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Subject: State aid SA.49241 (2017/N) – Welsh Government Rescue and Restructuring Aid Scheme for non-financial SMEs in difficulty

Dear Sir,

The European Commission ("the Commission") wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU"). The Commission has based its decision on the following considerations.

1. PROCEDURE

- (1) By SANI registration of 29 September 2017, the United Kingdom ("the UK") notified an aid scheme (hereinafter "the scheme") for rescuing and restructuring small and medium sized enterprises in Wales, (hereinafter "SMEs"). By letter dated 26 October 2017, the Commission requested additional information, which the UK authorities supplied on 14 November 2017.

2. DESCRIPTION OF THE SCHEME

2.1. Legal basis and objective

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- (2) The scheme prolongs an existing aid scheme and adapts it to the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (hereinafter "the Guidelines")¹. The original scheme is in place since 2003, was re-notified in 2009 and was ultimately extended in 2013, to expire on 31 December 2017.² Like predecessor schemes, the objective of the notified scheme is the rescue and restructuring of non-financial undertakings in difficulty in the UK regions of East Wales, West Wales and the Valleys by granting rescue and restructuring aid as well as temporary restructuring support. The scheme will be administered by the Development Bank of Wales Plc (hereinafter "the Development Bank"), a 100% owned subsidiary of the Welsh Government.
- (3) The legal basis of the scheme are Sections 1(2), (3) & (7) of the Welsh Development Agency Act 1975 (competencies which were vested in the Welsh Ministers pursuant to schedule 11 of the Government of Wales Act 2006) and Sections 60, 70 & 71 of the Government of Wales Act 2006.

2.2. Beneficiaries

- (4) The scheme applies to all SMEs in difficulty, except those operating in the coal or steel sector and those covered by specific rules for financial institutions.
- (5) Rescue aid and temporary restructuring support under the scheme can also be granted to SMEs that do not qualify as undertakings in difficulty but are merely facing acute liquidity needs due to exceptional and unforeseen circumstances. Exceptional and unforeseen circumstances under the scheme are those that the SME could not reasonably be expected to have anticipated and planned for as part of the normal course of business. Acute liquidity needs shall be determined through analysis of the SME's' financial position and ability to meet its due debts by reference to the SME's' historic and forecasted financial statements and debtor and creditor positions.
- (6) The scheme defines SMEs as enterprises that meet the following requirements: (i) employ fewer than 250 persons, and (ii) have an annual turnover not exceeding EUR 50 million, or an annual balance sheet not exceeding EUR 43 million. Any interpretation as to the definition of the SME is done by reference to Commission's Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium-sized enterprises³, or the successor arrangements or amendments, e.g. Annex I of Commission Regulation (EU) No 651/2014.⁴
- (7) Under the scheme, an undertaking is considered as being in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. In this sense, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

¹ OJ C 249 of 31.7.2014, p.1.

² The scheme has been running since 2003, following the Commission's approval decision of 6 October 2003 (N 281/2003). It was re-notified to the Commission in 2009, following which the Commission approved the scheme for four years (SA.29013). In 2013, the Commission approved an extension of the scheme until 31 December 2017 (SA.37226).

³ OJ L 124, of 20 May 2003

⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1–78.

- (a) In the case of limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.
 - (b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
 - (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under the domestic law for being placed in collective insolvency proceedings at the request of its creditors.
 - (d) In relation to smaller State-owned undertakings, where such undertaking's book debt to equity ratio has been greater than 7,5 and its EBITDA interest coverage ratio has been below 1,0 for the past two years.
- (8) A company belonging to or being taken over by a larger business group is not normally eligible for aid under the scheme, except when it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group and that the difficulties are too serious to be dealt with by the group itself.
 - (9) The scheme shall not apply to newly-created SMEs as defined in point 21 of the Guidelines.

2.3. Conditions for granting aid

- (10) The notified scheme provides that the maximum amount of aid that can be awarded to any one undertaking is limited to EUR 10 million. The UK authorities undertake to ensure that this amount includes any aid obtained from other sources or under other schemes.
- (11) Aid under the scheme can only be granted if it contributes to a well-defined objective of common interest, if the need for a State intervention is shown, if the aid measure is appropriate, if the aid has an incentive effect, if the aid is proportionate, if any undue negative effects on competition and trade between Member States are avoided and if the aid is transparent. The way in which these conditions are spelled out in the scheme is described below in sections 2.3.1 to 2.3.8.

2.3.1. Objective of common interest

- (12) Before granting any aid and in line with the criteria established in point 107 of the Guidelines, the Development Bank must establish that the failure of the beneficiary would likely involve social hardship or a market failure, in particular that:
 - The exit of an innovative SME or an SME with high growth potential would have potential negative consequences;

- The exit of an undertaking with extensive links to other local or regional SMEs would have potential negative consequences;
 - The failure or adverse incentives of credit market would push an otherwise viable undertaking into bankruptcy; or
 - Similar situations of hardship duly substantiated by the beneficiary would arise.
- (13) The scheme requires the submission to the Development Bank of a feasible, coherent and far-reaching restructuring plan, drawn up having regard to the indicative restructuring plan in Annex II to the Guidelines and intended to restore the beneficiary's long-term viability within a reasonable timescale, and makes the granting of restructuring aid conditional upon its implementation.

2.3.2. Need for State intervention and incentive effect

- (14) Aid will be granted under the scheme if comparison with a credible alternative scenario not involving State aid demonstrates that, in the absence of aid, the relevant objective or objectives of common interest would not be attained, or would be attained to a lesser degree, in particular, the beneficiary would have been restructured, sold or wound up without achieving the relevant objective or objectives of common interest.
- (15) The scheme indicates that the test on whether in the absence of aid the objective of common interest would not be achieved through the sale or winding up of the beneficiary, will be carried out, inter alia, on the basis of the likelihood of contracts being terminated, the loss of regulatory approvals arising from insolvency, the impact on other SMEs and the potential for further unemployment in the supply chain, the loss of experience and expertise, including intellectual property and know-how, etc.

2.3.3. Appropriateness

(a) Rescue aid

- (16) Rescue aid may only be granted in the form of loans.
- (17) The remuneration that the beneficiary is required to pay for rescue aid must not be set at a rate lower than the reference rate set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates for weak undertakings offering normal levels of collateralisation⁵ (currently 1-year Interbank Offered Rate (hereinafter "IBOR") plus 400 basis points) and must be increased by at least 50 basis points if the authorisation of the rescue aid is extended as a result of the notification of restructuring aid.
- (18) Any loan must be reimbursed within a period of not more than six months after disbursement of the first instalment to the beneficiary, unless it is followed by a restructuring aid or a liquidation plan.

⁵ OJ C 14, 19.1.2008, p. 6.

(19) Rescue aid must not be used to finance structural measures, unless these are required during the rescue period for the survival of the beneficiary.

(b) Restructuring aid

(20) Under the aid scheme, restructuring aid is granted in a form of an instrument appropriate to the issue that it is intended to address and repayable over as short a period of time as possible.

(21) When granting restructuring aid, the UK authorities have committed to ensure that the instrument chosen is appropriate to the problem that it is intended to address. This will be ensured by the assessment of each business on its merits including a review of historic and forecast trading performance. In particular, the UK authorities will determine whether the beneficiary's problems relate to liquidity or solvency and will select the appropriate instruments to address the problems identified.

(22) The UK authorities shall also assess whether the long-term viability of the beneficiary may be restored on the basis of a feasible, coherent and far-reaching restructuring plan, which requires adequate own contribution and burden sharing and limits the potential distortions of competition in accordance with the Guidelines.

(c) Temporary restructuring support

(23) The scheme provides for temporary restructuring support in the form of loans only. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than eighteen months after disbursement of the first instalment to the beneficiary, less any immediately preceding period of rescue aid.

(24) The remuneration of temporary restructuring support shall be set at a rate not less than the reference rate set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates for weak undertakings offering normal levels of collateralisation (currently 1-year IBOR plus 400 basis points). The remuneration for the temporary restructuring support may be increased by at least 50 basis points 12 months after the disbursement of the first instalment to the beneficiary (less any immediately preceding period of rescue aid).

(25) The scheme provides that not later than six months after disbursement of the first instalment of the temporary restructuring support to the beneficiary, less any immediately preceding period of rescue aid, the UK authorities will approve a simplified restructuring plan.

2.3.4. Proportionality of the aid/aid limited to the minimum

(a) Rescue aid and temporary restructuring support

(26) The scheme restricts rescue aid to the amount needed to keep the beneficiary in business for six months (18 months in the case of temporary restructuring support).

- (27) The amount of aid granted by the Development Bank under the scheme will be calculated on the basis of the formula set out in Annex I of the Guidelines. Any rescue aid and temporary restructuring support granted in excess of the outcome of the formula shall be justified by liquidity needs documented by a liquidity plan setting out the beneficiary's liquidity needs for the coming six months (eighteen months in case of temporary restructuring support).
- (28) The analysis of the liquidity plan will be undertaken through detailed review of the beneficiary's historic trading performance and having regard to the business and the sector and market in which it operates. The ability of the beneficiary to accelerate receipts or delay payments will be tested, as will the extent to which headroom in existing funding lines may be utilised to meet the liquidity needs. Where appropriate, the assumptions in the liquidity plan can be agreed back to supporting documentation. Methods of raising new funds will also be investigated, with due regard for the likely timescales associated with delivering additional funding in the context of the timing of the liquidity crisis.

(b) Restructuring aid

- (29) Any restructuring aid under the scheme shall be limited to the minimum amount required to enable the beneficiary to implement a restructuring plan to restore its long-term viability.
- (30) The scheme indicates that an adequate level of own contribution is required and that this own contribution must be real and aid free. To ensure that own contribution is both real and aid free, the UK authorities committed to obtain and check the documentary evidence of the beneficiary's own contribution as well as to require beneficiaries to explain where their own contribution funds have been sourced and this will form part of the due diligence associated with the appraisal of requests for aid.
- (31) The own contribution should be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary. For example, where the aid to be granted enhances the beneficiary's equity position, the own contribution should similarly include measures that are equity-enhancing, such as raising fresh equity from incumbent shareholders, the write-down of existing debt and capital notes, the conversion of existing debt into equity or raising of new external equity on market terms.
- (32) The Development Bank can consider the own contribution to be adequate if it amounts to at least 40% of the restructuring costs in case of medium-sized enterprises or at least 25% of the restructuring costs in case of small enterprises.
- (33) Aid to cover losses under the scheme can only be granted on terms which involve adequate burden-sharing by existing investors. The scheme provides that this will normally mean that existing shareholders and/or subordinated creditors must absorb losses in full, before granting of aid by the State. In any case, pursuant to the scheme, the beneficiary shall not distribute cash outflows to holders of equity capital or subordinated debt during the restructuring period to the extent legally possible, except where the aid amount is small in comparison with the own contribution, or it can be demonstrated that subordinated creditors would receive less in economic terms than under normal insolvency proceedings and if no State aid were granted.

- (34) Adequate burden sharing will also mean that the State will receive a reasonable share of the future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.

2.3.5. Negative effects

- (35) The scheme excludes the provision of aid to any SME which has received rescue or restructuring aid or any temporary restructuring support in the past ten years. Exceptions to this rule are permitted in cases: (a) where temporary restructuring support follows the granting of rescue aid as part of a single restructuring operation; (b) where restructuring aid follows the granting of rescue aid or temporary restructuring support as part of a single restructuring operation; (c) where rescue aid or temporary restructuring support has been granted in accordance with these guidelines and that aid was not followed by restructuring aid, if: (i) it could reasonably have been believed that the beneficiary would be viable in the long term when the aid pursuant to these guidelines was granted, and (ii) new rescue or restructuring aid or temporary restructuring support becomes necessary after at least five years due to unforeseeable circumstances for which the beneficiary is not responsible; (d) in exceptional and unforeseeable circumstances for which the beneficiary is not responsible.

2.3.6. Nature and form of measures to limit distortions of competition

- (36) The scheme foresees that the measures to limit distortions of competition should usually take the form of structural measures (i.e. divestment of assets, reduction of capacity or market presence). These measures should in particular take place in markets where the undertaking will have a significant market position after restructuring, in particular those where there is significant excess capacity. Divestments to limit distortions of competition should take place without undue delay, taking into account the type of asset being divested and any obstacles to its disposal, and in any case within the duration of the restructuring plan.
- (37) To avoid deteriorations in the structure of the market, the scheme indicates that structural measures should normally take the form of divestments on a going concern basis of viable stand-alone businesses that, if operated by suitable purchaser, can compete effectively in the long term. Structural measures that can take the form of divestment of assets alone and do not involve the creation of a viable entity able to compete in the market are less effective in preserving competition and will therefore only be accepted in exceptional cases where it can be demonstrated that no other form of structural measures would be feasible or that other structural measures would seriously jeopardise the economic viability of the undertaking.
- (38) According to the scheme, behavioural measures can also be taken, aiming at ensuring that the aid is used only to finance the restoration of long-term viability of the beneficiary and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition.
- (39) Certain behavioural measures must be taken for medium-sized enterprises. First, the scheme requires beneficiaries to refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of the beneficiary. Second, beneficiaries are required to refrain

from publishing State support as a competitive advantage when marketing their products and services. Third, where no other remedy, structural or behavioural, can adequately address the competition distortions identified and where such a measure will not itself restrict competition in the market concerned, the scheme indicates that it may be necessary to require the beneficiary to refrain from engaging in commercial behaviour aimed at a rapid expansion of its market share relating to specific products or geographic markets by offering terms (for example prices and other commercial conditions) which cannot be matched by competitors that are not in receipt of State aid.

- (40) The scheme does not require small undertakings to implement measures limiting distortions of competition, except where otherwise provided by rules on State aid in a particular sector. The scheme does not foresee any other behavioural measures.
- (41) The scheme indicates that, with respect to medium-sized enterprises, measures in compliance with EU law which open up certain markets to other EU operators may be considered, provided those markets are directly or indirectly linked to the beneficiary's activities. Such initiatives may replace other measures to limit distortions of competition that would normally be required of the beneficiary.

2.3.7. Recipients of previous unlawful aid

- (42) The scheme excludes the payment of individual aid to undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

2.3.8. Reporting and transparency

- (43) The UK authorities commit to submit reports on the operation of the scheme to the Commission on a yearly basis.
- (44) The UK will maintain for at least ten years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of twenty working days or such longer period as may be fixed in the request.
- (45) The UK commits to respecting the transparency conditions of point 96 of the Guidelines and making available all requested information on the following website: www.gov.wales

2.4. Budget and duration of the scheme

- (46) The scheme is foreseen to enter into force on expiry of the current scheme, which expires on 31 December 2017 (see recital (2)), after its approval by the Commission. The UK confirmed that, until then, it will respect the standstill obligation under article 108(3) TFEU. The scheme will expire on 31 December 2021, provided that EU State aid rules continue to be applicable to the UK until that time.
- (47) The overall budget of the scheme is in the range of EUR 11-17 million (GBP 10-15 million) while the annual budget is c. EUR 2.23 million (GBP 2 million).

3. ASSESSMENT

3.1. Existence of State aid

- (48) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between member States, be incompatible with the internal market.
- (49) It follows that for a measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: (i) it must be granted by the State or through State resources and must be imputable to the State; (ii) it must confer an advantage upon an undertaking; (iii) it must be selective, i.e. favour certain undertakings or the production of certain goods; and (iv) it must distort or threaten to distort competition and it must affect trade between Member States.
- (50) The UK notified the scheme as an aid scheme and does not question the qualification of the measures taken on its basis as State aid.
- (51) The public support granted under the scheme is provided by Welsh Government from Financial Transaction Reserve funding, as well as by available funds allocated to the current scheme. Therefore, the financing of the scheme can be considered as being given through State resources. In addition, the decisions to grant such support in each case are taken by the Development Bank, a wholly owned subsidiary of the Welsh Government and, as such, are imputable to the State.
- (52) The public support granted on the basis of the scheme shall be providing improved solvency and additional finance to the beneficiaries, in circumstances where they could have failed to obtain fresh capital on financial markets. Mostly SMEs in difficulty are eligible to the scheme and the interventions shall be decided on a case by case basis, thus selectively favouring certain undertakings. Furthermore, the scheme is applicable to nearly all economic sectors and, therefore, the beneficiaries may operate on markets which are open to competition and sell products which are traded throughout the EU. The public support granted through the notified scheme strengthens the position of the beneficiaries compared to that of their competitors in other Member States and must therefore be regarded as being capable of distorting competition and affecting trade between Member States.
- (53) The public support measures provided through the scheme therefore constitute State aid within the meaning of Article 107(1) TFEU. The Commission had reached the same conclusion on the previous scheme (see recital (2)).

3.2. Compatibility of the aid with the internal market

- (54) The scheme provides for rescuing and restructuring aid as well as temporary restructuring support granted to non-financial undertakings in difficulty. In view of this, the Commission has examined the scheme in light of Article 107(3) (c) TFEU and, in particular, on the basis of the Guidelines, which allow, in point 37, that Member States set up schemes for rescue and restructuring aid to SMEs.

3.2.1. Beneficiaries

- (55) Under the scheme and as noted in recital (6) aid can only be granted to SMEs as defined in accordance with the definition of SMEs included in point 13 of the Guidelines.
- (56) As foreseen in point 18 of the Guidelines and explained in recital (4), the scheme excludes from its sectoral scope any undertaking operating in the coal and steel sector as well as those covered by specific rules for financial institutions.
- (57) In accordance with point 19 of the Guidelines and as noted in recital (7) aid can only be granted to undertakings in difficulties as defined in point 20 of the Guidelines, excluding newly created undertakings and companies forming part of a larger business group (see recitals (8) and (9)), in line with points 21 and 22 of the Guidelines.
- (58) In addition, in accordance with point 29 of the Guidelines and as noted in recital (5) aid can also be granted to SMEs that do not qualify as undertakings in difficulty but are merely facing acute liquidity needs due to exceptional and unforeseen circumstances. Exceptional and unforeseen circumstances are those that the SME could not reasonably be expected to have anticipated and planned for as part of the normal course of business. Acute liquidity needs shall be determined through analysis of the SME's' financial position and ability to meet its due debts by reference to the SME's' historic and forecasted financial statements and debtor and creditor positions.

3.2.2. Aid instruments

- (59) As explained in recital (2) and in line with points 25 to 28 of the Guidelines the scheme foresees the granting of three types of aid, namely rescue aid, restructuring aid and temporary restructuring support.

3.2.3. Conditions for granting of aid

- (60) In line with point 105 of the Guidelines, and as described in recital (10), the scheme limits the maximum amount of aid that can be awarded to any one undertaking under the scheme to EUR 10 million including any aid obtained from other sources cumulated for the same purpose as the aid granted under the scheme.

- (61) As foreseen in point 38 of the Guidelines, aid can only be granted if it contributes to a well-defined objective of common interest, if the need for State intervention is shown, if the aid measure is appropriate, if the aid has an incentive effect, if the aid is proportionate, if any undue negative effects on competition and trade between Member States are avoided and if the aid is transparent.
- (62) In this regard, in order to prove that the aid contributes to a well-defined objective of common interest point 44 of the Guidelines requires Member States to demonstrate that the failure of the beneficiary would be likely to involve serious social hardship or severe market failure. Point 107 of the Guidelines provides guidance as to what will constitute such an objective of common interest in the case of schemes for SMEs. As described in recital (12), and in line with sub (a), (b), (c) and (d) of point 107 of the Guidelines, a contribution to an objective of common interest is found to exist if the failure of the beneficiary would likely involve social hardship, causing negative economic and social consequences for the region, or where the State intervention is needed to correct market failures and prevent bankruptcy of innovative companies or SMEs with high growth potential, thus preventing adverse consequences for an entire sector or a region, or if similar situations of hardship duly substantiated by the beneficiary would arise.
- (63) In addition, restructuring aid must be conditional on the implementation of a restructuring plan which must fulfil the conditions laid down in points 45-49 of the Guidelines as explained in recital (13).
- (64) In line with points 53 and 59 of the Guidelines, the Development Bank must demonstrate the need for State intervention and that the aid has an incentive effect. In this regard, as described in recital (14), the UK authorities require that an alternative scenario is included in the restructuring plan on the basis of which aid under the scheme will be granted, in order to demonstrate the serious social hardship or severe market failure that would occur in case of bankruptcy or winding-up of an undertaking.
- (65) The appropriateness of any rescue aid must be demonstrated in accordance with the requirements laid down in points 55 (a)-(c) and (e), 56 as well as 109 of the Guidelines. As regards restructuring aid, granting authorities must establish its appropriateness in line with point 58 of the Guidelines. The compliance of the scheme with these requirements is demonstrated in recitals (14) to (22).
- (66) The proportionality of rescue aid must be established in line with point 60 of the Guidelines and, in particular, the formula set out in Annex I to the Guidelines. Any aid exceeding the result of that calculation must only be authorised if it is duly justified by the provision of a liquidity plan, as described in recitals (27) and (28), setting out the beneficiary's liquidity needs for the coming six months.
- (67) Restructuring aid is regarded to be proportionate only if, in line with point 61 of the Guidelines, its amount and intensity is limited to the minimum necessary to enable restructuring to be undertaken and, furthermore, only if the conditions of a significant own contribution of points 62-63 and 111 of the Guidelines as well as of a burden sharing in the meaning of points 65-69 of the Guidelines are fulfilled. As described in recitals (29) to (34), the scheme fulfils the proportionality requirements, in particular, by requiring that the own contribution of the beneficiary be adequate and also comparable to the aid instrument provided as regards the effects on solvency and/or the liquidity of the beneficiary.

- (68) As regards temporary restructuring support and as described in recitals (23) to (25) and (26) to (28), the scheme implements the appropriateness and proportionality requirements set out in points 115-117 of the Guidelines.
- (69) As explained in recital (35), the scheme requires respect of the "one time last time" principle as defined in point 112 of the Guidelines. In addition, it stipulates, as described in recitals (36) - (41), that measures to limit distortions of competition in line with points 77-93 as well as 113 of the Guidelines must be taken. The Commission concludes on this basis that the requirements laid down in the scheme concerning measures to limit distortions of competition are in line with points 77-86 as well as point 113 of the Guidelines.
- (70) Furthermore, as noted in recital (42) and in accordance with point 94 of the Guidelines, the scheme expressly excludes the payment of individual aid in favour of an undertaking, which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (71) Lastly, as noted in recital (45) the scheme fulfils the conditions provided for in point 96 of the Guidelines concerning transparency and stipulates that the UK authorities will submit annual reports on its operation to the Commission. The UK authorities have committed to publish online the full text of the approved aid scheme; the identity of the granting authority/(ies); the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, etc. As described in recital (43), the UK authorities commit to submit annual reports on its operation to the Commission.

3.2.4. Additional observations on the entering into force and termination of the scheme

- (72) Since the UK notified on 29 March 2017 its intention to leave the European Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council in agreement with the UK decides to extend this period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, the present decision only applies if (i) the UK is still a Member State on the first day of the period for which the notified scheme is approved (from 1st of January 2018 to 31 December 2021, in line with the duration of the Guidelines (in point 135)), and (ii) to individual aid granted⁶ under the notified scheme until the UK ceases to be a Member State.
- (73) In view of the above, the Commission concludes that the scheme fulfils all compatibility criteria laid down in the Guidelines and is, therefore, compatible with the internal market.

⁶ According to the case-law of the CJEU, aid must be considered to be granted at the time that an unconditional right to receive it is conferred on the beneficiary under the applicable national rules (See Case C-129/12 Magdeburger Mühlenwerke EU:C:2013:200, paragraph 40).

4. CONCLUSION

(74) The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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 the disclosure to third parties and to the publication of the full text of the 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:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission