



EU-UK Trade and Cooperation Agreement

Subsidy control chapter

Introduction and scene setter – TCA

Timeline and rules

- Agreement reached on the EU-UK Trade and Cooperation Agreement (TCA) on 24 December 2020 and signed on 30 December 2020. Into force on a provisional application basis until 28 February 2021.
- Rules on subsidies can be found in Chapter 3 of Title XI, Annex ENER-2 and the “Joint Declaration on subsidy control policies”

Substantive rules – Subsidy definition and scope

SUBSIDY DEFINITION

- 4 cumulative criteria to qualify as a subsidy under the TCA
 1. **Resources** of the Parties (also supranational level)
 2. **Economic advantage** to an **economic actor**
 3. **Specificity**. Provision on specificity for tax matters
 4. Potential or actual **effect on trade or investment between the Parties**

SCOPE

- Covers all subsidies for **goods and services** that fulfill the definition with few exceptions (agriculture, fisheries, audiovisual).
- Special exemptions for natural disasters and social character subsidy targeted at final consumers.
- **De minimis** threshold: SDR 325.000 (approx. EUR 385 000) per economic actor over 3 years.
- **EU funds** subject to subsidy rules, except for article on Independent authority/body.

Substantive rules - Principles

- Commitment from both Parties to have in place and maintain an effective system of subsidy control which ensures respect of the following principles when granting subsidies:
 - a) **Public policy objective** to remedy a **market failure**
 - b) **Proportionate** and limited to what is necessary to achieve the objective
 - c) **Designed to change the economic behaviour of the beneficiary** in line with the objective (“incentive effect I”)
 - d) **No compensation of costs** that would have otherwise been funded by the beneficiary in the absence of the subsidy (“incentive effect II”)
 - e) **Appropriateness** of the subsidy
 - f) **Balancing test:** Positive effects should outweigh negative effects in particular and trade and investment between the Parties.
- **Legality** of a subsidy will be determined by respect of these principles

Substantive rules – Specific assessment principles

- **Binding** specific assessment principles in the following areas :
 1. Services of public economic interest (SPEIs);
 2. Rescue and restructuring subsidies;
 3. Unlimited guarantees;
 4. Subsidies granted to banks, credit institutions and insurance companies;
 5. Export subsidies (including short term export credit subsidies (STEC)), and subsidies contingent upon the use of domestic content;
 6. Large cross-border cooperation projects;
 7. Subsidies to air carriers for the operation of routes; and,
 8. Energy and environmental subsidies.
- **Non-binding** specific assessment principles for the following:
 1. Subsidies to disadvantaged areas
 2. Transport (airports, road infrastructure, port infrastructure)
 3. Research and Development

Enforcement – Independent authority/body, Transparency and Consultations

Independent authority/body

- **No mandatory ex ante control** but obligation to establish/maintain an operationally independent authority/body
- Authorities may cooperate and may agree on separate cooperation framework.

Transparency

- Information on a specific subsidy shall be made public within 6 months of granting (12 months for tax measures).
- Interested parties entitled to get information on the compliance with the assessment principles.

Consultations

- **State to state mechanism** for additional information and consultations in case a subsidy (actual or planned) **has or could have a negative effect on trade on investment.**

Enforcement - Courts and Recovery

Courts

- Courts and tribunals shall have be **competence** to review subsidy decisions, other decisions of independent authority/body including failure to act, impose remedies, and hear claims from interested parties.
- EU and UK shall have the **right to intervene** in each other courts and tribunals.

Recovery

- Commitment to have in place an effective mechanism of recovery. Can be ordered when (i) subsidy not treated as such (ii) principles not been applied, or (iii) misuse or no application of powers in applying the principles.

Enforcement: unilateral measures and dispute settlement

Remedial measures:

- If subsidy has or could have a significant negative effect on trade or investment.
- Can be imposed in 60 days and may take any form (e.g. imposition of tariffs or suspension of rights under the agreement).

Rebalancing measures:

- In case of significant divergences with respect to subsidy control that have a material impact on trade or investment.
- Can be imposed in maximum 45 days and take any form (e.g. imposition of tariffs or suspension of rights under agreement).

Dispute settlement

- Dispute settlement of the TCA applies except for provision on independent authority and courts.
- Arbitration tribunal has **no jurisdiction in assessing individual subsidy cases and recovery.**

Thank you!