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14a Eccleston Street, London, SW1W 9LT
Email: press@politeia.co.uk , Telephone: 020 7799 5034
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Protect UK Competitiveness from EU Action! The State aid proposals in the Backstop should change, explain two leading UK-EU lawyers in new Politeia publication

Publication: Tuesday 5th Feb. 2019
PDF Link: ***The Withdrawal Agreement, State Aid and UK Industry: How to Protect UK Competitiveness***

After Parliament's rejection of the Withdrawal Agreement, the UK's focus has been on how to exit the Backstop. But other changes are also needed to ensure that the UK is treated fairly under the proposed Treaty. This is especially the case for State aid policy after Brexit – say two distinguished lawyers, Barnabas Reynolds and James Webber.

The Withdrawal Agreement would give the EU *de facto* control over UK State aid. That could have far more serious implications for the UK economy and fiscal policy than seems commonly understood. It would mean that during the transition the UK could not prepare for a possible no deal by using State aid without Commission approval. And, under the Northern Ireland Backstop, the EU would retain permanent control over UK State aid for goods and most likely for far more than that.

In a detailed schedule the authors outline what steps can be taken. They propose:

- Extending UK membership of the EU pending negotiation of a new trade relationship in place of transition;
- Removing the Backstop and fixing the transitional provisions; or
- Codifying the operation of the State aid provisions in the Backstop, for instance so that the UK benefits from equivalent protections to the EU, and fixing the transitional provisions.

The Withdrawal Agreement, State Aid and UK Industry: How to Protect UK Competitiveness is published on 5th February 2019 by Politeia, 14a Eccleston Street, SW1W 9LT.

Notes to Editors:
As the authors explain:

> 'EU State aid law was intended for its customs union for EU goods trade - to protect Member State industries from unfair competition from States giving their own industries subsidies once tariffs were removed.' But the ECJ and European Commission have 'extended the original concept to cover a range of other industries, as well as tax matters and many other key competitiveness measures.'

Using its State aid powers the EU Commission could control such measures as:

- VAT changes (other than to the prevailing rate). These would need Commission approval, unlikely to be forthcoming if they gave UK businesses a competitive edge.
- Subsidies or tax relief to incentivise a business to locate or invest in the UK or compensation to some sectors for new costs faced after Brexit.
- Temporary relief from costly social security, environmental or pension rules.
- Tax changes favourable to a sector, e.g. lowering green energy levies.
- Tax changes to encourage investment in the UK (other than lowering prevailing rates) would be vulnerable to State aid control.
- Infrastructure Investment. Any infrastructure investment that is likely to generate a direct economic return, e.g. toll roads, ports, airports, industrial parks.

Enquiries to: The Authors:

- **Barnabas Reynolds** leads the Global Financial Institutions practice at Shearman and Sterling LLP. He is the author of *A Blueprint for Brexit: The Future of Global Financial Services and Markets in the UK* (2016) and *Free Trade in UK-EU. Financial Services: How Best to Structure a Brexit Free Trade Deal* (2018) barney.reynolds@shearman.com
- **James Webber** is an EU State aid and antitrust partner at Shearman and Sterling LLP. He is the author of *Access to evidence in market investigations* (2014) and *Cross-Border EU Competition Law Actions* James.webber@shearman.com

Politeia: Anton Witchell-Chibber, 0207 799 5034, press@politeia.co.uk

These themes will be discussed at two forthcoming Politeia events at which journalists would be welcome. If you would like to attend, please respond to this e-mail by writing to press@politeia.co.uk with your name, position and organisation, and we shall put you on the list.

- ***Brexit & Beyond: Unfinished Business,* Wed. 6th February, 12.30pm - 1.30pm,** The Army & Navy Club, 36-39 Pall Mall, London, SW1Y 5JN (Barnabas Reynolds, Martin Howe QC, Graham Stringer MP, Andrea Jenkyns MP)
- ***Referendum Decision, the UK and the EU - Constitutional, Legal and Regulatory Change*, Tue. 12th February, 7.00pm – 8.00pm,** BPP Law School, 68-70 Red Lion St, WC1R 4NY in Politeia's Legal series with BPP University, (James Webber and others).