

Energy UK's response to the Subsidy Control consultation

March 2021

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership. We represent the diverse nature of the UK's energy industry with our members delivering over 80% of both the UK's power generation and energy supply for the 28 million UK homes as well as businesses. The energy industry invests £13bn annually, delivers £31bn in gross value added on top of the £95bn in economic activity through its supply chain and interaction with other sectors, and supports 738,000 jobs in every corner of the country.

Energy UK welcomes the subsidy control consultation and the opportunity provided to shares our views. Considering the high number of questions and various level of relevance for the energy industry, we have chosen to respond using a theme approach instead that better shows our areas of priority.

Key principles for an efficient and reputable UK subsidy regime

- Support the UK's Net-zero ambition by 2050, maintain a competitive and dynamic market economy and create an attractive investment environment for clean energy and low carbon projects.
- Transparent principles and procedures, with clear timetables and efficient processes for consultation and for dealing with any issues or objections raised by interested parties, including businesses, not just States.
- A less bureaucratic system than the EU State aid system consistent across the UK internal market.
- A clear process that reflects the UK-EU TCA provisions in the UK regime's approach with clear references to the status of energy and environmental projects.

Transition to the new UK subsidy regime

- 1.1. Following the UK's exit from the EU, there is an opportunity to develop a new regime which is independent and robust, but which is also more flexible, less bureaucratic, and faster to reach decisions than the EU state aid regime.
- 1.2. The subsidy regime should seek to reduce unnecessary red-tape, administrative burden, and promotes competition and investment in strategic areas, especially in

areas that support the decarbonisation agenda and the UK's ambition of reaching Net-zero by 2050.

- 1.3. Subsidies should be used to deliver outcomes that wouldn't otherwise be achieved and the regime should be UK wide and support the internal UK market.
- 1.4. It is important to establish the new regime quickly and with certainty to avoid delays to projects currently under development and enable a smooth transition so that schemes which were acceptable under the EU regime (e.g. Contract for Difference (CfD) and Capacity Market) be normally acceptable/transferable under the new regime.
- 1.5. Energy UK welcomes proposals to constrain the circumstances in which aid already granted could be recovered (avoiding the sort of situation we encountered with the Capacity Market).

Energy and environmental projects in a Net-zero context

- 2.1. Energy UK is pleased that consultation recognises that net-zero driven subsidies should be supported by the new regime. Government could however go further by identifying Net-zero as a specific objective of the new regime.
- 2.2. Government should set out in more detail the framework and principles which would govern subsidies for environmental and energy projects and thus provide a high level of confidence that schemes and subsidies which were in compliance with these principles are compatible with the new regime.
- 2.3. Energy UK suggests that specific rules on energy and environmental subsidies would be useful provisions under the UK subsidy regime to increased clarity, especially under the Net-zero agenda, and should not be limited to comply with trade agreements.
- 2.4. We can see the value of supporting regions to meet the levelling-up agenda, but other criteria should also be considered, for example the deliverability of low carbon projects and overall cost effectiveness (cost per tonne of CO₂ saved for example).
- 2.5. Subsidies should be for projects that cannot be materialised under normal market conditions and for technologies that support the UK's transition to Net-zero. As such, there is a need to consider the speed and scale of deployment that will be required in the years to come.
- 2.6. Offshore wind is a good example of a technology that can be considered close to being able to operate without subsidy at the current speed and scale of deployment, but that cannot be realised without continued support at the scale required for Net-zero. It is also a technology that continues to evolve and adapt and as such continues to require support. As such, when assessing the level of subsidy, it should be based on level of scale and deployment in the future, and not limited to the concept of minimum size based on current levels of scale and deployment.
- 2.7. The subsidy regime (and any more detailed framework developed for energy and environmental projects) should also be flexible enough to recognise the different circumstances of very large capital intensive projects with very long timeframes – such

as new nuclear and CCUS – and the need to have arrangements for these which will attract investment at a lower cost of capital and address remote but high impact risks.

- 2.8. The Contract for Difference (CfD) scheme has been and remains a key driver of the deployment of renewable and low carbon technologies that support the transition to a Net-zero economy. The CfD will continue to play such crucial role in the decades ahead as further emerging technologies will need to be deployed at scale.
- 2.9. Such subsidies are beneficial under both strategic interests in terms of the ability of the energy system to transition to Net-zero and continue to support security of supply, and advancing the clean transition and supporting the fight against climate change. The CfD explicitly supports the Government's first objective of delivering UK strategic interests with reference to Net-zero.
- 2.10. We would also propose that subsidy schemes introduced by Electricity Market Reform such as the CfD and the Capacity Market, and subsequently cleared by the European Commission, all be included in the scope of any future 'low-risk' subsidy definition.

Interaction with the EU state aid regime

- 3.1. The UK subsidy regime should ensure it meets the requirements of the UK-EU TCA and other trade agreements/WTO principles.
- 3.2. This is especially important when it comes to the provisions under the TCA on environmental and energy projects, as many energy companies operating in the UK also have operations in the EU and many projects are cross-border with neighbouring countries, with more in the pipeline as part of the decarbonisation of the energy system.
- 3.3. There is also a need to define what national or global economic emergencies are, considering the UK and the EU's recognition that climate change constitutes a threat to humanity and the recognition of the damage climate change already causes and will continue to inflict to economies across the world. In the UK, many local councils have declared climate emergencies, and there is a need to clarify how this is reflected in the subsidy regime and in the context of the TCA provisions.
- 3.4. We welcome the joint UK/EU declaration on subsidy control that recognises that subsidies for R&D are generally allowable. We would emphasise the role of R&D in developing and improving the technologies required for net zero, including areas such as nuclear, onshore/offshore wind (including floating wind), heat pump deployment, low carbon hydrogen.

Challenge hearing process

- 4.1. Energy UK supports the proposal for a judicial forum to hear challenges of subsidy schemes and awards, with more specialist knowledge from an expert panel. This would be the main route available for those willing to challenge state aid decisions to

whether the public authority granting the aid has followed due process, giving more certainty to investors and developers of aid benefiting projects.

- 4.2. We would also suggest exploring a route for challenge on merit and for third party scrutiny of the UK subsidy regime with a review process being open to stakeholder input as well.
- 4.3. Energy UK notes the importance of time limits for implementation of recovery power, and agrees with the proposal of one month. This would allow for time for challenges and request for information, but not risk delaying for a lengthy period the advancement of the projects.
- 4.4. For the CfD scheme, this will need reflected into the Low Carbon Contract Company's (LCCC) CfD timings on ICP/contract signature, to allow for that period to pass before contracts are signed.
- 4.5. We note that it is not yet determined whether a formal pre-approval process will be required for larger or more complex cases. The absence of a formal process may offer benefits in terms of speed and flexibility but we would nonetheless recommend that Government or the awarding public authority should be required to prepare a sufficiently detailed decision document which is finalised at the time the decision is made to award the subsidy. Requiring this kind of decision document to be produced should help ensure that compliance with the subsidy regime principles is taken into account at the outset in the design of the subsidy and best secure that Government or the awarding public authority prepares a robust case, thereby improving legal certainty.
- 4.6. If large or "higher-risk" projects are ultimately required to secure pre-approval of any aid granted from the new UK subsidy authority, this process should follow fixed timetables and be conducted sufficiently rapidly to not be a delay/hindrance to developing projects and securing finance for them. Six months would seem to be an appropriate timeframe (the CMA currently considers large and complex mergers within this timescale so should be able to handle complex/controversial state aid case to a similar timeframe). Once any pre-approval has been granted and any limited time-period for challenge of that decision has elapsed, the aid granted should be extremely robust to further challenge.