

European State Aid Law

edited by

Martin Heidenhain



Verlag C. H. Beck München 2010

Published by

Verlag C. H. Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
eMail: bestellung@beck.de

Co-published by

Hart Publishing, 16C Worcester Place, Oxford, OX1 2JW, United Kingdom,
online at: www.hartpub.co.uk

Published in North America (US and Canada) by Hart Publishing, c/o International
Specialized Book Services, 930 NE 58th Avenue, Suite 300, Portland, OR 97213-3786,
USA, eMail: orders@isbs.com

ISBN 978-3-406-57884-7 (Beck)
ISBN 978-1-841139180 (Hart Publishing)

© 2010 Verlag C. H. Beck oHG
Wilhelmstr. 9, 80801 München

Printed in Germany by
fgb · freiburger graphische betriebe
Bebelstr. 11, 79108 Freiburg

Typeset by Reemers Publishing Services GmbH, Krefeld

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Preface

The State Aid Action Plan of 2005, drafted and carried into effect under the aegis of Commissioner Neelie Kroes, instituted a wide-ranging reform of European State aid law. During the same period, the Community Courts have issued numerous watershed decisions, which have elucidated and refined the basic principles of State aid law. The global financial crisis, the full ramifications of which no one can yet foresee, has also made the significance of State aid law in the task of protecting competition Community-wide apparent to a broader public. For all these reasons, it appears more than justified to publish a new overview of State aid law.

This book has been written by practicing lawyers with many years' experience in the field of State aid law, and it is intended primarily for the use of practicing lawyers. Our discussion also refers to any scholarly commentary and debate relevant to a particular issue, to the extent accessible to the authors. As the reader will no doubt recognize, the book discusses European State aid law in the English language, but from the perspective of the German legal tradition.

The publisher and the editor extend their gratitude to Darrell Wilkins for his diligence and perseverance in translating a large part of the text of this book.

Martin Heidenhain

Berlin, October 2009

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* The views expressed are the author's own and should not be attributed to the European Commission.

List of Abbreviations

AG	Advocate General
Art./Arts	article/s
Bacon	Bacon, European Community Law of State Aid, 2009
BB	Der Betriebs-Berater (journal)
Bellamy/Child/Roth	Bellamy/Child/Roth, European Law of Competition, 6 th ed. 2008
BER	Block Exemption Regulation
Bil.	Billion
Bleckmann	Europarecht, 6 th ed. 1997
Bull.	Bulletin of the European Union
Bunte-author	Bunte (Editor), Kommentar zum deutschen und europäischen Kartellrecht, 2 vol., 10 th ed. 2008
BVerwG	<i>Bundesverwaltungsgericht</i> (German Federal Administrative Court)
BVerwGE	Decisions of the <i>Bundesverwaltungsgericht</i> (see BVerwG)
Callies/Ruffert-author	Callies/Ruffert (Editors), Kommentar zum EU-Vertrag und EG-Vertrag, 3 rd ed. 2007
CAPM	Capital Asset Pricing Model
CDE	Cahiers de droit européen (journal)
cf	confer; see
CFI	European Court of First Instance
CGT	Compensated Gross Ton
Ch.	Chapter
CMLR	Common Market Law Reports (journal)
CMLRev	Common Market Law Review (journal)
COM	Documents of the European Commission
Com.	European Commission
DG	Directorate-General
DG ENTR	Directorate-General Enterprise and Industry and Research
DG RTD	Research Directorate-General
DÖV	Die öffentliche Verwaltung (journal)
Dony	Dony, Commentaire J. Mégret, Contrôle des aides d'Etat, 2 nd ed. 2007
D'Sa	D'Sa, European Community Law on State Aid, 1998
DVBt.	Deutsches Verwaltungsblatt (journal)
e.g.	exemplia gratia; for example
EC	Treaty Establishing the European Communities
ECJ	European Court of Justice
ECLR	European Competition Law Review (journal)
ECR	European Court Report; Report of cases before the European Court of Justice and the Court of First Instance
ECSC	European Coal and Steel Community; Treaty establishing the ECSC
ed./eds	edition/s
EEA	European Economic Area
ELJ, ELJour	European Law Journal
ELRev	European Law Review (journal)
EMU	European and Monetary Union
EPL	European Public Law (journal)
ERDF	European Regional development Fund
ESF	European Social Fund
EStAL	European State Aid Law Quarterly (journal)
etc.	et cetera
EU	European Union; Treaty of the European Union

EuR	Europarecht (journal)
EUR	Euro
Euratom	European Atomic Energy Community
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (journal)
Evans	Evans, European Community Law of State Aid, 1997
EWS	Europäisches Wirtschafts- und Steuerrecht (journal)
f/ff	and the following
fn/fns	footnote/s
FOD	French Overseas Departments
FS	Festschrift (liber amicorum)
GBER	General Block Exemption Regulation
GDP	Gross Domestic Product
GGE	Gross Grant Equivalents
Grabitz/Hilf-author	Grabitz/Hilf, Das Recht der Europäischen Union, 2008 (looseleaf)
Groeben/Schwarze-author	von der Groeben/Schwarze (Editors), Kommentar zum EU-/EG-Vertrag: 6 th ed. 2003 ff, succeeding GTE, 5 th ed.)
GS	Gedächtnisschrift (liber amicorum)
GTE-author	von der Groeben/Thiesing/ Ehlermann (Editors), Kommentar zum EU-/EG-Vertrag, 5 th ed. 1997 (continued by Groeben/Schwarze)
Hancher/Ottersvanger/Slot	Hancher/Ottersvanger/Slot, EC State Aids, 3 rd ed. 2006
Heidenhain 2003-author	Heidenhain (Editor), Handbuch des Europäischen Beihilfenrechts, 2003
ibid.	ibidem
id	idem
Immenga/Mestmäcker-author	Immenga/Mestmäcker (Editors), EG-Wettbewerbsrecht Kommentar, 2 vol., 4 th ed. 2007
infra	see below
JZ	Juristenzeitung (journal)
Kepenne, Guide	Kepenne, Guide des aides d' État en droit communautaire, Réglementation, jurisprudence et pratique de la Commission, 1999
Koenig/Kühling/Ritter	Koenig/Kühling/Ritter, EG-Beihilfenrecht, 2 nd ed. 2005
LASA	Lesser amount of State aid draft framework
Lenz/Borchardt-author	Lenz/Borchardt, EU und EG-Vertrag (Editors), 4 th ed. 2006
LET	Limited effect on trade draft framework
Liber Amicorum Santaolalla-author	Liber Amicorum in Honour Francisco Santaolalla Gadea, EC State Aid Law, 2008
LIEI	Legal issues of economic integration
Lübbig/Martin-Ehlers	Lübbig/Martin-Ehlers, Beihilfenrecht der EU, 2 nd ed. 2009
Mayer-author	Mayer (editor), Kommentar zu EU- und EG-Vertrag, 2005
Mederer/Pesaresi/van Hoof-author	Mederer/Pesaresi/van Hoof (Editors), EU Competition Law, vol. IV, State Aid, 2008
Mio.	Million
MMR	Media und Recht (journal)
Nemitz-author	Nemitz (Editor), The Effective Application of EU State Aid Procedures. The Role of National Law and Practice, 2007
NJW	Neue Juristische Wochenschrift (journal)
no./nos	number/s
NTER	Nederlands tijdschrift voor Europees recht (journal)
NUTS	Nomenclature of Territorial Units for Statistics
NVwZ	Neue Zeitschrift für Verwaltungsrecht (journal)
NZBau	Neue Zeitschrift für Bau- und Vergaberecht (journal)

List of Abbreviations

OECD Journal of Competition Law and Policy	OECD Journal of Competition Law and Policy (journal)
OJ	Official Journal of the European Communities; Official Journal of the European Union
ÖZW	Österreichische Zeitschrift für Wirtschaftsrecht (journal)
Ortiz Blanco-author	Ortiz Blanco (Editor), EC Competition Procedure, 2 nd ed. 2006
p/pp	page/s
para/s	marginal numbers
R&D&I	Research and Development and Innovation
Quigley	Quigley, European State Aid Law and Policy, 2 nd ed. 2009
RabelsZ	Zeitschrift für ausländisches und internationales Privatrecht, begründet von Rabel (journal)
RDUE	Revue du Droit de l'Union Européenne (journal)
Reg	Regulation
RIW	Recht der internationalen Wirtschaft (journal)
RMUE	Revue du Marché Unique Européen (journal)
Rosenfeld	Rosenfeld, Das Verfahrensrecht der gemeinschaftsrechtlichen Beihilfeaufsicht, 2000
Sánchez Rydelski-author	Sánchez Rydelski (Editor), The EC State Aid Regime: Distortive Effects of State Aid on Competition and Trade, 2006
Sánchez Rydelski	Sánchez Rydelski, Michael, EU Beihilferecht, 2003
Santa Maria-author	Santa Maria (Editor), Competition and State Aid. An Analysis of the EC Practice, 2008
SchJM-author	Schröter/Jakob/Mederer (Editors), Kommentar zum Europäischen Wettbewerbsrecht, 2003
Smit/Herzog-author	Smit/Herzog (Editors), The Law of the European Union, 2005 ff
Schwarze-author	Schwarze (Editor), EU-Kommentar, 2 nd ed. 2008
SEA	Single European Act
sec./secs	section/s
SME	Small and medium-sized enterprise
subpara	subparagraph
supra	see above
TERFN	Trans European Rail Freight Network
VerwA	Verwaltungsarchiv (journal)
vol.	volume
WBl	Wirtschaftsrechtliche Blätter (journal)
WM	Wertpapiermitteilungen, Zeitschrift für Wirtschaft und Bankrecht (journal)
WPR	Wettbewerb in Recht und Praxis (journal)
WTO	World Trade Organisation
WuW	Wirtschaft und Wettbewerb (journal)
ZBB	Zeitschrift für Bankrecht und Bankwirtschaft (journal)
ZfBR	Zeitschrift für das internationale Bau- und Vergaberecht (journal)
ZEuS	Zeitschrift für europarechtliche Studien (journal)
ZGR	Zeitschrift für Wissenschaft und Rechtspraxis des Unternehmensrechts (journal)
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (journal)
ZIP	Zeitschrift für Wirtschaftsrecht (journal)
ZöGU	Zeitschrift für öffentliche und gemeinnützige Unternehmen (journal)
ZUM	Zeitschrift für Urheber- und Medienrecht (journal)
ZWeR	Zeitschrift für Wettbewerbsrecht (journal)

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C-369/07	Commission/Greece		07. 07. 2009
C-494/06	Commission/Italy and Wam		30. 04. 2009
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C-415/07	Lodato Gennaro		02. 04. 2009
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C-333/07	Régie Networks		22. 12. 2008
C-384/07	Wienstrom		18. 12. 2008
C-334/07	Commission/Freistaat Sachsen		11. 12. 2008
C-295/07	Commission/Département de Loiret		11. 12. 2008
C-214/07	Commission/France		13. 11. 2008
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C-39/06	Commission/Germany	93*	19. 06. 2008
C-49/05	Ferriere Nord/Commission	68*	08. 05. 2008
C-390/06	Nuova Agricast	2577	15. 04. 2008
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C-321/01	Agrana/Commission	10027	05. 11. 2002
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C-351/98	Spain/Commission	8031	26. 09. 2002
C-74/00	Falck/Commission	7869	24. 09. 2002
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62/87	Exécutif régional wallon/Commission	1573	08. 03. 1988
213/85	Commission/Netherlands	281	02. 02. 1988
67/85	van der Kooy/Commission	219	02. 02. 1988
223/85	RSV/Commission	4617	24. 11. 1987
259/85	France/Commission	4393	11. 11. 1987
248/84	Germany/Commission	4013	14. 10. 1987
5/86	Commission/Belgium	1773	09. 04. 1987
310/85	Deufil/Commission	901	24. 02. 1987
234/84	Belgium/Commission ("Meura")	2263	10. 07. 1986
282/85	DEFI/Commission	2469	10. 07. 1986
40/85	Belgium/Commission ("Boch")	2321	10. 07. 1986
103/84	Commission/Italy	1759	05. 06. 1986
169/84	Cofaz/Commission	391	28. 01. 1986
52/84	Commission/Belgium	89	15. 01. 1986
214/83	Germany/Commission	3053	03. 10. 1985
277/83	Commission/Italy	2049	03. 07. 1985
18/84	Commission/France	1339	07. 05. 1985
93/84	Commission/France	829	13. 03. 1985
296/82	Leeuwarder Papierwarenfabriek/Commission	809	13. 03. 1985
240/83	ADBHU	531	07. 02. 1985
290/83	Commission/France ("CNCA")	439	30. 01. 1985
323/82	Intermills/Commission	3809	14. 11. 1984
91/83	Heineken	3435	09. 10. 1984
130/83	Commission/Italy	2849	11. 07. 1984
222/83	Differdange/Commission	2889	11. 07. 1984
169/82	Commission/Italy	1603	27. 03. 1984
84/82	Germany/Commission	1451	20. 03. 1984

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171/83	Commission/France	2621	20. 09. 1983
203/82	Commission/Italy	2525	14. 07. 1983
249/81	Commission/Irland	4005	24. 11. 1982
213/81	Nordeutsches Vieh- und Fleischkontor	3583	13. 10. 1982
188/80	France/Commission	2545	06. 07. 1982
17/81	Pabst und Richarz	1331	29. 04. 1982
142/80	Salengo	1413	27. 05. 1981
730/79	Philip Morris/Commission	2671	17. 09. 1980
73/79	Commission/Italy ("sovraprezzo")	1533	21. 05. 1980
72/79	Commission/Italy	1411	24. 04. 1980
61/79	Denkavit	1205	27. 03. 1980
177/78	Pigs & Bacon Commission	2161	26. 06. 1979
91/78	Hansen	935	13. 03. 1979
82-77	van Tiggele	25	24. 01. 1978
74/76	Iannelli	557	22. 03. 1977
78/76	Steinike and Weinlig	595	22. 03. 1977
173/73	Italy/Commission	709	02. 07. 1974
141/73	Lohrey	1527	11. 12. 1973
122/73	Nordsee	1511	11. 12. 1973
121/73	Markmann	1495	11. 12. 1973
120/73	Lorenz	1471	11. 12. 1973
70/72	Commission/Germany	813	12. 07. 1973
77/72	Capolongo	611	19. 06. 1973
6/69	Commission/France	523	10. 12. 1969
30/59	De Gezamenlijke Steenkolenmijnen/High Authority	1	23. 02. 1961

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		ECR II	
T-75/03	Banco Comercial dos Acores/Commission		10. 09. 2009
T-227/01	Álava and Gobierno Vasco/Commission		09. 09. 2009
T-30/01	Álava/Commission		09. 09. 2009
T-369/06	Holland Malt/Commission		09. 09. 2009
T-303/05	AceaElectrabel/Commission		08. 09. 2009
T-211/05	Italy/Commission		04. 09. 2009
T-273/06	ISD Polska/Commission		01. 07. 2009
T-81/07	Jan Rudolf Maas/Commission		01. 07. 2009
T-291/06	Operator ARP/Commission		01. 07. 2009
T-288/06	Regionalny Fundusz Gospodarczy/Commission		01. 07. 2009
T-309/02	Acegas/Commission		11. 06. 2009
T-301/02	AMG/Commission		11. 06. 2009
T-300/02	AMGA/Commission		11. 06. 2009
T-297/02	ACEA/Commission		11. 06. 2009
T-292/02	Confservizi/Commission		11. 06. 2009
T-222/04	Italy/Commission		11. 06. 2009
T-189/03	ASM Brescia/Commission		11. 06. 2009
T-152/06	NDSHT/Commission		09. 06. 2009
T-332/06	Alcoa Trasformazioni/Commission		25. 03. 2009
T-354/05	Télévision française/Commission		11. 03. 2009
T-68/05	Aker Warnow/Commission		10. 03. 2009
T-424/05	Italy/Commission		04. 03. 2009
T-445/05	Associazione italiana del risparmio gestito/Commission		04. 03. 2009
T-265/04	Tirrenia di Navigazione		04. 03. 2009
T-25/07	Iride/Commission		11. 02. 2009
T-388/03	Deutsche Post/Commission		10. 02. 2009
T-162/06	Kronoply/Commission		14. 01. 2009
T-211/04	Government of Gibraltar/Commission		18. 12. 2008
T-455/05	Componenta/Commission		18. 12. 2008
T-196/04	Ryanair/Commission		17. 12. 2008
T-388/02	Kronoply/Commission		10. 12. 2008
T-254/00	Hotel Cipriani/Commission		28. 11. 2008
T-70/07	Cantieri Navali Termoli/Commission		12. 11. 2008
T-309/04	TV2/Commission		22. 10. 2008
T-20/03	Kahla/Commission		24. 09. 2008
T-301/01	Alitalia/Commission	1753	09. 07. 2008

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T-442/03	SIC/Commission	1161	26. 06. 2008
T-268/06	Olympiaki Aeroporia/Commission	1091	25. 06. 2008
T-348/04	SIDE/Commission	625	15. 04. 2008
T-233/04	Netherlands/Commission	591	10. 04. 2008
T-289/03	BUPA/Commission	81	12. 02. 2008
T-50/06	Ireland/Commission	172*	12. 12. 2007
T-375/03	Mineralfaserindustrie/Commission	121*	20. 09. 2007
T-254/05	Mineralfaserindustrie/Commission	124*	20. 09. 2007
T-136/05	EARL Salvat/Commission	4063	20. 09. 2007
T-25/04	González/Commission	3121	12. 09. 2007
T-196/02	MTU/Commission	2889	12. 09. 2007
T-239/04	Italy/Commission	3265	12. 09. 2007
T-348/03	Friesland Foods/Commission	101*	12. 09. 2007
T-68/03	Olympic Airways/Commission	2911	12. 09. 2007
T-344/04	Bouychou/Commission	91*	19. 07. 2007
T-360/04	FG Marine/Commission	92*	19. 07. 2007
T-167/04	Asklepios/Commission	2379	11. 07. 2007
T-475/04	Bouygues Télécom/Commission	2097	04. 07. 2007
T-246/99	Tirrenia di Navigazione/Commission	65	20. 06. 2007
T-357/02	Sachsen/Commission	1261	03. 05. 2007
T-366/00	Scott/Commission	797	29. 03. 2007
T-369/00	Loiret/Commission	851	29. 03. 2007
T-423/05	Olympiaki Aeroporia/Commission	6*	29. 01. 2007
T-95/03	Estaciones de Servicio/Commission	4739	12. 12. 2006
T-217/02	Ter Lembeek/Commission	4483	23. 11. 2006
T-117/04	Jachthavens/Commission	3861	27. 09. 2006
T-210/02	British Aggregates/Commission	2789	13. 09. 2006
T-613/97	Ufex/Commission	1531	07. 06. 2006
T-354/99	Kuweit Petroleum/Commission	1475	31. 05. 2006
T-395/04	Air One/Commission	1343	10. 05. 2006
T-17/03	Schmitz-Gotha/Commission	1139	06. 04. 2006
T-351/02	Deutsche Bahn/Commission	1047	05. 04. 2006
T-34/02	Le Levant/Commission	267	22. 02. 2006
T-92/02	Schwäbisch Hall/Commission	11	26. 01. 2006
T-426/04	Tramarin/Commission	4765	21. 11. 2005
T-318/00	Thüringen/Commission	4179	19. 10. 2005
T-324/00	CDA/Commission	4309	19. 10. 2005
T-321/04	Air Burbon/Commission	3469	19. 09. 2005
T-349/03	Corsica Ferries France/Commission	2197	15. 06. 2005