



Brussels, 14.12.2020
C(2020) 8730 final

| | | |
|---|--|---|
| <p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p> | | <p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p> |
|---|--|---|

**Subject: State Aid SA.58851 – Ireland
Prolongation of the Risk Equalisation Scheme**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 2 October 2020, registered by the Commission on the same day, the Irish authorities notified to the Commission the prolongation of their risk equalisation scheme (RES) for private health insurers under Article 108(3) of the Treaty on the Functioning of the European Union (hereafter "TFEU").
- (2) The notified measure is a prolongation of the existing RES¹, which expires on 31 December 2020. The existing RES was approved by the Commission on 29 January 2016 ("the 2016 authorisation decision") under the European Union framework for State aid in the form of public service compensation.² This

¹ Commission Decision C(2016) 380 of 29 January 2016 in case SA.41702 (2016/NN) – Ireland, Risk equalisation scheme, OJ C 104, 18.3.2016, p.1. Available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_41702.

² Communication from the Commission — European Union framework for State aid in the form of public service compensation, OJ C 8, 11.1.2012, p. 15–22.

Mr. Simon Coveney, TD
Minister of Foreign Affairs and Trade,
Department of Foreign Affairs and Trade
80, St. Stephen's Green,
Dublin 2,
IRELAND

framework spells out the conditions under which State aid not falling under Commission Decision 2012/21/EU³ can be found compatible with the internal market pursuant to Article 106(2) TFEU.

- (3) The Irish authorities' initial intention was to notify both a prolongation of the existing RES until 31 March 2021 (the end of the risk equalisation cycle) and an updated scheme, which would have started on 1 April 2021.
- (4) In this context, the Commission services received informal submissions from the three private insurers active on the Irish private health insurance market: Irish Life Health (submission of 15 May 2020), Laya Healthcare (submission of 15 May 2020) and Vhi Healthcare (submission of 15-17 May 2020).
- (5) The uncertainty caused by the COVID-19 pandemic, particularly in relation to health insurance market claims costs, have prompted a decision by the Irish authorities to extend the existing RES until the end of the next cycle (31 March 2022), without the initially planned update of the scheme. The extension will give the Irish authorities more time for further analysis of market conditions and their potential impact on the scheme. The Commission's decision as regards the extension is without prejudice to its assessment of any potential reform of the RES.
- (6) The measure was notified in accordance with the simplified procedure under Article 4(2)(b) of Commission Regulation (EC) No 794/2004⁴.
- (7) The Commission requested additional clarifications on 20 October 2020 and on 11 November 2020. The Irish authorities replied on 4 November 2020 and on 20 November 2020.

2. DESCRIPTION OF THE MEASURE

2.1. The Irish health insurance market and structure

- (8) The Irish health system is characterised by a mix of public and privately funded health services. The latter is called the private medical insurance market ("PMI market").
- (9) Three health insurers are active on the PMI market: Vhi Healthcare (50.2% market share), Laya Healthcare (26% market share) and Irish Life Health (20% market share).⁵ The PMI market is overwhelmingly focused on covering

³ Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.1.2012, p. 3–10.

⁴ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) 659/1999, laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 140, 30.04.2004.

⁵ Figures from the Irish Health Insurance Authority, July 2019.

treatment in hospitals. A small proportion (3.8% market share) of the in-patient plans in the market are provided by restricted membership undertakings.⁶

- (10) Compared to the situation under assessment in the 2016 authorisation Decision, Vhi Healthcare continues to have a larger proportion of members in the older age groups (and therefore bears more risks) than the other insurers active in the PMI market. This is mainly a combined effect of Vhi Healthcare's historical presence as former sole insurer and current position as largest operator.
- (11) The Commission refers to recitals (6) to (9) of the 2016 authorisation decision for a detailed description of the Irish health insurance market and structure.

2.2. Public services obligations

- (12) The public service obligations for PMI providers in Ireland are set out in the Health Insurance Act 1994 (as amended), which defines the health insurance policy objective of the Irish State: "*The principal objective of this Act is to ensure that, in the interests of the common good and across the health insurance market, access to health insurance cover is available to consumers of health services with no differentiation made between them (whether effected by risk equalisation credits or stamp duty measures or other measures, or any combination thereof), in particular as regards the costs of health services, based in whole or in part on the health risk status, age or sex of, or frequency of provision of health services to, any such consumers or any class of such consumers.*"⁷
- (13) The Health Insurance Act 1994 sets out the four PMI obligations, which are designed to support this objective, as follows:
 - *Community Rating*: Insured persons pay the same level of premium for a given level of benefit, regardless of health profile (age, gender or health status).⁸
 - *Open Enrolment*: Health insurers must accept all applications, regardless of age or health status.
 - *Lifetime Cover*: An insurance contract cannot be terminated or fail to be renewed by the insurer without the consent of the insured person, even as the insured person ages and/or his physical condition declines.
 - *Minimum Benefits*: Insurers must provide a certain minimum level of benefits prescribed by legislation for all insurance products.
- (14) The rationale behind these requirements is to promote solidarity among age groups, genders and people of different health status, as well as to guarantee a satisfactory quality level of health care.

⁶ Restricted Membership Undertakings provide insurance to members of a particular group, normally a vocational group or employees of a particular organisation, and their dependants.

⁷ See section 1A-(1) (a) to (d) of the Health Insurance Act 1994, <http://www.irishstatutebook.ie/eli/1994/act/16/>.

⁸ Some exceptions exist to this rule, including reduced rates for children and young adults.

- (15) The Commission refers to recitals (10) to (12) of the 2016 authorisation decision for a detailed description of the public service obligations for the private health insurers, which have remained unchanged.

2.3. The aid measure under the 2016 RES

2.3.1. Functioning of the scheme

- (16) The Commission has approved a RES for the Irish PMI market on four occasions in the past: in 2003⁹, 2009¹⁰, 2013¹¹ and 2016¹². The Commission refers to recitals (13) to (17) of the 2016 authorisation decision for more detailed information on the 2003, 2009 and 2013 schemes.
- (17) The purpose of the 2016 scheme has been to support the health insurance policy objectives of the Irish State under the Health Insurance Act 1994.
- (18) The scheme has been in place since 1 January 2016. It operates by levying a charge against insurers in the form of a *stamp duty* payment based on the numbers of insured lives, and issuing a payment to insurers in the form of a *credit* on behalf of each insured person falling into a specific category. As under the 2013 scheme, the credits are paid directly to insurers on behalf of individuals, from a Risk Equalisation Fund administered by the Health Insurance Authority (hereafter “HIA”), the statutory regulator of the PMI market in Ireland. Insurers charge net premiums to the insured persons.
- (19) Risk equalisation credit and stamp duty amounts are recommended each year by the HIA in a report presented to the Minister for Health. The HIA’s recommendations, subject to approval by the Minister and the Irish Parliament, are then incorporated into the Health Insurance Act which provides for the changed amounts as well as other changes to the regulatory structure of the Irish PMI market.

2.3.2. Beneficiary and contributors

- (20) The operation of the RES, given current customer profiles (see recital (10)), has so far resulted in one net beneficiary (Vhi Healthcare) and two net contributors¹³. The market situation for each insurer with and without the RES in 2019 is provided in Table 1 below.

⁹ Commission Decision C(2003) 1322fin of 13 May 2003 in case N 46/2003 Risk equalisation scheme in the Irish health insurance market, OJ C 186, 6.8.2003, p.16.

¹⁰ Commission Decision C(2009) 3572 final of 17 June 2009 in case N 582/2008 Health Insurance intergenerational solidarity relief, OJ C 186, 8.8.2009, p. 2.

¹¹ Commission Decision C(2013) 793 final corr. of 20 February 2013 in case SA.34515 (2013/NN) – Ireland, Risk equalisation scheme 2013, OJ C 204, 18.7.2013, p. 2.

¹² See footnote 1.

¹³ In 2016, GloHealth was acquired by the Irish Life Group, which became Irish Life Health. GloHealth closed to new and renewing business from February 2017. For this reason and because its turnover is negligible compared to the three other open market insurers (earned premiums before reinsurance and risk equalisation credits of only around EUR 400,000 in 2018), it is not included in the table. Its remaining business is written by Irish Life Health.

Table 1: Profitability of insurers on the Irish PMI market in 2019 (Source: HIA)

| €m / % | Elips Insurances Ltd (Laya Healthcare) | Irish Life Health DAC | Vhi Healthcare |
|--|--|-----------------------|----------------|
| Earned premiums before reinsurance and risk equalisation credits | [...] | [...] | [...] |
| Claims incurred before reinsurance | [...] | [...] | [...] |
| Impact of RES | [...] | [...] | [...] |
| Cost of reinsurance | [...] | [...] | [...] |
| Expenses | [...] | [...] | [...] |
| Underwriting profit | [...] | [...] | [...] |
| Underwriting profit gross of reinsurance | [...] | [...] | [...] |
| Impact of investments | [...] | [...] | [...] |
| Sales (i.e. earned premiums and impact of RES) | [...] | [...] | [...] |
| Return on sales gross of reinsurance and investments | [...] | [...] | [...] |

- (21) Vhi Healthcare continues to have a larger proportion of members in the older age groups and it is thus expected that Vhi Healthcare will continue to be the net beneficiary of the RES, while its competitors will be net contributors.
- (22) The Commission refers to recitals (18) to (37) and (44) to (50) of the 2016 authorisation decision for a detailed description of the aid measure subject of this prolongation.

2.3.3. Overcompensation test under the 2016 RES

- (23) As laid out in recitals (38) to (43) of the 2016 authorisation decision, in addition to the ex-ante mechanism to avoid overcompensation, the Irish authorities carry out an ex post overcompensation test in accordance with the 2012 SGEI Framework.
- (24) Overcompensation will be deemed to have occurred when the net beneficiary's return on sales (hereafter "ROS") gross of reinsurance¹⁴ and excluding investment activities¹⁵ exceeds 4.4% per annum, calculated on a rolling three-year basis.
- (25) The Irish authorities conducted in 2019 the overcompensation test for the first three-year rolling period (2016-2018). It was completed independently on behalf

¹⁴ I.e. before reinsurance – insurance companies, including Vhi, purchase reinsurance from other insurance companies as a means of better risk management, although this means that they have to forego some profit (driving down the ROS net of, i.e. after, reinsurance).

¹⁵ Investment income as recorded in the income statement of a net beneficiary undertaking is excluded from both the profit and sales figures in the calculation of return on sales.

of the Health Insurance Authority by the accounting company KPMG. The independent accountant concluded that Vhi Healthcare did not receive a profit in excess of a reasonable profit and it was therefore concluded that no overcompensation has occurred as a result of the scheme.

2.3.4. Commitment under the 2016 RES

- (26) In the 2016 authorisation decision, the Commission laid down the Irish authorities' commitment that the net projected average claims cost for any age group in receipt of age-related credits would not go below 125% of the projected market average net claims cost.¹⁶
- (27) In the context of the prolongation of the 2016 RES, the Irish authorities confirmed that every year since 2016, the RES has been calibrated above the net claims cost threshold of 125%.¹⁷ They also confirmed that for the prolongation period the credits will be set so that the claims cost threshold will not fall below 125% based on projected claims at the point of calibration.

2.4. Prolongation of the 2016 RES

- (28) The 2016 authorisation decision covers the period from 1 January 2016 to 31 December 2020.
- (29) For the reason set out in recital (5), the Irish authorities intend to prolong the existing RES until 31 March 2022, in order for the intended subsequent scheme (see recital (3)) to be permitted to commence on 1 April 2022, in alignment with the current annual cycle.¹⁸
- (30) All other elements of the measure approved by the 2016 authorisation decision remain unchanged.
- (31) As regards the budget, the table below provides the figures for the years that the 2016 RES has been in operation and for the duration of the notified prolongation. The figures for 2021 and 2022 encompass the current risk equalisation cycle which will end on 31 March 2021 and the new risk equalisation cycle which will run from 1 April 2021 to 31 March 2022. These are budgets based on projected cash flows during the specified time period.

¹⁶ Recitals (37) and (129) to (134) of the 2016 authorisation decision.

¹⁷ It was clarified in the 2016 decision (footnote 34 to recital 37) that the limit of 125% would relate to a forward-looking view when setting risk equalisation credits, as a retrospective assessment would be difficult to administer and the outcome would be quite variable.

¹⁸ The current cycle of levies and risk equalisation credits in the scheme applies from 1 April to 31 March of the year after.

Table 2: Stamp duties and credits (realised and estimated (underlined))

| Year | Total stamp duties (€m) | Total Credits Paid (€m) |
|----------------------------|-------------------------|-------------------------|
| 2016 | 641.58 | 620.4 |
| 2017 | 683.75 | 670.37 |
| 2018 | 737.60 | 728.36 |
| 2019 | <u>757.70</u> | <u>737.04</u> |
| 2020 | <u>770.30</u> | <u>745.0</u> |
| 2021 | <u>776.5</u> | <u>781.0</u> |
| 1 January to 31 March 2022 | <u>163.4</u> | <u>201.1</u> |

(32) The actual level of stamp duty revenues and credits paid out may vary due to the higher level of variability and uncertainty as a result of the potential impacts of the COVID-19 pandemic on claims levels and market participation (i.e. access to treatments).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) TFEU

(33) According to Article 107(1) TFEU “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”.

(34) It follows that, in order for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following four cumulative conditions have to be met:

- i. it has to be imputable to the Member State and granted out of State resources;
- ii. it has to confer an economic advantage on undertakings;
- iii. the advantage has to be selective; and
- iv. the measure has to distort or threaten to distort competition and affect trade between Member States.

(35) The Commission's conclusion in recital (67) of the 2016 authorisation decision that the measure constitutes State aid within the meaning of Article 107(1) TFEU, based on the assessment in recitals (53)-(66), is not affected by the notified prolongation of the approved measure. The considerations set out in that decision that the scheme was selectively advantageous to Vhi Healthcare and that it was likely to have an effect on trade between Member States and to lead to a distortion of competition continue to apply.

3.2. Compatibility of the aid with the internal market under the 2012 SGEI Framework

(36) As stated in the 2016 authorisation decision, under certain conditions Article 106(2) TFEU allows the Commission to declare compensation for SGEIs compatible with the internal market. The 2012 SGEI Framework sets out

guidelines for assessing the compatibility of SGEI compensation which exceeds EUR 15 million per year.

- (37) Except for its period of application, all elements of the measure approved in the 2016 authorisation decision remain unchanged (see recitals (29) and (30)).
- (38) Paragraph 14 of the 2012 SGEI Framework provides that “*Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account.*”
- (39) The Commission refers to recitals (77) to (80) of the 2016 authorisation decision, which describe how the Irish authorities fulfilled this condition for the 2016-2020 period.
- (40) In addition, according to the Irish authorities, several consultative forums and meetings were held between the Department of Health, the insurers and the HIA over the year 2020 to discuss the envisaged new RES, market developments and the impact of the COVID-19 pandemic.
- (41) The Commission thus considers, in line with the 2016 authorisation decision, that the provision of private health insurance cover under the conditions of community rating, open enrolment, lifetime cover and minimum benefits until 31 March 2022 qualifies as a genuine SGEI.
- (42) As indicated in Section 2.3 of the 2012 SGEI Framework, the provision of the SGEI must be entrusted to the undertaking by way of one or more official acts.
- (43) The content of the PMI obligations is clearly described in the Health Insurance Act 1994, as further detailed in the 2016 authorisation decision (recitals (11) and (82)-(84)).
- (44) The Commission thus considers, in line with the 2016 authorisation decision, that the entrustment is in line with the 2012 SGEI Framework requirements.
- (45) The Irish authorities, in their notification to the Commission, sought approval of the scheme’s prolongation for one year and three months, i.e. for the period 1 January 2021 to 31 March 2022, and justified the reason for such prolongation (see recital (5) of the present decision).
- (46) The Commission therefore considers that no concerns are raised in relation to the duration of the prolonged scheme.
- (47) According to paragraph 18 of the 2012 SGEI Framework, “*aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings*”.¹⁹ In addition, according to paragraph 44 of the 2012 SGEI Framework, “[w]here an undertaking carries out activities falling both inside

¹⁹ OJ L 318 17.11.2006, p.17.

and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services.”

- (48) As explained in the 2016 authorisation decision (recital (26)), the Health Insurance Act 1994 includes sufficient provisions and safeguards in that regard. In general terms, all insurers are required to maintain separate accounts for their health insurance business and submit this financial data to the HIA.
- (49) In light of the above, the Commission considers, in line with the 2016 authorisation decision, that undertakings entrusted with the provision of the SGEI in this case comply with Directive 2006/111/EC.
- (50) Paragraph 19 of the 2012 SGEI Framework makes the compatibility of SGEI compensation conditional upon compliance with Union public procurement rules, where applicable.
- (51) The Commission notes, in line with its assessment in the 2016 authorisation decision (recital (95)), that, since any operator wishing to provide its services on the PMI market is entrusted with the SGEI and may potentially benefit from the 2016 RES, it is not necessary to use the public procurement rules in order to ensure compliance with the 2012 SGEI Framework in this case.
- (52) According to paragraph 20 of the 2012 SGEI Framework, “[w]here an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.”
- (53) As the Commission observed in the 2016 authorisation decision (recitals (97)-(99)), the 2016 RES operates in an identical manner in respect of all insurers on the Irish PMI market, as it is based on objective criteria. The scheme does not discriminate between insurers, as the calculation of contributions and payments is the same for each insurer.
- (54) Therefore, the Commission considers, in line with the conclusion in the 2016 authorisation decision (recital 100), that the notified measure complies with paragraph 20 of the 2012 SGEI Framework.
- (55) According to paragraph 21 of the 2012 SGEI Framework, “[t]he amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.” In this respect, paragraph 24 of the 2012 SGEI Framework foresees that “[t]he net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible.”
- (56) As the Commission stated in the 2016 authorisation decision (recitals (102)-(105)), the 2016 RES does not aim to compensate the net costs of providing private health insurance in Ireland, but rather to reduce the differences in these net costs arising from divergences in the risk profiles of insurers active on the Irish PMI market. This specific objective is achieved by the specific methodology used under the RES, with the determination of the appropriate level of credits and stamp duties.

- (57) The net cost of the SGEI still has to be calculated to verify the absence of overcompensation. However, as the Commission stated in the 2016 authorisation decision, the net avoided cost methodology does not appear adequate for such verification.
- (58) As regards the prolongation of the 2016 RES, Vhi Healthcare is expected to continue to be the net beneficiary of the scheme, while its competitors will be net contributors.
- (59) On an ex-post basis, as explained in recitals (23)-(24), the HIA determines the reasonable profit with reference to Return on Sales (ROS) excluding reinsurance and investment activities.
- (60) Overcompensation will be deemed to have occurred where the net beneficiary's ROS exceeds 4.4% per annum, calculated on a rolling three year basis.
- (61) As foreseen in the 2016 authorisation decision (recital (109)), the HIA carried out the first overcompensation test in 2019 for the period 2016-2018 inclusive. As indicated in recital (25), no overcompensation was found.
- (62) Furthermore, a clear procedure has been established for the recovery of any overcompensation that may be found to have occurred under the RES (recital (43) of the 2016 authorisation decision).
- (63) In light of the above, the Commission considers that the reasonable profit calculation and the verification of the absence of overcompensation are in line with the 2012 SGEI Framework.
- (64) As mentioned in the 2016 authorisation decision (recital 105), through its design, the RES promotes competition on the basis of price and/or quality rather than risk selection by insurers. More specifically, the compensation provided to all insurers is based on a combination of expected costs (age-based risk equalisation credits) and incurred costs (hospital bed utilisation credits) and neither payment to insurers removes an insurer's incentive to be efficient, as the insurer makes higher profits when efficient. The efficiency mechanisms are built into the system.
- (65) Therefore, the Commission's reasoning in the 2016 authorisation decision (recital (115)) that it is not considered appropriate to introduce additional efficiency incentives still holds.
- (66) For the above-mentioned reasons and in line with the 2016 authorisation decision, the Commission considers that no concerns are raised by the measure under assessment in relation to the requirements under section 2.8 of the 2012 SGEI Framework.
- (67) As regards the transparency requirements under paragraph 60 of the 2012 SGEI Framework, the mechanisms described in the 2016 authorisation decision (recitals (123)-(125) still hold.
- (68) The Commission therefore considers, in line with the conclusion in the 2016 authorisation decision (recital 126) that the transparency requirements set out in the 2012 SGEI Framework are fulfilled.

- (69) The Commission recalls that fulfilling the requirements set out in sections 2.1 to 2.8 of the 2012 SGEI Framework is usually sufficient to ensure that the aid does not distort competition in a way that is contrary to the interests of the Union. The Commission had concluded in the 2016 authorisation decision (recital 128) that this was the case.
- (70) However, the Irish authorities had decided to adopt an additional commitment, whereby the net projected average claims cost for any age group in receipt of age-related credits would not go below 125% of the projected market average net claims cost over the entire period 2016 to 2020.²⁰
- (71) The Commission had welcomed the Irish authorities' proposal as an additional measure to ensure that no serious distortion of competition would be induced by the RES (recital (134) of the 2016 authorisation decision).
- (72) The Irish authorities confirmed that the commitment would also be complied with for the prolongation (see recitals (26)-(27)).
- (73) Therefore, all compatibility conditions are still fulfilled. The Commission's conclusion in the 2016 authorisation decision that the measure notified by Ireland is considered compatible with the internal market pursuant to Article 106(2) of the TFEU is not affected by the notified prolongation.

²⁰ The commitment is further detailed in recitals (129)-(133) of the 2016 authorisation decision.

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 106(2) of the Treaty on the Functioning of the European Union

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

