Chapter 10

EU Law Chapter on EU State Aid Rules – The Bumpy Ride From 'Subsidy Control' to 'Subsidy Governance'

László Szegedi – Bálint Teleki

Abstract

The EU integration process has shaped EU State aid law and policy. This evolutionary process has also been reshaped by the EU's expanding supranational competences, the ever-changing rules of procedure and methodology, and the different sets of actors involved in these policy cycles. This applies to the companies as beneficiaries of state aid, the Member States involved in providing such aid, and the EU actors, notably the Commission and the CJEU, in shaping state aid procedures and rules. The last decade has seen several challenges and opportunities for further development of this policy area. This chapter looks at the changes in the regulatory landscape in the light of the CJEU's case-law on standing rights, the coronavirus and the energy market crisis, the EU Green Deal initiative and the tax avoidance cases before the CJEU. In addition, we may also see some future trends concerning the territorial distortions between Member States due to the highly different levels of state aid, or the compensation of these distortions by funds at EU level financed by a certain percentage of the aid approved and granted, and finally the use of the newly enacted Foreign Subsidies Regulation as an external tool to protect the Single Market.

Keywords: *state aid distortions, standing rights, coronavirus and energy market crisis, taxation avoidance cases, Foreign Subsidies Regulation*

László Szegedi – Bálint Teleki (2024) 'EU Law Chapter on EU State Aid Rules – The Bumpy Ride From 'Subsidy Control' to 'Subsidy Governance''. In: Zoltán Nagy (ed.) *Economic Governance. The Impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries,* pp. 229–254. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.znecogov_10

1. History and policy characteristics of the EU state aid rules

1.1. The evolution of the EU state aid rules concerning a diverse set of policy areas

The evolution of the EU state aid rules runs parallel to the EU integration history. The EU state aid rules are a politically significant part of the EU competition law owing to the many related policy areas encompassed by them.

In the initial stages of the integration, the state aid policy was designed to create a common (later internal) market, which is increasingly viewed as the core component of the broader European unification project.[1] As remarked on by Buendía Sierra, one of the most cited experts on the EU state aid rules, these rules have a mother and a father. In this constellation, the father is (has been) the internal market (competition between Member States or just between states globally), whereas the mother is (has been) the competition between undertakings.[2]

To understand how state aid rules were formulated, the historical and, most notably, economic context of the integration needs to be examined.[3] In the 1940s and the early 1950s, new mercantilism remained the dominant economic doctrine, and state aid to undertakings was one of the primary instruments used by governments to intervene in the economy.[4] In the 1950s and the 1960s, restrictive practices meant treating subsidies as 'bad'. With the less interventionist and less intensive regulatory approach of the state aid policy, the entire policy area became more sophisticated, with several regulatory products and many EU secondary legislations, especially soft norms.[5] One of the main game-changers was the 1970s' crisis cycles (collapse of the Bretton Woods monetary system and two consecutive oil shocks), as European governments started to deliberately use public subsidies to promote national undertakings that provided subsidies for national market competitors, as several Japanese and American companies began locating their plants in Europe with some Member States offering subsidies to attract them. During this period, it became necessary for the Commission to avoid a subsidy race ('father side'), which would have had a negative impact from budgetary, competition, and internal market perspectives ('mother side').[6]

During this period, it was also demonstrated that state aid rules could substantially impact trade affairs within the common (later single) market on regional and global trade levels.[7] Industrial policy was inevitably an integral part of the

1 Cini, 2016, p. 17.
2 Buendía Sierra, 2016a, p. 127.
3 Cini, 2016, p. 17.
4 Merola, 2016, p. 101.
5 Buendía Sierra, 2022, pp. 7–8; Cini, 2016, p. 17.
6 Merola, 2016, p. 103.
7 Verouden, 2016, p 131.

evolution of state aid rules. By the mid-1960s, West Europeans were becoming concerned about the extent to which foreign direct investment came into the region, and a wave of US takeovers reflected the weakness of the European industry. Therefore, from this point until the 1970s, the Community began to contemplate taking positive actions in the broad field of industrial 'policy' for adopting more concrete and coherent policies; however, it produced limited results.[8] In terms of the current challenges faced, a full-fledged EU industrial policy is yet to emerge. Moreover, China's economic imperialism and the US's increasing protectionism and geopolitical turmoil contributed to industrial and indirect state aid policy as well.[9]

Taxation as a policy area has a relatively short connection with state aid issues. Owing to the natural fluidity and flexibility of the concept of state aid, taxation-related subsidies and reductions granted by Member States became widespread. Parallelly, the Commission started to adopt a much broader approach in dealing with tax avoidance practices by analysing these measures as state aid, which led to several cases before the Court of Justice of the European Union (CJEU).[10] Several other CJEU cases dealt with the taxation sovereignty of the Member States when such national steps could potentially be labelled as state aid.

The coronavirus crisis, with its financial, economic, and health implications, demonstrated the broader impact of the EU state aid measures on further policy areas, such as on fostering gender equality as part of the compatibility assessment.[11] Moreover, the Commission's green and digital transition agenda inevitably had a rebound effect on matters of state aid.[12] As some scholars have highlighted in the broader context of economic (especially energy-policy-related) issues, incorporating sustainability priorities into compatibility assessments could become even more relevant in the coming years.[13]

1.2. Actors of the EU state aid policy framework

State aid has become a politically significant part of the EU competition law owing to the parties concerned. As analysed above, subsidies or their prohibition always indicated Member States' competencies, usually strategically relevant sectors of their national economies. However, Member States could have diverse attitudes, as state aid is generally prohibited under EU law, which is why state aid control was established in the EU (to avoid subsidy races between Member States trying to attract companies to their territories).[14] Additionally, Member States

8 Di Carlo and Schmitz, 2023.
9 Di Carlo and Schmitz, 2023, pp. 23–25.
10 Piernas López, Hancher and Rubini, 2022, p. 4.
11 Finckenberg-Broman and Broman, 2022; Piernas López, Hancher and Rubini, 2023, p. 4.
12 Strihó, 2020, pp. 163–175.
13 Kingston, 2021; Kowalik-Bańczyk, 2023.
14 Buendía Sierra, 2016a, p. 122.

with fewer resources often do not realise that other (more affluent) Member States may use state aid as an antidote against its lower costs and other internal market economic effects,[15] which has become even more visible under the current era of temporary state aid frameworks. Additionally, Member States are in a position of conflict, having access to most of the relevant information on the subsidy, yet not interested in disclosing them to the Commission, which is the primary centralised enforcer of such rules.[16] A conflict of interest could also arise between Member States in the sense that one Member State may often not be interested in a decision by the Commission to declare state aid from another Member State as compatible with the internal market, as it may increase the advantage of undertakings from other Member States as potential competitors to the detriment of its own undertakings.

The position of *undertakings* can be categorised following a binary logic: all undertakings granted by a Member State, such as state aid, are considered beneficial, while almost all undertakings, such as state aid, granted to their competitors are not beneficial. Nevertheless, these undertakings are considered 'third parties' or 'sources of information' by the Commission, with relatively few 'rights', later partly extended by the European Court of Justice (ECJ)/CJEU. However, compared to the Commission and Member States, they still lack the same procedural rights.[17]

The main competencies of state aid control have been granted to the *Commission*, which can take sector-specific yet cross-sectoral decisions, along with Member States' authorities functioning within the EU-level network. Therefore, Member States tend to view the Commission as an obstacle rather than a neutral arbiter.[18] Moreover, as state aid policy has been converted to some kind of subsidy governance with a potential effect on various policy areas, the Commission's role has been modified to that of a political actor in subsidy decisions as well as in drafting rules for these policy areas. Compatibility tests of aid measures concerning a single market are to be conducted exclusively by the Commission, which enjoys a wide margin of discretion, limited by external actors (Member States and ECJ/CJEU), or by the Commission itself, as laid down in detailed soft law guidance documents.[19]

Finally, the *ECJ (pre-Lisbon term)/CJEU (post-Lisbon term)* plays a pivotal role in shaping the notion of aid, controlling the legality of the Commission's decisions and even extending third parties' *locus standi* and further procedural rights.[20] As noted by Merola, the ECJ/CJEU always maintains a rigorous approach to preserving the role of state aid control, fully aware that aid policies implemented

15 Ibid.
16 Hofmann and Morini, 2011, pp. 354–355.
17 Bacon, 2009; Hofmann and Morini, 2011; Buendía Sierra, 2016a, p. 122.
18 Buendía Sierra, 2016a, p. 122.
19 Buendía Sierra, 2022, pp. 7–8.
20 Hofmann and Morini, 2011; Buendía Sierra, 2016a, p. 124.

by Member States or, even worse, individual aid to specific undertakings could result in an uneven playing field potentially hindering free competition that was the aim of the founding fathers.[21] This is exactly why national courts played only a modest role in state aid matters, but held a more critical position in recovery issues.[22] Additionally, this chapter will refer to the General Court (GC) (lower instance) and the Court (higher instance) if the two forums within the ECJ/CJEU differ in their conclusion of certain judicial cases or require further interpretation.

1.3. Regulation of the EU state aid

The primary legal basis of the EU state aid (Arts. 107–109 of the Treaty on the Functioning of the European Union (TFEU)) has remained practically unchanged since the beginning of integration.[23] Technically, Art. 107(1) can be considered a general prohibition: state aid is incompatible with the establishment of an internal market. This provision refers to five elements; any aid is considered incompatible with the internal market if it (i) is provided for an undertaking, (ii) is granted by a Member State or through State resources in any form whatsoever, (iii) is one that distorts or threatens to distort competition, (iv) favours certain undertakings or the production of certain goods (selectivity), and (v) affects trade between Member States. The first three define the notion of aid, which can be labelled as incompatible if the other two elements (selectivity-based distortion and effect on the trade between Member States) can be identified.[24] Additionally, a measure by a state/public authority constitutes state aid if it confers an economic advantage on an undertaking or a group of undertakings. The concept of 'advantage' used in the context of the EU state aid control is defined as follows: 'An advantage, within the meaning of Art. 107 para. (1) of the TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention'.[25] Consequently, state aid classification and the analysis of advantages require a thorough examination of market positions between potential competitors.

However, state aid can be considered compatible if it aligns with one of the objectives indicated in Art. 107 paras. (2) and (3) of the TFEU.[26] In addition to the substantive legal requirements of Art. 107, Arts. 108–109 refer to the procedural issues of the EU state aid regime.

21 Merola, 2016, p. 102.
22 Buendía Sierra, 2016a, p. 125.
23 Papp, 2022a, p. 166.
24 Dán, 2022, p. 116.
25 Commission Notice on the notion of state aid as referred to in Art. 107 para. (1) of the Treaty on the Functioning of the European Union, 2016/C 262/01, OJ C 262, 19.7.2016, 1–50.
26 Righini, 2016, p. 137.

Primary law in this field has proven to be flexible enough to quickly translate new political guidelines into instruments for action.[27] Several pieces of EU's secondary legislation have been enacted during the EU integration, along with the ECJ/CJEU's extensive case law.[28] Presently, the secondary legislation's role has become more decisive compared to that of the TFEU, and most of the aids after the 2010s State Aid Modernisation (SAM) measures (explained below) are exempted based on group exemption regulations and, in parallel, ex-post monitoring of the Commission has been enhanced.[29]

Member States have an obligation to provide prior notification of all new aid measures to the Commission, with some exceptions: (i) those falling under block exemptions, (ii) those under a *de minimis* threshold, and (iii) those under a scheme already authorised by the Commission, and (iv) when the aid constitutes compensation for the provision[30] of a service of general economic interest.[31] Following the mandatory notification phase, the Commission starts a preliminary investigation to arrive at any of the three decisions mentioned: (i) no aid has been identified – measure might be implemented; (ii) aid is compatible with EU rules based on the compatibility test – measure might be implemented; and (iii) start in-depth investigation owing to serious doubts on the compatibility – measure might not be implemented.[32] The Commission's in-depth investigation could also conclude as (i) positive if, as per the investigation, the measure concerned does not constitute an aid or can be considered as compatible with the internal market, (ii) further conditions are put forward in the decision for the aid measure to be implemented, and (iii) a negative final decision, if the aid measure is incompatible with the internal market, and, consequently, cannot be implemented.[33]

In the recovery framework, the Commission might request the Member State to recover the aid measures implemented if a negative final decision has been taken. If the Member State does not comply with the decision within the prescribed time, the Commission may refer it to the ECJ in accordance with Art. 108 para. (2) of the TFEU without initiating an infringement procedure under Art. 258 of the TFEU.[34]

27 Merola, 2016, p. 108.
28 Dán, 2022, pp. 114–115.
29 Papp, 2022a, p. 168.
30 European Commission, 2011.
31 European Commission, 2013, p. 1.
32 European Commission, 2013, p. 1.
33 Art 4–9. Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Art. 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, 9–29.
34 European Commission, 2013, p. 2.

2. The EU state aid rules during the recent and current crisis management cycles

2.1. State aid rules before the coronavirus crisis

In terms of the 'back to the future approach', state aid rules and related regulations often evolve by following cyclical patterns in line with economic changes and further improvements. In the 2000s, the Commission began to mention increasingly about 'competition between undertakings' as the core mission of state aid control, paying only lip service to the other ('competition between Member States') dimension. Additionally, some techniques began to be imported from antitrust, which had just undergone modernisation.[35]

Several changes related to the 2008-2012 crisis were similar to those of the 1970s following the economic trends and recession, which inevitably impacted state aid rules and national- and EU-level actors' positions. This crisis period led to a sharp increase in state aid measures; that is, the allocated figure for state aid rose from less than 1% of the EU GDP in 2007 to around 13% in 2011.[36] A clear demand was observed to guarantee subsidies for financial institutions at that time, which led to the development of the common EU-level resolution framework. Additionally, there was a need to ensure a level playing field for European businesses and avoid a subsidy war among Member States by preventing them from adopting unilateral measures to react to the crisis; this forced the Commission to respond with a set of new coordinated policies and the enactment of new vital pieces of soft law[37] ('Temporary Framework').[38] In other words, the Commission realised and appreciated the relevance of the competition between Member States once again.

The Commission Communication of May 2012 on SAM was the starting point of further reform steps, with three main objectives: to (i) foster growth in a strengthened, dynamic, and competitive internal market; (ii) focus enforcement on cases with the most significant impact on the internal market; and (iii) bring streamlined rules and make faster decisions. Back then, there was a shift toward using the General Block Exemption Regulation[39] from the notifying measures, which suggested that the Commission moved beyond state aid control toward the direction of state aid policy[40].

35 Buendía Sierra, 2016a, p. 125.

36 European Commission Staff Working Document, Facts and Figures on State Aid in EU Member States, 2012 Update, SEC(2012) 443 final of 21 December 2012.

37 Communication of the Commission – Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis, 2011/C 6/05, OJ C 6, 11.1.2011, 5–15.

38 Merola, 2016, p. 107.

39 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Art. 107 and 108 of the Treaty, OJ L 187, 26.6.2014, 1–78.

40 Van de Casteele, 2016, p. 117.

Furthermore, the SAM measures led to a change in the EU's approach toward 'competition between Member States'. The main difference was a substantial expansion of the categories of aid exempted from notification, for example, with the enactment of the Group Exemption Regulation. This move impacted the dichotomy of subsidy control vs. subsidy governance: notably, this may make some sense from the perspective of state aid policy (e.g. increasing research and development, and environmental investments), not so much from the aspect of state aid control. As Buendía Sierra noted, the latter was particularly true concerning the 'competition between Member States' as well. It was obvious that the level of resources that the different Member States could use for state aid varied considerably, more so after the crisis. Increasing the theoretical possibilities for all for granting aid without Commission control would imply that only certain Member States could use such options.[41]

Regarding the allocation of competencies, these policy steps resulted in keeping only the most relevant cases at the level of the Commission, combined with the further reform of the increased *ex-post* monitoring in 2017, that is, an enhanced transparency and control system. This can be viewed as a counterbalance, as 95% of the aids granted were exempted according to group exemption regulations after the SAM measures.[42] For example, the Commission noted in 2017 that the number of state aid notifications halved in research, development, and innovation since 2014.[43] Interestingly, the European Court of Auditors (ECA) criticised in its 2011 report that the Commission did not assess the *ex-post* impact of its state aid control in a comprehensive manner.[44] Additionally, the *ex-post* monitoring results are to be made publicly available to enhance the 'circulation of best practices' among the Member States to be assessed by independent national authorities. This could be considered a step in the right direction, as it offers a 'follow-up tool' within the state aid mechanisms, reducing the overreliance on a formalised system.[45]

2.2. State aid as the tool for the coronavirus- and energy crises-management

The coronavirus pandemic and later the energy crises-management led to a reconsideration of the EU state aid rules. This crisis-driven evolution also led to different policy steps due to the symmetric nature of the coronavirus crisis in terms of it impacting almost every economic sector instead of the finance-centred turbulence of the great financial crisis.[46] Compared to the austerity-centred crisis management of the 2008–2015 period, the COVID-19 pandemic led to emblematic EU-level solidarity measures[47] – especially with the creation of EU's NextGenerationEU recovery

41 Buendía Sierra, 2016a, p. 127.
42 European Commission, 2017.
43 European Commission, 2017; Papp, 2022a, p. 178.
44 European Court of Auditors, 2011, p. 59.
45 Papp, 2022a, p. 182.
46 Czeczeli et al., 2020; Halmai, 2020, pp. 305–349.
47 Urbanovics and Teleki, 2021.

instrument with ca. EUR 800 billion temporary funds to support economic recovery from the coronavirus pandemic. The centrepiece of NextGenerationEU is the Recovery and Resilience Facility (RRF), in which the Commission raises funds by borrowing on the capital markets (issuing bonds on behalf of the EU). These are then available to Member States for implementing several reforms and investments, which include three main aims: (i) to realise green and digital transition of the EU; (ii) to address the challenges identified in country-specific recommendations under the European Semester framework of economic and social policy coordination; and (iii) to implement the RePowerEU plan as the Commission's response to the socio-economic hardships and global energy market disruption caused by the post-coronavirus Russo-Ukrainian war.[48] The tendency of these reforms clearly indicate that the EU's approach has become much more horizontal, with management incrementally binding together diverse policy areas, which also impacts the EU state aid policy.

In a narrower context, the Commission reacted quickly to the crisis by partially suspending and re-interpreting state aid rules.[49] Simultaneously, further changes to the framework have widened the scope for aid (State Aid Temporary Framework – SATF[50] – amended several times).[51] SATF was adopted on 19 March 2020 to enable Member States to use the flexibility foreseen under state aid rules to support the economy during the coronavirus outbreak. However, it has not been extended beyond 30 June 2022, the expiry date for the SATF, with some exceptions. In particular, investment and solvency support measures could remain effective until 31 December 2023.

Owing to the limitations of the Editorial, this paper focuses on the overall evaluation of the related reform measures without further describing[52] the SATF.

The temporary framework is based on Art. 107 para. (3) point b) of the TFEU. This allows Member States to adopt a wide range of aid measures, subject to prior notification and approval by the Commission. Furthermore, during the COVID-19 crisis, Member States could avail three other exemptions. First, the direct state aid exemptions under Art. 107 para, (2) point (b) of the TFEU to overcome the damages caused by exceptional occurrences. This exemption applies in the health, tourism, transport, retail, and culture sectors. In addition, Art. 107 para. (3) point (c) of the TFEU could be used for restructuring aid for companies in financial difficulties. Member States could also apply the so-called *de minimis* aid, where state aid up to EUR 200,000 per beneficiary is automatically allowed over three years.[53]

48 European Commission, 2023a.

49 Gombos and Szűcs, 2021.

50 Communication from the Commission – Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01, OJ C 91I, 20.3.2020, 1–9.

51 Rosanò, 2020; Papp, 2022b; Ruzicska, 2022.

52 Communication from the Commission – Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, 2023/C 101/03, OJ C 101, 17.3.2023, 3–46.

53 Bartucz, 2022.

These steps have had a positive impact as the Commission's decision-making process, which has speeded up leading to the rapid approval of aid measures in the initial stages of the crisis. Yet, the report requested by the European Parliament Committee on Economic and Monetary Affairs (EP ECON) also identified the monitoring system's deficiencies, partly revealed earlier in the ECA's 2011 report. As a result, the ECON report recommended that the evaluation process, transparency, and monitoring be prioritised by the European Commission. The report also identified the apparent threat of the unbalanced territorial impact of the subsidies due to fiscal imbalances between Member States.[54] In light of the overreliance on temporary frameworks, some authors have also questioned the credibility of the EU state aid rules in the longer term owing to (i) the moral hazard of readily justifiable (extendable lifelines) and the moral hazard associated with subsidy dependence; (ii) the fallacy of seemingly ordinary market transactions; (iii) the increasing reliance on *ad hoc* solutions and highly situation-specific interpretations potentially eroding the pre-existing *acquis.*[55]

3. State aid rules in the CJEU's case law

3.1. Legal position of individual plaintiffs (competitors) in the CJEU's case law

In recent decades, the ECJ/CJEU has played a pivotal role in shaping the framework of the state aid rules following primary and secondary EU legislation, especially in the procedural rules and guarantees area. Several scholars have mentioned this role in general[56] and SAM reform steps in particular.[57] As Merola noted, until relatively recently, procedural rules were shaped by less worthy forces and objectives, such as a conservative approach by the administration or an unwillingness to accept any change regarding its consolidated internal practice.[58] The role of such procedural guarantees has become even more relevant in light of the previous decade's legislative reforms related to emphasising investigation only in significant cases, combined with *ex-post* monitoring by the competent authorities. Such a control and enforcement system could function more effectively if the national- and EU-level authorities could rely on additional information concerning subsidy cases, potentially from private parties (e.g. complainants and further market competitors). As for the evolution of these procedural guarantees, their origins are often rooted in

54 Van Hove, 2020, p. 8; Papp, 2022b, pp. 10–14.
55 Kociubiński, 2023.
56 Hofmann, Rowe and Türk, 2011; Hofmann and Morini, 2011; Chalmers, Gareth, and Monti, 2014.
57 Merola, 2016, pp. 108–109; Van de Casteele, 2016, p. 118; Buendía Sierra, 2016a, p. 125.
58 Merola, 2016, pp. 108–109.

ECJ/CJEU's case law. The Procedural Regulation further cemented this, which also serves as the sector-specific basis for the Charter of Fundamental Rights Art. 51, the right to good administration.[59]

Individuals – competitors in this case – in the actions for annulment before the CJEU have only restricted standing rights. The well-elaborated case law of the Court called the Plaumann test of the 1960s required individuals, as non-privileged plaintiffs, to have a direct and individual concern as standing requirements. Several judgements in the case law elaborate on how direct and individual concerns shall be interpreted.[60] In the Lisbon Treaty too, these standing requirements have been reformulated. Lisbon's primary law, namely Art. 263 para. (4) of the TFEU, as broadened standing rights to some extent in certain regulatory acts – yet, the standing rights of individuals are considered restrictive even today.[61]

In the case of competitors, the standing rights admissibility test (having direct and individual concerns) needs thorough case-by-case evaluation by the ECJ/CJEU. Individual concern refers to evaluation in context of the Plaumann case law: Persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes that are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed'.[62] In general, fulfilling these criteria depends on the part of the investigation procedure (preliminary or in-depth formal investigation procedure) in which the competitor is about to act and the competitor's market status.

According to the ECJ/CJEU case law, the competitor may act only by instituting proceedings to safeguard procedural rights in the course of the preliminary investigation procedure. If this also means that the final decision of the Commission's investigation finds that the aid is compatible with the common market, the individual could rely only on infringement of those procedural rights/guarantees since no in-depth formal investigation procedure has been initiated.[63] Therefore, the competitors' standing right within the preliminary investigation procedure is primarily based on securing the procedural rights of the beneficiary's competitor, whose rights have been initially acknowledged by the Court following an activist approach many times.

If the competitor initiates an action for annulment based on the compatibility test's failure, the competitor's standing right (individual and direct concern) must be

59 Szegedi, 2019, pp. 248–254.

60 Hofmann, Rowe and Türk, 2011, pp. 829–841.

61 Somssisch, 2021.

62 CJEU, 15 July 1964, C-25/62, *Plaumann v. Commission*, ECLI:EU:C:1963:17, part I. on the 'Ground of the judgment'.

63 CJEU, 19 May 1993, C-198/91, *Cook v. Commission*, ECLI:EU:C:1993:197, paras. 23–26; CJEU, 15 June 1993, C-225/91, *Matra v. Commission*, ECLI:EU:C:1993:239, paras. 17–20; CJEU, 24 February 2005, C-78/03 P, *Commission v. Aktionsgemeinschaft Recht und Eigentum (ARE)*, ECLI:EU:C:2005:761, paras. 35–37.

found to infringe on its procedural rights and its significantly affected position by the aid on the market. The game-changing judgement has been the ECJ's *Compagnie française delázole* (COFAZ) ruling. According to the COFAZ, an applicant's position can be given individual consideration regarding the Commission's decision on aid compatibility only if the applicant's market position has been substantially affected by the aid to which the contested decision relates.[64] This binary logic of the case law was later reformulated by the ECJ, emphasising the market position element instead of the infringement on procedural rights.[65] Later, the ECJ also concluded that participation in the investigation procedure is necessary for finding that a decision is of individual concern to an undertaking (competitor).[66] Additionally, the case law became even more detailed on the applicant's admissibility test, relying much more on the level of market distortion instead of its substantially affected market position.[67] Several factors can influence the level of market distortion, such as a sudden increase in production capacity or a significant drop in sales (even closing down of market participants).[68] Even the most recent case law has upheld this line of examined criteria.[69] In certain cases (*Kronoply),* the Court acknowledged the individual concern of the applicants (competitors) even though the beneficiary and the applicants were not competitors on identical product markets but used the same raw materials in their production process or based on the adverse effects associated with the new entrance of the beneficiary.[70]

In general, the standing rights in state aid cases have become more restrictive as the ECJ/CJEU's approach focuses on market position and market distortion analysis instead of on procedural fairness during the individual applicants' admissibility tests.[71] Yet, the ECJ/CJEU has followed a much more extensive interpretation, especially in antitrust cases emphasising the protection of applicants' procedural rights in line with the role of the Commission/EU-level procedures potentially identifying

64 CJEU, 28 January 1986, C-169/84, *COFAZ and others v. Commission*, ECLI:EU:C:1986:42, para. 25.

65 Bacon, 2009, pp. 514–515; Hofmann, Rowe and Türk, 2011, p. 832; Hofmann and Morini, 2011, pp. 362–367.

66 CJEU, 22 November 2007, C-260/05 P, *Sniace v. Commission*, ECLI:EU:C:2007:700, para. 57.

67 C-78/03 P, paras. 35–37; CJEU, 22 December 2008, C-487/06 P, *British Aggregates v. Commission*, ECLI:EU:C:2008:757, paras. 47–56.

68 CJEU, 22 October 1996, T-266/94, *Foreningen af Jernskibs- og Maskinbyggerier i Danmark and others v. Commission*, ECLI:EU:T:1996:153, paras. 46–47; CJEU, 12 December, 2006, T-95/03, *Asociación de Empresarios de Estaciones de Servicio de la Comunidad Autónoma de Madrid és Federación Catalana de Estaciones de Servicio v. Commission*, ECLI:EU:T:2006:385, para 54.

69 The more recent case law cannot be seen as merely being restrictive. The GC noted in Castelnou Energía that it could not conclude that an undertaking did not have standing to bring proceedings, if this undertaking succeeded in avoiding or limiting such a decline; for example, by making savings or by expanding in other more profitable markets. These steps did not call into question the substantial effects of the aid on its position and were even taken as a result of those effects (CJEU, 3 December 2014, T-57/11, *Castelnou Energía vs. Commission*, ECLI:EU:T:2014:1021, para. 41).

70 CJEU, 24 May 2011, C-83/09 P, *Commission v. Kronoply*, ECLI:EU:C:2011:341, paras. 67–68.

71 Bacon, 2009, p. 516; Hofmann, Rowe and Türk, 2011, pp. 832–833.

third parties.[72] These cases prove the pivotal role of the ECJ/CJEU in providing an interpretation of not just substantive but also procedural state aid rules sometimes even by rewriting the abovementioned 'unwillingness of the administration to accept any changes when it comes to its consolidated internal practice'. Moreover, judicial practice has demonstrated that state aid cases incrementally involve further economic considerations (like analysing market positions and potential distortions), even if they deal with only formal issues like admissibility matters before the CJEU. These complex tasks could become even more substantial in the CJEU's future workload, provided the evolution of this policy area shows a continuing shift from 'subsidy control' to 'subsidy governance' and covers a broader range of diverse policy implications.

3.2. CJEU's case law in 'the Taxation vs. state aid saga'

The ECJ/CJEU's role has been decisive in procedural rights and guarantees concerning competence-based issues, especially regarding extension of EU competencies. Taxation-related cases created a turbulent era in the recent two decades between Member States fighting to keep their national sovereignty over taxation and the Commission acting as a centralised 'state aid authority' with much weaker competencies in taxation matters.[73] This issue has become highly relevant, particularly (i) in the fight against tax avoidance and aggressive tax planning and (ii) limiting Member States' fiscal sovereignty when designing their tax systems.[74] Theoretically, this issue could become highly relevant as relief from economic burdens can also constitute an advantage, and therefore tax measures are relevant for the EU's state aid regime.

As for tax avoidance and aggressive tax planning, the Commission started to apply state aid rules to an ever-growing number of national direct tax rules and regimes, especially after several publications revealed this practice of multinational enterprises (MNEs), known for using loopholes in the international tax rules. LuxLeaks and EP committee inquiries made it obvious by as early as 2013/2014 that many MNEs shift their profits to no or low tax jurisdictions and exploit the differences between domestic tax systems to achieve double non-taxation.[75] The Commission also started investigating individual tax rulings, mainly transfer pricing rulings, issued by Member States to large MNEs suspected of granting 'sweetheart deals' to the latter.[76] In this manner, the Commission used this to tax MNEs – not exclusively Silicon Valley giants but further enterprises as well – which the US did not tax to boost their competitiveness.[77]

72 CJEU, 25 October 1997, C-26/76, *Metro v. Commission*, ECLI:EU:C:1977:167, paras. 8–13; Foster, 2015, p. 230; Hofmann, Rowe and Türk, 2011, p. 831.
73 Rapp, 2021.
74 Stavitzky, 2022; Szudoczky, 2022.
75 Szudoczky, 2022, p. 25.
76 Stavitzky, 2022, p. 56; Szudoczky, 2022, p. 25.
77 Mason, 2020, p. 373; Szudoczky, 2022, p. 25.

Regarding methodology, the Commission's approach to labelling individual national rulings as state aid focused on selectivity [Art. 107 para. (1)] using a three-step analysis: (i) reference system determination: a general taxation framework to identify the selectivity as a result of special national rules (Commission's burden of proof); (ii) identification of the derogation that departs from the reference system's general rule, resulting in a more favourable treatment of certain undertakings as *prima facie* selectivity (Commission's burden of proof); and (iii) justification of the *prima facie* selectivity based on the reference system's intrinsic basic or guiding principle of further inherent mechanisms (Member State's burden of proof).[78]

In tax avoidance and aggressive tax planning cases, the Commission combined the three-step analysis with the arm's length principle referring to the notion of aid to point out transfer pricing arrangements without a market-based outcome.[79] This resulted in the reduced tax liability of beneficiaries compared to other undertakings in comparable situations owing to the lack of taxation for incomes transferred through the arrangements.[80] What makes the related analysis more complicated is the hypothetical nature of the pricing agreements leading to a price range that can only be compared with ordinary market pricing and conditions. The Commission applied the Organisation for Economic Co-operation and Development's (OECD) transfer pricing guidelines[81] involving five different methodologies; however, the MNEs were also permitted to use other guidelines.[82]

The GC followed a rather strict but affirmative approach to examining the Commission's related decisions. The GC's rulings on Starbucks, Amazon, Apple, and Nike/Converse favoured neutrality among the abovementioned methodologies and expected the Commission to identify the MNEs' (and national actors') manifest errors.[83] In its Fiat judgement, a somewhat different outcome appeared, as the GC disapproved of the methodology applied by Luxembourg, calling it incompatible with ordinary market pricing/conditions, partly based on an existing advantage that resulted in an amount ten times greater than that to which the rate was applied under the tax ruling at issue.[84] This could be identified as a discrepancy between the applied methodology and the ordinary market pricing/conditions. Yet, scholars' criticism

78 Commission Notice on the notion of state aid as referred to in Art. 107(1) of the Treaty on the Functioning of the European Union, 2016/C 262/01, para. 138; Papp, 2021, p. 286; Szudoczky, 2022, p. 25.

79 Stavitzky, 2022, p. 58.

80 Szudoczky, 2022, p. 25.

81 OECD, 2022.

82 Stavitzky, 2022, pp. 58–59.

83 CJEU, 24 September 2019, T-760/15 and T-636/16, *Netherlands v. Commission*, ECLI:EU:T:2019:669; CEJU, 12 May 2021, T-816/17 and T-318/18, *Luxemburg and others v. Commission*, ECLI:EU:T:2021:252; CJEU, 15 July 2020, T-778/16 and T-892/16, *Ireland and others v. Commission*, ECLI:EU:T:2020:338; CJEU, 14 July 2021, T-648/19, *NIKE European Operations Netherlands Brand Converse Netherlands BV v. Commission*, ECLI:EU:T:2021:428.

84 CJEU, 24 September 2019, T-755/15 and T-759/15, *Luxemburg and Fiat Chrysler Finance Europe v. Commission*, ECLI:EU:T:2019:670, para. 283.

focused mainly on the external legal nature of OECD methodologies lacking EU harmonisation.[85] Even if the Court has the final word in these cases, apparently, state aid is not necessarily the right tool to remedy the systematic problems of the international tax system, considering the GC's recent judgements.[86] However, these court cases led to modifying some national tax regulations and former national practices, even as the cooperation between national authorities intensified.[87] Additionally, the number of related EU legislative steps increased, especially on the globally harmonised minimum level of corporate taxation[88] or with the already enacted directive[89] on broader access to information in related matters.

Concerning the second issue, specific CJEU rulings can also be mentioned limiting Member States' fiscal sovereignty in designing their tax systems. In this regard, the Gibraltar case had a decisive role in repealing corporate taxation by introducing a new payroll and business property occupation tax. This was calculated on the employees' salary combined with the property located in Gibraltar as the tax base. In its analysis, the CJEU labelled this new tax materially selective, favouring offshore companies *per definition* having neither employees nor properties – thereby excluding such companies as an inevitable consequence of the bases of assessment and not as a random result of the regime itself.[90] The manifestly discriminatory nature of such regulation has been decisive in this regard. Yet, Gibraltar remained the only judgement when the CJEU did not accept the reference framework of the Member State, providing a rare example of a successful justification during the three-step analysis.[91] The underlying main question refers to the scope of national tax sovereignty and which national tax design issues could be considered consistent. In the case of turnover-based progressive taxes (of special sectoral taxes), this is even more complicated with the hybrid nature of profit-based turnover taxes (based on the ability of the taxpayer to pay) and turnover taxes (based on progressive tax rates).[92] Regarding Hungarian sectoral taxes, the CJEU left it to the broad discretion of the Member States to define the reference system – as the Gibraltar ruling remained the exception rather than the rule.[93] Moreover, the turnover remained a natural and relevant indicator of the ability to pay, making progressive turnover taxation not incompatible with the single market Art. 107 para. (1) clause. Finally, the only option for the Commission to demonstrate the turnover-based progressive taxes'

85 Dourado, 2023, pp. 2–4.
86 Szudoczky, 2022, p. 26.
87 Stavitzky, 2022, pp. 55–81.
88 European Commission, 2022a.
89 Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, OJ L 429, 1.12.2021, 1–14.
90 CJEU, 15 November 2011, C-106/09 P and C-107/09 P, *Commission and Spain v. Government of Gibraltar and the UK*, ECLI:EU:C:2011:732, para. 106.
91 Papp, 2021, p. 290.
92 Szudoczky, 2022, p. 27.
93 CJEU, 3 March 2020, C-75/18, *Vodafone Magyarország*, ECLI:EU:C:2020:139, para. 50.

incompatibility was the manifestly discriminatory element – not yet genuinely concretised by the CJEU itself.[94]

In general, the CJEU remained reluctant to expand (or overexpand) the Commission's competencies in taxation by labelling specific national tax regulations and practices as state aid. Just like in the case of the standing rights' expansion, the taxation saga demonstrated the potential outreach of the Commission's compatibility test to other policy areas.

3.3. Sustainability and green transition in the area of state aid?

The EU's Green Deal marks a new area in which green policies might become much more horizontal, potentially affecting the EU's other policy areas. Moreover, sectoral dialogue between different policy areas and related disciplines has become inevitable.[95] Additionally, the Commission's related state aid legal framework has also been amended (several times) in light of the Green Deal requirements.[96] Therefore, the question is whether the state aid case law of the CJEU will/should take a green turn, or even a U-turn is highly relevant.[97]

Two major state aid cases can be mentioned in this context: energy policy issues rooted in economic policy and environmental law.[98] In these cases, the Commission's approval for providing state aid to construct and operate nuclear power plants (Great Britain's Hinkley Point C NPP – HPC and Hungary's new Paks2 reactor installations – Paks2) was challenged by Austria with somewhat parallel pleas. Both cases referred to the exemption provision of Art. 107 para. (3) of the TFEU, stating that state aid may be compatible with the internal market if it aims to develop an activity that constitutes a public interest objective and is appropriate, necessary, and not disproportionate.

The GC set a precedent on the competition aspects of nuclear investment and installations with both HPC and Paks2 judgements (the Court already decided HPC, while in the case of Paks2, the appeal was only submitted to the Court). First, new investments into nuclear facilities can constitute a public interest objective in conformity with Art. 107 para.(3) of the TFEU – even if they are not necessarily pursued by all Member States, and not in the sole interest of the beneficiary of the aid.[99]

94 Papp, 2021, p. 290; Szudoczky, 2022, p. 28.

95 Meyer and Hoffmann, 2023; Csák and Nagy, 2020; Kutasi, 2022.

96 Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Art. 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing, and marketing of fishery and aquaculture products compatible with the internal market in application of Art. 107 and 108 of the Treaty, OJ L 167, 30.6.2023, 1–90.

97 Terpan and Saurugger, 2020.

98 Lovas, 2021a, pp. 25–59; Lovas, 2021b.

99 CJEU, 12 July 2018, T-356/15, *Austria v. Commission, Hinkley Point*, ECLI:EU:T:2018:439, para. 86; CJEU, 30 November 2022, T-101/18, *Austria v. Commission, Paks2*, ECLI:EU:T:2022:728, paras. 98–99.

This implication also refers to the heated debate on the future use of nuclear power dividing many Member States (e.g. Germany and Austria dissenting from nuclear power, while France, Belgium, and most of the Central and Eastern European (CEE) region countries mainly favouring it). The judges did not rewrite these choices based on the state aid rules, unsurprisingly in light of the Member States' free selection of their energy mixes, for which the Treaties formally guarantee freedom (Euratom).

Further recalling Member States' free choice of energy mix, the GC (Court in HPC) also clarified that the Commission cannot require state financing to be allocated to alternative energy sources.[100] Member States have broad powers in the field of energy policy, including free choice of energy mix to achieve the EU's preferred objectives, such as security of supply, diversification of energy sources, and decarbonisation. Changing of this rule would require an amendment of the Treaties (as it is included in the Lisbon Treaty). Nevertheless, it would be a challenging issue for the Member States in light of their divided opinion on the utilisation of nuclear energy, combined with the free choice of their energy mixes. In general, this political and scientific dispute is not a problem to be resolved judicially.[101]

The application of the compatibility test is even more complicated in Art. 107 para. (3) of the TFEU cases as the Court has overruled the GC's approach in the HPC case. In this regard, the Court has clarified that state aid for an economic activity falling within the scope of the nuclear energy sector that is proven upon examination to contravene environmental rules cannot be declared compatible with the internal market. Nevertheless, mere principles (the protection of the environment, the precautionary principle, the 'polluter pays' principle, and the principle of sustainability) cannot be regarded as precluding in all circumstances when it comes to granting state aid for the construction or operation of a nuclear power plant. In general, the Court concluded that state aid for an economic activity shown upon examination to contravene rules of EU law on the environment cannot be declared compatible with the internal market.[102] Kingstone referred to this argumentation saying that it might become a game-changer if further EU Green Deal-related legislation concretises the abovementioned principles of EU law – potentially already having resulted in incompatibility,[103] while Kowalik-Bańczyk also cited this argument of the Court as an illustrative exception of the state aid law area, noting how the competition law moved toward sustainability goals.[104]

Yet, the GC's Paks2 judgement upheld a somewhat restrictive approach regarding extra-economic consideration, concluding that 'the breach of another rule of EU law would have had to be *indissociably linked* to the State aid measure'. Further, referring to the sector-specificity of EU policies, 'the broader investigation would run counter

100 CJEU, 22 September 2020, C-594/18 P, *Austria vs. Commission*, ECLI:EU:C:2020:742, paras. 79–80; T-101/18, para. 97.
101 Kingston, 2021, p. 12.
102 C-594/18 P, paras. 45, 100.
103 Kingston, 2021, pp. 15–18.
104 Kowalik-Bańczyk, 2023, p. 11.

to, first, the procedural rules and guarantees specific to the procedures specially established for the control of the application of those provisions and, second, the principle of autonomy of administrative procedures and remedies'.[105] This analysis of the link in the Paks2 judgement dealt with the lack of a public procurement procedure. However, this matter is yet to be decided by the Court. In general, the the case law mandates the Commission to prohibit state aid measures which are *inextricably linked* to the infringement of environmental law – yet the right of the prohibition is still unclear in the mere case of indirect harm to the environment.[106]

The HPC judgement also had a broader impact on the policy framework of the EU state aid rules besides green and sustainability considerations. As Buendía Sierra noted, the HPC could be seen as a timely reminder that the Commission must look both at the positive and at the negative effects of the aids, emphasising the adverse effects (environmental considerations raised by Austria).[107] Additionally, more recent state aid compatibility tests can identify this judgement's impact.[108]

4. Conclusions – From 'subsidy control' to 'subsidy governance'?

Using the analogy of Buendía Sierra, the state aid law, as a tool of subsidy control, is moving toward an era of subsidy governance, involving extra-economic implications of the EU integration. Similar to what occurred at the beginning of the European integration, the multi-level nature of this area became highly relevant in crisis management situations, as described above. In the 1970s or during the significant financial and economic recession at the end of the 2000s – including the current era of the post-COVID situation and the ongoing energy and war-related crisis cycles – the dilemma became highlighted with the realisation that state aid cannot be considered a competition tool for mere subsidy control. It could be used on a broad range of further policy areas, including industry and trade, green and digital transition, not to mention taxation and corporate governance. These challenges must be addressed by the Union, national legislators, and enforcement actors, especially the CJEU. Considering the complexity of state aid involving highly specific evaluation of economic issues, it already incorporates the methodologies of further policy areas like corporate taxation, energy supply measurements, or analysis of competitors' market position.

105 T-101/18, para. 31.
106 Nicolaides, 2023.
107 Buendía Sierra, 2022, p. 11.
108 Nicolaides, 2021.

Nevertheless, this dilemma is explicitly multinational and multidimensional, expected to become even more relevant in the upcoming years, as the recent crisis management steps related to state aid control and governance can and must be evaluated in light of their unbalanced nature between Member States.

Referring to Buendía Sierra once more, the question posed is wrong: Who do you love more, your dad ('father's side' of state aid as a subsidy race between Member States) or your mom ('mother's side' of state aid as subsidy race with its negative impact on budgetary, competition, and internal market perspectives between undertakings)?[109] Buendía Sierra noted that a proper enforcement of state aid rules requires simultaneously considering both objectives when designing guidelines and adopting decisions. In this regard, 'state aid is not only about competition between undertakings but also between Member States. Insisting on just one of both dimensions would be a mistake. Both form an essential ingredient of EU state aid'.[110]

The SAM reform with the Commission's extended direct control only on the most substantial cases might also lead to de-prioritisation of less significant (small Member States') markets (due to the presumably smaller size of beneficiaries and aid volumes), even if these markets require more awareness in terms of competition distortion.[111] This tendency and related threats have become even more relevant in light of the coronavirus crisis. As Ruzicska evaluated the SATF and the state aid in 2020 on the 'father side', Germany and France were 'responsible' for approximately 68% of the approved state aid, while smaller and financially weaker Member States deteriorated rapidly, for instance, as seen even when comparing Italy to France. A further deterioration of the level playing field is clearly evident in the EU. As a result, a company's economic viability depends (among other things) on which state of the internal market it is based in (in the linkage of the mother's and father's sides). Further, the favoured companies could force – despite some measures to prevent the expansion of the beneficiary companies – some of the affected competitors out of business and thus exacerbate the differences.[112] The report requested by the EP's ECON committee also identified the diverse capacity of the Member States to secure subsidies.[113] In other words, 'even if all Member States enjoy the same *de iure* freedom to use their economic arsenal, some may end up using bazookas while others shoot slingshots'.[114] The overall trend shows that the territorial distribution of aid between Member States later became less unbalanced.[115] This concern had been identified from other angles of competition law, like fusion control, even before the

109 Buendía Sierra, 2016a, p. 127.
110 Buendía Sierra, 2016a, p. 128.
111 Buendía Sierra, 2016b, p. 501; Papp, 2022a, p. 186.
112 Ruzicska, 2022, p. 2.
113 Van Hove, 2020, pp. 20–21.
114 Ruzicska, 2022, p. 3.
115 European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Report on Competition Policy 2021, Brussels, 14.7.2022, COM(2022) 337 final, p. 44.

coronavirus crisis.[116] In contrast, some smaller countries used derogations from EU market-based commitments.[117]

This dilemma of distortion could be addressed by setting up compensation funds financed by a certain percentage of the aid approved and granted. The EU's performance in creating EU-level funds to avoid further distortions between Member States as a crisis management tool remained unbalanced. The new Solvency Support Instrument has not been enacted as proposed by the Commission in May 2020, which would have built on the existing European Fund for Strategic Investments.[118] The new RRF framework could be seen as a positive step along with some new fund programmes (CRII, CRII+, and REACT-EU).[119]

Taking a step further involves investigating the EU state aid rules outside of the single market, having even greater relevance in light of China's economic imperialism and the US's increasing protectionism.[120] To make this argument understandable, the EU must be present and present while formulating global laws on subsidies to avoid EU companies' disadvantage in the worldwide market. The unilateral interface mechanism requires equalising the terms of competition and investment when a subsidised entity is active in the EU internal market – while considering the further rules of global trade, which are primarily enshrined in World Trade Organisation (WTO) law.[121] To provide a quick overview of the most recent policy steps in this area, the preferential trade agreements have been crucial in extending the territorial reach of the EU state aid law, which also proves the EU's regulatory power at the global level.[122] As a further step, the new Foreign Subsidies Regulation can be mentioned. According to this unique piece of EU legislation, subsidies granted by non-EU governments currently go unchecked. In contrast, offerings granted by Member States are subject to scrutiny under the EU state aid rules by the Commission as the sole enforcer of this regime.[123] These new powers inevitably include further sophistication of the Commission's state aid compatibility test, which – using the analogy of extended subsidy governance – will presumably influence other state aid-related EU policies like industry or trade or digitalisation[124] and media. This territorial extension of state aid law also refers to the CJEU's primary function in state aid law enforcement, involving a broader scope of legal sources such as the WTO law.[125]

The EU state aid law and policy-making have been shaped and reshaped by the EU integration process with its expanding supranational competencies, various sets

116 Bundeswettbewerbsbehörde, 2019.
117 Bartha and Horváth, 2023.
118 European Commission, 2020.
119 European Commission, 2022b.
120 Di Carlo and Schmitz, 2023, pp. 23–25.
121 Rubini, 2023a, p. 13.
122 Szirbik, 2023; Rubini, 2023a, pp. 14–16.
123 European Commission, 2023.
124 Nicoli and Iosifidis, 2023.
125 As most recent example, see: CJEU, 1 March 2023, T-480/20 and T-540/20, *Hengshi Egypt Fiberglass Fabrics and Jushi Egypt for Fiberglass Industry v. Commission*, ECLI:EU:T:2023:90; Rubini, 2023b.

of different actors, and everchanging rules of procedures and methodologies, and the last decade offered challenges as well as opportunities for a more profound evolution of this policy area. Addressing these challenges with a step-by-step formulation of proper subsidy governance by the EU legislator (and CJEU) in collaboration with national actors could be pivotal to ensuring the future competitiveness of internal markets' undertakings as well as of its Member States.

Bibliography

Bacon, K. (ed.) (2009) *European Community Law of State Aid*. 1st edn. Oxford: Oxford University Press.

Bartha, I., Horváth M., T. (2023) 'State Aid as a Risk in the Policy of Competitive Advantages in the European Union', *Studia Iuridica Lublinensia*, 32(2), pp. 35–55; https://doi.org/10.17951/sil.2023.32.2.35-55.

Bartucz, Z. (2022) 'A koronavírus járvány és az állami támogatási szabályok' In: Nyikos, Gy. (ed.) *Állami támogatások a gyakorlatban*. Budapest: Ludovika Egyetemi Kiadó. pp. 81–112.

Buendía Sierra, J. L. (2016a) 'EU State Aid Control: Competition Between Undertakings or Between Member States? in the EU' in Rubini, L., Hawkins, J. (eds.): *What shapes the law? – Reflections on international and European subsidy disciplines' history, law, politics, and economics*. Florence: European University Institute. pp. 121–128.

Buendía Sierra, J. L. (2016b) 'Small on Small: Towards a Two-Speed State Aid Control?', *European State Aid Law Quarterly*, 15(4), pp. 501–503; https://doi.org/10.21552/estal/2016/4/2.

Buendía Sierra, J. L. (2022) 'Quo Vadis Compatibility?' in Piernas López, J. J., Hancher, L., Rubini, L. (eds.) *'Back to the Future'? State Aid Law and Policy in Search of a Context. EU Law Live Weekend Edition, Special Issue,* 2023/127, pp. 6–11.

Bundeswettbewerbsbehörde (2019) *Positionspapier zu nationalen und europäischen Champions in der Fusionskontrolle* [Online]. Available at: https://www.bwb.gv.at/fileadmin/user_upload/PDFs/Positionspapier_European_Champions_DE.pdf (Accessed: 20 July 2023).

Cini, M. (2016) 'EU State Aid Policy – The Origins and Early Years' in the EU' in Rubini, L., Hawkins, J. (eds.): *What shapes the law? – Reflections on international and European subsidy disciplines' history, law, politics, and economics*. Florence: European University Institute. pp. 17–19.

Chalmers, D., Gareth, D., Monti, G. (2014) *European Union Law*. 3rd edn. Cambridge: Cambridge University Press; https://doi.org/10.1017/CBO9781139854542.

Csák, Cs., Nagy, Z. (2020) 'A környezeti és pénzügyi fenntarthatóság – avagy a környezetjog és a pénzügyi jog egyes kapcsolódási pontjai', *Miskolci Jogi Szemle*, 15(1) különszám, pp. 38–50.

Czeczeli, V., Kolozsi, P. P., Kutasi, G., Marton, Á. (2020) 'Economic Exposure and Crisis Resilience in Exogenous Shock: The Short-Term Economic Impact of the Covid-19 Pandemic in the EU', *Public Finance Quarterly*, 65(3), pp. 321–347; https://doi.org/10.35551/PFQ_2020_3_1.

Dán, J. (2022) 'Az állami támogatások uniós szabályai' in Gombos K. (ed.) *Az Európai Unió versenyjogának alapjai.* Budapest: Wolters Kluwer, pp. 113–124.

Di Carlo, D., Schmitz, L. (2023) 'Europe first? The rise of EU industrial policy promoting and protecting the single market', *Journal of European Public Policy*, 30(10), pp. 2063–2096; https://doi.org/10.1080/13501763.2023.2202684.

Dourado, A. P. (2023) 'The FIAT Case and the Hidden Consequences', *Intertax*, 51(1), pp. 2–4; https://doi.org/10.54648/TAXI2023015.

European Commission (2011) *Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest* [Online]. Available at: https://eur-lex.europa.eu/eli/dec/2012/21(1)/oj (Accessed: 21 February 2024).

European Commission (2013) *Competition Policy: State aid procedures* [Online]. Available at: https://competition-policy.ec.europa.eu/state-aid/procedures_en (Accessed: 25 July 2023).

European Commission (2017) *State aid: Commission simplifies rules for public investment in ports and airports, culture, and the outermost regions,* 17 May. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1341 (Accessed: 2 July 2023).

European Commission (2020) 'EU budget for recovery: Kick-starting the EU economy by incentivising private investments', *Daily News,* 29 May. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/mex_20_970 (Accessed: 29 July 2023).

European Commission (2022a) *Proposal for Council Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU* [Online]. Available at: https://eur-lex.europa.eu/eli/dir/2022/2523/oj (Accessed: 24 July 2023).

European Commission (2022b) *REACT-EU* [Online]. Available at: https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/react-eu_en (Accessed: 3 August 2023).

European Commission (2023a) *The Recovery and Resilience Facility* [Online]. Available at: https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en (Accessed: 21 July 2023).

European Commission (2023b) *Foreign Subsidies Regulation* [Online]. Available at: https://competition-policy.ec.europa.eu/foreign-subsidies-regulation_en (Accessed: 5 August 2023).

European Court of Auditors (2011) *Do the Commission's procedures ensure effective management of state aid control? – Special Report No 15* [Online]. Available at: https://doi.org/10.2865/26852 (Accessed: 7 July 2023).

Finckenberg-Broman, P., Broman, M. M. (2022) 'State aid policy to move the fiction of gender equality to a fact' in Piernas López, J. J., Hancher, L., Rubini, L. (eds.) *'Back to the Future'? State Aid Law and Policy in Search of a Context. EU Law Live Weekend Edition, Special Issue,* 2023/127, pp. 18–23.

Foster, N. (2015) *Foster on EU Law.* 5th edn. Oxford: Oxford University Press.

Gombos, K., Szűcs, A. E. (2021) 'State Aid in the times of Covid-19 pandemic', *Hungarian Yearbook of International Law and Europen Law,* 9(1), pp. 74–90; https://doi.org/10.5553/HYIEL/266627012021009001005.

Halmai, P. (2020) *Mélyintegráció – A Gazdasági és Monetáris Unió ökönómiája*. Budapest: Akadémiai Kiadó; https://doi.org/10.1556/9789634545569.

Hofmann, H. C. H., Morini, A. (2011) 'Judicial review of Commission Decision in State Aid' in Szyszczak, E. (ed.) *Research Handbook on European State Aid Law.* Cheltenham: Edward Elgar Publishing, pp. 354–389; https://doi.org/10.4337/9780857936424.00025.

Hofmann, H. C. H., Rowe, G. C., Türk, A. H. (eds.) (2011) *Administrative Law and the Policy of the European Union*. Oxford: Oxford University Press; https://doi.org/10.1093/acprof:oso/9780199286485.001.0001.

Kingston, S. (2021) 'State Aid and the European Green Deal: The Implications of Case C-594/18 P Austria v Commission (Hinkley Point C)', *UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper*, 2021/6, pp. 1–18. [Online]. Available at: https://shorturl.at/fhADR (Accessed: 2 July 2023).

Kociubiński, J. (2023) 'The Three Poisons of Post-Covid State Aid: Emerging Trends in Interpretation and Legislative Approach to Member States' Aid Measures', *European State Aid Law Quarterly*, 22(1). pp. 4–16; https://doi.org/10.21552/estal/2023/1/3.

Kowalik-Bańczyk, K. (2023) 'Sustainability in EU competition law?' in Donati, A. (ed.) *The interaction between EU environmental and economic law. EU Law Weekend Edition, Special Issue,* 2023/130, pp. 11–14.

Kutasi, G. (2022) 'How Does Economics Approach Nature?', *Cognitive Sustainability*, 1(2), pp. 1–7; https://doi.org/10.55343/cogsust.21.

Lovas, D. (2021a) *Liberalizáció és reguláció az Európai Unió energiapolitikájában*. Debrecen: Debreceni Egyetem Állam-és Jogutományi Kar.

Lovas, D. (2021b) 'Relevance of the Court Decision on the Hinkley Point Nuclear Power Plant in Relation to Paks II', *Studia Iuridica Lublinensia*, 30(2), pp. 305–317; https://doi.org/10.17951/sil.2021.30.2.305-317.

Mason, R. (2020) 'The Transformation of International Tax', *American Journal of International Law*, 114(3), pp. 353–402; https://doi.org/10.1017/ajil.2020.33.

Mason, R. (2023) 'Tax competition and state aid', *Yearbook of European Law*, yead001, pp. 1–24; https://doi.org/10.1093/yel/yead001.

Merola, M. (2016) 'The Forces Shaping State Aid Control in the EU' in Rubini, L., Hawkins, J. (eds.) *What shapes the law? – Reflections on the history, law, politics, and economics of international and European subsidy disciplines*. Florence: European University Institute. pp. 101–109.

Meyer, S., Hoffmann, M. C. (2023) 'Die grüne Transformation des europäischen Beihilferechts', *Europäische Zeitschrift für Wirtschaftsrecht*, 34(9), pp. 413–416.

Nicolaides, P. (2021) 'Shedding Light into the 'Black Box' of State Aid', *European State Aid Law Quarterly*, 20(1), pp. 4–14; https://doi.org/10.21552/estal/2021/1/3.

Nicolaides, P. (2023) 'Must the Commission Prohibit Aid That Harms the Environment?', *European State Aid Law Quarterly*, 22(1), pp. 17–28; https://doi.org/10.21552/estal/2023/1/4.

Nicoli, N., Iosifidis, P. (2023) 'EU digital economy competition policy: From *ex-post* to *ex-ante*. The case of Alphabet, Amazon, Apple, and Meta', *Global Media and China*, 8(1), pp. 24–38; https://doi.org/10.1177/20594364231152673.

OECD (2022) *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*. Paris: OECD Publishing; https://doi.org/10.1787/0e655865-en.

Papp, M. (2021) 'Fiscal State Aid Law. A Compass to the Case Law of the Court of Justice of the EU' in Kecső, G. (ed.) *International and European Taxation*, Budapest: ELTE Eötvös Kiadó, pp. 275–301.

Papp, M. (2022a) 'Az európai integráció állami támogatási közpolitikájának fejlődése: Honnan hová?' in Király, M. (ed.) *A titokzatos kastély – Ünnepi tanulmányok Mádl Ferenc emlékére*. Budapest: ELTE Eötvös Kiadó, pp. 165–187.

Papp, M. (2022b) 'A járványtól a gazdasági újjáépítésig – A COVID-19 állami gazdasági támogatások kivezetése és az uniós helyreállítási források megérkezés', *MTA Law Working Papers*, 2022/24, pp. 1–16.

Glied, V., Pánovics, A. (2022) *Fenntartható fejlődés és környezetpolitika a 21. században – Egy paradigmaváltás küszöbén.* Pécs: Kontraszt Plusz Kft.

Piernas López, J. J., Hancher, L., Rubini, L. (2022) *'Back to the Future'? State aid law and policy in search of a context. EU Law Live Weekend Edition, Special Issue,* 2023/127.

Rapp, J. (2021) 'Taxation and State aid' in Hancher, L., Piernas López, J. J. (eds.) *Research Handbook on European State Aid Law.* Cheltenham: Edward Elgar, pp. 40–63; https://doi.org/10.4337/9781789909258.00010.

Righini, E. (2016) 'State Aid Control: An Evolutionary Theory of Resilience and Adaptation' in Rubini, L., Hawkins, J. (eds.) *What shapes the law? – Reflections on the history, law, politics, and economics of international and European subsidy disciplines.* Florence: European University Institute, pp. 137–139.

Rosanò, A. (2020) 'Adapting to Change: COVID-19 as a Factor Shaping EU State Aid Law', *European Papers – European Forum*, 5(1), pp. 621–631; https://doi.org/10.15166/2499-8249/354.

Rubini, L. (2023a) ''Herr Schmidt goes to Beijing': the extraterritorial reach of State aid law' in Piernas López, J. J., Hancher, L., Rubini, L. (eds.) *'Back to the Future'? State Aid Law and Policy in Search of a Context. EU Law Live Weekend Edition, Special Issue,* 2023/127, pp. 12–17.

Rubini, L. (2023b) 'Are Transnational Subsidies Regulated by EU and WTO law? The General Court has spoken (Case T-480/20 and Case T-540/20)', *EU Law Live Weekend Edition*, 2023/150, pp. 1–19.

Ruzicska, M. (2022) *Catch-22 in European State Aid Law: Between Liberalisation and Distortion of Competition* [Online]. Available at: https://shorturl.at/ntL12 (Accessed: 29 June 2023).

Somssisch, R. (2021) 'Magánszemélyek kereshetőségi joga tíz évvel Lisszabon után: teljes vagy hiányos a jogorvoslati rendszer?' in Bartha, I., Fazekas, F., Papp, M., Varjú, M. (eds.) *Hatékony jogvédelem az Európai Unió jogában – Tanulmányok Várnay Ernő 70. születésnapja tiszteletére*. Budapest: Társadalomtudományi Kutatóközpont, pp. 102–125.

Stavitzky, P. (2022) 'Az adóelkerülés elleni fellépés állami támogatási eszközökkel – Az Európai Bizottság és az Európai Bíróságok vonatkozó gyakorlata' in Nyikos, Gy. (ed.) *Állami támogatások a gyakorlatban*. Budapest: Ludovika Egyetemi Kiadó, pp. 55–80.

Strihó, K. (2020) *Az elektronikus kereskedelem – A kereskedelem digitalizációjának alapvetései*. Budapest: Wolters Kluwer.

Szegedi, L. (2019) *Közigazgatási bírói jogvédelem uniós átalakulás alatt – Eltérő jogvédelmi mércék az EU jogának tagállami és uniós végrehajtása során*. Budapest: HVG-Orac Kiadó.

Szirbik, M. (2023) 'Az Európai Uniós versenyjoga a globális verseny kihívásai és a belső piac követelményei között', *Európai Jog,* 21(1), pp. 1–13; https://doi.org/10.55413/561.A2300102.EUO.

Szudoczky, R. (2022) 'The Future of Fiscal State Aid' in Piernas López, J. J., Hancher, L., Rubini, L. (eds.) *'Back to the Future'? State Aid Law and Policy in Search of a Context. EU Law Live Weekend Edition, Special Issue,* 2023/127, pp. 24–28.

Terpan, F., Saurugger, S. (2020) 'The politics of the Court of Justice of the European Union' in: Cardwell, P. J., Granger, M.-P. (eds.) *Research Handbook on the Politics of EU Law.* Cheltenham: Edward Elgar Publishing. pp. 31–49; https://doi.org/10.4337/9781788971287.00011.

Urbanovics, A., Teleki, B. (2021) 'The economic context of the COVID-19 pandemic in the Mediterranean countries: A comparative analysis', *Intersections. East European Journal of Society and Politics*. 7(3), pp. 157–177; https://doi.org/10.17356/ieejsp.v7i3.799.

Van de Casteele, K. (2016) 'Changes and What Drives them. Evolution of State Aid Control' in Rubini, L., Hawkins, J. (eds.) *What shapes the law? – Reflections on the history, law, politics, and economics of international and European subsidy disciplines*. Florence: European University Institute, pp. 111–119; https://doi.org/10.2870/48206.

Van Hove, J. (2020) *Impact of state aid on competition and competitiveness during the COVID-19 pandemic: an early assessment – Study requested by ECON Committee* [Online]. Available at: https://doi.org/10.2861/108010 (Accessed: 28 July 2023).

Verouden, V. (2016) 'EU State Aid Control: The Quest for Effectiveness' in Rubini, L., Hawkins, J. (eds.) *What shapes the law? – Reflections on the history, law, politics, and economics of international and European subsidy disciplines*. Florence: European University Institute, pp. 129–135; https://doi.org/10.2870/48206.