

# State aid in a post-Brexit world: the CMA's role

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The position relating to State aid post-Brexit is beginning to become clearer as the 29 March deadline draws closer. The Government laid 'the State Aid (EU Exit) Regulations 2019' (Regulations) before Parliament in late January 2019 to cover the regime moving forward in the event the UK leaves the EU with no deal. However, it is worth discussing one particular part of the Regulations in more detail; the Competition and Market Authority's (CMA) role as the UK state aid enforcement agency.

## The current position

The current enforcement agency of the EU State aid regime is the European Commission, who exercise a fairly broad range of powers and methods in order to ensure that the state aid rules are complied with, including:

- dealing with notifications of all plans to grant aid or to alter any approved aid schemes and these grants or schemes cannot be effective until they receive the Commission's Authorisation;
- declaring any aid given by a member state as unlawful, triggering a requirement for the Commission to order the illegally granted aid to be repaid by the recipients to the granting public authority;
- extensive monitoring powers if it has serious doubts about individual aid decisions being made by a member state. These include having the power to enter premises, asking for on the spot explanations and examining a company's accounts and records.

## The proposed role of the CMA

Generally, the procedures in the Regulation are being kept as similar as possible to the Commission's current procedural rules in relation to the notification and investigation of state aid. However, there are still some uncertainties at this point which are unlikely to be solved until much closer to the deadline, such as:

- the form and content of any notifications or complaints
- the form, content and date for the submission of annual reports in relation to existing aid schemes, and aid which is exempt from notification
- the form and summary information for aid that is exempt from notification

The intention is that the CMA will publish a notice covering these outstanding points prior to exit day, and is consulting on procedural guidelines.

Schedule 4 of the Regulation is also important. This gives the CMA similar monitoring powers to those that the Commission has now in relation to investigating state aid, but it is useful to note the breadth of these provisions and the power the CMA has to investigate state aid, especially as in places they go beyond the current powers enjoyed by the Commission:

1. A CMA officer may enter the business premises of a beneficiary to obtain information to determine whether there has been a misuse of aid. The CMA must, however, give at least 2 working days' notice and conduct the search 'only at a reasonable hour', unless there is a court warrant in which case the entry could be immediate.

2. The officers may take any equipment from the premises they feel necessary and copies of any documents which are produced as part of the enforcement visit.
3. The officers may require any person on the premises to produce any documents that they consider relevant and provide an explanation of the document.
4. Obstruction of officers (or indeed failure to comply with their reasonable requests) in relation to their powers to enter premises gives rise to criminal offences.

Other differences to note between the proposed regime with the CMA and the state aid procedures under the Commission are:

- **the introduction of deemed approval.** Under the CMA regime if the CMA does not issue a decision within 40 working days of receipt of the notification, then the measure which has been notified is deemed to have been accepted (Regulation 9(1) of the Regulations)
- **any public body which grants state aid can notify the CMA of its intention to do so and to seek approval.** This could open up the regime to smaller public authorities who will now be able to notify the CMA directly of their intention to award state aid and seek approval. Under the old regime the Government needed to support the measure for it to be approved by the Commission and only had finite resources to do this meaning there was a tendency only for government departmental schemes to be supported. However, with this requirement now removed, many smaller aid granting authorities may look to utilise this as a viable route.

## Contact



Alex Kynoch

Partner

[alex.kynoch@brownejacobson.com](mailto:alex.kynoch@brownejacobson.com)

+44 (0)115 976 6511

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