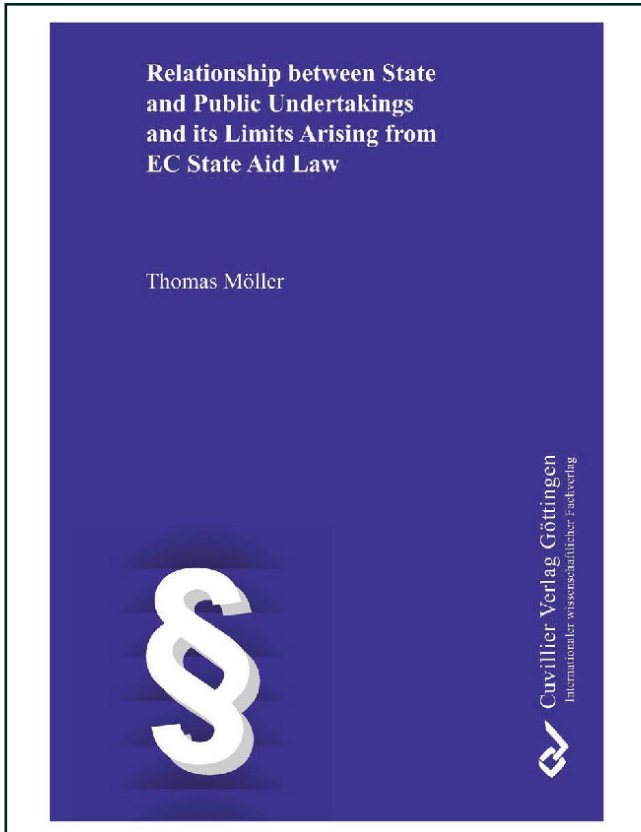




Thomas Möller (Autor)

**Relationship between State and Public Undertakings
and its Limits Arising from EC State Aid Law**



<https://cuvillier.de/de/shop/publications/928>

Copyright:

Cuvillier Verlag, Inhaberin Annette Jentsch-Cuvillier, Nonnenstieg 8, 37075 Göttingen,
Germany

Telefon: +49 (0)551 54724-0, E-Mail: info@cuvillier.de, Website: <https://cuvillier.de>

Table of Contents

<i>Table of Cases</i>	<i>III</i>
A. Introduction.....	1
B. Public Undertakings.....	5
1) The Concept of Undertaking in EC Law.....	5
2) Public Undertaking.....	6
3) State and Public Undertakings in Europe.....	8
C. Importance of the EC (State Aid) Law for Public Undertakings ...	10
1) Limitations Arising from the EC Economic Constitution.....	10
2) Limitations Arising to the Application of EC State Aid Law by Articles 86(2), 295 and 16 EC.....	11
D. Participation of the State by its Public Undertakings and the Prohibition of State Aid Article 87(1) EC.....	14
1) Aid Granted by the State or Through State Resources	15
Imputability of the measure to the State	16
2) Advantage.....	18
(a) SGEI as Market Equivalent.....	19
(b) Market Economy Investor Principle	22
(aa) Development of the Principle	24
(bb) Problems of the MEIP	25
(i) Equal treatment in unequal circumstances – comparable investors?	25
(ii) Public policy considerations and market behaviour.....	27
(iii) Appropriate return	29

(iv)	Judicial review of business decisions	30
(v)	‘Normal market conditions’	32
(vi)	The Hypothetical Private Investor – owner effect – comparable investor	33
(cc)	MEIP and Situations in the ‘Life’ of Public Undertakings ..	35
(i)	Foundation of a new public undertaking.....	35
(ii)	Equity capital injection.....	35
(iii)	Loans	38
(iv)	State Guarantees	40
(v)	Other measures in relation to public undertakings.....	42
3)	The Effect on Competition and on Trade Between Member States	45
4)	Favouring Certain Undertakings: Selectivity.....	46
E.	Legitimacy of Aid.....	49
1)	Art. 87(2) Aid that is Compatible with the Common Market.....	49
2)	Art. 87(3) Aid that may be Compatible with the Common Market	49
F.	Aid for Rescuing and Restructuring Firms in Difficulty.....	51
1)	Distinction between Rescue and Restructuring Aid.....	52
2)	Commission Forces States to Privatise their Public Undertakings .	53
G.	Relationship between State and Public Undertakings and Secondary Legislations.....	56
1)	De-Minimis: More Scope for Small Public Authorities	56
2)	Transparency-Directive.....	57
H.	Conclusion.....	59
	<i>Bibliography</i>	62

Table of Cases

European Court of Justice and European Court of First Instance

- Case 19/61 *Mannesmann*, judgment of 13 July 1962, Rec 675
- Case 173/73 *Italy v Commission* ('Steenkolenmijnen') [1974] ECR 709
- Case 703/79 *Philip Morris v Commission* [1980] ECR 2671
- Case 84/82 *Germany v Commission* [1984] ECR 1451
- Cases 296 & 318/82 *Netherlands and Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 809
- Case C 323/82 *Intermills v Commission* [1984] ECR 3809
- Case 234/84 *Belgium v Commission* ('Meura') [1990] ECR I-2263
- Case 40/85 *Belgium v Commission* ('Boch II') [1986] ECR 2321
- Case C-118/85 *Commission v Italy* [1987] ECR 2599
- Case C 102/87 *France v Commission* [1988] ECR 4067
- Case C-142/87 *Belgium v Commission* ('Tubemeuse') [1990] ECR I-959
- Case C-301/87 *France v Commission* ('Boussac') [1990] ECR I-307
- Cases 188-90/88 *France, Italy and UK v Commission* [1982] ECR 2545
- Case C-303/88 *Italy v Commission* ('ENI-Lanerossi') [1991] ECR I-1433
- Case C-305/89 *Italy v Commission* ('Alfa Romeo I') [1991] ECR I-1603
- Case C-42/90 *Höfner and Elser v Macrotron GmbH* [1991] ECR I-1979
- Case C-69/91 *Ministre Public v Decoster* [1993] ECR I-5335
- Cases 72 and 73/91 *Sloman Neptun Schiffahrts AG* [1993] ECR I-887
- Case C-278/92 *Spain v Commission* ('Hytasa No 1') [1994] ECR I-4103
- Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43