

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

From: Stephen.Clark-Foulquier@fco.gsi.gov.uk [mailto:Stephen.Clark-Foulquier@fco.gsi.gov.uk]
Sent: 28 October 2016 10:43
To: Stephen.Moore@economy-ni.gsi.gov.uk
Subject: NI Renewable heat Incentive

Hi Stephen,

As COMP have clearly set out why they have decided we need to re-notify and why we need to respect standstill, even if these is not the answers we had hoped for. We have only sent us a non paper so they have done us a favour by giving a formal view to an informal non paper.

- Where are we with the re-notification? When will it be ready to be submitted on SANI?
- If this is purely an administrative change than surely your view is COMP will approve the re-notification promptly.
- If the scheme is closed to new bidders then what is the issue with withholding payouts (and thereby avoiding overcompensation) until COMP has approved re-notification?

The Commission will not put down in writing that there is overcompensation as they approved the rate in their original decision.

Happy to discuss,

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

Personal information redacted by the RHI Inquiry

From: Moore, Stephen (DFE) [mailto:Stephen.Moore@economy-ni.gsi.gov.uk]
Sent: 27 October 2016 18:22
To: Steven McGregor (Sensitive)
Cc: Hughes, Seamus; Wightman, Stuart; Murphy, Shane; Marten, Lucy; Irrelevant information redacted by the RHI Inquiry; Adair, Joanne; Irrelevant information redacted by the RHI Inquiry
Subject: RE: NI Renewable heat Incentive

Steven

As discussed earlier today and was highlighted in points 12 and 13 in the non-paper that we submitted to the Commission, the rate of return is likely to be in excess of the rate agreed with the Commission when the scheme was originally approved and if we were to continue paying out at the current tariff rates, we are effectively overcompensating the beneficiaries.

Would you ask the Commission whether it has concerns the current tariff rates may result in overcompensation?

If so, would you also highlight to the Commission that we are concerned this may be the case, we think the correct thing to do is take action ASAP to prevent the situation getting worse and hence we find it hard to understand why we should be forced to 'standstill' and wait for a Commission decision before reducing the tariff rates.

Many thanks

Stephen

Stephen Moore
 State Aid Unit

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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>



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From: Moore, Stephen (DfE)
Sent: 21 October 2016 17:19
To: 'Stephen.Clark-Foulquier@fco.gsi.gov.uk'
Subject: RE: NI Renewable heat Incentive

Many Thanks

Stephen

Stephen Moore

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From: Stephen.Clark-Foulquier@fco.gsi.gov.uk [<mailto:Stephen.Clark-Foulquier@fco.gsi.gov.uk>]
Sent: 21 October 2016 14:37
To: Stephen.Moore@economy-ni.gov.uk

Cc: Irrelevant information redacted by the RHI Inquiry; Seamus.Hughes@economy-ni.gsi.gov.uk; Stuart.Wightman@economy-ni.gsi.gov.uk; Shane.Murphy@economy-ni.gsi.gov.uk; Lucy.Marten@economy-ni.gsi.gov.uk; Irrelevant information redacted by the RHI Inquiry
Subject: NI Renewable heat Incentive

Stephen,

I have put these two questions to DG COMP as you requested but it might take a while to get a response as the Energy team in DG COMP are very busy with both planned and unplanned staff absences.

However it is highly unlikely that DG COMP will reverse their decision on notification and standstill, so you will need to plan to move forward on this basis.

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: Irrelevant information redacted by the RHI Inquiry

From: Moore, Stephen (DfE) [<mailto:Stephen.Moore@economy-ni.gsi.gov.uk>]
Sent: 21 October 2016 13:29
To: Stephen ClarkFoulquier * (Sensitive)
Cc: Irrelevant information redacted by the RHI Inquiry; Hughes, Seamus; Wightman, Stuart; Murphy, Shane; Marten, Lucy
Subject: RE: NI Renewable heat Incentive

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

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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,

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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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