

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

C(2022) 7388 final

State aid: Commission adopts revised State aid Framework for research, development and innovation.

Submitted by Department for Business Energy & Industrial Strategy **24 November 2022**

SUBJECT MATTER

The European Commission (Commission) has adopted a revised Communication on State aid rules for research, development and innovation ('2022 RDI Framework'), which sets out the rules under which EU Member States can grant State aid to companies for RDI activities, while ensuring a level playing field. The 2022 RDI Framework, which contributes to the EU's strategic objectives relating to the green and digital transitions, entered into force on 19 October 2022.

SCRUTINY HISTORY

The previous version of this Framework in 2014 was not subject to scrutiny. In addition to a revision of the EU's temporary state aid framework to support economies during Covid 19 in 2020, there have been two recent EMs on other state aid communications applicable to Northern Ireland under the provisions of the Northern Ireland Protocol.

C(22)1890: COMMUNICATION FROM THE COMMISSION: Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia was the subject of a BEIS EM dated 26 April 2022. The House of Commons European Scrutiny Committee completed scrutiny on 11 May 2022 without a substantive report to the House (report 12, 22/23). The document was drawn to the attention of the House of Lords European Affairs Committee's sub-committee on the Protocol on Ireland/Northern Ireland in Chair's Sift 18 on 11 May 2022 but the sub-committee had no follow up questions.

C(2021)2594: COMMUNICATION FROM THE COMMISSION Guidelines on regional state aid was the subject of a BEIS EM, EM dated 14 May 2021. The House of Commons European Scrutiny Committee completed scrutiny on 8 September 2021 without a substantive report to the House (report 7, 21/22). The document was drawn to the attention of the House of Lords European Affairs Committee's sub-

committee on the Protocol on Ireland/Northern Ireland in Chair's Sift 2 on 19 February 2022 but the sub-committee had no follow up questions.

MINISTERIAL RESPONSIBILITY

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 Northern Ireland Executive has a particular interest in the application of the EU State aid rules, given the application of the EU State aid rules to aid that is within scope of Article 10 of the Northern Ireland Protocol - i.e. aid that affects trade in goods or wholesale electricity.

The Department for the Economy (Northern Ireland) Subsidy Control Advice Unit has been consulted in the preparation of this Explanatory Memorandum and has no concerns.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

The legal base for this framework is Article 107(3)(c) of the Treaty on the Functioning of the European Union.

ii. Voting Procedure

Not applicable. Under EU law, the European Commission has competence to adopt a communication which indicates how the Commission will treat potential State aid measures.

iii. Timetable for adoption and implementation

The Communication was adopted on 19 October 2022. There is no further implementation required.

POLICY IMPLICATIONS

The Framework allows some additional flexibility in the EU State aid system for RD&I aid measures and will apply to aid in scope of Article 10 of the Northern Ireland Protocol only - aid relating to goods and wholesale electricity. The framework itself

does not impose any new burdens or give rise to any negative effects on Northern Ireland.

Any other subsidies granted by UK Authorities for RD&I, that are not in scope of the Northern Ireland Protocol, will not be covered by the Framework. There is no obligation for UK Public Authorities to follow the terms of this Framework when granting subsidies that are not in scope of Article 10 of the Protocol. Instead, the Subsidy Control Chapter of the UK-EU TCA and in future the UK's domestic subsidy control regime will apply, which allow for a more flexible approach in providing subsidies.

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.

Content of the Framework

This is an update to the Commission's legal framework to deal with RD&I support. The RDI Framework aims at facilitating research, development and innovation activities, which, due to market failures, would not occur without state support. The framework aims to encourage investment by public authorities to enable experimentation, testing and upscaling of technologies, while at the same time limiting distortions to trade and competition.

The revised Framework allows flexibility through a number of targeted adjustments (i) to simplify and reflect the experience gained from the application of the 2014 RDI Framework – facilitate its practical application and reduce administrative burden on public authorities, such as through simplified mechanisms to determine indirect R&D costs that are eligible for support under State Aid rules, (ii) to reflect regulatory, economic and technological developments – enable the swift development and deployment of innovative technologies while also facilitating the digital and green transition of the EU economy, aligned to the European Innovation Agenda, and (iii) to align the relevant rules to the current EU policy priorities, such as the European Green Deal and the Industrial and Digital Strategies.

The Commission's overall approach to supporting RD&I activity remains the same under this Framework, which is to cap the percentage of aid that the state may provide based on the activity that is being supported. This will depend on the severity of the market failure that justifies the state's intervention, the size of the company, and how close the subsidised activity is to market. Thus 100% of costs can be subsidised to a fundamental research project across the board, while the general level of maximum support that can be provided by the state for the construction and upgrade of testing infrastructure would be 35% of a large company's costs.

CONSULTATION

Not applicable.

FINANCIAL IMPLICATIONS

The adoption of the revised framework carries no **financial** implications of itself, but rather sets the rules for how the Member States can grant State Aid to companies for RDI activities.

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

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

Department for Business, Energy & Industrial Strategy