EUROPEAN COMMISSION

Brussels, 25.7.2022
C(2022) 5455 final

PUBLIC VERSION

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Subject: State Aid SA.103565 (2022/N) – Ireland
COVID-19: Scheme to support investment towards a sustainable recovery

Excellency,

1. PROCEDURE

(1) By electronic notification of 30 June 2022, Ireland notified an aid scheme in the form of direct grants for investment support towards a sustainable recovery (the "measure") under section 3.13 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[1]. Ireland provided additional information on 11, 13, and 14 July 2022.

[1] 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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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IRELAND

(2) Ireland exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified only in English.

2. DESCRIPTION OF THE MEASURE

(3) Ireland considers that the COVID-19 pandemic continues to affect the real economy. The measure forms part of an overall package of measures and aims to support private investment as a stimulus to overcome an investment gap accumulated in the economy due to the crisis.

(4) Ireland confirms that the aid under the measure is not conditional upon 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.

(5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, in light of sections 2 and 3.13 of the Temporary Framework.

2.1. The nature and form of the aid

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

2.2. Legal basis

(7) The legal basis for the measure is Sections 21, 22, and 30 of the Industrial Development Act, 1986 (as amended)[3] and a draft Guidance by the granting authority that will be adopted after the Commission decision.

2.3. Administration of the measure

(8) The Irish Industrial Development Authority ("IDA")[4] shall be the granting authority for the measure.

(9) The aid will be granted directly to the beneficiaries, on the basis of a written application submitted to the IDA before works on the investment have started.

2.4. Budget and duration of the measure

(10) The estimated budget of the measure is EUR 500 million. It will be financed by the general State, region, and local budgets.

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2 Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

3 Revised Acts (lawreform.ie)

4 IDA is Ireland's inward investment promotion agency set up under the Industrial Development Acts. It is a State owned enterprise that is commercially run and beneficially owned by the Irish government.

(11) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure, until no later than 31 December 2022.

2.5. Beneficiaries

(12) The beneficiaries of the measure are undertakings (within the meaning of the General Block Exemption Regulation, "GBER"[5]), employing 10 or more full time employees, operating in manufacturing and/or internationally traded services, in the sectors of information and communication, professional, scientific and technical activities, and administrative and support service activities. Credit or financial institutions are excluded as eligible beneficiaries.

(13) The Irish authorities estimate up to 500 beneficiaries.

(14) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the GBER[6] on 31 December 2019. Aid, however, may be granted to small enterprises[7] (excluding micro enterprises[8]) 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[9] or restructuring aid[10].

2.6. Sectoral and regional scope of the measure

(15) The measure applies to undertakings engaged in the activities referred to in recital (12). It does not apply to the financial sector.

(16) The measure applies to the whole territory of the Republic of Ireland.

2.7. Basic elements of the measure

(17) The objective of the measure is to incentivise companies to accelerate or expand capital investment in Ireland, including in relation to green technologies and new digitalisation technologies to bring about productivity gains and improve competitiveness. Overall, the scheme will help to address an investment gap accumulated in the economy (recital (3)), particularly in relation to the green transition and digital transformation.

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[5] 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.

[6] As defined in Article 2(18) of the GBER.

[7] As defined in Annex I to the GBER.

[8] The Irish authorities have explained that micro enterprises have been excluded as there are a significant number of alternative initiatives targeted at them.

[9] 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.

[10] 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.

(18) The aid is granted on the basis of a scheme. The Irish authorities indicate that the maximum individual aid amount that may be granted per undertaking will not exceed 1% of the total budget available referred to in recital (10), that is, EUR 5 million. Consequently, the overall aid granted to beneficiaries on the basis of section 3.13 of the Temporary Framework will not exceed EUR 10 million per undertaking in nominal terms, or the maximum aid amount calculated in accordance with Article 14 of the GBER, with the exception of Article 14(14) of the GBER, and based on the applicable regional aid map[11], increased by EUR 10 million in nominal terms.

(19) The eligible costs of the measure will be the costs of investment in tangible and intangible assets. Costs related to purchasing land will not be eligible under the measure.

(20) Financial investments are not eligible for support under the measure.

(21) The aid intensity will not exceed 15% of eligible costs, except for in the following circumstances:

(a) investments by small enterprises[12] may be increased by 20 percentage points, and investments by medium enterprises[13] may be increased by 10 percentage points; and

(b) for investments in assisted areas as set out in Ireland's regional aid map[14], which is in force at the time the aid is granted, and in compliance with Article 14 of the GBER – excluding Article 14(14) – aid intensities may be increased by the aid intensity of the assisted region.

(22) The Irish authorities confirm that aid under the measure does not support activities in breach of the 'do no significant harm' ("DNSH") principle. It will be obligatory for companies to confirm in writing in their application form requesting the aid that the investment complies with the criteria set out in Article 17 of Regulation (EU) No. 2020/852[15]. The environmental impact of the project will also be examined as part of the IDA's due diligence in the approval process. This includes an assessment through an economic appraisal model and requires the applicant to provide details on the carbon impact of the project (energy, waste, water, travel) over a five-year time horizon and includes climate impact as a cost (or benefit if the absolute amount of emissions will fall as a result of the project). The Irish authorities note that the IDA has taken significant steps to align its due diligence processes to the Union Taxonomy on sustainable investment. Its strategy[16] commits the IDA to the promotion of responsible business practices

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11 Commission decision C(2022) 1684 final, of 22.3.2022, State aid SA.101399 (2022/N) – Ireland – Regional aid map for Ireland (1 January 2022 – 31 December 2027), OJ C 146, 1.4.2022, p. 1.

12 As defined in Annex I to the GBER.

13 As defined in Annex I to the GBER.

14 Commission decision in SA.101399. See footnote 11.

15 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13.

16 https://www.idaireland.com/driving-recovery-and-sustainable-growth-2021-2024

among its client base, in line with the Sustainable Development Goals and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises. The Irish authorities indicate that the IDA investment criteria for a sustainable investment align to Article 10 of Regulation (EU) No. 2020/852, while all project proposal documents require a description of (i) the corporate level approach to environmental sustainability and (ii) the details of the climate action activity of the Irish operations.

(23) The aid will only concern investments made after the notification of the Commission's decision approving the measure.

2.8. Cumulation

(24) The Irish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[17] or the GBER, provided the provisions and cumulation rules of those Regulations are respected.

(25) The Irish authorities also 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.

(26) Under no circumstances may the total aid amount exceed 100% of eligible costs. As a result, cumulation with other aid instruments that allow the coverage of a funding gap is excluded.

2.9. Monitoring and reporting

(27) 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[18]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(28) By notifying the measure before putting it into effect (see recital (7)), the Irish authorities have respected their obligations under Article 108(3) TFEU.

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17 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

18 Referring to information required in Annex III to the GBER.

3.2. 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 IDA (recital (8)), and it is based on the national legal basis mentioned in recital (7). It is financed through State resources, since it is financed by the State, regional, and local budgets (recital (10)).

(31) The measure confers an advantage in the form of grants on its beneficiaries which they would not have had under normal market conditions (recital (6)).

(32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely those undertakings described at recital (12), excluding undertakings active in the financial sector.

(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.

3.3. 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)(c) TFEU, the Commission may declare compatible with the internal market "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*".

(37) When it amended the Temporary Framework on 18 November 2021, the Commission sought to provide options for Member States, to avoid a repetition of the post-crisis investment drop that occurred in the Union in the wake of the 2008 crisis, with the potential to hold back long-term growth. Investment support measures under section 3.13 of the Temporary Framework seek to overcome the negative economic effects of the crisis, including a widening of the investment gap. The measure aims at supporting private investment in assets as a stimulus to overcome an investment gap accumulated in sectors of the economy of significant importance for a sustainable recovery (recitals (12) and (17)). The measure has been designed to meet the requirements of the specific category of aid ("*Investment support towards a sustainable recovery*") described in section 3.13 of the Temporary Framework. The Commission therefore assesses the

compatibility of the measure based on Article 107(3)(c) TFEU, in light of sections 2 and 3.13 of the Temporary Framework.

(38) The Commission considers that the measure facilitates the development of certain economic activities (recitals (12) and (17)) that are important for the economic recovery, is appropriate and necessary to address the economic consequences arising from the crisis induced by the COVID-19 pandemic. In particular:

(a) The aid is granted on the basis of a scheme and the maximum individual aid amount that may be granted per undertaking does not exceed 1% of the total budget of the scheme (recitals (10) and (18)). The measure therefore complies with point 89(a) of the Temporary Framework.

(b) Eligible costs include only the costs of investments in tangible and intangible assets as referred to in recital (19), excluding financial investments (see recital (20)). Costs related to purchasing land are also excluded as eligible under the measure (see recital (19)). The measure therefore complies with point 89(b) of the Temporary Framework.

(c) The measure applies to the whole territory of the Republic of Ireland (recital (16)). Furthermore, the sectoral scope of the measure is not designed in a manner that leads to an artificial limitation in the sense of point 89(c) of the Temporary Framework. The sectoral scope encompasses a considerable number of activities and the potential beneficiaries are defined in a broad manner since a considerable number of undertakings may apply under the measure (recitals (12) and (13)). For these reasons, the measure complies with point 89(c) of the Temporary Framework.

(d) The aid intensities under the measure do not exceed the limits laid down in point 89(d) of the Temporary Framework (recital (21)).

(e) The overall limit of EUR 10 million per undertaking on the basis of section 3.13 of the Temporary Framework in nominal terms or the maximum aid amount calculated in accordance with Article 14 of the GBER, with the exception of Article 14(14) of the GBER and based on the applicable regional aid map, increased by EUR 10 million in nominal terms (recital (18)) are not exceeded. The measure therefore complies with point 89(e) of the Temporary Framework.

(f) The aid is granted in the form of direct grants (recital (6)). The measure therefore complies with the first condition in point 89(f) of the Temporary Framework.

(g) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the GBER on 31 December 2019 (recital (14)). Aid may be granted to small enterprises (excluding micro 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[19] or restructuring aid[20] (recital (14)). The measure therefore complies with point 92 of the Temporary Framework.

(h) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2022 (recital (11)). Aid will only concern investments made after approval of the measure by the Commission (recital (23)). The measure therefore complies with point 93 of the Temporary Framework.

(i) Aid may only be granted on the basis of a written application submitted before works on the investment start (recital (9)). The aid under the measure therefore has an incentive effect pursuant to point 94 of the Temporary Framework.

(39) The Irish authorities confirm that the aid under the measure is not conditional upon 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 (recital (4)).

(40) The Irish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (27)).

(41) 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 and the cumulation rules of the relevant Regulations are respected (recitals (24) and (25)); they also confirm that the total aid amount cannot exceed 100% of the eligible costs (recital (26)). The measure therefore complies with points 20 and 91 of the Temporary Framework.

(42) The measure will facilitate the development of certain economic activities referred in recitals (12) and (17) which are of importance for a sustainable economic recovery because they accumulated an investment gap due to the crisis. The measure will have positive effects on the development of these activities, as it will contribute to a reduction of the investment gap that could hamper long-term economic growth. The measure will however strengthen the financial situation of certain undertakings operating in sectors where there is cross border competition; it will thus have negative effects on competition and trade (recital (33)).

(43) In weighing the positive effects of the aid against its negative effects on competition and trade (point 90 of the Temporary Framework), the Commission has paid particular attention to the fact that the measure does not support activities in breach of the DNSH principle. To this effect, as explained in recital (22), the Irish authorities will require applicants for aid under the measure to confirm that the investment complies with the criteria set out in Article 17 of Regulation (EU) No. 2020/852. They also confirm that the IDA will examine the environmental

[19] 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.

[20] 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.

impact of a project, as part of its due diligence in the approval process, which it has sought to align with the Union Taxonomy on sustainable investment, as explained at recital (22). In addition, the measure was designed to meet the conditions laid down in section 3.13 of the Temporary Framework: as the measure is necessary, proportionate and appropriate, it is unlikely to have undue negative effects on competition and trade and such effects are limited to the minimum necessary. In particular, aid under section 3.13 can only finance investment costs relating to tangible and intangible assets, it benefits a broad range of beneficiaries, the aid amount is capped, and the maximum aid intensity is lower when the size of the undertaking increases.

(44) The Commission has taken due consideration that the measure facilitates the development of certain economic activities and of the positive effects of that measure on supporting the recovery from the crisis provoked by the COVID-19 pandemic when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of that measure outweigh its potential negative effects on competition and trade.

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)(c) 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