



College of Europe
Collège d'Europe



Natolin



Maastricht University

Brexit & State Aid: Transition Issues

Prof P. Nicolaides

The problem

- Pending cases:
 - Notified to Commission or being investigated by Commission
 - EU courts:
 - More than 220 cases some of which have UK links [EasyJet, British Aggregates, Tempus Energy, Austria (Hinkley Point C)]
- Illegal aid examined within 10-year period after end of transition period

Transition

<u>Period 1</u> Until 29/3/2019	<u>Period 2</u> 30/3/2019-31/12/2020	<u>Period 3</u> From 1/1/2021
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Period 1:

Commission currently authorises notified SA until 29/3/2019
“without prejudice to withdrawal agreement”

Period 2: Provisions of (draft) Withdrawal Agreement

Art 121 WA: Transition period: From exit until 31/12/2020

Art 122 WA: EU law applicable on & in UK until 31/12/2020
and shall produce same legal effects in UK as in EU

Judicial proceedings

- Art 82 WA: Pending cases: CJEU shall continue to have jurisdiction on cases brought before end of transition period [also preliminary rulings]
- Art 85 WA: Judgments have binding force also after transition period

Administrative procedures

- Art 88 WA: Ongoing administrative procedures: EU institutions continue to be competent for administrative procedures initiated before end of transition period
- Art 91 WA: Binding force & enforceability of administrative decisions: Decisions adopted before end of transition period shall be binding on and in UK
- But, will admin decisions be binding when initiated before end of transition period but concluded after transition period?

After transition?

- Art 89 WA: New administrative procedures: EU institutions remain competent to initiate new administrative procedures concerning compliance with EU law where facts forming subject matter of administrative procedure occurred before end of transition period
- But, will the Commission investigate illegal aid granted before end of transition period? If yes, what will be the effect of its decisions?

After transition: Northern Ireland

- Art 168 WA: “The Protocol on Ireland/Northern Ireland, ..., shall apply as from the end of the transition period.”

- Protocol on Ireland / Northern Ireland
 - Article 9: “The provisions of Union law on aids granted by States listed in Annex 2.9 to this Protocol shall apply to the United Kingdom in respect of Northern Ireland. For the purposes of those provisions, "in respect of Northern Ireland" means that only measures that affect trade between the territory of Northern Ireland and the Union shall be considered as aid within the meaning of Article 107(1) TFEU.” [Annex 2.9 still empty]

Conclusions

- SA rules will apply after UK exit until 31/12/2020
 - But, what will be the effect of admin decisions concluded after end of transition period?
- SA rules will apply to NI after 31/12/2020
 - But, will NI regime “spillover” to the rest of the UK?