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PUBLIC VERSION

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**Subject: State Aid SA. 49865 (2017/N) – United Kingdom  
Northern Ireland Renewable Heat Incentive Scheme 2018-19**

Sir,

## **1. PROCEDURE**

- (1) Following pre-notification contacts the United Kingdom (UK) notified the above-mentioned measure to the Commission on 19 December 2017 pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. The approved scheme**

- (2) In June 2012 the Commission approved the renewable heat incentive ('the scheme') scheme in Northern Ireland in Commission Decision *SA.34140 Renewable Heat Incentive (RHI) scheme – Northern Ireland* (the '2012 Decision').<sup>1</sup>
- (3) The scheme aims to incentivise the utilisation of a range of renewable heat technologies (biomass, ground source, biogas production and solar thermal). Support is provided in the form of tariffs (in pence per kWh), which cover the cost difference between heat generated from renewable technologies and heat generated from fossil fuels. The Commission makes reference to recitals (10) to (49) of the 2012 Decision for a detailed description of the scheme.

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<sup>1</sup> OJ C 368, 28.11.2012, p.4.

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- (4) In November 2015 the Northern Ireland authorities amended the scheme for support to new small and medium-sized biomass installations which started operating from that date. Changes included the setting of an annual tiered tariff (a decreased tariff after a set number of operating hours), a cap on the heat produced above which no payments would be made in any given year, and broadening the medium-sized biomass category to include installations from 20-99kW to 20-199 kW.
- (5) In addition, a new category was created for combined heat and power ('CHP') installations using biomass which would previously have been eligible for support under the biomass category. This applied to newly built CHP biomass installations or converted ones from the use of fossil fuels as an input fuel.
- (6) In 2017 the UK notified its intention to extend the November 2015 changes affecting new small and medium-sized biomass installations to all such installations that had entered the scheme before November 2015.
- (7) As the UK authorities explained, these changes were intended to prevent overcompensation and return the scheme to the original target rate of return of 12%.
- (8) In March 2017 the Commission found that the modifications implemented in 2015 and those notified to the Commission in 2017 were compatible with the internal market under Article 107(3)(c) TFEU in its Decision SA.47501 *Northern Ireland Renewable Heat Incentive Scheme 2017-18* (the '2017 Decision'). The Commission makes reference to recitals (4) to (22) of the 2017 Decision for a detailed description of the approved changes.

## **2.2. The notified amendment**

- (9) The latest version of the Renewable Heat Incentive Scheme Regulations (adopted in 2017 and approved by the 2017 decision) expires on 31 March 2018 and therefore a new Regulation is required as from 1 April 2018. As mentioned in recital (35) of the 2017 Decision, the UK authorities had envisaged to introduce further amendments to the scheme by 31 March 2018, and notify such amendments to the Commission in accordance with their obligations under Article 108(3) TFEU.
- (10) Despite their original intention, the UK authorities have not yet designed a new support scheme to support renewable heat production after the expiry of the present scheme. As a result, the UK authorities propose that the 2017 scheme Regulations are extended by one more year until 31 March 2019 to allow for the development of a long-term framework for support.
- (11) The authorities explain that this prolongation is intended to keep expenditure within budget limits, reduce the potential for fraud and abuse, and eliminate the potential for overcompensation. Without this prolongation, the scheme may have to revert back to the un-tiered tariff rates as described in the 2012 decision, which the UK found to provide a risk of overcompensation.
- (12) All remaining conditions of the measure approved by the 2012 decision, as modified and approved by the 2017 decision, will remain unchanged. The UK has

confirmed that commitments provided for in the 2017 Decision are valid in their entirety also for the prolongation of the scheme.

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

#### **3.1. Presence of aid**

- (13) Regarding the presence of State aid, the notified prolongation of the approved measure does not affect the Commission's conclusion in the 2012 decision (recitals 52-54) and the 2017 decision (recitals 40-42). The considerations set out in those decisions therefore continue to apply and the Commission concludes that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.2. Legality of the aid**

- (14) The UK authorities have not put the prolongation of the scheme into effect before a Commission decision has been taken. Thus, the UK has complied with the stand-still obligation set out in Article 108(3) TFEU.

#### **3.3. Compatibility**

- (15) The 2012 RHI scheme was approved on the basis of Article 107(3) TFEU and the *2008 Community Guidelines on State aid for Environmental Protection*<sup>2</sup>. See recitals 56 to 78 of the 2012 decision.
- (16) The modifications made to the scheme in November 2015 and April 2017 were approved on the basis of Article 107(3) TFEU and the *Guidelines on State aid for environmental protection and energy 2014-2020*<sup>3</sup>. See recitals 45 to 65 of the 2017 decision.
- (17) The notified modification does not affect the Commission's conclusions in the 2012 and 2017 decisions that the measure notified is considered compatible with the internal market pursuant to Article 107(3) c) of the TFEU.

#### **3.4. Additional observations**

- (18) Since the United Kingdom notified on 29 March 2017 its intention to leave the European Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council in agreement with the United Kingdom decides to extend this period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, the present decision only applies if (i) the United Kingdom is still a Member State on the first day of the period for which the notified extension is approved, and (ii) to individual aid granted<sup>4</sup> under the scheme until the United Kingdom ceases to be a Member State.

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<sup>2</sup> Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1.

<sup>3</sup> Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

<sup>4</sup> According to the case-law of the CJEU, aid must be considered to be granted at the time that an unconditional right to receive it is conferred on the beneficiary under the applicable national rules (See

#### 4. CONCLUSION

- (19) On the basis of the considerations set out in the 2012 and 2017 decisions, the Commission finds that the notified prolongation is compatible with the internal market pursuant to Article 107 (3) c) TFEU.
- (20) 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 disclosure to third parties and to the publication of the full text of this letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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BELGIUM  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully

*For the Commission  
Margrethe VESTAGER  
Member of the Commission*