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State aid control from a political science perspective

Michelle Cini

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Abstract

This chapter reviews the political science research on European Union (EU) State aid policy. The literature focuses primarily on the evolution of State aid control and on the institutions and actors who play a role in the policy. Resting on Treaty provisions that were little used in the first decades of the European Community, the Commission's incremental soft law approach, supportive jurisprudence from the Court of Justice of the European Union (CJEU), and the involvement private complainants have helped bring together Commission and Member State interests in support of State aid control. The Commission's handling of the financial crisis, a test for the more mature regime, has been largely judged a success. Over time policy initiatives have helped to reduce and target national subsidies, and the enforcement of and compliance with the Treaty provisions have improved dramatically since the late 1980s. The political dimension of the policy seems to have less resonance these days, as there are fewer high-profile controversial cases than in the past, but there are still interesting questions to be addressed about the way in which competition, regional, environmental, cultural and industrial policies are balanced against each other in the design and application of the EU-level policy and decision-making, and what the implications of UK's departure from the EU and the emergence of populist governments and leaders in the Member States might mean for State aid control.

Keywords: European Commission; Member State interests; soft law; financial crisis; Europeanisation; effectiveness; compliance; Brexit

I. INTRODUCTION¹

European State aid rule- and decision-making has always been politically sensitive. In contrast to antitrust or mergers, State aid control is '...the privileged dialogue between the Commission, national governments and favoured firms' (Kassim and Lyons 2013: 11). The relationship between Commission and Member state lies at its heart, however, with firms playing only an indirect role. Given their strong distributive element, State aid measures and EU responses to those measures also have the potential to attract considerable public attention. For elite actors, however, reference to the *politics* of State aid control has pejorative overtones. In order to assure the credibility of EU State aid control the Commission seeks to avoid political conflicts about individual decisions. For decades, the Commission has sought to commit itself to strict State aid control by developing an increasingly complex system of soft and hard rules (Rawlinson 1993: 57). More recently, the strengthening of economic analysis in the handling of individual cases was partly justified as an additional means of minimising the potential for political interference. This has meant that for many years now political conflict about individual State aid decisions have become the exception rather than the rule, such that even during the recent financial

¹ This chapter updates Michael Blauburger's excellent contribution to the first edition of this volume. The author would like to thank Prof. Blauburger for allowing much of his earlier work to be carried over into this chapter.

and economic crisis, the Commission managed to sustain a rule-based approach and to temporally limit the exceptions made.

Nevertheless, EU State aid control remains inherently ‘political’ (Kassim and Lyons 2013: 1) in at least three respects: first, competition policy in general, and State aid control in particular, are horizontal policies which touch upon a broad variety of goals other than competition, for example, innovation, environmental protection, regional development. Balancing these different goals against each other and setting priorities involves political judgement. Second, the enforcement of EU State aid rules heavily depends on their general acceptance by, and the cooperation of, Member State governments. In order to develop EU State aid control and given its limited own resources, the Commission needs to be sensitive to what is politically feasible at the level of Member States, realising that the policy ‘...restrains the ability of democratically elected governments to invest and subsidise as they wish’ (Kassim and Lyons 2013: 1). Third, on a different scale, State aid policy opens a window on the relationship between the neoliberal state and the market (Davies 2013), as well on new forms of economic patriotism that may be gleaned from the design of the state aid regime (Clift 2013).

For a long time, political scientists interested in European integration tended to neglect this policy field. This might be viewed as part of a wider (albeit relative) neglect of state aid issues in other cognate academic disciplines.

...political scientists have typically regarded the EU’s state aid policy as too technical, legal scholars often do not regard the state aid rules as part of competition law, and while economists have examined the justifications for industrial policy, they have only recently considered the regulation of state aid to be worthy of serious interest (Kassim and Lyons 2013: 2).

In 2005, a bibliometric survey on all articles on EU policies published in three major political science journals between 1994 and 2004 identified competition policy as one of the major under-researched policy areas. By 2009, State aid control was among those subfields that accounted for an overall increase in political science research on EU competition policy (Karagiannis 2009: 8), though it still remains something of ‘poor relation’ compared to other EU policy areas (Kassim and Lyons 2013: 2; Wishlade 2012: 585).

This chapter provides an overview of the contributions of political scientists to the study of EU State aid control. It centres around two broad sets of questions. Part II focuses on the historical development, institutions and the politics of State aid control at the European level: Part III addresses the domestic impact of the policy. Part IV concludes by identifying gaps in the literature and desiderata for further research.

II. THE EVOLUTION OF EUROPEAN STATE AID CONTROL

The following two subsections discuss a first strand of literature which concerns the actors and institutions involved in State aid control, the drivers of the policy’s evolution and the political tensions that emerge where objectives other than competition are incorporated into the EU’s rule- and decision-making.

II.i. The Drivers of EU State aid Control

The evolution of EU state aid control can be divided into three phrases. 1958-1991 has been labelled ‘the dark ages’, a period when only limited action was taken; 1992-2004 was a period of ‘reformation’, also viewed as part of a wider ‘public turn’ in EU competition policy (Aydin and Thomas 2012: 533); by contrast, the period after 2005 was one of ‘maturation’ (Kassim and Lyons 2013). The latter entailed an overhaul of procedures and rules by former Commissioner Neelie Kroes. It was also marked by the onset of the financial crisis in 2008.

The Commission's strategic framing of the State aid issue played a significant role in the transformation of the policy in the 1980s and 1990s. As a policy entrepreneur, the Commission framed the issue of State aids in relation to market integration in the 1980s and in relation to EMU in the 1990s. In the 1980s, the integrated market argument was crucial; in the 1990s, the Commission argument was all about Member State budgets and the 'tightening belts' needed to qualify for EMU. These framings helped to shape the interests of Member States and economic actors, constructing State aid control as the solution to a policy problem (Aydin 2014: 141). It was especially important that Member States were brought into the process; the Commission was successful in convincing national actors that it was in their interest to have a strong State aid policy at EU level (ibid: 155). Indeed, the Commission-Member State relationship lies at the heart of EU State aid policy. State aid control needs to be understood as a policy that rests on political agreement between Member States and the EU institutions, a synergistic relationship of cooperation and cooptation, '...more accurately described by mutual adjustment than political conflict' (Zaharidis 2010a: 966).

Alongside individual Decisions, the Commission's main instruments to promote State aid control are Guidelines and Frameworks which clarify the distinction between compatible and incompatible aid. This particular 'soft law approach' (Cini 2001) was developed out of necessity after the refusal of Member State governments to adopt Council legislation back in 1966 and 1972 (Lavdas and Mendrinou 1999: 29f.). This soft law is an entry point for politics within the policy (Smith 1998). What first appeared to be a weakness, however, developed into a strength of EU State aid control. While the Commission still has a strong interest in securing broad Member State approval for its rules through consultations and multilateral meetings, no Council vote or domestic transposition is required as in the case of normal secondary law. Moreover, despite significant controversies about their legal basis and character, the Commission's soft rules have become *de facto* and even *de jure* binding upon Member States. In order to 'convince' individual Member States to accept new rules, the Commission repeatedly employs a strategy that was described elsewhere as 'divide and conquer' (Schmidt 2000: 46f.). If a broad majority of Member States accepts new or revised Guidelines, the Commission may threaten governments which refuse their approval to open formal investigations concerning all existing aid covered by the new rules.² The obligatory character of State aid soft law became particularly obvious during the accession preparations of the Central and Eastern European countries. According to the third Copenhagen criterion, candidate countries had to comply with the *acquis communautaire* and in the field of State aid, the *acquis* was defined broadly, to include not only legislation, but all sorts of Commission Communications as well as the jurisprudence of the European Courts.

It is important to stress that the Commission enjoys broad discretion in matters of State aid control. Somewhat paradoxically, this discretion has been shown to be further strengthened through the introduction of new rules, as in the case of the 1999 Procedural Regulation, an initiative that one might expect to have limited the Commission's freedom to act (Zaharidis 2010b: 954). Even so, the Commission is said to confront a dilemma of discretion, resulting from the fact that its discretionary capacity is broad, this can sometimes leave the institution in a rather vulnerable position (Doleys 2013). One example of the Commission's use of its discretion is in agenda-setting where it is able to choose the timing of the revision of State aid Guidelines and Frameworks. Cini and McGowan (2009: 177–180) describe in detail how the Commission took the opportunities of the single market initiative in the late 1980s and of the Lisbon Agenda in 2005 to systematically revise its State aid Guidelines and Frameworks. Conversely, when the financial crisis led to a huge increase in rescue and restructuring

² See Cini (2001: 201f.) for a detailed study of the Commission's strategic behaviour vis-à-vis Germany and Spain when these two countries refused to accept a new framework on State aid to the motor vehicle industry in 1989. A more recent example is Germany's initial refusal to accept the revised Guidelines on regional aid which had been accepted by all other 24 EU Member States in 2006. The heading of the Commission's Press Release (IP/06/851) showed quite openly the punitive character of its response: 'State Aid: 24 Member States Accept New Regional Aid Guidelines (2007–2013); Commission Opens Formal Investigation against Germany' (emphasis added).

measures, the Commission apparently feared a detrimental effect on ongoing consultations and postponed the revision of the Guidelines on rescue and restructuring aid until 2012.³ At the same time, the Commission's adoption of soft law in the context of the financial crisis, which took the form of four crisis communications '...represented an important change in the goals of this sub-policy in comparison to the pre-crisis period' (Botta 2016: 265). Yet, once the urgency of the crisis disappeared in 2009, the Commission reverted to its ordinary decision-making, forcing the banking sector to be restructured, as under pre-crisis rules. The Commission was therefore able to 'safeguard its exclusive competence in State aid control (ibid: 265; see also Doleys 2012: 529)

Undoubtedly, the Commission's best ally in promoting the integration of EU State aid control in cases of Member State resistance is the CJEU (Smith 1998: 66f.; Aydin 2014). First and foremost, the ECJ decisively supported the Commission in interpreting broadly the State aid prohibition and, thus, often helped to counter Member States' 'creative' efforts to circumvent EU State aid control. The CJEU does not always support the Commission, however (Lehmkuhl 2008: 144f.). Yet even Commission 'defeats' in individual cases may have an empowering effect in the long run. If the Commission applies State aid rules too softly in an individual case, other Member State governments or competitors of the beneficiary can dispute the Decision in court (Smith 1998: 66). As a result, the very threat of a negative court judgment can empower the Commission externally vis-à-vis Member States as well as internally (DG COMP or the Legal Service) to apply EU rules strictly. Moreover, the ECJ significantly helped to improve the Commission's access to information in State aid cases, for example, by confirming the Commission's competence to take a negative decision where incomplete information was provided by a Member State. Finally, the most powerful tool of EU State aid control, the Decision to order recovery of illegally granted aid, was invented by a Court ruling in 1973. Once again, the Commission was sensitive as regards the political feasibility of tighter State aid control and it did not make use of its new power before 1984 (Smith 1998: 65, 68).

Working alongside the EU institutions, private complainants have also played a significant, if ambivalent role in the evolution EU State aid policy (Aydin 2014). Private complaints help the Commission to detect non-notified State aid measures, and have been especially important in trade disputes over the grant of aid (Damro 2013). Yet, the flipside of this third-party involvement in State aid cases has been the Commission's chronic excess of workload. Dissatisfied with the Commission's treatment of their complaints, private parties have repeatedly challenged State aid decisions before the CJEU or the General Court (Smith 2001: 228f.). Thus, private complaints both empower and constrain the Commission. DG COMP's efforts to regulate the procedure of State aid control in the late 1990s was partly a response to the increasing workload caused by private party involvement (Smith 1998: 231). Similarly, the expansion of Block Exemption regulations was largely justified by the Commission as a means of better focusing its regulatory capacities on the most critical cases, thereby making a virtue of necessity.

II.ii The 'Politics' of EU State Aid Policy?

In principle, competences appear to be clearly allocated between the European and domestic levels in the field of State aid. While the Commission controls Member State aid in order to prevent distortions of competition within the internal market, Member States keep the autonomy to design their own State aid policies, as long as this does not violate EU competition law. However, as the Commission has gained in confidence, increasing formalisation and expansion into wider areas of activity has followed (Wishlade 2012: 585). Studies of the politics of State aid policy consistently warn against treating the Commission as a unitary actor and try to investigate the internal dynamics between different Directorates-General or even within DG COMP. In one of the earliest contributions on the policy aspects of EU state aid control, Lavdas and Mendrinou (1995) traced the evolution of the Commission's approach towards aid for small and medium-sized enterprises (SMEs), showing how the former DG III

³ See the Commission's Communication of 2 July 2009, O.J. 2009 C 156/3.

(Internal Market and Industrial Affairs) and DG IV (Competition) sought to accommodate their differing policy objectives. As a result, the authors argued, the Commission became more and more permissive towards aid for SMEs while the overall control of national state aid was tightened (ibid: 190). There have also been tensions between industrial and competition policy objectives in the regulation of so-called ‘innovation aid’ (Blauberger 2009b: 723).

Another field which traditionally involves tensions between different DGs and policy objectives is regional policy (Cini and McGowan 2009: 182f.). When the Commission presented its Regional Aid Guidelines in 1998, one commentator questioned whether this was still competition policy or ‘cohesion policy by the back door’:

This presentation of the Guidelines is notable for a number of reasons. First, it makes no mention of the perceived need to control regional aid in the context of distortions of competition (. . .) Second, it is very much concerned with the substance of regional policy (Wishlade 2003: 89, emphasis in the original text).

As of 2017, the most challenging field of regional development concerned cohesion policy and not national regional aid (Wishlade 2017). Even so, critics have argued that EU State aid policy has led the Member States to shift their policy away from addressing inequalities to reinforcing success, arguing that State aid policy has ‘...challenged the capacity of nation states to pursue the objective of territorial cohesion through various types of public policy (Colomb and Santinha 2012: 475). From these authors’ perspectives, the competition dimension of State aid control tends to trump cohesion goals where conflicts between the two goals are identified. The case of Madeira has been used to demonstrate how disadvantaged regions are unable to benefit from differing regional corporate income tax rates, because these differential rates would be treated as State aid if they were not in line with the tax rate in Portugal as a whole. This case shows how ‘...the Commission has not succeeded in making State aid policy more coherent with the regional policy objectives of the Community’ (Wishlade 2012: 544).

It is not only in regional aid that policy tensions have been found. For example, they have been found in the field of public service broadcasting where online media engagement in receipt of State subsidy has fallen foul of the EU State aid rules (Humphreys 2010). In the Netherlands, an interesting case involved the concept of ‘green services’, which were challenged by the Commission under the State aid rules, raising questions about the viability of agri-environment schemes at national level. The issue at the heart of this case was the public funding element of the proposed scheme, which the EU interpreted as State aid to farmers. After a long period of misunderstanding, a compromise was eventually found which allowed a revised version of the initiative to go ahead (Zwaan and Goverde 2010).

These examples have been interpreted as evidence of an evolving European model of ‘good’ State aid policy (Blauberger 2009b). Although State aid policy is not harmonised at the EU level, the Commission has adopted the Council’s plea for ‘less and better targeted aid’ as its own reform slogan. Most explicitly, the Commission’s State Aid Action Plan (SAAP) of 2005 defined substantive ‘key priorities’ for well-targeted aid and called for ‘a modernised state aid policy in the context of the Lisbon strategy for growth and jobs’ (European Commission 2005). The policy considerations of the Commission are also present in its ‘balancing test’. In line with the jurisprudence of the CJEU, the balancing test requires all national State aid measures to be justified in terms of the ‘common interest’ of the EU (European Commission 2005: 4). The implications of this approach, as well as its limits, became most obvious during the reform of the Regional Aid Guidelines in the context of the Eastern enlargement. According to the Commission’s original proposal, State aid should have been restricted to the most underdeveloped regions from a European perspective (Wishlade 2008: 756–759). After strong opposition from some ‘old’ Member States, the Commission returned to a less radical approach which continues to allow regional aid to be directed to these countries’ least developed regions. It can only be speculated, whether the Commission’s initial proposal was deliberately radical in order to yield concessions by some Member States or whether the Commission was partly surprised by the force of

their opposition (Wishlade 2008: 759). The second element of the Commission's balancing test, the so-called 'incentive effect' was also perceived as unwarranted interference into national State aid policy; even so, it was subsequently introduced into state aid practice (Neven and Verouden 2008: 1.51).

To sum up, EU-level State aid control impinges on the capacity of Member States to develop their own industrial (and other) policies. The Commission has increasingly developed its own model of what it considers to be the acceptable face of national state aid. Yet, our understanding of how these policy objectives are defined internally by the Commission as well as in exchange with Member State governments remains rather anecdotal, reliant more on media commentary than on academic research. We now turn to address the question of the EU influence on national State aid policies.

III. THE EU IMPACT ON NATIONAL STATE AID POLICIES

A second strand of political science research on EU State aid control identifies its domestic impact, analyses the ways by which the Commission influences the design of national State aid policies and discusses alternative explanations for the observable trends.

III.i. Empirical Evidence and Competing Explanations

Studies on the domestic impact of EU State aid control either follow a quantitative approach, investigating the development of State aid levels and objectives, or they analyse more qualitatively individual cases and processes of national policy adjustments. As regards quantitative studies, various political scientists base their analysis on data from the EU State aid Scoreboard and the Commission's register of State aid cases (Smith 1996; Zahariadis 1997; Wolf 2005; Aydin 2007; Zahariadis 2008; Blauburger 2009a). The Commission's Scoreboard provides the most complete and up-to-date dataset on State aid. Studies largely confirm the Commission's own observation of a downward trend in State aid expenditure during the 1990s and most of the 2000s as well as a redirection of State aid towards horizontal objectives in recent years (European Commission 2008; Botta 2016).

Quantitative studies differ, however insofar as they attribute changes in national State aid policies only partly to European influences. Most sceptical as regards EU impact, Zahariadis (2002: 296) deduces from his comparison of State aid expenditures in EU Member and non-Member countries in the early 1990s that increasing trade linkages rather than formal EU membership explain State aid discipline (see also Cao et al 2007). This speaks to broader analysis of the EU competition regime in which it is argued that the advancement of the policy was driven by three factors: interdependence; global cooperation in competition rules; and, more recently, the fall-out from the post-2008 financial crisis (Aydin and Thomas 2012: 533). Other accounts of State aid expenditure focus on socio-economic, institutional and party-political factors such as high levels of unemployment (Blais 1986), leftist governments (Zahariadis 1997, 2010; Cao et al. 2007), the relative power of the Member State and the Commission (Zahariadis 2013), or political pathologies such as weak governments and lack of transparency (Neven and Röller 2000). Franchino and Mainenti (2013) use national data on state aid expenditure to show how electoral institutions matter in distributive decision-making (see also McGillivray 2004), and more specifically how legislators in higher magnitude districts (those with more elected members) spend more than those in lower magnitude districts, controlling for ballot control, party-based voting and pooling. They conclude that where politicians need to cultivate a personal vote, spending on State aid is likely to be higher than in districts where they do not.

These accounts do not explain the long-term trends observed within the EU. In contrast, comparisons of EU Member and non-Member States ask whether EU State aid control reduces aid levels. In a comparative study Thomas (2012) concludes that it does. His study shows how the US spends substantially more than the EU on the promotion of inward investment. Yet, he finds that the impact of the EU regime on the aggregate trend in inward investment across Europe is minimal. This leads him to draw positive conclusions about the effectiveness of EU State aid control (ibid: 580). In contrast, Blauburger and Krämer (2013) see the efforts of the Commission to export its state aid regime

externally as a way to counter probable disadvantages arising from the EU's distinctive rules. Wolf (2005) compares systems of State aid control across different levels, global (WTO), regional (EU), and national (German federalism), and concludes that EU State aid control is by far the most effective system in ensuring compliance (ibid.: 91). Aydin (2007) analyses State aid expenditure across 16 OECD countries, including EU and EEA Member States, candidate countries, Turkey, and Japan. Without denying the persisting differences between EU Member States' industrial policies, she finds strong evidence for lower State aid levels due to EU State aid control (ibid.: 122–125). Blauburger (2009a) compares State aid policies in Central and Eastern European countries before and after EU accession. While candidate countries partly used their 'last-minute' chance between the conclusion of accession negotiations and enlargement to grant considerable amounts of State aid, they largely brought their policies in line with EU requirements afterwards (ibid.: 1037). This point is reinforced by the work of Hölscher, Nulsch and Stephan (2017) who show how there are now no markable difference between State aid practice in EU Member States, east and west.

Qualitative studies complement these accounts of broader trends by focusing on individual cases of successful or unsuccessful State aid control. Their picture of the domestic impact of European State aid control is more nuanced. For example, a case study on German public banks analyses how European State aid control provided an opportunity structure for private competitors to complain and to build an alliance with the Commission which finally helped to overcome governmental resistance (Grossman 2006). Other studies are more sceptical and point to institutional incompatibilities between the EU and domestic levels which may lead to sub-optimal outcomes for both sides. Despite initial agreement on the direction of restructuring Olympic Airways, the positions of the Greek government and the Commission diverged over time and both parties ended up in a legal conflict before the CJEU (Featherstone and Papadimitriou 2007). The Commission won the case in the CJEU, but taking the long duration of the conflict into account and the legal uncertainty involved, this result was clearly inferior to a cooperative solution.

The impact of State aid control on territorial relations within federal member states has been addressed in several studies. Thielemann (1999) discusses a dispute over State aid to Volkswagen. Three institutional features, the author argues, explain the Commission's 'blindness' to the peculiarities of German federalism causing an evitable conflict (ibid.: 411f.): centralized decision-making by DG COMP versus traditionally joint decision-making involving federal and regional authorities in Germany, discretionary versus legalistic decision-making, as well as horizontal versus vertical policy co-ordination (that is, the interference of DG COMP in what is considered to be a question of regional policy autonomy in Germany). Other studies on territorial relations address different questions. The more recent case of Madeira in the context of Portugal's corporate tax rates was discussed above (Wishlade 2012). In a similar and quite strident vein, Streb (2013) argues that the Commission has undermined and disempowered sub-national states in federal political systems (he considers the German, Austrian and Belgian cases) because it flattens territorial structures, limiting autonomy (see also Columb and Santinha 2012).

More recent qualitative studies, such as Botta and Schwellnus (2015) have addressed the special circumstances of EU State aid control in Central and Eastern Europe (CEE) and in the Eastern Neighbourhood. In the case of Ukraine, a rather limited convergence with the EU State aid rules is attributed to the role played by veto-players in the form of Ukrainian oligarchs who are able to limit convergence where it impact their interests (Dimitrova and Dragneva 2013). Amongst the CEE states, the situation had been rather different. One of the major topics of debate during accession negotiations was regional aid, mainly through tax exemptions in so-called 'special economic zones' (Atanasiu 2001; Bohle and Husz 2005). The Commission concluded several transitional agreements on special economic zones with Poland, Hungary and other new Member States. In the case of Hungary, Bohle and Husz (2005: 94f.) argue, the concessions made by the Commission were not so much due to insurmountable governmental resistance, as the tax exemptions granted put a serious strain on public budgets, but rather resulted from successful lobbying of multinational companies who are the main beneficiaries of this type of regional aid. In Poland, domestic party politics and unstable governments were the main reasons

why the introduction of State aid legislation was repeatedly delayed (Gwiazda 2007). Given that accession countries had no choice but to comply with EU demands, however, party political factors played a decreasingly important role towards the end of accession negotiations and after accession, so that even the eurosceptic Kaczyński government could not fundamentally oppose EU State aid control anymore (ibid.: 124).

In sum, a broad variety of political science research shows that national State aid policies are partly ‘europeanised’, that is, that EU State aid control has an identifiable impact on the overall design of Member States’ policies as well as on individual State aid measures. While aggregate trends tell us little about the instruments and mechanisms of EU influence on the ground, individual case studies sometimes provide very specific explanations that may only be representative for some cases, for example, depending on the applicable rules or the Member States involved. The remaining part of this chapter, therefore, discusses recurrent patterns of Member State compliance with EU State aid rules.

III.ii. Patterns of Compliance with EU State Aid Rules

There exists an increasingly differentiated political science literature on why States (do not) comply with EU legal obligations and by which instruments the Commission is most successful in ‘guarding the Treaty’, that is, in making Member States comply (Börzel 2003; for a broad overview, see Treib 2008). Compliance with EU State aid rules is a special case in at least two respects. First, before initiating infringement proceedings, the Commission already possesses the specific tool of recovery decisions. Second, in contrast to harmonised EU policies, ‘compliance’ with EU State aid rules is not accomplished once and for all by the domestic transposition and implementation of European secondary law, but continuously and often passively through not granting distortive aid (Blauberger 2009a: 1033).

Wolf (2005: 92–113) finds hierarchical forms of enforcement, monitoring and sanctioning through the Commission and judicial dispute settlement by the CJEU to be most important for ensuring compliance with EU State aid rules. By contrast, inclusion and participation of the affected parties or discursive processes of mutual learning are found to be less decisive. Undoubtedly, the single most powerful instrument of the Commission is a negative decision (including the order of recovery of unlawful aid) or even the threat thereof. While the relatively low number of negative decisions might be interpreted to indicate weak enforcement by the Commission, it was noted quite early that it should rather be read as a sign of Member States’ anticipatory obedience (Smith 1996: 568). The Commission’s threat to decide negatively or even the opening of formal investigations immediately impose costs on potential State aid beneficiaries through creating legal uncertainty, thus reducing the attractiveness of receiving State aid in the first place. EU State aid rules, therefore, serve to ‘channel State aid demand’ (Blauberger 2009a: 1041f.).

Compliance with EU State aid rules is largely assured at the early stages of policy formulation, based on the comprehensive regulation of State aid procedures and substance (Wolf 2005: 99f.). As regards compatible aid, the Commission managed to gradually increase and shift the burden of proof towards Member State governments. While the Commission automatically assumes all State aid to potentially distort competition, Member State governments, in order to pass the balancing test and to make final approval likely, need to design and justify their State aid measures along the lines of the Commission’s Guidelines and Frameworks. Besides, the more detailed the criteria set out by the Commission in guiding its assessment of compatible aid, the more these rules provided an opportunity structure for private parties to either demand forms of compatible aid or to complain about distortive aid (cf. Grossman 2006).

Franchino and Mainenti (2016) are perplexed, however, by the illegal aid that persists in the EU Member States. They point to the importance of electoral institutions in shaping government incentives to comply with international obligations, such as the State aid rules. Where there is a misalignment between the collective objectives of a government party and the individual objectives of members in the legislature, individuals may not mind too much if they are caught out by the State aid rules as they can then blame the Commission and still take the credit for proposing the aid. As such,

Franchino and Maintenti argue that the EU compliance literature does not help to explain the patterns (and persistence) of (illegal) state aid.

Several authors have contributed to assessment of the Commission response to the financial crisis, with the focus mainly on the 2008-9 period. Compliance is a key theme in these accounts. The literature argues that credit should go to the Commission for the way in which it handled State aid during the financial crisis (Doleys 2012: 551; Lyons and Zhu 2013). After the collapse of Lehman Brothers in September 2008, Member States allocated billions of Euros to the propping up of their national banking sectors. Overall aid levels rose to 3.5 per cent of GDP in 2009. The Commission faced 325 notified aid schemes which Member States expected them to review over a short period of time, challenging their administrative capacity (Botta 2016: 268). Indeed, Member States told the Commission they would need to apply the state aid rules speedily and flexibly. The Commission was initially accommodating and was gradually able to reassert itself. It had been aware of the risk involved in dealing with the aid in a heavy-handed, dogmatic manner and decided to respond pragmatically in the first instance, by providing temporary authorisation to all notified aid (ibid: 268) and later by crafting a special crisis regime (based on the soft law ‘crisis communications’) (Doleys 2012). If the Commission had not acted in this way it is likely that ‘...member states would have stopped complying with the State aid rules...’ (Botta 2016: 268). The outcome was impressive. Aside from the crisis measures themselves, the Commission maintained total aid to industry at around pre-crisis level (around 0.5 per cent of GDP) (Doleys 2012). ‘This supports the contention that state aid generally remained under control despite the economic crisis’ (Aydin and Thomas 2012: 541). In the end, and in the absence of an EU Treasury, ‘...State aid control became the main EU instrument for coordinating the member states’ responses to the destabilization of banks during the financial crisis’ (Botta 2016: 275) and a key component of the EU’s steering of the crisis.

IV. CONCLUSION

The main goal of this chapter has been to show what research on EU State aid policy has been undertaken by political scientists; it demonstrates the sorts of issues that arise from a political perspective, which reflect to some degree wider trends in EU political science research, but also developments and interest in the policy itself. In relatively recent times, there has been some interest in the Commission’s approach to State aid in the context of the financial crisis, and ongoing work on the intersection between regional and industrial policy. State aid has provided case study material for other research, including on the relevance of electoral institutions in distributive policy-making. While there was a flurry of activity in 2012 and 2013, there has been a relatively limited output of work on State aid policy since then, covering quite a diffuse range of political and policy questions. One might question whether many of the political questions about State aid have been settled. It is too early to tell. What we might be witnessing is a temporary lull in research activity on this topic or a new normal given the maturity of the State aid regime. As things stand, while the cumulative contribution of political science to the study of State aid has continued to increase, albeit at a less dramatic pace, there still remains plenty of room for further research.

There are a number of obvious research gaps that have already been identified in previous parts of this chapter: What determines the Commission’s evolving mix of policy goals incorporated into EU State aid rules? Can we investigate further the tensions between industrial and regional politics and State aid control? What other policy objectives are being met, or might in future be met through a creative use of State aid policy? How far do Member States’ policies converge towards a common European model of modern State aid policy and what accounts for persisting differences between national approaches? What is the role of EU State aid control in an increasingly global economy, for example, will the EU be able to export its State aid rules beyond Europe (cf. Aydin 2009; Blauberger and Krämer 2013). Finally, what is the impact of the election of populist governments and leaders on State aid compliance? And how might the UK’s departure from the Union affect the EU State aid

regime, if at all? These and other such questions continue to make EU State aid control an interesting policy field for political scientists.

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