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## EU State Aid Rules and WTO Subsidies Agreement



### Summary

- 1 EU state aid rules
- 2 Transition period and beyond
- 3 WTO Agreement on Subsidies and Countervailing Measures

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# Contents

<b>Summary</b>	<b>5</b>
<b>1 EU state aid rules</b>	<b>8</b>
1.1 Is it state aid?	9
1.2 Exemptions	11
1.3 Special rules for public services	14
1.4 Notifying the European Commission	16
1.5 Fitness check of EU state aid rules	17
1.6 Coronavirus support	18
1.7 Organisation of EU state aid controls in the UK	20
1.8 Statistics	20
<b>2 Transition period and beyond</b>	<b>23</b>
2.1 State aid in the Withdrawal Agreement	23
2.2 Protocol on Ireland and Northern Ireland	24
2.3 UK support measures in response to Covid-19	25
2.4 Independent UK subsidy regime	26
<b>3 WTO Agreement on Subsidies and Countervailing Measures</b>	<b>29</b>
3.1 Comparing EU state aid and WTO rules	31
3.2 Critique of the SCM and global trends	32
3.3 Statistics	33



## Summary

As a member of the European Union, the United Kingdom was part of the EU regime on restricting trade-distorting business subsidies (“state aid”). EU state aid rules continued to apply to the UK till the end of the transition period on 31 December 2020. New mutual commitments on subsidy control were agreed in the UK-EU Trade and Cooperation Agreement. In June 2021, the Government put forward the Subsidy Control Bill, which will establish an independent UK subsidy control regime. But in light of the government’s international commitments, both EU state aid rules and the WTO Agreement on Subsidies and Countervailing Measures remain relevant to UK public authorities.

This briefing explains what EU state aid rules mean. It also sets out the recent changes brought about in response to the coronavirus pandemic. A further section looks at the state aid rules which applied during the transition period, the settlement of ‘ongoing’ cases, and the provisions regarding trade between Northern Ireland and the EU. Finally, the briefing sets out the main principles of the WTO Agreement on Subsidies and Countervailing Measures.

For information on state aid in the UK-EU negotiations see Commons Library briefings CBP 8852, [The UK-EU future relationship negotiations: Level playing field](#) and CBP 9190, [The UK-EU Trade and Cooperation Agreement: Level playing field](#).

### What is state aid?

EU Member States sometimes use public resources to intervene in their national economies by assisting companies or industries. This can range from a government tax relief scheme for investors, to a local authority giving a subsidy to a property developer.

This type of assistance is called ‘state aid’ and is normally prohibited if it threatens to distort trade and competition between firms, through for example, discouraging investment and increasing costs to consumers. EU state aid rules aim to create a level playing field so that, for example, French firms can compete fairly with German ones.

The EU and its Member States also use state aid as a policy tool. Exemptions to the EU state aid rules allow for certain beneficial interventions. For example, state aid might be necessary and justified to address a market failure, as when small and medium enterprises (SMEs) have difficulties finding investment capital. It may also be necessary to achieve policy goals such as regional economic development or environmental protection. Governments

can, for instance, use state aid to stimulate business investment in less developed areas or advance environmentally friendly technologies.

The European Commission (EC) has strong powers to assess cases of state aid, approve them and enforce stringent ‘claw-back’ mechanisms when state aid is deemed unlawful. As an EU Member State, the UK did not have specific legislation for state aid and EU state aid rules applied directly.

## What does the EU state aid framework look like?

As a general rule, an EU Member State cannot pay out state aid unless a scheme or an aid measure is approved by the European Commission. Policymakers have to make sure that support is legal through making it compliant with guidelines set out at EU level.

However, there are many exemptions, such as the *de minimis* rule for assistance worth less than €200,000 over three years and the General Block Exemption Regulation. These exemptions generally allow smaller schemes to be set up without a prior notification in Brussels. In addition, EU state aid rules do not restrict policies open to all businesses, such as a general reduction of corporation tax or changes in employment law.

In 2020, the Commission finished an evaluation of the state aid rules. It concluded that overall, the rules were fit for purpose but would be amended in some areas, to reflect the objectives of the [European Green Deal](#) – the EU’s climate action plan, and its industrial and digital strategies.

In response to the coronavirus outbreak, the EU has temporarily relaxed the usual state aid restrictions to give Member States more flexibility to support their economies.

The EU state aid rules can be found on [the European Commission’s website](#).

## Has there been much state aid in the UK?

While an EU Member State, successive UK governments supported rigorous state aid controls and avoided subsidising particular industries or companies.

The UK public sector had spent less in business support than most other EU countries. In 2019, the UK spent 0.51% of GDP on state aid (excluding railways, agriculture and fisheries), while France spent 0.85% and Germany 1.54%.

## Transition period

During the transition period, the UK continued to apply EU state aid rules and regulations and the EC carried on with the assessment and approvals of UK state aid measures. After the end of the transition period on 31 December 2020, the Commission can finish ongoing procedures and take follow-up action. For up to four years after that date, the Commission has power to

initiate new examinations of UK aid, which authorities may have paid to businesses before the end of transition. This for example allows the Commission to investigate allegations of unlawful UK aid paid out in the past.

The Protocol on Ireland and Northern Ireland determines that EU state aid law continues to apply in the UK in respect of support measures which can affect trade between Northern Ireland and the EU. This is limited to trade in goods and electricity. The European Commission remains the enforcement authority for these measures.

The Government has [proposed an independent UK subsidy control regime](#) in the [Subsidy Control Bill](#), which is currently going through Parliament.

## World Trade Organisation Agreement on Subsidies and Countervailing Measures

The UK is party to the WTO Agreement on Subsidies and Countervailing Measures.

Under the Agreement, some subsidies are prohibited outright while the rest are ‘actionable’ – meaning that the subsidy is allowed, but other countries can take certain actions if the subsidy harms them. Countries can protect their industries by taxing imports of the subsidised good – this is known as imposing a ‘countervailing duty’.

Although the definition of a ‘subsidy’ under the WTO regime is broadly similar to ‘state aid’ in EU law, the EU rules are a lot more stringent than the WTO rules on subsidies. The key differences are:

- The default position in WTO rules is that subsidies are generally allowed, while EU rules consider subsidies to be generally illegal.
- WTO rules apply to goods, but EU rules include services too.
- EU rules are applied prospectively (i.e. legality must be proved *before* awarding any support), while WTO rules are only reactive, and are only triggered if a member country lodges a complaint.
- WTO rules rely on state-to-state enforcement while under EU rules there are remedies available to businesses and individuals.
- Under EU rules, a business has to repay illegal state aid. There is no such mechanism to remove anti-competitive effects under the WTO rules.

The WTO rules on subsidies apply alongside the UK commitments on subsidy control under the Trade and Cooperation Agreement with the EU and other international agreements.

The text of the WTO’s Agreement on Subsidies and Countervailing Measures is available on [the WTO’s website](#).

# 1 EU state aid rules

State aid is when public bodies support certain enterprises or industries, financially or by other means.

EU Member States sometimes intervene in their national economies by providing assistance to companies or industries using public resources. This can range from a government tax relief scheme for investors to a local authority giving a subsidy to a property developer.

This type of assistance is called ‘state aid’ and is normally prohibited by EU rules, unless it is covered by one or more of the exemptions outlined later.

State aid is generally prohibited in the EU because it can distort competition between firms, discourage investment and cost consumers. State aid rules aim to create a level playing field so that, for example, British firms can compete fairly with German ones. The arguments in favour of state aid rules also apply to domestic competition.

The UK government has historically supported strong state aid rules:

The ineffective use of State aid in the long run can ... lead to a persistence of inefficient and unproductive industries, preventing the emergence of new and more innovative, high growth firms ... and so damaging the country’s long term prosperity. And of course, if taxpayers’ money is not being used to subsidise inefficient enterprises, taxes can be lower or public spending can be increased in other areas.<sup>1</sup>

But state aid can also be an important policy tool. Exemptions to the state aid rules allow for certain beneficial interventions. For example, state aid might be necessary and justified to address a market failure, as when SMEs have difficulties finding investment capital or companies are reluctant to invest in employee training. State aid may also be necessary to achieve policy goals such as regional economic development or environmental protection. Governments can, for instance, use state aid to stimulate businesses to invest in poorer regions or to purchase advanced environmentally friendly technologies.

<sup>1</sup> Department for Business, Energy and Industrial Strategy, [The state aid manual \[withdrawn\]](#), July 2015, p6

## 1.1

## Is it state aid?

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State aid can be legal or illegal.

There are four key questions to determine whether an aid measure involves state aid (i.e. whether state aid rules apply). Note however that **the presence of state aid does not automatically mean that a measure is prohibited**. Rather, the authorities need to ensure that the proposed measure is legal. This can be done, for example, by demonstrating that the aid measure is covered by an exemption to the rules, or by seeking the approval of the European Commission (EC).

For any assistance provided by EU Member States, if the answer to all of the following questions is 'yes', then the measure involves state aid. Conversely, if 'no' is the answer to at least one of these questions, then the measure does not involve state aid (i.e. state aid rules do not apply).<sup>2</sup>

1. Does the aid **favour certain undertakings** (such as companies) or the production of certain goods?
2. Is aid **provided through state resources**?
3. Does the aid distort or threaten to **distort competition**?
4. Could the aid **affect trade between Member States**?

These four questions are explained in more detail below:

1. Does the aid give an **advantage to certain undertakings** (such as companies) or the production of certain goods?

The state aid rules apply if the aid provides financial assistance to an organisation or group of organisations. Normally the rules apply to assistance provided to companies, but assistance to third sector organisation (such as charities) can also be considered state aid.

Assistance to individuals is not considered state aid. Assistance such as tax measures which apply to all businesses equally, are not considered state aid. However, if the assistance applies to a specifically defined type of businesses (for example, businesses in a certain area, or businesses of a certain size) then it will count as state aid. Indirect financial assistance (such as exemption from a certain charge or fee) will also count as state aid.

There is no state aid advantage to a particular company if a public body behaves (purchases, sells, invests, lends etc.) like a private business would do, in similar circumstances (this is called the [Market Economy Operator](#)

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<sup>2</sup> Department for Business, Energy and Industrial Strategy, [The state aid manual](#), July 2015, p6. Article 107(1) of the [Treaty on the Functioning of the European Union \(TFEU\)](#) contains the definition on state aid.

([MEO](#)) principle).<sup>3</sup> For example, a local authority can inject capital in a business expecting the same returns as a commercial investor. It can also provide a loan to a company at an interest rate that would be acceptable to a commercial lender. If the local authority can demonstrate that the MEO is met, there is no state aid.

2. Is aid **provided through state resources**?

The rules apply if the assistance is provided by any organisation that is controlled by a Member State. This includes non-departmental public bodies, executive bodies, as well as government departments and local authorities.

The form of state support is not decisive. It can be a grant to a company, a loan or a guarantee below market rates, a tax relief scheme, sale of public property at a discounted rate or free consultancy advice and more.

3. Does the aid distort or threaten to **distort competition**?

If the assistance strengthens the position of a company within a particular market, relative to other companies operating in that market, then the assistance distorts or could distort competition in that market.

Since the EU operates a free trade area involving other Member States, assistance which strengthens the position of all companies in a particular sector within one country would be considered state aid since these companies may operate in a market involving companies in other Member States.

4. Could the aid **affect trade** between Members States?

This condition is interpreted broadly. If the good or service benefitting from the aid could possibly be traded between Member States, then the assistance is considered to affect trade.<sup>4</sup>

To reiterate, if the answer to all of the above questions is 'yes', then the assistance would be considered a state aid measure. For the aid measure to be legal, the EC's approval would have to be sought, unless it can be demonstrated that the policy is covered by at least one of the exemptions outlined below. If an exemption applies, then there is no need to seek the EC's approval.

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<sup>3</sup> European Commission, [Commission Notice on the notion of State aid as referred to in Article 107\(1\) of the TFEU](#), 19 July 2016, OJ C 262, p17

<sup>4</sup> Department for Business, Energy and Industrial Strategy, [The state aid manual](#), July 2015, pp7-8

## 1.2

## Exemptions

State aid that is covered by one of these exemptions is legal...

There are three categories of exemptions to state aid rules. If any exemption applies to a state aid measure, then the assistance is normally permitted without the need to seek the EC's formal approval, although some requirements regarding transparency and reporting apply. These categories are the *de minimis* rule; individual aid under schemes that have already been approved by the EC; and the General Block Exemption Regulation.

### De minimis rule

According to the *de minimis* rule small amounts of assistance are exempt from state aid rules. Any aid that is worth less than €200,000 per business over three years is allowed by the EC.<sup>5</sup> The threshold is lower in two sectors: €100,000 in the road transport sector, and €15,000 for agriculture.

In order to be covered by the *de minimis* rule, the value of the aid must be "transparent" – that is, precisely calculable in advance. This means that aid which requires any form of risk assessment in order to determine its monetary value is not exempt under the *de minimis* rules, regardless of how small the amount of assistance is.<sup>6</sup>

### Aid under an approved scheme

The EC can approve state aid schemes by giving its consent to a policy framework, maximum amounts and conditions of aid, as well as types of beneficiaries of these schemes. When public organisations grant assistance to companies under such a pre-approved scheme they will normally be exempt from a prior notification.

Various UK state aid schemes fall into this category, for example the [Enterprise Management Incentive](#) scheme, which helps SMEs attract and retain skilled personnel, and the [Enterprise Investment Scheme](#), whereby state aid is used to promote investment in smaller knowledge-intensive companies.<sup>7</sup>

### General Block Exemption Regulation

State aid with the following aims is included in the General Block Exemption Regulation (GBER) and is exempt from prior notification. Block exemptions exist for aid that promotes:<sup>8</sup>

<sup>5</sup> European Commission website, [State aid procedures](#) (accessed 4 August 2021)

<sup>6</sup> Department for Business, Energy and Industrial Strategy, [The state aid manual](#), July 2015, p20

<sup>7</sup> Pre-approved UK state aid schemes are registered in the [EC State aid database](#).

<sup>8</sup> [Council Regulation \(EU\) 2015/1588, O.J. L 248, 13 July 2015](#), Article 1

- **Small and medium sized enterprises (SMEs).** Aid which overcomes market failures that prevent SMEs from starting and thriving is allowed. This aid often takes the form of assistance to invest, take on new workers or cover intellectual property costs.
- **Research, development and innovation.** Aid that allows the EU to move towards a ‘knowledge-based economy’ is allowed. This can include assistance with patent costs, technical feasibility studies or development projects.
- Beyond traditional research and development, aid is also exempt from state aid rules if it assists in the creation of innovative enterprises, advisory services or support services.
- **Employment and training, especially for disadvantaged residents and workers with disabilities.** Aid for training workers is generally allowed. Aid which helps disadvantaged workers into employment is also allowed. This aid often takes the form of assistance to employ people with disabilities, provide training or establishing family friendly leave/pay systems. Aid for the transport of workers who live in remote regions is also allowed.
- **Regional aid.** One of the key objectives of the EU is to raise the quality of life of citizens in disadvantaged regions of the Union. Aid is allowed if it “enhances economic cohesion” by helping the development of less developed areas (see box 1 on Regional state aid).
- **Infrastructure aid.** Aid for investment in local infrastructure and broadband, sport and multifunctional recreational infrastructure is allowed.
- **Environmental protection.** Aid which favours environmental protection or measures to tackle climate change is exempt from state aid rules. In particular, investments in energy savings, investments in renewable energy and environmental tax reductions are allowed.
- **Aid for culture and heritage conservation.** It is for Member States to define what they consider cultural or natural heritage.
- **Aid to make good the damage caused by natural disasters.**
- The detailed rules and limits on the aid that is allowed under each of the different block exemptions can be found in [Commission Regulation \(EU\) No 651/2014 of 17 June 2014](#).

## 1 Regional state aid

Authorities can give state aid to support investment and employment in less advanced regions of the EU, thereby contributing to more balanced economic development within and between EU Member States. Regional state aid is restricted to eligible geographical areas which Member States record in their regional aid maps. The last map that was used in the UK is available on <http://www.ukassistedareamap.com/>.

According to the EC's [Regional Aid Guidelines](#) Member States can grant state aid to companies in the designated areas to support investment in new production or modernisation of existing facilities. The guidelines limit how much state aid companies can receive as a percentage of their costs.

Schemes targeting sensitive sectors like steel are not eligible. For other sectoral schemes, Member States have to demonstrate how those would be more beneficial than horizontal policies available to all sectors. Smaller schemes under the GBER do not need prior approval of the EC.

Regional aid is not intended to encourage relocation of firms from one Member State to another.

Regional state aid may not be awarded to firms in difficulty, as state aid for rescuing and restructuring of businesses is strictly limited in the EU and [specific guidelines](#) apply.

Before the end of transition period, the UK received the EC's approval for a wide range of aid schemes targeting assisted areas, for example the [Regional Growth Fund](#) in England and the [Welsh Local Government Property Development Grant Scheme](#). The [SCR Jessica Urban Development Fund](#) is an example of a regional initiative covering East Midlands, Yorkshire and the Humber.

Export-related aid is prohibited.

### Export-related aid is not allowed

Aid for "export-related activities" is not allowed even if the assistance otherwise meets *de minimis* or GBER exemptions. Examples are aid directly linked to quantity of exported products or to setting up distribution networks. Support to attend trade fairs is allowed though.

Further detail on GBER exemptions can be found in this EC publication, [General Block Exemption Regulation \(GBER\) Frequently Asked Questions](#).

## 1.3

## Special rules for public services

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EU law refers to public services as “Services of General (Economic) Interest”.

In the EU legal framework public services are referred to as Services of General Interest. These include non-commercial services provided by the government, such as defence and public education, but also services which governments contract out to businesses but financially support their provision. The latter are called Services of General Economic Interest (SGEIs).

Under the EU law, SGEIs are economic activities which deliver outcomes in the overall public good that, in absence of public intervention, would not be available at all or would not live up to the desired standard in terms of quality, safety, affordability, equal treatment or universal access. Such services for example can include public utilities such as gas and electricity supply, postal services, public service broadcasting, rural transport, provision of social housing and more.

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Member States are free to define what they consider a SGEI. The Commission guards against manifest errors.

Public authorities can choose to define what they consider a service of general, public interest. Thus, SGEIs may refer to different services across the EU, depending on the market situation and policy choices in that particular Member State. However, the Commission and the Union’s courts can determine whether a Member State has made a “manifest error” in defining something as an SGEI and giving it financial support which distorts the level playing field for businesses. The Court and Commission have found manifest errors in several cases, including:

- broadcasting organisations engaging in activities related to advertising and e-commerce;<sup>9</sup>
- broadband networks limited to business parks and not benefiting the population at large,<sup>10</sup> and
- port operations, i.e. the loading, unloading, transshipment, storage and movement which do not differ from other, commercial activities in ports.<sup>11</sup>
- These activities, although earmarked as SGEI, were not found to be different from purely commercial services and did not warrant financial support.

### State aid rules and compensation for SGEI

In general, **state aid principles apply** to the [funding of SGEIs](#) in the same way as they apply to any other economic activity: public authorities should not excessively subsidise such services. This is because an undertaking which

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<sup>9</sup> C-195/06, Kommunikationsbehörde Austria (KommAustria)/Österreichischer Rundfunk (ORF), 18 oktober 2007

<sup>10</sup> Commission decisions on state aid N 890/2006, France, SICOVAL and N 284/2005, Ireland, Metropolitan Area Networks

<sup>11</sup> CJEU, 27/11/2003, C-34/01 to C-38/01, Enirisorse

provides the service might use an overly generous compensation to cross-subsidise its other, commercial activities to the detriment of fair competition.

However, **a separate set of state aid rules** exists for SGEIs.<sup>12</sup>

There is **no state aid** if the following conditions are met:

- Public service obligations are clearly defined and explicitly entrusted to an undertaking which will provide the service;
- The amount of compensation is calculated using objective and transparent methodology and does not exceed the costs incurred.
- Finally, a provider is selected in a public tender. Alternatively, the level of compensation is determined based on a bench-mark analysis of the costs of a typical well-run business.<sup>13</sup>

If one of the three conditions above is not met, a compensation for an SGEI is considered state aid and has to comply to [SGEI state aid regulations](#); the higher the amount of support the more thorough the scrutiny by the Commission. State aid rules for SGEI can be found on [this website of the Commission](#). These rules are also explained in more detail in chapter 7 of the [State Aid Manual](#) of the Department for Business, Energy and Industrial Strategy (BEIS).

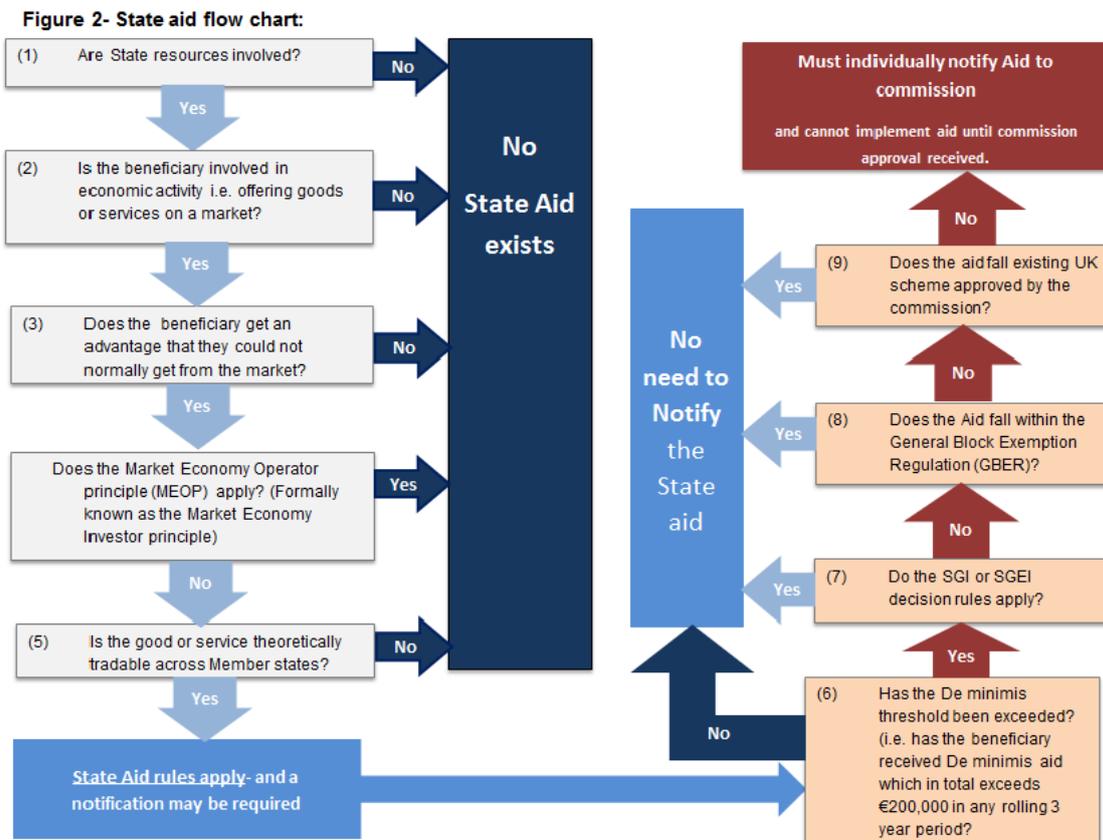
The flow chart below summarises all that has been laid out so far:<sup>14</sup>

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<sup>12</sup> European Commission, [Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to A separate set of state aid rules applies to SGEIs, social services of general interest](#), 29 April 2013

<sup>13</sup> The European Court of Justice set out these conditions in its [Altmark](#) judgement - Case C-280/00, 24 July 2003

<sup>14</sup> Department for Business, Energy and Industrial Strategy, [State aid: the basics](#), July 2015



## 1.4

## Notifying the European Commission

If an instance of public support is found to involve state aid, and none of the exemptions applies, then the EC must be formally notified to seek its approval for the aid measure. A proposed support measure may not be implemented before the EC has taken its final decision. This is known as the “stand still obligation”.

Generally, the EC grants its approval based on whether the aid is:<sup>15</sup>

- The minimum necessary to remedy the failure (proportionate)
- Really changing the behaviour of the organisation that receives it (incentive effect)
- The best way to address the failure (appropriate)

<sup>15</sup> Department for Business, Energy and Industrial Strategy, [State aid: the basics](#), July 2015, p8

- Beneficial enough to outweigh any negative effects on competition (balancing test)

## 1.5

## Fitness check of EU state aid rules

In January 2019, the Commission launched an [evaluation of state aid rules](#) which have been in force since 2014 – the so-called “[fitness check](#)”. In October 2020, the Commission [concluded](#) that overall, the rules were fit for purpose. Individual rules would be amended in some areas, to reflect recent legislative and policy developments. Some rules needed better alignment with the objectives of the [European Green Deal](#) – the EU’s climate action plan, and its industrial and digital strategies.

An example of a future adjustment is the Commission proposal to amend the guidelines for public support for transnational projects of strategic significance. Commission [Communication on Important Projects of Common European Interest \(IPCEIs\)](#) (2014) allows exemptions from normal EU state aid rules for strategically important multinational projects where several Member States pool their resources.<sup>16</sup> Examples are pan-European research facilities or cross-border transport projects. Several projects have been approved under the guidelines so far, including an initiative by seven Member States to support innovation in the field of batteries with €3.2 billion, which was approved in December 2019. The guidelines are seen by some as too complex.<sup>17</sup> In spring of 2021 the Commission [held a consultation](#) on a proposed revision of the communication. Draft amendments included making transnational projects more accessible to SMEs and giving all Member States a genuine opportunity to participate in an emerging project.<sup>18</sup>

The European Scrutiny Committee has noted that the UK has a direct economic interest in future developments in EU state aid policy:

The extent to which EU Member States can subsidise their domestic industries will have an impact on the competitiveness of British businesses that compete with them on the UK market or internationally.<sup>19</sup>

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<sup>16</sup> European Commission Communication. [Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest](#), OJ C1 88, 20 April 2014, p2

<sup>17</sup> Euractive, [Commission ponders state aid review to support ‘Airbus of the future’](#), 20 December 2012; Financial Times, [Europe First: how Brussels is retooling industrial policy](#), 2 December 2019

<sup>18</sup> European Commission Communication [A New Industrial Strategy for Europe](#), COM(2020) 102 final, 13 March 2020

<sup>19</sup> European Scrutiny Committee, [Thirty-third Report of Session 2019–21](#), 18 December 2020, para 1.2

## 1.6

## Coronavirus support

In response to the Covid-19 outbreak, the European Commission relaxed the usual state aid restrictions. On 19 March 2020 it published a [Temporary Framework](#) for state aid measures, which gives EU Member States more flexibility to support their economies during and after the pandemic.<sup>20</sup>

The EU Temporary Framework aims first to ensure that companies have the liquidity to keep operating, or can temporarily freeze their activities, if need be, and second that support for businesses does not undermine the European single market. For an overview of the framework see box below.

Commentators have [compared the scale](#) of these temporary measures to the Member States' action taken during the financial crisis in 2007-2008. Some note that the relaxation of state aid rules and “clearing measures at astonishing speed” opens the door to [increased economic inequalities among richer and poorer EU Member States](#).

### 2 EU state aid rules changed in response to Covid-19 outbreak

The EU [Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#) enables Member States to provide the following types of support:

- direct grants (or tax advantages) of up to €1.8 million to a company<sup>21</sup>;
- state guarantees for loans taken by companies from banks;
- public loans with favourable (subsidised) interest rates to companies;
- safeguards for banks that channel support to businesses of all sizes. The framework gives guidance to ensure that the support is direct aid to the banks' customers, not to the banks themselves;
- additional short-term export credit insurance to be provided by the state.<sup>22</sup>

The initial Framework has been amended to include, among others

- aid in form of tax deferral, suspension of social security contributions, and wage support to employees;
- recapitalisation of failing businesses directly by taking an equity share (which could amount to nationalisation in certain cases);

<sup>20</sup> European Commission, [Temporary Framework for State Aid Measures to Support the Economy in the Current Covid-19 Outbreak](#) (informal, consolidated version), accessed 2 August 2021. The State aid Temporary Framework, which was first published on 18 March 2020, has been amended five times and extended till 31 December 2021.

<sup>21</sup> Before 28 January 2021, €800,000 per company

<sup>22</sup> European Commission, [statement by Executive Vice-President Margrethe Vestager](#), 19 March 2020

- support for uncovered fixed costs of companies facing a decline in turnover of at least 30% due to the pandemic, up to a maximum amount of €10 million per undertaking;
- conversion of repayable instruments such as loans and guarantees into direct grants.

Member States' public authorities have to make state aid available by 31 December 2021.

The Temporary Framework complements other options already open to Member States under state aid rules. The Commission can approve national support measures

- to remedy a serious disturbance to the economy of a Member State in circumstances, such as those caused by the Covid-19 outbreak ([Article 107\(3\)\(b\)](#)), and
- to compensate specific companies or specific sectors for the damages directly caused by the outbreak ([Article 107\(2\)\(b\)](#)).

Outside the Temporary Framework, Member States can take various other steps to support businesses affected by the Covid-19 outbreak. As set out in the Commission [Communication of 13 March 2020](#), state aid rules permit measures such as:

- rescue aid to support acute liquidity needs of companies facing bankruptcy;
- compensations to companies for the damage suffered in exceptional circumstances. This may include supporting sectors that have been particularly hard hit (e.g. transport, tourism and hospitality) and measures to compensate losses suffered by organisers of cancelled events.<sup>23</sup>

Generic support schemes which are open to all companies fall outside the scope of state aid and do not require involvement of the Commission. These include wage subsidies and tax suspensions which are available to all businesses.

For an overview of UK measures covered by the EU Temporary Framework see section 2.3 below.

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<sup>23</sup> EC Communication on a [Coordinated economic response to the COVID-19 outbreak](#), 13 March 2020

## 1.7 Organisation of EU state aid controls in the UK

The Department for Business, Energy and Industrial Strategy (BEIS) has the overall policy responsibility for state aid or subsidy control policy in the UK. BEIS can advise local and regional authorities, as well as devolved administrations on their support measures. During the UK's EU membership, the BEIS State Aid Team coordinated notifications to the EC submitted by other government departments, agencies or authorities. The Department for Environment, Food and Rural Affairs (Defra) offered guidance on application of the rules to agriculture, fisheries and aquaculture. The Department for Transport (DfT) dealt with matters related to state aid to transport.<sup>24</sup>

### Devolved administrations

Although state aid was not formally devolved during the UK's EU membership, each of the devolved executives in Scotland, Wales and Northern Ireland had their own state aid units that offered advice and guidance to authorities granting state aid, liaised with BEIS and represented devolved perspectives in state aid cases in Brussels.<sup>25</sup>

The ultimate authority to decide whether a support measure involved state aid and when it could be permitted, rested with the European Commission.

The Subsidy Control Bill which the government proposed in June 2021, will establish an independent UK subsidy regime and new procedures. See section 2.4 below.

## 1.8 Statistics

The European Commission collects statistics on approved state aid expenditure in an annual [State Aid Scoreboard](#).<sup>26</sup> The 2020 Scoreboard shows that public organisations in the UK spend less on business support than in many other EU countries. According to Member State expenditure reports, in 2019 the UK spent 0.51% of GDP on state aid (excluding agriculture, fisheries, and railways), while France spent 0.85% and Germany 1.54%. In total, 28 Member States' state aid was worth 0.81% of EU GDP in 2019.<sup>27</sup>

Data covers all existing state aid measures to industries, services, and transport for which the EC adopted a formal decision. It also includes state

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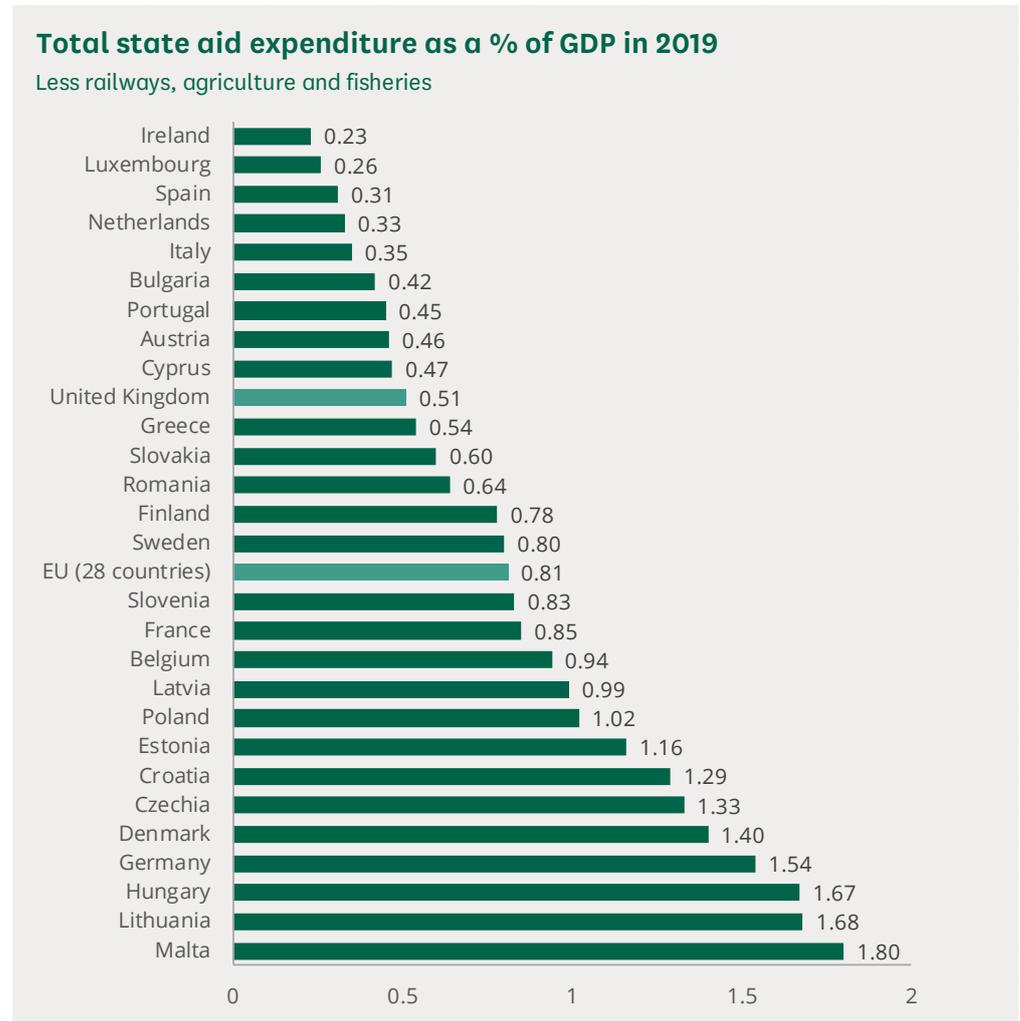
<sup>24</sup> Department for Business, Energy and Industrial Strategy, [State Aid Guidance, archived website](#) (accessed 4 August 2021)

<sup>25</sup> [Department for the Economy State Aid Unit Northern Ireland, Scottish Government State Aid Team, Welsh Government State Aid Unit](#) (accessed 4 August 2021)

<sup>26</sup> European Commission, [State Aid Scoreboard 2020 website](#) (accessed 4 August 2021)

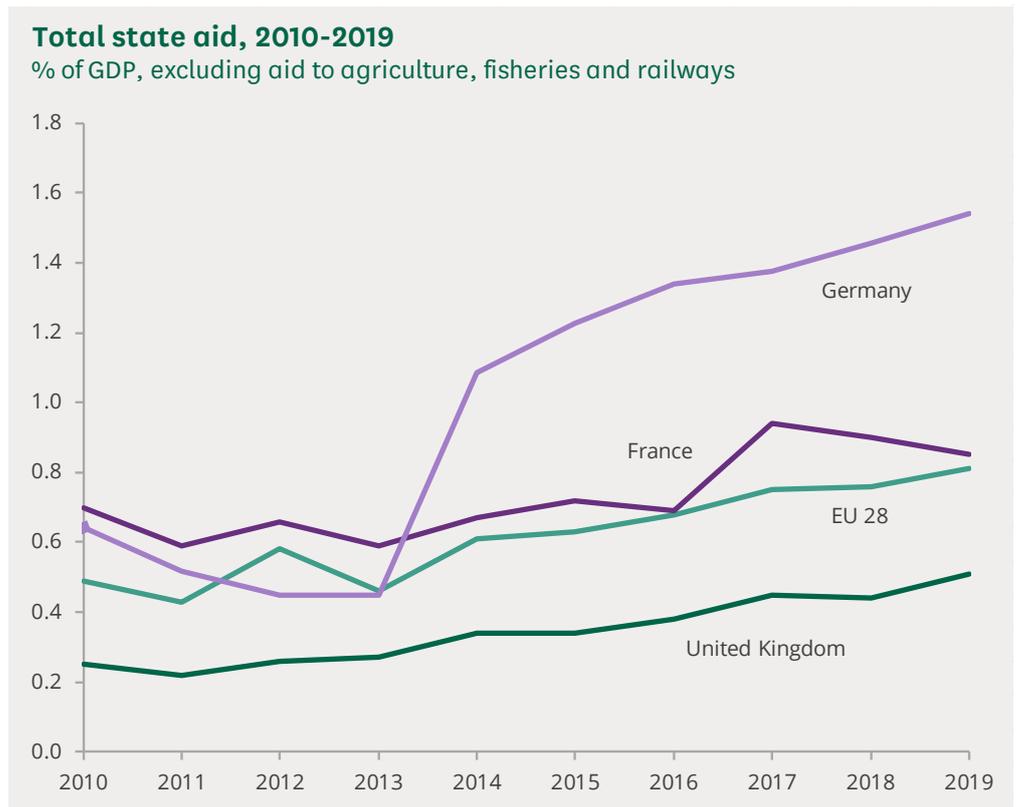
<sup>27</sup> European Commission, [State aid Scoreboard 2020](#); data from DG Competition, [Aid by main objectives in current prices](#)

aid which falls within the scope of the General Block Exemption Regulation (GBER). *De minimis* aid, aid to railways, agriculture, and fisheries, measures in support of public services and crisis aid to the financial sector are not included.



Source: European Commission, State Aid Scoreboard 2020, [Aid by main objectives in current prices](#)

In the past, successive UK governments have spent less on state aid than most other EU countries. Over the 2010-2019 period, UK state aid as a percentage of GDP remained well below the percentage of EU GDP as a whole.



Source: European Commission, State Aid Scoreboard 2020, [Aid by main objectives in current prices](#)

## 2

# Transition period and beyond

Although the UK left the EU on 31 January 2020, under the terms of the [Withdrawal Agreement](#) (WA) and the [European Union \(Withdrawal\) Act 2018](#) which gives effect to it, EU state aid law continued to apply to the UK until the end of the transition period [on 31 December 2020](#).

Under the terms of the WA, state aid assessment remained unchanged in the UK during the transition period. The UK was treated as if it were a Member State for state aid purposes.<sup>28</sup>

The Commission continues to be responsible for monitoring and enforcing **ongoing** state aid **procedures** that were initiated before the end of the transition period on 31 December 2020.

## 2.1

### State aid in the Withdrawal Agreement

Part 3 Separation provisions of the [Withdrawal Agreement](#) is intended to take care of an orderly exit of the UK from the EU by allowing ‘live’ processes and arrangements to come to an end under current rules following the end of transition.

Articles 92, 93 and 95 prescribe the procedures and processes regarding ongoing state aid cases and aid paid out before 31 December 2020. Under provisions of **Article 92**, the Commission will continue to be responsible for monitoring and enforcement of **ongoing** state aid **procedures** initiated before the end of the transition period.<sup>29</sup>

The Commission has power to **initiate new procedures** regarding UK aid which was granted before the end of the transition period, and is alleged to be illegal state aid. The Commission will retain this power for a period of four years after the end of the transition period. The Commission will also retain its competence to follow up on those procedures after the end of the four-year period, i.e. after 31 December 2024 (Article 93).

Article 95 of the WA says that state aid decision of the Commission taken during the transition period or under Articles 92 and 93 of the WA, and addressed to the United Kingdom or to natural and legal persons residing or

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<sup>28</sup> V. Verouden, P. Ibáñez-Colomo, “Ensuring a level playing field post-Brexit: State aid control”, 11 January 2019, p21

<sup>29</sup> [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 October 2019

established in the UK, shall be binding on and in the UK. The legality of EU state aid decisions in both ongoing and new cases covered by the separation provisions, will be reviewed exclusively by the CJEU.<sup>30</sup>

During the transition period and thereafter, UK lawyers have maintained their rights to represent clients in UK state aid cases before EU institutions (Article 94 (2)). Also, UK experts or other representatives are able to attend Commission expert meetings relevant to UK cases, although they do not have voting rights (Article 128(5)).

What happens if the UK is found to breach the state aid provisions of the WA? The Commission's explanatory slides of 8 February 2019 summarise on page 39 the contents of Part VI (Governance Structure) of the WA, as follows:

In the event of a dispute on the interpretation of the agreement, an initial political consultation would take place in a **Joint Committee**. If no solution can be found, either party can refer the dispute to binding arbitration. The decision of the **arbitration panel** will be binding on the EU and the UK. In case of non-compliance, the arbitration panel may impose a payment to be paid to the aggrieved party. However, if there is a question of Union law, the panel is obliged to refer it to the CJEU.

If compliance is still not restored, the Agreement allows parties to **suspend proportionately** the application of the Withdrawal Agreement itself, except for citizens' rights, or parts of other agreements between the Union and the UK. Such suspension is subject to review by the arbitration panel.<sup>31</sup>

Commons Library briefing [The UK's EU Withdrawal Agreement \(section 4.11\)](#) has more detail on this issue (the text of the revised Withdrawal Agreement of October 2019 remained unchanged with regard to state aid).<sup>32</sup>

## 2.2

## Protocol on Ireland and Northern Ireland

The Protocol on Ireland/ Northern Ireland accompanying the [Withdrawal Agreement](#) sets out the arrangements to maintain an open border on the island of Ireland after the end of the transition period. The Protocol remains in force after the end of the transition, subject to the consent mechanism of Northern Ireland institutions.

Under Article 10 of the Protocol, EU state aid rules continue to apply to subsidies related to trade in goods and the wholesale electricity market,

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<sup>30</sup> Commons Briefing Paper [The UK's EU Withdrawal Agreement](#), 4 December 2018, CBP 08453, Chapter 4.11

<sup>31</sup> Commons Library Briefing CBP-8453, [The UK's EU Withdrawal Agreement](#), 11 April 2019, section 7.1

<sup>32</sup> Commons Briefing Paper [The UK's EU Withdrawal Agreement](#), 4 December 2018, CBP 08453, Chapter 4.11

insofar as these can affect trade between Northern Ireland and the EU.<sup>33</sup> Agricultural subsidies in Northern Ireland are exempted from EU state aid controls, up to a certain agreed maximum. State aid regulations under the Protocol are enforced by the European Commission.

It is not immediately clear how broadly the Protocol provisions on state aid would be interpreted in practice, and how far measures that affect NI-EU trade may also include UK support to businesses in Great Britain which, for example, sell goods in Northern Ireland.<sup>34</sup> State aid [experts](#) and commentators have [said](#), that by signing the Withdrawal Agreement [with the Protocol](#), the UK has agreed to a system which could in practice extend the reach of EU state aid enforcement [beyond Northern Ireland](#).<sup>35</sup> The European Scrutiny Committee has noted that the extent to which EU state aid rules will continue to be binding on the UK under the Protocol are still interpreted very differently by the UK Government and the European Commission.<sup>36</sup>

For further details on state aid provisions in the Protocol see Commons Library briefings

- CBP 8713, [The October 2019 EU UK Withdrawal Agreement](#), 18 October 2019, and
- CBP 9003, [United Kingdom Internal Market Bill 2019-21](#), section 6.5, Northern Ireland Protocol. State aid, 14 September 2020.

## 2.3

## UK support measures in response to Covid-19

The government's coronavirus-related business support schemes, as well as wider support measures set up during the transition period, were subject to EU state aid rules. As summarised in section 1.6 above, in response to the pandemic, the European Commission relaxed the usual state aid restrictions by adopting a [Temporary Framework](#).<sup>37</sup>

By the end of 2020, the European [Commission had approved several UK Covid-19 related support schemes under the Temporary Framework](#), including

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<sup>33</sup> See HM Government Command Paper, [The UK's approach to the Northern Ireland Protocol](#), May 2020, CP226, para 40

<sup>34</sup> Matthew Holehouse, [State aid, competition, environmental obligations feature in UK's revised exit package](#), MLex, 17 October 2019

<sup>35</sup> MLex, [Comment: Brexit deal's state aid rules might have long reach](#), 19 October 2019; MLex, [EU powers to review UK state aid under Irish Border Protocol to be assessed 'case by case'](#), 24 January 2020; G.Peretz QC in [Boris Johnson's efforts to escape EU state aid rules 'mistaken'](#) Financial Times, 9 February 2020

<sup>36</sup> European Scrutiny Committee, Forty-First Report of Session 2019–21, [Northern Ireland Protocol: Withdrawal Agreement Joint Committee Decisions and declarations of 17 December 2020](#), 9 April 2021, para 145

<sup>37</sup> European Commission, [Temporary Framework for State Aid Measures to Support the Economy in the Current Covid-19 Outbreak](#) (informal, consolidated version), accessed 2 August 2021.

the Coronavirus Business Interruption Loan Scheme (CBILS) and Coronavirus Large Business Loan Interruption Scheme (CLBILS).<sup>38</sup>

The European Scrutiny Committee analysed the impacts of the EU state aid rules on the UK government's coronavirus support schemes and published its findings in consecutive reports. The Committee wrote in its report of 7 May 2020:

There is no indication that the Government's preferred way of providing public support to businesses affected by the Covid-19 outbreak to date has been impeded by EU laws.<sup>39</sup>

UK Covid-19 schemes that were approved under the EU state aid rules before 1 January 2021 can continue as they are already compliant with the UK's new commitments under the Trade and Cooperation Agreement with the EU. Government [guidance on the UK's international subsidy control commitments](#) (section 4) notes that public authorities in the UK are no longer bound to follow the limits set out in the EU state aid rules. The guidelines elaborate:

When public authorities implement new [Covid-19 related] schemes and subsidies, or amend an existing scheme, which could not be done under the terms of EU State aid rules, then an assessment will need to be made against the principles set out in Article 366. This is so that the public authority can satisfy itself of TCA compliance.

## 2.4 Independent UK subsidy regime

Theresa May's Government planned to maintain a rigorous domestic state aid system after leaving the EU. Prime Minister Boris Johnson however has rejected any alignment with EU state aid rules. He announced in a pre-election [speech on 29 November 2019](#), that the UK would have its own subsidy system from 1 January 2021, based on the World Trade Organisation

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<sup>38</sup> For an analysis of the Commission state aid approval decisions regarding UK schemes, see European Scrutiny Committee, [Eleventh Report of Session 2019–21](#), 17 June 2020  
The following UK schemes have been approved under the Temporary Framework:  
SA.56792 [Loan guarantees under the Coronavirus Business Interruption Loan Scheme](#) (CBILS), 25 March 2020 and SA.56794 [Interest subsidy under the Coronavirus Business Interruption Loan Scheme](#) (CBILS), 25 March 2020  
SA.56841 [Umbrella scheme: Temporary State Aid Framework for the UK Government](#) (covers the Coronavirus Large Business Loan Interruption Scheme (CLBILS)), 6 April 2020  
SA.57078 [COVID-19 Temporary Framework for UK authorities \(amendments to the Umbrella scheme\)](#), 23 April 2020;  
SA.57152 [COVID 19 - UK - Self-Employed \(including members of partnerships\) Income Support Scheme](#), 11 May 2020  
SA.57617 [COVID-19 Temporary Framework for Gibraltar Authorities](#), 6 July 2020  
SA.58205 [Scottish Enterprise Subordinated Loan Scheme](#), 24 August 2020

<sup>39</sup> European Scrutiny Committee, [Seventh Report of Session 2019–21](#), 7 May 2020, para 2.28; An update of the application of EU State aid Rules to UK business support schemes was included in the [Eleventh Report of Session 2019–21](#), 17 June 2020, section 1.

commitments on restricting harmful subsidies. This regime would be more clear, permissive, speedy and consistent than the EU rules.<sup>40</sup> Our briefing [UK subsidy policy: first steps](#), has more on this in section 1.3.

A [BEIS press statement](#) of 9 September 2020 set out the Government's approach to future subsidy control in some more detail. It confirmed that the new regime will be based on WTO subsidy rules from 2021 and that the UK will adhere to its obligations on subsidies agreed under its future free trade agreements. The Government also confirmed that "it does not intend to return to the 1970s approach of trying to run the economy or bailing out unsustainable companies" and will ensure "a dynamic and competitive market economy" throughout the UK. The new regime would ensure that subsidies do not distort competition among the four nations and regions of the UK. The features of the UK regime would be set out following a consultation which would be held at a later date.<sup>41</sup>

## Negotiations with the EU

State aid, or subsidy control – the term now used by the UK Government – became one of the most controversial areas during the negotiations over the UK's future relationship with the EU and one of the last issues to be resolved. The UK sought to protect its regulatory autonomy and avoid provisions in this area that would go further than free trade agreements "normally" do. The EU saw alignment on state aid rules as essential to prevent UK subsidies to industries from threatening to undercut EU businesses in the future.<sup>42</sup>

At the final stage of the negotiations in December 2020, the UK and EU came to an agreement and included mutual obligations regarding subsidy control in the Trade and Cooperation Agreement (TCA). For details of the negotiations and the subsidy provisions in the TCA see our briefing, [The UK-EU Trade and Cooperation Agreement: Level Playing Field](#).

From 1 January 2021 EU state aid rules no longer apply to the UK, except for provisions relating to trade between Northern Ireland and the EU, included in the Withdrawal Agreement Protocol on Ireland/ Northern Ireland (see section 2.2 above).

On 31 December 2020, the Government published technical [guidance on the UK's international subsidy control commitments](#), which implements the UK's international obligations under the WTO Agreement on Subsidies and

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<sup>40</sup> BBC, [General election 2019: PM pledges help for struggling firms after Brexit](#), 29 November 2019; See also [UK / EU relations: Written statement](#), HCWS86, 3 February 2020

A more permissive subsidy system would focus on limiting the most harmful subsidies in contrast to the EU system which is based on a general prohibition of state aid and various exemptions to that prohibition.

<sup>41</sup> BEIS, [Government sets out plans for new approach to subsidy control](#), 9 September 2020

<sup>42</sup> Commons Library briefing, [The UK-EU Trade and Cooperation Agreement: Level Playing Field](#), 20 May 2021, section 3.1

Countervailing Measures, the TCA, and other agreements<sup>43</sup> This guidance sets out the main steps that UK public authorities must follow when awarding subsidies. The interim regime is based on self-assessment of subsidies by public authorities.

## Subsidy Control Bill

Following [a consultation in February and March 2021](#), the Government has [proposed an independent UK subsidy control regime](#) in the [Subsidy Control Bill](#), which is currently going through Parliament. Our [briefing on the Subsidy Control Bill](#) explains the contents of the Bill and includes expert commentary in relation to Government's proposals.

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<sup>43</sup> Department for Business, Energy & Industrial Strategy, [Guidance on the UK's international subsidy control commitments](#), 31 December 2020, updated on 24 June 2021

## 3

## WTO Agreement on Subsidies and Countervailing Measures

The vast majority of countries in the world are members of the [World Trade Organization \(WTO\)](#). The WTO is a forum where member countries agree on trade rules and resolve their trade disputes.

### WTO member map, 2021



Source: [www.wto.org](http://www.wto.org)

One of the key WTO agreements is the [Agreement on Subsidies and Countervailing Measures \(SCM\)](#). This agreement lays out rules on the use of subsidies and on the actions countries can take to protect themselves from the effects of another country's subsidies. The SCM forms the basis of anti-subsidy provisions of many free trade agreements including the Comprehensive Economic and Trade Agreement between Canada and the European Union (CETA) and the EU-Japan FTA.

[For the purpose of the SCM, a subsidy is defined](#) as consisting of three elements:

- (i) A financial contribution (e.g., grants, loans, equity infusions, loan guarantees, fiscal incentives, the provision of goods or services, the purchase of goods, payments into funding mechanisms)
- (ii) by a government or any public body within the territory of a Member
- (iii) which confers a benefit.

To qualify, a subsidy must be ‘specific’, that is, it must be targeted at certain enterprises or industries.

All elements must apply for a subsidy to exist.

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Some subsidies are prohibited outright while the rest are ‘actionable’ – meaning that the subsidy is allowed, but other countries can take actions if it harms them.

Under the Agreement, some subsidies are prohibited outright while the rest are ‘actionable’ – meaning that the subsidy is allowed, but other countries can take certain actions if the subsidy harms them. All subsidies fall into one or the other category.

- **Prohibited subsidies:** these are subsidies that require recipients to meet export targets, or to use domestic goods instead of imported goods. They are prohibited because they are specifically designed to distort international trade, and are therefore likely to hurt other countries’ trade.

The WTO prioritises complaints about prohibited subsidies by handling them more quickly than procedures regarding actionable subsidies. If the dispute settlement procedure confirms that the subsidy is prohibited, the offending country must withdraw it immediately or face ‘countermeasures’ – a form of retaliation authorised at the WTO level. If the offending country does not withdraw the subsidy, the complaining country can impose a special tax on imports of the subsidised good to counteract the effect of the subsidy. This is called a ‘countervailing duty’.

- **Actionable subsidies:** any subsidy that is not prohibited outright is allowed but ‘actionable’. Most subsidies, such as production subsidies, fall into this category. Actionable subsidies can be challenged by other WTO countries if they hurt their domestic producers. The complaining country has to show that this is the case, otherwise the subsidy is permitted.

There are three types of harm that actionable subsidies can cause. First, one country’s subsidies can hurt a domestic industry in an importing country. Second, they can hurt rival exporters from another country when the two compete in third markets. And third, domestic subsidies in one country can hurt exporters trying to compete in the subsidizing country’s domestic market.

If the WTO’s Dispute Settlement Body rules that the subsidy does indeed have harmful effects, the subsidy must either be withdrawn or its harmful effect removed. Again, countermeasures against the subsidy can be taken at the WTO level, and the complaining country can impose countervailing duties if its domestic producers are hurt by imports of the subsidized products.<sup>44</sup>

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<sup>44</sup> World Trade Organisation, [Understanding the Agreements website](#) and [SCM Agreement website](#) (accessed 2 August 2021)

Countervailing duties are a tax on the imports of subsidised goods which makes these goods more expensive to buy.

**Countervailing duties** are a tax on the imports of subsidised goods which makes these goods more expensive to buy. The principle behind these duties is to bring the market price of subsidised goods back up to what it would have been without subsidies. Doing so restores a level playing field between domestic producers and the imports they compete with.

To be allowed to impose countervailing duties, a country must carry out a detailed investigation to prove that certain imports are subsidised, and that these subsidies are hurting a domestic industry. Countervailing duties can usually be imposed for five years.<sup>45</sup>

There are **special rules for agricultural products**, which are more permissive of subsidies. The rules are set out in the [Agreement on Agriculture](#). The broad objective of the agreement is to secure reductions to the levels of support and protection in the agricultural sector.<sup>46</sup>

### 3.1

## Comparing EU state aid and WTO rules

EU state aid rules are more stringent than WTO subsidy rules.

WTO rules on subsidies and EU state aid rules are two different frameworks. The EU rules are more stringent than the WTO's. Although the definition of a 'subsidy' under the SCM is broadly similar to 'state aid' under the Treaty on the Functioning of the European Union (TFEU), the WTO rules are more limited in scope. The key differences are:

- The default position in WTO rules is that subsidies not targeted at exports and/or import substitution are allowed, unless another country can demonstrate that these subsidies are hurting a domestic industry or trade in general; EU rules can apply domestically, as they consider state aid to be generally illegal, unless it falls within an exemption or has been approved.
- The provisions of the SCM only apply to goods trade, while EU state aid rules apply to any economic activity, including services and capital movements.
- EU rules are applied prospectively and do not need an official complaint from a Member State to be triggered. For instance, a public body planning to provide state aid must either satisfy itself that its scheme is exempted or seek the explicit approval of the European Commission *before* awarding any subsidy. WTO rules, on the other hand, are only reactive.
- EU rules allow businesses and individuals to lodge a complaint to the Commission and to bring claims in national courts. The WTO rules rely on state-to-state enforcement. Private actors such as companies cannot

<sup>45</sup> World Trade Organisation, [SCM Agreement website](#), (accessed 2 August 2021)

<sup>46</sup> World Trade Organisation, [Legal texts: Agreement on Agriculture website](#), (accessed 12 August 2021)

complain to the WTO, so businesses who believe there has been a breach of the SCM have to persuade their own government to take action.

- The EU state aid rules are set up to remove anti-competitive effects through recovery of illegal state aid. The WTO offers dispute settlement mechanisms to terminate the subsidies or to offset them by allowing the importing country to introduce countervailing duties on subsidised imports.

The report of the House of Lords EU Committee’s Internal Market Sub-Committee [Brexit: competition and State aid](#) of 2 February 2018 examines the differences between the WTO rules on subsidies and the EU state aid regime in greater detail.<sup>47</sup>

## 3.2

### Critique of the SCM and global trends

While the Agreement on Subsidies and Countervailing Measures (SCM) forms the basis of anti-subsidy provisions of many free trade agreements including CETA and the EU-Japan FTA, the SCM has been described by many as ineffective and in need of enhancement. For example, a working paper from the Bertelsmann foundation notes that the SCM has fallen short of addressing market-distortions created by state-subsidised exports, and state-owned enterprises, especially from state-managed economies. In addition, the SCM does not cover investment incentives or services activities.<sup>48</sup> International trade experts Brown and Hillman observe that “chronic low compliance with the fundamental obligation to notify subsidies” under the SCM constitutes a serious problem in the functioning of the agreement. The SCM has also been described as lacking adequate and effective remedy mechanisms.<sup>49</sup>

Research from the Organisation for Economic Co-operation and Development (OECD) found that state-controlled businesses are increasingly competing with private firms in global markets.<sup>50</sup> Government industrial subsidies can have a negative effect on competition and have increasingly become a global concern.<sup>51</sup> To address this, some parties like the United States, Japan and the

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<sup>47</sup> HL European Union Committee, Internal Market Sub-Committee, [Brexit: competition and State aid](#), 2 February 2018, HL 67 2017-19, pp47-48; a comprehensive comparison is given in L. Rubini, *The Definition of Subsidy and State Aid: WTO and EC Law in Comparative Perspective*, Oxford University Press, 2009

<sup>48</sup> Bernard Hoekman, Douglas Nelson, [Rethinking International Subsidy Rules](#), Global Economic Dynamics, Bertelsmann Stiftung, Working paper, 28 February 2020.

<sup>49</sup> Chad P. Broun, J. Hillman, [WTO’ing a Resolution to the China Subsidy Problem](#), *Peterson Institute for International Economics*, October 2019, section 4

<sup>50</sup> Kowalski, P. and K. Perepechay, [International Trade and Investment by State Enterprises](#), OECD Trade Policy Papers, No. 184, OECD Publishing, Paris.

<sup>51</sup> Jehan Sauvage, OECD, [Why government subsidies are bad for global competition](#), 15 April 2019

EU have come forward with [initiatives for enhanced rules on industrial subsidies](#).<sup>52</sup>

On 5 May 2021, the European Commission published a [proposal for a Regulation on foreign subsidies distorting the internal market](#). This followed a Commission [White paper](#) published in June 2020. The Commission is proposing to introduce new tools, besides the SCM, which would help address distorting effects of non-EU subsidised business activities in the single market. Such subsidies may, for example, facilitate the acquisition of EU companies, distort the investment decisions, market operations or pricing policies of their beneficiaries, or distort biddings in public procurement, to the detriment of non-subsidised companies. The new tools could include Commission powers to investigate cases of foreign subsidies, or require divestment of certain assets. The Commission could also prohibit certain subsidised business mergers and acquisitions, or the award of public procurement contracts to subsidised bidders.<sup>53</sup>

The UK is [seeking agreement at the WTO](#) on the need to tackle harmful industrial subsidies, which distort competition and undermine international trade. The Government is raising the issue [with its trading partners](#) and at international fora, [including the G7](#). Opening the G7 Trade Track, an initiative of the UK's G7 presidency, Liz Truss, the Secretary of State for International Trade, said:

We need to reform the [WTO] dispute settlement system, stamp out unfair industrial subsidies and make sure everybody – large or small – is following the rules and being transparent.<sup>54</sup>

### 3.3

## Statistics

The [WTO publishes data](#) on the number of countervailing investigations initiated and measures actually taken by countries (i.e. the actual imposition of countervailing duties on certain imports). The number of countervailing initiations exceeds the number of countervailing measures imposed.

The data presented in the charts below cover the period from January 1995 to December 2020. The data comes from WTO members submitting reports for the relevant periods and may underrepresent the actual number of measures.

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<sup>52</sup> [Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union](#), 14 January 2020

<sup>53</sup> European Commission website, foreign subsidies (accessed 2 August 2021)

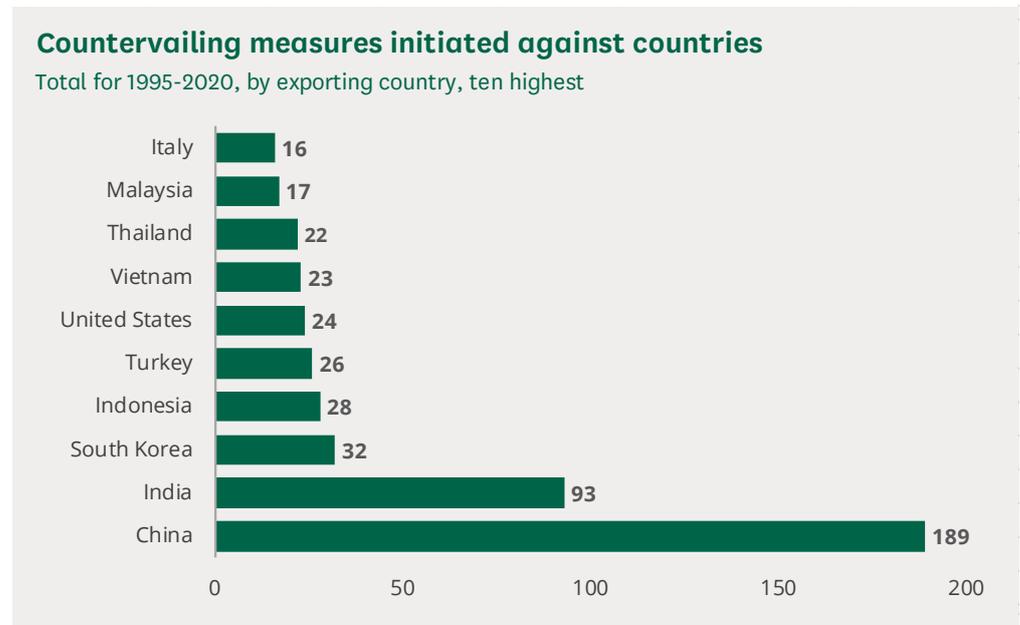
European Commission, [White Paper on levelling the playing field as regards foreign subsidies](#), COM(2020) 253 final, 17 June 2020

European Commission, [Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market](#), COM(2021) 223 final, 5 May 2021

<sup>54</sup> Department for International Trade, [UK's G7 Trade Track Opening Statement](#), 31 March 2021

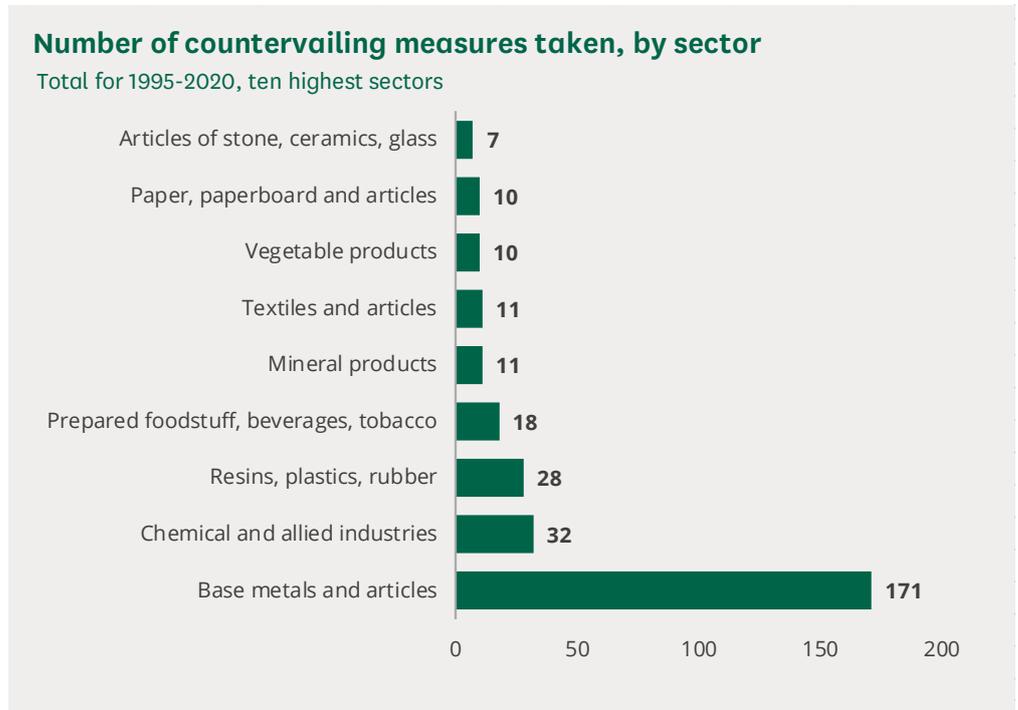
Each reported measure covers one product imported from one country or customs territory.

Over the 1995-2020 period, the highest number of countervailing measure investigations (189) was started against China, which makes 30% of all measures initiated during that period. The United States initiated nearly a half (290) of the total of 632 countervailing measure investigations, followed by the EU with 89 measures.



Source: WTO SCM, [Countervailing initiations: by exporter](#)

The chart below shows countervailing measures taken against subsidies by affected sector. Nearly half of the total of 344 countervailing measures taken from 1995 to 2020 were against subsidies in the base metals and articles sector.



Source: WTO SCM, [Countervailing measures: by sector](#)

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