
DRAFT STATUTORY INSTRUMENTS

2019 No.

The State Aid (EU Exit) Regulations 2019

PART 2

Framework

State aid

3.—(1) In this regulation, the “state aid rights” are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised in domestic law by virtue of—

- (a) Articles 107(1) and 108(3) of the TFEU; and
- (b) section 4 of the European Union (Withdrawal) Act 2018.

(2) The state aid rights have effect as if—

- (a) Articles 107(1) and 108(3) of the TFEU were modified as set out in the second column of the Table in paragraph (4); and
- (b) they are subject to the conditions set out in the third column of the Table.

(3) In the rest of these Regulations (except the first column of the Table in paragraph (4), regulation 65, paragraph 2(1)(c) of Schedule 6 and paragraphs 5(1)(a), 6(1) and 7(2)(c)(iii) of Schedule 8)—

- (a) a reference to Article 107(1) or Article 108(3) of the TFEU is a reference to that Article as it has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and paragraphs (1) and (2); and
- (b) a reference to another Article of the TFEU is a reference to the corresponding condition set out in the third column of the Table in paragraph (4).

(4) The Table is—

<i>Article of the TFEU</i>	<i>Modified form of Articles 107(1) and 108(3)</i>	<i>Conditions on modified Articles 107(1) and 108(3)</i>
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Article 107(1)	Any aid granted by the 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 the United Kingdom and the European Union, be prohibited unless it is approved in accordance with Article 108(3) of the TFEU.
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<i>Article of the TFEU</i>	<i>Modified form of Articles 107(1) and 108(3)</i>	<i>Conditions on modified Articles 107(1) and 108(3)</i>
Article 108(3)	The CMA shall be notified of any plans to grant or alter aid. The aid grantor concerned shall not put its proposed measures into effect unless the aid is approved under Article 93, 106(2) or 107(2) or (3) of the TFEU.	
Article 93		The CMA shall approve aid if the aid meets the needs of coordination of transport or the aid represents reimbursement for the discharge of certain obligations inherent in the concept of a public service in respect of transport.
Article 106(2)		The CMA shall approve aid if— <ul style="list-style-type: none"> (a) the aid is for an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly; and (b) not approving the aid would obstruct the performance of the particular tasks assigned to the undertaking.
Article 107(2)		The CMA shall approve the following— <ul style="list-style-type: none"> (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; and (b) aid to make good the damage caused by natural disasters or exceptional occurrences.
Article 107(3)		The CMA may approve the following— <ul style="list-style-type: none"> (a) aid to promote the economic development of an area that was, immediately before exit day, specified in Schedule 1 to the Assisted Areas Order 2014⁽¹⁾; (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of the United Kingdom; (c) aid to facilitate the development of certain economic activities or of an area in Northern Ireland or of an area that was, immediately before exit day, specified in

(1) [S.I. 2014/1508](#), amended by [S.I. 2017/173](#).

<i>Article of the TFEU</i>	<i>Modified form of Articles 107(1) and 108(3)</i>	<i>Conditions on modified Articles 107(1) and 108(3)</i>
Article 346(1)		<p>Schedule 2 to the Assisted Areas Order 2014(2); and</p> <p>(d) aid to promote culture and heritage conservation.</p> <p>The provisions of Articles 107(1) and 108(3) of the TFEU shall not preclude the application of the following rules—</p> <p>(a) the state shall not be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security; and</p> <p>(b) the state may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.</p>

Application and exemptions

4.—(1) The following are not prohibited under Article 107(1) of the TFEU and are exempt from the notification requirement in Article 108(3) of the TFEU—

- (a) agricultural aid granted in accordance with a provision specified in Schedule 1; and
- (b) aid granted in respect of an outstanding amount of a specified EU project in accordance with Schedule 2.

(2) Aid granted in accordance with a de minimis regulation does not meet the criteria in Article 107(1) of the TFEU and is exempt from the notification requirement in Article 108(3) of the TFEU.

(3) Aid granted in accordance with the following is deemed to be approved under Article 93, 106(2) or 107(2) or (3) of the TFEU (as appropriate) and is exempt from the notification requirement in Article 108(3) of the TFEU—

- (a) the road and rail regulation;
- (b) the SGEI decision; or
- (c) a block exemption regulation.

(4) The prohibition in Article 107(1) of the TFEU and the notification requirement in Article 108(3) of the TFEU are subject to regulation 57 (application of state aid framework in urgent cases).

(5) Schedule 3, which relates to aid granted by Act of Parliament, has effect.

Approval of aid under Article 107(3)

5.—(1) The CMA may approve aid under Article 107(3) of the TFEU only if the CMA is satisfied that any adverse effects on trade and competition are justified by the objective of the aid.

(2) In considering whether to approve aid under Article 107(3) of the TFEU, the CMA must have regard to any relevant CMA statement of policy and Secretary of State guidance.

Approval of aid under Article 93, 106(2) or 107(2)

6. In considering whether to approve aid under Article 93, 106(2) or 107(2) of the TFEU, the CMA must have regard to any relevant CMA statement of policy.