EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND WINDSOR FRAMEWORK

C(2023) 1711 final

Communication from the Commission: Temporary Crisis and Transition Framework (TCTF) for State Aid measures to support the economy following the aggression against Ukraine by Russia

Submitted by the Department for Business and Trade on 05/04/2023

SUBJECT MATTER

The European Commission has adopted a Temporary Crisis and Transition Framework (TCTF), expanding upon the Temporary Crisis Framework (TCF 2022) established in March 2022 which enabled EU Member States to provide increased State aid and support their economies in the face of threats arising from Russia's invasion of Ukraine. The revised Framework forms part of the EU's Green Deal Industrial Plan (GDIP) aimed at scaling up the EU's manufacturing capacity for Net Zero industrial products.

The TCTF has been adopted pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union which allows aid granted to remedy a serious disturbance in the economy of an EU Member State to be considered compatible with the internal market.

SCRUTINY HISTORY

The Department for Business, Energy and Industrial Strategy (BEIS) submitted an EM dated 26 April 2022 on the TCF 2022 (C(2022)1890). The House of Commons European Scrutiny Committee completed scrutiny on the document on 11 May 2022 without a substantive report to the House (Report 12, 22/23). The document was considered at the House of Lords European Affairs Committee Sift 18 on 16 May 2022 and was drawn to the attention of the Northern Ireland Protocol sub-committee.

MINISTERIAL RESPONSIBILITY

The Secretary of State for Business and Trade 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, Northern Ireland Departments have a particular interest given the application of EU State aid rules under Article 10 of the Windsor Framework to measures affecting trade in goods and wholesale electricity between Northern Ireland and the EU.

The Subsidy Control Units in the Department for the Economy (Northern Ireland) and the Department of Agriculture, Environment and Rural Affairs were consulted in the preparation of this Explanatory Memorandum and commented on the draft.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

The legal base for this Temporary Crisis and Transition Framework is Article 107(3)(b) 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 9 March 2023. There is no further implementation required.

POLICY IMPLICATIONS

The TCTF allows additional flexibility in the EU State aid system and will apply to aid in scope of Article 10 of the Windsor Framework. This is aid that affects trade in goods and wholesale electricity between Northern Ireland and the EU. Article 10 primarily applies to aid granted in Northern Ireland and applies to aid granted in Great Britain only in very limited circumstances where there is a material effect on NI-EU trade in goods and wholesale electricity.

The TCTF accelerates the approval of aid with pre-approved scheme designs as outlined in the TCTF and does not impose any new burdens.

Subsidies which are not in scope of the Windsor Framework need only comply with the UK Subsidy Control Act 2022.

Content of the TCTF

The revised TCTF builds on the previous TCF 2022 by including several new provisions. These include new measures to accelerate the rollout of renewable energy production and storage, allowing Member States to fund up to 100% of the total investment costs where aid for these projects is set through a competitive bidding process, and up to 45% of the total investment costs where the aid is administratively set. Small- and medium-sized enterprises are eligible to receive higher aid intensities. Aid can also be granted to compensate operating costs of these projects through two-way Contracts for Difference (CfD) schemes with a contract duration of no longer than 20 years from the commencement of operations of the aided installation.

Additional flexibilities have also been introduced for aid targeted at the decarbonisation of industrial production. Member States can now fund up to 10% of the budget available or EUR 200 million and may also grant aid in the form of tax credits. Alternatively, Member States can fund up to 60% of the investment costs of equipment, machinery or installations for these decarbonisation projects, and up to 30% of eligible costs for electrification projects.

Aid granted to projects in scope of the above categories must be awarded by 31 December 2025, and projects must be in operation within 36 months of the award of the aid.

Brand new measures have been introduced in relation to investment projects in strategic net zero sectors, namely the production of relevant equipment for batteries, solar panels, wind turbines, heat-pumps, electrolysers, and equipment for carbon capture usage and storage (CCUS). The beneficiary will have to apply to Member States for this aid before the start of works. Aid can cover up to 15% of eligible costs and cannot exceed EUR 150 million. However, higher aid intensities and aid ceilings are available for investments in assisted areas.

Specific provisions allow for Member States to exceed these aid amounts to match the maximum level of aid offered by third countries in order to ensure these investments are made inside the EEA. These provisions come with strict conditions, including restrictions on ensuring these investments are made at least partly in disadvantaged areas and a requirement for projects of this kind to use ‘state of the art technology’. Beneficiaries would also be required to provide solid evidence of a subsidy it would likely receive from a third country and demonstrate that the investment would not be made within the EEA without the aid offered by the Member State. No aid provided in this section may be offered to facilitate the relocation of production between Member States. Aid must also be granted by 31 December 2025.

CONSULTATION

Not applicable

FINANCIAL IMPLICATIONS

The proposal carries no financial implications of itself, but rather sets the rules for how the European Commission will find aid compatible with the EU single market.

MINISTERIAL NAME AND SIGNATURE

KEVIN HOLLINRAKE

Parliamentary Under Secretary of State (Minister for Enterprise, Markets and Small Business)

Department for Business and Trade