

From: [Moore, Stephen \(DfE\)](#)
To: Stephen.Clark-Foulquier@fco.gsi.gov.uk
Cc: Irrelevant information redacted by the RHI Inquiry; [Hughes, Seamus](#); [Wightman, Stuart](#); [Murphy, Shane](#); [Marten, Lucy](#)
Subject: RE: NI Renewable heat Incentive
Date: 21 October 2016 12:29:08
Attachments: [image001.png](#)
[image002.gif](#)

Stephen

Thanks for getting the clarity.

This is certainly not what we were hoping for.

I will advise my colleagues that DG Comp says standstill applies.

But, could you go back to them and say that this could create significant difficulties for us and could even trigger questions for them from MEPs, if they get to hear what the Commission has said.

Could you ask them to review their answer again, so they are absolutely certain.

In particular:

- (1) Can DG Comp clarify what they would accept is a modification of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market?

The point here is that the scheme was closed to new applications last year, will not be re-opened and all we are doing is reducing the tariff so that the rate of return are brought back in line with that originally proposed and agreed.

Arguably this is an administrative change.

I also cannot see how reducing the tariff rates for a closed scheme, to ensure the rate of return is returned to the rate agreed with the Commission, could possibly affect the original evaluation of the compatibility of the aid measure with the common market.

Second, I understand the point about appropriate measures, but I am not sure the Commission's interpretation of para 250 is correct in this case.

- (2) Can DG Comp consider whether the second exemption in paragraph 250 applies in this case?

In relation to para 250, this also provides an exemption from the appropriate measures requirement whenever "a beneficiary has received confirmation from a Member State that it will benefit from State aid under such a scheme for a predetermined period, such aid can be granted under the entire period under the conditions laid down in the scheme at the time of the confirmation."

Arguably this exemption is more applicable in this case and hence no appropriate measures are required and the revision to the tariffs doesn't need to be tested against the 2014 EEAG.

Again, the fundamental point being the tariffs are only being changed to ensure the scheme adheres to the conditions originally agreed with the Commission.

Grateful if you could put these two questions to the Commission ASAP.

Many Thanks

Stephen

Stephen Moore

State Aid Unit
 Department for the Economy
 Netherleigh
 Massey Avenue
 Belfast, BT4 2JP
 Tel: 028 9052 9415 (ext: 29415)
 Mob: Personal information redacted
 TextRelay: 18001 028 9052 9415
 Web: www.economy-ni.gov.uk



NEW - 'State aid: A Beginner's Guide for Public Bodies in Northern Ireland' can now be accessed through the DFE Internet site: <https://www.economy-ni.gov.uk/publications/state-aid-beginners-guide-public-bodies-northern-ireland>



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From: Stephen.Clark-Foulquier@fco.gsi.gov.uk [mailto:Stephen.Clark-Foulquier@fco.gsi.gov.uk]
Sent: 21 October 2016 11:05
To: Stephen.Moore@economy-ni.gsi.gov.uk
Cc: Irrelevant information redacted by the RHI Inquiry
Subject: NI Renewable heat Incentive

Stephen,

A formal response from DG COMP on NI RHI – not what you were looking for I'm afraid:

We finalised the discussion on this matter, and as anticipated, we concluded that the amendments considered for the Northern Ireland RHI scheme are notifiable (they can be seen as tightening of the criteria for granting the aid, which are apparently not covered by the adjustment mechanism approved in the 2012 decision).

Our Procedural Regulation (Council Regulation (EU) 2015/1589) provides guidance on what a notifiable change is. Its article 1(c) it states that any alteration to an existing aid shall be considered as a new aid (i.e. subject to the notification obligation).

Article 4(1) of the Implementing Regulation (Commission Regulation (EC) No 794/2004) clarifies that an alteration to an existing aid is "any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market".

Since any notifiable amendment is considered new aid, the standstill obligation applies to it.

It is true that often tightening of criteria (in particular in the form of reductions of limitations to the aid amount) would be find compatible, but this is a conclusion to be reached based on a proper assessment. It can also happen that tightening of criteria would make a scheme more restrictive, more selective and

perhaps more distortive. In other cases the amendments will need to be assessed based on new rules – which is actually also the case here.

Paragraph 250 of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG) provides as a principle that Member States shall, as necessary, amend their schemes to bring them into line with the EEAG no later than 1 January 2016. Paragraph 250 also contains an exception to that principle for operating aid in support of RES and cogeneration: if the scheme was approved by the Commission, it does not need to be adapted as long as it is not changed. However, if amendments are introduced to scheme approved under the previous Guidelines, then the respective scheme must be brought in line with the EEAG.

As the Northern Ireland RHI was approved based on the previous Guidelines, once amended it will need to be assessed based on the EEAG.

Kind regards,

Stephen Clark-Foulquier | Policy Assistant, Competitiveness & Markets Team | UK Representation to the European Union | Avenue d'Auderghem 10, 1040 Brussels | stephen-clark-foulquier@fco.gsi.gov.uk | Tel: +32 (0)2 287 8269 | GSM: 

From: Moore, Stephen (DfE) [<mailto:Stephen.Moore@economy-ni.gsi.gov.uk>]
Sent: 17 October 2016 15:37
To: Stephen ClarkFoulquier * (Sensitive)
Subject: NI Renewable heat Incentive

Stephen

Re RHI – Thanks. Our Departmental Solicitors Office really do think it would be illogical for the Commission to say standstill applies in this case. I also think that any revision to the Commission’s original decision is more administrative than substantive. The scheme is closed to new applications and the proposed changes to the tariffs are essentially to bring the rate of return back to what was previously agreed with the Commission.

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From: [Wightman, Stuart](#)
To: [Moore, Stephen \(DFE\)](#)
Cc: [Hughes, Seamus](#); [Murphy, Shane](#); [Marten, Lucy](#); [Stewart, Chris \(DFE\)](#); [McCormick, Andrew \(DFE\)](#)
Subject: RE: NI Renewable heat Incentive
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Attachments: [image001.png](#)
[image002.gif](#)

Thanks Stephen

Notifying the Commission at the same time as the consultation starts is something we can consider. My only concern is that we are likely to be consulting on up to three options so our notification will also have to include options otherwise we could be vulnerable to legal challenge.

Thanks for pursuing the point about standstill.

Stuart

Stuart Wightman

Energy Efficiency
Department for the Economy
Netherleigh
Massey Avenue
Belfast, BT4 2JP
Tel: 028 9052 9425 (ext: 29425)
Mob: Personal information redacted
TextRelay: 18001 028 9052 9425
Web: www.economy-ni.gov.uk



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From: Moore, Stephen (DfE)
Sent: 21 October 2016 12:32
To: Wightman, Stuart
Cc: Hughes, Seamus; Murphy, Shane; Marten, Lucy
Subject: RE: NI Renewable heat Incentive

Stuart

How big an issue is standstill?

Given the consultation will take some time, could we not notify at the same time as the consultation starts?

I seem to recall that some of the consultations on the NIRO ran in parallel with the State aid notifications.

Stephen

Stephen Moore

State Aid Unit
Department for the Economy