

From: [McCormick, Andrew \(DFE\)](#)
To: tony.mcgleenan@barlibrary.com
Cc: [McGinn, Paul](#); [Paul McLaughlin](#); [Brown, Kevin](#); [McAdams, Jonathan](#); [McMurray, Stephen](#); [Coyne, Terence](#)
Subject: State Aid
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Attachments: [image2017-04-04-102300.pdf](#)

The attached is still subject to checking for any redactions before publication and a corrigendum because they missed small and only covered medium boilers. But it may be helpful to you now.

Many thanks.



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

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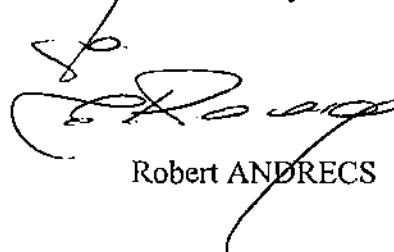
03. 04. 2017

UK representation to the EU

Brussels, 3.4.2017
SG-Greffe(2017) D/ 5524OFFICE OF THE UNITED
KINGDOM PERMANENT
REPRESENTATIVE TO THE
EUROPEAN UNION
Avenue d'Auderghem, 10
1040 BRUXELLES
BELGIQUE**NOTIFICATION PURSUANT TO ARTICLE 297 OF THE TFEU****Subject: COMMISSION DECISION (31.3.2017)**

The Secretariat-General would be obliged if you could forward the enclosed Decision to the Secretary of State for Foreign and Commonwealth Affairs.

For the Secretary-General,


Robert ANDRECS

Encl. : C(2017) 2242 final

UK



Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

http://ec.europa.eu/dgs/secretariat_general
E-mail: sg-greffe-certification@ec.europa.eu

EUROPEAN COMMISSION



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Received in Reception

Brussels, 31.3.2017
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03. 04. 2017

UK representation to the EU

**Subject: State Aid SA. 47501 (2017/NN) – United Kingdom
Northern Ireland Renewable Heat Incentive Scheme 2017-18**

Dear Sir,

1. PROCEDURE

- (1) Following pre-notification contacts the United Kingdom notified the above-mentioned measure to the Commission on 16 March 2017 pursuant to Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background and description of the notified measure

- (2) In June 2012 the Commission approved the renewable heat incentive ('RHI') scheme in Northern Ireland in Commission Decision *SA.34140 Renewable Heat Incentive (RHI) scheme – Northern Ireland* (the '2012 Decision').¹
- (3) The objective of the scheme is to assist in the contribution by Northern Ireland to the United Kingdom's renewable energy targets.² Specifically, the United Kingdom plans to achieve the 20 % target for energy consumption from renewable sources established for the United Kingdom by Directive 2009/28/EC of the European Parliament and of the Council³ (the 'Renewable Energy Directive') through the attainment of 12 % renewable heat and 30 % renewable electricity by 2020.

¹ OJ C 368, 28.11.2012, p.4.

² See paragraph 2 of the 2012 Decision.

³ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion and use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p.16).

The Rt Hon Boris JOHNSON
Secretary of State for Foreign Affairs
Foreign and Commonwealth Office
London SW 1A 2AH
United Kingdom

The notified changes

- (4) In order to reduce the net cost to the Northern Ireland Executive of the RHI scheme in the 2017-2018 financial year, the United Kingdom notified a set of changes to the 2012 Decision. The following notified amendments will be introduced from 1 April 2017 (or the day after the approval of the European Commission) for all installations in the medium biomass band of the scheme only:
- a. An annual tiered tariff will be introduced for installations in the medium biomass band whereby the standard rate tariff will be paid for the first 1,314 operating hours, reducing thereafter to a lower tariff of GBP 1.5 p/kWh;
 - b. An annual heat cap of 400,000 kWh will be imposed on all medium biomass installations above which no payments will be made; and
 - c. The 'medium biomass' band will be rebanded from '20 kW and above, up to but not including 100 kW' to '20 kW and above, up to but not including 200 kW'.
- (5) The notified amendments will only affect installations which entered into the scheme approved by the 2012 Decision until November 2015. The reason is that the same changes were made to the scheme on 18 November 2015 although at that time only new installations entering the scheme after that date were to be affected. These changes were not notified to the Commission. Thus, the notified changes detailed here will only affect installations which fell outside the auspices of the changes made in November 2015, i.e. installations which entered into the scheme between its introduction and the date on which the changes made in November 2015 came into effect.
- (6) The Northern Ireland authorities have explained that in the context of the notified change that will reband the medium biomass category of installations (see paragraph (4)c above), there are no undertakings which will be 'rebanded' because there are no undertakings currently in the scheme that were first accredited between its inception and the date on which the 2015 changes took effect that are between 100 and 200 kW. This change is therefore made for reasons of consistency with the 2015 changes and does not have any actual impact in practice.
- (7) The introduction of the tiered tariff system along with the annual cap is designed to regulate the returns which undertakings are receiving under the RHI scheme. The Northern Ireland authorities have explained that for a typical 99 kW installation the switch to the tiered tariff system will result in a rate of return of around 12 % on a levelised basis for the upcoming financial year (2017-18). This was the target rate of return initially approved in the 2012 Decision.⁴
- (8) The heat cap will be set at 400,000 kWh/year and will act as a functional maximum threshold to enable the competent authorities to ensure that beneficiaries cannot claim support in excess of the hours of heat which can

⁴ See paragraph 63 of the 2012 Decision.

reasonably be expected to be generated. Above this maximum threshold no support will be paid.

The November 2015 changes

- (9) Following a review in 2014⁵ the Northern Ireland authorities decided to amend the scheme to reflect updated information on the types and sizes of installations which were coming forward under the scheme, as well as evolving information on their operating costs. The same changes presented in paragraph (4) above were thus applied to all new medium biomass installations from November 2015.
- (10) In addition, renewable combined heat and power ('CHP') installations using biomass would previously have been eligible to apply for support under the biomass category of installations but from November 2015 they were split out into a separate renewable CHP category for installations using biomass which were either newly built or converted from the use of fossil fuels as an input fuel.
- (11) The Northern Ireland authorities have explained that no installations have yet been accredited in the newly-introduced CHP category, however. The United Kingdom has confirmed to the Commission that no new CHP installations will be accredited under this category before 31 March 2018 and that the CHP tariffs will be notified to the Commission separately after a review by the Department of the Economy in Northern Ireland. The introduction of these tariffs therefore falls outside the scope of this Decision.
- (12) In the ten week period between the announcement of the changes in 2015 and their implementation there was an unprecedented spike in demand, with almost 1,000 applications being received in those 10 weeks. This more than doubled the total number of installations under the scheme which created significant budgetary pressure.
- (13) As a result of the increased budgetary pressure resulting from the increased uptake a decision to suspend the scheme to new applicants was taken in February 2016. The United Kingdom confirmed that the suspension remains in place and will remain in place for the duration of the notified amendments (i.e. until 31 March 2018). So no new beneficiaries were entered into the scheme from February 2016 and no new beneficiaries will be accredited under the scheme until such time that the United Kingdom has re-notified the measure. The 2015 amendments therefore only affected new medium biomass installations which applied for support in the brief period between the introduction of said amendments and the scheme being closed in February 2016.

Background

- (14) The first change which was effected in November 2015 for new installations, and which will take effect for all other installations from 1 April 2017 (or the day after the approval of the European Commission), is the 'rebanding' of the biomass category (see paragraph (4)c above). After the change the medium biomass category was rebanded from 20-99 kW to 20-199 kW; all installations in this

⁵ See paragraph 38 of the 2012 Decision.

range thus received the Band 1 associated tariff. Band 2 was consequently 'rebanding' as 200-1,000 kW.

- (15) The changes to the banding were implemented because after operational experience of the regime it was realised that a large number of applications for support were in this 20-99kW band (it was assumed to perhaps take advantage of the higher tariff associated with it (see Table 1 in the 2012 Decision)). The Northern Ireland Department of the Economy therefore widened the banding to include installations up to and including 199 kW to encourage larger, more efficient installations to enter the scheme.
- (16) The tariff structure for beneficiaries operating biomass installations was also changed in November 2015 to introduce a tiered tariff system (see paragraph (4)a above). Under the tiered system, the Tier 1 tariff is paid for the first 1,314 hours of operation. The threshold of 1,314 operating hours was selected as it represents the average operating time associated with a boiler running at a 15 % load factor. Above this threshold beneficiaries are paid the reduced Tier 2 tariff of GBP 1.5 p/kWh up to a cap of 400,000 kWh/year, beyond which support payments cease.
- (17) The tiering was introduced because the 2014 review of the scheme revealed that where the original assumptions informing the tariff structure in the 2012 Decision were that load factors in the medium biomass category of installations would average around 15 %, in reality higher load factors were observed (averaging around 43 % under the scheme).
- (18) Tier 1 therefore recognises that for installations within the load factor range (around 15 %) which formed the basis of the assumptions used in 2012, the standard tariff remains appropriate. The 1,314 hour threshold, which represents the operating hours associated with a 15 % load factor, therefore ensures that for installations operating at this level the returns being made, as modelled in 2012, are around 12 %.
- (19) The second tier is designed to cater for installations which operate at a higher load factor and so exceed the 1,314 hours associated with a 15 % load factor. Given the target returns under the 2012 Decision and the notified measure are around 12 %, the Northern Ireland authorities developed the Tier 2 tariff of 1.5 p/kWh on the basis of analysis conducted by the former Department of Agriculture and Rural Development in Northern Ireland.
- (20) Using an 80 % load factor, that analysis set out the following operating costs in Tier 2:

| | |
|------------------|-------------------|
| Fuel costs | 4.66 p/kWh |
| Electricity | 0.30 p/kWh |
| Servicing | 0.25 p/kWh |
| Remedial repairs | <u>0.10 p/kWh</u> |
| Total | 5.31 p/kWh |

As compared with operating costs for liquid natural gas of 3.79 p/kWh, this leads to a difference in operating costs between biomass and liquid natural gas of 1.52 p/kWh.⁶ The tariff was thus set at 1.5 p/kWh to reflect this differential.

- (21) The 400,000 kWh annual threshold was selected because analysis by the Northern Irish authorities shows that 388,000 kWh was the estimated upper limit of the expected annual heat requirement for a typical poultry shed, which are the beneficiaries with the highest heat loads under the scheme. The limit was thus set at 400,000 kWh/year to provide a small contingency for additional heat that might be required in an exceptionally cold year. The cap therefore represents the maximum heat requirement which beneficiaries could be expected to need in the ordinary course of business.
- (22) The maximum which can now be realised for a 199 kW boiler operating to the full annual heat cap of 400,000 kWh would be a return of 19 %. By comparison, at an average load factor of 43 %, which is the average load factor for all boilers installed under the scheme, a 199 kW boiler will be realising a maximum return of 13 %.

2.2. National legal basis

- (23) The national legal basis of the measure is comprised of:
- The Energy Act 2011;
 - The Renewable Heat Incentive Regulations (Northern Ireland) 2012;
 - The Renewable Heat Incentive (Amendment) Regulations (Northern Ireland) 2015;
 - The Renewable Heat Incentive Schemes (Amendment) Regulations (Northern Ireland) 2016; and
 - The Renewable Heat Incentive Scheme (Amendment) Regulations 2017.

2.3. Beneficiaries

- (24) The beneficiaries of the RHI scheme approved in the 2012 Decision are the operators of non-domestic renewable heat installations in Northern Ireland using the following renewable energy sources: biomass (including solid municipal waste⁷), ground source (deep geothermal, ground source and water source heat pumps), biogas production (biomethane injection and biogas combustion, except from landfill gas), and solar (solar thermal up to 200 kW).
- (25) Since its introduction in 2012 1,974 renewable heat installations have been accredited under the scheme. As explained in paragraph (13) above, the scheme

⁶ The Northern Ireland authorities have explained that liquid petroleum gas was the appropriate comparator for most biomass installations because it was the original fuel being used by the majority of RHI scheme participants. At the time the November 2015 changes were made biomass heating systems in the 21-99kW band made up 97% of all applications received. Many of these installations were poultry houses which traditionally used liquid petroleum gas air blown heaters before the introduction of the scheme. As such, liquid petroleum gas was the most appropriate comparator for this type of installation.

⁷ Whilst energy from waste is an eligible technology under the scheme the Northern Ireland authorities have confirmed that no energy from waste installations have been accredited under the scheme to date.

has been suspended to new applicants since February 2016 and will remain suspended until at least 31 March 2018.

2.4. Form of aid and level of support

- (26) The following table sets out the successive changes to the medium biomass tariff since the introduction of the scheme.

| Tariff name | Installation capacity | Tariff Pence/kWh (June 2012 – 18 November 2015) ⁸ | Tariff Pence/kWh (For installations accredited after 18 November 2015) | Tariff Pence/kWh (For all medium biomass installations which entered the scheme between its inception and 18 November 2015) |
|----------------|---|--|--|---|
| Medium Biomass | 20 kW and above up to but not including 100 kW ⁹ | 5.9 | Tier 1: 6.4 Tier 2: 1.5 | Tier 1: 6.5 Tier 2: 1.5 |

Table 1: RHI Scheme Tariffs (Source: Northern Ireland authorities)

- (27) Support contracts last for 20 years which the United Kingdom has confirmed accords with the useful lifetime of the beneficiaries' installations.
- (28) As was the case under the 2012 Decision,¹⁰ only 'useful heat' is eligible for remunerated support under the scheme. The Northern Ireland authorities will monitor and enforce this requirement.

2.5. Monitoring and enforcement

- (29) The Northern Ireland Department of the Economy commissioned an independent review into the scheme in 2016 focusing on allegations relating to abuse of the scheme and in particular on the beneficiaries' alleged receipt of support for hours of 'non-useful' heat in contravention of the 'useful heat' requirement (see paragraph (28)).
- (30) Given the results of this review, the United Kingdom has committed to the conduct of a wholesale review of the scheme during 2017 with a view to the monitoring of individual beneficiaries' compliance with the scheme rules to date, specifically targeting any suspected abuse of the 'useful heat' requirement. The United Kingdom has specifically committed to procuring the inspection of all accredited sites in 2017.
- (31) Where such inspection uncovers non-compliance with the scheme, the United Kingdom has committed to taking appropriate action to ensure that any such overcompensation is remedied. Action will be taken under the powers conferred in Regulations 43-47 of the *Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012* (the '2012 Regulations').
- (32) Among the powers conferred by the 2012 Regulations are the ability to suspend support payments,¹¹ withhold or reduce support payments,¹² revoke a

⁸ Tariffs are quoted from the legislation and are uplifted annually using the Retail Price Index.

⁹ 200 kW from November 2015.

¹⁰ See paragraph 25 of the 2012 Decision.

¹¹ Regulations 43 and 44 of the 2012 Regulations.

¹² Regulation 45 of the 2012 Regulations.

beneficiary's accreditation or registration under the scheme,¹³ and offset or recover any support payments made in excess of a beneficiary's proper entitlement under the scheme.¹⁴

2.6. Duration

- (33) The RHI scheme approved under the 2012 Decision granted support contracts for periods of 20 years and envisaged the grant of such contracts until 2020, such that the final year of support was intended to be 2040.¹⁵
- (34) However, as outlined at paragraph (13) above, the scheme was suspended for new applications in February 2016. The scheme remains suspended to new applicants at present and the United Kingdom has confirmed that the scheme shall remain suspended for the duration of the notified amendments. The notified amendments for medium biomass installations will apply from the 1 April 2017 (or the day after the approval of the European Commission) until 31 March 2018.
- (35) In the context of the review of the scheme proposed by the Northern Ireland authorities and described at paragraph (30) above, the Northern Ireland authorities have explained to the Commission that further amendments to the scheme are envisaged which should be in place before the 31 March 2018. The United Kingdom has committed to the notification of any such amendments to the Commission in accordance with its obligations under Article 108(3) TFEU.

2.7. Budget and Source of Financing

- (36) The budget of the scheme for the duration of the notified measure (i.e. until 31 March 2018) is an estimated GBP 25.3 million.
- (37) This will be financed through central budgetary funds - specifically, funds of GBP 22.3 million from Annual Managed Expenditure derived from the central budget of the United Kingdom with the balance being sourced from the Northern Ireland budget.

2.8. Granting Authority

- (38) The Department of the Economy in Northern Ireland is responsible for the development and implementation of the scheme and the publication of guidance.
- (39) The scheme is administered by the Office of Gas and Electricity Markets ('Ofgem') which determines the eligibility of applicants for accreditation, calculates and pays the support payments to accredited beneficiaries, and is responsible for compliance and enforcement.

3. ASSESSMENT OF THE MEASURE

3.1. Presence of aid

- (40) Article 107(1) TFEU defines the concept of State aid as *"any aid granted by a Member State or through State resources in any form whatsoever which distorts*

¹³ Regulation 46 of the 2012 Regulations.

¹⁴ Regulation 47 of the 2012 Regulations.

¹⁵ See paragraph 14 of the 2012 Decision.

or threatens to distort competition by favouring certain undertakings or the production of certain goods...".

- (41) The 2012 Decision concluded that the RHI scheme in Northern Ireland constituted State aid within the meaning of Article 107(1) TFEU on grounds that it was funded from Government budgets (and so involves State resources), selects only certain renewable installations for support, and through that support provides those beneficiaries with an advantage they would not enjoy under normal market conditions.¹⁶ Furthermore, it was noted that the beneficiaries included undertakings involved in intra-EU operations and so the measure was capable of distorting competition and affecting trade between Member States.¹⁷
- (42) Nothing in the notified amendments alters the above and the Commission therefore concludes, by express reference to the 2012 Decision, that the notified measure involves State aid within the meaning of Article 107(1) TFEU.

3.2. Legality

- (43) The amendments which were notified to the Commission on 16 March 2017, summarised in paragraph (4) above, were notified to the Commission before their implementation and will not take effect until after the date of this Decision. The United Kingdom has therefore fulfilled their obligations under the stand-still provision in Article 108(3) TFEU in respect of these amendments.
- (44) However, the amendments which were effected in November 2015, referred to in paragraph (9) above, were not notified to the Commission before they were put into effect (for a period of less than 3 months from mid-November 2015 until February 2016) which means at this time those measures have become unlawful aid granted in violation of the United Kingdom's obligations under Article 108(3) TFEU.

3.3. Compatibility

- (45) 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*¹⁸ ('2008 EAG'). The 2012 Decision concluded that the measure was compatible with all of the requirements of the 2008 EAG¹⁹. The measure approved under the 2012 Decision is therefore an approved existing aid scheme.
- (46) The first part of Point 250 of the *Guidelines on State aid for environmental protection and energy 2014-2020* ('EEAG')²⁰ states that existing aid schemes concerning operating aid to renewable energy only need to be adapted to the new EEAG rules when a change is made (or in certain other instances). Footnote 105 to Point 250 of the EEAG clarifies that a change is any notifiable change within the meaning of Article 1(c) of Regulation (EC) No 659/1999.²¹ Article 1(c)

¹⁶ See Section 3.1 of the 2012 Decision.

¹⁷ See paragraph 53 of the 2012 Decision.

¹⁸ Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1.

¹⁹ See paragraph 78 of the 2012 Decision.

²⁰ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1).

²¹ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

defines the scope of 'new aid', which is notifiable, as including any alterations to existing aid. Further guidance can be found in Article 4(1) of Commission Regulation (EC) No 794/2004²², which provides that "... an alteration to existing aid shall mean 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...".

- (47) The Commission has concluded that the changes made to the scheme in November 2015 were not of a purely formal or administrative nature. The changes introduced new tariff structures and classifications of eligible beneficiaries. Rather, they qualify as a notifiable change within the meaning of Article 1(c) of Regulation (EC) No 659/1999. Therefore, the relevant rules for the assessment of the measures introduced for new beneficiaries in November 2015 are the EEAG.
- (48) The Commission also notes that the changes made in 2015 constitute unlawful aid, as explained above in paragraph (44). Point 248 of the EEAG stipulates that unlawful aid will be assessed in accordance with the rules in force on the date on which the aid was granted and these will therefore be assessed on the basis of the EEAG. On grounds of both Point 250 and 248 of the EEAG, therefore, the changes effected in November 2015 will also be assessed against the EEAG.
- (49) The second part of Point 250 of the EEAG provides that whenever a beneficiary has received confirmation from a Member State that it will benefit from State aid under an existing aid scheme for a predetermined period, aid can be granted for that entire period under the conditions laid down in the scheme at the time of the confirmation. The beneficiaries under the existing aid scheme that were accredited for the aid before the changes made in 2015 came into effect (which would only have affected new and not existing beneficiaries) come within the auspices of this second part of Point 250 of the EEAG. As mentioned at paragraph (45) above, the existing aid scheme for these beneficiaries was approved in the 2012 Decision.
- (50) The changes now notified constitute gradual reductions to the tariffs approved in the 2012 Decision for medium biomass installations and introduce the maximum annual heat cap. These changes were specifically designed to ensure that the returns being realised by beneficiaries remain within the range envisaged at the time the scheme was designed over the pre-determined 20 year period. The Commission concludes therefore that the measures now notified as changes to the existing aid scheme are in line with the aims laid down in the scheme at the time of the confirmation and do not impact the Commission's 2012 conclusion on the compatibility of that scheme with the internal market given that observance of the conditions laid down at the time of the scheme's approval are the motivation behind these amendments.

3.3.1. Objective of common interest

- (51) According to Point 31 of the EEAG, the aid must contribute to a well-defined objective of common interest. The objective of the amended RHI scheme is to

²² Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, (OJ L 140, 30.4.2004, p. 1).

support the production of renewable heat and thereby contribute to the attainment of the United Kingdom's renewable energy targets, as outlined in paragraph (3) above. The Commission therefore considers that the changes implemented in November 2015 were aimed at an objective of common interest in accordance with Article 107(3)(c) TFEU.

3.3.2. *Necessity, appropriateness and incentive effect*

- (52) In principle, Member States need to demonstrate that State aid is necessary to remedy a market failure that otherwise would remain unaddressed (Point 37 of the EEAG). However, the Commission presumes that such a market failure still exists in the field of renewable energy (Point 115 of the EEAG).
- (53) In Point 107 of the EEAG the Commission acknowledges that '...under certain conditions State aid can be an appropriate instrument to contribute to the achievement of the Union objectives and related national targets'. According to Point 116 of the EEAG, the Commission can presume the appropriateness of aid to energy from renewable sources provided all other conditions are met in order to allow Member States to achieve their targets in line with the EU 2020 objectives.
- (54) In line with Point 49 of the EEAG, an incentive effect occurs when the aid induces the beneficiary to change its behaviour towards reaching an objective of common interest, a change in behaviour which would not occur without the aid. Furthermore, Points 51 and 52 of the EEAG require a Member State to ensure that new installations entering into a scheme do so by means of an application form which verifies their application against a counterfactual, and ensure that only installations on which work has not already begun are eligible to apply for support (Point 50 of the EEAG).
- (55) The Commission notes in this respect that the applications were submitted before work on the project had started in line with Point 50 of the EEAG. The Northern Ireland authorities have also confirmed that only new installations were eligible to apply before applications were suspended. As aid beneficiaries need to be accredited under the scheme the Commission considers that the requirements of the EEAG are met, also taking into account the fact that the scheme has been suspended to new applicants since February 2016.
- (56) Consequently, the Commission considers that the changes implemented in November 2015 are appropriate, necessary and provide an incentive effect to address the objective of common interest.

3.3.3. *Proportionality*

- (57) The Commission will assess the proportionality of the changes made in 2015 under EEAG Section 3.3: Aid to energy from renewable sources. Operating aid for energy from renewable sources other than electricity must comply with specific rules contained in Point 131 of the EEAG. In particular the aid per unit of energy may not exceed the difference between the total levelised costs of producing energy and the market price of the form of energy concerned under Point 131(a) of the EEAG.

- (58) In this instance the production costs were used as the reference scenario as there is no market price for heat in Northern Ireland. The Northern Ireland authorities therefore compared the cost of producing renewable heat with the cost of producing heat from fossil fuel. The standard rate tariff is based on a load factor of around 15 %. The Tier 1 tariff ensures that the support, which is modelled on the difference between renewable and conventional heat production, is in line with the modelled assumptions. The support therefore does not exceed the difference between the costs of renewable and conventional heat production and so complies with Point 131(a) of the EEAG.
- (59) Also in respect of the Tier 2 tariff the Northern Ireland authorities have submitted the costs data on which the tariff was based (see paragraph (20) above). These show that the level of support is less than the difference between the costs of producing renewable heat and conventional heat production and so also complies with Point 131(a) of the EEAG.
- (60) Under Point 131(b) of the EEAG the levelised costs of electricity may include a normal return on capital. The 2012 Decision explained that initial data from an independent consultancy report had indicated that the necessary rate of return to incentivise renewable heat production ranged from 8-22 %.²³ As such, a target rate of return of 12 % was chosen to model the tariffs.²⁴
- (61) The amended tiered tariff system is designed to regulate beneficiaries' returns in line with the aims envisaged by the Northern Ireland authorities in 2012. Particularly they are targeted at the provision of a target rate of return of 12 %. As was the case in the 2012 Decision, 12 % is considered a reasonable target return for installations of this kind. In addition, the range of returns is restricted and does not exceed 19 % (below the 22 % determined by the report).
- (62) Point 131(b) of the EEAG also requires that any investment aid is deducted from the total investment amount. As was the case in the 2012 Decision,²⁵ the RHI scheme support in Northern Ireland cannot be cumulated with investment aid. Point 131(b) of the EEAG is therefore complied with.
- (63) Point 131(c) of the EEAG provides that production costs must be updated at least annually. The United Kingdom has confirmed that the scheme has been suspended since February 2016. As any further change will be notified in line with Article 108(3) of the Treaty, the requirement of Point 131(c) is complied with.
- (64) Point 131(d) of the EEAG requires that aid is only granted until the plant has been fully depreciated according to normal accounting rules. As detailed in paragraph (27) above, support payments are made for 20 years - the useful lifetime of the generating assets. The United Kingdom has therefore satisfied the Commission that aid will only be granted until the plant is fully depreciated in accordance with normal accounting rules in the United Kingdom.

²³ See paragraph 63 of the 2012 Decision.

²⁴ A rate of 6 % was used for solar – see paragraph 64 of the 2012 Decision. The solar tariff is not affected by this Decision.

²⁵ See paragraph 71 of the 2012 Decision.

- (65) The Commission concludes therefore that the changes implemented in November 2015 comply with the EEAG and so are compliant with the internal market.

4. CONCLUSION

- (66) The Commission regrets that the United Kingdom implemented the changes effected in November 2015 without notifying the Commission and so put those changes into effect before Commission approval had been received in breach of Article 108(3) TFEU.
- (67) Nonetheless, the Commission concludes on the basis of the foregoing assessment that the measure, as amended, is compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (68) 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>.

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
Neven MIMICA
Member of the Commission

