European Competition vs. Global Competitiveness:

Transferring EU Rules on State Aid and Public Procurement beyond Europe

Michael Blauberger* and **Rike U. Krämer****

CCP Working Paper 10-10

Abstract:
As long as there is no effective state aid control outside the EU, the European Commission faces a dilemma: either European firms will be disadvantaged in global competition by strict EU rules, or the Commission will come under pressure to relax the rules, thereby running the risk that fair competition within the EU will be undermined. As a consequence, the Commission attempts to promote EU rules on state aid and public procurement beyond EU borders – in non-member countries as well as at the WTO level. This article analyses the Commission's channels of regulatory transfer and the factors accounting for its varying success. Bilateral cooperation provides many opportunities to spread European state aid rules, but decentralised enforcement at the national level remains ultimately deficient. Moreover, the transfer of European rules to the multilateral WTO depends heavily on the EU's ability to reach prior consensus with its most powerful partner and rival, the US Government.

***Keywords*:** State aid, public procurement, regulatory export.

***Acknowledgements*:** This text was inspired by a workshop held in July 2009 at the ESRC Centre for Competition Policy on "The European Union and State Aid: the Present Crisis and Beyond". We thank Hussein Kassim and Susanne K. Schmidt for their helpful comments on earlier versions of this paper. The funding of the Collaborative Research Centre 597 'Transformations of the State' by the German Research Foundation is gratefully acknowledged.

***Contact details*:**

* Dr. Michael Blauberger, Collaborative Research Centre 597 ‘Transformations of the State’, University of Bremen, email: michael.blauberger@sfb597.uni-bremen.de
** Rike U. Krämer, Collaborative Research Centre 597 ‘Transformations of the State’, University of Bremen, email: rike.kraemer@sfb597.uni-bremen.de

Contents

1 Introduction

When European governments set up national policies to support the automotive industry in the face of the economic crisis in early 2009, the European Commission had to strike a delicate balance. Across the Atlantic, the Obama administration was planning a multi-billion package of subsidies, potentially linked to a 'Buy American' clause. The European Union's (EU) Ambassador in Washington, John Bruton, threatened to refer the issue to the World Trade Organization (WTO).[1] At the same time within Europe, several governments voiced their opposition to the plans of French President Sarkozy to limit the receipt of state aid to companies with factories located in France or supplied by French sub-contractors. The EU Presidency, then held by Prague, arranged an informal meeting of European Heads of State and Government and the European Parliament passed a resolution on the future of the automotive industry, in which it included a plea "to accelerate, simplify and increase financial support for the automotive industry".[2] In his intervention in the debate, the Slovak MEP, Sergej Kozlik, captured the dilemma in which the EU and particularly the Commission had to manoeuvre:

[1] "Fears over US Stimulus Package. Europe Warns against 'Buy American' Clause", in: Spiegel Online, 2 February 2009, online: http://www.spiegel.de/international/europe/0,1518,605185,00.html [All URLs have last been checked on 1 May 2010].
[2] "Resolution on the future of the automotive industry", RSP/2009/2560. For the details of the parliamentary debate, see online: http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090324&secondRef=ITEM-011&language=EN&ring=P6-RC-2009-0152.

> We must prevent rivalry over subsidies between the various players on the European market. The situation is made more difficult by the fact that these rules do not take account of global competition, particularly from the US (…) Europe may face not only the problem of how to sort out production and sales problems in Europe, but also the problem of imported cars that have been produced with excessive state aid. In such a situation Europe could also threaten to enforce measures within a World Trade Organization framework.

The Commission adopted a mixed approach. It temporarily allowed more state aid for the European automotive industry, insisted on non-discriminatory measures between member states, and called for increased efforts in the medium and long-term to guarantee fair competition on a global scale.[3]

This article concentrates on the latter aspect of promoting state aid discipline beyond the EU, more specifically on the Commission's strategies to export European state aid and public procurement rules. While extraterritoriality, regulatory export and rule convergence have long been issues in traditional areas of competition policy such as antitrust and merger control (Friedberg 1990; Waller 1997; Wigger 2008), much less attention has been devoted to state aids (Van de Casteele 2006: 804). Some authors have analysed the implementation of state aid control under accession conditionality in Central and Eastern Europe (Blauberger 2009; Cremona 2003), but less is known about rule transfer to countries that are not committed to eventual EU membership, e.g. countries from the European Free Trade Area (EFTA) and associated countries. Also, the EU is actively promoting its state aid rules at the WTO level, albeit with limited success. Furthermore, in parallel to its efforts in regard to state aid control, attempts to export European rules have been undertaken in relation to public procurement, a field which can have strong state aid implications. Through which channels does the Commission promote European rules on state aid as well as public procurement and how can we explain its varying success?

We will address these questions in five steps. Section 2 sketches the basic dilemma: as long as there is no effective state aid control outside the EU, European firms are disadvantaged in global competition by strict EU rules, or the Commission comes under pressure to relax its controls, thereby running the risk that fair competition within the EU will be undermined. After a short outline of EU rules on state aid and public procurement in section 3, we analyse the Commission's strategies to transfer these rules beyond the EU. Section 4 deals with horizontal

[3] "Communication from the Commission responding to the crisis in the European automotive industry", COM (2009) 104 final.

regulatory transfer to non-EU countries. Section 5 addresses the attempted vertical 'upload' of EU rules to the WTO level. The concluding section summarizes the main reasons for the Commission's varying success in exporting EU rules and discusses the benefits for European firms of EU regulatory transfer.

2 European Competition vs. Global Competitiveness

From a perspective purely oriented towards economic efficiency it might seem misleading to oppose 'European competition vs. global competitiveness'. In numerous speeches before and after the outbreak of the financial crisis, former Competition Commissioner, Neelie Kroes, reiterated her conviction that modern competition and industrial policies did not contradict each other, but could contribute jointly to making firms more competitive. Based on free competition within the EU, guaranteed by the Commission's supervision, countries and firms should "use our Single Market as a springboard for global success" (Kroes 2008).

Before the financial and economic crisis, however, doubts were already raised by various voices as to whether such a straightforward European competition approach neglected the fact that other countries and regions did not apply similarly strict competition principles. During the consultations on the Commission's State Aid Action Plan (SAAP) launched in June 2005, a major share of comments deplored the inward-looking perspective of the Commission and its lack of global considerations (European Commission 2006: 8). Not just business representatives or member states like France and Germany, but also the Competition Law Association reminded of this broader issue:

> (…) the reform road map raises challenges for the Commission to balance the key objective of 'less and better targeted state aid' against the competitiveness of the EU economy as a whole in the global economy. Obviously the Commission will need to consider the economic position of the EU vis-à-vis countries such as China and India (which routinely provide state assistance to companies) and ensure that, at the same time as trying to create a level competitive playing field within the EU, the EU as a whole is not then put at a competitive disadvantage vis-à-vis other major and emerging economies in the world. [4]

In particular, the representatives of large firms criticised the Commission for its differentiated approach, allowing larger proportions of state aid only for small and medium sized enterprises (SMEs). State aid to large firms is considered to be

[4] Comments of the Competition Law Association on the EU Commission's State Aid Action Plan, online: http://ec.europa.eu/competition/state_aid/reform/comments_saap/37551.pdf

especially distortive to intra-Community competition and, therefore, EU rules such as the Multisectoral Framework limit the ability of member governments to grant state aid for large regional investment projects exceeding € 100 million (Soltész 2005). Combined with higher costs to fulfil European environmental and social standards, the French business representation *MEDEF* argued that strict state aid rules might disadvantage large European firms in global competition and create an incentive for them to relocate to regions outside the EU.[5] Hence, even if companies may well improve their global competitiveness in the long term due to the discipline imposed by European state aid rules – see e.g. the example of airline companies such as Air France (Kassim & Stevens 2010) – the Commission is confronted with opposite pressures in the short run.[6]

Public procurement may also have an (often implicit) state aid dimension and, therefore, a similar logic applies. The expansion of procurement law is primarily justified as a reaction to the enlargement of markets, leading to a more efficient use of public expenditures. The former internal market Commissioner, Frits Bolkestein, for example, commented as follows on the extension of the WTO Government Procurement Agreement to the enlarged EU:

> This is good news for the new Member States, whose companies will now be able to bid for government contracts in important markets all over the world. It is also good news for EU taxpayers, as opening up procurement markets more widely leads to better value for money.[7]

In return for the liberalisation of public contracts and the efficiency gains involved, however, EU member states lose certain possibilities to promote national or European firms by favouring them against economic actors from abroad. The only exception for offering support to national industry permitted under European procurement law concerns subcontracting for SMEs (recital 32 of the Directive 2004/18 EC). Thus, the above outlined arguments for transferring state aid regulations to the international level or extended them bilaterally to other nation states apply *mutatis mutandis* for the regulation of public procurement.

---

[5] Position adopted by MEDEF concerning the European Commission's State Aid Action Plan, online: http://ec.europa.eu/competition/state_aid/reform/comments_saap/38148.pdf

[6] See, for example, page 5 of the position of the European Aeronautic Defence and Space Company (EADS) on the "EU 2020" strategy, calling for more state aid flexibility in cases of global distortions of competition. Online: http://ec.europa.eu/dgs/secretariat_general/eu2020/docs/european_aeronautic_defence_space_company_en.pdf

[7] "Public procurement: WTO Government Procurement Agreement extended to the enlarged EU", Commission Press Release IP/04/744, 15 June 2004.

As a result, the Commission faces a dilemma in cases that have both a European and a global dimension: European competition and global competitiveness cannot always be reached at the same time, but the two goals have to be balanced against each other. A telling case is the Commission's treatment of Airbus. Given that there is no European competitor, the Commission can argue that Airbus subsidies do not affect trade between member states. Hence, no state aid as defined by Article 107(1) TFEU (ex-Article 87(1) of the EC Treaty) is involved. Normally, however, global developments and intra-European effect are hard to disentangle. If the Commission strictly enforces EU rules on state aid and public procurement, it gets criticised for disadvantaging European firms on the global market. Conversely, if it gives way to the demands of large firms, competition in the internal market is undermined. An example of a potential loophole for weaker state aid control is the so-called 'matching clause' in the Commission's framework for research, development and innovation aid (Van de Casteele 2006: 804). The clause, that has not so far been applied, allows higher aid intensities, if "competitors located outside the Community have received (in the last three years) or are going to receive, aid of an equivalent intensity for similar projects".[8] In order to escape this dilemma and to resist downward regulatory pressures, the Commission can try to extend the 'level playing field' beyond Europe, i.e. it can encourage stricter control of state aid and transparent public procurement outside the EU. Before we discuss these efforts to export its regulations to other countries and to the global level, we briefly describe their object: European rules on state aid and public procurement.

3 EU state aid and public procurement rules

The overall goal of European state aid and public procurement law is the creation of an internal market. Both state aid and public procurement can be obstacles within the internal market if public resources are used to discriminate between member states in order to protect and promote national firms. The rules regarding state aid are directly laid down in Articles 107 to 109 TFEU (ex-Articles 87 to 89 of the EC Treaty). In contrast, European public procurement law is not regulated in the Treaty, but has been established in secondary legislation.

[8] Official Journal 2006, C 323, point 5.1.7.

3.1 The main principles of European state aid control

European state aid rules are only applicable if a government measure qualifies as state aid in the first place. Therefore, the definition of state aid is of great importance but difficult to establish. In theory, many government actions result in a benefit to an enterprise. Furthermore governments are continually finding new ways to intervene and, thus, the definition of state aid cannot be static. As a result, state aid is defined dynamically through the case-law of the European Court of Justice (ECJ) and decisions of the Commission (Plender 2003). Based on Article 107(1) TFEU, four broad criteria for identifying state aid can be identified: (1) any aid; (2) that involves a charge on the public account; (3) that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods; and which (4) affects trade between the member states.

The general assumption of Article 107(1) TFEU is that all state aid distorts competition. However, in some cases state aid can be compatible with the internal market, notably when such measures pursue community objectives such as the correction of market failures. Article 107(2) TFEU establishes a per se compatibility of specific types of state aid with the common market. This category comprises, for example, state aid to compensate the damage caused by natural disasters or exceptional occurrences. More important and also more contested are the exceptions laid down in Article 107(3) TFEU. This Article establishes different categories of state aid which *may* be compatible with the common market, giving the Commission a margin of discretion to announce whether an aid falls under this provision. The main objectives the Commission refers to in its decisions are Article 107(3) a,b,c TFEU:

> (a) aid to promote the economic development of areas where the standard of living is
> abnormally low or where there is serious underemployment;
> (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
> (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

The Commission has developed Guidelines and Communications to define these vague formulations in Article 107(3)a,b,c TFEU and to improve legal certainty for the member states. For example, regional state aid is mostly justified on the basis of

Article 107(3)a TFEU, temporary measures to mitigate the effects of the global economic crisis refer to Article 107(3)b TFEU and most other types of state aid, for example, for environmental protection or research, development and innovation are based on Article 107(3)c TFEU.

The control of state aid is largely centralized at the European level, with the Commission being the key player in the control procedure. According to the directly effective 'standstill clause' in Article 108(3) TFEU and Article 2.1 of the Regulation No 659/1999, member states must notify any measure that falls under the state aid definition to the European Commission and they must not implement measures without prior approval by the Commission. The Commission has the exclusive right to examine whether a notified measure is compatible with the common market, subject to Article 107(2) and (3) TFEU. Eventually, the Commission takes a positive, conditional or negative decision. If state aid is granted despite a negative decision of the Commission**,** the measure is deemed illegal and the Commission obliges the enterprise to repay the state aid it has received. The Commission's decisions can be appealed before the European Courts.

3.2 Public procurement law at the European level

Unlike the case of state aid, European public procurement law is not laid down in the EC Treaty. Only an implicit reference can be found in Article 199 TFEU (ex-Article 183(4) of the EC Treaty). Nevertheless, the European Commission early assumed that different laws concerning government procurement in the member states were an obstacle to trade. The Commission's first effort to regulate this issue was the Commission Directive 70/32/EEC of 17 December 1969 on provision of goods to the State, to local authorities and other official bodies. Based on ex-Article 33(7) of the EC Treaty, the Commission was able to enact this Directive unilaterally. The Treaty provision empowered the Commission to regulate the procedure and timetable according to which member states had to abolish measures having an effect equivalent to quotas insofar as they affected cross-border trade. Although the first Directive lacked relevant fields of application, it already indicated the Commission's determination to pursue liberalization. It mainly consisted of a list of practices which the member states were obliged to eliminate (Weiss 1993: 34).

The aim of the Commission, however, to liberalise government procurement law could not be achieved through such an approach and, therefore, the Commission changed its strategy. It initiated Directives aimed at eliminating discriminatory

behaviour among member states mainly by coordinating national procurement procedures and by increasing their transparency (Bovis 2007: 8). The first of these Directives (71/305/EEC) was passed in 1971. Today, the Council Directives 2004/17 and 2004/18 EC apply and had to be implemented before January 2006. Their main goal is the elimination of discriminatory public procurement among member states. The evolution of procurement regulation in the European Union is based on two assumptions: first, openness and transparency are necessary in order to eliminate discrimination in procurement procedures; and second, given that a great variety of regulations within the member states exists, no complete harmonisation is achievable. As a consequence, European rules aim to harmonise existing administrative practices only, while respecting a decentralised system of public procurement regulation (Bovis 2007: 8).

European procurement law is applicable to contracts between an economic actor and a contracting authority having as their object the execution of works, the supply of products or the provision of services above a certain threshold (for example, in the case for public works it applies to contracts exceeding € 5.150.00). The contracting authority may be the state or its organs, including, for example, municipalities, government departments or public health insurance companies (cf. ECJ judgement 11 June 2009 *[Hans & Christophorus Oymanns GbR/AOK Rheinland/Hamburg]* No C-300/07). Transparency is to be achieved through an obligation to community-wide publicity and advertisement of public procurement contracts in the Official Journal of the European Communities. The advertisement has to include a full description of the purchased product or service and all other requirements of the contract, for example, special conditions relating to the performance of the contract. The stage of advertising is followed by the qualification and selection of the tenderers. This stage is governed by the principle of fairness. The contracting authorities have to define the suitability of the tenderer according to predefined objective criteria, such as the personal liability of the enterprise. Finally, the contracting authority must select the qualified tenderer that offers either the lowest price or the most economically advantageous. The latter criterion has to be assessed on the basis of measures defined in advance by the contracting authority, e.g. running costs, functional characteristics and environmental friendliness (Bovis 2007: 63ff.).

In order to promote European state aid and public procurement rules outside the EU, the Commission pursues two distinct paths: bilaterally, it offers incentives for other countries to adopt European rules, and multilaterally it attempts to introduce these rules into the WTO framework. We analyse each of these approaches in turn.

4 Regulatory transfer to non-EU countries

The EU's strategies to exert regulatory influence on non-member states has been a major concern of the literatures on EU eastward enlargement (Sedelmeier 2006) and on European 'external governance' (Lavenex & Schimmelfennig 2009). According to Lavenex and Schimmelfenning (2009), the EU's success in extending parts of the *acquis communautaire* beyond EU borders varies significantly across countries as well as policies and this variation can best be explained by institutional factors, i.e. by the specific instruments of regulatory transfer.

As regards EU state aid and public procurement rules, we can distinguish three major groups of countries according to the EU's instruments and the success of regulatory transfer (see Table 1). Apart from Switzerland, the countries of the EFTA are subject to state aid rules largely identical to those of the EU and rule enforcement has been delegated to a supranational surveillance authority closely modelled on the European Commission. For accession countries, adopting the entire *acquis* is a pre-condition for EU membership, but, as previous enlargement rounds have shown, actual rule enforcement may be critical before accession. Finally, the EU has included provisions on state aid and public procurement into its Stabilisation and Association Agreements (SAAs) in order to encourage rule adoption in associated countries that might once become accession candidates.

	Country	Agreement	Articles
EFTA	Iceland	Agreement on the European Economic Area (EEA) Surveillance and Court Agreement	Part IV, Chapter 2 & Protocols 26,27 (state aid) Article 65 and Annex 16 (procurement) Protocol 3
	Liechtenstein		
	Norway		
	Switzerland	Agreement between the EEC and the Swiss Confederation	Article 23 (1.iii) (state aid)
Accession candidates	Croatia	Stabilisation and Association Agreement	Article 70 & Protocol 2, Article 5 (state aid) Article 72 (public contracts)
	Macedonia	Stabilisation and Association Agreement	Article 69 & Protocol 2, Article 5 (state aid) Article 72 (public contracts)
	Turkey	Association Agreement, Decision 1/95 Commission Decision of 29.02.1996 (96/528/ECSC) Council Decision of 18.02.2008 (2008/157/EC)	Article 34 & 39 (state aid) Article 7,8 & Protocol 2 (state aid) 3. 1, Chapter 5 Annex 2007 Accession Partnership (public contracts)
Associated countries	Albania	Stabilisation and Association Agreement	Article 71 & Protocol 1, Article 5 (state aid) Article 74 (public contracts)
	Bosnia-Herzegovina	Interim Agreement on Trade and Trade-Related Matters	Article 36 & Protocol 3 (state aid)
	Montenegro	Stabilisation and Association Agreement	Article 73 & Protocol 5 (state aid) Article 76 (public contracts)
	Serbia	Stabilisation and Association Agreement	Article 73 & Protocol 5 (state aid) Article 76 (public contracts)

Table 1: EU agreements with third countries including provisions on state aid and public procurement[9]

4.1 EFTA countries

In 1992, the EC and its member states signed the Agreement on the European Economic Area (EEA Agreement) with five EFTA states (Austria, Finland, Iceland, Norway, and Sweden) which entered into force in 1994. In 1995, Liechtenstein joined the EEA Agreement while Austria, Finland, and Sweden became EU member states.

Based on the EEA Agreement, a system of state aid control has been established for all EFTA states except Switzerland that is largely identical to the EU's

[9] Source: Author's compilation. We thank Hannah Müller for her research assistance in generating this overview. A comprehensive collection of the EU's international agreements on competition policy is provided by the Commission (2008), online: http://ec.europa.eu/competition/international/legislation/legislation.html

regime (Antoniadis 2002). Articles 61 and 62 of the EEA Agreement mirror Articles 107 and 108 TFEU and protocol 26 to the agreement entrusts the EFTA Surveillance Authority 'with equivalent powers and similar functions to those of the EC Commission'. The latter protocol also incorporates the more detailed Council Regulation (EC) No 659/1999 (the 'Procedural Regulation') into the EEA Agreement. Accordingly, EFTA states have to notify planned state aid to the Surveillance Authority and they must not implement any measure without its prior approval. In cases of illegally granted state aid, the Surveillance Authority can oblige EFTA states to recover the aid. As regards substantive state aid rules, the Surveillance Authority holds 'contact meetings' with the Commission, it participates in the Commission's multilateral meetings in which new or revised rules are discussed with EU member states and it issues guidelines that largely reflect the Commission's secondary rules (ibid.: 158-160).[10] For example, when the Commission introduced a new category of 'innovation aid' in 2006, the Surveillance Authority followed shortly after in February 2007; the EFTA guidelines for national regional aid are applicable synchronously to the EU for the period from 2007 to 2013.

Next to the Surveillance Authority, located in Brussels, the EEA Agreement also provides for an EFTA Court that has the same function in state aid cases as the ECJ and, as its prototype, has its seat in Luxembourg. Article 6 of the agreement establishes the homogeneity principle according to which 'provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the (EC) Treaty (…) shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities'. Moreover, the European Commission being present in all Court cases – before the EFTA Court as well as the European Courts – it "functions as a transmission belt between the two jurisdictions" (Buschle 2006: 758).

Compared to the EU, the main difference of EFTA state aid control is its limited scope. In particular, state aid to agriculture and fisheries is not covered by the agreement. Switzerland is EFTA member, but it has not ratified the EEA agreement and, therefore, is not subject to the Surveillance Authority's control. Apart from these exceptions, however, the transfer of EU state aid rules to EFTA countries is almost complete. Moreover, due to the delegation of decision-making powers to the Surveillance Authority and the Court, independent rule enforcement is guaranteed. In

[10] For the guidelines, see online: http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/

2007, the Surveillance Authority started to publish a State Aid Scoreboard which is based on the Commission's methodology. It exhibits deficits with regard to the recovery of illegal state aid in Norway and Iceland, but overall state aid levels have been mostly below the average of EU member states.[11] As a consequence, when Austria, Finland and Sweden entered the EU in 1995, no transitory arrangements were required in the field of state aid and all measures that had been approved by the Surveillance Authority automatically received the status of 'existing aid', i.e. they were legally protected against any retrospective disapproval by the European Commission.

In the field of public procurement the picture is similar. Article 65 of the EEA Agreement read together with Annex 16 requires the application of the European procurement regime (Bock 1993; Schnitzer 2005: 68ff; Toikka 1993). Furthermore, the EFTA countries are all members of the General Procurement Agreement (GPA) at the WTO level. As the discussion below will show, the GPA's approach is similar to the European one.

4.2 Accession countries

The more recent rounds of EU enlargement required more intense preparation. The third Copenhagen accession criterion EU membership 'presupposes the candidate's ability to take on the obligations of membership'. In practice, this *acquis* criterion requires all candidate countries to align their legislation with European law before they can enter the Union. For this purpose, the *acquis* is divided into different chapters which can be assessed and negotiated separately during accession preparations (cf. Avery 2004). State aid control belongs to the competition chapter which is typically among the last chapters to be finalised. Public procurement issues used to be part of the chapter on free movement of goods for the countries that acceded in 2004 and 2007; current candidate countries have to discuss these issues in a separate chapter. Initially, the European Commission and candidate countries 'screen' the entire *acquis* in order to identify where legislative alignment is most needed and, subsequently, the Commission publishes annual progress reports on each candidate country's efforts.[12] Apart from these reports, the Commission uses a variety of instruments to promote rule transfer, e.g. financial support and administrative assistance from member states' civil services ('twinning' programs) –

[11] Online: http://www.eftasurv.int/press--publications/scoreboards/state-aid-scoreboards/
[12] Online: http://ec.europa.eu/enlargement/how-does-it-work/progress_reports/index_en.htm

by far the most important tool of the Commission, however, is the incentive of EU membership itself (Grabbe 2003; Schimmelfennig & Sedelmeier 2004). Unless all negotiation chapters are successfully concluded, a candidate country cannot become EU member state.

In the Central and Eastern European countries (CEECs) that became member states in 2004, state aid control and procurement law procedures were virtually unknown before the beginning of the accession process in the mid-1990s. The legal obligation of CEECs to align with European state aid and public procurement rules was first established by the Europe Agreements, concluded between the EU, its member states and individual candidate countries during the 1990s (Cremona 2003). Nevertheless, fulfilling the *acquis* criterion in the realm of state aid proved to be particularly challenging for CEECs, given that European state aid rules cannot simply be implemented 'once and for all' into domestic law, but they have to be respected in the design of individual state aid measures and are applied by the Commission on a case by case basis. Under these circumstances, the Commission developed a novel approach of rule transfer to CEECs which differed fundamentally from previous enlargements and from other policy areas. Candidate countries had to establish national monitoring authorities which, until accession, were supposed to play a similar role as the Commission normally plays at the European level. Emulating the procedure of European state aid control, the granting of state aid became contingent on the notification to and approval by the respective national monitoring authorities. Furthermore, in their assessment of individual aid measures, national authorities were bound to apply the entire state aid *acquis* 'including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case law of the Court(s)' (cf. Schütterle 2002: 581). Between 1997 and 2001, all CEECs adopted national state aid legislation which transposed core elements of the state aid *acquis* into national law and laid down the procedure of national state aid control.

By and large, the Commission's strategy for extending European state aid rules to the CEECs was successful and has been applied to other candidate countries since then (Blauberger 2009). During the first years after accession, the Commission had to solve some very specific legal questions regarding the period immediately before accession and to assess a considerable number of state aid measures for firms in difficulty from the CEECs. Apart from these short-term

challenges, the new entrants are controlled by the Commission as any other member state today and they do not pose any particular compliance problem. Before accession, however, the overall picture looked quite different. National monitoring authorities played an important role in raising awareness for European state aid rules and in developing expertise in the candidate countries. Yet, the enforcement record of national monitoring authorities was only partly satisfactory for the Commission (ibid. 2009: 1036f.). In particular in between the signing of the accession treaties and accession, many governments from CEECs used their last opportunity to spend considerable amounts of state aid. The real adjustment of their state aid policies took place just after accession, when national state aid legislation had become obsolete and the exclusive competence to control had been transferred to the Commission.[13]

Drawing its lessons from Eastern enlargement in 2004, the Commission tried to tighten pre-accession requirements and to improve national monitoring authorities' enforcement record in other candidate countries. In regard to Romania and Bulgaria, the EU threatened to postpone accession by one year if the *acquis* criterion was not met satisfactorily and, more specifically, Romania could not receive the status of 'existing aid' for any of its measures before May 2006 (von Borries 2006). Current candidate countries are still in the process of passing domestic state aid legislation and establishing national monitoring authorities (Turkey), or the Commission pressures them to improve administrative capacity (Macedonia) and rule enforcement (Croatia). For their further development, a scenario similar to the CEECs seems likely: EU rules have to be adopted before accession, but their strict enforcement will only be possible under Commission surveillance.

In the case of public procurement, the EU White Paper 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union' provided guidance for the legislative measures to be adopted by CEECs. In particular, administrative procedures in the field of public procurement had to be reformed in order to encourage competition between potential suppliers. The EU supported the CEECs financially in establishing these administrative rules in the context of its pre-accession Phare programme (Kanaras 2000: 110). Companies from the old EU member states gained access to public tenders in the CEECs after a

[13] Focusing mainly on antitrust, Hoelscher and Stephan (2009: 883) draw a similar conclusion. They still identify a certain enforcement gap of national competition authorities in the CEECs compared to old member states, but they are confident that the Commission fills this gap. While being rather sceptical as regards sustainable enforcement of European state aid rules after the financial crisis, they do not show why this should be a specific problem of the new member states.

transitional period of up to ten years from the entry into force of the Europe Agreements (Hupkes 1997: FN 29). By contrast, suppliers from the CEECs were granted access to public tenders in the EU directly by the Europe Agreements. This was meant to provide an additional incentive for CEEC governments to adopt EU public procurement rules as CEEC companies could hardly compete with suppliers from EU member states without adequate knowledge of and resources for European procurement procedures (Hupkes 1997: 51).

The Stabilisation and Accession Agreements with Croatia and Macedonia contain similar provisions regarding the opening up of public procurement procedures. The transitional period was reduced from ten to a maximum of five years. The negotiations with Turkey concerning public procurement have not yet been opened.

4.3 Associated countries

The EU tries to extend the 'level playing field' in state aid matters also to those European countries that do not (yet) have an EU membership perspective. Currently, Albania, Bosnia-Herzegovina, Montenegro and Serbia are associated countries under Stabilisation and Association Agreements (SAAs). Each SAA contains a state aid prohibition modelled after Article 107(1) TFEU and a general obligation to assess competition cases 'on the basis of criteria arising from the application of the competition rules applicable in the Community' (cf. Cremona 2003: 266).

Given that most governments in associated countries aspire to EU membership, the EU can apply a weaker version of accession conditionality: in order to obtain the status of an accession candidate, associated countries must signal their willingness and capacity to comply with the *acquis*. The Commission, therefore, treats associated countries as 'potential candidates' which, in the long-run, have to fulfil the same Copenhagen criteria as previous accession countries. The annual progress reports on associated countries are structured largely identical to those of candidate countries, but the different sections do not have the status of accession negotiation chapters.[14] The particular approach to state aid control is the same as in CEECs and current candidate countries. Domestic state aid legislation needs to be passed and a national monitoring authority has to be established. In Albania and Montenegro, for example, these basic conditions had been met by the end of 2007

[14] See Footnote 12 for the progress reports. Interestingly, the progress reports are published by the Commission's Directorate-General for Enlargement, even though associated countries are labelled only 'potential candidates'.

and first reports on national state aid expenditure were published in 2008. Thus, even without candidate status, these countries are already more advanced in the implementation of EU state aid rules than the accession country Turkey.

In general, however, there are strong reasons to doubt whether the transfer of European state aid and public procurement rules to non-member states and even non-candidates can be effective. Based on their analysis of the enlargement preparations until 2004, Schimmelfennig and Sedelmeier (2004: 671f.) argue that domestic adoption of EU rules depended mainly on the credibility of the membership perspective and that rule adoption improved significantly the closer the reward of accession came. By contrast, outside the enlargement context, the Commission can only consult national authorities and request enforcement of European rules, but it has no sanctions or incentives other than the long-term perspective of EU membership to offer (Van de Casteele 2006: 800f.). None of the associated countries, according to the Commission's progress reports, has so far been able to effectively enforce European state aid rules and in the area of public procurement only limited progress has been documented so far.

Finally, the EU has concluded a considerable number of bilateral agreements in the context of the European Neighbourhood Policy, in particular with countries from Northern Africa and with former Soviet republics, which include references to European state aid rules. Provisions on state aid can also be found in agreements with individual countries such as South Africa and Chile – in the latter case, however, without incorporation of any specific EU rules, but only with a general reference to the rights and obligations stemming from WTO rules on subsidies. By and large, these agreements aim at improving state aid transparency and awareness in the target countries, but they do not impose enforceable obligations nor do they establish independent monitoring authorities. Hence, the power of EU rules clearly decreases from (i) largely identical EFTA rules and institutions to (ii) rule convergence, but enforcement deficits in candidate and potential candidate countries to (iii) modest efforts in increasing state aid transparency beyond these contexts.

5 Regulatory transfer to the WTO level

After discussing the horizontal transfer of European state aid and procurement law, we now turn to the vertical 'upload' of these regulatory systems to the WTO level. The reasons for the EU to upload its rules are the same as in the case of horizontal transfer, but the starting position is quite different. While most associated and

accession countries had hardly any state aid and public procurement policies prior to EU rule transfer, different regulatory approaches compete at the international level. As Kal Raustiala (2002: 35-43) has argued, the field of international competition policy is characterised by two partly divergent approaches – those of the US and the EU – with similar levels of regulatory power. Hence, depending on the degree of consent between these two powers, we find regulatory upload or, in case of dissent, rather vague compromises at the WTO level. The latter is true for global state aid law, while public procurement rules are largely identical at EU and WTO levels.

The EU's latest window of opportunity to transfer rules up to the WTO level was the Uruguay Round from 1989 to 1994. The EU strongly lobbied during these negotiations for an export of European rules to the international level. Eventually, both regulatory systems (state aid and procurement law) were revised and two new international agreements were enacted.

5.1 The Agreement on Subsidies and Countervailing Measures

The expression for state aid at the WTO level is subsidies. Previous to the Uruguay Round, a 'Subsidies Code' was applied, which interpreted the relevant articles of the General Agreement on Tariffs and Trade (GATT) concerning subsidies and countervailing measures. Though legally binding, this system proved to be inoperable from the perspective of the EU (Luengo Hernández de Madrid 2007: 83f.). Neither an overall reduction of subsidies nor a decrease in countervailing measures by the US had been achieved. Against this background, the Uruguay Round included negotiations on subsidy control and the EU tried to promote its own practice in this field. The outcome of the Uruguay Round was the adoption of the Agreement on Subsidies and Countervailing Measures (SCM), a multilateral agreement which is mandatory for all WTO members. By and large, however, the EU had only limited success in exporting its own state aid rules. Significant compromises with the US had to be made – as regards (i) the definition of subsidies (which had not been addressed in the previous Subsidies Code), (ii) possible exceptions from the state aid prohibition as well as (iii) the control procedure.

As regards (i) the *definition of subsidies*, the US broadly argued for an understanding of subsidies as a cause of market distortion. Subsidies impede the efficient allocation of resources and were to be combated with penalties such as countervailing duties (Antidistortion School, cf. Hufbauer & Shelton Erb 1984: 21). According to this view, a subsidy exists when it is possible to measure a benefit for

firms. Such a benefit is present when the beneficiary receives an advantage compared to normal market conditions (Luengo Hernández de Madrid 2007: 84).

The EU, represented by the Commission, advocated a more differentiated approach which largely followed the system of a state aid prohibition with possible exceptions arising from Article 107 TFEU. Unlike the US, the EU asserted that subsidising can be an option to correct market failures. Accordingly, subsidies should only be prohibited if industry causes an injury in another country because of subsidies (Injury-Only School, cf. Hufbauer & Shelton Erb 1984: 19). In order to identify a subsidy, the EU also proposed the criterion of benefit or financial contribution. In line with its own interpretation of Article 107(1) of the EC Treaty, however, the criterion of financial contribution should not be regarded to be fulfilled if a measure did not include any cost or charge on the public account (Luengo Hernández de Madrid 2007: 84). As a result, the EU advocated a somewhat narrower, but more precise, definition of prohibited state aid in order to prevent cases in which state aid was granted legally by EU member states but considered illegal at WTO level. Otherwise, the Commission feared that other WTO members, particularly the United States, would make (excessive) use of their right to impose countervailing duties.

The compromise that resulted from the negotiations included as a main novelty a definition for subsidies in Article 1 of the SCM. Accordingly, a subsidy exists if (1) there is a *financial contribution* by a government which (2) confers a *benefit* to certain enterprises. This wording left the question undecided if a charge on the public account was needed to define a measure as a subsidy or not (Rubini 2005: 160). The question whether a subsidy necessarily involves a charge on the public account was finally decided upon by the dispute settlement bodies (Rubini 2009: 141). The panel and the appellate bodies decided against the European position and interpreted the wording of Article 1 of the SCM in accordance with the US understanding of subsidies.[15]

[15] The first reports regarding this question were the WTO Panel and WTO Appellate Body reports in the case *Canada-Civilian Aircraft* (WT/DS70/R, 1999 and WT/DS70/AB/R, 1999). In this case, Brazil complained that Canada granted prohibited export subsidies to the Canadian civil aircraft. One of the contentious questions was, if a granted credit should be considered a subsidy when this credit did not involve a cost to government. Interestingly, this issue was not debated as a question of the first element of a subsidy in Art.1 SCM (a “financial contribution”) but as a question of the benefit criterion. The EC participated as a third party in this WTO case and pointed to the fact that “a cost to government” is a not a question of benefit but of the first element “the financial contribution”. Furthermore the EC was of the opinion that the "cost to government" is the appropriate measure of a "financial contribution" (WT/DS70/AB/R, 1999, para. 97). This point however, was not addressed by either the parties or the DSB organs (Slotboom 2002: 535). The result of the case was the finding that a “cost to government” is not necessarily needed to define the term benefit. Furthermore it was stated that the appropriate

As regards (ii) *possible exceptions to the state aid prohibition*, different categories of subsidies are established in Articles 3, 5, 6 and 8 of the SCM that might, at first sight, resemble those in Articles 107(3)b,c of the EC Treaty. However, the categories of the SCM are not formulated as exceptions as in the European system, but they follow the so-called 'traffic-light-approach': red for 'prohibited' subsidies, amber for 'actionable' subsidies and green for 'non-actionable' subsidies.

The first category ('prohibited') includes according to Article 3 SCM non-primary export subsidies provided by governments as illustrated in Annex 1 of the SCM, e.g. internal transport and freight charges on export shipments on terms more favorable than for domestic shipments. Subsidies that fall within this category have to be withdrawn. The idea of banning these subsidies found strong approval among WTO member states. The European system similarly prohibits this category of subsidies, for example in Article 1 of the Commission Regulation 69/2001 (Rubini 2005: 176).

The second category ('actionable') contains according to Article 5 and 6 SCM subsidies which cause adverse effects for the interests of another member states e.g. by causing serious prejudice to its domestic industry. The control of actionable subsidies follows a two-track approach, through (1) countervailing duties or (2) agreement discipline. To reach agreement discipline, either the subsidy can be removed or the other member state can be compensated (Stehn 1996: 6f.). This category had already been included in the Tokyo Round and was not strongly contested by the EU or the US.

As was expected, the most difficult category was the green basket of 'non-actionable' subsidies (Article 8). This category was included as a result of European pressures. Here, the EU tried to establish its state aid exception system (Didier 1999: 256) in order improve legal certainty for EU member states. State aid granted legally in the EU should be also in compliance with WTO regulations. The US, in contrast, opposed the green basket as it was regarded as a loophole for EU member states in order to circumvent the SCM by disguising their measures as non-actionable subsidies (Luengo Hernández de Madrid 2007: 87). Due to US resistance, Article 31 SCM included a review provision of Article 8 SCM after a period of five years. After those five years, the US was still reluctant to extend the provision. Furthermore, many developing countries were concerned that the provision favoured developed

place to establish whether a benefit exists is the marketplace and not the cost to government (Slotboom 2002: 537).

countries' interests.[16] Since no consensus about the extension of Article 8 SCM could be reached until the end of 1999, the category of non-actionable subsidies expired in the year 2000 (Rubini 2005: 185).

Finally, (iii) the SCM establishes rules on the *control procedure* and on measures that are applicable once a prohibited, actionable or non-actionable state aid is granted (Ehlermann & Goyette 2006: 717). The general instrument against distortive subsidies provided for in the SCM agreement is a countervailing duty on another member state's product. The possibility of countervailing duties already existed under the previous regime. Yet, the establishment of three different categories (prohibited, actionable and non-actionable) of subsidies and the direct linkage of these categories to the regulation of countervailing duties were considered improvements of the SCM (Stehn 1996).

5.2 The General Procurement Agreement

Public procurement has been an issue at the international level for a long time. International procurement regulation was already discussed as a part of the International Trade Organization (ITO) negotiations. When the Havana Charter of 1948 on the establishment of the ITO failed to pass US Congress, however, public procurement had already been excluded from the agenda during the negotiations (Blank & Marceau 1997: 31ff.) Later, the EU gained a dominant influence on the development of international procurement law. This influence was much greater than in the field of state aid control, mainly for two reasons: the EU could promote its own system, first, because of the lack of alternative regulatory models in this field and, second, because the EU could build a consensus with the US prior to establishing international rules.

In the 1960s, the Organisation for Economic Cooperation and Development (OECD) started an attempt to establish international procurement rules. The first draft set of guidelines of the OECD's working group was finalised in 1965. At the same time, the first draft of the European Procurement Directive 70/32/EWG was published (Delsaux 1997: 407). After fifteen years of talks, OECD member countries decided to conduct further negotiations on international procurement rules within the framework of the Tokyo Round. The final OECD document, the "Draft Instrument on Government Purchasing Policies" which summarized the conclusions reached in

[16] Minutes of the regular meeting of the Committee on Subsidies and Countervailing measure held on 1-2 November 1999, G/SCM/M/24

fifteen years, was delivered to the Tokyo Round. Simultaneously, European efforts to harmonise procurement procedures resulted in a comprehensive set of coordinative Directives and this was “certainly not a complete coincidence” (Delsaux 1997: 407).

During the Tokyo Round, Europe – based on its own experiences – clearly set the agenda with regard to international procurement rules. The development of European procurement rules and the related expertise regarding technical and procedural questions strengthened the European position during the negotiations on international procurement rules. Unlike all other parties, the European Commission was in a position to illustrate a detailed set of rules which were not only transparent but also more easily readable than regulations in other countries (Delsaux 1997: 415). Furthermore, this preparatory work made it easier for the European member states to accept international regulation in this field (Arrowsmith 2003: 33). Nevertheless, the final Tokyo Round Agreement on Government Procurement had a very limited coverage (Blank & Marceau 1997: 31ff.). For example, electrical generating and telecommunications equipment – two sectors that had also been excluded from EC Directives – were exempted from the final agreement. In addition, only the federal level of government was covered by the rules and a small number of countries signed up to the agreement (Arrowsmith 2003: 33).

A major breakthrough towards a more ambitious international agreement was the declared willingness of the EU and the US to open up their telecommunications markets in the early 1990s (Delsaux 1997: 413). By starting bilateral negotiations on this issue, both countries believed to promote the establishment of international rules in the long run. Indeed, the bilateral Memorandum of Understanding between the two countries, agreed in May 1993[17], was decisive for the amendment of the procurement agreement of the Tokyo Round. Eventually, the Uruguay Round negotiations led to the General Procurement Agreement (GPA) which entered into force in January 1996. Unlike the SCM, the GPA is a plurilateral agreement, membership is not mandatory and its terms apply only to signatory states. The GPA largely extended the scope of procurement rules, while the rules on discrimination and the award procedure remained largely unchanged. Clearly reflecting the European approach, non-discrimination and transparency are key principles in the GPA (Delsaux 1997: 413).

17 Official Journal 1993, L 125/1.

6 Conclusion

In summary, European rules on state aid and public procurement are designed to guarantee free and fair competition in the internal market. Yet they scarcely address the international dimension of competition policy. If the Commission does not want to be blamed for reducing the global competitiveness of European firms, it can either loosen its own rules or it can try to extend the 'level playing field' beyond EU borders by exporting European state aid and public procurement law. Our article has given an overview of the Commission's various efforts to transfer EU rules horizontally, to non-EU countries, as well as vertically, to the WTO level. The success of EU regulatory transfer differs: Bilateral cooperation provides many opportunities to spread European state aid rules, in particular if domestic rule adoption is a condition for EU accession. Ultimately, however, strict enforcement is only guaranteed by an independent authority, i.e. by the Commission itself or the EFTA Surveillance Authority. Vertical upload of European rules to the multilateral (or plurilateral) WTO heavily depends on the EU's ability to reach prior consensus with its most powerful counterpart, the US government.

Besides avoiding disadvantages for European firms, EU regulatory transfer may even produce benefits for them and for EU institutions. Firms that are already familiar with EU rules can save transaction costs that would arise from divergent rules at different levels or in different countries. Moreover, if questions of interpretation arise in the application of rules that are modelled after EU law, European jurisprudence takes a leading role beyond its proper jurisdiction. Lastly, given the growing competitive pressures from emerging market economies and the advancing legalisation of international trade, we should clearly expect questions of regulatory export to gain in importance in the future.

Literature

Antoniadis, Alexandra (2002), The EFTA Surveillance Authority's Practice in the Field of State Aid, in: *European State Aid Law Quarterly* **1**:2, 157-182

Arrowsmith, Sue (2003) *Government Procurement in the WTO*, The Hague: Kluwer Law International

Avery, Graham (2004) The Enlargement Negotiations, in: Fraser Cameron, Hg. *The Future of Europe. Integration and Enlargement*, New York: Routledge, 35-62

Blank, Annet & Gabrielle Marceau (1997) A History of Multilateral Negotiations on Procurement: From ITO to WTO, in: Bernard M. Hoekmann & Petros C Mavroidis, Hg. *Law and Policy in Public Purchasing: The WTO Agreement on Government Procurement*, Ann Arbor: Michigan University Press, 31-55

Blauberger, Michael (2009), Compliance with Rules of Negative Integration. European State Aid Control in the New Member States, in: *Journal of European Public Policy* **16**:7, 1030-1046

Bock, Christian (1993), The EEA Agreement: Rules on Public Procurement, in: *Public Procurement Law Review* **2**:3, 136-157

Bovis, Christopher H. (2007) *EU Public Procurement Law*, Cheltenham: Edward Elgar

Buschle, Dirk (2006) The Case Law of the EFTA Court in the Field of State Aid, in: Michael Sanchez Rydelski, Hg. *The EC State Aid Regime. Distortive Effects of State Aid on Competition and Trade*, London: Cameron May, 757-788

Cremona, Marise (2003), State Aid Control: Substance and Procedure in the Europe Agreements and the Stabilisation and Association Agreements, in: *European Law Journal* **9**:3, 265-287

Delsaux, Pierre (1997) Government Procurement in a Multilateral Context, in: Paul Demaret, Jean-François Bellis & Gonzalo Garcia Jimenez, Hg. *Regionalism and Multilateralism after the Uruguay Round: Convergence, Divergence and Interaction*, Brussels, 397-419

Didier, Pierre (1999) *WTO Trade Instruments in the EU Law*, London: Cameron May

Ehlermann, Claus-Dieter & Martin Goyette (2006), The Interface between EU State Aid Control and the WTO Disciplines on Subsidies, in: *European State Aid Law Quarterly* **5**:4, 695-718

European Commission (2006) *Results of the Consultation on the State Aid Action Plan (SAAP). Detailed Summary*, Brussels

- (2008) *Provisions on International Relations in EU Competition Policy*, Brussels/Luxembourg

Friedberg, James J. (1990) *The Convergence of Law in an Era of Political Integration: The Wood Pulp Case and the Alcoa Effects Doctrine*, Morgantown, USA: West Virginia University

Grabbe, Heather (2003) Europeanization Goes East: Power and Uncertainty in the EU Accession Process, in: Kevin Featherstone & Claudio M. Radaelli, Hg. *The Politics of Europeanization*, Oxford/New York: Oxford University Press, 303-330

Hölscher, Jens & Johannes Stephan (2009), Competition and Antitrust Policy in the Enlarged European Union: A Level Playing Field?, in: *Journal of Common Market Studies* **47**:4, 863-889

Hufbauer, Gary Clyde & Joanna Shelton Erb (1984) *Subsidies in International Trade* Cambridge, MA: MIT Press

Hupkes, Eva H.G. (1997), Public Procurement in Central and Eastern Europe, in: *Public Procurement Law Review* **6**:2, 49-91

Kanaras, Vassilios E. (2000), Enlarging the Scope of Public Procurement: The EU´s Expansion into Central and Eastern Europe, in: *Public Procurement Law Review* **9**:3, 109-119

Kassim, Hussein & Handley Stevens (2010) *Air Transport and the European Union: Europeanization and Its Limits*, Basingstoke: Palgrave Macmillan

Kroes, Neelie (2008) *Competitiveness – the Common Goal of Competition and Industrial Policies. Address at the Aspen Institute, 18th April 2008*, Paris

Lavenex, Sandra & Frank Schimmelfennig (2009), EU Rules beyond EU Borders: Theorizing External Governance in European Politics, in: *Journal of European Public Policy* **16**:6, 791-812

Luengo Hernández de Madrid, Gustavo E. (2007) *Regulation of Subsidies and State Aids in WTO and EC Law: Conflicts in International Trade Law*, Alphen aan den Rijn: Kluwer Law International

Plender, Richard (2003) Definition of Aid, in: Andrea Biondi, Piet Eeckhout & James Flynn, Hg. *The Law of State Aid in the European Union*, Oxford/New York: Oxford University Press, 3-39

Raustiala, Kai (2002), The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law, in: *Virginia Journal of International Law* **43**:1, 1-92

Rubini, Luca (2005) The International Context of EC State Aid Law and Policy: The Regulation of Subsidies in the WTO, in: Andrea Biondi, Piet Eeckhout & James Flynn, Hg. *The Law of State Aid in the European Union*, Oxford et all: Oxford University Press, 149-188

- (2009) *The Definition of Subsidy and State Aid: WTO and EC Law in Comparative Perspective*, New York: Oxford University Press

Schimmelfennig, Frank & Ulrich Sedelmeier (2004), Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe, in: *Journal of European Public Policy* **11**:4, 661-679

Schnitzer, Johannes Siegfried (2005), The External Sphere of Public Procurement Law: Bi-Regional Trade relations from the Perspective of the European Community, in: *Public Procurement Law Review* **14**:2, 63-90

Schütterle, Peter (2002), State Aid Control. An Accession Criterion, in: *Common Market Law Review* **39**:3, 577-590

Sedelmeier, Ulrich (2006), Europeanisation in New Member and Candidate States, in: *Living Reviews in European Governance* **1**:3

Slotboom, Marco M. (2002), Subsidies in WTO Law and in EC Law: Broad and Narrow Definitions, in: *Journal of World trade* **36**:3, 517-542

Soltész, Ulrich (2005), The New Multisectoral Framework on Regional Aid. Overkill or an 'Appropriate Measure'?, in: *European Competition Law Review* **26**:2, 98-105

Stehn, Jürgen (1996) *Subsidies, Countervailing Duties, and the WTO: Towards an Open Subsidy Club*, Kiel: Kiel Discussion Papers

Toikka, Merja (1993), Public Procurement in the EEA, in: *Public Procurement Law Review* **2**:5, 123-127

Van de Casteele, Koen (2006) The International Dimension of State Aid, in: Michael Sanchez Rydelski, Hg. *The EC State Aid Regime. Distortive Effects of State Aid on Competition and Trade*, London: Cameron May, 789-804

von Borries, Reimer (2006), State Aid Control in Romania, in: *European State Aid Law Quarterly* **5**:3, 509-517

Waller, Spencer W. (1997), The Internalization of Antitrust Enforcement, in: *Boston University Law Review* **77**:2, 343-404

Weiss, Friedl (1993) *Public Procurement in European Community Law*, London: Athlone Press

Wigger, Angela (2008) The External Dimension of EU Competition Policy: Exporting Europe's Core Business?, in: Jan Orbie, Hg. *Europe's Global Role. External Policies of the European Union*, Farnham: Ashgate, 181-201