

Research program:
“The Prohibition of State Aids in the EU Legal Order. The borders of the definition and the relationships with the Fundamental Freedoms”

Annex C

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Research project

The main goal of this project is to investigate the prohibition of State aid included in artt. 107 and following of the Treaty on the Functioning of the European Union in order to understand its application. In other words, the purpose is to outline to which extent the European Commission has the possibility to apply this provision in order to achieve the European Union's main objective, namely the achievement of the internal market.

After identifying the State aid concept as elaborated by the European Court of Justice, attention will be paid on the most interesting requirement of the State aid notion, that is the selectivity concept. Although it is easy to define in general terms, it is indeed very difficult to apply to the real cases.

On this respect, the European Court of Justice case law is very copious but far from being consolidated. This is surely due to the fact that the European Court of Justice case law in this field has had an important evolution in the recent past, especially with regard to the selectivity concept that is still in evolution and it has many profiles of interest.

Secondly, moreover, the project aims to compare the evolution of the case-law on the prohibition of State aid with the relevant one concerning the fundamental freedoms in order to analyze the interactions resulting from the concrete application of these two different provisions, linked by a common objective, that is the establishment of the internal market.

The starting point of this work is represented by the PhD thesis ("Self-Government Tax Authority and EU Law"), discussed on 15 April 2015, whose fourth chapter examines the impacts resulting from negative harmonization, more precisely from the prohibition of State aid and from the fundamental freedoms, on the self-government tax authority.

It is important to underline that the present research is aimed to develop certain ideas, only mentioned in the PhD thesis, with the final purpose of publishing a monograph on this subject.

The research activity will be characterized by a thorough analysis of both the doctrine and the European Court of Justice case law. This activity, monitored by a report after six months, will be characterized by personal research, part of which will be held abroad, participation in seminars, conferences and meetings on the subject for a period of twelve months that should be enough to complete the work.

The relevance to the Excellence Initiatives project is represented by the analysis that will be performed in relation to the different linking factors used by different Member States to justify taxation. This examination will be conducted on two fronts. Firstly the study will investigate the connecting factors used at the internal level. Later the analysis will shed light on the influence arising from European law with specific reference to the taxing power allocation between Member States. This last aspect is really remarkable, above all in a highly globalized context where transnational situations involving the simultaneous engagement of more tax systems are more and more frequent. The foremost doctrine, with reference to the application of the State aid prohibition, currently believes that this provision could not be applied to general measures applicable to all the

undertakings. According to this theory it should always be found a favorable tax provision that deviates from the general discipline. In this project a try to examine the consistency of this theory will be done. More in detail, an attempt will be made in order to verify if, differently, even general provisions, such as the regimes called "IP-Box", could be analyzed in the light of the State aid prohibition, in the event that the general provision is not consistent with the tax system, considered as a whole, in which it is introduced.

The hypothesis that will be investigated in this thesis, therefore, is to ascertain whether the specific selectivity, namely the one identified in a concrete way by demonstrating that different economic undertakings, that are in a similar factual and legal situation, undergo a dissimilar treatment, is only a part of the prohibition of State aid arising from the Treaty on the Functioning of the European Union. Selectivity, according to this new interpretation of the State aid concept, in contrast, should be based on the internal coherence of the analyzed provision with the tax system in which that specific rule is inserted.

This new approach could have significant consequences on domestic tax systems. Moreover, from a systematic point of view, it would denote a more effective application of the equality principle in this field.

With regards to the comparison between the application of fundamental freedoms and the prohibition of State aid, however, the work will try to analyze the many connections existing between these two provisions in order to understand if, in order to achieve the internal market, it is possible to come to a combined use of the two measures, aspect that so far has not been admitted by the European Court of Justice.

This achievement, which would lead to extend the results achieved in the field of State aid almost automatically to the fundamental freedoms one, would lead to solve immediately the problems connected with the "reverse discrimination", allowing the introduction of the equality principle even in the fundamental freedoms field.

This project, in the light of the above, will provide an in depth study of relevant utility for both the central government and the local ones.

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