Institute for Public Policy Research

BRIEFING

STATE AID RULES AND BREXIT

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ABOUT THIS PAPER

This paper explains the nature and scope of EU policy on state aid and competition. It supports education in the economic, social and political sciences by informing the public on the definition of state aid, the EU's legislation on state aid and competition, the use of state aid in the UK and other EU member states, and the role of state aid within the UK-EU withdrawal agreement.

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SUMMARY

The EU’s policy of state aid control has become a focal point of debate since the UK’s 2016 referendum. Some proponents of leaving the EU have argued that, freed from the constraints of EU rules on state aid, the UK would have more flexibility to embark on an active industrial policy; opponents have countered that this overstates the stringency of the rules. This short briefing seeks to assess these claims, exploring the role of state aid rules in the EU and how these might change under different Brexit scenarios.

The briefing finds that EU state rules do not prevent an active industrial policy. Instead, the EU allows state aid directed towards a range of key progressive priorities, such as regional development, environmental protection, and support for small businesses. It restricts state aid where it wastes public money and exacerbates pan-European inequalities. Moreover, EU rules do not prevent nationalisation and explicitly allow for public ownership in the rail industry and other areas of the economy. The evidence suggests that the UK has spent far less on state aid than most other EU countries: in 2016 state aid expenditure in the UK was €8.6 billion, compared with €14.5 billion in France and €41.1 billion in Germany. Finally, this briefing’s analysis of the withdrawal agreement indicates that the UK would be expected to follow the same state aid rules under any future relationship with the EU. Leaving the EU therefore provides no additional flexibility in the application of state aid policy.

1.
WHAT IS STATE AID?

In simple terms, state aid is the granting of state resources in order to benefit certain firms or industries. More precisely, the EU's rules on state aid are set out in the text of the treaties, with Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) providing the following definition:

> *"any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."*
> (TFEU 2007)

EU case law has helped to clarify the exact meaning of state aid. According to EU law, for something to constitute state aid it must meet the following conditions (European Commission 2016):

- State aid benefits an **undertaking** – ie an entity engaged in an economic activity, such as a business. An economic activity means providing goods and/or services on a market. Undertakings do not have to be defined as such in national legislation; whether or not something is an undertaking depends on what it does, rather than how it is legally classified. The definition of an undertaking excludes a number of public services – for instance, public hospitals that freely provide universal services as part of a national healthcare system on the principle of solidarity are not considered undertakings.
- State aid is granted (directly or indirectly) through **state resources** and it must be imputable to the state. State resources can be delivered in a range of ways, such as through grants, loans, tax breaks, guarantees, and in-kind support.
- State aid offers an **advantage** to an undertaking – ie it must grant it an economic benefit that it could not otherwise have received without state intervention.
- State aid is **selective** – ie it must favour particular undertakings or the production of particular goods. Accordingly, general measures (eg general tax changes) do not constitute state aid. Typically, examples of state aid are when resources are targeted at specific firms, sectors, or regions.
- State aid **distorts or threatens to distort competition** and **affects trade between member states**. In practice, these conditions are respectively met whenever an advantage is granted to an undertaking in a sector where there is or could be competition, and whenever aid benefits an undertaking over other undertakings competing in intra-EU trade.

When the European Commission is determining whether an aid is compatible with the single market, it must first check whether the aid in question in fact falls under the definition of state aid. There are therefore many instances of government intervention – notably general measures that do not target particular firms, regions or sectors, and measures that do not benefit entities engaged in economic activity – that fall outside of the remit of state aid rules altogether.

2. WHY DOES THE EU REGULATE STATE AID?

The EU has long recognised the benefits of state aid. These benefits tend to be grouped into two categories, based on whether they enhance public welfare or address inequalities. In the case of the former, the EU has argued that state aid can help to make the economy work better. For instance, investment in research and development can have knowledge spill-overs which benefit the wider economy and which cannot be fully appropriated by the firm making the investment. State investment in research and development can therefore help to unlock economic growth (Buelens et al 2007; European Commission 2009). In the case of the latter, the EU supports the argument that state aid can help to address inequalities. For instance, state support can help attract investment away from wealthier regions and towards more deprived regions (Friederiszick and Merola 2015).

Given the recognition of these benefits, why does the EU regulate the use of state aid by its member states? One important reason is that state aid, when designed poorly, can lead to deadweight loss – ie subsidies for investments that would have occurred anyway. This benefits shareholders at the expense of the wider public. State aid can also widen regional disparities by attracting investment away from poorer countries and regions. Given wealthier regions tend to have the 'deepest pockets' and are therefore able to offer the most generous subsidies, state aid can divert companies towards wealthier regions at poorer regions expense. State aid rules therefore play an important role in addressing regional inequalities.

The arguments for state aid rules become particularly relevant in the context of the EU's single market. Without state aid rules, there is a risk of a subsidy race between member states. For instance, suppose a multinational tech firm intends to set up a new branch in the EU. In order to attract the investment, a member state may offer a tax break. As a result, the firm is likely to be tempted to base its new branch in the member state, from which it can then easily sell its goods and services across the EU. To forestall this risk, other member states may match the original offer, leading to a subsidy race. The countries with the 'deepest pockets' – ie the wealthiest member states – are likely to be best-placed to outbid others, while poorer member states are at a disadvantage. The firm is therefore likely to set up in a richer region, to the detriment of employment opportunities in the EU's poorer regions.

Moreover, in this example it is likely that the multi-national firm did not need such a strong incentive to base itself in the wealthy member state. Suppose the final subsidy offered to the firm is €5 million, but the firm would have made the same decision if it had been offered €1 million. This means that the wealthy member state would have wasted €4 million, simply to divert the firm away from poorer regions and entrench pan-European inequalities (Friederiszick and Merola 2015).

Indeed, this example is not just a theoretical one. In recent years the European Commission has taken action to address selective tax advantages offered to multinational companies by particular member states. These have included ensuring the Netherlands recovered €25.7 million in tax advantages from Starbucks in 2015; ensuring Ireland recovered €14.3 billion in tax benefits from Apple in 2016;

and ensuring Luxembourg recovered €282.7 million in tax benefits from Amazon in 2017 (European Commission 2018a).

Finally, state aid rules are necessary to avoid escalating trade disputes. To see this, imagine a scenario involving two countries – Country A and Country B – where there are no state aid rules. Suppose Country A decides that it wants to expand its exports by giving its producers a cost advantage and so instructs its state-owned electricity utility to provide its aluminium producers with free power. Suppose this helps its export performance and harms aluminium producers in Country B. Country B will likely respond by putting a tariff on aluminium imports from country A, cancelling out country A's subsidy and protecting its own firms. The uninhibited use of state aid therefore invites the imposition of retaliatory tariffs, eliminating any price advantage. Accordingly, in a free trade area where tariffs are forbidden, there must also be rules on state aid to ensure a level playing field in trade.

In sum, the EU's state aid rules recognise the benefits of aid measures designed to make the economy work better and to tackle inequality. But at the same time, they place limits on state aid where it creates deadweight loss, undermines public welfare, and exacerbates regional imbalances. The EU's rules are not designed to simply prevent state aid; they instead aim for state aid to be targeted at the most economically and socially beneficial activities.

3.
WHAT STATE AID IS ALLOWED UNDER EU RULES?

As section 2 demonstrated, the EU recognises that state aid can deliver several important benefits for member states. This section illustrates how a range of state aid measures are in fact fully compatible with EU rules.

The compatibility of state aid measures with EU law is set out in the text of the EU treaties. While Article 107(1) provides for a general prohibition of state aid, Articles 107(2) and 107(3) then go on to provide a range of significant exemptions. Article 107(2) states that state aid "shall" be compatible with the single market under the following circumstances (TFEU 2007).

a. Aid of a "social character" that is given directly to individual consumers.

b. Disaster aid.

c. Aid granted to certain areas of Germany affected by its division.

More broadly (and importantly), Article 107(3) states that state aid "may" be compatible with the single market under the following circumstances (TFEU 2007).

a. Regional aid to support economic development in areas where living standards are "abnormally low" or where underemployment is "serious" (as well as the EU's outermost regions).

b. Aid to support an important project of "common European interest" or to address a "serious [economic] disturbance".

c. Aid to support the "development of certain economic activities or of certain economic areas", provided it does not affect trading conditions "to an extent contrary to the common interest".

d. Aid to support culture and heritage conservation, again provided it does not affect trading conditions to an extent contrary to the common interest.

e. Other categories that can be legislated for by the EU.

In practice, there are a series of ways for member states to demonstrate compatibility of state aid measures with EU law. First, many state aid measures do not require notification to the European Commission at all, because they fall under categories already defined under previous EU legislation. These include (European Commission 2015).

- **Aid previously authorised by the commission under an existing scheme.**
- **Small amounts of state aid** – under the de minimis Regulation, any state aid to an individual undertaking worth €200,000 over three fiscal years is exempt from state aid restrictions and from pre-notification, given the small potential impacts on trade and competition (European Commission 2013a).
- **Aid falling under the General Block Exemption Regulation (GBER)** – this Regulation sets out conditions for state aid measures that do not require commission notification, based on criteria such as the type of beneficiary, the project expenses, and the aid intensity (the percentage of a project's eligible costs that are resourced via state aid) (European Commission 2014). The aim is to screen out less contested forms of state aid before notification to the commission. The GBER covers around 80 per cent of all state aid measures (European Commission 2017).

On the basis of the GBER, there are a range of state aid interventions that are considered compatible with the single market. Examples include regional aid, SME aid, R&D aid, and environmental aid (BIS 2015).

- **Regional aid:** the GBER allows for the active application of state aid to support the EU's poorer regions. For instance, regional investment aid of up to €18.75 million and up to 25 per cent of eligible costs can be targeted in the UK's poorest regions without any notification to the commission.[1] These regions (known as Article 107(3)(a) regions) are defined as NUTS2 regions with GDP per head below or equal to 75 per cent of the EU average. In the UK, Article 107(3)(a) regions include Cornwall, West Wales and the Valleys, and Tees Valley and Durham.
- **SME aid:** given small businesses can initially struggle to secure capital, the EU allows for state aid targeted at SMEs. For instance, investment aid to SMEs of up to €7.5 million per undertaking per project is automatically permissible without prior notification to the commission, provided certain conditions are fulfilled. The aid can support up to 20 per cent of eligible costs for small enterprises and 10 per cent of eligible costs for medium enterprises.
- **R&D aid:** the GBER automatically allows for a range of state aid measures to support research and development without pre-notification. For instance, up to €7.5 million aid may be given to support the construction or upgrade of an innovation cluster. The aid can reach up to 50 per cent of eligible costs.
- **Environmental aid:** the GBER allows for automatic exemption for aid with a series of environmental and energy objectives, provided these go beyond simply complying with current EU standards. For instance, state aid of up to €15 million per undertaking is available to help support energy efficiency objectives that go beyond EU standards. This aid can support up to 30 per cent of eligible costs. (The limit is higher for SMEs and poorer regions).

Other forms of state aid may also be compatible with the single market, but they need to be signed off by the European Commission. The commission process for investigating state aid is complex and varies depending on the type of aid in question. However, there are some common questions the commission explores in its investigation to determine the compatibility of state aid with the single market (European Commission 2009).

- **Does the measure contribute to an objective of common interest?** An aid measure should contribute to an objective of common interest, as set out in Article 107(3). Crucially, this is defined as an object of interest for the whole of the EU.
- **Is the measure appropriate?** The state aid measure should be the appropriate policy instrument to achieve the objective in question.
- **Is there an incentive effect?** The state aid measure should have an incentive effect – ie it should change the behaviour of its beneficiaries so that they engage in additional activities compared to what they would have done without the aid. It should not simply subsidise activities that would have taken place regardless of the aid.
- **Is the measure proportionate?** The state aid measure should provide no more support than necessary to secure the additional activities or investments.
- **Does the measure have undue negative effects on competition and trade?** The state aid measure should not result in excessive negative effects (eg subsidy races, crowding out) that outweigh any potential positive impacts. For instance, the regional aid guidelines indicate that a regional aid measure should not attract investment away from a poorer region to a wealthier one (Friederiszick and Merola 2015).

1 The aid intensity is higher for SMEs.

These guidelines illustrate that the tests the commission applies are not designed to prevent the use of state aid; they are instead there to ensure state aid is used for sensible purposes. For instance, taking the example from section 2 of the multinational tech firm, it is clear that the state aid applied in this case is disproportionate (because it provides more than necessary to secure the investment) and has negative effects on competition and trade (because it attracts the firm away from a poorer region to a wealthier one). On the other hand, if the state aid measure had been used in a poorer region to attract investment, then it would be far more likely to be admissible under the EU's rules.

4.
DO EU RULES PREVENT NATIONALISATION?

Some have claimed that EU state aid and competition rules prevent nationalisation. This, however, is not correct. To understand why requires broadening the focus of this briefing beyond state aid to look at other aspects of the EU's competition policy.

First, it is clear from EU law that the EU is not incompatible with nationalisation. The EU treaties are explicitly neutral with respect to the system of property ownership. Article 345 TFEU states that "The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership" (TFEU 2007). There are no provisions within the treaties that directly prevent nationalisation. Indeed, nationalisation is a common feature in every EU country. While the UK has 16 state-owned enterprises, this is relatively low compared to other member states: France has 51 state-owned enterprises, Germany has 71 state-owned enterprises, and Poland has 126 state-owned enterprises. The top ten OECD countries with the largest shares of state-owned enterprises in national employment are all members of the EEA (OECD 2017).

It is true, however, that state-owned enterprises are subject to EU competition rules. According to Article 106 TFEU, member states cannot enact measures contrary to the treaties relating to "public undertakings" and "undertakings to which member states grant special or exclusive rights" (TFEU 2007). The courts have in the past applied Article 106 TFEU in conjunction with Article 102 TFEU, which prohibits abuse of an undertaking's dominant market position where it affects trade between member states. This means that, in some instances, EU law can prevent state monopolies.

There is nevertheless a partial exemption in Article 106 TFEU for undertakings that run "services of general economic interest". These are economic activities that deliver outcomes for the public good that would not otherwise be provided without state intervention (European Commission 2013b). Possible examples include public telecommunications networks, water distribution, electricity distribution, transport networks and postal services (Scyszczak 2007: 217). Undertakings that run such services are only subject to EU competition law to the extent that this does not prevent them from performing the tasks assigned to them. This gives them partial immunity from the treaty rules.

Another common argument is that EU law prevents the re-nationalisation of the rail services. Again, this is not the case: the rail services in many other European countries are dominated by state-run operators, including SNCF in France, Nederlandse Spoorwegen in the Netherlands and Deutsche Bahn in Germany. Indeed, the majority of the UK's rail routes are either partially or wholly owned by European states (RMT 2014).

Moreover, rail services receive special consideration within the EU treaties. Alongside general EU competition policy, inland transport is subject to Article 93 TFEU, which states that transport aid measures are compatible with the treaties if "they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service" (TFEU 2007).

It is true that the EU has in recent years introduced secondary legislation – most recently, the fourth railway package of 2016 – to develop a single market in rail services. This legislation requires that the railway infrastructure manager (in Britain's case, Network Rail) has independence from train operating companies and that access to railway infrastructure (ie track, etc) is open to competition (Badstuber 2018; European Commission 2019).

However, this legislation does not ban state-owned train operating companies. Neither does it preclude the possibility of awarding public service contracts with exclusive rights directly (ie without a competitive tender) to state-owned train operators in certain circumstances (eg for smaller contracts). Furthermore, where a public service contract has been awarded, member states can restrict the access of other train operating companies to the railway infrastructure if this compromises the "economic equilibrium" of the contract (ibid).

In sum, the EU's rules on state-owned enterprises, while complex, clearly do not impede nationalisation. Instead, they apply the rules of competition to state-owned companies. These rules can limit state monopolies, but they also include a series of important exemptions for services where there is a wider public benefit in state intervention.

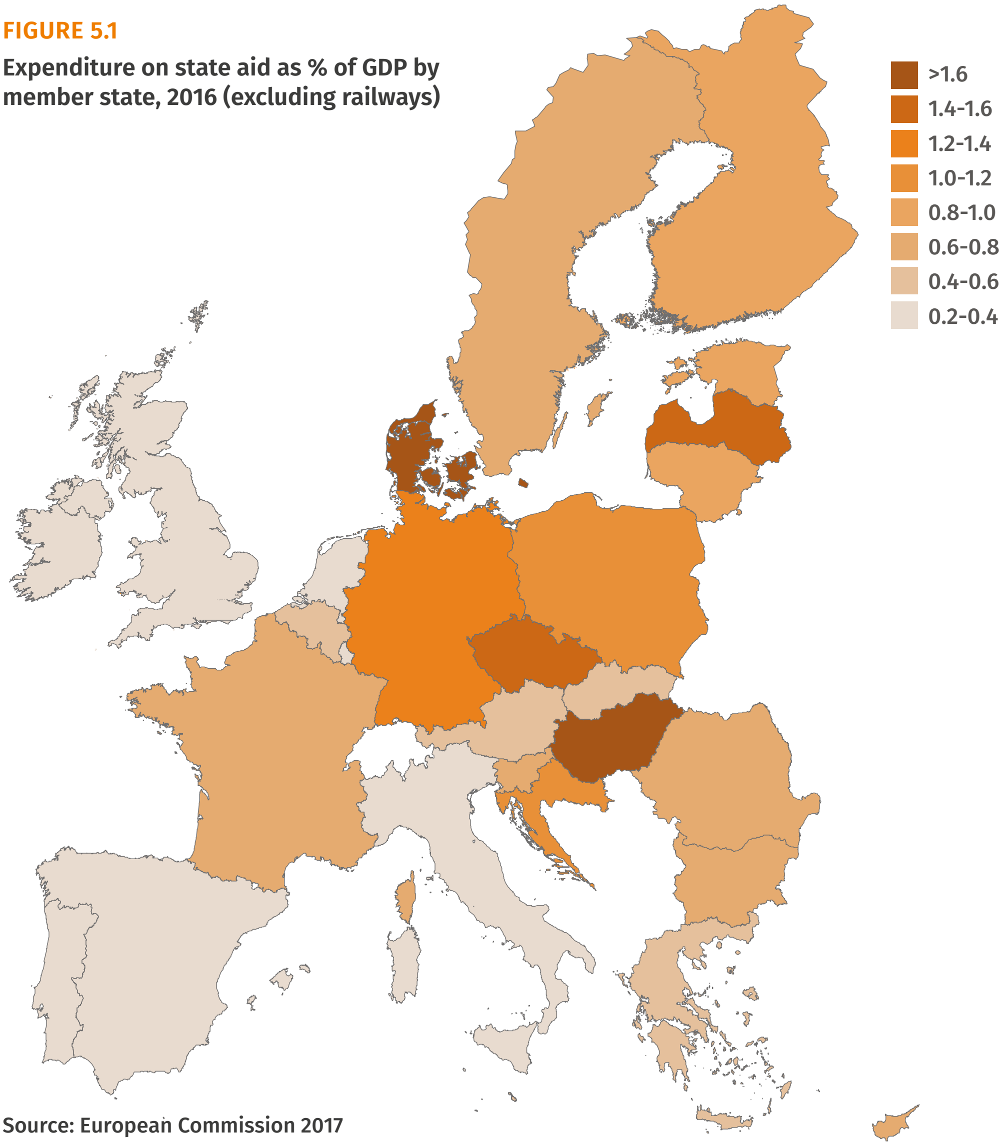
5.
HOW MUCH DOES THE UK SPEND ON STATE AID?

As the previous sections have shown, EU rules allow for a considerable range of state aid measures as part of an active industrial policy. An analysis of state aid activity across the EU confirms that there is considerable scope for a more expansive state aid policy without deviating from EU rules.

The EU's state aid scoreboard compares expenditure on state aid across each member state (European Commission 2017). As figure 5.1 illustrates, UK spending on state aid as a percentage of GDP in 2016 was 0.36 per cent, significantly lower than the EU average (0.69 per cent) and far lower than other western European countries such as Germany (1.31 per cent), France (0.65 per cent), and Denmark (1.63 per cent).

FIGURE 5.1

Expenditure on state aid as % of GDP by member state, 2016 (excluding railways)



Source: European Commission 2017

In raw figures, UK spending on state aid was €8.6 billion (£7.0 billion), compared with €14.5 billion (£11.9 billion) in France and €41.1 billion (£33.7 billion) in Germany. Table 5.1 illustrates how much more the UK would spend on state aid if this expenditure was equivalent to the state aid expenditure as a percentage of GDP for each member state. This suggests that UK expenditure on state aid would be approximately £6 billion more per annum if it spent the same level as France, approximately £19 billion more per annum if it spent the same level as Germany, and approximately £25 billion more per annum if it spent the same level as Denmark. (Such spending would of course still need to meet EU rules, as explained in the previous sections.)

TABLE 5.1

Estimated increase in spending for UK to 'match' other EU countries' state aid expenditure as % of GDP

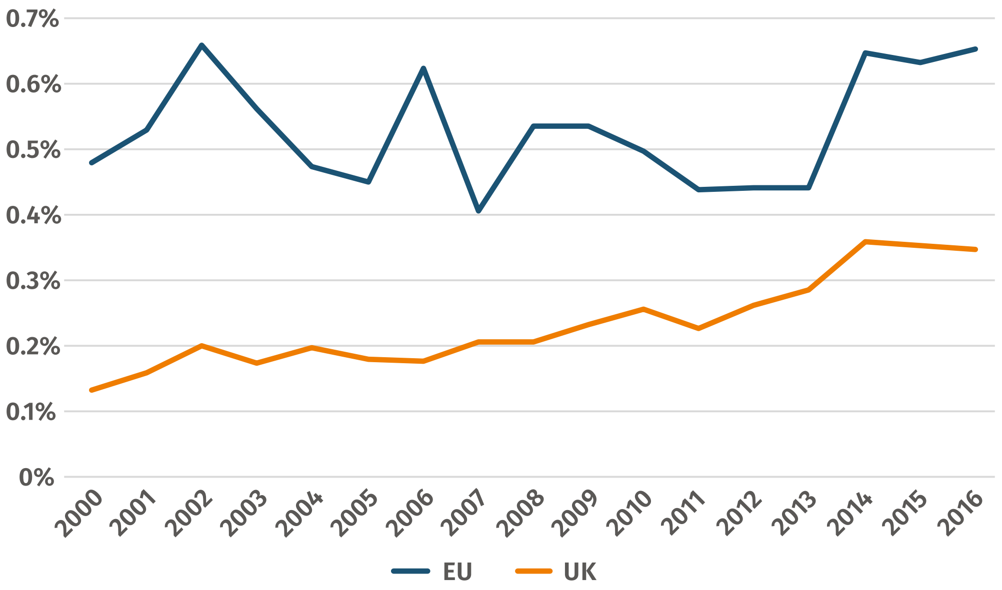
Member state	State aid expenditure as % of GDP, 2016 (excluding railways)	Increase in spending if UK were to match member state's state aid expenditure as % of GDP (£ billion)
Austria	0.56	4
Belgium	0.58	4
Bulgaria	0.74	7
Croatia	1.15	16
Cyprus	0.71	7
Czech Republic	1.44	21
Denmark	1.63	25
Estonia	0.86	10
Finland	0.93	11
France	0.65	6
Germany	1.31	19
Greece	0.41	1
Hungary	2.10	34
Italy	0.22	-3
Latvia	1.53	23
Lithuania	0.87	10
Luxembourg	0.28	-2
Malta	0.55	4
Netherlands	0.33	-1
Poland	1.08	14
Portugal	0.36	0
Republic of Ireland	0.20	-3
Romania	0.61	5
Spain	0.25	-2
Slovakia	0.47	2
Slovenia	0.76	8
Sweden	0.78	8

Source: European Commission 2017

While UK spending on state aid as a share of GDP has increased over time, it has consistently been far below the EU average (figure 5.2).

FIGURE 5.2

UK and EU expenditure on state aid as % of GDP (excluding railways), 2000-2016



Source: European Commission 2017

A more detailed comparison between state aid spending in the UK, Germany and France illustrates where spending between the countries differs (table 5.2). In the UK, state aid spending largely focuses on research and development, support for SMEs, and environmental protection. In Germany, expenditure is highly concentrated in support for environmental protection: the vast majority of state aid spending falls under this category, and it spends more than 10 times on the environment compared to the UK. On the other hand, in France, state aid spending is more evenly shared among objectives such as culture, environmental protection, regional development, sectoral development, SME support, and social support to individual consumers.

TABLE 5.2

Non-agricultural state aid expenditure by objective for the UK, Germany and France, 2016 (excluding railways)

State aid by objective	UK	Germany	France
Closure aid	0%	3%	0%
Compensation of damages caused by natural disaster	0%	0%	0%
Culture	2%	2%	8%
Employment	0%	0%	0%
Environmental protection incl Energy saving	39%	87%	23%
Heritage conservation	0%	0%	0%
Promotion of export and internationalisation	0%	0%	0%
Regional development	4%	1%	14%
Rescue & Restructure	0%	0%	0%
Research and development incl Innovation	30%	4%	5%
Sectoral development	0%	0%	11%
SME incl risk capital	24%	2%	12%
Social support to individual consumers	0%	0%	26%
Training	0%	0%	0%
Other	0%	1%	1%

Source: European Commission 2017

Finally, subsidies to the railway sector are treated separately in the state aid figures. Again, the UK falls far behind its continental neighbours: UK expenditure on railway subsidies in 2016 was €941 million, compared to €11.8 billion in Germany and €12.2 billion in France.

The evidence on state aid expenditure demonstrates that the UK is a modest user of state aid compared to other member states. In 2016 UK spending on state aid as a share of GDP was around half of the EU average. This indicates that there is considerable scope for greater expenditure on state aid – including on priorities such as environmental protection, R&D, and regional development – within the framework of EU state aid policy.

6. WILL STATE AID RULES CHANGE AFTER BREXIT?

Some commentators have argued that the UK will have more flexibility to pursue state aid measures outside of the EU. However, the withdrawal negotiations have clearly demonstrated that state aid rules will play a key role in any post-Brexit agreement between the UK and the EU. The EU has affirmed that the future relationship – whether it is a free trade agreement or a customs union – will be underpinned by certain 'level playing field' provisions. These aim to ensure that neither party has an unfair competitive advantage over the other in future trade. One key element of the level playing field is an agreement on state aid policy.

The state aid provisions contained within the Irish protocol (the so-called 'backstop') illustrate the EU's minimum expectations for the future relationship. The backstop is an insurance policy designed to prevent a hard border on the island of Ireland if no alternative arrangements can be found. As part of the arrangement for the backstop, the UK and the EU have agreed to form a customs union. Given the customs union removes all tariffs and quantitative restrictions on UK-EU trade, the EU has required a set of level playing field conditions to be introduced if the backstop ever comes into effect, including detailed provisions on state aid. This indicates that any future agreement between the UK and the EU that removes tariffs and quantitative restrictions will require at the very minimum these state aid provisions.

So what do the state aid provisions in the backstop say? The Irish protocol states that the UK must continue to apply EU law on state aid in its entirety as part of the UK-EU customs union (European Commission 2018b). This includes the key treaty provisions on state aid, the GBER and the de minimis regulation, and the commission's guidelines on state aid control. These rules will be updated automatically over time in line with EU legislation. Moreover, they will apply in reference to the "common interest" of the UK and the EU – ie when applying the rules, the UK will have to take into account the interests of the EU27 as well as the UK (Verouden and Ibáñez-Colomo 2019).

The rules will also be enforced in a similar way to now. As explained in the earlier sections, the European Commission plays a critical role in state aid enforcement in the EU, given it has considerable discretion in its decision-making powers. The Irish protocol states that in the UK, rather than the commission playing its normal role in decision-making, this should instead be transferred to an 'independent authority'.[2] This independent authority will have the same powers and functions as the commission with respect to state aid and its decisions will have the same legal effect. In order to ensure that the commission and the UK's independent authority take the same approach to state aid, they are required to cooperate closely, sharing information on cases where appropriate. The independent authority must seek the commission's opinion on every draft decision and take this into account before it adopts a decision. Furthermore, the protocol requires the UK domestic courts to enforce the state aid provisions and sets out a strict procedure – including the

2 ie the Competition and Markets Authority. For Northern Ireland, the Withdrawal Agreement specifies that different arrangements apply – here the EU institutions will directly enforce the state aid provisions.

possibility of remedial measures – in the event of a dispute between the UK and the EU (ibid).

Taken together, these provisions ensure the full application and enforcement of EU state aid rules in the event of the backstop coming into force. This clearly demonstrates that any agreement between the UK and the EU that removes tariffs and quantitative restrictions will require at a minimum full adherence to the EU's state aid regime.

Suppose, however, no agreement is reached between the UK and the EU – would the UK be required to follow state aid rules under this scenario? Even here, there are limitations on the UK's state aid policy. First, WTO rules limit the use of targeted financial subsidies. While these are not as far-reaching or enforceable as EU rules, they do place limits on government action. Certain subsidies that directly distort trade (such as export subsidies) are prohibited. Other subsidies are 'actionable', which means they are allowed but can be challenged if they are shown to adversely affect the interests of another WTO member. This can result in countervailing measures – eg tariffs designed to offset the effect of the original subsidy (House of Commons Library 2018).

In any case, even under a 'no deal', the EU has made clear that autonomous 'basic connectivity' measures to facilitate trade – such as measures to avoid the interruption of air traffic and to allow UK road haulage operators to transport goods into the EU – will be contingent on the UK ensuring conditions of fair competition. Therefore, even under a no deal the UK will likely be required to follow certain state aid rules to prevent major disruption in trade and transport between the UK and the EU (Holehouse 2019; European Commission 2018c).

CONCLUSION

This briefing has assessed the role of EU state aid rules in the context of Brexit. Our analysis suggests that, contrary to claims that the EU seriously inhibits an active industrial policy, there is extensive scope for member states to pursue state aid measures. EU rules allow for the use of state aid for purposes ranging from regional development and environmental protection to R&D and SME financing. Moreover, EU law is officially neutral on the matter of state ownership and does not prevent nationalisation.

In fact, the UK currently spends much less on state aid than the EU average. There is therefore considerably further scope to expand state aid measures in future under EU law.

Finally, our analysis of the withdrawal agreement suggests that, in the event of Brexit, any future UK-EU relationship will continue to require following EU state aid policy. Even under a no deal scenario, the UK will be subject to WTO limits on the use of subsidies to distort trade. Therefore, state aid rules will continue to be relevant for future UK industrial policy, regardless of the outcome of the current Brexit process.

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