
STATE AID LAW
OF THE EUROPEAN
UNION

EDITED BY
HERWIG C. H. HOFMANN
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OXFORD

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Foreword

State Aid is one of the sectors in which the EU legal order seeks to find a balance between Competition Law and Member States' support policies to undertakings to achieve a well-functioning and equitable economy. Identifying this balance is one of the most complicated challenges for the EU, which, in this field, needs to combine free market principles and Member States' interventions. Furthermore, over the years, State Aid control provisions have evolved, stemming from the Treaty, secondary legislation, as well as Court rulings. The result of this regulatory and jurisprudential stratification is the increasing complexity of State Aid Law. As a consequence, there are some recurring issues and also new ones that arise. What is State Aid? When is State Aid *de jure* compatible with EU Law? When is State Aid compatible after a discretionary assessment? What State Aid is exempt from notification? What are the features of the administrative procedures before the Commission? What are the principles stemming from the Court of Justice's case law? What is the relationship between EU State Aid and the World Trade Organization (WTO)? Faced with all those questions, *State Aid Law of the European Union* edited by Herwig Hofmann and Claire Micheau is an absolute must-read book for four reasons.

First, the book has an interdisciplinary approach. State Aid cannot be completely understood without examining the interplay between both the political and economic motivations that guide states and their sub-structures. Thus, the book has the virtue of dealing with the political, economic, legal, and institutional dimensions of State Aid, by treating the matter in an interdisciplinary and multi-faceted, scholarly way. The added value of this approach is clear: instead of valuable insights from each discipline, the book offers a consolidated approach, which combines all these different vantage points. Part I of the book is about these different dimensions. It outlines the existing debates and gives new insight into academic writings that lead the reader to an understanding of the reasons for and conditions of controlling State Aid in a multilevel structure. The value of this is to show that competition law is not the only perspective to understanding the evolution of State Aid control.

Second, as well as this interdisciplinary approach, the book covers every field of 'traditional' State Aid in the European Union. Indeed, Parts II–V explore in detail the key elements of the subject.

Part II deals with the notion of State Aid. It examines the criterion of State Origin, the notion of undertaking, the criterion of advantage and selectivity, the distortion of competition, and the effect on trade between EU Member States. It also contains two important additions to the discussion of the notion of aid, that is, the use of concepts of public procurement and of European Funds in State Aid control. Part II seeks to, and does successfully, explain the notion of State Aid in light of the recent modernization of the State Aid programme and, in particular, the chapters on public procurement and European Funds give the full picture of this notion.

Part III concerns Compatibility rules on State Aid. It visits the big questions, such as the relation between policy-specific regulations and rules on State Aid, and gives an in-depth analysis of the conditions of compatibility in the various sub-categories created by Union law. Thus, *de jure* compatible Aid under Article 107(2) TFEU and aid subject to a discretionary assessment under Article 107(3) TFEU are examined, as well as Transport Aid, which is assessed on the basis of Article 93 TFEU. Moreover, this part looks at State Aid that is exempt from notification to the Commission according to the General Block Exemption

Regulation (GBER). Therefore, Part III gives a thorough overview of the set of problems, contributes to the debate, and proposes original solutions to the different issues.

Parts IV and V deal with the fundamental and different roles of two key institutional players in State Aid control: the Commission and the Court of Justice. In particular, Part IV discusses procedures before the Commission. However, it is not a simple commentary on these procedures, but rather it examines a number of basic principles of the Commission's administrative procedures in relation to State Aid investigations and focuses on the limited rights of interested parties in these procedures. On that point, Part IV offers several explanations following three headings: the addressee factor, the dual role of the Commission and national courts, and the so-called 'one size fits all' approach. It also comments on the developments in case law, Commission practice, and avenues available at the national level that may alleviate this situation. Part V contains a thorough examination of the case law of the Court of Justice in the field of State Aid, in the light of the basic constitutional features of the EU system of judicial review. Thus, the allocation of powers between Union and national courts in the field of EU State Aid, the remedies available at centralized and decentralized levels, as well as their interactions are examined, taking into account the fact that the EU judicial system follows a dual approach based on mutual completion of remedies granted at both Union and Member State level. Both neophytes and skilled practitioners of EU State Aids will find Parts II to V extremely useful.

Third, the book has a global dimension. Indeed, after having examined State Aid in the EU legal order, Part VI focuses on the analysis of two sets of instruments: WTO law on subsidies established in the context of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and EU trade defence instruments. The first chapter of this part compares the WTO subsidy laws to the notions of State Aid in EU law. This comparative approach presents a more detailed understanding of the EU State Aid regime by contrasting it with WTO law, and is useful in providing concrete reasons and potential solutions for conflicts of law. Indeed, it comes to the interesting conclusion that both systems can learn from each other. The second chapter looks at the EU's anti-subsidy instruments. It points out that since 1995 anti-subsidy instruments have progressively become the key tool through which the EU has addressed subsidization by trading partners.

Fourth, the composition of the team of authors—judges at the Court of Justice and the General Court, legal secretaries of the latter, officials of the European Commission, skilled lawyers, and distinguished scholars—guarantees a perfect combination of leading academic and practical expertise. Thus, the theoretical approach and real-world practice blend in a book that challenges present issues on EU State Aid and proposes original solutions.

For all those reasons, scholars and practitioners before the Court of Justice should read this book, which is a key tool to understanding the evolution of State Aid, to explore elements of potential answers to the most common, albeit complex, questions and to conceive possible future developments on the subject.

Marc Jaeger
President of the General Court,
Court of Justice of the European Union

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List of Abbreviations

AAS	Advanced Authorization Scheme
AG	Agriculture Agreement
AMS	Aggregate Measurement of Support
AS	Anti-subsidy
BOPT	business property occupation tax
CAP	Common Agricultural Policy
CEPIFINE	Confederation of European Fine Paper Industries
CF	Cohesion Fund
CFI	Court of First Instance
CFP	Common Fisheries Policy
CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CMEs	coordinated market economies
CVDs	countervailing duties
DAC	Development Assistance Committee
DDS	Duty Drawback Scheme
DEPBS	Duty Entitlement Passbook Scheme
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAFRD	European Agricultural Fund for Rural Development
EBIT	earnings before interest and taxes
EBRD	European Bank for Reconstruction and Development
EC	European Community Treaty
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEA	European Economic Area Agreement
EEC Treaty	European Economic Community Treaty
EEPR	European Energy Programme for Recovery
EMFF	European Maritime and Fisheries Fund
EOUs	Exported Oriented Units
ERDF	European Regional Development Fund
ESF	European Social Fund
FI	Financial Instruments
FMS	Focus Market Scheme
FOS	Farmers' Sales Organization
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GBER	General Block Exemption Regulation
GC	General Court
HHI	Herfindahl–Hirschman Index
IDAC	In-depth assessment communication
IIDSF	Ignalia International Decommissioning Support Fund
IIP	injury investigation period
IP	investigation period
IPRs	intellectual property rights
IRR	internal rate of return
KDB	Korea Development Bank
KEIC	Korean Export Insurance Corporation
LDR	Less Developed Regions
LMEs	liberal market-oriented economies

MA	Managing Authorities
MDR	More Developed Regions
MEIP	market economy investor principle
MEIT	market economy investor test
MfN	most favoured nation
NBER	National Bureau of Economic Research
NGO	Non-Governmental Organization
NHS	national health services
NOS	Nederlandse Omroep Stichting
NPV	net present value
NUTS	Nomenclature of Territorial Units for Statistics
NVNI	non-violation nullification and impairment
OECD	Organization for Economic Cooperation and Development
PACE	partnership in assisting community expansion fund
PAT	Autonomous Province of Trento
PPPs	Private Public Partnerships
PSO	public service obligations
R&D	research and development
RAG	Regional Aid Guidelines
RBI	Reserve Bank of India
RDİ	Research, Development, and Innovation
SAAP	State Aid Action Plan
SAM	State Aid Modernization
SCM	Agreement on Subsidies and Countervailing Measures
SEZs	Special Economic Zones
SGEI	services of general economic interest
SIG	services of general interest
SMEs	small and medium-sized enterprises
SND	Norwegian Industrial and Regional Development Fund
SOEs	state-owned enterprises
TCD	Trinity College Dublin
TFEU	Treaty on the Functioning of the European Union
TR	Transition Regions
VoC	variety of capitalism
WTO	World Trade Organization
WWAN	Wireless wide area networking

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