



EUROPEAN COMMISSION

Brussels, 07.XII.2005

C(2005)4668 final

**Subject: State Aid N 395/2005 – Ireland
Loan Guarantee for social infrastructure schemes funded by the
Housing Finance Agency.**

Sir,

1. PROCEDURES.

- (1) By letter dated 20 July 2005, received by the European Commission on 26 July 2005, the Irish authorities notified a legislative measure: Section 17 of the Housing (Miscellaneous Provisions) Act 2002 (hereinafter 2002 Act), in conjunction with Section 56 of the Housing Act 1966 (hereinafter 1966 Act). Pursuant to these measures, the Minister for Finance may guarantee the borrowings of a public financial Agency, the “Housing Finance Agency” plc (hereinafter HFA); the latter then advances the funds borrowed to the local authorities, which use those funds to provide dwellings for socially disadvantaged households and to provide infrastructural elements ancillary to these dwellings, such as roads or playgrounds.
- (2) By letter dated 12 September 2005, the Commission asked for additional information, which was provided by letter dated 3 October 2005.
- (3) By fax sent on 14 November 2005, the Irish authorities took an additional commitment.
- (4) The raising of funds by the HFA in reliance of the Minister’s guarantee and the provision of those funds to local authorities and voluntary housing associations for social housing purposes have already been the subject of two decisions of the Commission:

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- On 9 March 2001, the Irish authorities notified the provisions of the Housing Finance Act 1981 (hereinafter 1981 Act). Pursuant to these provisions, the Minister for Finance may guarantee borrowings by the HFA which advances the funds borrowed to local authorities for social housing purposes. By a decision dated 3 July 2001¹, the Commission concluded that the aforementioned guarantees in favour of the HFA do not constitute State aid within the meaning of Article 87 (1) of the EC Treaty and that the cheap guaranteed funding for social housing activities constitute compatible State aid pursuant to Article 86(2) of the EC Treaty.
 - On 2 February 2004, the Irish authorities notified Section 17 of the 2002 Act, which amended the 1981 Act. Pursuant to the 1981 Act amended by the 2002 Act, the Minister for Finance may guarantee borrowings of the HFA up to €6 billion (instead of formerly €1.905 billion) and the HFA may lend money not only to local authorities, but also to voluntary housing bodies engaged in the provision of social housing. The Irish authorities asked for an authorisation by the Commission for a time-period of 10 years. By a decision dated 30 June 2004², the Commission concluded that the guarantees in favour of the HFA do not constitute State aid within the meaning of Article 87 (1) of the EC Treaty and that the cheap guaranteed funding for social housing activities constitute compatible State aid pursuant to Article 86(2) of the EC Treaty.
- (5) Neither the 2001 decision, nor the 2004 decision refer to Section 56 of the 1966 Act. Pursuant to that provision, the activities of local authorities in Ireland may involve the provision not only of dwellings but also of other infrastructural elements, which are ancillary to the provision of dwellings, such as roads or playgrounds. Therefore, the Irish authorities have decided to submit the present notification to seek the Commission's confirmation that:
- the guarantee by the Minister of Finance of the HFA's fundraising for the purpose of making loans to the local authorities to fund Section 56 ancillary infrastructure activities is not an aid measure within the meaning of Article 87(1); and
 - the provision of cheap guaranteed funding by the HFA to the local authorities for the purposes of their ancillary infrastructure activities under Section 56 is compatible with the EC Treaty.

2. DESCRIPTION OF THE NOTIFIED MEASURE.

- (6) The notified measure is Section 17 of the 2002 Act in conjunction with Section 56 of the 1966 Act.

¹ SG (2001) D/289528. Case N209/2001-Ireland.

² SG (2004) D/202605. Case N89/2004 -Ireland.

2.1. Section 17 of the 2002 Act.

- (7) Section 17 of the 2002 Act amends the 1981 Act. The 1981 Act provides:
- “for the promotion by the Minister for the Environment of a limited company to provide finance, either directly or indirectly, for the acquisition and construction of houses”;
 - “for the guaranteeing by the Minister for finance of borrowings by the said company and for other connected matters”.
- (8) Following the 1981 Act such as amended by the 2002 Act and other acts³, the name of the said company is the Housing Finance Agency (HFA). The HFA is a limited company, regulated by public law and promoted by the Minister for the Environment. All of the issued share capital of the HFA is owned by the Minister for Finance. Directors are appointed by the Minister for the Environment with the consent of the Minister for Finance.
- (9) The nature and scope of the HFA’s fundraising are restricted by applicable legislation and its own internal statutes. Following the 1981 Act such as amended by the 2002 Act and other acts, the HFA may:
- Make a loan to a person to acquire, construct a house,
 - Advance moneys:
 - to a housing authority to enable loans to be made by the authority for the acquisition and construction of houses,
 - to a local authority, to be used by it for any capital purpose authorised by or under any enactment mentioned in the Schedule to this act⁴,
 - to a body standing approved of section 6 of the Housing Act, 1992, to be used by it in respect of the provision or management of housing accommodation as provided for in that section or in respect of other matters in relation to housing that may be determined by the Minister for the Environment with the consent of the Minister for finance (...)
 - To borrow money for the aforesaid purposes.
- (10) Following the 1981 Act such as amended the 2002 Act and other acts, the HFA can rely on the guarantee of the Minister of Finance to borrow moneys for the aforesaid purposes. The purpose of the State guarantee is to facilitate borrowing

³ Acts amending the 1981 Act are the 1982 Act, the 1985 Act, the 1988 Act and the 1992 Act, as well as the Planning and Development (Amendment) Act 2002, section 20, and the 2002 Act.

⁴ The Schedule to the 1981 Act mentions the Housing Acts, 1966 to 2002, the Local Government (Sanitary Services) Acts, 1878 to 1995; the Waste Management Acts, 1966 and 2001 and the Water Supplies Act, 1942.

by the HFA at the best available rates. The HFA does not guarantee from any other statutory guarantees or equivalent support⁵.

2.2. Section 56 of the 1966 Act.

- (11) The Commission highlights that the present decision only refers to Section 17 of the 2002 Act in conjunction with Section 56 of the 1966 Act, which are the provisions notified by the Irish authorities.
- (12) Section 56 of the 1966 Act is composed of two sub-sections.
- (13) Sub-section (1) provides that “a housing authority may erect, acquire, purchase, convert or reconstruct, lease or otherwise provide dwellings (...)”. Pursuant to that provision and to the 1981 Act amended by the 2002 Act, the Minister for Finance may guarantee the borrowings of the HFA which then advances the funds borrowed to the local authorities and to the voluntary housing bodies which use those funds to provide dwellings for socially disadvantaged households. This was the subject of the decision taken by the Commission on 30 June 2004. Therefore, the present decision will only examine Section 17 of the 2002 Act in conjunction with Section 56 (2) of the 1966 Act.
- (14) Sub-section (2) provides that “a housing authority may, in connection with dwellings provided, (...), provide, and if they think fit, maintain in good order and repair roads, shops, playgrounds, places of recreation, parks, allotments, open spaces, sites for places of worship, factories, schools, offices and other buildings or land and such other works and services, as will, in the opinion of the authority, serve a beneficial purpose either in connection with the requirements of the persons for whom the dwellings are provided or in connection with the requirements of those persons and other persons”.
- (15) Notwithstanding the provisions of Section 56(2) of the 1966 Act, the Irish authorities stated in paragraph 5(3) of their letter dated 20 July 2005 that:
 - moneys provided by the HFA to local authorities will not be used to provide and or maintain shops or factories,
 - with regard to offices, moneys provided by the HFA will be restricted to the provision of financing to local authorities for the construction and acquisition of offices to accommodate the officials of the local authorities.
- (16) Furthermore, in their letter dated 3 October 2005, the Irish authorities confirmed that loan finance will not be used for services.

⁵ See paragraph 5 of the Commission’s decision dated 30 June 2004. In paragraph 4 of their letter dated 20 July 2005, the Irish authorities submitted that “the operation of the State guarantee in favour of the HFA and the ability of the HFA to raise finances have not changed since the Commission’s June 2004 decision.

- (17) Last, in their fax sent on 14 November 2005, the Irish authorities committed that if an undertaking was granted specific rights to manage or use an infrastructural element financed by the scheme to run an economic activity, the HFA would ensure that the contract terms on which the local authority engages the undertaking to manage or use the facility will be market terms.

3. ASSESSMENT OF THE NOTIFIED MEASURE.

- (18) Section 17 of the 2002 Act in conjunction with Section 56 of the 1966 Act therefore provides for two stages, which are to be assessed separately.

1) the guarantee by the Minister of Finance of the HFA's fundraising for the purpose of making loans to local authorities to fund infrastructure elements ancillary to social housing;

2) the provision of cheap guaranteed funding by the HFA to local authorities for the purposes of their infrastructure activities ancillary to social housing.

3.1. Guarantee by the Minister of Finance of the HFA's fundraising for the purpose of making loans to local authorities to fund infrastructure elements ancillary to social housing.

Application of the principles on special credit institutions⁶.

- (19) HFA is a special public credit institution benefiting from State guarantees that provides dedicated financing for social housing related purposes.
- (20) The activities of special credit institutions aim at supporting the structural, economic and social policies and the public tasks of their public owners in accordance with their public mission. It must be taken care that special credit institutions are only entrusted with promotional tasks in compliance with the State aid rules of the Community. The fulfilment of promotional tasks shall be governed by the respect of the prohibition of discrimination under Community law.
- (21) The application of the principles on special credit institutions is without prejudice to the examination of these activities under the Community State aid rules vis-à-vis the beneficiaries. It is also without prejudice to the application of other provisions of the Treaty and to the international obligations of the Community concerning State aid and other subsidies.
- (22) The advantages for special credit institutions immanent to the State guarantees may, among others, be used in the following areas:
- (23) 1) Fulfilment of public promotional activities:

⁶ See Amendment of the Commission's proposal for appropriate measures on State guarantees for public credit institutions in Germany, Official Journal of the European Union C150 of June 22nd 2002 (pages 7 to 8).

- (24) The public promotional tasks of the special credit institutions, e.g. the raising and/or channelling of State financial support, consist in the implementation and administration of promotional measures at the request of the State in precisely described areas, in particular environment-friendly investment, infrastructure, housing and services of general interest. The public promotional tasks must be described in concrete terms in the relevant legal provisions.
- (25) For the implementation of their public promotional tasks, special credit institutions may use all instruments at their disposal, in particular the principle of channelling through funds to beneficiaries via commercial banks and financing in consortia. Addressees of their promotional measures can be all persons and entities of private and public legal form.
- (26) For the fulfilment of their public promotional tasks, special credit institutions may only engage in services and other activities (e.g. treasury management, risk management and consultancy on their promotional activities), which are directly in connection with the fulfilment of their tasks; trade in securities, deposited funds business and giro account business are allowed to special credit institutions only for their own account and only to the extent that they are directly in connection with their public promotional tasks.
- (27) 2) Granting of loans and other forms of financing to the State, municipalities and special purpose associations of public legal form.
- (28) In summary, special credit institutions may use State guarantees for public (service) tasks, for instance, firstly, to finance entities of the State sphere (e.g. municipalities) without restrictions (closed-cycle approach) or, secondly, to generate and distribute subsidies at the request of the public authorities, but only if this is in line with the State aid rules vis-à-vis the final beneficiaries.

Effect of the guarantee vis à vis HFA.

- (29) In raising funds for the purpose of making loans to local authorities to fund infrastructure ancillary to social housing, the HFA supports the social policy of the Irish authorities and acts as an instrument of the State.
- (30) Furthermore, the nature and scope of the HFA's fundraising activities are restricted by applicable legislation and its own internal statutes. Following the latter, the HFA operates exclusively on behalf of the State. The limits on the lending powers of HFA mean that the advantage accruing to HFA by virtue of the State guarantees cannot be exploited by the HFA to allow it to compete with commercial banks in lending money to third parties. The Commission is therefore of the opinion that the guarantees granted by the State remain within the sphere of financing of the State.
- (31) Therefore, when raising funds for the purpose of making loans to the local authorities to fund infrastructure ancillary to social housing, HFA is not an undertaking within the meaning of Article 87 (1) of the EC Treaty, but an intra-governmental funding agency/special credit institution. The State guarantees

granted to HFA for the purpose of making loans to local authorities to fund infrastructure ancillary to social housing thus do not constitute State Aid within the meaning of Article 87 (1) of the EC Treaty.

3.2. Provision of cheap guaranteed funding by the HFA to local authorities for the purposes of their infrastructure activities ancillary to social housing.

- (32) On the basis of the information and commitments submitted by the Irish authorities, the scheme under review presents the following characteristics:
- (33) - the scheme is limited to the provision of infrastructural elements: section 17 of the 2002 Act provides that the HFA may make moneys available to local authorities “to be used by them for any capital purpose ...”; in their letter dated 3 October 2005, the Irish authorities confirmed that finance will only be provided for capital projects and will not be used for services.
- (34) – the scheme is limited to the provision of infrastructural elements needed to ensure a good environment for social dwellings (e.g. parks and roads to access to social dwellings). The provision of such elements is usually considered as falling within the responsibility of public authorities. Furthermore, most elements provided by the scheme are not economically viable and will therefore not be provided by the market. Some of the elements are public goods (e.g. street lighting). The use of other elements could in theory be subject to a charge (e.g. places of recreation); however, it is unlikely that any undertaking would find it economically viable to provide these elements, especially considering that they are ancillary to social housing and therefore primarily used by economically disadvantaged people. In their letter dated 3 October 2005, the Irish authorities indicated that except for the places of recreation, the use of the infrastructural elements provided through HFA’s cheap financing will be free of charge.
- (35) With regards to the infrastructural elements which could be run for an economic activity, such as the places of recreation, the Irish authorities took the engagement in their fax sent on 14 November 2005, that if an undertaking was granted specific rights to manage or use an infrastructural element financed by the scheme to run an economic activity, the HFA would ensure that the contract terms on which the local authority engages the undertaking to manage or use the facility would be market terms⁷. Therefore, no undertaking will be selectively favoured and as a consequence, the cheap guaranteed funding provided by the HFA to the local authorities for the purpose of providing that infrastructural

⁷ Furthermore, in their letter dated 3 October 2005, the Irish authorities indicated that money will not be used to provide shops, factories or offices, except offices to accommodate the officials of the local authorities,

element will not constitute State aid within the meaning of Article 87 (1) of the EC Treaty⁸.

- (36) If the infrastructural element is directly run by the local authority for an economic activity, then the cheap guaranteed funding provided by the HFA can confer an advantage to the local authority and therefore might constitute State aid within the meaning of Article 87 (1) of the EC Treaty.
- (37) For such compensation to escape classification as State aid in a particular case, four conditions must be satisfied (see Case C-280/00, *Altmark Trans GmbH* paragraph 87, 88).
- First, the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined.
 - Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner.
 - Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public services obligation, taking into account the relevant receipts and a reasonable profit.
 - Fourth, where the undertaking is not chosen in a public procurement procedure, which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs, which a typical undertaking, well run and adequately provided within the same sector would incur, taking into account the receipts and a reasonable profit from discharging the obligations.

Only if those four conditions are satisfied may it be considered that an undertaking has not enjoyed a real financial advantage, which would have the effect of putting it in a more favourable competitive position than the undertakings competing with it, so that it is not therefore State aid within the meaning of the EC Treaty.

- (38) In the case at hand the municipalities which are responsible for providing infrastructural elements ancillary to social housing under Irish law are not chosen in a public procurement procedure. Such a procedure does not apply since municipalities which exercise a competence on social housing, apply for subsidies with the HFA within the framework of their competence and are therefore not awarded with public contracts. Furthermore, the Irish authorities have not provided information substantiating that they are being compensated according to the costs of a typical undertaking. In the absence of indications that

⁸ Following Article 87 (1) of the EC Treaty, 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, as in so far, as it affects trade between Member States, be incompatible with the common market.

the municipalities are acting as cost-efficient undertakings, it cannot be excluded that the fourth condition is not fulfilled. Therefore it could in principle be possible that the municipalities do enjoy a real financial advantage, which would have the effect of putting them in a more favourable competitive position than the undertakings competing with them, so that it is therefore State aid within the meaning of Article 87(1) EC Treaty.

(39) However, such an aid may be authorised under Article 86(2) if it meets the conditions for applying this exception.

(a) Operation and definition of a service of general economic interest:

(40) The Commission notes that the scheme is limited to the provision of infrastructural elements needed to ensure a good environment for social dwellings. The Commission considers the promotion of social housing as a legitimate public task of the State⁹. The provision of infrastructural elements needed to ensure a good environment for social dwellings can be considered as a condition for promoting social housing and therefore can be considered as a legitimate public task of the State. As the content of the service and the task of the housing-funding-system and the local authorities are accurately defined in the 1981 Act, as amended by following acts¹⁰, and in the 1966 Act, the first condition of Article 86(2) EC-Treaty is fulfilled.

(b) Entrustment:

(41) The 1981 Act, such as amended by following acts¹¹, read in conjunction with Section 56(2) of the 1966 Act, has clearly entrusted the HFA with the task of providing cheap guaranteed funding to local authorities for the purposes of their infrastructure activities ancillary to social housing.

(c) Proportionality of the compensation:

(42) In their letter dated 3 October 2005, the Irish authorities replied to the question whether the use of the infrastructural elements would be free of charge that “a charge could arise in the case of places of recreation and, where this does happen, the charge would seek to cover costs”. This means that the advantage conferred to the local authorities through cheap financing will be passed on to the final consumer. Accordingly this part of the scheme fulfils the condition that no overcompensation should exist for the public service costs.

⁹ See Amendments of the Commission’s proposal for appropriate measures on State guarantees for the public credit institutions in Germany, OJ C-150 of 22 June 2002 (see II/4 measures with a purely social character).

¹⁰ Acts amending the 1981 Act are the 1982 Act, the 1985 Act, the 1988 Act and the 1992 Act, as well as the Planning and Development (Amendment) Act 2002, section 20, and the 2002 Act.

¹¹ Acts amending the 1981 Act are the 1982 Act, the 1985 Act, the 1988 Act and the 1992 Act, as well as the Planning and Development (Amendment) Act 2002, section 20, and the 2002 Act.

- (d) Development of trade within the Union:
- (43) The ultimate objective of the notified scheme is to provide infrastructure elements ancillary to social housing. Such elements are mainly of local nature. Furthermore, the aid under assessment is proportionate to the costs incurred by the operators. Accordingly the aid in question is not liable to produce distortion to an extent contrary to the Community interest.
- (44) In conclusion, the cheap guaranteed funding provided by the HFA to the local authorities for the purposes of providing infrastructure ancillary to social housing:
- Either does not distort or threaten to distort competition and trade and therefore does not constitute State aid within the meaning of Article 87 (1) of the EC Treaty.
 - or constitutes compatible State aid pursuant to Article 86(2) EC Treaty.

Conclusion

- (45) In view of the commitments of the Irish authorities according to which:
- moneys provided by the Housing Finance Agency (HFA) to the local authorities will only be used for capital projects related to social housing and not for services ;
 - moneys provided by the HFA to the local authorities will not be used to provide and or maintain shops or factories or offices except offices to accommodate the officials of the local authorities;
 - if an undertaking is granted specific rights to manage or use an infrastructural element financed by the scheme to run an economic activity, the HFA will ensure that the contract terms on which the local authority engages the undertaking to manage or use the facility will be market terms;

the Commission has accordingly decided that:

- the guarantees in favour of the HFA in conjunction with Article 56(2) of the Housing Act 1966 do not constitute State aid within the meaning of Article 87(1) of the EC Treaty and
- the provision by the HFA of cheap guaranteed funding to local authorities for the purposes of providing the infrastructural elements ancillary to social housing referred to in Article 56(2) of the Housing Act 1966 either does not constitute State aid within the meaning of Article 87(1) of the EC Treaty or constitutes compatible State aid pursuant to Article 86(2) of the EC Treaty.

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://europa.eu.int/comm/secretariat_general/sgb/state_aids/.

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Yours faithfully,

For the Commission,

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