

# The European, Middle Eastern and African Antitrust Review 2018

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The European, Middle Eastern and African Antitrust Review 2018

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*Global Competition Review* is delighted to publish 2018 edition of *The European, Middle Eastern & African Antitrust Review*, one of a series of three special reports that have been conceived to deliver specialist intelligence and research to our readers – general counsel, government agencies and private practice lawyers – who must navigate the world’s increasingly complex competition regimes.

Like its sister reports, *The Antitrust Review of the Americas* and *The Asia-Pacific Antitrust Review*, *The European, Middle Eastern & African Antitrust Review* provides an unparalleled annual update, from competition enforcers and leading practitioners, on key developments in the field.

In preparing this report, *Global Competition Review* has worked with leading competition lawyers and government officials. Their knowledge and experience – and above all their ability to put law and policy into context – give the report special value. We are grateful to all of the contributors and their firms for their time and commitment to the publication.

Although every effort has been made to ensure that all the matters of concern to readers are covered, competition law is a complex and fast-changing field of practice, and therefore specific legal advice should always be sought. Subscribers to *Global Competition Review* will receive regular updates on any changes to relevant laws over the coming year.

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# European Union: State Aid

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## Introduction: The concept of state aid

State aid law is a genuine concept of EU law that forms part of the competition law rules laid down in articles 107-109 et seq of the Treaty on the Functioning of the European Union (TFEU). In a single market as in the EU, state aid rules are vital to prevent distortions of competition as a consequence of governmental support for national market players to the detriment of competitors from other member states.

Article 107 TFEU generally prohibits state aid except for aid justified by reasons of general economic development. State aid can take different forms and is not limited to direct subsidies. In fact, in recent years the focus of state aid law has shifted towards the question of whether tax measures, financial guarantees or preferential commercial terms provided by a government may constitute state aid.

Any advantage, in any form whatsoever, that a state entity confers on a selective basis to certain undertakings or for the production of certain goods can in principle be state aid. In contrast, subsidies granted to individuals or general measures open to all companies do not fall into the application of article 107 TFEU. Hence, the criteria for assessing state aid are as follows:

- an intervention by the state or through state resources regardless of its form;
- that provides the beneficiary with an advantage on a selective basis that is not available to companies in comparable situations, eg, a grant for an individual company or a favourable measure for an industry sector or for businesses in defined regions;
- that has or may distort competition; and
- that is likely to affect trade between EU member states.

As the definition of state aid raises many questions in individual cases, the European Commission, who is in charge of ensuring that state aid complies with EU rules, in May 2016 published a Notice on the notion of state aid.<sup>1</sup> The Notice forms part of the Commission's State Aid Modernisation initiative that was launched in 2012. The overriding goal the Commission aims to achieve with the Notice and its other instruments is to provide guidance and legal certainty for companies and to focus its resources on the most problematic cases with the largest impact on the EU single market. The Notice on the notion of state aid provides general guidance on all aspects of the definition of state aid by summarising the Commission's decisional practice and the case law of the European courts.

While article 107(1) contains a general prohibition of state aid, EU state aid rules also accept that government intervention may in some instances be justified. According to article 107(2) and (3), state aid that supports a number of policy objectives, such as aid with a social character, aid for the promotion of culture and heritage or other goals, can be considered compatible with the single market. The General Block Exemption Regulation<sup>2</sup> (GBER) plays an important role in defining the scope of exceptions to the general prohibition of state aid as it exempts aid measures from prior notification if certain conditions are respected. According to the Commission's estimates

roughly three-quarters of the state aid measures are exempted under the GBER.

If a state measure contains aid and no exemption applies, the measure needs to be notified to the Commission which will assess whether the measure can be justified individually and approved by the Commission as compatible with the internal market on that basis. If this is not the case, the Commission will take a so-called negative decision and require the member state to recover the aid with interest from the beneficiary. The aim of recovery is to remove the undue advantage granted to a beneficiary. There are only a few situations in which such recovery would not be required: where it would be contrary to a general principle of EU law (see section 6 below) or when the 10-year limitation period for recovery has passed. If a member state does not comply with the recovery decision in time, the Commission may directly refer it to the European Court of Justice (ECJ).

The discussion below highlights a number of key areas in which state aid enforcement has been particularly prominent in recent years but does not purport to be exhaustive.

## State aid and tax

One area in which the European Commission has increased state aid enforcement significantly concerns national tax rulings. Fiscal measures have always been the subject of state aid scrutiny, as a favourable tax treatment by an authority may provide an undue advantage to certain companies or an industry sector, thus falling under the scope of article 107(1) TFEU. Since the end of the last century the interdependence between tax and state aid law has become a special focus of the Commission in light of increased tax competition between EU member states.<sup>3</sup>

Since the Commission adopted a series of decisions in 2002 and 2003 on national schemes which granted tax breaks to international groups of companies that based part of their activities in these member states, a recurrent issue has been the way in which tax authorities deal with transfer pricing. Transfer pricing relates to the prices companies charge for intra-group transactions, in particular between companies of the same group located in different countries. Since intra-group transactions do not take place on the market, tax authorities need to assess whether the price charged for these intra-group transactions is indeed comparable to a price that would have been paid on the market, to prevent groups of companies from using transfer pricing in order to move profits from high-tax to low-tax jurisdictions.

While tax authorities mainly assess transfer prices in order to verify that companies do not pay too little tax, in 2006 the Court of Justice held that if national tax authorities were to accept transfer prices that result in a lower taxable base, this could amount to state aid.<sup>4</sup> On this basis, the Commission has stated that article 107(1) TFEU implies an arm's length principle, ie, the requirement that tax authorities only accept transfer pricing methodologies that result in "a reliable approximation of a market-based outcome."<sup>5</sup>

Since 2013, the Commission has started investigations into rulings given by tax authorities in several member states concerning the transfer prices used by large corporations. This has resulted so far in decisions against Belgium,<sup>6</sup> Luxembourg,<sup>7</sup> the Netherlands<sup>8</sup> and Ireland,<sup>9</sup> all of which are being challenged before the General Court of the European Union. As an accompanying policy regarding its tax investigations, the Commission on 3 June 2016 issued a working paper on state aid and tax rulings.<sup>10</sup> In December 2016, in a case relating to a Spanish tax scheme, the Court of Justice supported the Commission's approach on selectivity which plays a central role in many tax cases. The Court set aside judgments of the General Court that had annulled two Commission decisions considering that the selectivity of a Spanish tax scheme had not been established in those decisions. The Court of Justice held that case law does not require the Commission to always identify a particular category of undertakings that exclusively benefit from a measure in order to demonstrate selectivity.<sup>11</sup>

It should be noted that tax rulings are not the only fiscal measures being scrutinised by the European Commission under state aid rules. Other tax measures that have been found by the Commission to constitute unlawful aid in the past few years include changes to the French tonnage tax regime,<sup>12</sup> an exemption from the aggregates levy in the UK,<sup>13</sup> tax exemptions offered to certain ports in the Netherlands<sup>14</sup> and the German scheme for the carry-forward of tax losses in the case of restructuring of companies in financial difficulty.<sup>15</sup>

### State aid in the energy sector

A sector in which the Commission has been particularly active recently is the area of energy supply. In 2014, the Commission published its new Guidelines on state aid for environmental protection and energy (EEAG) for the period 2014-2020.<sup>16</sup> The EEAG promote the use of renewable energy sources but also aim to address market distortions that may arise from public support granted for this purpose.

European Renewable Energies Association (EREF) brought a challenge against the new guidelines. However, the General Court dismissed this application for annulment because of lack of standing in November 2015.<sup>17</sup> The Commission's assessment under the EEAG was nevertheless sanctioned by the General Court recently in a case concerning the Commission's objection to the exemption of heavy industry in Germany from surcharges in order to support renewable energy. The challenge mainly concerned the question of whether such an exemption constituted aid, rather than the Commission's assessment of the compatibility of such aid. The General Court wholly endorsed the Commission's analysis and rejected the application brought by Germany.<sup>18</sup>

As regards renewable energy, the Commission approved support measures, among others, in France,<sup>19</sup> Belgium,<sup>20</sup> Czech Republic,<sup>21</sup> Slovenia,<sup>22</sup> Greece,<sup>23</sup> Poland<sup>24</sup> and Italy.<sup>25</sup> The Commission, on 27 May 2016, also cleared German plans to grant aid of €1.6 billion for mothballing and subsequently closing eight lignite-fired power plants.<sup>26</sup> The support does not cover the costs for closing the plants which will be borne by the operators themselves, but Germany plans to compensate the operators for their foregone profits.

Notably, while the Commission on 24 October 2016 approved<sup>27</sup> German plans to support high-efficiency cogeneration aimed at promoting energy efficiency, lower CO<sub>2</sub> emissions and leading to a better integration of cogenerated power into the electricity market, it also initiated an in-depth investigation into reductions for certain users from the surcharges imposed to finance the support.

In April 2015, the Commission opened its first-ever state aid sector inquiry into capacity mechanisms,<sup>28</sup> which resulted in an interim report in 2016.<sup>29</sup> According to the Commission, capacity mechanisms can increase security of electricity supply, but it must be more thoroughly assessed whether they are necessary, targeted and cost-effectively designed. In late 2016, the Commission approved, after an in-depth investigation, French plans for a capacity mechanism under state aid rules<sup>30</sup> which, in its amended version, is the first national plan committing to explicitly include and remunerate foreign capacities.

### State aid for ports and airports

Another sector in which Commission enforcement has been particularly active is transport, in particular aviation and, to a lesser extent, maritime transport.

After a General Court judgment in 2000 confirmed that the operation and construction of an airport is an economic activity,<sup>31</sup> several investigations into aid to regional airports were initiated, most notably into the state aid provided to Belgium's Charleroi airport. The Commission's decision in that case,<sup>32</sup> despite its annulment by the General Court in 2008,<sup>33</sup> kicked off dozens of investigations into aid schemes for regional airports and the modernisation of regional airports in multiple member states.<sup>34</sup> In 2014 the Commission also adopted new guidelines for state aid to airports and airlines.<sup>35</sup>

In the maritime sector, specific guidelines have also applied for many years. One of the most interesting aspects is that they allow member states to introduce tax benefits for ship-owning companies, mainly to allow them to compete with non-EU countries trying to act as flag states. Recently, the Commission on this basis validated the prolongation of the tax exemption regimes for seafarers in Belgium,<sup>36</sup> Germany<sup>37</sup> and Sweden.<sup>38</sup>

Up until now, there were no block exemptions in the aviation and maritime sectors (and member states were therefore always required to notify aid measures they intended to grant). On 17 May 2017, after two rounds of consultation launched in 2016, the Commission approved the proposed extended scope of the GBER to ports and airports.<sup>39</sup> In the airport sector, public investments for the infrastructure of regional airports (with less than 3 million passengers per year) may be made without prior notification. Up to 75% of infrastructure costs for airports with less than 1 million passengers per year and up to 50% of infrastructure costs for airports with less than 3 million passengers per year are exempted from notification.

For maritime ports, public investments of up to €150 million in sea ports<sup>40</sup> and of up to €50 million in inland ports<sup>41</sup> may be made without prior notification. For these two categories, eligible costs are defined as investments for the construction, replacement or upgrade of port infrastructures, access infrastructure and dredging. In the case of maritime ports, up to 100% of the eligible costs where such costs are up to €20 million are exempted from notification, up to 80% of the eligible costs where such costs are above €20 million are exempted and up to 60% of the eligible costs where such costs are above €50 million are exempted. In the case of inland ports, up to 100% of the eligible costs are exempted up to a €50 million total envelope.

### Aid for start-ups

A novelty in EU state aid law is the introduction in the GBER of a specific regime to facilitate access to public finance for start-up companies. Pursuant to this system, aid received by "unlisted small enterprises up to five years following registration which have not yet distributed profits and have not been formed through a merger"<sup>42</sup> is

exempted from the notification requirement.

This new exemption is now increasingly used in the context of investment initiatives launched by member states through specific public hubs as it is seen as a convenient way to provide aid in excess of the de minimis cap of €200,000 on block-exempted aid pursuant to the Commission's De Minimis Regulation.<sup>43</sup>

While the former general block exemption regulation<sup>44</sup> contained references to start-ups, there was no clear cut definition of this concept under the state aid rules, and "start-ups" were not separately identified as a form of business eligible to receive specific aid as such. The strategy of the Commission's DG Competition, as described during the course of the consultation phase of the 2014 GBER, was specifically to simplify "scattered provisions for start-up aid [...] into a broad category of start-up aid, targeting the market failure of access to finance for all start-ups".<sup>45</sup>

In order to assess a company's eligibility to receive aid for start-ups, a four-step analysis is required. This involves checking whether the company: is a small enterprise; has less than five years' existence; has not distributed profits since its creation; and was not formed through a merger.

If a start-up is eligible, a number of different thresholds for the funding are in place and the aid may take a wide range of different forms. What renders aid for start-ups particularly attractive is that the thresholds are very clearly defined for a wide range of different tools. The different ceilings applicable may be doubled where the company qualifies as a small and innovative enterprise.

Other block exemption mechanisms may also enable young companies to receive public funding (such as aid for R&D projects, innovation aid and investment aid). However, the start-up category appears to be a very handy and comprehensive tool for young companies to obtain public funding.

### Procedural developments

This last section focuses on procedural developments and companies' rights in state aid procedures. It should be kept in mind that in state aid cases the Commission and the member state concerned are the main parties to the procedure. The role of third parties including the beneficiary or a complainant is rather limited. Thus, it can be challenging for companies' arguments to be heard by the Commission.

There have been two recent developments regarding the Commission's rules for state aid procedures: the enhancement of the Commission's investigation tools in 2013<sup>46</sup> and the introduction of a new Procedural Regulation in 2015.<sup>47</sup>

First of all, in 2013, the Commission enhanced its investigation tools by introducing the ability to directly obtain information from undertakings. Prior to the modernization package, the procedural framework presented the Commission with a number of difficulties when gathering market information as it was largely dependent on the information provided by member states. Consequently, this put a significant administrative burden on member states which led to frequent delays. Even though under the Best Practices Code<sup>48</sup> the Commission could seek the cooperation of third parties after initiating a formal investigation process, this measure lacked teeth because the cooperation of third parties was voluntary.

The modernization package has addressed this shortfall by strengthening the Commission's powers so that once it has opened a formal investigation, it can obtain information by a simple request or decision from: (i) beneficiaries provided that the member state requesting the aid agrees;<sup>49</sup> and (ii) other undertakings and other member states if the information provided by the member state requesting the aid is not sufficient.<sup>50</sup> These enhanced investigatory

powers came into force on 20 August 2013 and were codified in 2015 in the new Procedural Regulation. For the first time, these powers enabled the Commission to compel a response from third parties and to enforce compliance with fines for inaccurate or misleading information in a response to a simple request or decision and for delays in responding to a decision.<sup>51</sup>

Even though these changes do not absolve member states from showing that aid is compatible, they allow the Commission to look to other sources to obtain "factual company and market data and facts-based analysis of the functioning of the market."<sup>52</sup> The Commission recognises that these new measures must be applied proportionately (especially with regards to SMEs)<sup>53</sup> and can only relate to information that is at the other parties' disposal.<sup>54</sup>

In 2015, the Commission also streamlined its procedural rules by codifying, "in the interest of clarity and rationality,"<sup>55</sup> its earlier procedural rules in the new Procedural Regulation, which came into force on 14 October 2015. The Procedural Regulation provides rules for the notification of state aid, formal investigations, injunctions and recovery of aid deemed incompatible with the single market.

Finally, recent case-law of the CJEU reaffirmed the importance of state aid law and its potential consequences for companies in cases where an aid element is not identified on time, in particular when entering into contracts with government authorities. The CJEU's decision in *Klausner Holz*<sup>56</sup> of 2015 made it clear that even a final judgment having the force of res judicata cannot prevent the application of EU state aid law in a subsequent court procedure if a national court considers an agreement to contain an element of aid. There can also be no legitimate expectations for companies that relied on a final judgment that is contrary to the state aid rules. Thus, member states do not have any alternatives other than to strictly enforce state aid law. Companies are well advised to obtain state aid law advice prior to entering into any agreements with state entities that might include an aid element.

### Notes

- 1 Commission Notice on the notion of aid, C:2016:262:1.
- 2 Commission Regulation 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, L:2014:187:1.
- 3 Since then, tax exemptions have made up 20-40% (depending on the year) of the aid instruments used by member states according to the Commission's State Aid Scoreboard which can be found here: [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html/](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html/).
- 4 Case C-182/03 and C-217/03 *Belgium and Forum 187 v Commission*, ECLI:EU:C:2006:416.
- 5 Commission Notice on the Notion of State Aid, C:2016:262:1, para. 171.
- 6 Decision of 11 January 2016 in case SA.37667, Belgian excess profit exemption, L:2016:260:61.
- 7 Decision of 21 October 2015 in case SA.38375, L:2016:351:1.
- 8 Decision of 21 October 2015 in case SA.38374, L:2017:083:38.
- 9 Decision of 30 August 2016 in case SA.38373, at submission deadline only available on the Commission's website.
- 10 DG Competition – Internal Working Paper on State Aid and tax rulings, 3 June 2016.
- 11 Case C-20/15 P – *Commission v World Duty Free Group*, ECLI:EU:C:2016:981.
- 12 Decision of 4 February 2015 in case SA.14551, *French tonnage tax*, L:2015:110:15.
- 13 Decision of 27 March 2015 in case SA.34775, *British aggregates levy*, L:2016:059:87.

- 14 Decision of 21 January 2016 in case SA.25338, Corporate tax exemption of Dutch public enterprises, L:2016:113:148.
- 15 Decision of 26 January 2011 in case SA.29150, *German "Sanierungsklausel"*, L:2011:235:26.
- 16 Communication from the Commission – Guidelines on state aid for environmental protection and energy 2014-2020, C:2014:200:1.
- 17 Case T-694/14 *European Renewable Energy Foundation (EREF) v Commission*, ECLI:EU:T:2015:915.
- 18 See Case T-47/15 *Federal Republic of Germany v Commission*, ECLI:EU:T:2016:281.
- 19 Decision of 12 December 2016 in case SA.46898, at submission deadline only available on the Commission's website.
- 20 Decision of 8 December 2016 in case SA.45867, at submission deadline only available on the Commission's website.
- 21 Decision of 28 November 2016 in case SA.40171, at submission deadline only available on the Commission's website
- 22 Decision of 10 October 2016 in case SA.41998, EU:C:2016:425:1.
- 23 Decision of 16 November 2016 (Case SA.44666), EU:C:2017:083:1.
- 24 Decision of 2 August 2016 in case SA.37345, *Polish certificates of origin system to support renewables and reduction of burdens arising from the renewables certificate obligation for energy intensive users*, C:2016:471:2.
- 25 Decision of 28 April 2016 in case SA.43756, *support to electricity for renewable sources in Italy*, C:2016:258:8.
- 26 Decision of 27 May 2016 in case SA.42536, *closure of German lignite plants*, C:2016:258:5.
- 27 Decision of 24 October 2016 in case SA.42393, *reform of support for cogeneration in Germany*, C:2016:406:12.
- 28 Capacity mechanisms are measures aimed at ensuring sufficient electricity supplies, for example, by investment in new power plants and/or ensuring that power plants continue to operate. Capacity mechanisms are meant to avoid black-outs and ensure that electricity supply meets demand at any time but may also distort competition by favouring certain producers or types of technology, or create barriers to trade across national borders.
- 29 Available at [http://ec.europa.eu/competition/sectors/energy/state\\_aid\\_to\\_secure\\_electricity\\_supply\\_en.html](http://ec.europa.eu/competition/sectors/energy/state_aid_to_secure_electricity_supply_en.html).
- 30 Decision of 8 November 2016 in case SA.39621, French country-wide capacity mechanism, L:2017:083:116.
- 31 Case T-128/98 *Aéroports de Paris v Commission*, ECLI:EU:T:2000:290, confirmed by Case C-82/01 *Aéroports de Paris v Commission*, ECLI:EU:C:2002:617.
- 32 Decision of 12 February 2004 in case SA.14093, *Advantages granted by the Walloon Region to Brussels South Charleroi Airport and the airline Ryanair*, L:2004:137:1.
- 33 Case T-196/04 *Ryanair v Commission*, ECLI:EU:T:2008:585. The Commission recently adopted a new decision in this case, again finding incompatible aid but now only in so far as the airport itself was concerned (as opposed to the airline, Ryanair): Decision of 1 October 2014 in case SA.14093 *Advantages granted by the Walloon Region to Brussels South Charleroi Airport and the airline Ryanair*, L:2016:325:63.
- 34 See, for example, recently, the Decision of 8 April 2015 in case SA.38937 France – Investment aid scheme for French small and medium airports, at submission deadline only available on the Commission's website;
- Decision of 31 July 2015 in case SA.39757, *Ireland – Regional Airports Programme 2015-2019*, C:2015:277:6; Decision of 6 November 2015 in case SA.40433, *Austria – Investment Programme Kärnten Airport, Klagenfurt*, C:2016:009:3.
- 35 Communication from the Commission – Guidelines on state aid to airports and airlines, C:2014:099:3.
- 36 Decision of 14 September 2015 in case SA. 38336, *Prolongation of the exemption from social security contributions for seafarers in the sectors of maritime transport and dredging*, C:2015:403:1.
- 37 Decision of 3 May 2016 in case SA.44732, *Prolongation of the existing aid scheme "Reduction of the wage tax payable on seafarers' wages"*, C:2016:390:6.
- 38 Decision of 24 March 2014 in case SA.38240, *Shipping Aid*, C:2014:348:18.
- 39 Commission – Fact Sheet, 17 May 2017, MEMO/17/1342; the amended Regulation (GBER Amending Regulation, to enter into force 20 days after its publication in the OJEU) was not yet published at submission deadline.
- 40 Eligible costs of €130 million per project or €150 million per project in a maritime port included in the work plan of a Core Network Corridor.
- 41 Eligible costs of €40 million per project or €50 million per project in an inland port included in the work plan of a Core Network Corridor
- 42 Ibid, article 22.
- 43 Commission Regulation 1407/2013 of 18 December 2013 on the application of articles 107 and 109 of the Treaty on the Functioning of the European Union to de minimis aid, L:2013:352:1.
- 44 Commission Regulation 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of articles 87 and 88 of the Treaty, L:2008:214:3.
- 45 See the Draft GBER – explanatory memorandum of the second consultation launched on 8 May 2013 (available here: [http://ec.europa.eu/competition/consultations/2013\\_gber/gber\\_explanatory\\_memo\\_en.pdf](http://ec.europa.eu/competition/consultations/2013_gber/gber_explanatory_memo_en.pdf)), p.4.
- 46 Regulation 734/2013 of 22 July 2013 amending Regulation 659/1999 laying down detailed rules for the application of article 93 of the EC Treaty, L:2013:204:15.
- 47 Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of article 108 of the Treaty on the Functioning of the European Union, L:2015:248:9.
- 48 Code of Best Practice for the conduct of state aid control procedures, C:2009:136:13.
- 49 This provision is currently contained in article 7(2)(b) of the Procedural Regulation.
- 50 This provision is currently contained in article 7(2)(a) of the Procedural Regulation.
- 51 See article 8(1) of the Procedural Regulation.
- 52 See recital 12 of the Procedural Regulation.
- 53 See article 7(1) of the Procedural Regulation.
- 54 Article 7(4) of the Procedural Regulation.
- 55 Recital 1 of the Procedural Regulation.
- 56 Case C-505/14 *Klausner Holz Niedersachsen GmbH*, ECLI:EU:C:2015:742.



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Falk Schöning is a partner in Hogan Lovells' Brussels office and head of the firm's EU state aid practice. He can assist you regarding all questions and problems of EU and German antitrust law, EU state aid law and export control law. Falk also has experience of policy-making in Brussels and Berlin and can assist clients effectively in policy advocacy projects. Clients praise Falk as solution-orientated, pragmatic and reliable. He is listed as a "Future Leader" in competition law by *Who's Who Legal* 2017 and as a "Next Generation Lawyer" by *The Legal 500*.

In state aid cases he structures projects and transactions and counsels in the proceedings of the European Commission, national authorities or courts. Areas of focus include state aid and tax, TMT, R&D and regional aid, and security and defence. Falk also advises on the impact of Brexit on state aid law questions.



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David Dauchez is an associate in Hogan Lovells' Brussels office. He advises on all aspects of EU law, including competition law, state aid, merger control and cartels with special focus on competition issues in relation to regulated industries, energy and transport.

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