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State Aid SA. 54724 (2019/N) – Ireland – Limited extension of NAMA's lifespan to work out residual loans

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Subject: State Aid SA. 54724 (2019/N) – Ireland – Limited extension of NAMA's lifespan to work out residual loans

Sir,

1. PROCEDURE

(1) On 26 February 2010, the Commission took a no-objection decision on the Irish asset relief scheme for banks in Ireland ("the NAMA Decision"[1]).

(2) On 3 August 2010, 29 November 2010, and 29 July 2014, the Commission took no objection decisions[2] on the transfers of tranches of impaired assets from the participating institutions to the National Asset Management Agency ("NAMA").

[1] Commission Decision in case N725/2009, Establishment of a National Asset Management Agency (NAMA): Asset relief scheme for banks in Ireland, OJ C 94, 14.04.2010, p. 10.

A subsequent complaint was rejected by the Commission on 25 January 2018 by way of a decision in which the alleged measures were assessed either to be existing aid or to not constitute aid. See Commission Decision in case SA.43791, Alleged aid to and through the National Asset Management Agency, OJ C 60, 16.02.2018, p.4.

[2] Commission Decision in case N331/2010, Transfer of the first tranche of assets to NAMA, OJ C 37, 5.02.2011, p. 3.
Commission Decision in case N529/2010, Transfer of the second tranche of assets to NAMA, OJ C 40, 9.02.2011, p. 6.

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(3) From January 2019 to June 2019, during a number of pre-notification contacts, the Irish authorities brought forward a proposal for a limited extension of the lifespan of NAMA and subsequently provided clarifications.

(4) On 20 June 2019, the Irish authorities formally notified a request to extend the lifespan of NAMA beyond 2021 to the end of December 2025.

(5) On 11 July 2019, the Irish authorities submitted a signed commitment list.

2. FACTUAL BACKGROUND

2.1 The NAMA Decision

(6) In order to restore stability to the Irish banking system in the context of the financial crisis, the Irish authorities established NAMA on 22 December 2009[3]. The establishment of NAMA aimed to address the issue of asset quality in the Irish banking system by allowing participating financial institutions to sell to NAMA assets whose declining and uncertain value prevented the longer-term shoring-up of bank capital and the return to normally functioning financial markets. As set out in NAMA's purposes[4], it was to acquire and manage such eligible bank assets from participating institutions[5] as is appropriate, dealing with those assets expeditiously and protecting or otherwise enhancing the value of those assets in the interests of the State and obtain the best achievable financial return for the State.

(7) In the NAMA Decision, the Commission has found that the introduction of the NAMA asset relief scheme constitutes State aid pursuant to Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). The Commission concluded that this aid was compatible aid by virtue of Article 107(3)(b) TFEU.

(8) The NAMA asset relief scheme among others included a State guarantee on NAMA's senior liabilities and certain special powers, rights and tax exemptions granted to NAMA. In its NAMA Decision, the Commission relied on a number of commitments from the Irish authorities to ensure that NAMA, whilst performing its objectives, does not unduly distort competition through the use of its powers, rights and exemptions[6] granted in the Act. In that Decision[7], the Commission also concluded that to the extent that the exemption from stamp duty upon acquisition would amount to aid to NAMA it would also be compatible. Finally, the Commission also addressed[8] in the NAMA Decision a complaint by Senator

Commission Decision in case SA.38562/2014, Transfer of the last tranches (from tranches 3 to 9) of assets to NAMA, OJ C 393, 7.11.2014, p.5.

3 The National Asset Management Agency Act 2009 ("the Act"), on the basis of which NAMA was established, was passed into law on 22 November 2009 and came into operation on 21 December 2009.

4 As set out in section 10 of the Act and summarized in recitals (11) and (33) of the NAMA Decision

5 See recital (33) of the NAMA Decision.

6 The Act grants NAMA specific post-acquisition powers aimed at making NAMA's access to the underlying real estate security (both physically and legally) easier and at allowing it to have close control over the process of realisation of such security in order to maximise recovery value. See in this respect also recitals (125) to (129) of the NAMA Decision.

7 See recital (84) of the NAMA Decision.

8 See recitals (77) and (139) of the NAMA Decision.

Eugene Regan who among others expressed the concern that due to its scale, scope and powers NAMA may distort competition on the Irish real estate market.

(9) The notification by Ireland that resulted in the NAMA Decision included a draft business plan referring to “the expected 10 year lifetime of NAMA” and net present value cash flow projections assuming a “wind-up of NAMA in 2020”.

(10) The Commission subsequently took three separate no-objection decisions[9] on the transfers of tranches of impaired assets to NAMA. In total, NAMA paid EUR 31.8 billion for assets with a total notional value of EUR 74.1 billion[10]. As mentioned in the NAMA Decision[11], the Irish authorities provided the Commission with a commitment to claw back any payment in excess of the real economic value of the assets that became apparent after the review by the Commission of the individual notifications related to the transfer of each tranche of assets.

2.2 Background on NAMA

(11) The 100% publicly controlled NAMA is the parent entity[12] of a group that consists of several legal entities. In particular, NAMA established an investment holding company in 2010[13] – National Asset Management Agency Investment D.A.C. – which is majority-owned by private investors.[14] That investment holding company in turn controls about a dozen operational entities. NAMA may however exercise a veto over decisions taken by that investment holding company and therefore NAMA has effective control of it. Graph 1 summarises the NAMA group structure (see below recital (13)).

(12) In line with NAMA’s purpose, as described in recital (6), the following participating institutions transferred assets by "impaired borrower" exposures to NAMA: (i) Anglo Irish Bank, (ii) Allied Irish Bank, (iii) Bank of Ireland, (iv) Irish National Building Society and (v) Educational Building Society.

(13) NAMA (i.e. the above-mentioned investment holding company) financed the purchase of "impaired borrower" exposures through the issuance of State-guaranteed senior debt securities for 95% of the purchase price (“Senior Debt”) and the issuance of (non-State-guaranteed) subordinated debt securities for 5% (“Subordinated Debt”). The issued securities – both Senior Debt and Subordinated Debt - were directly passed on to the participating financial institutions pro rata to their share in the real economic value of assets transferred to NAMA. The Senior Debt could then be used by the participating financial institutions as collateral for financing from the financial markets, and if necessary, from the European Central Bank ("ECB"), helping to improve the

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9 See footnote 2.

10 The market value of these loans at time of acquisition amounted to only about EUR 26.2 billion.

11 See recital (69) of the NAMA Decision.

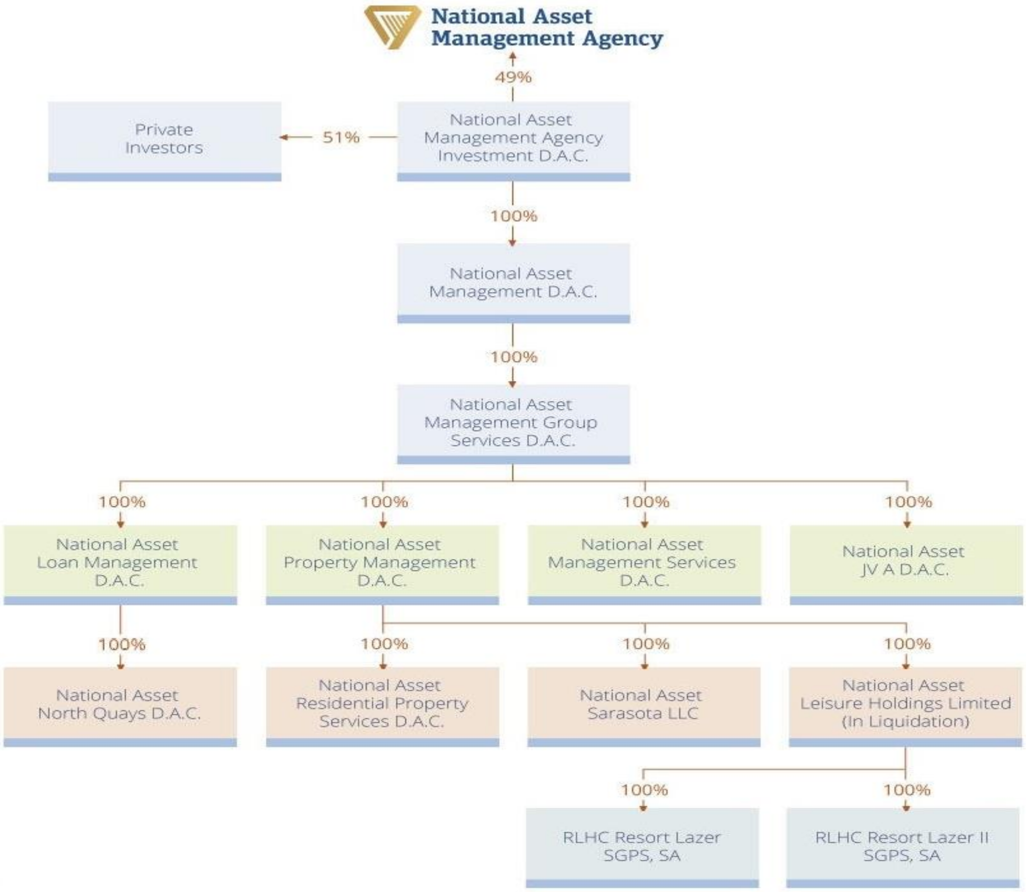
12 The parent entity NAMA is the only entity which is exempted from income tax. It has so far not received any cash flows from its operating entities.

13 NAMA set up special purpose vehicles – majority owned by private companies – to ensure it would be regarded as being outside of the government sector by Eurostat (subject to a number of conditions).

14 Private companies own 51% of its shares (EUR 51 million of ordinary B shares) and the remaining 49% (EUR 49 million of ordinary A shares) are owned by NAMA.

liquidity position of those banks. The overall remuneration for the State was included in the discount rate used to calculate the real economic value of the transferred assets and there was no additional guarantee fee to be paid to the State.[15] As mentioned in the NAMA Decision[16], NAMA or a NAMA group entity have also been allowed under the Act[17] to borrow sums (in addition to the maximum funds raised for the purchase of the assets) as are required for the performance of its functions up to EUR 5 billion[18]. However, NAMA has in practice not availed itself of the possibility to borrow additional funds.

Graph 1: NAMA group structure[19]



(14) The Senior Debt in the amount of EUR 30.2 billion, originally scheduled to be repaid by 2020, has been fully repaid since October 2017. As at 31 December 2018, EUR 529 million of the Subordinated Debt in the original amount of EUR 1.6 billion have already been redeemed by NAMA, ahead of the first call date in March 2020.[20]

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15 See recitals (71) and (99)-(103) of the NAMA Decision.

16 See recital (40) of the NAMA Decision.

17 See section 50 of the Act.

18 For example to complete unfinished developments if deemed profitable.

19 See NAMA website: https://www.nama.ie/about-us/group-structure/

20 See NAMA Annual Report & Financial Statements 2018: https://www.nama.ie/uploads/documents/NAMA-Annual-Report-and-Financial-Statments-2018-English.pdf

(15) Since its inception, NAMA has worked towards managing its portfolio in a way to reduce its size and to dispose of the loans held in its portfolio by the end of 2020 in a value maximising manner. At the end of December 2018, the value of NAMA's loan portfolio amounted to EUR 1.9 billion, down from the acquisition value of EUR 31.8 billion. Table 1 shows the evolution of the year-end loan portfolio value held by NAMA.[21]

Table 1: Evolution of year-end loan portfolio value held by NAMA

	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Year-end loan portfolio value (in billion EUR)	28.0	25.6	22.8	19.6	13.4	7.8	3.9	3.2	1.9

(16) In 2018 the NAMA Board conducted a portfolio review that identified a portfolio of potential residual loans with a projected carrying value of circa EUR 300 million (approximately 1% of originally acquired assets, "Residual Loans") that would likely remain unresolved at the end of 2021.

(17) These Residual Loans are comprised of two categories:

(a) A number of loans that are unlikely to be resolved by 2021 due to on-going litigation. The NAMA Board has estimated that this category could represent about EUR 250 million (83%) of the Residual Loans.

(b) A small number of loan exposures that are secured on sites that have significant value up-lift due to the potential of being re-zoned for development over time. The NAMA Board has therefore identified a small portfolio of connections and sites which, in their view, will not achieve peak value by 2021 and, in relation to which, NAMA's section 10 objective can only be fulfilled over a horizon beyond that date. The carrying value of these exposures at end 2021 is currently estimated at about EUR 58 million.

(18) Concerning the special powers granted to NAMA, the Irish authorities committed to send yearly reports on NAMA's use of these powers. In the most recent report to the Commission (for the calendar year ending 31 December 2018) the Irish authorities noted that "*to date, none of the following powers have been exercised by NAMA: (i) the vesting order power; (ii) the compulsory purchase of land power; (iii) the power to amend contract terms; (iv) the power for the removal of limitations on the right of transfer of assets; (v) the power to request information from the Revenue Commissioners; or (vi) the power to assert section 228(2)* [of the Act] *as a defence to any claim that might be brought against NAMA*".

2.3 Extension of dissolution period of NAMA and the updated commitment list

(19) NAMA would continue to manage its wind-down and work out its residual loans for a limited period beyond 2021 with a view to the dissolution of NAMA before

[21] Ibid.

the end of December 2025 at the latest. NAMA would report to the Minister for Finance before the end of 2021 setting out in detail its proposals and a detailed plan for the dissolution of NAMA within this timeframe.

(20) The Irish Authorities are also proposing to make a number of commitments ("Commitments") in relation to its powers and activities in the period beyond 2021. These Commitments are:

(a) There will be no alteration or expansion of NAMA's mandate. NAMA commits to disposing its residual residential loans before the end of December 2025 and it is intended that NAMA will be dissolved by that date subject to outstanding litigation.

(b) The Irish authorities will not introduce any changes to the NAMA Act 2009 which requires NAMA to act commercially and deal expeditiously with the remaining assets while protecting or otherwise enhancing the value of those assets in the interests of the State.

(c) NAMA will not provide new development funding for its remaining assets for the period beyond end December 2021. Funding is envisaged to continue to be provided for asset management work (including infrastructural works designed to enhance site values) and to fund the process of securing appropriate planning approvals for sites securing the residual residential loans. Such funding will continue to be provided on a commercial basis and terms will be market conform.

(d) NAMA will continue to act as a Market Economy Operator with regard to the management and disposal of its post-2021 residual portfolio.

(e) The Irish Authorities will continue to submit yearly reports on the use of certain powers under the NAMA Act 2009 to the EU Commission and the Competition and Consumer Protection Commission, as provided for in paragraph 74(vii) of the 2010 Decision.

(f) Every year from 2021 until NAMA's dissolution, the Irish Authorities will submit an annual report to the EU Commission providing an update on the progress that NAMA has made towards deleveraging its residual portfolio.

(g) NAMA and the Irish Authorities agree not to issue any additional State guaranteed NAMA bonds.

3. POSITION OF IRELAND

(21) The Irish Authorities state in their notification that it was estimated at the time of the NAMA Decision (as well as the notification leading to said Decision) that NAMA would wind down its loan portfolio over an approximate ten-year period. Estimates of an end date were included in the draft business plan for NAMA and other material that was submitted as supporting documentation to the notification at that time.

(22) The Irish authorities consider that the extension of the dissolution of NAMA does not constitute a new provision of State aid. Considering that no specific termination date for NAMA was put forward, the Irish Authorities consider that a delay is allowable under the parameters of the NAMA Decision. If the extension of NAMA's lifespan would be considered to be new aid, the Irish authorities consider that the NAMA Scheme would continue to be compatible with the internal market. This would be on the basis of the same consideration that led to the Commission's approval in the NAMA Decision (including the necessity to complete the remedy of a serious disturbance in the Irish economy) and the need to properly resolve the business of NAMA in line with its statutory obligations. The Irish authorities further state that the delay in the eventual dissolution of NAMA will not alter or expand NAMA's mandate during the extension of its lifespan. NAMA will purchase no new assets from participating financial institutions during the proposed extension of the lifespan. During this period, NAMA will continue to wind down and dispose of its existing portfolio of assets in an orderly and commercial manner.

(23) Taking into account the operational, legal and financial impacts of the potential alternative options available and the scale of the Residual Loans, the Irish authorities consider that a limited delay to the wind down of NAMA is the best option to obtain the best achievable financial return for the State[22]. Therefore, NAMA should continue to work out its Residual Loans for a limited period beyond 2021.

(24) Concerning NAMA's mandate and special powers the Irish authorities identify three measures in particular that were granted to NAMA through the Act and approved as such by the NAMA Decision:

(a) the State guarantee on the Senior Debt;

(b) the granting of certain tax exemptions to NAMA; and

(c) the extraordinary powers granted to NAMA by the Act.

(25) As regards the State guarantee on Senior Debt, Ireland extinguished its contingent liability in NAMA when NAMA repaid the last of its guaranteed Senior Debt. NAMA's future operating expenses, including those arising during the proposed extension period, will be financed by its retained earnings and the sale of its remaining assets. Additionally, NAMA expects to return a surplus of EUR 4 billion to the exchequer in the coming years after having paid off in 2020 its remaining financial obligations. Therefore, there is no intention nor need to issue any further State guaranteed bonds to fund NAMA before the 2025 planned wind-down date.

(26) As regards the tax exemptions, the Irish authorities state that the exemption from stamp duty will not be relevant to the work of NAMA during the proposed extension, as NAMA has already received all eligible assets, whose transfer was

[22] The Irish authorities considered a number of options to deal with the Residual Loans. These options included the possible transfer of the Residual Loans to another State entity, the establishment of an alternative vehicle within the State to manage these loans, an accelerated sale of the Residual Loans or the possible extension of NAMA's lifespan to complete this residual work.

approved by the Commission in three separate decisions[23]. No further asset transfers to NAMA will occur. NAMA is liable for any other applicable stamp duty that does not concern the transfer of eligible assets. Furthermore, only the 100% publicly controlled parent entity is exempt from other taxes. All the other group entities are taxable in Ireland.

(27) As regards the special powers, the Irish authorities state that a number of these are beyond those available to market operators dealing on the Irish real estate market. In line with the NAMA Decision, the Irish authorities have submitted reports on the use of the powers in order to ensure that no market distortions were occurring as a result. During the proposed extension period, NAMA will continue to submit these reports to the relevant authorities and there will be no amendment to, or expansion of, these powers as contained in the Act.

(28) The Irish authorities consider that the commitments in relation to its powers and activities in the period beyond 2021 are designed to provide further assurance that NAMA will continue not having a distortive effect on the market during this time.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid

(29) According to Article 107(1) TFEU any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States, is prohibited.

(30) The qualification of a measure as State aid within the meaning of that provision therefore requires the following cumulative conditions to be met:

(i.) the measure must be imputable to the State and financed through State resources;

(ii.) it must confer an advantage on an undertaking;

(iii.) that advantage must be selective; and

(iv.) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

(31) As described in recital (24), the Irish authorities highlighted three aid measures that were granted to NAMA through the Act. In particular, this includes:

(a) the State guarantee on the Senior Debt;

(b) the granting of certain tax exemptions to NAMA; and

(c) the extraordinary powers granted to NAMA by the Act.

(32) The Commission will therefore assess the three specific aid measures highlighted above, as well as the effect of the continued existence of NAMA (even with

[23] See footnote 2.

limited scope), an entity which was created by State aid authorised in 2010 by the NAMA Decision and which could be involved in economic activities. The extension of NAMA's lifespan also delays accordingly the final disbursement of the share capital injection and the surplus to the Irish State.

(33) In particular, NAMA winds down its remaining assets and provides financing for asset management work (including infrastructural works designed to enhance site values) as well as to fund the process of securing appropriate planning approvals for sites securing the residual residential loans. These activities are economic in nature.

(34) Since NAMA has repaid all of its Senior Debt, the State guarantee[24] on these liabilities has expired. However, the theoretical possibility continues to exist that NAMA is able to make use of the option to borrow additional funds up to EUR 5 billion, with or without the guarantee of the Minister. In addition, the State has injected EUR 49 million of share capital when establishing NAMA in 2010[25] and NAMA will only partially disburse the accrued surplus by the end of 2021 and will disburse the injected capital and any potentially remaining surplus once it is liquidated. As explained in recital (27), the Irish authorities state that certain powers are beyond those available to market operators dealing on the Irish real estate market and are only available to NAMA. All these measures are granted to NAMA by virtue of the Act. The Commission considers that these measures, as well as the continued existence of NAMA, entail the use of State resources[26] and are imputable to the State.

(35) The measures help NAMA to perform the wind-down of its portfolio in a more efficient and value maximising manner. The Commission therefore concludes that the measures constitute an advantage, which is selective in nature as it is only granted to NAMA.

(36) When State aid strengthens the competitive position of an undertaking compared to other undertakings competing on the internal market, the latter are affected by that aid. NAMA manages down a portfolio and when doing so, it is in competition with other actors in that market. Therefore, it potentially distorts the competition and affects trade between Member States.

(37) In conclusion, the above measures meet all cumulative State aid criteria and therefore constitute State aid within the meaning of Article 107(1) TFEU.

4.2. New aid versus existing aid

(38) Aid measures are categorised as "existing" or "new" aid. This determines the applicable procedure. Pursuant to Article 1(b)(ii) of the Council Regulation

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[24] On which the remuneration NAMA had to pay was below market conditions when it was uncertain that any remuneration or surplus would be generated from the shares.

[25] See footnote 14.

[26] Notably the State guarantees on the Senior Debt and the capital injection into NAMA. The Commission notes that, to constitute State resources, a positive transfer of funds does not have to occur; foregoing State revenue is sufficient. In this case, the extension of the dissolution of NAMA results in the Irish State extending the final repayment of the capital injection and surplus in NAMA, which would otherwise have been paid fully to the State by the end of 2021.

2015/1589[27] ("the 2015 Procedural Regulation"), the notion of existing aid includes "*authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council*". Therefore, in the present case, to the extent that measures have already been authorised by the NAMA Decision, they constitute existing aid, which may be lawfully implemented, in accordance with Article 108(1) TFEU, so long as the Commission has made no finding of incompatibility.

(39) However, Article 108(3) TFEU provides that plans to grant or alter existing aid must be notified, in due time, to the Commission and may not be implemented until the procedure has led to a final decision.[28] In line with case-law[29], the Commission considers that amending (i.e. prolonging) the duration of aid that has an expiry date is sufficient to make it a new aid irrespective of whether or not other characteristics of the measure are changed.

(40) According to case-law, the scope of the NAMA Decision is determined not only by reference to the actual wording of that decision, but also by taking account of the aid measures notified by the Member State concerned.[30] As mentioned in recital (9), the notification in 2009 included a business plan and cash flow projections that did not go beyond 2020. Therefore, the notification of Ireland gives rise to the presumption of a lifespan of NAMA, which was limited to the end of 2020 (or at most the end of 2021 when also taking into account necessary works linked to its dissolution).

(41) Based on the information provided in the notification for the NAMA Decision and taking into account the position of the Irish authorities explained in recital (21), the Commission considers that the lifespan of NAMA, which is covered by the NAMA Decision, is limited to the period ending 31 December 2021 at the latest.

(42) The Commission notes that pursuant to Article 1(c) of the 2015 Procedural Regulation, the notion of new aid includes *"alterations to existing aid"*. Furthermore, as confirmed by the Union Courts,[31] amending (i.e. prolonging) the duration of aid that has an expiry date is sufficient to make it a new aid irrespective of whether or not other characteristics of the measure are changed.

(43) Given that the measures approved in the NAMA Decision remain unaltered for the period up to 31 December 2021, the notified prolongation until 2025 is an alteration that is severable from the authorisation of those measures up to 2021. Therefore, the subject-matter of the present decision is solely the assessment of the compatibility of the notified prolongation of the measures from 1 January

[27] Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.09.2015, p. 9.

[28] Case C-590/14 P *DEI and Commission v Alouminion tis Ellados*, ECLI:EU:C:2016:797, para. 45.

[29] Joined Cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Álava - Diputación Foral de Álava and others v Commission*, ECLI:EU:T:2002:59, para. 175.

[30] Case C-537/08 P *Kahla Thüringen Porzellan v Commission*, ECLI:EU:C:2010:769, para. 44.

[31] Joined Cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Álava - Diputación Foral de Álava and others v Commission*, ECLI:EU:T:2002:59, para. 175.

2022 to 31 December 2025. By contrast, the authorisation of the measures until 31 December 2021 continues to be based on the NAMA Decision of 2010.[32]

(44) Lastly, the Commission observes that it concluded in the NAMA Decision[33] that the participating credit institutions (i.e. Anglo Irish Bank, Allied Irish Bank, Bank of Ireland, Irish National Building Society and Educational Building Society) would receive State aid through NAMA. For completeness, the Commission recalls that this aid was declared compatible in the individual restructuring State aid decisions of the participating credit institutions. The extension of the lifespan does not involve the transfer of new assets by those participating credit institutions to NAMA: the extension of the dissolution of NAMA thus does not involve any additional aid to those participating credit institutions.

(45) The Commission therefore will assess the compatibility of the aid to NAMA which will be in place from 1 January 2022 to 31 December 2025.

4.3. Compatibility

4.3.1. Legal basis

(46) Aid can be declared compatible with the internal market by the Commission on the basis of Article 107(3)(b) TFEU, if it is intended *"to remedy a serious disturbance in the economy of a Member State"*. The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. This has been successively detailed and developed in the six Crisis Communications[34]. The Commission confirmed that view by adopting the 2013 Banking Communication[35].

(47) The Commission concluded in the NAMA decision that the introduction of NAMA constituted State aid which fulfilled the requirements of Article 107(3)(b)

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[32] The Commission could have put in question the compatibility of the measures authorised by the NAMA Decision until 2021 only under the procedure for existing aid provided for in Article 108(1) TFEU. The Commission has no reason to initiate such procedure.

[33] See recitals (80)-(84) of the NAMA Decision.

[34] Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("2008 Banking Communication"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("Recapitalisation Communication"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the Treatment of Impaired Assets in the Community Banking sector, OJ C 72, 26.03.2009, pages 1-22 ("the Impaired Assets Communication"); Communication from the Commission "The return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules" OJ C195, 19.8.2009, p. 9 ("the Restructuring Communication"); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("2010 Prolongation Communication"), OJ C 329, 7.12.2010, p. 7; Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis ("2011 Prolongation Communication), OJ C 356, 6.12.2011, p. 7.

[35] Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ("*2013 Banking Communication*") OJ C 216, 30.07.2013, p.1

TFEU. The Commission considers the application of Article 107(3)(b) is still appropriate for the period beyond end-2021, since NAMA continues to fulfil the role for which it was originally created as outlined in recitals (6) to (8). The only change is the extension of its lifespan with a limited scope from the originally envisaged date of end-2021 to end-2025 at the latest, in order to fully complete the remedy of a serious disturbance in the Irish economy and to obtain the best achievable financial return for the State in line with the *rationale* of the NAMA Decision and the Act.

(48) Since the extension of the lifespan of NAMA does not result in additional aid to the participating credit institutions, the Commission will not base its assessment on the six crisis communications and the 2013 Banking Communication. The Commission will assess the measures directly under Article 107(3)(b) TFEU following the common State aid assessment principles.

4.3.2. Compatibility assessment

(49) For aid to be compatible with the internal market, it must comply with the general principles for compatibility under Article 107(3) TFEU, viewed in the light of the general objectives of the Treaty. In the NAMA decision, the Commission already concluded that the set-up of the NAMA scheme fulfilled the requirements of Article 107(3)(b) TFEU. The Commission notes that no new measures are granted to NAMA, but the measures are extended for some period of time. Therefore, the Commission will assess whether the additional aid granted through this extension alters the analysis of the NAMA decision. In particular, the Commission will analyse whether the extensions of the measures are necessary; proportionate; appropriate; and avoid undue negative effects on competition and trade between Member States.

(50) As regards the necessity of the aid, the Commission recognised in the NAMA Decision that the post-acquisition special powers granted to NAMA by the Act are justified in the context of the objectives of the measure while also stressing the necessary supervision of such powers. In line with this view, the Irish authorities committed to providing the yearly reports mentioned in recital (18), which show that none of the powers deemed to be more likely to distort competition have been used up to the end of 2018. The Commission considers that the conclusions of the NAMA Decision concerning the special powers still hold and considers them necessary for the period beyond end-2021. In particular, the Commission recalls that the powers were assessed in the NAMA Decision as a tool to support NAMA in achieving the maximum recovery value for the assets while at the same time their use was subject to commitments.[36] Also the equity provided by the State and the surplus generated so far allow NAMA to wind down its Residual Loans in an orderly manner to obtain the best achievable financial return for the State. Therefore, the Commission concludes that the extension of these measures beyond 2021 is necessary to fulfil NAMA's objectives as already included in the Act and approved in the NAMA Decision.

(51) As regards the proportionality of the aid to NAMA, the Commission notes firstly that the Residual Loans comprise only around 1% of the originally acquired

[36] The commitments include the consultation of the Commission prior to any potential use for certain powers and refraining from using others altogether. See recital (127) of the NAMA Decision.

assets. Secondly, the extension is of a limited duration (i.e. until end-2025) to help fulfil NAMA's objectives and obtain the best achievable financial return for the State. In particular, the limited extension allows NAMA to avoid having to agree on inadequate settlement terms concerning the residual litigation loans and benefit from a value uplift of certain loans where re-zoning for development is expected to occur after end-2021. The length of the extension period is mostly driven by the Residual Loans subject to on-going litigation which require further time to be resolved. Thirdly, the Irish authorities committed among other things that NAMA will:

(a) not issue any further State guaranteed bonds;

(b) act in a market conform way;

(c) grant funding beyond 2021 only for asset management works.

Those commitments all ensure that the aid to NAMA is limited to the minimum necessary to achieve the best financial return to the State. Therefore, the Commission considers that the extension of the measures beyond 2021 is proportional.

(52) As regards the appropriateness of the measures, the Commission notes that the current decision extends part of the measures that were authorised in the NAMA decision, which were appropriate to remedy the disturbance of the Irish economy. The Commission notes that the current extension allows NAMA to wind down its Residual Loans in an orderly manner to achieve the objective of the best possible financial return to the State (as put forward in the Act). Although the disturbance of the Irish economy occurred in 2010, the credibility of Ireland's intervention via NAMA, in order to remedy that disturbance, relies on the full execution of an orderly wind-down of NAMA's assets. In view of the above, the Commission therefore considers that the measure is appropriate.

(53) Concerning the distortions of competition which could result from the scale of the scheme relative to the Irish real estate market[37] as well as from the powers granted to NAMA, the Commission notes that the Residual Loans comprise only 1% of the loans that were transferred to NAMA and that the Irish authorities committed to not acquire any new assets. In addition, the Irish authorities included specific commitments to restrict any financing to asset management work, which would be provided on market terms. Finally, the Commission also relies on the commitment from the Irish authorities to limit the use of the potentially distortive special powers described and to provide yearly reports on the use of these special powers. The Commission considers that any continued distortion of competition from NAMA's management of the Residual Loans is minimised by the Commitments.

(54) On the basis of the above, the Commission finds the aid to be necessary, proportionate, appropriate and to avoid undue negative effects on competition to remedy a serious disturbance of the Irish economy. Therefore, the Commission concludes that the notified measure is compatible with Article 107(3)(b) TFEU.

[37] See recital (139) of the NAMA decision.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the new aid on the grounds that it is compatible with the internal market pursuant to Article 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 Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION