

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

C(2022) 8067

Proposed Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid

Submitted by the Department for Business Energy and Industrial Strategy
12/12/2022

SUBJECT MATTER

The European Commission (Commission) has proposed a revised regulation on *De Minimis* aid. The regulation will allow public authorities to continue to grant small amounts of aid without applying the State aid control rules. The current rules allow public authorities to grant *de minimis* aid of €200,000 (£172,920)¹ over three years. The revised regulation will increase this to €275,000 (£236,000)² but will introduce mandatory reporting for all *De Minimis* awards.

SCRUTINY HISTORY

C(21)5636: COMMISSION REGULATION (EU) of 23.7.2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. BEIS submitted an EM dated 17 August 2021. The House of Commons European Scrutiny Committee completed scrutiny on the document on 22 September 2021 without a substantive report to the House (Report 8, 21/22). The Commission Regulation has been retained under scrutiny by the House of Lords European Affairs Committee's Sub-Committee on the Protocol on Ireland/Northern Ireland.

10050/18, COM(18)389: Proposal for a COUNCIL REGULATION amending Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid. BEIS submitted an EM dated 29 June 2018. The House of Commons European Scrutiny Committee completed scrutiny of the proposal on 5 September 2018 without a substantive report to the House (Report 37, 17/19). The proposal was examined by the House of Lords European Union Committee's Internal Market Sub-Committee and scrutiny was completed on 20 December 2018.

MINISTERIAL RESPONSIBILITY

¹ EUR/GBP exchange rate as of 1 December 2022

² EUR/GBP exchange rate as of 1 December 2022

The Secretary of State for Business, Energy and Industrial Strategy has primary responsibility for subsidy control policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

The regulation of the provision of subsidies is a reserved matter and an excepted matter in Northern Ireland.

However, the Secretary of State for Business, Energy and Industrial Strategy and the Northern Ireland Executive have a particular interest in the application of EU State aid rules, given the application of those State aid rules to aid that is within scope of the Northern Ireland Protocol – i.e. aid that affects the trade in goods or wholesale electricity between Northern Ireland and the EU.

The Department for the Economy (Northern Ireland) Subsidy Control Advice Unit as well as the Scottish and Welsh subsidy control units have been consulted in the preparation of this Explanatory Memorandum and are content.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

The legal base for the proposed regulation is Articles 107 and 108 on the Treaty on the Functioning of the European Union.

ii. Voting Procedure

Ordinary legislative procedure of the European Union.

iii. Timetable for adoption and implementation

The current *De Minimis* Regulation is set to expire on 31 December 2023. The proposed replacement regulation is due to come into force on 1 January 2024.

POLICY IMPLICATIONS

This proposed regulation will form part of the annex 5 regulations that apply to the UK by virtue of Article 10 of the Northern Ireland Protocol. In practice, the *De Minimis* Regulation applies predominantly to subsidies granted by public authorities in Northern Ireland. However, the Northern Ireland Protocol could apply in limited circumstances to a subsidy granted by a public authority outside Northern Ireland where it is awarding subsidies to recipients that are in scope of Article 10 of the Northern Ireland Protocol. The Department for the Economy (Northern Ireland) Subsidy Control Advice Unit estimates there are 60 schemes currently active in Northern Ireland that utilise the EU's *De Minimis* Regulation for their State aid cover.

Some of these schemes (e.g. the HMRC Customs Duty Waiver scheme³) are operated by UK Government Departments.

The *De Minimis* Regulation allows public authorities to grant small amounts of aid without applying the State aid rules. A public authority must ensure that *De Minimis* threshold of €200,000 (£172,920)⁴ over three years is not exceeded. The public authority and the beneficiary must exchange *De Minimis* declarations whereby the beneficiary confirms how much *De Minimis* aid it has received over the previous two financial years to ensure that its *De Minimis* award does not exceed the threshold permitted. A lower threshold of €100,000 (£86,460)⁵ exists for aid to the transport sector. The agriculture and fisheries sector has a separate regulation with separate ceilings.

There are two main changes in the revised draft Regulation:

First, the amount that a beneficiary can receive will increase to €275,000 (£237,765)⁶ over three years, which is largely to reflect inflation. Similarly, the ceiling for *De Minimis* aid to the transport sector has increased to €137,500 (£118,882)⁷ to reflect inflation.

Second, under the current rules there is no obligation to report any *de minimis* aid. However, the revised regulation proposes that public authorities report all *de minimis* aid, no matter how small the amount. The regulation states that *de minimis* aid may be uploaded to a national database or a central EU database. The revised reporting rules mean that a *de minimis* aid of as little as £1 must be uploaded to either the EU database or a new UK *De Minimis* State aid database.

The proposed EU regulation on *De Minimis* aid will come into force on 1 January 2024. From that point onwards any public authorities granting *De Minimis* aid will need to upload that award to either a UK database or the central EU database. This is a significant additional administrative requirement for those public authorities. This may also impact disproportionately on smaller public authorities who only ever give very small amounts of *de minimis* aid and which have not needed to report on any State aid in the past. On one hand, this is likely to lead to increased public authority costs to ensure compliance with the *De Minimis* Regulation. On the other hand, administrative costs for beneficiaries should be minimised. This is because the database will show how much *De Minimis* aid beneficiaries have already received, which would remove the need for them to make *De Minimis* declarations.

The new UK subsidy control regime also enables small amounts of subsidy to be provided, as Minimal Financial Assistance (MFA) up to £ 315,000 over a three-year period. However, while MFA declarations will still be required by the UK regime,

³ <https://www.gov.uk/guidance/claim-a-waiver-for-duty-on-goods-that-you-bring-to-northern-ireland-from-great-britain>

⁴ EUR/GBP Bank of England exchange rate 30 November 2022

⁵ EUR/GBP Bank of England exchange rate 30 November 2022

⁶ EUR/GBP Bank of England exchange rate 30 November 2022

⁷ EUR/GBP Bank of England exchange rate 30 November 2022

under the UK's subsidy transparency rules, only MFA awards that exceed £100,000 will have to be uploaded to the BEIS subsidy database.

The Northern Ireland Protocol Bill, which is proceeding through Parliament, disapplies Article 10 of the Protocol in domestic law. The Bill would provide for the domestic subsidy regime (Subsidy Control Act 2022) to apply to all UK subsidies, including those in Northern Ireland. However, it is our preference to resolve the problems we have been seeing with the Protocol through talks, and the Government is engaging in constructive dialogue with the EU to find solutions.

CONSULTATION

Not applicable.

FINANCIAL IMPLICATIONS

There are no financial implications from the increase in the amount of De Minimis aid that a public authority can provide. However, the new obligations to record and upload all *De Minimis* aid will have resource implications for public authorities providing De Minimis aid under the Article 10 of the NIP. It is not possible, proportionate or appropriate to estimate the total increase in the administrative burden on public authorities, as there is no record of how many *De Minimis* awards would then need to be uploaded.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink that reads "Kevin Hollinrake". The signature is written in a cursive style and is centered on the page.

Kevin Hollinrake MP

Parliamentary Under Secretary of State (**Minister for Small Business, Consumers and Labour Markets**).

Department for Business, Energy & Industrial Strategy