

**From:** [Moore, Stephen \(DFE\)](#)  
**To:** [McAdams, Jonathan](#)  
**Cc:** [Marten, Lucy](#); [Dukelow, Victor](#); [Murphy, Shane](#); [Murray, Amanda](#)  
**Subject:** Internal Audit Rec - Domestic RHI ESCOs - advice from DFE State aid unit  
**Date:** 24 February 2017 12:51:48  
**Attachments:** [image001.png](#)  
[image002.png](#)

Jonathan

I think we have three options with the ESCOs.

1. Conclude there is no State aid to the ESCOs – on the basis that the nature of the RHI scheme is such that we can reasonably conclude the ESCO provisions in the RHI scheme have a ‘purely local impact’ and that there is therefore no effect on trade between Member States; or
2. The payments being made to the ESCOs are State aid, which needs to be notified to the EC for approval, as it does not fall within the scope of any of the EC’s exemption regulations; or
3. The payments being made to the ESCOs fall within the scope of the EC’s de minimis regulation.

In relation to State aid it is important to understand that State aid is present only when it provides an ‘undertaking’ with an ‘advantage’ that may have an ‘effect on trade’ between Member States.

It is also important to understand that State aid is not present when the beneficiary of the aid is not an ‘undertaking’ (e.g. a general member of the public) or the undertaking is not receiving an ‘advantage’ (e.g. the undertaking is receiving the market rate for a service it is providing) or the measure has ‘no effect’ on trade and competition between member States.

In this case, I am fairly sure the Commission will conclude that an ESCO is an ‘undertaking’.

However, it may be possible to argue that either:

- (a) The ESCO’s are receiving the market rate for the service they are providing; or
- (b) The ESCOs are supplying a service in just Northern Ireland (i.e. a limited area within a Member State) and that the ESCO provision in the RHI scheme is unlikely to assist them attract customers from other Member States; or
- (c) The ESCO provision in the RHI scheme, will have no more than a marginal effect on the conditions of cross-border investments or establishment (i.e. the ESCO provision will not be seen by companies as a reason why they should invest in or relocate to Northern Ireland).

In essence we suggest to the EC that the payments to the ESCOs do not provide them with an ‘advantage’ (i.e. (a)) **and/or** that there is no ‘effect on trade’ between Member States (i.e. (b) or (c)).

An alternative approach is to categorise the aid that the RHI scheme is providing to the ESCOs as ‘de minimis aid’ and to then make all payments to the ESCOs on the basis of the EC’s ‘de minimis’ regulation.

On balance, having weighed up the options, I don’t think option 3 (de minimis) is the best way to resolve this anomaly and propose we informally explore the viability of option 1. With the Commission and be prepared, if required by the Commission, to commit to including the ESCO’s in the next notification we send the Commission for the post 31 March 2018 RHI scheme.

Happy to discuss.

Stephen

#### Stephen Moore

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**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>



**Please consider the environment - do you really need to print this e-mail?**

**From:** McAdams, Jonathan  
**Sent:** 24 February 2017 09:20  
**To:** Moore, Stephen (DFE)  
**Cc:** Marten, Lucy  
**Subject:** FW: Internal Audit Rec - Domestic RHI ESCOs

Stephen,

We had briefly touched on this earlier and you’d asked for some information in relation to ESCO’s in the domestic scheme (the 2% figure). Below is a breakdown by the team that sets out the detail by ESCO and by year, hopefully that provides the info in a way you can interrogate as needed.

Happy to discuss the next steps once you’ve had a chance to consider,

Jonathan

**From:** Hawthorne, Jill  
**Sent:** 23 February 2017 15:49  
**To:** McAdams, Jonathan; Marten, Lucy  
**Cc:** Briggs, Peter; Birnie, Neill  
**Subject:** Internal Audit Rec - Domestic RHI ESCOs

Jonathan/Lucy,

Peter has collated ESCO figures covering the three key points set out in your email.

- How many installations have been provided by ESCO's;
- How many different companies are there and how much has each of these received to date;
- Critically – has any one of these companies received more than €200k (seems unlikely given the scale, but it's an important State Aid threshold).

With regards to the final point, we have presented the information in two parts (i) payments made to-date (column highlighted blue); and (ii) an estimate of total payments to ESCOs over the lifetime of the scheme, which includes upfront payments not yet processed plus estimated annual payments x 7 years (columns highlighted yellow) in £ Sterling and € Euros.

There are few caveats noted below the table.

Hopefully this is helpful – but if you need anything else, please just shout.

Jill

#### DOMESTIC RHI - ESCOS

Esco name	No of applications	Upfront payments to date	Upfront payments not yet processed	Annual payments	Estimated over 7 year lifetime (upfront payment plus 7 x annual payments) (£)	Estimated lifetime (€)
Bryson	70	172500	2500	107186.4	925304.8	1088593.882
Eco Energy Technologies	3	0	7500	6017.12	49619.84	58376.28235
Ecopellets	4	10000		7934.07	65538.49	77104.10588
Green Energy Engineering	21	52500		41592.61	343648.27	404292.0824
NIHE	19	47500		16131.1	160417.7	188726.7059
<b>Total</b>	<b>117</b>	<b>282500</b>	<b>10000</b>	<b>178861.3</b>	<b>1544529.1</b>	<b>1817093.059</b>

*Caveats - a few things to note about the figures:*

- All payments to date are upfront payments – no annual payments have been made to any ESCOs yet. All but 4 upfront payments to ESCOs have been processed (1 Bryson, 3 Eco Energy Technologies).
- The estimated figure for the lifetime of the scheme is based on actual annual payment calculated by the database multiplied by 7, plus upfront payments. This doesn't take into account the annual tariff adjustments.
- The Euro figure is based on an exchange rate of 0.85 (today's rate according to Google.)

**From:** Briggs, Peter  
**Sent:** 23 February 2017 14:32  
**To:** Hawthorne, Jill  
**Subject:** FW: Internal Audit Reccs

Jill,

As discussed, the table below is amended to include the 4 upfront payments that haven't yet been made.

Thanks  
 Peter

Esco name	No of applications	Payments to date	Upfront payments not yet processed	Annual payments	Estimated over 7 year lifetime	Estimated lifetime (€)
Bryson	70	172500	2500	107186.4	925304.8	1088593.882
Eco Energy Technologies	3	0	7500	6017.12	49619.84	58376.28235
Ecopellets	4	10000		7934.07	65538.49	77104.10588
Green Energy Engineering	21	52500		41592.61	343648.27	404292.0824
NIHE	19	47500		16131.1	160417.7	188726.7059
<b>Total</b>	<b>117</b>	<b>282500</b>	<b>10000</b>	<b>178861.3</b>	<b>1544529.1</b>	<b>1817093.059</b>

#### Peter Briggs

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**From:** Briggs, Peter  
**Sent:** 23 February 2017 14:00  
**To:** Hawthorne, Jill  
**Subject:** FW: Internal Audit Reccs

Jill,

The figures I am getting are in the table below. A few things to note about the figures:

- All payments to date are upfront payments – no annual payments have been made to any ESCOs yet. All but 4 upfront payments to ESCOs have been processed (1 Bryson, 3 Eco Energy Technologies).
- The estimated figure for the lifetime of the scheme is based on actual annual payment calculated by the database multiplied by 7, plus upfront payments. This doesn't take into account the annual tariff adjustments.
- The Euro figure is based on an exchange rate of 0.85 (today's rate according to Google.)

Thanks  
 Peter

Esco name	No of applications	Payments to date	Annual payments	Estimated over 7 year lifetime	Estimated lifetime (€)
Bryson	70	172500	107186.4	922804.8	1085652.706

Eco Energy Technologies	3	0	6017.12	42119.84	49552.75294
Ecopellets	4	10000	7934.07	65538.49	77104.10588
Green Energy Engineering	21	52500	41592.61	343648.27	404292.0824
NIHE	19	47500	16131.1	160417.7	188726.7059
Total	117	282500	178861.3	1534529.1	1805328.353

## Peter Briggs

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**From:** Hawthorne, Jill  
**Sent:** 20 February 2017 10:37  
**To:** Briggs, Peter  
**Subject:** FW: Internal Audit Reccs

Peter,

O/R could you look at this for me please – I've indicated to Jonathan that we will try to have something back with him by end of this week. Had a chat with the team on this and had a quick look at the export s/s so I think the information should be readily accessible (although Cait has indicated that we need Nicola to refresh this, as last one is dated Nov 16).

Regarding the last bullet point, my thinking is that we may have to break this down into two elements (i) what has been received as of Feb 2017 and (ii) estimate of the total amount that will be received over the life of the scheme (we can discuss most appropriate way to do this).

Thanks,

Jill

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**From:** McAdams, Jonathan  
**Sent:** 20 February 2017 09:34  
**To:** Hawthorne, Jill  
**Cc:** Briggs, Peter; Marten, Lucy  
**Subject:** Internal Audit Reccs

Jill,

The final audit recommendation around notifying the European Commission is one we could potentially tick off quickly given that we are in conversation with the Commission on the Non-Domestic side at the moment and might be able to drop this into the mix.

In order to do that I'd need a few further details to give to our State Aid Unit around the 2% of Domestic that are ESCO's –

We should hopefully be able to present this as a minor issue in the context of our other changes that we are notifying, and get that audit recommendation off the books quickly.

J