounts.
- 2.5 **You must sign the declaration on the Outline Project Proposal Form to declare that you understand the following: The applicant declares that no EU funding from other sources or programmes has been obtained in relation to this project and it will be a condition of funding, if successful, that at no time in the future will the applicant apply for other EU funding specifically for this project.**

Please note that you cannot combine the two funding mechanisms, i.e. De Minimis and General Block Exemption

Table 1: General Block Exemption Regulation SA39221 (“ZWS Funding Support Scheme”)

Please also note:

- **Capital costs relate to physical assets such as plant and equipment; operating costs relate to intangible costs such as salary costs, external consultancy costs and overhead costs but only where these are 100% directly attributable to the project and not as an apportionment of business as usual costs;**
- **All costs claimed for by the recipient from ZWS MUST BE 100% utilised on the project and there can be no apportionment of costs for either capital or operating costs.**

Article	Title	Capital / operating	Scope and eligibility	Aid intensity
47	Investment aid for waste recycling and re-utilisation	Capital only	Plant, equipment and infrastructure costs; waste minimisation, resource value maximisation, reuse, reprocessing, recycling.	35% with an increase by 20% for small undertakings and 10% for medium size undertakings. In addition the aid intensity may be increased for investments located in assisted areas. The aid intensity may be increased by 5% for investments located in assisted areas fulfilling the conditions of Article 107(3)(c). <i>For details of the assisted areas see footnote.</i>
18	Aid for consultancy in favour of SMEs	Operating	Consultancy services provided by an external consultant for a one off specific activity not related to the SME's usual operating costs.	50% of eligible costs
22*	Aid for start ups	Capital / Operating	Eligible undertakings shall be unlisted small enterprises up to five years following their registration, which have not yet distributed profits and have not been formed through a merger.	100% of eligible costs
38	Investment aid for energy efficiency measures	Capital / Operating	Aid shall not be granted where improvements are undertaken to ensure that undertakings comply with Union standards. Eligible costs shall be the extra investment costs necessary to	30% with an increase by 20% for small companies and 10% for medium sized enterprises.

achieve the higher level of energy efficiency.

28	Innovation Aid for SMEs	Operating	Costs for obtaining, validating and defending patents and other intangible assets; costs for secondment of highly qualified personnel from a research and knowledge-dissemination organization or a large enterprise, working on innovation activities in a newly created function within the beneficiary and not replacing other personnel; costs for innovation advisory and support services;	50% of eligible costs
17	Investment Aid to SMEs	Capital and Operating	Investment relating to the setting up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or fundamental change in the overall process of an existing establishment. Also, the acquisition of assets belonging to an establishment where the establishment has closed or would have closed had it not been purchased (subject to specific conditions).	20% of eligible costs for small enterprises and 10% for medium sized enterprises.
19	Aid for SMEs for participation in fairs	Operating	Costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.	50% of eligible costs.
25**	Aid for research and development projects	Capital / Operating	Eligible costs include personnel, capital equipment, contract research, consultancy costs and additional overheads (all of which must be directly related to the project).	25 – 70% of eligible costs dependent on size of enterprise and category of research

*Please note: Projects put forward for funding by Zero Waste Scotland under Article 22, section 3 (c), will be assessed on a strict case by case basis. Zero Waste Scotland has a restricted annual spend available to fund projects using this article. For the avoidance of doubt the CEIF will only be used as a grant mechanism.

**Please note: Projects put forward for funding by Zero Waste Scotland under Article 25 will be assessed on a strict case by case basis in line with European Structural Funds National Rules on Eligibility of Expenditure which is downloadable alongside this document. This will ensure that the project feasibility & initial development work proposed is directly related to low carbon operations and will deliver the outcomes expected. Please note that all such work will be subject to further review and agreement from the ERDF Managing Authority.

To help you to identify whether your project falls within an assisted area please refer to the link to the website <http://www.ukassistedareasmap.com/ieindex.html>