



EUROPEAN COMMISSION

Brussels, 5.8.2021  
C(2021) 5951 final

PUBLIC VERSION

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**Subject: State Aid SA.63009 (2021/N) – Ireland  
COVID-19: Aid to licensed commercial bus operators**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 5 July 2021, Ireland notified aid in the form of limited amounts of aid for undertakings active in urban and suburban passenger land transport (the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).<sup>1</sup>

## **2. DESCRIPTION OF THE MEASURE**

- (2) Ireland considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the

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<sup>1</sup> Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

- (3) The impact of the COVID-19 outbreak on economic activity in Ireland has been sudden and widespread. Businesses and enterprises in all sectors, including the passenger bus sector, are being negatively impacted by continuing public health restrictions. At the height of the Government restrictions between March 2020 and May 2020, passenger numbers across public transport in Ireland fell to less than 10 % of pre-COVID-19 levels.
- (4) Similar to many other sectors, public transport has been profoundly affected by the COVID-19 pandemic, with restrictions on travel and mobility together with continuing social distancing guidelines reducing public transport routes, frequency of services and capacity. Ireland has faced a heavy reduction in patronage on public transport services, impacting heavily on fare revenues and the financial viability of these services and operators.
- (5) The Irish authorities explained that while the majority of public transport in Ireland is provided by the publicly subsidised bus and rail services funded through the National Transport Authority (“NTA”) public service obligation (“PSO”) programme, the public transport system also includes non-subsidised bus services provided on a commercial basis by licensed bus and coach businesses of varying size (hereafter: commercial bus operators). The commercial bus sector provides essential public transport services across Ireland and in 2018 operated over 90 million kilometres, carrying more than 27 million passengers.
- (6) According to the Irish authorities, the commercial bus operators market has been severely affected by the COVID-19 crisis, with the combined effects of falling demand for public transport services and reduced capacity leading to a significant fall in revenue. This threatens the continued viability and provision of many of the services.
- (7) Commercial bus operators rely heavily on passenger revenues, meaning that their survival in the short term is in doubt. Enabling mobility will be vital to support economic recovery as the Irish economy recovers from the pandemic.
- (8) Therefore, the Irish authorities consider that in the absence of continued State support, commercial bus operators will respond by withdrawing services entirely, leaving several areas of the country without any public transport alternatives.
- (9) The aim of the measure is to contribute to challenges faced by commercial bus operators to overcome liquidity issues and to maintain essential public transport services during the COVID-19 pandemic.
- (10) Ireland confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (11) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

### **2.1. The nature and form of aid**

- (12) The measure provides aid in the form of direct grants.

### **2.2. Legal basis**

- (13) The legal bases for the measure are the Ministers and Secretaries Act 1924 and Official Decision of Irish Government S180/20/10/0648C of 21 January 2021.

### **2.3. Administration of the measure**

- (14) The granting authority of the measure will be the Irish Department of Transport, while the NTA will manage the scheme.

### **2.4. Budget and duration of the measure**

- (15) The estimated budget of the measure is EUR 15 million originating from the State budget.
- (16) Aid may be granted under the measure as from the notification of the Commission's approval until no later than 31 December 2021.

### **2.5. Beneficiaries**

- (17) The beneficiaries of the measure are small and micro<sup>2</sup> enterprises engaged in the commercial operation of urban and suburban passenger land transport active in Ireland. Credit and financial institutions are excluded as eligible beneficiaries.
- (18) Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid<sup>3</sup> or restructuring aid.<sup>4</sup>

### **2.6. Sectoral and regional scope of the measure**

- (19) Under the measure, aid will be granted to enterprises active in the commercial operation of urban and suburban passenger land transport, except the financial sector.
- (20) The measure applies to the whole territory of Ireland.

### **2.7. Basic elements of the measure**

- (21) Under the measure, eligible operators can apply for aid to the NTA. In doing so, they will provide an initial contract price to the NTA based on the amount of drivers, fuel costs, maintenance costs and overhead costs. The contract price is

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<sup>2</sup> As defined in Annex I to 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, 26.6.2014, p. 1.

<sup>3</sup> Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

<sup>4</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

then benchmarked against similar Public Service Obligation (PSO) contracts which the NTA has either directly awarded or has procured through a tendering process, in order to check whether the contract price can be considered reasonable.

- (22) The contract price is adjusted on a periodic basis taking into account fare and other revenue receipts, lost kilometre penalty deductions, service variations and any material variances between the agreed price and the actual costs of the operators. At the end of the contract period, a review of the actual outcome versus the amount of aid provided will be performed and any over-compensation will be clawed back.
- (23) The Irish authorities confirm that the amount of aid shall not exceed EUR 1.8 million per beneficiary<sup>5</sup>.
- (24) Operators are eligible under the measure if they:
  - (a) are small and micro enterprises engaged in urban and suburban passenger land transport;
  - (b) are holding a small commercial bus licence which has been issued by the NTA;
  - (c) are not in receipt of any other aid in relation to the services being funded;
  - (d) are not compensated for the provision of a PSO as per Regulation (EC) No 1370/2007<sup>6</sup>;
  - (e) have reimbursed or paid into a blocked account any unlawful or incompatible aid that they have received before.

## **2.8. Cumulation**

- (25) The Irish authorities confirm that aid granted under the measure may be cumulated with aid under the *de minimis* Regulation<sup>7</sup> or the General Block Exemption Regulation<sup>8</sup>, provided the provisions and cumulation rules of those Regulations are respected.
- (26) The Irish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

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<sup>5</sup> All figures used must be gross, that is, before any deduction of tax or other charges.

<sup>6</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

<sup>7</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

<sup>8</sup> 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.

- (27) The Irish authorities confirm that if the beneficiaries receive aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 22(a) of that framework, will be 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 (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>9</sup>).

## **3. ASSESSMENT**

### **3.1. Existence of State aid**

- (29) 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.
- (30) The measure is imputable to the State, since it is administered by the NTA and it is based on the Ministers and Secretaries Act 1924 and Official Decision of Irish Government S180/20/10/0648C of 21 January 2021 (recitals (13) and (14)). It is financed through State resources, since it is financed by public funds originating from the State budget (recital (15)).
- (31) The measure confers an advantage on its beneficiaries in the form of direct grants, which they would not have had under normal market conditions (recital (12)).
- (32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings active in the commercial operation of urban and suburban passenger land transport, excluding the financial sector (recital (19)).
- (33) 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.
- (34) 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.

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<sup>9</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014.

### 3.2. Compatibility

- (35) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (36) 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*”.
- (37) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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*”.
- (38) The measure aims at maintaining essential public transport at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (39) 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 preserve employment and economic continuity and to overcome liquidity issues in the transport sector is widely accepted (see recital (9)). Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 3.1 of the Temporary Framework.
- (40) 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:
- The aid takes the form of direct grants (recital (12)).
- The overall nominal value of direct grants shall not exceed EUR 1.8 million per undertaking<sup>10</sup> (recital (23)). The measure therefore complies with point 22(a) of the Temporary Framework.
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (15). The measure therefore complies with point 22(b) of the Temporary Framework.
  - Aid may be granted to micro and small enterprises also if they were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under

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<sup>10</sup> All figures used must be gross, that is, before any deduction of tax or other charges.

national law and they have not received rescue aid<sup>11</sup> or restructuring aid<sup>12</sup> (recital (18)). The measure therefore complies with point 22(c)bis of the Temporary Framework.

- Aid will be granted under the measure no later than 31 December 2021 (recital (16)). The measure therefore complies with point 22(d) of the Temporary Framework.

(41) The Irish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (29)). The Irish authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (25) to (27)).

(42) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

#### 4. CONCLUSION

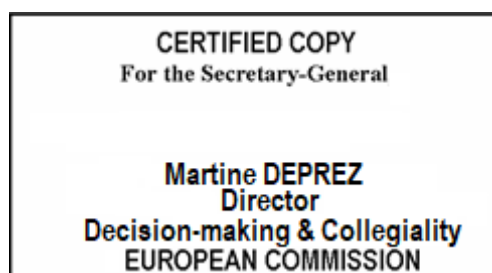
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President



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<sup>11</sup> Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

<sup>12</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.