
Brexit: Implications for State Aid/Control of Subsidies

NOVEMBER 22, 2016

In a referendum on June 23, 2016, voters in the United Kingdom voted to leave the European Union. The UK government is currently expected to trigger the Article 50 process to formally exit the EU in the spring of 2017. Once it does so, the UK will cease to be a member of the EU within two years from the date that it has given notice under Article 50 of the Treaty of European Union, unless the EU Member States (i.e., the UK plus the 27 remaining EU Member States) unanimously agree to extend that time period. This is the sixth in a series of briefing notes prepared by [WilmerHale's Brexit team](#) discussing the potential legal and regulatory implications of a future Brexit for the UK and the EU.

A future Brexit is likely to have significant potential impact on the monitoring and control of subsidies or other forms of aid granted by the UK and/or the remaining EU-27 to individual companies or entire sectors of industry, or to promote specific policies (e.g., renewable energy). Until Britain leaves the EU, all of these types of subsidies—both within the UK and in the other 27 EU Member States—are subject to the discipline imposed by EU State aid law, briefly summarized below. If a “hard Brexit” occurs, with the UK leaving the EU without a customs or trade agreement in place that extends to subsidies, the fallback rules controlling subsidies granted by the UK will be the World Trade Organization's (WTO's) Agreement on Subsidies and Countervailing Measures, and EU State aid rules would no longer apply to the UK. UK companies (like a company from any jurisdiction that competes with EU companies) would still have access to EU State aid rules to complain about State aid granted by EU Member States, but EU companies would not have access to a similar mechanism for UK government subsidies, unless some sort of post-Brexit regime is agreed upon. While WTO subsidy rules—which include both state-to-state dispute settlement proceedings and an option for governments to put in place anti-subsidy and anti-dumping mechanisms for companies to complain about subsidies by foreign governments—would continue to be available, if EU State aid rules no longer applied in the UK, subsidies for UK companies would be under significantly less systematic and pervasive scrutiny than at present. Going forward, the UK will have to decide whether and to what degree it wishes to impose discipline akin to EU State aid rules on subsidies granted to UK companies by UK governmental authorities, and the EU will need to decide to what extent it requires the UK to do so as part of a post-Brexit deal.

This alert explains key differences between EU State aid rules and the WTO anti-subsidy regime. It then examines various free trade agreements that have been concluded recently by the EU with third

countries to see what types of State aid discipline have been agreed upon, and whether those provisions could serve as a model for any UK-EU agreement governing this issue.

[Download PDF](#)

Authors



Christian Duvernoy

RETIRED PARTNER

✉ christian.duvernoy@wilmerhale.com

☎ +32 2 285 49 06



**Stephanie
Hartmann**

COUNSEL

✉ stephanie.hartmann@wilmerhale.com

☎ +1 202 663 6564