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**Subject: State aid SA.43564 (2016/N) – United Kingdom  
Scottish Green Bus Fund**

Sir,

## 1. PROCEDURE

- (1) Following pre-notification contacts, on 16 June 2016, the United Kingdom of Great Britain and Northern Ireland ("the UK") notified the Scottish Green Bus Fund ("SGBF") aid scheme, which was initially approved as compatible aid by the Commission decision dated 19 November 2009 in case N 517/2009<sup>1</sup>. The scheme has subsequently been modified five times by the UK. Commission approval has been obtained for each modification, most recently by decision of 24 March 2014 (SA.37527 (2014/N))<sup>2</sup>. Clarifications were submitted on 26 January 2016, 15 March 2016 and 23 May 2016 in response to Commission's requests.

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<sup>1</sup> OJ C 136, 16.6.2009, p.3-12 – State Aid N 517/2009.

<sup>2</sup> OJ C 120, 23.4.2014, p. 1–15 – State Aid no. SA.37527 (2014/N)

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- (2) The notified measure is applicable only in Scotland.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Background

- (3) The Scottish authorities seek to significantly reduce greenhouse gases (GHG) emissions from road transport by 2050. Although in Scotland buses account for a relatively small proportion of transport's overall GHG emissions, the Scottish authorities intend to maintain the bus industry's incentives to reduce emissions in this sector. Despite their potential fuel savings, the high upfront capital cost made bus companies reluctant to purchase low carbon buses which are more expensive<sup>3</sup> than comparable standard diesel buses. The main purpose of the Scottish Green Bus Fund is to support and hasten the introduction of low carbon buses across Scotland by shifting the bus market towards low carbon buses. In addition to the previous rounds already approved by the Commission (see point (1)), the Scottish authorities have announced another round of funding amounting to £3m to support the purchase of approximately 55 new low carbon buses in Scotland (SGBF)<sup>4</sup>. SGBF is based on the Green Bus Fund introduced by the UK authorities on 1 July 2009 (N 517/2009)<sup>5</sup> but will operate only in Scotland.

### 2.2. The scheme

#### 2.2.1. National legal basis

- (4) The national legal basis for the scheme is Section 5 of the Science and Technology Act 1965<sup>6</sup>. The scheme will be in place until 31 December 2016.

#### 2.2.2. Main elements of the measure

- (5) The Scottish Green Bus Fund ensures that the support only goes to buses that increase the level of environmental protection in the absence of Union standards.
- (6) To qualify for the Scottish Green Bus Fund (SGBF) any vehicles included in the application to the scheme must satisfy the definition of a Low Carbon Bus (LCB) which was defined by the Department for Transport:
- ensure that the vehicles are EURO VI compliant and as a minimum produce at least 15% less carbon emissions than an equivalent diesel EURO VI bus.<sup>7</sup>

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<sup>3</sup> Low carbon buses can be over £100,000 more expensive.

<sup>4</sup> Each low carbon bus is expected to result in around 21 tonnes less CO<sub>2</sub> per year than a standard diesel bus, for a total of 1,155 tonne reduction in CO<sub>2</sub> each year.

<sup>5</sup> To date, the Green Bus Fund has helped with the purchase of 269 low carbon buses.

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1965/4>

<sup>7</sup> Euro VI emission standards are: CO g/kWh 1.5, HC g/kWh 0.13, NO<sub>x</sub> g/kWh 0.4 and PM g/kWh 0.01. No standard is provided for CO<sub>2</sub> emissions as far as buses are concerned.

- (7) The SGBF operates as a challenge fund where applications from operators for low carbon buses are assessed against objective and transparent criteria. The measure is technologically neutral in the sense that no specific technology is preferred above another in the assessment process provided that it can achieve the required reduction in terms of GHG emissions.
- (8) The assessment process aims to maximise the number of qualifying vehicles that can be aided from a limited amount of available funding to generate the greatest reduction in greenhouse gas emissions. To ensure that the measure does not provide any one bidder with more funding than is necessary, bidders will be competing for limited funding and priority will be given to bids which require the lowest amount of grant per vehicle, providing the other criteria are met. In addition to the amount of grant sought bids are assessed and ranked, using the following criteria:
- the number of buses which would be purchased and the passenger capacity of each;
  - the environmental performance of each bus to be purchased;
  - the level of the grant required per bus;
  - the extent to which the plans for using the new low carbon buses generate specific environmental benefits, including air quality objectives and any plans to replace older existing buses;
  - details of any additional manufacturer's commitments (e.g. relating to ongoing support towards replacement of batteries and operational performance etc.);
  - a commitment to share with the Scottish authorities the performance data on the fuel efficiency and GHG savings achieved;
  - details of how the new low carbon buses complement and are additional to any existing programmes.
- (9) To further ensure that the grant is not paid to bidders who would have purchased the buses without grant, the Chief Executive or other senior board member of the bidding organisation will be required to confirm in writing that all new low carbon buses purchased under the fund are additional to any existing low carbon bus procurement programmes.
- (10) In the context of the competitive process, the Scottish authorities will only pay the net extra costs of a low carbon bus and bus operators will have to take into account the potential fuel savings and any other operating benefits when submitting a bid so as to maximize their chances to outbid their competitors. They will also take into account any increase in operating costs relating to the maintenance, battery replacement and performance impacts.
- (11) Individual grants to successful bidders will be calculated on the basis of actual figures. Bidders will each be required to provide details of:
- the cost of each new low carbon bus they intend to buy;

- the cost of the equivalent new diesel bus of the same total passenger capacity;
  - the amount of grant sought (which must not be more than the difference between the above costs).
- (12) Bidders will be required to provide written confirmation from the relevant bus manufacturers as to the costs of the bus they intend to buy and its diesel equivalent. These must reflect the actual price at which the manufacturer intends to sell the specified number of low carbon buses to the bidder, and the actual price at which it would sell the same number of diesel equivalents (i.e. both costs must include any discounts offered).

### 2.2.3. *Beneficiaries*

- (13) Under the fund, bus operators, local authorities, regional transport partnerships ("RTPs") and companies leasing buses to these groups in Scotland will compete for capital funding to support the purchase of new low carbon buses. The majority of the funding will be paid to operators of bus services in Scotland. The fund is available on a non-discriminatory basis to all operators who wish to apply. This includes operators from other EU Member States who run a bus service in Scotland.
- (14) The closing date for receipt of applications was 11 December 2015. No bidder would need to enter into any agreements with bus manufacturers in advance of the outcome of the application to the Commission. The UK authorities will not assess any bid, nor pay out any aid in advance of receiving the Commission's approval.

### 2.2.4. *Eligible costs and maximum funding*

- (15) The eligible costs are calculated as the additional costs of a low carbon bus compared to a new standard diesel bus. Therefore, in accordance with paragraphs 72 and 73 of the Guidelines on State aid for environmental protection and energy 2014-2020 (hereinafter EEAG)<sup>8</sup>, the eligible costs consists of the additional investment costs necessary to achieve a higher level of environmental protection than the undertaking would achieve in the absence of any environmental aid.
- (16) The UK claims that in the absence of this grant it is unlikely that a bus operator will invest in a low carbon bus given the relatively high upfront capital costs. The current cost of a low carbon bus is estimated to be between around £250,000 for a single decker to around £330,000 for a double decker<sup>9</sup>. The average cost of a low carbon bus is at least £100,000 more than comparable standard diesel buses<sup>10</sup>. However, there are also additional operating costs relating to the need for enhanced maintenance and the regular replacement of batteries.
- (17) The actual aid intensity sought by bidders will be the minimum necessary to achieve the environmental gain, given that bidders will be competing against each other within

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<sup>8</sup> OJ C 200 of 28.06.2014.

<sup>9</sup> This will, of course, vary for different manufacturers and does not take into account any savings for bulk purchases

<sup>10</sup> SGBF applicants are required to provide a signed quote from a bus manufacturer detailing the cost of the bus they wish to purchase under the SGBF along with the cost of the equivalent standard diesel bus.

limited budget. The UK authorities have designed the Scottish Green Bus Fund competition to be fully compliant with the conditions of Paragraph 80 of the EEAG and they seek agreement to pay grants up to 80% of the eligible investment costs.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Existence of aid**

- (18) A measure constitutes State aid in the meaning of Article 107 (1) TFEU if it is "*granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods [...] in so far as it affects trade between Member States.*"
- (19) Therefore, in order to determine whether the scheme at stake contains a State aid element within the meaning of Article 107(1) of the EC Treaty, it must be established whether a) the measure confers a selective economic advantage to the undertakings concerned, b) this advantage has been financed through State resources, c) this advantage distorts or threatens to distort competition and, finally, d) the measure affects trade between Member States.
- (20) The Commission considers that the notified SGBF scheme allows bus operators to be relieved, by means of State resources, of a part of the costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens the position of these enterprises in relation to their competitors in the Community and therefore, it confers a selective advantage, which has potentially distorting effects on competition. In view of the fact that the scheme concerns a sector where undertakings from any Member State can operate, the aid is likely to affect trade between Member States.
- (21) In view of the above, the Commission considers that the notified measure constitutes State aid within the meaning of Article 107(1) of the TEU.

#### **3.2. Lawfulness of the aid**

- (22) By notifying the scheme before the start of its implementation, the UK authorities have fulfilled their obligation according to Article 108(3) of the TFEU.

#### **3.3. Compatibility of the aid**

- (23) The Commission notes that the notified measure is covered by point 18(a) of the EEAG which concerns aid for projects that increase the level of environmental protection in the absence of Union standards (including aid for the acquisition of new transport vehicles).

- (24) The measure's compatibility in respect of Article 107(3)(c) TFEU must be assessed on the basis of the common assessment principles established in Section 3.2 of the EEAG, namely the point 25(c).
- (25) In particular, according to point 27 of the EEAG the Commission will consider a State aid measure compatible with the internal market if it satisfies each of the following criteria:
- a) contribution to a well-defined objective of common interest;
  - b) need for State intervention;
  - c) appropriateness of the aid measure;
  - d) incentive effect
  - e) proportionality of the aid (aid kept to the minimum);
  - f) avoidance of undue negative effects on competition and trade between Member States;
  - g) transparency of aid.

*3.3.1. Contribution to a well-defined objective of common interest*

- (26) According to the EEAG, the general objective of environmental aid is to increase the level of environmental protection compared to the level that would be achieved in the absence of the aid.
- (27) The Europe 2020<sup>11</sup> strategy focuses on creating the conditions for smart, sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy. To that end, a number of headline targets have been set, including targets for climate change and energy sustainability: (i) a 20 % reduction in Union greenhouse gas emissions when compared to 1990 levels; (ii) raising the share of Union energy consumption produced from renewable resources to 20 %; and (iii) a 20 % improvement in the EU's energy-efficiency compared to 1990 levels. The first two of these nationally binding targets were implemented by 'The climate and energy package'<sup>12</sup>.
- (28) The replacement of existing technologies has proven very time-consuming, as new technologies that do not use fossil fuels are not fully competitive with conventional technologies, and the technologies also have a long useful life. This measure therefore serves to promote this technology shift in the transport sector by, among other things, knowledge-building and collecting specific experiences that are necessary for achieving the objective of common interest of reducing greenhouse gases, including those from the transport sector.
- (29) The Commission considers that the implementation of the notified scheme will have the benefit of reducing the emissions from buses and support the EU's long term climate goals of reducing CO2 emissions. It will also help the UK to meet their 2020 10% target for

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<sup>11</sup> COM(2010) 2020 final of 3.3.2010.

<sup>12</sup> Decision No 406/2009/EC of 23 April 2009 (OJ L 140,5.6.2009, p. 136) and Directive 2009/28/EC of 23 April 2009 (OJ L 140, 5.6.2009, p. 16).(3).

energy from renewable sources in transport set by the Renewables Directive<sup>13</sup> on the promotion of the use of energy from renewable sources.

- (30) In the present case, the aid scheme is aimed at supporting the purchase of low carbon buses that are capable of achieving at least a 15% reduction in CO<sub>2</sub> of an equivalent diesel EURO VI bus. In line with section 3 par.(25)(c) of the EEAG, the scheme grants aid for the acquisition of new transport vehicles which increase the level of environmental protection in absence of applicable Community standards for CO<sub>2</sub> and therefore it contributes to a well-defined objective of common interest.

### 3.3.2. *Need for State intervention*

- (31) According to the EEAG, State aid measures must be targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver contributing to an increased level of environmental protection.
- (32) The UK authorities submitted evidence showing that in spite of the potential fuel savings, the low carbon buses can be considerably more expensive than comparable diesel buses<sup>14</sup>. Based on data provided concerning the implementation of the five rounds of the scheme approved by the Commission in 2009<sup>15</sup> (see point 1), a shift started towards the purchase of low carbon buses, but they were not sufficiently successful in creating a large enough market for these buses which would lead in turn to manufacturers reducing the price of the vehicles to a level where the operators of bus services would readily buy them as an affordable alternative to buses using less environmentally sustainable technologies.
- (33) Therefore further state intervention is needed before they can achieve the step change that is needed for the more widespread use of these buses. The nature of the bus market means that large government intervention is required to minimise the large cost difference between sustainable technology and new diesel vehicles.

### 3.3.3. *Appropriateness of the aid measure*

- (34) The Commission notes that aid is awarded as a direct grant. The Commission understands that such a policy path suits better and will eventually achieve a more appropriate outcome by contributing to a more informed decision-making basis for a broader measure.
- (35) The Commission also notes that aid in the form of direct grant aid will, on one hand, contribute to achieving the policy outcome and, on the other hand, will produce the fewest possible distortions of trade and competition because 1) the measure is temporary, 2) the aid is awarded on the basis of transparent and objective criteria that preclude discrimination in respect of bus manufacturers, and 3) the measure limits the public intervention to the minimum necessary as the aid is awarded on a tender basis.
- (36) The Commission considers that the type of aid chosen is coherent with the market failure that the SGBF aid scheme aims to address.

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<sup>13</sup> Directive 2009/28/EC of 23 April 2009 (OJ L 140, 5.6.2009, p. 16–62)

<sup>14</sup> For example a single decker hybrid costs on average GBP215,000 whereas its diesel equivalent costs GBP123,000.

<sup>15</sup> <http://www.lowcvp.org.uk/initiatives/leb/Publications.htm>

### 3.3.4. *Incentive effect*

- (37) According to point 49 of the EEAG an incentive effect occurs when the aid induces the beneficiary to change its behaviour to increase the level of environmental protection and does not subsidise the costs of an activity that an undertaking would anyhow incur. The measure at hand aims to support the acquisition of low carbon buses in order to increase the level of environmental protection in the absence of Union standards. Such investments are not mandatory and the investor would not undertake them without the aid.
- (38) Firstly, the price of a low carbon bus is considerably higher than the price of a traditional bus (see point 16). Therefore, in the absence of aid it is unlikely that a bus operator will invest in a low carbon bus given the relatively high upfront capital costs. Furthermore, there are also additional operating costs relating to the need for enhanced maintenance and regular replacement of batteries, as well as uncertainties with respect to the possibility for potential fuel savings to offset higher purchasing costs.
- (39) Secondly, the Scottish Government requires purchasers to submit performance returns for low carbon buses along with a counterfactual reporting the overall fleet performance compared to the performance of any new diesel bus purchased at the same time. According to the UK authorities, the stakeholders made clear that the measures enable a sound business case regarding the investment in low carbon buses and it is necessary in order for buses operators to shift away from traditional diesel buses.
- (40) Thirdly, the Commission notes that under the scheme aid is awarded on the basis of a competitive tendering process and fulfils the conditions of paragraphs (52) of the EEAG.
- (41) Therefore, the aid scheme has an incentive effect (section 3.2.4 of the EEAG) as the aid will help to incentivise bus operators to replace their buses, with low carbon buses providing for better environmental protection, since in the absence of aid bus operators would only have to comply with Euro VI standards for new buses.

### 3.3.5. *Proportionality of the aid*

#### 3.3.5.1. Eligible costs

- (42) Point 72 of the EEAG provides that the eligible costs for environmental aid are the extra investment costs in tangible and/or in intangible assets which are directly linked to the achievement of the common objective.
- (43) The Commission notes that in the case at issue the eligible costs stand for the additional costs for purchasing the low carbon bus compared with the reference vehicle - in this case a new diesel bus of the same size and class. Hence, the above mentioned provisions are respected.

#### 3.3.5.2. Maximum aid intensity

- (44) According with the point 80 of the EEAG, "*Where aid to the beneficiary is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, the aid amount may reach 100 % of the eligible costs. Such a bidding process must be non-discriminatory and provide for the participation of a sufficient number of*



*undertakings. In addition, the budget related to the bidding process must be a binding constraint in the sense that not all participants can receive aid. Finally, the aid must be granted on the basis of the initial bid submitted by the bidder, therefore excluding subsequent negotiations."*

- (45) Environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for. Aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid.
- (46) The eligible costs are calculated as the additional costs of a low carbon bus compared to a new standard diesel bus. Therefore, in accordance with paragraphs 72 and 73 of the EEAG, the eligible costs consists of the additional investment costs necessary to achieve a higher level of environmental protection than the undertaking would achieve in the absence of any environmental aid.
- (47) The UK authorities confirmed that the grant will be awarded on the basis of a tender and that objective criteria (i.e. unambiguous, transparent and non-discriminatory) will be used to assess the applications. In light of the above mentioned arguments, it will therefore be possible to grant up to 100 % of the eligible costs under the notified measure. Despite this possibility, the UK authorities have nevertheless decided to cap the maximum support to 80% of the eligible costs.
- (48) Moreover, the bidding document makes clear that the fund wishes to deliver the maximum number of low carbon vehicles for the limited budget of £3m so bidders will be competing against each other for this funding. This ensures that applicants will only bid for the minimum funding they need. In addition, the open competition for low carbon buses ensures that the scheme will be operating in a fair and transparent way, on the basis of objective and technologically neutral criteria and excluding any discrimination between bus manufactures, as well as private bus operators.
- (49) The UK authorities have designed the Scottish Green Bus Fund competition to be fully compliant with the conditions of paragraph 80 and seek agreement to pay grant up to 80% of the eligible investment costs.
- (50) In view of the above the Commission concludes that, in line with paragraph 70 of the EEAG, the safeguards present in the notified scheme mechanism will ensure that the aid will be limited to the minimum needed to meet the environmental protection sought.

#### *3.3.6. Avoidance of undue negative effects on competition and trade*

- (51) The SGBF scheme will be operated in a fair, open and transparent way. As it has been already the case under SGBF's predecessor Green Bus Fund scheme, it will be open to beneficiaries purchasing low carbon buses manufactured throughout the EU and accordingly any distortion on the low carbon buses market is kept to a minimum and do not outweigh the environmental aims of the scheme.
- (52) The Commission thus finds that the State aid scheme in question is compatible with the common market because it leads to increased environmental protection without adversely affecting trading conditions to an extent contrary to the common interest.

### 3.3.7. *Cumulation of aid*

- (53) The Commission notes that Transport Scotland will ask applicants to declare how their project is being funded. If any other public funding is being used then that funding will be cumulated with the proposed SGBF award and we will ensure that the maximum aid intensity approved under the scheme is not exceeded.
- (54) The Commission considers that the SGFB scheme is in compliance with the provisions of paragraph 81 of the EEAG, regarding the cumulation rules. In addition, aid is granted on the condition that the recipient does not receive other state aid, also including de minimis aid, for the same eligible expenses that would cause the maximum aid intensity under the EEAG to be exceeded.

### 3.3.8. *Transparency of aid*

- (55) The Commission considers that the UK authorities comply with their obligations regarding reporting and transparency as they undertook to submit annual reports in accordance with section 6 of the EEAG.
- (56) In view of the above considerations, the Commission considers the conditions set up in the Guidelines on State aid for environmental protection and energy 2014-2020 to be met and the aid compatible with the Article 107 (3) (c) of the TFUE.

## **4. CONCLUSION**

The Commission has accordingly decided:

not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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:

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State Aid Registry  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

*Margrethe VESTAGER*  
*Member of the Commission*

<p><b>CERTIFIED COPY</b> For the Secretary-General,</p> <p><b>Jordi AYET PUIGARNAU</b> Director of the Registry EUROPEAN COMMISSION</p>
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