

# Criminal Liability – An Efficient Tool of EU State Aid Law Enforcement?

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*More than two years after the Commission set out the State Aid Modernisation (SAM) package, still no considerable progress has been achieved in terms of increasing the efficiency of EU State aid law enforcement at the national level in spite of severe deficiencies. Attention must therefore be given to the question of how to enhance the Member States' compliance with EU State aid rules. This article proposes criminal liability as an efficient tool of EU State aid law enforcement. First, current deficiencies of EU State aid law enforcement are illustrated. Second, it is examined whether the granting of unlawful State aid potentially fulfils the elements of a crime, namely the crime of embezzlement of public funds, exemplified by German criminal law. Finally, some proposals for further improvements concerning the practical implementation of the criminal law approach are presented.*

*Keywords: Criminal liability, Embezzlement, Enforcement, GBER, Procedure before the Commission, SAM.*

## I. Deficiencies of EU State Aid Law Enforcement

While the number of State aid notifications submitted by Member States has been on a rising trend over the past years due to the extension of the scope of EU State aid control,<sup>1</sup> the Commission has sought to improve the procedure for granting State aid by making it more efficient, transparent, and predictable, not least to reduce the burden upon its own resources.<sup>2</sup> For this purpose, the Commission has gradually strengthened the role of the Member States in terms of State aid control to a great extent by exempt-

ing more and more measures from the notification obligation.<sup>3</sup>

This process currently culminates in the adoption on the 21<sup>st</sup> of May 2014 of the amendment of the General Block Exemption Regulation (GBER) for State aid by the Commission.<sup>4</sup> The amendment widens the scope of the GBER horizontally and vertically, allowing the block exemption of various additional types of State aid, such as aid to compensate the damage caused by certain natural disasters, aid for broadband infrastructures or aid for sport and multifunctional recreational infrastructures.<sup>5</sup> As a result of this development, the Commission's competence is reduced

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<sup>1</sup> Soltész, 'Die Entwicklung des europäischen Beihilferechts im Jahr 2013' [2014] EuZW 96; cf. also the Commission's statistics on the number of notifications submitted by Member States (status as of 2013; <[http://ec.europa.eu/competition/state\\_aid/statistics/statistics\\_1\\_en.xls](http://ec.europa.eu/competition/state_aid/statistics/statistics_1_en.xls)> accessed 15.11.2014); on the other hand, the number of respective decisions adopted by the Commission has been on a declining path since the year 2007, cf. Commission's

statistics on the number of decisions adopted by the Commission (status as of 2013; <[http://ec.europa.eu/competition/state\\_aid/statistics/statistics\\_2\\_en.xls](http://ec.europa.eu/competition/state_aid/statistics/statistics_2_en.xls)> accessed 15.11.2014).

<sup>2</sup> Von Wallenberg and Schütte, in Grabitz, Hilf and Nettesheim (eds), *Das Recht der Europäischen Union* (53<sup>th</sup> ed 2014), Art. 107 rec. 6.

<sup>3</sup> Cf. on the State Aid Modernisation package as a whole Soltész, 'Das neue europäische Beihilferecht' [2014] NJW 3128-3133 and in particular on the GBER at p 3130.

<sup>4</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance [2014] OJ L187/1.

<sup>5</sup> Stöbener, 'Beihilferecht: Neue AGVO', [2014] EuZW 484.

from an *ex ante* control to an *ex post* control of Member States' compliance with State aid rules.<sup>6</sup> Consequently, it is up to the Member States to ensure the *ex ante* consistency of measures with the *de minimis* and block exemption rules.<sup>7</sup>

### 1. The role of the Member States as 'judge[s] in their own cause'

At an early stage, regarding the EU State Aid Modernisation (SAM) reform package of 2012, the European Economic and Social Committee (EESC) recognised the associated problem, that the 'State and, more broadly, all state and public entities that may grant aid would, in a sense, be judge in their own cause'.<sup>8</sup> The EESC is right in pointing out that more unrestrained responsibility of the Member States for the implementation of State aid control probably leads to subjective measurements in terms of the application of State aid rules, which increases legal uncertainty for State aid beneficiaries and their competitors, and eventually might result in an economic nationalism, which should be overcome by far.<sup>9</sup> Therefore, the EESC raised the decisive question to the Commission about '[w]hat legal and practical means [...] the Commission ha[s] in mind to convince Member States to cooperate fully in enforcing State aid law'.<sup>10</sup>

Under the current legal circumstances, however, the only feasible way for the Commission to ensure effective State aid law enforcement at the national

level is to increase the *ex post* control of measures granted without prior notification.<sup>11</sup> Yet, the effectiveness of the *ex post* control depends on a large degree on the Member States' commitments to make their aid practices transparent.<sup>12</sup>

### 2. Private State aid law enforcement in the jungle of conflicting competences – The 'dual-tracked' control of State aid by the Commission and the national courts

State aid control under Article 107 and 108 TFEU is a matter for both the Commission and the national courts to pursue, especially when it comes to competitor's lawsuits based on the infringement of the standstill obligation (Article 108(3) sentence three TFEU).<sup>13</sup> However, the complementary but separate roles of the Commission and Member States' courts<sup>14</sup> ensues a large potential for conflict in terms of contradictions and interdependencies between decisions of the Commission, on the one hand, and rulings of the national courts, on the other.<sup>15</sup>

In its judgment of 21<sup>st</sup> of November 2013 in Case C-284/12 (*Deutsche Lufthansa*) the CJEU ruled on the binding effect of a Commission's decision to initiate the formal investigation procedure pursuant to Article 108(2) TFEU vis-à-vis parallel proceedings before national courts.<sup>16</sup> The specific issue was whether national courts are entitled to determine the existence of State aid within the meaning of Article

6 Cf. the regulations on the Commission's monitoring of aid exempted from notification set out in Articles 10 to 12 GBER, see on this subject also recital 28 of the GBER.

7 European Commission, Communication on EU State Aid Modernisation (SAM) COM/2012/0209, 08.05.2012. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0209:FIN:EN:PDF>> accessed 15.11.2014, p 7, subsection 21.

8 European Economic and Social Committee, 'Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU State Aid Modernisation (SAM)', 14.11.2012, p 6, subsection 3.3.1. <[www.eesc.europa.eu/?i=portal.en.int-opinions.23584](http://www.eesc.europa.eu/?i=portal.en.int-opinions.23584)> accessed 15.11.2014.

9 Opinion of the European Economic and Social Committee (n 8), p 2, subsection 1.6.2.

10 Opinion of the European Economic and Social Committee (n 8), p 2, subsection 1.6.1.

11 European Commission, Communication on EU State Aid Modernisation (SAM) COM/2012/0209, 08.05.2012 (n 7), p 7, subsection 21.

12 For that reason, the Commission is extending the principles of transparency and of evaluation, see the Communication from the Commission C(2014) 3349/2, 21.05.2014 <[http://ec.europa.eu/competition/state\\_aid/modernisation/state\\_aid\\_transparency\\_en.pdf](http://ec.europa.eu/competition/state_aid/modernisation/state_aid_transparency_en.pdf)> accessed 15.11.2014 and also the Commission's Policy brief of June 2014, 'You Can't Improve What You Can't Measure: State aid evaluation' <[http://ec.europa.eu/competition/publications/cpb/2014/007\\_en.pdf](http://ec.europa.eu/competition/publications/cpb/2014/007_en.pdf)> accessed 15.11.2014.

13 Erb, 'Pro & Contra: Bindungswirkung von beihilferechtlichen Eröffnungsentscheidungen?', (2014) EuZW 247; Becker, 'Die parallele Prüfung beihilferechtlicher Sachverhalte durch Kommission und nationale Gerichte – Entscheidungskompetenzen und -konflikte', [2012] EuZW 725.

14 Case C-284/12 *Deutsche Lufthansa* ECLI:EU:C:2013:755, para 27; Joined cases C-261/01 and C-262/01 *van Calster and Cleeren* [2003] ECR I-12249, para 74; Case C-39/94 *SFEI and Others* [1996] ECR I-3547, para 41.

15 Erb (n 13), p 247.

16 For the details of the case, see Ghazarian, 'Binding Effect of Opening Decisions – Lufthansa AG v FFH', (2014) 1 EStAL 108.

107(1) TFEU in contradiction to the opening decision.

Based on the wording of the judgment – finding that ‘a national court [...] is required to adopt all the necessary measures with a view to drawing the appropriate conclusions from an infringement of the obligation to suspend the implementation of that measure’<sup>17</sup> – it is considered by some legal authors that a national court is free to deviate from the opening decision of the Commission to initiate the formal investigation procedure with regard to the qualification of a measure as State aid. The national court might and must ascertain on its own whether the respective measure constitutes State aid as long as a final Commission’s decision has not yet been taken.<sup>18</sup> However, the majority of the legal commentaries interpret the judgement as meaning that opening decisions having a binding legal effect for national courts, whose ruling therefore must cohere with the Commission’s assessment as to the aid character of a measure.<sup>19</sup> This contention is supported by the reasoning that excessively long durations of proceedings before national courts and conflicting decisions between the Commission and the national courts

should absolutely be avoided in the light of efficient private State aid law enforcement.

In respect of the abovementioned judgment in Case C-284/12 *Deutsche Lufthansa*, the CJEU appears to attempt to strengthen private State aid law enforcement. It remains to be seen whether it will have the envisaged effect.

### 3. Recovery of unlawful State aid - The problem of enriching the malefactor

The purpose of State aid recovery is to restore the *status quo ante* and to prevent the aid beneficiary from having undue advantages over its competitors.<sup>20</sup> An omission of any further aid to the firm receiving the unlawful State aid alone is not sufficient to eliminate the distortion of competition.<sup>21</sup>

However, the EU State aid rules do not provide any penalty in case of an infringement of the standstill obligation by a Member State. Instead, the unlawful behaviour of the Member State results in its own enrichment due to the repayment of the unlawful aid.<sup>22</sup> As a consequence, there is a lack of effective incentives for Member States to prevent unlawful State aid *ex ante*, whereas the prospective State aid beneficiaries often do not even know that the aid they receive is non-compliant with EU State aid rules and, even if they know, there is no possibility for them to notify the aid to the Commission, so that, in many cases, they rather take the risks associated with the granting of potentially unlawful and incompatible State aid than being left without any aid.

John Temple Lang proposes two possibilities to solve this incentive problem of the Member States. Accordingly, one option would be to prescribe an automatic sanction under EU law, which obligates the Member State or the respective public entity to pay a fine in case of a breach of EU regulations regarding the granting of State aid.<sup>23</sup> Another option would be, as suggested by John Temple Lang, to clarify the Member States’ or the respective public entity’s liability under EU law for damages to competitors of the recipient of unlawful aid, thereby improving private State aid law enforcement.<sup>24</sup>

These approaches, however, would require the will of both the EU institutions and the Member States to enact and implement a genuine new legislation on the national enforcement of State aid rules, and, therefore, there appears to be little chance of these

17 Case C-284/12 *Deutsche Lufthansa* ECLI:EU:C:2013:755, para 42.

18 See, for instance, Berrisch, ‘Mehr Fragen als Antworten – Keine Klärung der „Bindungswirkung“ von beihilferechtlichen Eröffnungsentscheidungen der Kommission’, [2014] EuZW 253.

19 Cf., for example, Soltész, ‘Bindungswirkung der Eröffnung beihilferechtlicher Prüfverfahren’, [2013] NJW 3773, but who himself is critical of the binding effect; Bonin and Wittenberg, ‘Beihilferecht: Bindungswirkung von Eröffnungsentscheidungen der Kommission für nationale Gerichte’, [2014] EuZW 68; Martin-Ehlers, ‘Die Bindungswirkung einer Eröffnungsentscheidung der Kommission im Beihilferecht’, [2014] EuZW 247; Kamann, ‘Kommission vs. nationale Gerichte im europäischen Beihilferecht – Private Rechtsdurchsetzung während des förmlichen Prüfverfahrens’, [2014] ZWeR 60; Ghazarian (n 16).

20 Case C-499/99 *Commission v Spain* [1995] ECR I-699, paras 21 et seq; Koenig, ‘Haftung der Europäischen Gemeinschaft gem. Art. 288 EGV Absatz II EG wegen rechtswidriger Kommissionentscheidungen in Beihilfensachen’, [2005] EuZW 205; see also, recently, Koenig and Ghazarian, ‘Beihilfenrestitution bei zahlungs- und insolvenzunfähigen Körperschaften’, (2014) 3 BRZ 131.

21 Koenig and Wetzel, ‘Beihilfenrückforderung nach einer Neuvergabe der Betriebsführung’, [2006] EuZW 654.

22 Lever, ‘EU State Aid Law – Not a Pretty Sight, (2013)1 ESTAL 7; Temple Lang, ‘EU State Aid Rules – The Need for Substantive Reform’, (2014) 3 ESTAL 440.

23 Temple Lang (n 22), p 441; according to that, the amount of the fine should be calculated by reference to the sum of the State aid.

24 Temple Lang (n 22), p 441; cf. on the right of individuals to claim reparation directly against Member States CJEU, Case C-6/90 and C-9/90 *Francovich* [1991] ECR I-5357.

proposals being incorporated into EU law.<sup>25</sup> This is especially because of the Commission's efforts to reduce the number of notifications, not to increase them, while the proposals of John Temple Lang would urge the Member States to notify considerably more of their aid measures in order to avoid being fined by the Commission or legal actions brought by damaged competitors.

## II. The Criminal Approach – Embezzlement of Public Funds under German Criminal Law

As opposed to the unlikely event of significant legal changes at Union level regarding the national enforcement of State aid rules, the best near- and mid-term solution to the aforementioned set of problems has to be sought within already existing laws. To that end, taking up the sharper sword of criminal law might be the most effective way to achieve the goal of ensuring efficient State aid control at a national level.

Criminal law implications of EU State aid law have indeed been subject to the recent judgment of the CJEU in the *Commerz Nederland* case.<sup>26</sup> The CJEU explicitly stated that the imputability of a measure to the State is not excluded merely because the State official concerned with the granting of the State aid (in the form of guarantees in this case) 'acted improperly, deliberately kept the provision of those guarantees secret and disregarded the undertaking's statutes and [...] that public authority would have opposed the provision of the guarantees, had it been informed of it'.<sup>27</sup> The CJEU ergo made clear that the imputability of a measure to the State is not even undermined by the fact that the State official concerned is convicted of a criminal offence in relation to a breach of EU State aid law.

Under German criminal law for example, the granting of unlawful aid may be considered embezzlement ('Untreue') of public funds under Section 266 of the German Criminal Code (StGB). Section 266(1) StGB reads as follows:

'Whosoever abuses the power accorded him by statute, by commission of a public authority or legal transaction to dispose of assets of another or to make binding agreements for another, or violates his duty to safeguard the property interests of another incumbent upon him by reason of

statute, commission of a public authority, legal transaction or fiduciary relationship, and thereby causes damage to the person, whose property interests he was responsible for, shall be liable to imprisonment not exceeding five years or a fine.'<sup>28</sup>

### 1. Objective element: Breach of trust

According to Section 266, State officials, including eg financial authority civil servants, mayors, county commissioners or State Ministers, who are generally called and empowered to conclude legal transactions by statute or commission of public authority, are possible perpetrators of embezzlement in *sensu stricto* when it comes to spending public funds.<sup>29</sup>

The key question under German law is whether the EU State aid rules can be regarded rules and regulations relating to and affecting the parties' internal legal relationship, so that the granting of an unlawful State aid would also constitute a breach of trust under Section 266(1) StGB. Under the case law of the BGH (Bundesgerichtshof) the criminal liability of embezzlement exclusively serves to provide protection for the trustors' capital. Thus, a breach of trust can only be considered when the perpetrator violates rules and regulations, which serve the purpose to protect (at least indirectly) the trustors' capital.<sup>30</sup> Any direct implication of the EU State aid rules for the legal fiduciary relationship between the perpetrator and the public trustor and ergo for the breach of trust, however, is presenting a problem, since the legal concepts of the EU State aid law and national embezzlement law do not utterly coincide.

The competition rules pursuant to Articles 101 to 109 TFEU are aimed at the establishment and the

25 John Temple Lang also recognises the political pressure that, as a result, would rise in order to keep the Commission from deciding that aid had been unlawfully paid, along with the increase in the number of respective court proceedings; see Temple Lang (n 22), p 441.

26 Case C-242/13 *Commerz Nederland* ECLI:EU:C:2014:2326.

27 *ibid*, para 39.

28 Translation of the German Criminal Code provided by Prof. Dr. Michael Bohlander, < [http://www.gesetze-im-internet.de/englisch\\_stgb/](http://www.gesetze-im-internet.de/englisch_stgb/) > accessed 15.11.2014.

29 Perron, in Schönke and Schröder (eds), *Strafgesetzbuch* (29<sup>th</sup> edn, 2014) § 266 rec. 7-10.

30 BGH, [2011] NJW, 88-96 (with a comment by Bittmann, 'Beeinflussung von Betriebsratswahlen und Grenzen der Untreue – Fall Siemens/AUB', *ibid*, pp 96-97).

maintenance of a European area of commercial freedom.<sup>31</sup> According to Article 3(3) TEU the accomplishment of the internal market of the EU 'shall work for [...] a highly competitive social market economy'. Consequently, the protection of public budgets does not form part of the direct objectives of the EU State aid law regime.

Nevertheless, Article 108(3) sentence three TFEU obliges Member States to recover unduly paid State aid and, besides this, Articles 10 to 15 of the State Aid Procedure Regulation enable the Commission to compel the concerned Member State to 'take all necessary measures to recover the aid from the beneficiary' (Article 14(1) of the State Aid Procedure Regulation). In the light of the retrospective redress of lost public funds, which always accompanies the recovery of an unlawful State aid, it could be argued that the EU State aid rules serve at least indirectly the purpose of protecting public funds.

At any rate, the breach of trust associated with the granting of unlawful State aid results from the violation of national budgetary law, which serves, without any doubt, directly to protect public funds.<sup>32</sup> As in other Member States, the German budgetary law recognises the cardinal principles of efficiency and economy.<sup>33</sup> According to the principle of efficiency, assets must be used in such a manner that they yield an optimal result (maximum principle).<sup>34</sup> Furthermore, results have to be achieved with as little allocation of resources as possible (minimal principle).<sup>35</sup> The economic principle, which is embedded in these budgetary postulates,<sup>36</sup> is also enshrined in Article 107(1) TFEU. According to the jurisprudence of the

CJEU, an advantage exists if an undertaking receives a benefit without providing adequate compensation in return.<sup>37</sup> In order to determine whether or not the compensation is adequate the Commission as well as the CJEU apply the 'private investor' (or 'market economy investor') test.<sup>38</sup> In this test, it is assessed whether the investment made by the State was done under conditions, which would be satisfactory to a comparable hypothetical private investor under normal market conditions.<sup>39</sup>

Overall, it becomes apparent that the EU State aid regime as well as the German budgetary law unanimously prescribe a market balance and an absence of welfare losses and therefore share the same perspective and the same scale. Consequently, the granting of unlawful State aid in each case is violating the German budgetary law principles of efficiency and economy and, as a consequence, may always be considered a breach of trust under German criminal law. Other Member States might hold similar budgetary and criminal laws that might serve as an efficient tool of State aid law enforcement.

## 2. Subjective element: Intent

Under German criminal law, the crime of embezzlement requires evidence of intent (Section 15 StGB) regarding the objective elements of embezzlement as illustrated above. In this respect, the perpetrator has to specifically realise that he is committing a breach of trust.<sup>40</sup> Certainly, this is the case when the person engaged in the granting of unlawful State aid is aware of the fact that his actions are in conflict with EU State aid rules, and thus with the principles of economy and efficiency as laid down in the national budgetary law. Such a capacity must be assumed when the perpetrator recognised the State aid character of the measure in question or has been informed thereof, even by a law professor. An internal or external legal opinion induces at least a consciousness concerning the obligation to notify a measure. This is a piece of strong circumstantial evidence that the person knowing about the content of this legal opinion is acting intentionally.

Other Member States' jurisdictions might hold similar provisions, which allow efficient (preventive) State aid law enforcement by the means of criminal law in cases where the perpetrator grants unlawful aid intentionally.

31 Koenig, Schreiber and Dennis, *European Competition Law in a Nutshell* (Lexxion 2011), p 1.

32 Cf. Dierlamm, in Joecks and Miebach (eds), *Münchener Kommentar zum StGB* (2<sup>nd</sup> ed, 2014) § 266 rec. 259-264.

33 Section 6 of the German Budget Principles Act (HGrG); Sections 7(1) and 35(2) of the German Federal Budget Code (BHO).

34 Section 7 No. 1 of the general administrative regulation for the BHO (VV-BHO).

35 Section 7 No. 1 of the general administrative regulation for the BHO (VV-BHO).

36 Cf. Heller, *Haushaltsgrundsätze für Bund, Länder und Gemeinden: Handbuch zum Management der öffentlichen Finanzen* (2<sup>nd</sup> ed, 2010) p 234, rec. 711.

37 Koenig, Schreiber and Dennis (n 31), p 168.

38 *ibid*, p 169.

39 *ibid*, p 170.

40 Wessels and Hillenkamp, *Strafrecht BT 2* (36<sup>th</sup> ed, 2013) rec. 534 et seq.

### III. Some Proposals

Even the Commission concedes massive deficiencies of EU State Aid law enforcement. In the context of the SAM initiative in the year 2012, Commissioner for Competition Joaquín Almunia stated that the Commission's monitoring practices revealed vast gaps regarding compliance with State aid rules on a national level and admonished the Member States to 'reinforce their control mechanisms at all levels of their administrations'.<sup>41</sup> If the intention of the Member States and the Commission is for this to become a real political agenda, there is a necessity to pursue new avenues in order to systematically prevent unlawful State Aid.

Criminal investigations of embezzlement regarding the granting of unlawful State aid would be a first step in the right direction. This would not only have the desirable effect of thrusting State aid rules to the limelight of public attention, but would also serve as a powerful deterrence, thus constituting an efficient tool of EU State aid law enforcement.

The positive potential of this approach could be enhanced even further by establishing specialised prosecution offices for embezzlement crimes regarding unlawful State aid, thus pooling expertise and experience.<sup>42</sup> In this context, it is to be noted that the German principle of legality (in line with the continental inquisitorial model) imperatively requires the Public Prosecutor to initiate a criminal proceeding *ex officio* when there is a sufficient initial suspicion of a crime.<sup>43</sup>

To further increase the effectiveness of the criminal liability as a State aid law enforcement tool the national criminal investigation procedure should be improved by enhancing the mutual cooperation between the Commission and the competent national criminal law enforcement authorities. As a model might serve, in this respect, the newly created rules on the cooperation of the Commission with national courts as regards the application of EU State aid law, ie Article 23a of the State Aid Procedure Regulation.<sup>44</sup> The purpose of these procedural rules, which are inspired by the corresponding regulation in Article 15 of Regulation (EC) No 1/2003<sup>45</sup> regarding antitrust law enforcement, is to ensure the consistent and unitary application of EU State aid law.<sup>46</sup> To that end, the courts of the Member States are granted the right to ask the Commission to transmit to them in-

formation in its possession or its opinion on a case, whereas the Commission as *amicus curiae* is granted the right to submit written observations to the courts of the Member States on its own initiative where necessary to achieve the coherent application of Article 107(1) or Article 108 TFEU (Article 23a(1) and (2) of the State Aid Procedure Regulation). Even in the absence of explicit provisions concerning criminal law investigations in the State Aid Procedure Regulation, it follows from Article 4(3) TEU, which postulates the duty of sincere cooperation, that the national administrations are obliged to strive for mutual cooperation in the implementation of EU law. Therefore, Public Prosecutors should involve the Commission as *amicus curiae* when investigating State aid related embezzlement.<sup>47</sup>

However, any improvement in the establishment of a coherent and comprehensive legal framework for State aid related embezzlement at Union level is improbable, since the EU lacks competence in the area of substantive criminal law, with some exceptions for organised crime,<sup>48</sup> according to Article 83 TFEU, and financial interests of the EU,<sup>49</sup> according to Article 325 TFEU. Nevertheless, criminal liability for granting unlawful State aid may – accepting disparate levels of efficiency depending on the willingness of the Member States – be an efficient tool of EU State aid law enforcement where national jurisdictions hold according criminal provisions.

41 Almunia, 'The State Aid Modernisation Initiative', EStALI – European State Aid Law Institute, 10<sup>th</sup> Experts' Forum on New Developments in European State Aid Law on 7/6/2012, Brussels, speech/12/424.

42 In Germany, this concept has already been adopted regarding economic crime prosecution, according to Section 143(4) of the German Judicial System Act (GVG).

43 Gertler, in Graf (ed), *Beck'scher Online-Kommentar StPO* (18<sup>th</sup> ed, 2014) Richtlinien für das Strafverfahren, Allgemeiner Teil, Allgemeines, Der Staatsanwalt, rec. 2.

44 Article 23a was newly introduced by the Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([2013] OJ L204/15).

45 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ([2003] OJ L1/1).

46 Cf. Zuber, in Loewenheim, Meessen and Riesenkampff (eds), *Kartellrecht* (2<sup>nd</sup> ed, 2009) Article 15 VO 1/2003/EG, rec. 1.

47 See on the duties accompanying the administrative enforcement of EU law Kahl, in Callies and Ruffert (eds), *EUV/AEUV* (4<sup>th</sup> ed, 2011), Art. 4 EUV rec. 59 et seq.

48 Weißer, in Böse (ed), *Europäisches Strafrecht* (2013) § 8 rec. 1.

49 Dannecker, in Böse (ed), *Europäisches Strafrecht* (2013) § 8 rec. 2.