Preface

The global financial crisis that struck Europe eight years ago has profoundly affected its political, economic and regulatory landscape. The resilience of its institutions has been put to the test like never before, with intertwined shocks including the gigantic rescue of the entire banking system, the ensuing increase in public debt by proportions unheard of in peace time, the sovereign crisis and the near-exit of Greece (and of other Southern Member States) from the Euro area, and the continuing political crisis affecting the European project, best exemplified by the British referendum of 23 June 2016.

Against this background, assessing the EU’s (and its Member States’) policy of bank rescues over the past eight years provides a striking summary of European successes and failures and of the continuing tension between integration and fragmentation forces at play within the EU and its single market. State aid control, grounded in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), is a key feature of this recent history to the extent that it provided the EU, at the very beginning of the crisis, with a harmonization tool, albeit one that initially lacked the capacity to deal with the existential threat posed by the paralysis of the European banking system. But the limits of State aid as a policy instrument have rapidly emerged and the gradual implementation of the Banking Union, based on a wide body of EU legislation adopted after the crisis, has added a new EU-wide policy (and an additional layer of complexity) to the system. The recent developments, from the continuing weakness of Southern European sovereigns and their banks to the threat posed by the undercapitalization of a number of banks in core European countries such as Italy and Germany, show that the jury is still out on whether the past eight years have been a (half)-success in preventing a major systemic breakdown, or have simply postponed by a decade the necessary reckoning.

The purpose of this Research Handbook is to provide an inter-disciplinary view of State interventions in the banking sector, their control under State aid rules since the financial crisis of 2008, and the progressive emergence of a pan-European regulation of banks in distress. The links between EU/EEA State aid regulation, on the one hand, and financial regulation, on the other, have gained prominence during the recent financial crisis. While the existence of an interplay between the two areas is evident, the exact nature and content of this relationship deserves closer examination. This handbook offers insights from law and economics – on the extent to which the EU/EEA State aid regime is able adequately to address the concerns of financial regulation without losing sight of its primary purpose. The book’s contributors include academics, specialists in financial regulation, lawyers, economists and regulators, who have all followed or been directly involved in cases relating to the financial crisis.

Part I introduces the main themes of the book regarding banking regulation and State aid in the banking sector. In Chapter 1, Ioannis Kokkoris explains why the specific features of banks justify a specific treatment under competition and State aid law, and how this specific treatment has been applied in practice. In Chapter 2, Joanna Gray and Francesco de Cecco explore the challenges presented by banking regulation, the possible
tension between competition and financial stability, and the theoretical interplay between State aid control and financial regulation policies. In Chapter 3, Violeta Iftinchi lays out the evolution of the legal framework applied by the Commission to assess State aid in the banking sector since the beginning of the financial crisis.

Part II provides a closer analysis of the key concepts that underpin the application of State aid law to financial institutions, and examines specific aspects of the interface between State aid and financial regulation. In Chapter 4, Phedon Nicolaides explains the crucial role of the market operator test in the assessment of State aid for the banking sector. In Chapter 5, François-Charles Laprévote and Florine Coupé examine the ‘toolkit’ of instruments at the States’ disposal to rescue banks and the Commission’s decisional practice under State aid rules for each of these instruments. In Chapter 6, Sahar Shamsi, Pantelis Solomon and Nicole Robins describe the Commission’s practice regarding compensatory measures that are typically required from banks in order to clear State interventions under State aid rules. In Chapter 7, François-Charles Laprévote and Sven Frisch analyse the specific case of cross-border bank rescues during the crisis and their treatment by the Commission.

Part III turns the spotlight on a number of country cases where State interventions (and the Commission’s response) have been particularly significant: Germany (Sven Frisch, Chapter 8), the United Kingdom (Conor Quigley, Chapter 9), Ireland (Vincent J.G. Power, Chapter 10), France (Claire Froitzheim, Chapter 11), Belgium (Jean-Sébastien Duprey, Chapter 12), the Netherlands (Bart P.M. Joosen, Chapter 13), Spain, Cyprus and Portugal (Carlos Botelho Moniz, Pedro de Gouveia e Melo and Luís do Nascimento Ferreira, Chapter 14) and – for the EEA – Iceland (Dora Sif Tynes, Chapter 15).

Part IV is devoted to taking stock and thinking forward in light of the Banking Union’s package of legislative/regulatory reforms and the possible role of State aid in the future. In Chapter 16, Ginevra Bruzzone, Miriam Cassella and Stefano Micossi describe the new framework for bank recovery and resolution and its possible consequences for the sector. In the concluding Chapter 17, François-Charles Laprévote and Amélie Champsaur attempt to lay out possible scenarios of cooperation, interplay or rivalry between the parallel regulatory frameworks (and regulators) that now co-exist at EU and national level.

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