State Aid and Public Procurement in the European Union

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PREFACE

This book contains a collection of essays written by academics and practitioners who contributed to the elective Masters course on 'State Aid and Public Procurement in the European Union' at Maastricht University, and to two conferences on State aid and public procurement organised in Maastricht in 2013 and 2014, respectively.

In 2011 the European Commission's Education, Audiovisual and Culture Executive Agency (EACEA) decided to support the 'State Aid and Public Procurement in the European Union' course by recognising it as a Jean Monnet European Module (Lifelong Learning Programme).

First of all, the course aims to provide stakeholders – students, but also practitioners, civil servants, and consumers – with a thorough knowledge of EU public procurement law and State aid rules. But the course also addresses the largely unexplored links and interfaces between these two legal fields, which both aim to complete the internal market and to prevent the distortion of competition. These fields share common concepts, while observance of public procurement rules may limit the risk of individual transactions being qualified as State aid (as the *Altmark* case law and Commission packages illustrate).

The Jean Monnet Module grant enabled us first of all to invite a series of distinguished speakers, who shared their knowledge, experiences and views on State aid and public procurement law and their underlying relationship. Guests included the academics *Prof. Dr Phedon Nicolaides* (College of Europe, Bruges), *Dr Hanna Schebesta* (Wageningen University; European University Institute Florence), *Ms Rita Beuter* (European Institute of Public Administration), as well as the legal practitioners *Mr Bert Lejeune* (Paulussen Advocaten) and *Mrs Len Broeders* (Broeders Advocaten).

Secondly, lectures and tutorials were provided by members of the Law Faculty of Maastricht University, including the undersigned. During tutorials, participants learnt to apply theory to concrete cases by using an interdisciplinary (law and economics) method and a problem-based approach. They learnt to analyse specific public contracts that were granted on the basis of a public procurement procedure and to determine if these contracts conferred an advantage on certain undertakings in breach of EU State aid rules. Participants thus learnt to determine whether the procurement framework can provide an ultimate safeguard to prevent the award of a public contract from constituting state aid.

Thirdly, the Jean Monnet Module made it possible for us to organise two conferences on 'State Aid and Public Procurement in the European Union', on 23 May 2013 and 27 May 2014. These conferences attracted a wide audience of specialised academics, practitioners, supervisors and students. The most recent conference was opened by *Mr Vincent Verouden* (DG Competition, European Commission; Brussels School of Competition). Other speakers included *Prof. Dr Doris Hildebrand* (Free University of Brussels; EE&MC), *Prof. Dr Pieter Kuypers* (Radbout University Nijmegen; Dutch Commission of Public Procurement Experts; AKD), *Dr Laura Parret* (Houthoff Buruma), *Prof. Dr Raymond Luja* (Maastricht University), *Mr Georg Glavanovit* (Ernst and Young), *Prof. Dr Caroline Buts* (Free University of Brussels), *Prof. Dr Wouter Devroe* (Maastricht University; KU Leuven; Allen & Overy; Belgian competition authority), *Dr Stefan Weishaar* (University of Groningen), *Mrs Len Broeders* (Broeders Advocaten), *Prof. Dr Steven Van Garsse,* (Antwerp University; Flemish Knowledge Center on PPS) and *Mr Bert Lejeune* (Paulussen Advocaten). Their illuminating and thought-provoking presentations often led to lively debates on the path to follow towards European integration in the fields of State aid and public procurement and the development of the internal market. The Jean Monnet Module has most certainly fostered interaction between the worlds of theory and practice and has provided opportunities for all categories of stakeholders present to work together, to learn from each other's experience, and to broaden horizons. We hope that the conferences have thus made a small but genuine contribution to the development of the European Union as an advanced knowledge society.

The present book contains a selection of (conference) papers written by those who were involved in the course and in the conferences.

We want to express our sincere gratitude to EACEA for the support and co-financing which proved crucial in developing the course – which attracts more participants every year – and in organising the conferences, which will also continue to be organised on a yearly basis.

Sarah Schoenmaekers, Wouter Devroe and Niels Philipsen

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ABOUT THE EDITORS

Sarah Schoenmaekers studied law at the European Law School of Maastricht University. She has been a practising lawyer in Belgium (Omnius advocaten) since 2006. In 2010 she obtained her PhD at Maastricht University. From 2009–2012 Sarah Schoenmaekers worked as a lecturer at Maastricht and Hasselt Universities and since 2013 she has been an Assistant Professor at Maastricht University (specialisations: public procurement law and substantive European law). Since 2013 she has also been working as a post-doctoral researcher at the Open University of Heerlen. She is a scholar of the Maastricht Centre of European Law, the Institute for Transnational Legal Research (METRO) and a member of the Ius Commune Research School. She is a project manager of several research projects.

Wouter Devroe is Professor of Competition Law at Maastricht University, Professor of Law and Chair of the Economic Law Department at KU Leuven, attorney in Brussels (Allen & Overy), and Assessor at the Belgian Competition Authority. He previously clerked at the European Court of Justice and was a member of the adjudicating branch of the Belgian competition authority. He studied law in Leuven (lic. jur. 1990, summa cum laude), Heidelberg (Ruprecht-Karls Universität; Erasmus) and Chicago (LLM Northwestern University; Fulbright Grant). His PhD concerned privatisation, corporatisation and public service law. His teaching and research focus on European and economic law.

Niels Philipsen is Associate Professor in Law and Economics at Maastricht University. He graduated in economics (specialisations: microeconomics and antitrust policy) at the School of Business and Economics of Maastricht University and obtained his PhD in 2003 at the Maastricht Institute for Transnational Legal Research (METRO). In 2003 Niels Philipsen worked at the European Commission (DG Competition) in Brussels. In summer 2005 he was a visiting scholar at the University of Illinois in Urbana-Champaign (USA), and in spring 2007 he was a European Visiting Professor at Peking University in Beijing (China). Since 2004 he has been working as a Senior Researcher and project manager for many different research projects. He teaches courses in law and economics, competition law, business economics and State aid. In 2013 he became Vice-Director of METRO.