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STATE AID: DEROGATIONS FROM EU RULES

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E-BOOKS

*European State Aid Law*; Frank Montag, Franz Jürgen Säcker (eds.); Nomos Verlagsgesellschaft; 2016

**Publisher’s note:** The regulation of state aid belongs to the core areas of European Union law. Without the general prohibition of state subsidies to undertakings competitiveness would be distorted and the benefits of the internal market would be put in jeopardy. This book deals systematically article-by-article with the basic principles, the proceedings, and the implementation of state aid law as laid down in Articles 107 to 109 TFEU, as well as the general block exemptions regulation (Regulation No. 800/2008) and the Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Art. 93 TEC. Further, this commentary deals in detail with the rules regulating state aid in specific sectors such as telecommunication, postal services, broadcast and television, energy/coal, banking, railroads, road transport, shipping, air traffic/airports, automotive industry, shipbuilding, steel, housing, agriculture, fishery, culture/tourism/sport, health.
The Modernisation of State Aid for Economic and Social Development; Bruno Nascimbene, Alessia Di Pascale; Springer; 2018

Publisher’s note: This book analyses the recent modernisation of EU State aid law from various perspectives, and considers both substantive and procedural aspects. It also discusses the reasons for, and the goals and future implications of the modernisation programme, including the evolution of the concept of State aid. The ambitious reform programme was launched in 2012 and has now been almost fully implemented by virtue of the adoption of new rules of procedure in July 2013, and exemption in June 2014. The book highlights the main aspects of this sector reform, which include the Commission’s change of attitude towards so-called positive aid, i.e. those able to promote economic growth, and the intention to focus on matters of greater systematic extent. These objectives also imply a third aspect: increasing the intensity of the control powers conferred on the Commission with regard to that aid that prove to be harmful to competition and the internal market. The book also examines the greater responsibility given to States for self-assessment of their economic policy measures, and explores the resulting impact on, and challenges posed to the administrations of the Member States. The book’s second part is devoted to the application State aid rules in the area of services of general economic interest, with a special focus on aid in the field of social health and infrastructure.

EU Competition and State Aid Rules; Vesna Tomljenović et al.; Springer; 2018

Publisher’s note: This book scrutinizes legislative novelties and case law in the area of EU competition and state aid rules, focusing on the interaction between public and private enforcement of those rules. It is intended for scholars, stakeholders and anyone involved in the process of law enforcement – judges, attorneys at law, corporate lawyers and market participants. The book features contributions by prominent competition law scholars offering an academic analysis of the topics covered, and by several EU General Court judges, including its President, Mr. Marc Jaeger, providing first-hand information on the application of the EU competition rules in the General Court.

The Role of Competitors in the Enforcement of State Aid Law; Fernando Pastor-Merchante; Hart Publishing; 2017

Publisher’s note: This book explores the tools that the European rules on State aid place in the hands of competitors when it comes to fighting subsidies and other state measures of financial assistance to firms. In order to do so, the book scrutinises the means of redress available to competitors before national courts (private enforcement), as well as the opportunities that they have to make their voice heard in the course of the European Commission’s enforcement procedures (public enforcement). The insights provided by the book lead to a better understanding of the rights of private parties under the rules and practices that govern the enforcement of State aid law.
European State Aid and Tax Rulings; Liza Lovdahl Gormsen; Edward Elgar; 2019

Publisher’s note: This book investigates whether the European Commission (EC) has the mandate to legislate on direct taxation in sovereign states and ultimately questions whether the EC’s enforcement action in recent tax ruling cases, in the area of state aid, respects the rule of law.

State Aid Law and Business Taxation; Isabelle Richelle, Wolfgang Schöen, Edoardo Traversa; Springer; 2016

Publisher’s note: This book is a compilation of contributions exploring the impact of the European Treaty provisions regarding state aid on Member States’ legislation and administrative practice in the area of business taxation. Starting from a detailed analysis of the European Courts’ jurisprudence on Art.107 TFEU the authors lay out fundamental issues - e.g. on legal concepts like “advantage”, “selectivity” and “discrimination” - and explore current problems - in particular policy and practice regarding “harmful” tax competition within the European Union. This includes the Member States’ Code of Conduct on business taxation, the limits to anti-avoidance legislation and the options for legislation on patent boxes. The European Commission’s recent findings on preferential “rulings” are discussed as well as the general relationship between international tax law, transfer pricing standards and the European prohibition on selective fiscal aids.

State Aid and the Energy Sector; Leigh Hancher, Adrien de Hauteclercque, Francesco Maria Salerno; Hart Publishing; 2018

Publisher’s note: This important new work offers a comprehensive and compelling account of State aid law and policy and its application to the energy sector. Clearly structured and offering meticulous detail and robust analysis, it is required reading for all practitioners in the field. The volume explores general questions from the definition of State aid to its application in Member States by national courts. It also examines questions of procedure, questions of compatibility, and State aid and the EEA. It is an invaluable tool for lawyers, policymakers and tax professionals specialising in State aid law and energy law, written by a team of leading practitioners and academics in the field.

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E-ARTICLES

> **State Aid Evaluation, State of Play and Ways Forward**: Barbara Brandtner, Daniele Vidoni; European State Aid Law Quarterly : ESTAL; 2018-10-01; Vol. 17 (4); pp. 475-482

Abstract by the author: The Commission requirement concerning the evaluation of State aid schemes is one of the pillars of the State Aid Modernisation (SAM) reform of 2014. The aim of the evaluations conducted under State aid rules is to provide evidence on both the direct impact of the aid on its beneficiaries and on its indirect impacts, positive and negative, as well as on the proportionality and appropriateness of the aid measure. This article provides an account of the state of play in the evaluation of State aid schemes. To this end, we analyse the legal framework of the evaluation requirements as outlined under the General Block Exemption Regulation and under different State aid guidelines, and synthesise the characteristics of the current 45 evaluation plans, and of the Commission decisions approving them. Finally, we discuss the lessons learnt from the first final evaluation reports submitted and reflect on challenges.

> **State Aid and Competition: Application of a Social Welfare Criterion to State Aid**: Koert van Buiren, Daan in ’t Veld, Janneke van der Voort; Journal of Industry, Competition and Trade; 2019-09-15, Vol. 19 (3); pp. 389-411

Abstract by the authors: Within the European Union, state aid is prohibited unless it is provided under a specific exemption by the European Commission. The main motivation for state aid control follows from a partial welfare criterion. State aid, being selective, negatively affects competitors of the aid recipient firm. By applying a social welfare criterion instead, we find that state aid in the form of a production subsidy is beneficial to society for a surprisingly wide range of realistic market conditions and taxation costs. The intuition for this result is that under ‘imperfect’ market conditions—when prices exceed marginal costs—a production subsidy leads to more output and reduces oligopolistic inefficiencies. In a general market framework with cost differences and product differentiation, we balance this benefit with the costs of distortionary taxes needed to finance state aid. We derive the critical level of tax distortion that implies a general condition for welfare-improving state aid. Reasonable estimates of tax distortion are often below this critical level, indicating that the ban on state aid may exclude possibilities to increase social welfare. We formally prove that in any Cournot oligopoly, the critical value is strictly positive for at least one aid recipient firm. The potential for state aid to improve social welfare is found to be higher in less competitive markets, and when marginal costs of the subsidised firm are relatively low. Among other policy tools to correct market failures, using state funds to boost production may be a more appropriate option than generally considered. Our findings seem relevant in the ongoing policy debate on the application of a broad welfare criterion in state aid control in the European Union.

> **State Aid in the New EU Member States**: Jens Hölscher, Nicole Nulsch, Johanne Stephan; Journal of Common Market Studies; 2017-07; Vol. 55 (4); pp. 779-797

Abstract by the authors: In the early phase of transition, which began in the 1990s, Central and Eastern European countries (CEECs) pursued economic restructuring that involved massive injections of state support. With reference to the history of state aid in centrally planned economies, we investigate state aid practices of CEECs since attaining full EU membership. We analyse whether their state aid policies during and after transition challenged European state aid legislation, and whether these fit into the EU strategy of ‘less but better targeted aid’. The data-based analysis is complemented with some indicative insights from state aid in the steel industry as well as the financial service sector to suggest that there is today no significant difference in state aid law application between East and West any more
- the new EU members have further caught up by better aligning to the objectives of the State Aid Action Plan.

> **State Aid in the Form of Tax Exemptions – Some Thoughts from Norway**; Malgorzata Cyndecka; European State Aid Law Quarterly; 2019; Vol. 18 (2); pp. 119-120

**Abstract by the author:** According to the latest edition of the State Aid Scoreboard for the EEA-EFTA States, that is Norway, Iceland and Liechtenstein, Norway granted most of its aid – 74% – via tax concessions. Most electric cars have a heavy battery, which leads to an increased particulate matter emission from tyres. [...] producing batteries for electric cars requires additional resources and energy. In this case, however, the ESA has not yet finalized its assessment. [...] one may expect more interesting developments as regards the application of State aid law to taxation in the land of fjords.

> **Brexit, the EEA and the EU State aid Rules**; Maria Segura, Egill Olafsson, Marianne Clayton; European State Aid Law Quarterly : EStAL; 2019; Vol. 18 (1); pp. 3-14

**Abstract by the authors:** One of the many and still unresolved questions raised by the discussions surrounding Brexit is that of its implications on State aid rules. The consequences for the UK and for both the EU and the European Economic Area are still unknown. The options are diverse and still open to much speculation. In this article, we will focus on the EEA model. Because it is not that well-known, the scope of the EEA agreement and the way it functions will firstly be presented. Indeed, some specificities of the EEA framework, amongst which the principle of homogeneity, deserve explanations as a cornerstone for the application of State aid rules within the EU and the EEA. Finally, the actual different options regarding State aid control post-Brexit within the UK, EU and EEA will be discussed. To conclude, attention will be devoted to the concerns regarding the continuation of the EEA Agreement as it stands and the future homogeneous.

> **The Excess Profit Exemption System is Not an Aid Scheme: Not the Ruling Expected, But Not the End of the Story** [The Excess Profit Exemption System · Joined Cases T-131/16 and T-263/16 Belgium v Commission. Annotation by François-Guillaume de Lichtervelde]; François-Guillaume de Lichtervelde; European State Aid Law Quarterly; 2019; Vol. 18 (3); pp. 382-390

**Abstract by the author:** As the first State aid case involving tax rulings to reach the General Court, the judgment regarding the Belgian ‘excess profit exemption’ regime was highly anticipated. Instead of investigating separately the tax rulings granting the exemption, the Commission had intended to frame the case at the higher level and went after an ‘aid scheme. The Court did not follow this qualification and set aside the Commission’s Decision. While the judgment inflicted a blow to the enforcer’s approach, the Court did not take a position on the most sensitive questions raised by this case. The boundaries of EU State aid control with respect to tax rulings thus still remain unclear. However, the judgment established that Belgium enjoyed a margin of discretion in adopting the rulings that granted the excess profit exemption. This finding, which was fatal to the Commission’s scheme-based theory, may now support the Commission’s case that the rulings are ‘selective’ and could therefore amount to State aid. In that sense, the judgment ahead may ultimately have done more harm than good to Belgium’s case against the Commission’s investigation.

> **Preliminary ruling on the compatibility of taxation of superstores with the right to freedom of establishment and State aid law: Case C-233/16, ANGED**; Nicolas Sadeleer; Review of European, Comparative & International Environmental Law; 2018-11; Vol. 27 (3); pp. 341-347

**Abstract by the author:** Environmental protection measures and the rules on the internal market enshrined in the Treaty on the Functioning of the European Union are likely to be at odds with one another. For instance, the freedom of establishment is likely to limit the regulatory tax sovereignty of Member States. The case under review raises some critical issues regarding the validity of environmental taxes on large retail establishments in light of the freedom of establishment and State aid rules.
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> **Table of contents** – Subscribe to this service to receive in your mailbox the table of contents and full text access of specialised journals, such as The Austrian Review of International and European Law Online, European Constitutional Law Review; Cahiers droit européen; Common Market Law Review; European Law Journal; European Public Law; Journal de droit européen, Maastricht Journal of European and Comparative Law, Nederlands Tijdschrift voor Europees Recht; Zeitschrift fuer das Privatrecht der Europaeischen Union - GPR. The following journal can also be consulted: European state aid law quarterly.

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