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ENFORCEMENT  
OF  
EU STATE AID LAW  
AT NATIONAL LEVEL  
2010

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Reports from the 27 Member States

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## FOREWORD

So much ground has been covered since the adoption of the first Notice on the cooperation with national courts<sup>1</sup> in 1995. As the present book reveals, the European Union has experienced a surge in State aid cases in national courts, and this trend is not likely to revert, in particular in view of the current public and business interest on State aid matters in the recent years.

The European Commission has been a strong advocate of private State aid litigation throughout this time. Joaquin Almunia, Vice President of the European Commission, recently declared<sup>2</sup> that the increase in State aid cases brought before national courts is “one of the most important recent developments in the field of State aid, and one which I wholeheartedly welcome”.

In April 2009, the European Commission adopted a new Notice on the enforcement of State aid law by national courts<sup>3</sup>, which had two key aims: to explain the role of national courts in the State aid field as defined by the European Courts, and to offer national courts practical and user-friendly support in individual cases. The Notice is the result of a comprehensive review of the Commission’s 1995 notice and takes into account recent legislative developments and case-law.

This has been accompanied by a series of advocacy actions including conferences, publications, and State aid training for national judges. Directorate General for Competition also launched dedicated pages on its website<sup>4</sup> containing relevant information on private enforcement, including a compilation of State aid judgments which are mentioned in this book.

I would like to commend the quality of the work of the 27 national rapporteurs under the direction of Hogan Lovells, who have produced a thorough, clear, and wide picture of private State aid-related litigation in the European Union. This book will therefore provide the reader not only with information about how State aid law is enforced ‘at home’, but also with useful comparisons and examples from other national jurisdictions.

In my view, it is also particularly significant that each national report includes a section on “trends, reforms and recommendations”. While, as the reader will soon discover, it is obvious that some difficulties and important issues remain which may stand in the way of the successful

1 Notice on cooperation between national courts and the Commission in the State aid field, OJ (1995) C 312.

2 [Http://ec.europa.eu/competition/publications/state\\_aid/national\\_courts\\_booklet\\_en.pdf](http://ec.europa.eu/competition/publications/state_aid/national_courts_booklet_en.pdf).

3 Commission notice on the enforcement of State aid law by national courts, OJ (2009) C 85/1.

4 [Http://ec.europa.eu/competition/courts/state\\_aid.html](http://ec.europa.eu/competition/courts/state_aid.html).

protection of competitors against unlawful State aid, our common objective should be to look ahead, together with the legal community, in order to jointly promote the reinforcement of private State aids enforcement at national level in the future.

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## INTRODUCTION

The present book includes 27 national reports as well as a brief EU report on the application of State aid rules by national courts. It is the result of a longstanding collective research project, conducted in the wider context of general legal work carried out for the European Commission.

In 2005, the European Commission signed a research contract with Lovells (now Hogan Lovells) commissioning a far-reaching study on the application of State aid rules at national level. This study ("2006 study") was completed in March 2006 under the co-directorship of Jacques Derenne (Lovells), Thomas Jestaedt (Jones Day) and Tom Ottervanger (Allen & Overy)<sup>1</sup>. The 2006 study examined (i) the national courts' judgments in 15 Member States (before the 2004 accessions) and (ii) the enforcement of negative Commission decisions by Member State authorities in five sample Member States.

The results of this seminal 2006 study were used extensively by the Commission for the drafting of its Recovery Notice in October 2007<sup>2</sup> and again when preparing its Enforcement Notice in April 2009<sup>3</sup>. These notices provide national courts and third parties with a comprehensive overview of the remedies that are available when a Member State infringes its obligation to notify the Commission of any draft State aid, and of its standstill obligation in this regard.

In December 2008, Lovells (now Hogan Lovells) concluded a new exclusive contract with the European Commission to update the 2006 study and to enlarge it to the 27 Member States (the "2009 update study"). On 19 October 2009, the results of this 2009 update study were presented at a conference in Brussels. Mrs Neelie Kroes, the then EU Commissioner for Competition Policy, was the keynote speaker and discussed the achievements of the 2005 State Action Plan<sup>4</sup> in the field of private enforcement. The purpose of the Commission was more limited than for the 2006 study in that the results of the update survey were used to select sample cases for the new pages of the Directorate General for Competition's website dedicated to private enforcement (application of EU competition law by national courts). Since 2009, a new page gives access to the EU report included in this book as well as to a number of summaries of representative State aid national cases<sup>5</sup>. This completes the section of the Directorate General for Competition's website which was previously limited to antitrust cases.

- 1 [Http://ec.europa.eu/competition/state\\_aid/studies\\_reports/studies\\_reports.html#studies](http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html#studies).
- 2 Notice from the Commission – Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid, OJ (2007) C 272/4.
- 3 Commission notice on the enforcement of State aid law by national courts, OJ (2009) C 85/1.
- 4 State aid action plan – Less and better targeted State aid: a roadmap for state aid reform 2005–2009, COM(2005) 107 final.
- 5 See [http://ec.europa.eu/competition/court/state\\_aid\\_judgments.html](http://ec.europa.eu/competition/court/state_aid_judgments.html).

<sup>5</sup> The views expressed are purely those of the writer and may not in any circumstances be regarded as stating an official position of the European Commission.

Although we note that national courts do not always communicate all national antitrust judgments to the Commission, as required by Article 15 of Regulation (EC) No 1/2003<sup>6</sup>, it can be inferred from the recorded cases that private enforcement before national courts in State aid cases is as developed, if not more developed, as enforcement in antitrust matters.

In the context of the background research carried out for the 2009 update study, Lovells (now Hogan Lovells) developed a State aid Thesaurus with e-Competitions ([www.concurrences.com](http://www.concurrences.com)). This provides exhaustive direct on-line access to decisions of national courts in their own language, along with summaries and comments in English. Jacques Derenne, partner and head of the Antitrust, Competition and Economic Regulation practice of the Brussels Hogan Lovells office as well as of Hogan Lovells' State aid practice, and Cédric Kaczmarek, a Brussels based State aid specialist lawyer, directed the research, with the assistance of Counsel Alix Müller-Rappard, as well as Rainer Wessely and Katharine Wilson, in coordinating the work of an international consortium of 27 national rapporteurs established in every single Member State (made up of specialist lawyers from 11 Hogan Lovells offices around the European Union and local counsel from the remaining Member States). Rachel Candler, Sarah Bowyer, Heather Craig, Laura Shearing, Andin Fonyonga, Franck Avignon and Jonathan Clovin, trainee solicitors, have worked with dedication to ensure the harmonisation of the English language, style and references throughout the 27 reports.

The 27 national reports analyse the domestic legal framework within which national courts apply Article 107(1) TFEU (concept of State aid) and Article 108(3) TFEU (notification and standstill obligations of the Member States). The reports examine key national judgments in this context. The analysis is based on the analysis of more than 660 cases. The reports make particular reference to those cases which have been summarised and commented upon in the context of the Commission 2009 update study and e-Competitions State aid Thesaurus.

The present book aims at providing national judges, EU and national officials, in-house lawyers and interested parties (grantors of the aid measures, beneficiaries, third parties, investors) as well as private practitioners an extensive overview of the remedies available before national courts in relation to State aid issues. This is the first exhaustive analysis of how the EU State aid rules are applied in practice by the national courts in all the 27 Member States.

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August 2010

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<sup>6</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ (2003) L 1/1.

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