# Table of Contents

**Introduction** ................................................................. 10

1. **Commission Notice on the Notion of State Aid** ............... 12  
   Economic Activities & State Resources ................................. 12  
   Advantage and Selectivity .................................................. 17  
   Trade Effect, Distortion of Competition and Infrastructure ........ 25

2. **Concept of Economic Activity** ........................................... 30  
   Separating Economic from Non-Economic Activities ............... 30  
   The Treatment of Advisory and Information Services under State Aid Rules: The Case of the German Milk Levy .......... 34

3. **State Resources** ............................................................. 39

4. **Advantage** ................................................................. 44  
   How to Apply the Market Economy Investor Principle and what Mistakes to Avoid: The Long-running Case of EDF .......... 44  
   State Guarantees ............................................................. 50  
   Calculation of State Aid in Guarantees .................................. 54  
   The Impact of Public statements ......................................... 60  
   Advantage from Exclusive Use of Public-Funded Infrastructure .... 63  
   Market Economy Operator Test and Regional Development ........ 68  
   Valuation of Assets Disposed by the State .............................. 78
Table of Contents

5. **Advantage & Compensation** ........................................... 84
   Compensation for the Extra Costs Imposed by Law .................. 84
   Compensation for the Extra Cost of Pensions ....................... 89
   Compulsory Milk Tests ............................................. 92
   Compensatory Payments ............................................. 97

6. **Advantage & Private Creditor** ...................................... 101
   The Private Creditor Test: All Options Must be Taken into Account .. 101
   Private Investor v Private Creditor ................................ 108

7. **Selectivity** ............................................................ 113
   What Determines the Selectivity of a Public Measure?
   The Objectives of the Measure or its Effects? ....................... 113
   An Exception Is Not Necessarily Selective:
   The Case of the Spanish Tax Lease ................................ 120
   How to Determine the Selectivity of a Tax Measure ............... 124
   Selectivity of Health Tests: BSE tests. ............................. 130

8. **Selectivity & Taxes** .................................................. 133

9. **Taxation** .............................................................. 139
   Transfer Pricing ...................................................... 139
   Turnover Taxes ....................................................... 145
   Hungarian Advertisement Tax, Polish Retail Tax
   and Estonia Package Tax ............................................ 151
   Hypothecation of Taxes .............................................. 155
   Tax Exemptions Authorised by the Council of the EU ............. 160

10. **Effect on Trade** ..................................................... 166
    No Affectation of Trade .............................................. 166
    Local Infrastructure ................................................. 171
# Table of Contents

11. **Infrastructure** .................................................. 175
   - Combining Infrastructure Aid with SGEI Aid ...................... 175
   - Connecting Public and Private Infrastructure .................... 185
   - When Infrastructure is not Public:
     - Dedicated, Project-Specific and Bespoke ........................ 190
   - The Boundaries of Non-Economic Infrastructure and the Limits of the Funding Gap Method .................. 194

12. **Article 107(3)(c) & the Common Interest** .................. 200
   - Sport Facilities, the Balancing Test and Distortion of Competition .......................... 200
   - Compatible State Aid May Have Negative Effects
     on Some Market Operators ........................................... 204
   - Electricity Intensive Users ....................................... 209
   - Media Plurality in Denmark and Distortion of Competition ...... 218

13. **Bank Resolution** .............................................. 224
   - Who is Aided when a Bank is Resolved? .......................... 224
   - Burden-Sharing and State Aid to Banks ............................ 230
   - Non-State Aid Assistance to Depositors and Customers of Banks ........................... 238
   - Absence of State Aid from the Resolution
     of the Cooperative Bank of Peloponnese ............................ 242

14. **Regional Aid** .................................................... 244

15. **Natural Disasters** .............................................. 252

16. **Services of General Economic Interest** ....................... 257

17. **The General Block Exemption Regulation** ..................... 263

18. **New Aid** .......................................................... 267
19. National Courts ........................................ 271
20. State Aid Modernisation: First Results ...................... 273
21. Cohesion & State Aid .................................... 280
22. Withdrawal of the UK .................................... 287