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Subject: State Aid SA.59709 (2021/N) – Ireland – COVID-19 - Aid to airport operators

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts,¹ on 19 February 2021 Ireland notified an aid scheme to airport operators in Ireland (the “scheme”)². Ireland notified the scheme, which comprises three measures, under three legal bases: (a) a damage compensation measure assessed directly under Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU” or “Treaty”) (“Measure 1”); (b) a measure under section 3.1 of the Temporary Framework for State aid measures

¹ Ireland pre-notified the measure on 15 December 2020. During the pre-notification phase, there was one telephone conference between the Irish authorities and the Commission services. On 23 December 2020 and 2 February 2021, Commission requested additional information, to which Ireland responded on 22 January 2021 and 8 February 2021, respectively.

² On 22 February 2021, the Commission requested additional information from Ireland. The latter responded on 22 and 23 February 2021.

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

to support the economy in the current COVID-19 outbreak³ (“Temporary Framework”) (“Measure 2”) and (c) a measure under section 3.12 of the Temporary Framework (“Measure 3”).

2. DESCRIPTION OF THE SCHEME

2.1. The travel restrictions linked to the COVID-19 outbreak

- (2) Since the first case of COVID-19 was confirmed in Ireland, on 29 February 2020, the Irish government has progressively introduced a series of public health measures. They included among others, the closure of all schools, colleges, crèches and non-essential retail facilities, closure or restriction of tourism and hospitality businesses, restrictions on non-essential travel, including to places of work, and social distancing measures, including restrictions on social gatherings, and prohibition of any large gatherings.

2.1.1. *General advisory to avoid all non-essential travel overseas (17 March to 21 July 2020)*

- (3) The COVID-19 outbreak has resulted in the adoption of containment measures by the Irish authorities, as well as other Member States and third countries, leading to the *de facto* halt of the vast majority of passenger air transport activities. On 17 March 2020, the authorities issued a general advisory to avoid all non-essential travel overseas (i.e. to restrict travelling) (“general advisory”), and amended the security status for each country to reflect that advice. In line with that advice, Irish health authorities put in place a requirement that anyone coming into Ireland, apart from Northern Ireland, would have to either self-quarantine or self-isolate on arrival for 14 days (i.e. that requirement was applicable on all modes of international travel) and it also included residents of Ireland. Furthermore, several Member States and third countries imposed travel limitations affecting passengers travelling from Ireland. For example, Denmark closed its borders to international tourists from mid-March 2020, Irish citizens were banned from entering the USA and Canada from 16 March 2020. Qatar and the United Arab Emirates also closed their borders to foreigners at that time. On 28 March 2020, China imposed a similar ban, which was only lifted in September 2020.

³ 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 Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3, by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the 4th Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 340I, 13.10.2020, p. 1 and by Communication from the Commission C(2021) 564 final of 28 January 2021 on the 5th Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6 – 15.

- (4) The general advisory initially was to apply until 29 March 2020. However, the authorities subsequently extended it and they only loosened the obligation to self-isolate or quarantine in respect of countries on the very limited green list, implemented on 21 July 2020⁴. In addition to the general advisory, on 27 March 2020, the Irish government announced a lock-down until 12 April, subsequently extended until 29 June 2020. People were required to stay home with some exceptions.⁵ Those restrictions of movement of individuals were gradually eased in the course of May 2020, but they remained strict in character. As of 5 May 2020, the restriction zone for the movement of individuals was increased to 5 km and to 20 km as of 29 June 2020.
- (5) Although there was no direct ban on traveling, the effects of the general advisory together with the lock-down and the containment measures taken by other countries were similar to a ban and the overall air traffic (both passenger and route numbers) to and from Ireland dropped as a consequence drastically (see Table 1 and Table 2). As a further example of the impact on aviation in Ireland, Dublin Airport (the largest airport in Ireland), in 2019, had flights to more than 190 destinations in 42 countries operated by almost 50 airlines. In April 2020, Dublin Airport had flights to just 22 destinations in 11 countries, operated by seven airlines.

2.2. The effect of the restrictions on air traffic in Ireland

- (6) According to the Irish authorities, Ireland's aviation sector suffered a huge decline due to the travel restrictions adopted following the COVID-19 outbreak. At the height of the crisis, traffic movements in Europe were more than 90% below 2019 levels. In April 2020, passenger numbers were estimated at just around 1% of pre-COVID-19 numbers (see Table 2).
- (7) The impact on flights was significant during the period of April to June 2020. In that period, commercial movements at Shannon Airport, Dublin Airport and Cork Airport were down by average of around 84%, 90% and 96% respectively when compared to the same period in 2019 (see Table 1). Air traffic started resuming in July 2020 (Table 1). In addition, Eurocontrol figures showed air traffic in Europe at 49% of 2019 levels on 20 August 2020⁶, which was the best performance for

⁴ On 21 July 2020, the Government defined a list of fifteen "green" locations where the public were advised to take "normal precautions" ("Green List"). Those fifteen "green" countries were: Cyprus, Estonia, Finland, Gibraltar, Greece, Greenland, Hungary, Italy, Latvia, Lithuania, Malta, Norway, Monaco, San Marino and Slovakia. Typically, most of the routes between those locations and Ireland are not highly trafficked – some have no direct flights – so the impact of the "Green List" was minimal in terms of permitting travel to or from Ireland. The authorities further reduced the Green List to ten countries on 4 August 2020; seven countries on 17 September 2020; four countries on 24 September 2020 and no countries as of 8 October 2020.

⁵ To travel to and from work, or for purposes of work, only where the work is an essential health, social care or other essential service and cannot be done from home, To shop for food and household goods or collect a meal, doctor visits, vital family reasons (care to children, elderly or vulnerable people), to take brief individual physical exercise within 2 km from home, etc.

⁶ <https://www.eurocontrol.int/publication/eurocontrol-comprehensive-assessment-covid-19s-impact-european-air-traffic>

the summer 2020 season. Traffic levels on 20 November 2020 were 39% of 2019 levels.⁷

- (8) In conclusion, passenger numbers in Ireland's State Airports (Dublin, Cork and Shannon) fell from 32.6 million in 2019 to 3.6 million in 2020 for the period March to December (a fall of 89%) (see Table 2). Following a slight uptake in traffic in July and August 2020, the situation began to deteriorate again from mid-September 2020 (see Table 1).

⁷ Eurocontrol, COVID19 Impact on European Air Traffic EUROCONTROL Comprehensive Assessment, 2020.

Table 1: Overview of flights in scheduled commercial air transport operated in Ireland in 2020 and comparison with 2019 at Irish State airports

Total Commercial Movements												
	Dublin			Cork			Shannon			Total State Airports		
	2019	2020	% Change	2019	2020	% Change	2019	2020	% Change	2019	2020	% Change
Jan	16.699	16.190	-3,05%	1.457	1.390	-4,60%	1,246	1.221	-2,00%	19.402	18.801	-3,10%
Feb	15.541	15.494	-0,30%	1.368	1.353	-1,10%	1,087	1.179	-8,46%	17.996	18.026	-0,17%
Mar	17.871	12.596	-29,52%	1.561	1.192	-23,64%	1,320	691	-47,65%	20.752	14.479	-30,23%
Apr	19.787	1.883	-90,48%	1.753	82	-95,32%	1,444	261	-81,90%	22.984	2.226	-90,32%
May	21.277	2.082	-90,21%	2.049	78	-96,19%	1,836	239	-87,00%	25.162	2.399	-90,47%
Jun	21.298	2.304	-89,18%	2.187	90	-95,88%	1,951	322	-83,50%	25.436	2.716	-89,32%
Jul	22.356	6.073	-72,84%	2.270	532	-76,56%	1.976	850	-56,98%	26.602	7.455	-71,98%
Aug	22.372	7.786	-65,20%	2.286	732	-67,98%	1.843	725	-60,66%	26.501	9.243	-65,12%
Sep	21.218	6.630	-68,75%	2.004	477	-77,69%	1.974	557	-71,78%	25.196	7.664	-69,58%
Oct	20.418	5.206	-75,50%	1.768	365	-79,40%	1.738	557	-68,00%	23.924	6.128	-74,39%
Nov	16.398	3.392	-79,30%	1.432	130	-90,90%	1.254	397	-68,30%	19.084	3.919	-79,46%
Dec	16.903	3.610	-78,64%	1.421	104	-92,68%	1.191	406	-65,90%	19.515	4.120	-78,89%
YTD	232.138	83.246	-64,14%	21.556	6.527	-69,72%	18.860	7.405	-60,74%	272.554	97.178	-64,35%

Table 2: Overview of passengers in scheduled commercial air transport operated in Ireland in 2020 and comparison with 2019 at Irish State airports

Total Passenger Numbers												
	Dublin			Cork			Shannon			Total State Airports		
	2019	2020	% Change	2019	2020	% Change	2019	2020	% Change	2019	2020	% Change
Jan	2.074.547	2.105.782	1,51%	149.268	158.376	6,10%	101.604	93.079	-8,39%	2.325.415	2.357.237	1,36%
Feb	2.009.108	2.048.967	1,98%	150.798	159.437	5,73%	90.968	95.037	4,47%	2.250.874	2.303.441	2,34%
Mar	2.450.742	1.044.039	-57,40%	175.029	80.475	-54,02%	109.069	53.584	-50,87%	2.734.840	1.178.098	-56,93%
Apr	2.806.795	26.862	-99,04%	210.848	1.216	-99,42%	136.710	4.275	-96,87%	3.154.353	32.353	-98,97%
May	2.984.288	46.312	-98,45%	239.695	2.212	-99,08%	164.605	7.709	-95,32%	3.388.588	56.233	-98,34%
Jun	3.222.768	94.334	-97,07%	279.575	4.828	-98,27%	184.241	6.862	-96,28%	3.686.584	106.024	-97,12%
Jul	3.455.542	381.248	-88,97%	297.392	27.937	-90,61%	194.914	25.724	-86,80%	3.947.848	434.909	-88,98%
Aug	3.428.927	516.402	-84,93%	297.398	40.296	-86,45%	193.183	24.786	-87,17%	3.917.508	581.484	-85,16%
Sep	3.041.124	392.468	-87,09%	239.016	23.125	-90,32%	174.107	16.188	-90,70%	3.454.247	431.781	-87,50%
Oct	2.883.131	262.785	-90,89%	215.752	17.120	-92,06%	149.250	15.273	89,90%	3.248.133	295.178	-90,91%
Nov	2.257.327	175.180	-92,24%	172.039	6.439	-96,26%	112.554	5.411	-95,20%	2.541.920	187.030	-92,64%
Dec	2.298.932	291.325	-87,33%	163.452	8.931	-94,54%	106.370	4.475	-95,79%	2.568.754	304.731	-88,14%
YTD	32.911.227	7.385.704	-77,56%	2.590.262	530.392	-79,52%	1.717.575	352.403	-79,48%	37.219.064	8.268.499	-77,78%

2.3. Objective of the measure

- (9) The objective of Measure 1 is to compensate the damage suffered by the Irish airport operators as specified in recitals (28) and (29) due to the imposition of the general advisory and other containment measures linked to the COVID-19 outbreak in Ireland and other countries (“COVID-19 restrictions”) (recitals (3) to (5)) under Article 107(2)(b) TFEU during the period from 1 April to 30 June 2020 (the “compensation period”). As set out in more detail in recital (17), the damage is calculated as the EBIT (Earnings before Interest and Taxes) shortfall during the compensation period (which is part of the period when COVID-19 restrictions were in place), compared to 1 April to 30 June 2019 (the “reference period”), due to the loss of revenues resulting from the COVID-19 restrictions.

- (10) The objective of Measure 2 and Measure 3 is to ensure air connectivity and broadly support the general economy and development in Ireland by providing support to airport operators.

2.4. Legal basis and administration of the measure

- (11) The national legal basis for the scheme is the Government Decision of 10 November 2020, approved by the Oireachtas.⁸ According to section 2(4) of the Ministers and Secretaries Act 1924, the expenses of each of the State's ministries must be paid out of moneys approved and provided by the Oireachtas. The Oireachtas approved the funding through the Revised Estimates Volume ("REV"), published on 16 December 2020. Once the Government approves and publishes the funding in the REV, spending for a specified purpose can legally take place.
- (12) The Department of Transport⁹ is responsible for granting and administration of the aid.

2.5. Form, budget, duration and modalities of the aid scheme

- (13) The aid takes the form of direct grants for Measure 1 and Measure 2. For Measure 3, the aid is provided in form of direct grants, guarantees and loans (see recital (26)). The Department of Transport as the granting authority will allocate the funds from the Irish State budget to beneficiaries.
- (14) The overall budget of the aid scheme is EUR 26 million. The overall budget of the aid scheme will be split between the three measures. The estimated budget for Measure 2 is EUR 4 million.
- (15) The Irish authorities confirm that the scheme will not enter into force, nor will any aid be paid out before the Commission's approval.

2.5.1. Damage compensation scheme (Measure 1)

- (16) The scheme will compensate airport operators that handle more than 1 million passengers p.a. – Dublin Airport, Cork Airport and Shannon Airport (see recital (30)) – for damage incurred by those airports during the period from 1 April to 30 June 2020 that is directly linked to the COVID-19 as a direct effect of the COVID-19 restrictions (see recitals (3) to (5)). The damage will be calculated based on the operational losses shortfall in the compensation period (compared to the reference period) due to the decrease of business activity resulting from the COVID-19 restrictions. The losses will need to be compensated at the latest by 30 June 2021.
- (17) The net losses (actual damage) correspond to the loss of aeronautical and non-aeronautical revenues, minus avoided costs and plus the additional costs incurred in relation to COVID-19 during the compensation period. In practice, the damage is calculated for each eligible airport as the difference between the EBIT

⁸ The Oireachtas, sometimes referred to as Oireachtas Éireann, is the legislature of Ireland, i.e. the Parliament of Ireland.

⁹ In Ireland, ministries are referred to as Departments.

obtained within the compensation period and the EBIT in the reference period. Table 3 provides an estimation of the damage for the compensation period per each eligible airport, resulting in a total estimated damage of EUR 133.28 million.

Table 3: Estimated damage per airport based on EBIT

Month	2020	2019	2020 vs 2019
	EBIT	EBIT	(EUR million)
	<i>Cork Airport</i>		
April	[...]	[...]	[...]
May	[...]	[...]	[...]
June	[...]	[...]	[...]
			[-10; -5]
	<i>Dublin Airport</i>		
April	[...]	[...]	[...]
May	[...]	[...]	[...]
June	[...]	[...]	[...]
			[-150; -100]
	<i>Shannon Airport</i>		
April	[...]	[...]	[...]
May	[...]	[...]	[...]
June	[...]	[...]	[...]
			[-5; 0]
Total			-133.28

- (18) The damage estimation set out in Table 3 is based on data detailing the costs and revenues of individual airport operators in the relevant months of 2019 and 2020. Furthermore, the relevant granting authority (see recital (12)) will follow the rules on auditing and monitoring of the aid. Aid received in excess of the actual damage calculated in line with the methodology set out in recital (17) will have to be repaid including interest.

2.5.2. Limited compensation to airport operators (Measure 2)

- (19) Measure 2 aims at mitigating the negative impact of the COVID-19 outbreak on the air connectivity of Ireland and to do so it provides direct, non-repayable grants to airport operators in Ireland that handle fewer than 1 million passengers p.a. (see recital (31)).
- (20) As described in recital (14), the estimated budget for Measure 2 is EUR 4 million. The aid under that part of the scheme will be granted no later than 31 December 2021. The aid per undertaking will not be more than EUR 1.8 million.
- (21) Considering the exceptional situation that generated serious disturbances of the economy, the notified aid measure is aimed at supporting the seriously affected airport operators. Ireland considers the Irish aviation sector to be critical to the

State's economic development, international connectivity and tourism. Furthermore, Ireland contends that as an island, Ireland is more reliant on air connectivity than most other Member States.

2.5.3. *Support for uncovered fixed costs (Measure 3)*

- (22) Measure 3 contributes to the uncovered fixed costs of those undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity. In the present case, it aims to compensate the Irish airport operators that handle fewer than 1 million passengers p.a. (as specified in recital (31)) for the uncovered fixed costs. The aid is granted to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. The eligible costs will be the fixed costs incurred by undertakings during the eligible period (i.e. 17 March 2020 to 31 December 2021) including those costs incurred in part of that period ("eligible period") that are not covered by the profit contribution (i.e. revenues minus variable costs) during the same period and which are not covered by other sources, such as insurance, temporary aid measures or support from other sources.¹⁰ The losses of undertakings from their profit and loss statements during the eligible period will be considered to constitute uncovered fixed costs.
- (23) The Irish authorities have confirmed, that the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small enterprises (within the meaning of Annex I to the General Block Exemption Regulation ("GBER")¹¹), where the aid intensity will not exceed 90%.
- (24) The aid under Measure 3 will be granted no later than 31 December 2021.
- (25) The aid under that measure will be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or, with appropriate justification provided by the Member State to the Commission (for example in connection with the characteristics or size of certain type of undertakings) on the basis of tax accounts. Any payment exceeding the final amount of the aid will be recovered.
- (26) The aid may be granted in the form of direct grants, guarantees and loans provided the total nominal value of such measures remains below the overall cap of EUR 10 million per undertaking. All figures used must be gross, that is, before any deduction of tax or other charge.
- (27) The aid under that measure will not be cumulated with other aid for the same eligible costs.

2.6. Beneficiaries

- (28) The beneficiaries of the scheme are the Irish airport operators fulfilling the eligibility criteria (see recitals (29) to (32)).

¹⁰ For the purpose of this point, costs refer to fixed and variable costs: the former are incurred independently of the level of output, while the latter are incurred depending on the level of output.

¹¹ 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.

- (29) There are the following airport operators in Ireland: Dublin Airport and Cork Airport (managed by the DAA Group), Shannon Airport (managed by the Shannon Group), Donegal Airport, Kerry Airport and Ireland West Airport Knock.
- (30) Measure 1 will be targeted at larger airport operators, i.e. airport operators that handle more than 1 million passengers p.a. – Dublin Airport, Cork Airport and Shannon Airport. The amounts provided to beneficiaries under Measure 1 will be distributed on a *pro rata* basis according to passenger numbers in 2019.
- (31) Measure 2 and Measure 3 are aimed to address liquidity issues at Ireland’s smaller airports that handle fewer than 1 million passengers p.a. (i.e. Donegal Airport, Kerry Airport and Ireland West Airport Knock). If the budget is not sufficient to meet all costs incurred by the beneficiaries, then payments will be made on a *pro rata* basis according to passenger numbers for an equivalent period in 2019.
- (32) Aid under Measure 2 and Measure 3 may be granted only to undertakings that were not already in difficulty within the meaning of the GBER on 31 December 2019.
- (33) Ireland is of the opinion that the approach is appropriate to the needs of the Irish airport sector and non-discriminatory in respect of both categories of airports. Dividing the scheme between larger airport operators and smaller airport operators allows Ireland to compensate both categories in accordance with their needs, while ensuring that the smaller airport operators will receive their fair share of the aid.

2.7. Commitments, cumulation and reporting

2.7.1. Damages compensation scheme (Measure 1)

- (34) The Irish authorities confirmed that:
- (a) each beneficiary will be required to submit an audit report of its financial statements, allowing the Irish authorities to verify that the compensation received does not exceed the actual damage suffered. The Irish authorities will provide a report no later than one year after the date of the present decision, specifying the amounts of compensation provided under the current scheme;
 - (b) any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered including interest;
 - (c) aid under Measure 1 cannot be cumulated with other aid for the same eligible costs;
 - (d) any payment made to beneficiaries under the scheme will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary;

- (e) the benefit of the aid is excluded for any applicant that is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages;

2.7.2. *Limited compensation to airports (Measure 2) and support for uncovered fixed costs (Measure 3)*

(35) The Irish authorities confirmed that:

- (a) any payment exceeding the final amount of the aid must be recovered including interest;
- (b) a beneficiary of the aid scheme may also benefit from other measures under the Temporary Framework and/or from *de minimis* aid¹² and/or from aid under the GBER. The Irish authorities have however confirmed that insofar as a beneficiary may benefit from multiple measures under the Temporary Framework and/or from *de minimis* aid and/or from the GBER, the maximum aid amounts per beneficiary, as specified in the Temporary Framework, in the *de minimis* Regulation and in the GBER, will be respected;
- (c) Ireland will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework;
- (d) all the information regarding the granting of aid must be maintained for 10 years from the moment of granting of the aid.

2.7.3. *Additional confirmations in relation to cumulation rules and mitigation measures*

- (36) Ireland confirms that airport operators will not receive funding for the same costs that have already been covered by payments related to the aid scheme concerning regional airports in Ireland, prolongation of which was adopted under case number SA.60038.
- (37) Only uncovered costs will be eligible for consideration as part of the three measures making up the scheme. The Irish authorities guarantee that no airport operator will be overcompensated by the State for losses incurred as a result of COVID-19.
- (38) Ireland assures that the cumulation rules between Measure 2 and Measure 3 will be respected. Ireland intends to allocate the aid in terms of Measure 2 and Measure 3 in the following manner. In the first instance aid will be allocated under Measure 2. If, for example, the losses of an airport (net of any previous aid) are less than EUR 1.8 million, the airport operator will not receive more than the amount of losses incurred and will be deemed ineligible to receive support under Measure 3. If the losses are more than EUR 1.8 million (net of any previous aid),

¹² Granted in line with 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 (the “de minimis Regulation”) (OJ L 352, 24.12.2013, p. 1).

such an airport will receive the maximum grant under Measure 2 and then the Irish authorities will assess eligibility for support for meeting uncovered fixed costs (which have not been covered by any other support measure) under Measure 3.

- (39) In terms of mitigation, the Irish airport operators have taken various measures to mitigate the damages caused by the COVID-19 crisis. For example, Shannon Airport instituted a reduced, three-day, week for staff, implemented a 20% temporary pay cut for all employees earning more than EUR 30,000 per annum. Additionally, Shannon Airport paused capital spend with the exception of contractually committed works and ceased discretionary operating expenditure. Similar measures were also taken by other State and regional airport operators in Ireland¹³.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (41) 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.
- (42) The scheme is imputable to the State since it is based on a Government Decision (recital (11)). In addition, the Department of Transport will administer the scheme and grant the aid (recital (12)). The scheme is financed through State resources since it is funded from the budget of the State (recital (13)).
- (43) The scheme confers an advantage on the beneficiaries in the form of direct grants, guarantees or loans (recital (13)). The scheme thus confers an advantage which those beneficiaries would not have had under normal market conditions or relieves the beneficiaries of costs that they would have to bear under normal market conditions.
- (44) The advantage granted by the scheme as described in section 2 is selective as it is awarded only to certain undertakings active in Ireland, in particular airport operators as specified in recital (28).
- (45) The scheme is liable to distort competition, since it strengthens the competitive position of the beneficiaries. It also affects trade between Member States, since the beneficiaries are active in the airport sector, in which intra-Union trade exists.

¹³ Measures were also taken in Dublin and Cork Airports, Ireland West Airport, Kerry Airport and Donegal Airport.

- (46) In view of the above, the Commission concludes that the scheme constitutes aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility of Measure 1

- (47) Since the damage compensation described in detail in section 2.5.1 involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether Measure 1 is compatible with the internal market and in particular with Article 107(2)(b) TFEU.

3.3.1. *The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

- (48) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case law¹⁴ has consistently held that the notions of “natural disaster” and “exceptional occurrence” referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (49) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field¹⁵. In that regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee¹⁶; (ii) significant scale/economic impact¹⁷ and (iii) extraordinary¹⁸.

¹⁴ Judgment of the Court of Justice of 11 November 2004, Spain v Commission, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, Atzeni and others, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

¹⁵ Exceptional occurrences that have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

¹⁶ Commission Decision of 1 August 2011 on case SA.32163, Remediation of damage to airlines and airport operators caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, paragraph 31, OJ C 135, 9.5.2012, p. 1.

¹⁷ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire, France, OJ C 380, 30.12.2000, p. 9), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, paragraph 35, available at https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33487; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, paragraph 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, paragraph 36), the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, paragraph 19, OJ C 170, 16.7.2002, p. 16).

¹⁸ In its Decision of 19 May 2004 on case C-59/2001 concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry, OJ L 32, 6.2.2007, p. 14 the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination did not in itself constitute an exceptional occurrence.

3.3.2. COVID-19 as an exceptional occurrence

- (50) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Wuhan municipality in China at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak rapidly evolved, affecting not only other parts of China but also spread to the majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (51) The WHO declaration of a pandemic¹⁹, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19, determine the exceptional nature of the circumstances. The rapidness of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption²⁰. The necessity to adopt and encourage observance of measures aimed at interrupting transmission chains stems from that acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social hardship and severe economic consequences, containment measures needed to be adopted.
- (52) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travel, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where to do so was possible and various social distancing measures.
- (53) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market²¹.

Even though it was an unforeseeable event, it formed part of the normal commercial risks to which an undertaking is exposed.

¹⁹ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020. Online: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

²⁰ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

²¹ See for instance Commission Decision of 12 March 2020 on case SA.56685, Compensation scheme for cancellation of events related to COVID-19, Denmark, OJ C 125, 17.4.2020, p. 1, and Commission Decision of 31 March 2020 on case SA.56765, COVID-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France, France, OJ C 294, 4.9.2020, p. 1.

- (54) The Commission therefore concludes that the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. Causal link between Measure 1 and the COVID-19 outbreak

- (55) The Commission has examined Measure 1 pursuant to Article 107(2)(b) TFEU, in particular as regards the duration of the compensation period from 1 April to 30 June 2020. That assessment has led to the following observations.
- (56) As described in recitals (3) to (5), the Irish authorities adopted several sequential COVID-19 restrictions in response to the COVID-19 outbreak starting in March 2020.
- (57) With regard to the COVID-19 restrictions, the Irish authorities issued a general advisory to avoid all non-essential travel overseas, starting on 17 March 2020. Moreover, the Irish health authorities put in place a requirement that anyone coming into Ireland, apart from Northern Ireland, would have to either self-quarantine or self-isolate on arrival for 14 days (see recital (3)). The general advisory regarding non-essential travel overseas was subsequently extended and has continued to remain in place (recital (4)). Furthermore, several Member States and third countries imposed travel limitations affecting persons travelling from Ireland (see recital (3)). In addition to the general advisory, the Irish government announced a lock-down with restriction of movement of citizens on 27 March 2020 and subsequently extended it until 29 June 2020 (recital (4)).
- (58) The effects of the general advisory together with the lock-down and the containment measures taken by other countries were similar to a ban and the overall air traffic (both passenger and routes numbers) to and from Ireland dropped as a consequence drastically (see Table 1 and Table 2) (recital (5)).
- (59) The impact on flights was significant during the period of April to June 2020. In this period, commercial movements at Shannon Airport, Dublin Airport and Cork Airport were down by 84%, 90% and 96% respectively when compared to the same period in 2019 (see Table 1). The traffic starting resuming more noticeably in July 2020 (see Table 1).
- (60) The Commission therefore considers that the causal link between the COVID-19 outbreak and the damage can be established for the compensation period from 1 April 2020 until 30 June 2020.
- (61) The Commission observes that Measure 1 aims to cover the net losses of the beneficiaries caused by the decrease of the passenger air traffic as a direct effect of the COVID-19 restrictions.
- (62) The Commission thus concludes that Measure 1 is directly linked to the COVID-19 outbreak, which qualifies as an exceptional occurrence.

3.3.4. Proportionality of the aid measure

- (63) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not

result in overcompensation of that damage; it should only make good the damage caused by the exceptional occurrence.

- (64) To effectively ensure proportionality, it is necessary to analyse the assumptions and evidence on which the calculation of damage for the factual scenario is based. In particular, it is necessary to look at how the exceptional occurrence has actually and directly affected the operations of beneficiaries and what actual impact it has had on their costs and revenues.
- (65) Firstly, the Commission notes that the aid is strictly limited to compensation for the damage directly caused by the COVID-19 outbreak during the compensation period (namely, from 1 April to 30 June 2020).
- (66) As explained in recital (17), the damage is calculated by comparing the EBIT of the relevant airport operator during the compensation period with the EBIT that it would have expected absent the COVID-19 restrictions. The proxy for that counterfactual is the EBIT during the reference period (namely, the same months of the previous year, from 1 April to 30 June 2019).
- (67) The Commission further notes that, as described in recital (17), the net losses (actual damage) are calculated by taking into account the loss of revenues, additional costs and avoided costs during the compensation period by comparing the results of the beneficiaries during that period with the results during the reference period.
- (68) The Commission notes that the avoided costs correspond to all the costs the beneficiary would have incurred if its activity had not been affected by the COVID-19 restrictions, and that the beneficiary has not actually incurred in the compensation period due to its suspended activities.
- (69) On the one hand, that exceptional circumstance led to the interruption of operations and to a significant loss of revenue between 1 April and 30 June 2020 compared to the reference period. On the other hand, the interruption of operations allowed the beneficiaries to avoid significant costs in the compensation period compared to the reference period, which are taken into account in the calculations by the Irish authorities.
- (70) Based on the data submitted by the Irish authorities (see recital (7)), the Commission takes note that the COVID-19 restrictions led to a near standstill of airport operations, causing in turn a significant revenue shortfall in the compensation period compared to the reference period (see recitals (7) to (8)). On the other hand, due to the halt of activities airport operators made cost savings in the compensation period compared to the reference period, which the Irish authorities take into account in their calculations. Furthermore, as explained in recital (34)(a), each beneficiary will be required to submit an audit report of its financial statements, allowing the Irish authorities to verify that the compensation received does not exceed the actual damage suffered.
- (71) For the above reasons the Commission concludes that the notified compensation by Ireland to the beneficiaries does not exceed the damage caused to the beneficiaries by the exceptional occurrence as quantified as the difference between the lost revenues and the avoided costs in the compensation period.

- (72) The Commission therefore concludes that the notified measure provides for compensation that does not exceed what is necessary to make good the damage.
- (73) Moreover, as described in recital (34)(a), the Commission notes that the Irish authorities have put in place the additional safeguards to ensure that compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the abovementioned criteria.
- (74) Therefore, the Commission concludes that the damage compensation is proportionate.
- (75) In view of the above, the Commission considers that Measure 1 is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

3.4. Compatibility of Measure 2

- (76) 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*”.
- (77) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (78) The objective of Measure 2 is to ensure that the disruptions caused by the COVID-19 outbreak, in particular the liquidity shortage faced by airport operators, do not undermine the financial stability of those undertakings and to ensure the recovery of air connectivity of Ireland.
- (79) Measure 2 forms part of the measures adopted by the Irish authorities to remedy a serious disturbance in their economy. The measure forms part of an overall package of measures and aims at remedying the liquidity shortage faced by undertakings and ensuring that the disruptions caused by the COVID-19 outbreak do not undermine their viability. Furthermore, Measure 2 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.
- (80) Measure 2 meets all the conditions provided for in point 22 of the Temporary Framework. In particular:
- i. The aid will be granted in the form of a grant of maximum EUR 1.8 million per undertaking. The maximum aid amount per undertaking under Measure 2 will not exceed the ceiling set out in point 22(a) of the Temporary Framework (recital (20));
 - ii. Measure 2 is granted on the basis of a scheme with an estimated budget; hence the condition set out in point 22(b) of the Temporary Framework is met (recital (20));

- iii. The aid under Measure 2 will not be granted to undertakings that were already in difficulty on 31 December 2019 (within the meaning of the GBER), hence the condition set out in point 22(c) of the Temporary Framework is met (recital (32));
 - iv. The aid will be granted no later than 31 December 2021; therefore the condition set out in point 22(d) of the Temporary Framework is met (recital (20));
 - v. The aid does not concern undertakings active in the processing and marketing of agricultural products²², hence the condition set out in point 22(e) of the Temporary Framework is not applicable.
- (81) The Commission accordingly considers that Measure 2 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of Ireland and meets all the relevant conditions of the Temporary Framework.
- (82) The Irish authorities have committed to comply with all the monitoring and reporting provisions laid down in section 4 of the Temporary Framework. The Commission may request additional information regarding the aid granted, to verify whether the conditions laid down in the present decision have been met.
- (83) The Irish authorities have confirmed that they will respect cumulation rules regarding combination with *de minimis aid* and/or other aid.
- (84) In view of the above, the Commission considers that Measure 2 is compatible with the internal market in accordance with Article 107(3)(b) TFEU.

3.5. Compatibility of Measure 3

- (85) The principles as stated in recitals (76) and (77) apply *mutatis mutandis*.
- (86) Measure 3 forms part of the measures adopted by the Irish authorities to remedy a serious disturbance in their economy. The measure forms part of an overall package of measures and aims at remedying the liquidity shortage faced by undertakings and ensuring that the disruptions caused by the COVID-19 outbreak do not undermine their viability. Furthermore, Measure 3 has been designed to meet the requirements of a specific category of aid (“Aid in the form of support for uncovered fixed costs”) described in section 3.12 of the Temporary Framework.
- (87) The Commission considers that Measure 3 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of section 3.12 of the Temporary Framework, for the following reasons:
- (a) Aid is granted under Measure 3 no later than 31 December 2021 and covers uncovered fixed costs incurred during the period between 1 March

²² As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

2020 and 31 December 2021, including such costs incurred in part of that period (recital (22)). Measure 3 therefore complies with point 87(a) of the Temporary Framework;

- (b) Aid is granted under Measure 3 on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (22)). Measure 3 therefore complies with point 87(b) of the Temporary Framework;
 - (c) Uncovered fixed costs are defined under Measure 3 in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies²³, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (23)). The losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs. The aid under Measure 3 may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts. Moreover, Ireland also commits that any payment exceeding the final amount of the aid must be recovered including interest (recital (35)(a)). Measure 3 therefore complies with point 87(c) of the Temporary Framework;
 - (d) The aid takes the form of grants, guarantees and loans (recital (13)). The overall nominal value of grants will not exceed EUR 10 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (14)). Measure 3 therefore complies with point 87(d) of the Temporary Framework;
 - (e) Aid may not be granted under Measure 3 to undertakings that were already in difficulty on 31 December 2019 (recital (32)). Measure 3 therefore complies with point 87(f) of the Temporary Framework.
- (88) The Irish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (35)(c)). The Irish authorities further confirm that the aid under Measure 3 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 (recital (35)(b)).
- (89) The Commission therefore considers that Measure 3 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.

²³ Within the meaning of Annex I to the GBER.

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 Articles 107(2)(b) and 107(3)(b) 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 for Competition
State Aid Greffe
B-1049 Brussels

Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

