

University Doctoral (PhD) Dissertation Abstract

**New Challenges in the Implementation of EU State Aid Law
An analysis with a Special Focus on Tax Measures**

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1. Research background and objectives

My research focuses on the 21st century challenges of implementing state aid law, in particular state aid measures in the form of tax measures.

In order to protect the achievements of the European Internal Market, the Treaty on the Functioning of the European Union generally prohibits Member States from providing State aids that distort (or potentially distort) competition between Member States. At the same time, it enables those aid measures whose positive effects outweigh the negative effects of the distortion of competition to be exempted from the general prohibition. However, the content of these rules is steadily being transformed by jurisprudence and especially by the interpretation activity of the Court of Justice of the European Union in accordance with the EU objectives.

In order to ensure that this prohibition is respected and that the exemptions are applied uniformly throughout the European Union, the Treaties give the European Commission exclusive powers of control. The European Commission, as a quasi-competition authority, ensures that State aid provided by Member States complies with EU competition rules. As a general rule, Member States are obliged to notify the European Commission of all their planned State aid measures. However, due to the limitations of the Commission's capacities, it is also relying on Member State authorities and courts from the beginning.

Since the limits set by the EU on national State aid policy affected the sovereignty of the Member States extremely sensitively, the EU State aid rules were not often applied until the 1980s due to the counter-interests of the Member States. Since then, the resistance of the Member States has eased, but their counter-interests have remained. However, due to the developments affecting Community powers and the growing policy challenges, the resolution of the tension becomes more and more urgent (see in particular the energy and environmental protection problems or the crisis generated by the coronavirus).

The interpretation of the concept of state aid is not self-evident. In the dissertation, we see that the concept of state aid is constantly evolving. As a result of the Commission's practice and the case-law of the Court of the European Union, cases and areas that were not included in the original intentions of the founders have now been included in the conceptual scope of State aid. However, this generates further conflicts between the Union, and especially between the Commission and the Member States. The Member States try to defend their sovereignty,

while the European Union has to face more and more new challenges, which require the use of new instruments and, where appropriate, the extension of competition law prohibitions.

The State aid policy of the European Union has undergone many important changes in recent years and is still undergoing them. In the past half century, numerous secondary legislation and guidelines have been created.

The wording of the Treaties provides the Commission with relatively wide discretion regarding the application of State aid rules. The Commission - using its broad margin of appreciation - exercises more cautiously in some cases and more strictly in others. For example, in response to the Covid-19 epidemic, the Commission created a temporary crisis framework to enable Member States to take advantage of the full flexibility of State aid rules. However, based on the experience of 2008, this is a double-edged sword, since greater flexibility can negatively affect internal market competition. Nevertheless, through relaxation, Member States can also apply many discriminatory tax measures, which can also overshadow the EU's objectives against harmful tax competition.

On the other hand, since 2014, the Commission - with reference to the state aid framework - have been beginning in-depth investigations against a series of favorable tax treatments granted to multinational companies, which led to negative decisions and the recovery of illegal financial advantages granted from these companies. However, this type of intervention is not accepted by the Member States.

The aim of the dissertation is to reveal the dilemmas related to the Commission's new stances and competence limits detailed here, and the related judicial approaches.

Since the application of State aid rules takes place in a politically sensitive environment (since the decisions are aimed directly at the Member States), they can attract considerable public attention. There is a continuous discourse in the legal literature about the Commission's approach, both in general and in relation to individual cases. However, this debate is ongoing, many questions are still unanswered, and further actions by the Commission raise new questions. The EU's control of the State aid policy of the Member States still generates tension between the Commission and the Member States.

The aim of the dissertation is to get involved in the debate surrounding the European Commission's investigations into State aid. More specifically, it examines how the concept of

State aid is interpreted by the EU court, especially when the European Commission subjects tax measures to state aid-related investigations. Based on case law, it is already clear that tax measures can also notify the concept of State aid. However, in recent years, the Commission has also been investigating direct taxation with reference to the protection of the internal market. Since direct taxation remained in the hands of the Member States in the classic EU model of division of powers, the possibilities of EU control are very limited. The protection of the internal market and the conflicting interests of the Member States are generating more and more EU challenges. Nevertheless, in recent years, the Commission has been trying to take action against Member State practices that have a negative effect on the internal market through the modernization of State aid rules. The aim of the Commission is to promote more uniform application of the law, more effective enforcement and thus the protection of the internal market. Meanwhile, environmental protection and energy challenges are also increasing at the EU level, and the coronavirus has generated another crisis situation. These developments are also connected to each other in the field of State aids. The chapters of the dissertation are connected by following the path of these challenges. In light of all this, the dissertation examines the tensions between the sovereignty of the Member States and the powers of the Commission, as well as the *raison d'être* of the ever-increasing number of soft measures.

2. The structure of the dissertation

I have divided the dissertation into three main parts: the first large chapter is entitled Conceptual Foundations, the second part is dedicated to clarifying the role of the Commission, Member States' authorities and courts in implementation, while the third large unit specifically examines the 21st century challenges of the research area.

In the first half of the *Conceptual Foundations* chapter, the focus of the investigation is on the tax as a political instrument of the Member States' budget. The starting point is the clarification and delimitation of related concepts, thereby defining the budget policy and tax policy of the Member States, and the identification of a narrower segment of tax law - the correlations of tax law preferences with State aid law, as well as the tension between tax sovereignty and tax harmonization (which forms the core of the dissertation give). All this is done on the basis of the relevant literature and case law. After that, in the second subsection, I continue with the interpretation of the conceptual elements of EU State aid based on the case-law of the European Commission and the Court of Justice of the European Union.

The second chapter is about the institutional framework of implementation, the role and changing roles of the Commission, Member States' authorities and courts. 1) The sub-chapter "Committee's powers and scope in the control of State aid" examines the EU legislation on the Commission's powers and scope, as well as Commission and EU Court practices. The second subchapter (2) Changing the role of the Member States' authorities in the implementation of State aid law) examines the role of the national authorities, and the third (3) The role of the national courts in the EU competition law of state aid) examines the role and changing role of the national courts in the implementation.

The third main part of my dissertation is entitled The latest challenges in the implementation of State aid law. This chapter basically focuses on aid measures in the form of tax measures through a critical approach to soft law documents.

In the first unit of the third chapter (1) *Legitimate control or hidden tax harmonization? - Old debate, new developments based on the latest case law of EU State aid law*) I focus on the Commission's new approach to direct taxation. In the past few years, the Commission has also been examining the favorable tax practices of the Member States for multinational companies from the point of view of State aid. However, the Member States do not agree with this, because according to them, based on the principle of subsidiarity, the competence of the Commission cannot extend to the examination of direct taxes. In this sub-chapter, I am actually looking for an answer to the question of how far the Commission's control extends in connection with Member States' tax measures. To answer this question, I examine the latest case law of the Commission and the Court of Justice of the European Union, as well as compare the relevant literature. Furthermore, I reveal how the EU Court relates to the Commission's room for maneuver in this aspect.

Closely related to the previous subsection „*Can the Gordian knot be untied between Member States' tax sovereignty and the Commission's State aid soft law?*”, in fact, the subsection continues the unanswered research questions of the previous subsection. The European Commission's soft law documents generate more and more tension on the quagmire of competence boundaries. According to the Member States and some representatives of the legal literature, the Commission intends to have a say in the taxation policy of the Member States at a higher level than ever before by monitoring the respect of State aid law and using soft law instruments. Nevertheless, the changing status of soft law instruments is also surrounded by lively discourse in the legal literature. The question arises whether the

Commission respects the division of powers between the EU institutions and the taxation autonomy of the Member States. In the light of all this, in this subsection I also examine the Commission's new approach.

The next sub-chapter (2) *The latest developments of environmental protection and energy State aids in the form of tax measures*) examines the relevant dimensions of the increasing environmental protection and energy problems in the 21st century from the point of view of my research topic. Since the European Commission itself refers to this area as one of the new political priorities calling for the development of State aid law, I considered it justified to integrate it into the dissertation. By examining the environmental protection and energy support measures in the form of tax measures, I was able to introduce a new aspect into the dissertation, because I started from the preliminary assumption that changes in the dynamics of secondary law and soft law mutually influence each other.

The third sub-chapter (3) *Footprints of the pandemic in the implementation of the EU competition law of state aid*) focuses on the response to one of the largest challenges of the 21st century, the challenges generated by the coronavirus, which emerged with extraordinary suddenness, namely the relaxation of state aid rules. The purpose of this subsection is to explore the early effects of the preferential rules on the internal market and competition between Member States, in connection with the Commission's room for maneuver and the issues of the implementation of state aid law.

In the last sub-chapter (3/B) *EU crisis management: State aid programs approved on the basis of the temporary framework of State aids and their internal market risks*) linked to the previous unit, I examine the Commission's response to mitigating the negative economic effects of the Covid-19 pandemic, which is the state it manifested itself in the temporary relaxation of state aid rules and was realized specifically in the form of the approval of tax-based support measures. In this unit, I start from the preliminary assumption that the relaxation of state aid rules leads to a distortion of internal market competition. In this unit, I examine tax measures as tools for crisis management and explore the possible risks of their application. After that, I will review the support programs authorized on the basis of the temporary framework rules, which are partially or fully implemented through tax measures.

Hypotheses of the research

Summarizing the objectives discussed so far, the basis of my investigations are the following hypotheses:

- The EU competition law rules for State aids have been found at the level of the Treaties from the beginning, but their scope has changed and their content is undergoing continuous development. I start from the preliminary assumption that the EU's objectives require the Court of Justice of the European Union to interpret the concept of state aid more and more broadly in response to new competition-distorting practices. According to my hypothesis, in order to ensure the general prohibition of state aids, and thus distortion-free competition in the internal market, which is an essential part of integration, the authority of the Commission (which enforces the ban) is also strengthened by the law-interpreting activity of the Court of Justice of the European Union.
- I test the statement that in recent years, by examining the favorable tax practices provided by the Member States to multinational companies from a State aid point of view, the European Commission builds new approaches into the implementation policy of state aid law, and, asserting its own priorities, also reaches into areas where it did not have competence until now . Typically in the field of direct taxation. As part of my hypothesis, I also record that the Court of Justice of the European Union recognizes the European Commission's attempts to expand competences in this direction due to the increasing tax policy behavior of Member States that distorts competition.
- I am testing whether the contradiction between the taxation autonomy of the Member States and the growing powers of the European Commission is really irresolvable. I base this suggestion on the fact that Member States protect their tax sovereignty and regularly challenge Commission's decisions that negatively affect their tax policy. On the other hand, action against harmful tax competition and the protection of the internal market justify new competition law approaches. I believe that, since this area is politically extremely sensitive from the first moments of integration, the Commission's reactions to Member States' "actions" further increase jurisdictional tensions.

- According to my hypothesis, the implementation of State aid law is inefficient due to the Commission's lack of capacity and Member States' resistance. I base this assumption on the fact that, although ensuring the enforcement of the right to State aid is the exclusive competence of the Commission, it is also forced to rely on Member State authorities with opposing interests from the very beginning. Nevertheless, due to the political sensitivity of the area, the Member States practically ignored the ban in the beginning, and later applied it very differently, and it is still applied to this day. When formulating my premise, I also took into account the fact that the Commission itself referred to its lack of capacity, when it defined the range of measures exempt from the notification obligation in such a way that, as a result, 96% of the aids escaped the Commission's control.
- Harmful tax competition is a growing problem in the European Union. In recent years, the European Commission has been trying to de facto limit competition practices between Member States through the application of strict state aid rules. However, these frameworks were not designed for this purpose. For this reason, I believe that, despite the Commission's efforts, the framework of State aid law is not suitable for action against harmful tax competition. On the other hand, State aid rules were relaxed as part of the Commission's response to the coronavirus crisis. Based on the experience of the 2008 crisis, I start from the preliminary assumption that the relaxation of State aid rules leads to a distortion of internal market competition, and leads to an increase in harmful tax competition. With this context, I would also like to prove that the framework of state aid law is not suitable for action against harmful tax competition.
- According to my hypothesis, the dynamics of secondary law and soft law relating to state aid law mutually influence each other, which may also change the legal status of soft law. I base this on the fact that the number of secondary and soft law documents in the research area has increased in recent years. In many cases, secondary law only provides a framework, which is filled with content by the Commission's soft law. I start from the preliminary assumption that, despite the non-binding nature of soft law, it also has a significant impact on Member State's practices and the subsequent development of secondary law.

3. Methodology of the research

I start the theoretical foundation of the topic with an analytical method. I review the relevant domestic and foreign (legal and economic) literature positions, and then define the concept and most important characteristics of the Member State's budget policy and tax policy. In the light of all this, I turn to a narrower area of tax law - which is the focus of my research - the issue of tax law preferences. Using the method of content analysis, I reveal their connections with State aid law, as well as the sources of tension between tax sovereignty and tax harmonization. In order to interpret the concept of state aid, I primarily systematize the results of the jurisprudence of the EU Court and the practice of the Commission, and examine the case law with document and content analysis, which are accompanied by my own findings and summaries. I will also use the research methods discussed so far to clarify the executive powers and roles. After researching sources, I examine the relevant literature positions with a content analysis, if necessary, I compare them using a comparative method, and I examine the EU legislation with a document and content analysis. I use the correlational and explanatory methods here as well. I therefore examine the relevant legal literature, EU law and other EU documents using both deductive and inductive methods.

I also use the research methods discussed so far to clarify the executive powers and roles. In addition to the analysis of the relevant literature positions and the EU legal material using an analytical method, the case law analysis is also decisive here, primarily when exploring the role of the Member States' courts.

In the section on the latest challenges, in addition to the already described research methods, empirical analysis also plays a role. The first important part of this research unit is the jurisprudence research sensitively affecting the tax sovereignty of the Member States, which is combined with a qualitative analysis of the decisions of the Commission and the jurisprudence of the Court of Justice. When selecting the Commission's and the Court's cases, I focused on the most recent cases, primarily involving large multinational companies, since their activities raise new questions from the point of view of the tax sovereignty of the Member States. Secondary literature and commentaries are also useful for carrying out this analysis, as they often criticize the Commission's new approach and the reasoning of the Commission and the EU Court. In order to answer the research questions of this chapter, I also analyze publicly available statistics using the method of data analysis.

The dissertation also includes a self-developed database, which includes state aid programs in the form of tax measures (partly or entirely), approved based on the temporary framework regulations published in connection with the Covid-19 pandemic. The examined period lasts from the publication of the framework, from March 20, 2020, to July 15, 2022 (applicability of the preferential rules is, as a general rule, June 30, 2022). In order to find all relevant Commission decisions, I conducted a systematic search of the competition law database published by the Commission,¹ using carefully selected search terms.² Using this empirical method, from the examined period, it was possible to filter out approx. 120 Commission decisions and then process them using the data analysis method. Using a comparative method, it was also possible to define three groups of Member States.

In the individual chapters, I tried to combine the described methods to get as comprehensive a picture of the examined research questions as possible.

4. Results of the research

Summarizing the partial conclusions of the dissertation, the following findings can be pointed out.

The interpretation of the EU competition law concept of state subsidies is not self-explanatory. The division of powers between the European Union and the Member States is a deeply rooted and sensitive area. The problem stems from the fact that the Member States make economic policy decisions as part of their sovereignty, they also have the right to decide on state aids, tax measures and the distribution of tax burdens. However, the taxation autonomy of the Member States results in significant differences between the tax rules of the Member States. The differences between tax measures are also interesting from a competition law point of view, as they can distort competition between Member States. Since the Member States are part of the European Union, they have given up a part of their freedom of decision. Indeed, the Treaties set certain limits that are necessary to achieve the objectives of the Union

¹ Available at the following link:

https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3

² First, in the *Search competition cases (all policy areas)* section, I selected the term *State Aid* in the *Policy Area* field. I entered „Covid-19” in the *Case Title or Company Name* line, and then in the *Decision Date* I noted that I am interested in decisions after March 20, 2020. After that, I further refined the search with the special search conditions (*State Aid Advanced Search*). In the *Decision Type* field, I selected all options that mean a positive, negative, or conditional committee decision (I narrowed down the nearly 50 options to 11 in total). In addition, I set all tax-related measures (a total of 9) in the *Aid Instrument* field that filters out the tax-related measures that are the subject of the research.

and the efficient functioning of the internal market. Moreover, the Commission's practice and the EU Court's interpretation are constantly shaping them.

On the basis of the investigations of *Chapter I, Conceptual Foundations*, it can be established that the Court of Justice of the European Union examined the concept of state aid from many aspects and used an expansive interpretation in all cases. The permanent judicial practice therefore interprets the concept of prohibited state subsidies broadly and includes areas that were not originally included in the intentions of the founders. Based on what is described in the chapter, it seems that the development of EU law justifies the expanded interpretation and the scope of the powers of the Commission in order to achieve the EU objectives. At the same time, it can also be read from the discussions in the first chapter that the Court of Justice of the European Union expects the European Commission to conduct extensive investigations, so it cannot base its decisions on purely hypothetical statements.

In the first chapter, I also established that the confrontation between Member States' taxation autonomy and EU competition law, and the lack of clarity of the concept of State aid, result in legal uncertainty and may even threaten the foundations of integration.

In the second chapter (*II. implementing power: The role and role change of the Commission, Member States' authorities and courts*), I explored the procedural roots of the tensions between the Commission and the Member States, building on the foundations of the first chapter. In the sub-chapter (*1) Commission's powers and scope in the control of State aid*), I made the subject of the investigation the EU legislation on the Commission's powers and scope, the Commission's and the EU Court practice and the relevant legal literature. In this sub-chapter, I tried to justify, among other things, the hypothesis that the Court of Justice of the European Union strengthens the powers of the European Commission and recognizes its attempts to broaden its competences with its expanded interpretation. Based on the investigations in this subsection, I concluded that the jurisprudence has confirmed that the Commission has a wide discretionary power regarding the control of State aids. It can also be stated that the Court was previously less thorough when reviewing the Commission's decisions. Nowadays, however, much more thorough revisions are already appearing in judicial practice. More recently, the Court increasingly takes into account the specific components of the legal dispute, the technical or complicated nature of the Commission's assessment. Despite this, we still cannot speak of a consolidated stricter review, since if the Court is faced with a more complex economic assessment, the review is still limited. In light

of all this, in connection with my preliminary hypothesis, I state that the Court strengthens rather than weakens the powers of the Commission.

In the sub-chapter (2) *Change in the role of Member States' authorities in the implementation of State aid law*), my investigation focused on the latest developments in the cooperation between the Commission and Member States' authorities. I explored the relevant points of the forms of cooperation in terms of my topic and hypotheses. I found that the EU Court recorded as far back as the 1980s that, according to the loyalty clause, the authorities of the Member States must apply their national law in accordance with EU law, and it still holds firm to this interpretation. Accordingly, national courts and authorities are obliged to fully enforce and consistently interpret EU law. This obligation is even clearer in the field of State aids, where the Treaties stipulate an increased obligation to cooperate. However, the scope of this obligation is much less evident if EU soft law is also involved. The EU Court clarified the obligation to take soft law into account several times, but only with regard to national courts, but not with regard to public administrative authorities. Despite the fact that part of the legal literature believes that the findings of the jurisprudence also apply to the administrative authorities of the Member States, the exact scope of the tasks of the Member States' authorities is still far from clear. It seems that the Court is cautious for the time being and does not wish to resolve this tension that also affects the autonomy of the Member States.

Nevertheless, through the SAM reform, the Commission expanded its executive central role by closely integrating domestic state aid experts into its activities. However, the resulting system shows a changing picture, due to constitutional limitations and the pressure exerted by opposing forces. In order for the Commission to focus on the big issues, decentralization of the tasks introduced by modernization may seem inevitable and logical, but the effects of the reform require careful consideration as they have a divisive effect.

In connection with my hypotheses, I recorded the following findings: firstly, since the EU Court did not clarify the concerns related to soft law regarding the implementation in the Member States, it did not define the limits of the Commission's powers either. Secondly, in its announcement on the concept of State aid, instead of systematizing complex issues already clarified in case law, the Commission introduced new interpretations that go far beyond the boundaries of the concept of aid. In addition to the fact that with a new or inaccurate interpretation of the Treaties, the Communication may have worrying consequences in terms of legal certainty, the Commission's new approach also raises legitimacy concerns. Thirdly,

despite the fact that the Commission places great emphasis on coordination and cooperation between public administrations in order to achieve more effective implementation, this goal can be jeopardized by differences at the national level, constitutional limitations and the likely intervention of opposing forces. A decentralized system can only work if State aid rules are respected, regardless of who applies them. If there is a lack of willingness to cooperate, the effective implementation of State aid law is called into question and, where applicable, even the single market, which is the basis of integration, may be endangered.

In the sub-chapter *entitled 3) The role of national courts in the EU competition law of state aid*, my aim was to clarify the role of national courts in the implementation of State aid law and thereby confirm or discard my relevant presuppositions. More specifically, I tested the effectiveness of the implementation in this area as well, and I also examined problematic points related to the spread of the Commission's soft law instruments and the limits of their powers. I compared the findings of the subsection with the findings of the previous subsection, and noted that while the EU Court did not wish to take a position regarding the enforcement tasks of the member states' public administrative authorities, the jurisprudence concerning the national courts is extremely voluminous and increasingly clarifies the issue of the limits of competence. Based on the case law, I concluded that national courts have a prominent role in the implementation of state aid law and that the primacy of EU law over national constitutional principles is increasingly being outlined.

Based on case law, it seems that clarifying the duties of national courts contributes to more effective implementation of State aid law.

This picture is somewhat shaded by the rise of the Commission's soft law instruments and the recent development that the Court of Justice, disregarding its previous firm statement regarding soft law acts, stated that national courts can waive the application of soft law acts in justified cases. I believe that this development may generate new debates regarding the status of soft law and the limits of the Commission's powers, if it becomes a precedent in the future. Nevertheless, this finer line can be a kind of brake on the rise of the Commission's soft legal instruments and the new approaches contained in them. In this way, the EU court can narrow the Commission's room for maneuver with regard to soft law. This development may also affect effective enforcement. However, at the moment, these suggestions are more of a hypothetical nature, the clarification of these questions can be expected from the jurisprudence of the coming years.

The third chapter of my dissertation is *III. It is about the latest challenges in the implementation of State aid law*. In its first subsection (1) Legitimate control or hidden tax harmonization? - Old debate, new developments based on the latest case law of EU State aid law) I scrutinized the Commission's new approach. I found that the EU court, in response to trends at the EU and member state level, is constantly developing the concept of state aid and interpreting it more and more broadly. In addition, I have come to the conclusion that the jurisprudence has recently repeatedly strengthened the Commission's ability to control in the field of direct taxation. Based on the examined case law, I found that the Commission's powers in the field of state subsidies are much stronger than in tax policy (where it only has the option of making proposals, since the unanimous decision belongs to the Council of the European Union). For this reason, in the hands of the Commission, the investigation from the perspective of State aid in the field of direct taxation seems to be the only means of action against tax evasion that can achieve results relatively quickly. This is reflected in the fact that the Commission's investigations resulted in the modification of the rules and practices of the Member States in several cases (for example, as a result of the Engie or McDonald's cases). The Commission is therefore able to exert political pressure, but to a limited extent, against harmful tax competition. In view of all of this, I noted that although state aid investigations are limited, they may be able to tip the fight against tax evasion in a positive direction.

Based on the discussed case law, it seems that the Commission has the right to investigate in the area of direct taxes, however, the question remains open as to what depth it can do this. On the one hand, the analyzed Commission practice suggests that the Commission would approximate Member States' competences that have a negative effect on the internal market, including some areas of the Member States' tax systems, through the control of State aids. On the other hand, we know that, historically, direct taxation is an essential element of Member States' sovereignty. It is true that with the Treaties, the Member States agreed on a certain limitation of their sovereignty, but they did not give full power to any EU institution. At the current stage of development of EU law, I failed to answer the politically extremely sensitive question of how far the Commission can encroach on the autonomy of the Member States by referring to the implementation of EU law.

Therefore, „1/B) numbered *Can the Gordian knot be untied between Member States' tax sovereignty and the Commission's state aid soft law?*” I started another experiment with the chapter. In this unit, I noted that the tension between tax sovereignty and State aid law is evident in the legal literature. The aforementioned legal scholars believe that the source of the

unresolved issues of sovereignty is the European Union itself, since it is a constantly changing supranational entity. On the other hand (also in the legal literature), it is often forgotten that national sovereignty is not static in nature either. This can be read from the examined Commission and Court practice. The concept of State aid is shaped by a constantly changing and developing legal interpretation. This process also affects the borders of sovereignty, where there have never really been definitive lines. Nevertheless, in practice, the exclusive powers of the EU do not have clear "external" limits either.

The issue of sovereignty is therefore highly politicized, and its content is constantly undergoing minor and major changes. It is clear that the Member States strongly insist on their tax sovereignty. It is also increasingly clear that the implementation of the changing EU objectives (compared to the original objectives more significantly) curtails national sovereignty. However, at the current stage of development of EU law, it is not possible to clarify the limits of competence and thus whether the Commission is reaching into areas through soft law for which it is not actually authorized. What is discussed in this unit rather suggests that this happens, but compared to the previous subsection, the jurisprudence of the court points towards strengthening the Commission's room for maneuver. Based on what has been said so far, it seems that the contradiction between the sovereignty of the member states and the new approach of the Commission is irresolvable. Nevertheless, this tension could be alleviated if the actors' willingness to cooperate increased.

In this section, it was also revealed that due to the very limited suitability of the State aid frameworks for dealing with tax abuses and the strong resistance of the Member States, it may be more effective to lay the foundations for cooperation in this area with other means. This can also be linked to the problem of overstepping the authority, as finding another direction can resolve deeper conflicts.

In summary, it was not possible to refute or prove that the Commission, asserting its own preferences, is reaching into areas where it did not have competence until now. Nevertheless, tensions between Member States and the Commission threaten the effective implementation of State aid law and even the foundations of integration due to opposing forces.

In the second sub-chapter (2) *The latest developments of environmental protection and energy State aids in the form of tax measures*) I examined the relevant aspects of the increasing environmental protection and energy problems in the 21st century from the point of view of

my research topic. In this unit, I explored the change in the legal status of the State aid guidelines, and thus the Commission's new procedural developments.

The environment and energy sectors are probably one of the best examples of setting new directions for the relationship between the State aid guidelines and secondary EU law. In this area, the relationship between secondary law and soft law can be mapped and monitored quite well. In this section, it was possible to identify the three-step, circular process of the guidelines. I found that this process consists of the adoption of the General Block Exemption Regulation (GBER), State Aid Guidelines and new secondary legislation. While a paradigm shift took place and the emphasis shifted from the Treaties to secondary law, and the rise of soft law also occurred, and these changes also affect the future directions of the relevant secondary EU law. The mandatory provisions of the GBER provide a framework, but provide relatively greater freedom to Member States. In fact, through more detailed findings of soft law, the Commission can build new approaches into the Member States' support policy, which may be a concern due to legislative and competence limitations. Nevertheless, the principles set out in the Commission's Communication are a guiding thread for the future enforcement of EU State aid rules and future proposals for EU environmental and energy legislation. In this process, the guidelines can play a bridging role, building on the mandatory principles laid down in the decree, and they can prepare the revision of the sectoral directives and decrees. If this approach is confirmed, the Commission may go beyond the original objective of modernizing State aid rules, and this new dynamic may also change the discretion granted to Member States by the Treaty. Based on this, there is a contradiction between the non-binding legal nature of non-binding EU documents and their actual legal effect. For the time being, the Court of Justice of the European Union is cautious about the legal effects of soft law, but tends to recognize the occurrence of indirect effects. In addition, a kind of duality can be discovered, since the Commission leaves more freedom to the Member States in this area.

These developments further deepen the debate about the role of state support law. The Commission's latest efforts regarding legal security and environmental protection objectives are to be welcomed, however, its new guidelines embedded in soft law are a cause for concern regarding the limits of competence. Moreover, due to the rapid development of legislation in the energy sector, the described dynamics can be a footprint for other sectors as well. Based on this, it becomes urgent that the Court of Justice of the European Union clarify the competences of the Commission and the member states, as well as the legal status of soft law.

In the third sub-chapter (3) *Footprints of the pandemic in the implementation of EU competition law of state aid*), I focused on the legal dimensions of State aid law in the Commission's responses to the challenges generated by the coronavirus. In the spring of 2020 in the European Union, it became clear to both member state decision-makers and the European Commission that they must intervene to prevent economic collapse. The Commission stated that it is willing to deploy all necessary tools, similar to its crisis management in 2008. The purpose of this subsection was to explore the early effects of the preferential rules of the temporary state aid framework on the internal market and competition between Member States, and to test my hypotheses regarding the Commission's room for maneuver and the effectiveness of the implementation of state aid law in this aspect as well. As a result of my investigations, I noted that the Commission used its leeway to relax the implementation of the strict rules of state subsidies, but this could put efficiency and even the internal market at risk. It is clear from the annulment decisions of the General Court that it expects a more thorough explanation from the Commission, but it also provides an opportunity to remedy errors in explanation. In my opinion, the EU court thereby strengthens the powers and scope of the Commission also in extraordinary situations. In this aspect, it seems that the EU court is more permissive towards the decisions of the Commission. Overall, I believe that although the epidemic situation requires the use of all possible means to mitigate social and economic damage, its negative effects on the internal market must also be taken into account.

In the last sub-chapter of the dissertation (3/B) *EU crisis management: Tax support programs approved on the basis of the temporary framework of state aid and their internal market risks*) I examined tax measures approved on the basis of the temporary state aid framework rules published in order to mitigate the negative economic effects of the pandemic. On the basis of the approximately one hundred and twenty reviewed committee decisions, it can be concluded that the member states with greater budgetary capacity were able to make more intensive use of the opportunities provided by the temporary framework. It is not possible to draw far-reaching conclusions regarding market distortion from this finding alone within the framework of this research, since I specifically focused here on tax-related measures - for which there is currently no information available as a percentage of GDP - however, the numbers clearly show the extent to which the individual Member States in relation to each other they relied on tax measures, and how much budget they could put behind each program. It also became apparent that asymmetry can lead to an increase in harmful tax competition in

the long term. Taking into account the context described, the risks related to harmful taxes may increase through the relaxation of state aid rules.

Given that the pandemic is still ongoing and the Russian-Ukrainian conflict has presented new challenges to Member States and their undertakings, the combined effect of the various tax measures will only become apparent when the economies begin to recover. Nevertheless, some effects of the epidemic and the war will be difficult to separate from each other. In the long term, greater coordination of fiscal policies within the Union will be of fundamental importance in terms of limiting harmful taxes. As it has already been discussed countless times, the question of how to create a balance between respecting national tax discretion and protecting fair competition in the internal market is an open question. The coronavirus crisis and the loosening of State aid rules have further deepened this problem, since the very limited power of control over tax competition, combined with fiscal asymmetries, can lead to a distortion of competition in the internal market. Through the application of strict State aid rules, the Commission tries to de facto limit competition practices between Member States, therefore loosening control over them may also facilitate the implementation of harmful tax measures. In this context, the effectiveness of State aid rules in the fight against harmful tax competition is even more questioned.

Based on the general summary of my research results, the following findings can be pointed out in relation to my hypotheses:

- My hypothesis that, in response to new types of competition-distorting practices, the Court of Justice of the European Union interprets the concept of State aid more and more broadly and strengthens the powers of the Commission, has been confirmed. The verifiability of this goes practically throughout the dissertation, since all chapters at least partially dealt with the interpretation practice of the EU Court. Nevertheless, despite the fact that the jurisprudence has typically strengthened the powers of the Commission, the EU Court expects the Commission to conduct a thorough investigation procedure and adequately justify its decisions. Failure to do so will annul the Commission's decisions.
- My next preliminary assumption was that the European Commission in recent years - by examining the favorable tax practices provided by the Member States to multinational companies from a State aid point of view - builds new approaches into

the implementation policy of the State aid law, and also asserts its own priorities and reaches into areas where until now, it did not have powers - namely direct taxation and thus the tax sovereignty of the Member States. The first half of my hypothesis was confirmed and supplemented by the fact that it is not only new-oriented investigations, but increasingly intensively applied soft law instruments that actually build new approaches into enforcement policy and significantly influence the directions of the Member States' State aid policy and the tax sovereignty of the Member States. However, it was not possible to prove that the Commission would do all this to enforce its own priority. As part of my hypothesis, I noted that the Court of Justice of the European Union recognizes the European Commission's attempts to broaden its competences due to the increasing competition-distorting tax policies of the member states. My assumption was confirmed, as the jurisprudence discussed has repeatedly confirmed that the Commission can also conduct investigations in the area of direct taxation.

- In my thesis, I started from the preliminary assumption that there is an irresolvable contradiction between the taxation autonomy of the Member States and the growing powers of the European Commission. During my investigations, I came to the conclusion that due to the political sensitivity of this area, further clarification is needed regarding the limits of competence. Since there are no clear limits to either the powers of the Commission or the sovereignty of the Member States, and the European Union itself is a constantly changing entity, at the current stage of development of EU law, only a positive change in the willingness to cooperate could resolve the conflict between the Commission and the Member States. As long as the willingness to cooperate is absent, the conflict seems irresolvable. Nevertheless, in recent years there has also been a kind of relaxation on the part of the Commission, since in some cases it provides more freedom to the Member States than before (energy and environmental protection, epidemic situation, etc.).
- According to my assumption, the implementation of State aid law is inefficient due to the Commission's lack of capacity and Member State resistance. Based on the partial conclusions of the individual chapters of the thesis, I came to the conclusion that it cannot be clearly stated that the implementation of the State aid law is ineffective. It is to be welcomed that the European Commission has also sought to promote efficiency through modernization. However, it became clear that the Commission's capacities are

limited, and the Member States continue to treat with reservations the Commission's increasing intervention in their aid policy, and even more so, their tax policy. These facts reduce the effectiveness of the implementation, but do not prove that it is not effective.

- In connection with harmful tax competition, I recorded the hypothesis that the framework of State aid law is not suitable for action against harmful tax competition, and the relaxation of State aid rules due to the coronavirus crisis further deepens this problem. In connection with this premise, I established that tax competition and the transfer of profits of enterprises are characterized by strong, cross-border dynamics, but State aid law was not invented to explore these. State aid-related investigations have so far represented a very limited control, and the Member States do not accept the Commission's investigations in this direction either. However, it can also be stated that due to the political pressure on the Member States due to the action of the Commission, several investigation procedures resulted in the modification of the regulations and practices of the Member States. In view of all of this, I noted that although State aid investigations are limited, they may be able to tip the fight against tax evasion in a positive direction.

As for the relaxation of State aid rules, the Member States with greater budgetary capacity were able to make much more intensive use of the opportunities provided by the framework rules, but in terms of GDP, we get a much more nuanced picture. My first conclusion can also be seen from the preferential tax measure introduced by the Member States, but no information is available in connection with the latter. By definition, these developments also affect the internal market and tax competition. The authorized framework of tax-related measures suggests distortion of competition and the possibility of harmful tax competition, but no information is yet available on the actually awarded subsidies in proportion to GDP. Since the dust of the crisis has not yet settled - in fact, it has intensified as a result of the Russian-Ukrainian conflict -, in fact, the answer to this question remains merely an early assumption, which can neither be rejected nor verified.

- Finally, according to my last hypothesis, the secondary law on State aid law and the dynamics of soft law mutually influence each other, which can also change the legal status of soft law. It has been confirmed that, despite its non-binding nature, soft law

significantly influences Member States' practices. A multi-stage process could also be identified, in which the secondary law only provided a framework, which was filled with content by the Commission's soft law. Soft law also affects the review and subsequent directions of secondary law. It can be concluded that the legal status of soft law is changing. However, the process is still ongoing, so the framework of this research is not suitable for clarifying the changing status of soft law, they can only provide a snapshot of the process.



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List of publications related to the dissertation

Articles, studies (9)

1. **Széles, K.:** A pandémia lábnyomai az állami támogatások uniós versenyjogában és a belső piacon.
Gazdaság és Jog. 30 (5-6), 32-39, 2022. ISSN: 1217-2464.
Level of HAS Committee on Legal and Political Sciences: B
2. **Széles, K.:** Jogszerű ellenőrzés vagy rejtett adóharmonizáció?: Régi vita, új fejlemények az uniós állami támogatási jog legfrissebb esetjoga alapján.
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9. **Széles, K.:** Újabb fordulat a lengyel bírósági reform ügyében?

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List of other publications

Books (1)

10. Szerk. Siska, K., Papp, L. J.; Hadházi, D., Kanyuk, P. Á., Kisgyörgy, M., Kiss-Batta, A., Kulcsár, E. A., Molnár, L., Németi, O., Papp, B. I., Polyák, D. E., Róssinger, I. N., **Széles, K.**, Vincze, T.: Migráció a 21. században: hatása Európa politikai, gazdasági és kulturális életére. DE-ÁJK Praetor Szakkollégium, Debrecen, 183 p., 2016.

By the directives of HAS Committee on Legal and Political Sciences:

Publications in periodicals level „A”: 2, related to the dissertation: 2.

Publications in periodicals level „B”: 2, related to the dissertation: 2.

Publications in periodicals level „D”: 5, related to the dissertation: 5.

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