



EU State Aid Rules must End with the Transition! Replace frail EU rules with a new WTO inspired control system, says city lawyer in Politeia's new proposals.

Publication: Thursday 13th February 2020

PDF: [All Change? UK State Aid after Brexit What Law? Whose Courts?](#)

Very shortly the UK-EU talks will begin on the trade deal both parties want. The UK has made clear it intends EU laws, including EU State aid rules, to end after the transition. But the EU insists that the price of a good free trade deal will be UK rule alignment. In fact, Brussels' blueprint for the trade talks demands that the entire State aid rule book applies to the UK under the EU Court of Justice (CJEU). Such an extreme demand has not been imposed in other deals such as the Canada –EU trade deal, CETA.

Whatever the case for, or against, state subsidies to industry, the EU regards State aid control as being of central importance, says Politeia's new publication, *All Change? UK State Aid after Brexit: What Law? Whose Courts?* It can be used as one of the most effective policy tools available to the EU, says the author, James Webber, a Partner of Shearman & Sterling LLP. He warns that the European Commission could use it to exercise executive power over the UK's competitiveness.

He explains how the coming battle over State aid rules can be resolved. A new system of UK subsidy control should be proposed by the UK which ticks the EU's level playing field boxes, but does not subject the UK to EU law or jurisdiction.

Webber proposes that:

- **For the future the UK must end EU State aid rules with the transition.** Not only are they EU rules, but the dispute resolution system would not be impartial – for only the EU's court, the CJEU would judge disputes. Giving the final say to one party's courts makes EU concepts unusable in an agreement that must balance rights and responsibilities fairly.
- **There is no good reason to transfer EU State aid rules to a new UK regime.** The rules lack transparency, are unpredictable, slow and unfair. The weaknesses of the EU State aid regime are serious and underappreciated.
- **A new system to control wasteful and distorting subsidies would be more efficient and accountable.** It would also be more responsive to Britain's traditions of permissive, but transparent and accountable law making
- **The UK should switch to a legal framework inspired by the WTO Subsidies and Countervailing Measures Agreement, as anticipated in November by the Prime Minister.** An entirely new UK subsidy control regime which respects both UK sovereignty and EU legal autonomy but protects against genuine trade distortion is perfectly possible. This could also bring a level playing field, putting the focus on subsidies that *genuinely* distort trade and competition. It would also give the CMA powers to remedy any such effects. ... /

Given that the Withdrawal Agreement's Northern Ireland Protocol remains in place until a new FTA supersedes it, the EU State aid rules will continue in Northern Ireland, The author explains that the consequences of this are potentially grave and should meanwhile be limited by UK law. The Government should introduce legislation to ban notification to the European Commission of any State aid for beneficiaries outside Northern Ireland. As the author says:

Quick legislative action is needed to ensure that the ambiguity in the Northern Ireland Protocol is resolved satisfactorily. Any supposed requirement to notify State aid to beneficiaries in Great Britain to the European Commission following the end of transition would be highly damaging to the Government's freedom of action in rebalancing the economy

Welcoming the publication, Politeia's Director, Sheila Lawlor, explains in her foreword:

The UK's economy is based on freedom under laws that emerged over centuries to protect constitutional and economic liberty. EU laws, including State aid rules, should be replaced by our own. There is, however, a grave danger that the EU will use the Northern Ireland Protocol to impose its own State aid rules on the whole of the UK, and so continue to exercise a large measure of control over us. For this reason, it is important that a free trade deal replaces the Northern Ireland Protocol. James Webber's proposals explain why and show how potential interference can in any case be minimalised.

These and related themes were discussed by the author, **James Webber** at a special meeting in the **House of Commons Committee Room 15** (Westminster, London, SW1A 0AA) on **Wednesday 12th February**. Those who spoke alongside James Webber were:

- **Steve Baker MP**, Chair, ERG; Minister for Exiting the European Union (2017-18)
- **Thomas Sharpe QC**, One Essex Court
- **Dr Sheila Lawlor**, Director, Politeia (Chairing)

* * * *

All Change? UK State Aid after Brexit What Law? Whose Courts? by James Webber will be published by Politeia, 14a Eccleston Street, SW1 W9LT, on Thursday 13th February 2020. [All Change? UK State Aid after Brexit What Law? Whose Courts?](#). Hard copies are available from press@politeia.co.uk.

***The Author:** James Webber is a Partner of Shearman & Sterling LLP in the firm's global anti-trust practice. His work focuses on EU competition and administrative law representing companies and government before European Commission and European courts and his special interests include EU State aid rules.

Enquiries:

The Author: James Webber, 0207 655 5691/+32.2.500.9871

Series Editor: Dr Sheila Lawlor, 0207 799 5034, sheila.lawlor@politeia.co.uk

Politeia: Annabelle Newman, 0207 799 5034, press@politeia.co.uk

www.politeia.co.uk

14a Eccleston Street, SW1W 9LT Telephone: 0207 799 5034