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Subject: State Aid SA.56845 (2020/N) – Ireland
Repayable Advance Scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 26 March 2020, Ireland notified aid in the form of repayable advances (*Repayable Advance Scheme under the Temporary Framework*, "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[1] By e-mail of 28 March 2020, Ireland provided further clarification and confirmation on the planned implementation of the measure to the Commission.

(2) The Irish authorities confirm that the notification does not contain confidential information.

2. DESCRIPTION OF THE MEASURE

(3) Ireland considers that the ongoing COVID-19 pandemic is the greatest threat that the Irish economy has faced since the financial crisis in 2008. At present, the primary policy objective is the implementation of the necessary public health

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, (not yet published).

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measures in whatever form is required including the closure and restrictions on normal economic and social life.

(4) Measures to delay the spread of the virus, taken on 12 March 2020, included closing schools, colleges, childcare facilities and state-run cultural institutions. Pubs were also advised to close. These measures will continue along with further measures announced on 24 March 2020 by the National Public Health Emergency Team (NPHET) in response to coronavirus[2].

(5) Given the uncertainty around the current virus outbreak, it is not possible to undertake economic forecasts. Nevertheless, as an economic impact of the current restrictions and closures Ireland expects that consumption, investment and net trade will all fall sharply; households are expected to cut spending, firms will cancel or postpone investment and external demand for Irish goods and services is expected fall.[3]

(6) The notified measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(7) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(8) The measure provides aid in the form of repayable advances.

2.2. National legal basis

(9) The legal basis for the measure is:

(a) Industrial Development (Enterprise Ireland) Act, 1998, Section, 7 (1) (i)[4]

(b) Industrial Development Act 1993 Section, 8 (c)[5]

(c) Repayable Advance Scheme under the Temporary Framework[6].

[2] https://www.gov.ie/en/publication/a7e66d-latest-guidance-on-public-health-measures/

[3] https://www.esri.ie/system/files/publications/QECSPRING2020.pdf

[4] Enterprise Ireland - http://revisedacts.lawreform.ie/eli/1998/act/34/revised/en/html

[5] IDA Ireland - http://www.irishstatutebook.ie/eli/1993/act/19/enacted/en/index.html, http://www.irishstatutebook.ie/eli/2014/act/13/section/37/enacted/en/html#sec37

[6] not yet published

2.3. Administration of the measure

(10) In accordance with Section 7(1)(i) of the Industrial Development (Enterprise Ireland) Act 1998, 'Enterprise Ireland'[7] and 'IDA Ireland'[8] are responsible for administering the measure.

2.4. Budget and duration of the measure

(11) The Irish authorities estimate that no more than EUR 200 million in aid will be granted under the measure. The funds will be made available by the Department of Business, Enterprise and Innovation, with the consent of both the Minister for Business, Enterprise and Innovation and the Minister for Public Expenditure and Reform.

(12) Aid may be granted under the measure as from its approval until 31 December 2020.

2.5. Beneficiaries

(13) The Scheme applies to undertakings active in Ireland, employing 10 or more full time employees, in the manufacturing and/or internationally traded services sectors, except for those in the coal or steel sector and those covered by specific rules for financial institutions.

(14) The scheme applies to undertakings that have suffered, or are projected to suffer, a 15 % or more reduction in actual or projected turnover or profit, or a significant increase in costs, as a result of COVID-19.

(15) An eligible undertaking is one i) whose financial position is negatively impacted by COVID-19, ii) that is unable to raise sufficient capital from the market (or other sources) to meet the funding needs of the business sustainment project plan, iii) that can demonstrate that it has the potential to return to viability, and iv) whose existence is facing a sudden shortage or unavailability of liquidity and needs to preserve the continuity of economic activity.

(16) Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[9] on 31 December 2019. It may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter.

(17) The Irish authorities estimate the number of beneficiaries to be between 101 and 500 undertakings.

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7 Enterprise Ireland is the government organisation responsible for the development and growth of Irish enterprises in world markets.

8 IDA Ireland is the agency responsible for the attraction and retention of inward foreign direct investment (FDI) into Ireland.

9 As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

2.6. Sectoral and regional scope of the measure

(18) The scheme is applicable to undertakings active in manufacturing and/or internationally traded services sectors.

(19) The Irish authorities confirmed that the scheme does not apply to undertakings operating in the primary agricultural, fisheries or aquaculture sectors. Neither does the scheme apply to undertakings that are operating in the coal or steel sector. Also not covered by the scheme are undertakings covered by specific rules for Financial Services[10].

(20) The Irish authorities further confirmed that where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid is not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(21) The scheme applies to the whole territory of Ireland.

2.7. Basic elements of the measure

(22) Funding will be provided as follows:

(23) Undertakings will be required to submit a Business Sustainment Project Plan as part of their application for funding. The Business Sustainment Project Plan, should, if implemented, lead to a stabilisation of the business and a return to viability.

(24) The Business Sustainment Project Plan must identify the extent of the immediate liquidity needs and outline how support provided through the proposed Temporary Framework measures will remedy the beneficiary's immediate problems.

(25) Funding will be granted in the form of repayable advances. The repayable advance support is limited to the amount needed to meet the funding needs of the beneficiary impacted by COVID-19, as it endeavours to implement a Business Sustainment Project Plan. The maximum amount of advance per undertaking is limited to EUR 800 000.

(26) The repayment of the advance is conditional upon the successful achievement of the project objective. If the project objective is achieved, the repayable advance will be repaid as follows: the repayment will start after a 3-year grace period; the repayment will be typically finalised by the end of year 5 on successful achievement of the project objective. The repayment will include up to 4% per annum administration fee. Ireland confirmed that in the event of the company falling substantially short of the project objectives, at the end of year 5, the Granting Authority would agree to repayment proportionate to the degree of success achieved. Ireland further explained that if the beneficiary becomes

[10] Financial institutions would be those included in the Communication from the Commission on the application, from 1 August 2013, of the State aid rules to support measures in favour of banks in the context of the financial crisis (‘Banking Communication’) (OJ C 216, 30.7.2013, p. 1).

insolvent, the State would not have a legal right to claim the repayment of the advance during the insolvency proceedings.

2.8. Cumulation

(27) Aid under this measure may be cumulated with aid under Sections 3.2 or 3.3 of the Temporary Framework, also with other compatible aid, de minimis aid or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

2.9. Monitoring and reporting

(28) The Irish authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.). In particular, those authorities will provide information demonstrating that none of the beneficiaries were companies in difficulty on 31 December 2019 within the meaning of the GBER.

3. ASSESSMENT

3.1. Legality of the measure

(29) By notifying the measure before putting it into effect, the Irish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(30) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(31) The measure is imputable to the State, since it was adopted by legislative acts and is administered by ‘Enterprise Ireland’ and ‘IDA Ireland’ which are government organisations (recitals (9) - (10)). It is financed through State resources, since it is financed by public funds. In particular, the measure is based on the ‘Industrial Development (Enterprise Ireland) Act, 1998, which foresees in Section, 7 (1) (i) to administer such schemes, grants and other financial facilities requiring the disbursement of European Union and such other funds as may from time to time be authorised by the Minister with the concurrence of the Minister for Finance’.

(32) The measure confers an advantage on its beneficiaries in the form of repayable advances, the repayment of which is conditional upon the successful achievement of the project objective. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertaking active in Ireland and operating in the specific sectors mentioned in recital (14).

(34) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Irish authorities do not contest that conclusion.

3.3. Compatibility

(36) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to assess whether that measure is compatible with the internal market.

(37) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(38) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(39) The measure seeks to address a sudden shortage or unavailability of liquidity and preserve the continuity of economic activity through supporting undertakings facing financial difficulties as a consequence of the COVID-19 outbreak.

(40) The measure is one of a series of measures conceived at national level by the Irish authorities to remedy a serious disturbance in their economy. The importance of the measure to address a sudden shortage or unavailability of liquidity and preserve the continuity of economic activity is widely accepted and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Irish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of repayable advances*") described in Section 3.1 of the Temporary Framework. The repayment conditions of the measure described in recital (27) are important elements to distinguish the aid instrument from the instrument of a loan, where the grantor would still have a legal right to claim the repayment if the project objective was not achieved (or even during the insolvency proceedings).

(41) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- Aid does not exceed EUR 800 000 per undertaking in the form of repayable advances (recital (26)); the condition of paragraph 22(a) of the Temporary Framework is therefore considered to be met;

- The estimated budget of the scheme is EUR 200 million (recital (11)). Therefore, the condition of paragraph 22(b) of the Temporary Framework is considered to be met;

- In compliance with paragraph 22(c) of the Temporary Framework, the aid will only be granted to undertakings which were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter (recital (17));

- The aid will be granted no later than 31 December 2020 (recital (12)); hence the condition set out in paragraph 22(d) of the Temporary Framework is met;

- Primary producers of agricultural products are excluded and aid to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or totally passed on to primary producers, and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by such producers (recital (21)), hence the condition set out in paragraph 22(e) of the Temporary Framework is met;

- The Irish authorities committed to comply with all the monitoring and reporting provisions laid down in section 4 of the Temporary Framework (recital (29)). The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in this decision have been met.

(42) Aid granted under section 3.1 of the TF COVID-19 may be cumulated either with aid under section 3.2 or section 3.3 of the TF COVID-19, and with aid granted under the de minimis Regulation[11] or with other forms of Union financing provided that the maximum aid intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

[11] De minimis Regulation, OJ L 352, 24.12.2013.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President