



EUROPEAN COMMISSION

Brussels, 03.07.2001

SG (2001) D/ 289528

Subject: State aid N 209/2001 – Ireland
Guarantee for borrowings of the Housing Finance Agency

Sir,

1. **Procedure**

By letter of 9.3.2001 your authorities notified a legislative measure pursuant to which the Minister for Finance may guarantee borrowings by the Housing Finance Agency (HFA).

By letter of 19.4.2001 the Commission asked for further information, which was transmitted by letter of 8.5.2001.

2. **Detailed description of the measure**

The HFA is a company limited by shares promoted by the Minister for the Environment and Local Government. It was incorporated on 8.2.1982 and the legal basis for the Agency's activity is the Housing Finance Agency Act, 1981 with its amendments 1982, 1985, 1988 and 1992.

The only objective of the HFA is to raise funds at the finest rate on the capital market, which are then advanced to local authorities to be used by them for public service purposes, namely the funding of the statutory social housing obligations of local authorities. This borrowing by the HFA may be subject to a State guarantee granted by the Minister for Finance.

Mr Brian Cowen T.D.,
Minister of Foreign Affairs,
Department of Foreign Affairs,
Iveagh House
St Stephen's Green
IRL-Dublin 2

Social housing means the provision of housing for the most socially disadvantaged households, and in particular for those households which due to their economic circumstances are unable to fund their own housing requirement at socially acceptable conditions through recourse to commercial lenders. According to your Government, the Irish State has always provided significant support for social housing.

Your Government states that the role of the HFA is to act as an efficient and cost-effective centralised borrower for the local authorities. In fulfilment of this role, it raises funds following open tender procedures on the capital and money markets for the social housing activities undertaken by local authorities. The Agency is a small, specialised organisation with only eleven staff and operates on a break-even basis, with margins designed only to cover its administrative expenses and to provide for risk management without profit margins.

Depending on the scheme involved, eligibility for social housing loan finance, which is handed out by the municipalities, not by the HFA, is established by reference to the following considerations:

- Need must be established.
- Households are eligible when subject to income and loan limit ceilings.
- Households are eligible which seek to avail of schemes unavailable in the private sector.
- Households are eligible when on local authority housing lists.

According to your authorities the purpose of the guarantee is to support the HFA in its borrowing and fundraising activity. The guarantee assists the Agency in accomplishing its statutory objective. It is given by the Minister for Finance and covering the principal of any moneys borrowed by HFA, the interest on those moneys and the incidental expenses arising in connection with those borrowings. No charge is made by the Minister for Finance to the Agency in respect of the provision of the guarantee. The only beneficiary of the guarantee is the HFA and any advantage occurring to the Agency as a result of the guarantee remains within the public service sector because of it being passed on to the municipalities (and finally to the disadvantaged households).

Your authorities consider that the guarantee should be subject to a decision declaring that it does not constitute aid as the guarantee is provided to support the raising of funds to be used for a public service purpose and is therefore excluded from the application of the EC-Treaty. Such decision is said to be necessary to create legal security about the legality of the guarantee under the EC State aid rules for the potential creditor of the HFA.

In the alternative your authorities consider that, pursuant to Article 86(2) of the EC-Treaty, any restrictions or distortions of competition as a result of the guarantee do not go beyond what is required to enable the Agency to perform the services of general economic interest with which it has been entrusted.

Therefore the Commission should adopt a decision finding that the guarantee is compatible with the Common market.

3. **Assessment of the measure**

Since the HFA is a legal entity closely connected to the public authorities (regulated by public law and its Board being appointed by Ministries), which is restricted by the applicable legislation and by its own internal statutes to the performance of the activity of fundraising for the social housing activities of the local authorities it acts as an instrument of the State. The HFA therefore can be regarded as an extension of the public authorities, which fulfils practically “in house” activities on the state’s own account and the guarantee granted by the State for its fundraising is to be considered as a transfer within the State not coming under the competition rules.

The municipalities on the other hand are active in the housing market. They offer cheaper housing conditions, through rents and construction loans, to certain consumers and are in doing so in competition with other operators in the housing market. They are therefore performing an economic activity. As this activity is supported by the State through the cheap guaranteed funding from the HFA, State resources are involved. As only certain operators (municipalities) are allowed to transfer this advantage of cheap funding to consumers they are favoured in the sense of Article 87(1) EC-Treaty and competition is distorted with respect to the other operators in the market.

The granting of loans, which is part of the sector of financial services where the single market has to a large extent been achieved, there is strong competition between financial institutions of different Member States, which is further intensifying with the European Monetary Union and the introduction of the single currency. Distortion of competition affects thus also trade between Member States. In this context reference has also to be made to the jurisprudence of the Court, stating that relatively small aid amounts and State aid to relatively small companies which are only active within their home country can in principle have effects on trade within the Community. As this activity of the municipalities covers the whole territory of Ireland it can therefore not be considered as a local activity and trade between the Member States must be supposed to be affected. As the advantage is not offered to consumers in a non-discriminatory way paragraph 2a of Article 87 EC-Treaty is not applicable.

An aid measure can in principle be compatible with the common market or considered being compatible with the common market if the conditions for applying Article 87(2) or Article 87(3) EC-Treaty are fulfilled. Since in the case at hand none of the conditions mentioned in these paragraphs are fulfilled the exemptions of Article 87(2) and (3) do not apply.

The aid measure can however be authorised under Article 86(2) EC-Treaty if the conditions for applying this provision are fulfilled. In the “Report on services of general economic interest in the banking sector”, drawn up by the Commission in 1997, the Commission noted that the following conditions must be satisfied in order for Article 86(2) to apply:

- The service in question must be a service of general economic interest and must be accurately defined by the Member State.
- The undertaking in question must be entrusted by the Member State with the provision of such a service.
- The exemption should be limited to what is necessary.
- The exemption must not affect the development of trade within the Union to an extent that would be contrary to the Community's interest.

The Commission concludes that the above conditions for applying Article 86(2) EC Treaty are fulfilled in the case at hand because of the following reasons:

- **Operation of a service of general economic interest:**

The objective of the Irish Government's housing policy, as set out in the Housing Acts, is to ensure that every household and specifically the most socially disadvantaged can have a good dwelling in a good housing environment. This objective is entrusted to the local authorities, which operate social housing programmes. These programmes consist of the provision of general mortgage finance, the operation of a shared ownership scheme, an affordable housing scheme aimed at providing low-cost housing, a rental subsidy scheme and miscellaneous grant schemes for elderly and disabled persons. Beneficiaries of these measures are socially disadvantaged households whose economic circumstances do not permit them to purchase or rent houses on the open market. Due to their poor creditworthiness, these households are generally unable to obtain a housing loan in the commercial, competitive sector at affordable rates, which has also to be proved by submitting letters of rejection from two private sector mortgage lenders. They can through this housing-funding-system turn to the municipalities for housing at cheaper rents.

Because of the above considerations the fund raising for the State for social housing can be regarded as an operation under Article 86(2) EC-Treaty. Since in addition the content of the service and the task of the housing-funding-system and the municipalities are accurately defined in the Housing Act 1991 the Commission considers the first condition to be fulfilled.

- **Entrustment:**

The HFA was established in 1981 by an Act of the Oireachtas (the Irish Parliament). The tasks of the Agency are clearly set out under Section 5 of the Housing Finance Agency Act 1981, as lastly amended by the Housing Act 1992, which states that the Agency may advance moneys to a housing authority to enable loans to be made by the authority for the acquisition and construction of houses. Under the same law the housing authorities (municipalities) are obliged to grant loans or to hire and construct houses.

Ireland has therefore taken specific steps to assign to the municipalities the task of social housing policy. The municipalities implement the public service provided to the private beneficiaries themselves.

▪ **Limitation of the exemption to what is necessary:**

As explained the “in house” activity on the State’s own account of HFA does not come under the competition rules. The benefit of the guarantee has, however, to be transmitted in full to the municipalities. This advantage granted to the municipalities is used exclusively to cover the cost of the above mentioned social public housing service. As this advantage is transferred to the final private beneficiaries it is equal to the “cost” of the service, which is the lowering of rents for disadvantaged final users. This part of the scheme fulfils the condition that no overcompensation should exist for a public service. But as it is only offered to a part of the market Article 87(2)a does not apply.

▪ **Development of trade within the Union:**

Social housing is fully in line with the basic objectives of the EC-Treaty. It is a legitimate element of public policy and as it is limited to what is necessary it is in the interest of the Community that social housing is supported.

Because of the above considerations the conditions in order for Article 86(2) EC-Treaty to apply are satisfied.

4. **Decision**

The Commission has accordingly decided:

to consider the aid to be compatible with the EC Treaty

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European Commission
Directorate-General for Competition
Directorate H-3
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: 0032-2-2969580

Yours faithfully,
For the Commission

Mario Monti
Member of the Commission