

State aid law in times of Brexit

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Introduction

- "*Competition & State aid*"?
 - A misnomer
- Some UK political commitments
 - "*Full, UK-wide subsidy control framework*"
 - "*independent UK State aid authority*" (CMA)
 - "*EU State aid rules transposed under the EU (Withdrawal) Bill*"
- But silence on detailed State aid regime
 - How to apply?
 - How to enforce?



Rationale for State aid control

- 1956 *Spaak* Report: market integration tool
 - Need for supranational control: no trust in Member States
- State aid
 - Commercial war between Member States
 - EU interest v national interest (*nationalism, protectionism...*)
 - State aid control by a national authority? *What a joke!?*
- EU State aid control is unique (the ultimate redline of EU rule of law)
 - *Ex ante* (less and less), exclusive powers to Commission, recovery, wide powers to national courts, primacy of EU law
 - Comp. with *ex post* and (very) weak WTO Agreement on Subsidies and Countervailing Measures



Export of EU State aid control

- Good precedents – different degrees of integration
 - EEA – two pillars structure
 - Parallel State aid system
 - Ukraine, Moldova (DECFT)
 - Albania, Macedonia, Montenegro, Serbia, Turkey (accession candidates)
 - Bosnia and Herzegovina, Kosovo (potential candidates)
 - Switzerland (bilateral and sectorial agreements)
 - WTO plus
 - Asian agreements (South Korea, Singapore, Vietnam), and many others
 - CETA (Canada): no State aid provision (information and best endeavour)
 - EU Euro-Mediterranean Association Agreements (rules may be adopted)
- Brexit?
 - Paradox: closest trade partner but centrifugal trends
 - State aid domestic legislation not unprecedented but for accession purposes (see 2004, 2007 and 2013 enlargements and DECFT trend)
 - Contradiction in the UK's position ("deep and complete" trade cooperation with the EU but no role for the CJEU)



Can CMA make the job?

- Internal dimension: the Devolved Administrations
 - Scotland, Wales, Northern Ireland, major cities (tension with London centralisation)
 - From EU discipline to UK discipline: easy concession
 - Some freedom from EU rules?
- External dimension: UK-EU trade relationship
 - See UK response to SAAP in 2005
 - Domestic regime acceptable for accession mode – Brexit?
 - What about the 5% or 10% most sensitive cases?
 - CMA independent? Will CMA act *against* the interest of the UK?
 - Set up a more independent system: High Court, CAT?
 - Access to UK courts by EU individuals? (UK companies will continue to benefit from EU law in the EU)

Thank you for your attention!

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