



EUROPEAN COMMISSION

Brussels, 15.1.2018
C(2018) 229 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.49445 –
Modification of the National Broadband Scheme for the UK for
2016-2020 (BDUK – SA.40720) - United Kingdom**

Sir,

1. PROCEDURE

- (1) On 8 December 2017, the United Kingdom (UK) notified to the Commission, in accordance with Article 4.2.(a) of Commission Regulation (EC) N°794/2004¹, an increase in the budget of an authorised aid scheme. The original aid measure was approved by the Commission on 26 May 2016 as State aid case SA.40720² (the 2016 decision).

2. DETAILED DESCRIPTION OF THE MEASURE

- (2) The present notification increases the maximum budget by an additional maximum estimated budget of GBP 500 million (approximately EUR 568 million). The new overall maximum estimated budget of the scheme is therefore

¹ Commission Regulation (EC) n°794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

² Commission Decision of 26 May 2016 in case SA. 40720 (2016/N) - National Broadband Scheme for the UK for 2016-2020. See http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf

The Rt Hon Boris JOHNSON MP
Secretary of State for Foreign and Commonwealth Affairs
King Charles Street
London SW1A 2AH
UNITED KINGDOM

GBP 1 billion (approximately EUR 1,14 billion). Apart from the budget change, no other modification to the scheme is foreseen.

- (3) The approved scheme supports the UK's objective of extending the coverage of NGA infrastructure as far as possible across the 5% of the premises which remain uncovered (2016 decision, recitals 3 and 6). As laid out in the 2016 decision, recital (6), the UK authorities had anticipated additional funding to become available. This is now the case, and it will enable the UK to support additional eligible projects covering a higher proportion of the already defined target areas.
- (4) All recitals from (2) to (166) of the 2016 decision remain valid and unaffected, except for recitals (6) and (19) on the overall budget which are amended according to the present decision. In recital (22), the Enterprise Bill referred to has now been adopted as Enterprise Act 2016.
- (5) All reporting obligations as set out in the 2016 decision remain unchanged. According to that decision, the UK authorities have committed to submit to the Commission annual reports, as required under Article 26 of Council Regulation (EU) 2015/1589. In line with point 78(k) of the Broadband Guidelines³, the UK authorities will also report key information on the implementation of the measure to the European Commission every two years. In addition, and in accordance with point 53 of the Broadband Guidelines, the UK authorities will submit to the Commission an evaluation report in due time to allow for the assessment of the possible prolongation of the scheme and in any case upon expiry of the scheme.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107 (1) of the TFEU

- (6) The measure constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), as described in paragraphs (167) to (178) of the 2016 decision.

3.2. Compatibility of the aid

- (7) As stated above, the notified measure amends an authorised aid scheme which was approved by the Commission on 26 May 2016. According to recitals (179) to (240), the scheme has been considered to meet the compatibility criteria set out in the Broadband Guidelines, hence being compatible with the internal market under Article 107 (3) (c) TFEU.
- (8) Besides the budget change, the United Kingdom will not alter any other conditions on which the original scheme was approved by the Commission.
- (9) The doubling of the initial budget will allow the UK authorities to cover additional premises within the target areas as defined in the 2016 decision. The additional budget compensates for a market failure and/or important inequalities and is therefore necessary on the same grounds as the initial budget.

³ Communication from the Commission - EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01), OJ C 25, 26.01.2013, p. 1-26.

- (10) The UK authorities have designed the measure in such a way as to minimise the State aid involved. The additional budget will be allocated in compliance with the Broadband Guidelines 2016⁴ and on the same conditions as the initial budget, as set out in recitals 191-221 of the 2016 decision, and is therefore proportionate.
- (11) Regarding the reporting obligation, the UK authorities will submit to the Commission annual reports, as well as reports on the implementation of the measure every two years as set out above in recital 4. Regarding the *ex-post* evaluation, the evaluation plan⁵ included in the 2016 decision remains adequate.
- (12) The Commission consequently sees no reason to depart from its previous positive compatibility assessment in its decision in State aid case SA. 40720. Thus, the measure and the amended scheme can be considered to be compatible with the internal market in accordance with Article 107(3) (c) TFEU, on the basis of the conditions stipulated in the Broadband Guidelines.

3.3. Additional observations

- (13) Since the United Kingdom 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 United Kingdom 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 United Kingdom 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 United Kingdom is still a Member State on the first day of the period for which the notified scheme is approved, and (ii) to individual aid granted under the notified scheme until the United Kingdom ceases to be a Member State.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid 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.

The Commission reminds the United Kingdom of its obligation to submit annual reports on the application of the aid scheme and to inform the Commission pursuant to Article 108(3) TFEU of all plans to amend or extend this measure or the evaluation plan. The Commission also reminds the UK authorities that the evaluation report must be submitted by December 2020 at the latest.

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>.

⁴ Footnote 3.

⁵ See: <https://www.gov.uk/government/publications/national-broadband-scheme-evaluation-plan>

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

