CHAPTER ONE

STATE AID IN COMMUNITY LEGISLATION

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1. Purpose of the Community framework for State aid: protection of freedom of competition and creation of a common European market.

The legislation on State aid is one of the few issues of a fiscal nature specifically governed by Community law, in general, and of the Community Treaties in particular.

The reason for so much attention on the part of the Community institutions must first be asked.

And indeed, the process of European integration, which began with the ratification of the 1957 Treaty of Rome and which led to the establishment of the European Economic Community (now the EU), was aimed at creating a common space, marked by the free movement of the goods and factors of production and, in the context of which, the companies of the different member countries could compete with each other according to the principles of free competition. It is in this scenario that the State aid discipline finds its precise location.

The identification of the ratio legis leads us, therefore, straight to the heart of the Treaty establishing the EEC and to the political choices that were initially made by the Contracting States.

The Community Treaty provided, respectively in articles 2 and 3, the objectives that the original EEC intended to pursue, [1] as well as the means by which to achieve the goals set. [2] Among these we also find free competition. [3]

It is easy to understand that, for competition to play its role as "economic authorizing officer", it must be neither limited nor distorted by interventions of a private or public nature that favor or penalize some companies over others.

It is therefore possible to understand the need, on the part of the Community legislator, to prepare legislative measures which, in addition to containing bans on the anticompetitive behavior of companies, [4] provide for others relating to anti-competitive behavior by States.

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[1] The original objectives, for the attainment of which the European Economic Community was established, are set out, in the context of the EC Treaty, in art. 2. This, in its consolidated version, provides textually: "The Community has the task of promoting in the the Community as a whole, through the establishment of a common market and an economic and monetary union and through the implementation of common policies and actions referred to in Articles 3 and 4, a harmonious, balanced and sustainable development of economic activities , a high level of employment and social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic results, a high level of environmental protection and quality improvement of the latter, the improvement of the standard and quality of life, economic and social cohesion and solidarity between Member States.

[2] The means by which to achieve the pursuit of the Community objectives pursuant to art. 2 of the TCE are listed under the art. 3 of the same Treaty. This textually provides the following: "For the purposes set out in Article 2, the action of the Community shall include, under the conditions and at the pace provided for in this Treaty: a) the prohibition, between the Member States, of customs duties and quantitative restrictions on the entry and exit of goods as well as all other measures having equivalent effect; b) a common commercial policy; c) an internal market characterized by the elimination, between Member States, of obstacles to the free movement of goods, persons, services and capital; d) measures concerning the entry and movement of persons, as required by Title IV; e) a common policy in the agriculture and fisheries sectors; f) a common transport policy; g) a regime designed to ensure that competition is not distorted in the internal market".

[3] With the 2007 Lisbon Treaty, which amended the EU Treaty and the Treaty establishing the European Economic Community (renamed Treaty on the functioning of the European Union), the c.d. "Pillars" set out in the previous Treaty have been abolished, while a division of powers between the Union and the Member States has been provided, as well as a strengthening of the democratic principle and the protection of fundamental rights. This also through the attribution to the Charter of Nice of the same legal value as the Treaties. The Lisbon Treaty officially entered into force as of 1 December 2009.

[4] The Community provisions aimed at companies and aimed at protecting free competition are provided for in Title VII, Chapter I, Section One of the TFEU, in articles 101 to 106 (ex Articles

These provisions were placed in the third part of the Treaty on the functioning of the European Union, entitled "*Internal Union policies and actions*" and, specifically, in Title VII: "*Common rules on competition, taxation and approximation of legislation*", Chapter I "*Competition Rules*", Section 2 "*Aid granted by State*s". These are the provisions set out in articles 107, 108, 109 of the TFEU. [5]

The introduction of the Community framework for State aid therefore finds its basis in the need to prevent any interventions carried out by a Member State, in favor of certain companies or certain sectors of activity, from artificially influencing the conditions of trade and thus alter competition; this is also because public financial support could strengthen the competitiveness of national companies, both on the national market (making it difficult to market companies from other EU countries) and on exports. [6]

Furthermore, the presence of such a forecast also appears to be justified by "solidarity" and "social" aspects which have affected the Treaties of the European Union over the years and which, in various ways and with different effectiveness, have contributed to outline the traits of what is commonly called the European economic constitution. [7]

Consider, for example, the instrumental function that is attributed to the "creation of a space without borders" with respect to the objective of "economic and social progress", in a framework of "balanced and sustainable development" with "a high level of employment" (art. 3 EU Treaty); or to the importance that, in the establishment of a common market without internal borders, is attributed to respect for human rights in general, [8] wanting to suggest that they include rights over the classic economic freedoms (art. 6 of the EU Treaty).

What emerges from the reading of these regulatory provisions is the increasingly evident interest on the part of the European Union towards the objective

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81-86 of the TCE). These are rules relating to agreements, abuse of dominant position and concentrations.

[5] The rules relating to the Community rules on State aid have been renumbered with the ratification of the Lisbon Treaty in 2007, which entered into force on 1 December 2009. With the Maastricht Treaty of 1993, these rules were laid down in articles 87, 88, 89 and, even before, with the Treaty of Rome of 1957, by articles 92, 93 and 94.

[6] On the question see M. INGROSSO, Tax benefits for Mediterranean games and State aid: the Almeria case 2005, in Tax Review, n. 5, 2004, p. 1769.

[7] See P. RUSSO, Tax benefits and exemptions in light of the EU principles on State aid: the powers of the national judge, report to the Conference of Studies "The application of Community law in the jurisprudence of the Tax Section of the Court of Cassation", in Tax Review, n. 1 bis, 2003, p. 331.

[8] In Article 6 of the EU Treaty, the "human rights" to which we want to refer are generally understood and, precisely for this reason, they are indicated in a distinct and differentiated manner with respect to "fundamental freedoms".

of economic development, but not understood as a value in itself, but in its "social" meaning.

In this we can see a clear change in the original perspective of the integration process of the EU, based exclusively on the protection of economic freedoms and the values of the "market". [9]

It is therefore in consideration of the scenario just highlighted that it is right to place the discipline of State aid, provided for within the EU.

In the light of what has been pointed out, the regulation of State aids should be interpreted not in the sense of an absolute incompatibility of such aids with respect to the objectives and the community values to be protected, but rather as a reserve of competence provided, in the ambit of the Treaties, for favor of the community bodies and, in particular, of the European Commission and of the Council and, therefore, not as a generic prohibition but rather as a protection towards a priority value such as that of free competition, of an instrumental nature with respect to the value of economic development understood in the sense of its "social" meaning.

Therefore the principle of free competition is therefore understood as a functional and instrumental tool for the realization of other purposes such as, for example, that of stimulating the economy [10] or technological innovation, the excellent allocation of resources as well as the generation of benefits for the consumers.

Precisely for these reasons, together with the rules on State aid that are closely related to it, it constitutes one of the pillars of the functioning of the internal EU market, contributing to a better allocation of resources and, at the same time, to an equal treatment of the public and private companies.

2. Elements characterizing the notion of State aid in the Community context.

After having clarified what the rationale of the State aid discipline in the EU is, it seems fundamental to understand what is meant by the expression "State aid".

Within the provisions of the TFEU there is no specific definition; art. 107, paragraph 1, confines itself to stating a prohibition on granting aid, expressly

[9] Significant is the statement of Robert Schumann of May 9, 1950 according to which: "Europe will not be suddenly or according to a single general plan: it will be made through concrete achievements, first of all creating a de facto solidarity.

[10] Anche in virtù della persistente crisi internazionale e finanziaria internazionale e della brutale recessione che ne ha conseguito. C. SCHEPISI (a cura di), La "modernizzazione" della disciplina sugli aiuti di Stato, Turin, Giappichelli, 2011.

providing that: "*except in the case of derogations contemplated by the treaties, the aid granted by the Member States is incompatible with the internal market, insofar as it affects trade between Member States States, or through state resources, in any form that, by favoring certain companies or certain productions, distorts or threatens to distort competition*".

There is not a notion of aid tout court, but only a notion of "incompatible aid", moreover it is a fairly general, broad provision, and therefore suitable to encompass all the facilities, of any nature and kind, given to companies. [11]

It follows that the European Commission is given ample discretion in assessing the compatibility, with EU law, of support measures granted by the public power in favor of companies.

On the other hand, the provision of a precise definition of State aid would have been extremely difficult to implement and, above all, would have produced the risk of encouraging Member States to invent new types of subsidies, not included among those typified by the legislation, just for circumvent the rule itself.

It is clear that filling the notion of "State aid" with content is necessary in order to define the boundaries of intervention of the Community jurisdiction on the measures adopted by the member States of the EU. These measures, even before they can be applied, must be previously submitted to the scrutiny of the Commission or, possibly, to the subsequent one of the Court of Justice. [12]

An attempt to provide a definition of State aid had been carried out in the past also by the Council with the enactment of Regulation n. 659/1999, concerning the procedure for notifying aid to the Commission. Also on this occasion, nothing new was added to what had not already been stated, as the art. 1 of the Regulation was limited to establishing that, for help, it was intended as "*any measure meeting the criteria set forth in art. 87, par. 1, of the Treaty*", today corresponding to art. 107 TFEU.

The regulation itself confined itself to providing, subsequently, the concepts of existing aid, new aid, aid scheme, individual aid, unlawful aid and improperly implemented aid. [13]

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[11] On the point P. COPPOLA, the current tax incentives in favor of the South in the light of the constraints of the EC Treaty set up to protect the principle of free competition between States, in Tax Review n. 6, 2007, pp. 1680-1681.

[12] The reference is to the normative dispositions of the art. 108 of the TFEU which expressly provides for the obligation of Member States to notify the Commission, in good time, of projects aimed at establishing or modifying aid. The Commission will then be required to rule on the compatibility of the notified aid project. If the judgment turns out to be negative and the State concerned does not comply with the decision by the established deadline, the Commission or another Member State may refer the matter directly to the Court of Justice.

[13] The notions to which reference is made will be the subject of greater in-depth analysis in

In the absence of a precise definition of State aid, the interpreters have tried to create one, from the analysis of concrete cases, verifying their compatibility with the community provisions, on the basis of the recurrence of the conditions provided by the art. 107.

The meaning of State aid can be derived from the various interventions of the Commission and the Court of Justice, as well as authoritative doctrinal interpretations, not always, however, unambiguous.

As far as the European Commission is concerned, it has ruled, in concrete cases, through directives, communications, letters and other atypical acts, thus transforming the legal regime of State aid into a "case – by case – law".

As far as the doctrine is concerned, the positions taken were different, depending on the importance attributed to the various identifying characteristics of the aid. For example, some authors have stressed the fact that the measures granted to companies are free, others have highlighted the selective nature of the measure adopted.

Among these, it is possible to cite by way of example, a definition according to which, it can be qualified as State aid, "*any mechanism which ensures a specific company, or a specific sector, an advantage or a free benefit whose origin or whose costs are borne by the public sector*". [14]

This is a thesis not shared by most of the Doctrine, [15] given that, with an emphasis on the gratuitousness of the advantage attributed to a company, the EU legislation was not applicable in all those cases in which the State received a consideration for the amount disbursed, which was therefore not granted free of charge, despite the fact that the recipient company could not have benefited under normal market conditions.

However, according to the most common opinion, [16] "*every possible economically appreciable advantage attributed to a company through a public intervention, an advantage that otherwise would not have been realized, qualifies as State aid*". This advantage granted by the public sector takes place without a counterpart or in any case bearing a burden that is certainly lower than the concession granted, so as to alter the conditions of competition.

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the course of the discussion and, specifically, in the second chapter dedicated to "The power of control of the European Commission and the recovery of aid declared incompatibile.

[14] See M. ORLANDI, State aid in Community law, Naples, Italian Scientific Editions, 1995, p. 129.

[15] In this sense the position expressed by C. PINOTTI is oriented, State aid to companies in EU competition law, Padua, Cedam, 2000, p. 25.

[16] This is the pragmatic definition provided by G. TESAURO, Community Law, Padua, Cedam, 2001, p. 651. On this point see also M. INGROSSO, Tax benefits for Mediterranean games and State aid: the Almeria case 2005, cit., pp. 1769-1770.

Finally, the interventions of the Court of Justice have also helped to define a generic, even if not exhaustive, definition of State aid.

Among these, a significant importance was attributed to the sentence which contributed to delineating a clear difference between the notion of subsidy and that of State aid, considering the latter to be much wider than the first.[17] The ruling in question also provided for a definition of subsidy, recognizing it as a "cash or nature benefit granted to support a business regardless of how much its customers pay for the goods or services it produces".

The notion of State aid would seem, on the contrary, to include "*not only the positive benefits and the kind of subsidies, but also the interventions which, in various forms, alleviate the burdens that normally weigh on the budget of a company and which consequently, without being strictly subsidized, they have the same nature and produce identical effects*".[18]

Moreover, from the analysis of the art. 107 TFEU, it follows that the interventions granted in favor of the companies are not analyzed on the basis of their cause or purpose, but on the basis of the effects produced by them, that is to say, the effect on intra-Community trade and competition.[19]

In conclusion, for the purpose of qualifying the notion of "State aid", it cannot, in any way and in any case, disregard the analytical identification of the identifying characteristics provided by the art. 107 TFEU which, together, contribute to defining the object of the case.

3. The identification requirements of a State aid: the c.d. VIST criterion.

Despite the absence, within the scope of the Community Treaties, of a precise definition of State aid, the by now consolidated decision-making practice of the European Commission, together with the rulings of the Court of Justice, have made it possible to identify the requirements, in the presence of which , a

[17] See EC Court of Justice, judgment of February 23, 1961, case 30/59, De Gezamenlijke Steenkolenmijnen in Limburg c. Commission. The judgment of 15 March 1994 in Case C-387/92, Banco Exterior de España was also expressed on the same question.

[18] See EC Court of Justice, judgment of February 23, 1961, case 30/59, cit.

[19] The Court of Justice expressed itself in this regard with the sentence of 2 July 1974, case 173/73, Italy c. Commission, Family allowances for textile industry workers, point 27 of the grounds. This position was then reaffirmed by the EC Court of Justice, judgment February 24, 1987, case 310/85, Deufil c. Commission, Public aid-Synthetic fibers and threads, point 8 of the explanatory statement.

public subsidy measure, granted to a company, can qualify as State aid.

The Court of Justice has also repeatedly pointed out that these requirements must occur cumulatively.[20] The absence of only one of these would be sufficient to exclude incompatibility with the single market and, therefore, the violation of the art. 107 TFEU.[21]

In any case, the identification requirements of a State aid can be deduced directly from the provision that states the prohibition, that is art. 107, paragraph 1 of the TFEU, which outlines a case with a complex structure.[22]

They are:

1) the economic advantage produced for the beneficiary company;
2) the impact on intra-community trade;
3) the selectivity or specificity of the granted measure, in the sense that it must be aimed at favoring only certain companies or productions;
4) the transfer of public resources.[23]

As you can see, from their initials, we get the acronym of VIST.

In fact, sometimes it has been assumed that, to the four identification requirements, a fifth had to be added, that is the "potential obstacle to competition", thus transforming the aforementioned acronym from VIST to VISA.

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[20] The reference is to the XXVI Report on competition policy of the EEC Commission, referring to 1996.

[21] See G. PROVAGGI, According to the EU Attorney General the facilities for cooperatives are not State aid, known to the EU General Lawyer, joined cases C-78/08, C-79/08 and C-80/08, in Tax Courier, n. 39, 2010, p. 3258; for a compendium see also V. DI BUCCI, State aid and fiscal measures in the recent practice of the EC Commission and in the jurisprudence of the community jurisdictions, in Rassegna Tributaria, n. 6 bis, 2003, p. 2315 et seq.

[22] Various Authors have expressed their requirements regarding the identification of State aid. Among these, see, in particular, M. ORLANDI, State aid in Community law, cit., p. 126, according to which the prohibition concerned the measures:
– qualify as aid;
– granted by the States or through state resources;
– for the benefit of entrepreneurial activities;
– of a selective nature;
– affecting trade between Member States;
– capable of distorting competition.
See also: D. SCHINA, State aids under the EEC Treaty Articles 92 to 94, Oxford, ESC, 1987, p. 12, cited by M. ORLANDI, State aid in Community law, cit., p. 126; L. HANCHER, T. OTTERVANGER, P.J. SLOT, EC State aids, London, Chancery Law Publishing, 1993, p. 22, cited by M. ORLANDI, State aid in Community law, cit., p. 126.

[23] Per una sintesi di tali requisiti si rimanda a: R. SUCCIO, Il divieto di Aiuti di Stato, in C. SACCHETTO (a cura di), Principi di diritto tributario europeo ed internazionale, Turin, Giappichelli, 2011, p. 163.

But, fundamentally, the presence of a fifth requisite turns out to be superfluous since, the occurrence of the incidence on the intra-community exchanges implies automatically and, consequently, also the occurrence of the requirement of the potential product obstacle on the competition.

They are intrinsically linked to one another, being the second substantially absorbed by the first. It is difficult, if not impossible, for a public measure granted to a company to affect intra-Community trade without, at the same time, influencing or hindering free competition.

Ultimately, it emerges that, for the purpose of qualifying a State aid, the fundamental elements to be taken into consideration are: [24]

a) the lender;
b) the means used;
c) the destination of the resources provided;
d) the potential effect of this destination of means.

3.1. The economic advantage for the beneficiary company.

Among the various identifying characteristics of a State aid, the first of which is intended to provide a detailed analysis is that relating to the economic advantage that, the measure introduced, should be able to bring to the beneficiary company of the measure itself.

If we want to go into detail, we specify that, when referring to the concept of "advantage" granted to companies, the forms through which this advantage can be provided can be the most diverse.

Therefore, it is customary to include among these subsidized measures, not only the positive benefits of the kind of subsidies, consisting in disbursements of public resources, but also all those interventions that, in various forms, are able to alleviate the burdens on the budget of a company.

These, while not constituting subsidies in the strict sense, have the same nature and produce the same effects, determining, for the State or for any other issuing body, a lack of entry of private resources that, otherwise, the companies would have had to pay.

As a result, there is an advantage for a company whenever it is endowed

[24] See P. RUSSO, Tax benefits and exemptions in light of the EU principles on State aid: the powers of the national judge, report to the Conference of Studies "The application of Community law in the jurisprudence of the Tax Section of the Court of Cassation", cit., p. 335; G. PROVAGGI, According to the EU Attorney General the facilities for cooperatives are not State aid, known to the EU General Lawyer, joined cases C-78/08, C-79/08 and C-80/08, cit., p. 3258.

with resources that normally a private investor, following the ordinary market rules, would not have provided.

The market therefore acts as a parameter to which the public intervention relates to determine its relevance, pursuant to art. 107 TFEU.

On the other hand, in no case is there a State aid, if a subject, public or private, pays money to a company for goods or services received.

In this context, in fact, the disbursement of public resources is justified by commercial reasons, as is the case in the case of negotiations between private subjects.

Ultimately, when reference is made to the requirement of economic advantage, it also refers in a certain sense to the means by which the provision of public resources should take place.

What is noticeable is not so much the way in which the disbursement of resources takes place, but rather that it turns into a financial sacrifice for the State. It is therefore sufficient that it should be directly or indirectly affected by the public budget without, however, a counterpart in the lender's favor by the company that benefits.

According to an authoritative Doctrine, [25] in order for a "State aid" to be put in place, "*it is essential that there is a correlative economic advantage in favor of a company and a concomitant (and symmetrical) decrease in capital for the person who provides the aid same*".

As already highlighted above, the form in which the attribution of the economic advantage can take place does not appear to be relevant, but it must be such as to alter the conditions of competition between companies.

According to the Court of Justice, [26] the economic advantage produced in favor of a company must be artificial and not deriving from normal market conditions. And, again, it must be a net advantage and not compensation. [27]

In conclusion, the failure to draw a tax from the State, or any other form of facilitation [28], does not in itself constitute an element, neither sufficient nor necessary, to qualify the act as "aid"; for example, the return of taxes or fees taken incorrectly cannot be considered as such.

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[25] See M.V. SERRANÓ, the precautionary suspension of acts aimed at recovering State aid: critical remarks on a perfectible text, in Rivista di diritto tributario n. 7/8, 2010, p. 813.

[26] See EC Court of Justice, judgment of 2 July 1974, case C-173/73, Italy c. Commission, family allowances for textile industry workers, cit., And judgment of 21 March 1991, case C-303/88, Italy c. Commission, State aid to companies in the textile/clothing sector.

[27] See EC Court of Justice, judgment of 24 July 2003, case C-280/00, Altmark Trans GmbH.

[28] In this regard, CHIARA FONTANA, The State Aids of Natura Fiscale, Turin, Giappichelli, 2012, pp. 72-73 Benefits Vs/Exemptions.

On the contrary, any form of facility that places a company in a favorable situation compared to its competitors, can be qualified as State aid, even if it does not lead to any transfer of resources by the State itself. For example, the reduction of the tax base of the tax or of the tax debt or the deferral of the terms of payment of a tax can be considered as such.

3.1.1. *The effective beneficiary of the aid is the concept of "enterprise" within the Community and national framework.*

From what emerges from the Community provisions on State aid, for a tax relief to be considered as such, it is a fundamental requirement that it be granted in favor of "certain companies or certain productions".

Thus, the importance of the notion of enterprise and production is apparent for the purposes of applying the aforementioned legislation.

Since the "companies" are the only recipients of the "aid", these cannot be considered as such if they are addressed to subjects that cannot be qualified as "companies".

From a terminological point of view, it should be pointed out that the notion of an enterprise to which reference must be made is that provided for by Community law and not by national law, the former being often more extensive and broader than the latter.

Furthermore, Community law emphasizes not the legal notion but the economic one, thus avoiding that, given the complexity and numerousness of the legal systems that make up the Community system, the concepts envisaged within national boundaries turn out to be non-coincident. [29]

According to EU competition law, the notion of an enterprise includes "*any economic entity or entity that organizes productive factors, which carries out an economic activity, regardless of its legal status and the way in which it is financed, and which is considered in relation to its possibility of competing with other entrepreneurs*".

The economic activity carried out must be aimed at the production of goods, or the provision of services, to be used for marketing on the market.

All institutions that do not exercise an economic activity such as, for example, research institutions, universities and training schools are excluded from the application of State aid legislation. [30]

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[29] See L. SCUDIERO, The notion of enterprise in the jurisprudence of the Court of Justice, known to the EC Court of Justice, sent. 17 February 1993, joined cases C-159/91 and C-160/91, "Poucet", in Il Foro italiano, 1994, part IV, p. 113, where, on page 115, it is specified that the Court of Justice could not have guaranteed the uniformity of Community law "if, due to the notion of company, it had referred to national legislation, given the diversity existing between the definitions in them".

[30] See G. TESAURO, Community Law, cit., p. 659

From the definition set out above, it also emerges that the legal nature of the beneficiary does not assume any importance and, consequently, a non-profit organization or a public body may qualify as companies, provided they exercise an economic activity.

With regard to non-profit organizations, the public subsidies granted in favor of a cultural association that manages cinemas at reduced prices, damages the managers who do not benefit from the same subsidies, therefore they can be considered as State aid and therefore prohibited by the law Community legislation. [31]

Even public bodies, in the case in which they carry out economic activities of an industrial or commercial nature, aimed at the concession of goods or services on the market, may be considered as beneficiaries of State aid. [32] Otherwise, public bodies that exclusively carry out activities that fall within the exercise of public powers, and that are therefore not of an economic nature such as to justify the application of competition rules, cannot qualify as beneficiaries of State aid.

Once the notion of "enterprise" has been specified in the Community context, we will move on to analyze the concept of "production", which is expressly contained in the reference standard.

With reference to the concept of production, the EU legislation intended even more to highlight the fact that, recipients of State aid may be not only companies, understood in the strict sense, but all economic entities that carry out accumulated production activities by the type of goods or services realized, regardless of the legal form or the size taken.

Consequently, all provisions of a general nature, such as unemployment benefits or other social security benefits for workers, are excluded from the prohibition provided for by Community law, as they do not favor certain enterprises or the production of goods and services.

These schemes place the State directly in relation to the workers benefiting from the subsidized measure, without the company being involved in any way. [33]

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[31] See M. ORLANDI, State aid in Community law, cit., p. 168.

[32] Consider the judgment of the EC Court of Justice, 19 January 1994, case C-364/92, SAT Fluggesellschaft mbH/European organization for la sécurité de la navigation aérienne (Eurocontrol). In this case, the Court denied that Eurocontrol, which carried out activities relating to the control and the police of the European airspace, was an enterprise, in that, the activity exercised was linked to the "typical prerogatives of public authorities.

[33] See the communication "Community guidelines on State aid for rescuing and restructuring firms in difficulty", GUCE, n. C 368, 12/23/94, p. 12.

However, if the favorable regime only facilitates the workers of a limited number of companies, thus not constituting a measure of a general nature, it will qualify as State aid and consequently prohibited. [34]

In this case, in fact, the recipient of the relief measure will no longer be the individual worker, but the company, which will be in a privileged position, being able to benefit from the exemption from the application of the incentive scheme that governs the termination of the relationship of work.

Ultimately, it is possible to argue that, for the purpose of identifying the nature of a certain business activity or the identification of certain productions, recipients of the legislation on State aid, the fundamental aspect to be assessed, and whose presence cannot be ignored , is that the beneficiaries of the "aid" can compete with other economic entities and, thanks to the aid they benefit from, are able to distort or threaten to distort free competition.

3.2. The effect on intra-Community trade.

A further requirement, whose presence appears to be fundamental for the purposes of including a subsidized measure in the context of "State aid", is that of the "impact on intra-Community trade".

Its importance emerges directly from the relevant Community legislation and, specifically, from art. 107 TFEU which states, to be precise, the incompatibility with the internal market of aid granted by States, "*to the extent that it affects trade between Member States" and which "distorts or threatens to distort competition*".

First of all, what is denoted by the Community provisions is that, for the purposes of assessing compatibility with the internal market, of public interventions granted in favor of companies, it is necessary to evaluate not the cause or purpose for which they are intended, but the effects that they are likely to produce.

Therefore, the purpose is not relevant, which may be more or less deserving, in view of which the potential effect on competition and on the intra-community trade that they can produce have been arranged, rather than on the contrary. [35]

Furthermore, a strict correlation between the requirement of impact on intra-Community trade and that of the potential distortion of competition can be deduced from the aforementioned legislation.

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[34] See M. ORLANDI, State aid in Community law, cit., p. 171.

[35] See G. PROVAGGI, According to the EU Advocate General, the facilities for cooperatives are not State aid, known to the EU General Lawyer, joined cases C-78/08, C-79/08 and C-80/08, cit., pp. 3528-3529.

According to what was claimed by most of the Doctrine, [36] there is a distortion of competition, "whenever an advantage is ascertained in favor of a given company, that is when the intervention of the State causes an artificial variation of some elements of the cost production of the beneficiary company, strengthening its position compared to other competing companies".

More in detail, the first requirement, namely that of incidence, covers, or rather absorbs, the second, ie that of the potential obstacle to competition.

In practice, once the existence of the first has been verified, it is easy to prove, presumptively, also the merits of the second.

On the other hand, it is not easy to prove the contrary, namely that, in the presence of the requirement of distortion of competition, there is at the same time an impact on intra-Community trade.

In some cases, in fact, it could happen that, a tax relief granted to a company goes to significantly alter competition between companies on a local scale but, on the contrary, has no impact on trade between Member States.

The concept of "incidence" has been the subject of analysis by the European Commission which, in various circumstances, has provided for its extensive interpretation.

Specifically, according to the decision-making practice of the European Commission, the requirement of impact on intra-Community trade is verified also in the following two circumstances:

1) when the aid is granted to a company operating in a sector characterized, at least in part, by Community exchanges even if the aid recipient is active only on a national or local scale. In this case, in fact, the strengthening of production, even if only aimed at the domestic market, entails a greater difficulty for companies operating in other states to penetrate the market. [37] It will therefore not be necessary to demonstrate that the facilitation has a concrete effect on trade;

2) in the case of aid granted to a Community company operating on the domestic market, even if for investments made outside the European Union. [38]

In the cases described above, the European Commission considered that the requirement of impact on intra-Community trade is satisfied as, in both cases, the company receiving the aid finds itself in a favorable competitive situation, hindering, for its competitors, introduction into the internal market.

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[36] See M. INGROSSO, Tax benefits for Mediterranean games and State aid: the Almeria case 2005, cit., p. 1771.

[37] See EC Court of Justice, ruling 13 July 1988, case 102/87, France c. Commission.

[38] In this case, distortion of competition is determined as, in the same State, other companies competing with the beneficiary of the aid that are also attempting to extend their market share abroad, without receiving any concession or aid, could operate.

Therefore, it is sufficient for the aid recipient to operate in a market where there is trade between Member States, whether or not it carries out exports. On the contrary, there will be no impact if the aid granted refers to productions that have no response in other countries.

In this regard, it is necessary to make some clarifications.

First, when reference is made to the fact that aid may affect intra-Community trade, it may be understood that, due to it, the extent of trade diminishes or risks diminishing, or that it may increase. What is relevant is that there is an alteration of the exchanges and not that they are held up or hindered.

It will therefore be of fundamental importance to determine whether an aid is capable of affecting intra-Community trade or whether, in contrast, it is so weak as not to produce the aforementioned effects. [39]

Furthermore, it is not necessary to demonstrate that, through the granting of the aid, a current prejudice to trade between Member States is caused, but it is sufficient to give proof that the aid granted is suitable to constitute a potential threat to competition and exchanges between the States of the U. IS. [40]

In conclusion, the requirement of impact on intra-community trade and, consequently, incompatibility with the legislation on State aid, occurs whenever the recipient of the tax relief measure is active on EU markets or, in any case, on markets characterized by from intra-community trade.

There are, however, some activities or services which, by their nature, do not affect intra-Community trade and, therefore, are not subject to the prohibition of State aid. The activities or services that fall into this category are those that:

– concern only limited geographical markets;
– are functional to purely local needs;
– are not likely to attract the interest to invest by companies located in other territories of the EU.

For the purposes of the aforementioned determination, the Commission considered that each measure should be evaluated, case by case, and have a significant effect.

Certainly small amounts of aid, the c.d. “de minimis” aids, which, due to their nature, are not likely to affect intra-Community trade or cause damage to free competition, despite their considerable importance for employment and for the development of the entrepreneurial fabric.

The de minimis aid and, at the same time, also the aid granted to SMEs or

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[39] See M. ORLANDI, State aid in Community law, cit., p. 177.

[40] See A. MATTERA RICIGLIANO, The European Single Market, Turin, Utet, 1990, p. 70, cited by M. ORLANDI, State aid in Community law, cit., p. 180.

those aimed at improving training and employment, are not subject to the prohibition set forth in Article 107 TFEU, as these are measures that invest the market in an insignificant manner, given the poor position held by the parties directly concerned. [41]

Consequently, the aid falling under this category is not prohibited by Community rules.

3.3. The selectivity or specificity of the aid.

Another requirement, fundamental for the purposes of the classification of a public aid measure as "State aid" according to EU legislation, is that of selectivity or specificity. [42]

Among the various requirements that make up the VIST criterion, selectivity is probably the one that lends itself to the greatest doubts of interpretation. This also as a direct consequence of an approach that is not always consistent followed by the European Commission.

Also, like the others, it can be deduced from the provisions of art. 107 TFEU, which, considered incompatible with the internal market, all those aids granted by states that favor "*certain companies or certain productions*". [43]

The requirement of selectivity is to be considered decisive for the identification of "State aids" precisely because the granting of a selective measure, that is addressed to certain companies or productions, is potentially capable of affecting free competition at Community level. From this follows the prediction of their incompatibility.

Therefore, the distinction between the measures qualified as selective and those of a general nature is fundamental.

Specifically, it is a consolidated opinion that a measure qualifies as "selective" when it, turning only to certain individuals or economic operators, distorts or threatens to distort competition in the European common market.

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[41] The aforementioned categories of aid will be discussed in more detail later in the discussion and, specifically, when compatible categories of aid will be examined and then exempted from the obligation to notify the European Commission. Such aid is expressly listed by the EC Regulation n. 800/2008, also known as the general exemption regulation by category, which unified all the previous regulations issued on the subject, with the exception of the one concerning "de minimis" aid.

[42] A special case of selectivity: the tax regime applicable to all companies resident in Gibraltar (Judgment of 15 November 2011, Joined Cases C-106/09 P and 107/09/P).

[43] Relevant in this sense is the figure of the entrepreneur art. 2082 c.c. CHIARA FONTANA, The State Aids of Natura Fiscale, Turin, Giappichelli, 2012.

On the contrary, a measure is defined as "general" when it is aimed at favoring the economy of a State as a whole and, for this reason, it is not included among the measures declared incompatible within the Community.

In other words, general measures are those that refer to the general regime of common law, ie the one applicable at national level. [44] These are the measures that apply horizontally to all companies that can potentially enjoy them.

Otherwise, if a measure provides for a more advantageous treatment for certain companies or productions, it is considered selective and, therefore, potentially derogating from the general regime, given that it hinders the horizontality of its application.

Authoritative Doctrine [45] intended to clarify in this regard that, "*in practice, it is necessary from time to time to verify whether the measure can be justified on the basis of a logic of development of the economic system as a whole or represents a deviation from the system's direct structure to reduce the financial charges for the benefit of specific players*".

However, what has been said lends itself to a correct response only from a theoretical point of view.

Concretely, this differentiation is not at all easy.

Suffice it to say that, often, not only are the measures arranged in favor of certain companies considered selective, but also the discretionary implementation, by the administrative authorities of a Member State, of norms of general scope. [46]

By way of example, the reform of a social security scheme that provides for a reduction in social security contributions to all companies cannot be considered as aid, but rather as a general measure. On the contrary, aid is configured, in the event that this reduction concerns only a specific industrial sector. [47]

Clear application difficulties are found, above all, in the tax sector.

The rules of fiscal relevance are basically rules of a general nature, in the sense that they do not precisely and accurately identify the subjects to whom they are addressed.

Consequently, even a tax relief, by not including the beneficiaries by name, ends up being very close to general measures, making it difficult to differentiate.

However, even in the case where it is possible to identify a rule applicable

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[44] See M. INGROSSO, Tax benefits for Mediterranean games and State aid: the Almeria case 2005, cit., pp. 1773-1774.

[45] The question was addressed by G. TESAURO, Community law, cit., p. 660.

[46] See EC Court of Justice, judgment of 26 September 1996, case C-241/94, France v Commission.

[47] See EC Court of Justice, judgment of 2 July 1974, case 173/73, Italy c. Commission, cit. In the case in question, the concession granted specifically concerned the textile sector in Italy.

only to certain subjects and, therefore, of a selective nature, further considerations should be made.

It would be necessary to verify if the aforementioned measure, despite its apparent selectivity, can somehow and, for some reason, be justified. [48]

3.4. The transfer of public resources.

The last requirement to identify State aid is the "transfer of public resources". [49]

Its importance is derived from reading the same provisions of the art. 107 TFEU which, in paragraph 1, establishes textually that, are considered incompatible with the internal market, "*aid granted by States, or through state resources*".

It follows that, in order for a State aid to be set up, it is necessary to implement a supply of resources that involves a financial sacrifice for the State and, at the same time, there is no counterpart in favor of the lender from the company or, in general, of the beneficiary.

This definition is rather generic and, therefore, it is considered appropriate to provide some explanation.

First, the state character of a help is given by the coexistence of two distinct elements:

1) the public origin of the resources used;
2) the imputability of the behavior to the State.

With regard to the first of these elements, it is specified that the measure adopted must be such as to entail a financial sacrifice for the State.

Therefore, with the expression "financial sacrifice for the State", it is intended to refer to the fact that the envisaged measure directly or indirectly affects the public budget.

This means that the burden deriving from the granting of aid may weigh on public finances both in the form of a reduction in capital [50] (disbursement) and in the case of lost revenue. [51]

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[48] Here, however, we wanted to make only general considerations regarding the selectivity of fiscal measures, specifying that their analysis will be the object of more in-depth analysis in the rest of this work and, in particular, during the third chapter dedicated to "The discipline of fiscal State aid and compatibility with Community provisions".

[49] See A. GARCEA, The origin "As noted by the most recent doctrine, the relationship of aid with the state source translates into a derivation nexus, whose interpretation can be economic, or legal".

[50] An emblematic case is that of non-repayable loans

[51] See C. PINOTTI, State aid to companies in EU competition law, cit., p. 36.

In the latter case, it must be shown that the State, in the absence of the granting of a specific measure, would certainly have obtained an entry.

With regard to the second requirement, various interpretative doubts have been posed from a terminological point of view.

First of all, the problem has been posed of what is meant by "state resources" highlighting that, probably, it would be more appropriate and correct to speak of public resources.

The very concept of State, used within the framework of the relevant Community provisions, takes on a rather broad connotation. [52]

In fact, the transfer of financial resources could involve, in addition to the central State, also all the territorial bodies (municipalities, provinces, regions) and any public or private body which, upon appointment by the public administration, is in charge of administering the resources and is subjected to public scrutiny.

Therefore, the public or private nature of the provider is not relevant, as is the fact that public resources are used.

For example, aid granted by credit institutions or commercial companies which are entrusted with the management of public resources or the granting of subsidies could be considered as such.

Ultimately, each of the requirements that have been analyzed in the preceding paragraphs, appears to be fundamental in order to define a tax relief measure as State aid and, as such, capable of altering the free competition between companies in the European common market.

The absence of only one of these would in fact rule out incompatibility with the Community market.

4. The different forms of State aid.

As we have had the opportunity to understand, on the basis of the provisions of the Treaty, State aid does not differ on the basis of their cause or purpose, but rather according to the effects they can potentially produce. The identification of State aid on the basis of the effects produced can also be deduced directly from judgments of the Court of Justice, including, in particular, the sentence "Deufil c. Commission", dating back to 24 February 1987, case 310/85, in which the Court expressly stated the following: "*Article 92 (now Article 107 TFEU) aims to prevent trade between Member States being affected by ad-*

[52] See G. ROLLE, P. VALENTE, Fiscal State aid after the Van Miert communication, in Corriere Tributario, n. 16, 1999, p. 1156.

vantages permitted by public authorities which, in various forms, alter or threaten to alter competition by favoring certain companies or certain products. Therefore, this article does not distinguish according to the causes or aims of the interventions, but defines them in relation to their effects". [53]

Article. 107 TFEU also establishes that the aid can be granted by the State, or through state resources, "*in any form*".

As a result, the methods of providing aid can be the most varied.

But since Community law requires that the granting of aid entail a financial sacrifice for the State, it will be provided, in most cases, by a Law, a secondary normative act or an administrative provision.

It cannot be excluded, however, that the aid can be ordered by means of a private law act, for what concerns the determination or disbursement of the aid itself, provided that there is always a public provision at its origin. The failure to indicate a specific definition of State aid has therefore led to the inclusion in it of a very wide range of interventions. In this regard, in July 1963 and in response to a parliamentary question, the European Commission listed a series of behaviors that, due to their characteristics, could be included in the notion of State aid. Among them, according to the European Commission, could include subsidies, tax and tax exemptions, parafiscal tax exemptions, interest rate subsidies, loan guarantees at particularly favorable conditions, the sale of buildings or land under title free or in particularly advantageous conditions, the supply of goods or services on preferential terms, the coverage of losses, as well as any other measure having equivalent effect. The Commission, even on that occasion, had limited itself to indicating a list of simplified examples of concrete cases falling within the notion of State aid, to which a series of other behaviors were added. [54]

Ultimately, to date there is no precise list of cases representing State aid and the existence or not of the identification requirements must be verified, case by case, on the basis of the guidelines expressed by the European Commission and the rulings of the Court of Justice. The only element that is evaluated for the purpose of identifying a State aid is the effect produced, ie whether it is such as to affect free competition between the member states of the EU. What matters is

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[53] See also the judgment of the Court of Justice of 2 July 1974, case 173/73, Italy c. Commission, cit.

[54] The following behaviors are also considered as aid: the state insurance of the risks deriving from changes in the parity of the exchange rates, the guarantee of the State to financial transactions, zero-interest loans or particularly favorable rates likely to be transformed into subsidies, the repayment of costs in the event of success, deferred collection of tax or social charges, supplies at cost price, privileged access to public contracts, authoritative determination of prices and tariffs, the sale of public companies at too low a price.

that, between the subsidized public intervention and the advantage produced by the beneficiary, there is a "condicio sine qua non" relationship, in the sense that the aid measure represents a necessary condition of the advantage, without the which it would never have been obtained.

5. The principle of incompatibility of State aid and its exceptions: the legislative provisions of art. 107 TFEU.

The EU legislation on State aid expressly establishes the prohibition, for the member states of the European Union, to grant aid to national companies or productions, such as to hinder free competition between them and, simultaneously, affect the realization and safeguarding the internal market.

Specifically, the incompatibility of State aid is provided by paragraph 1 of the art. 107 TFEU, in the section of the Treaty dedicated to the protection of freedom of competition in Europe.

The legislation in question does not provide for a general prohibition of all aid granted by the States but, only, for those that, in responding to the requirements highlighted in it, are to be considered incompatible with the internal market.

The discipline of State aid, however, appears to be quite complex given that, in it, a multiplicity of heterogeneous and sometimes even conflicting interests converge, which are difficult to reconcile. On the one hand, there are the interests of the Community (today U.E.), on the other those of the States, consumers or end users, as well as the companies benefiting from the measures and those competing.

In such a context, the free-market action of the Union, which looks to the market with confidence, and the political option of the States that, on the contrary, look to the failure of the markets and prefer their intervention in the economy. [55]

The member states of the Union are, however, called to sacrifice their national interests, giving priority to what is the Community interest aimed, in turn, at the realization of the internal market. And this was precisely the motivation that drove the European Union to adopt a real "competition policy", of which the State aid regulation is part. In addition to being based on the rules set out in the Treaties, it is based on an economic and legal doctrine that has been consol-

[55] See M. ORLANDI, State aid in Community law, cit., p. 67; PINOTTI, State aid to companies in EU competition law, cit., p. 2 and following.

idated over time and which has been expressed, and subsequently codified, through the numerous Decisions taken by the European Commission and the sentences issued by the Justice Court. [56]

There are, however, some specific cases in which the granting of interventions, which can be qualified in terms of State aid, can produce positive effects on the Community economic system, contributing to the realization of other purposes, such as stimulating economic activity, better allocation of resources, competition and innovation, and the generation of benefits for consumers.

In these cases, the European Commission plays a decisive role in that it is required to assess ex ante the compatibility of a tax relief measure and to decide on the possibility of granting or prohibiting it.

From what has been argued so far, it emerges that the real question concerning State aid is not to prohibit them or not, rather it concerns the evaluation of the effects they are likely to produce and, more specifically, the fact that their possible grant can generate positive or negative effects, not only nationally, but also and above all in the community.

This is the original reason why the founding fathers of the EEC, at the time of decreeing the legislation on State aid, considered it appropriate to make exceptions for those categories of aid which, although they could produce distortive effects on competition, were also in able to produce benefits for the European Community as a whole.

Consequently, through the provisions on State aid, it was certainly not wished to eliminate an important instrument of economic policy but, simply, it was intended to remove it from the will of the States and instead place it at the disposal of the Community.

The competent community bodies must monitor and ensure that the interventions prepared at national level are coordinated with those of other countries and that, in addition to the pursuit of specific interests, they are also and above all aimed at achieving the common interest.

The exceptions are divided into two categories.

The first relates to aid c.d. de jure compatible devices, provided for in the second paragraph of 107 TFEU.

The second, instead, includes those aids that can be declared compatible at the discretion of the Commission or the Council and which are expressly identified by the art. 107 TFEU, in the third paragraph.

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[56] C. PINOTTI, State aid to companies in EU competition law, cit., p. 2 and following.

6. “De jure” compatible aid.

The first category of subsidized interventions that, although they can be qualified as State aid, can be considered compatible with the common European market, is provided by the art. 107 TFEU, in paragraph 2.

They are de jure compatible aid, meaning, with this expression, that their compatibility is sanctioned verbatim by the provisions of the Treaty.

It is clear that, even if the compatibility for such measures is expressly provided for by Community legislation, they always represent aid.

This means that, like all the measures that can be qualified in such terms, they are subject to the prior notification to the European Commission, which is required to express its own evaluation.

Given their express compatibility, the Commission cannot exercise any discretion in the assessment procedure, as it can at most be limited to ascertaining the occurrence of the requirements and conditions that allow the aid granted to be included among those provided for by the second paragraph of the art. 107 TFEU, as well as checking that the States do not implement their abusive application.

In the event that the Commission fails to certify its compatibility, any interested natural or legal person, the Council or a Member State, may refer the matter directly to the Court of Justice to have the Commission recognize the violation of the Treaty provisions. [57]

The obligation for the Commission to recognize the compatibility of the aid, referred to in the second paragraph of art. 107 TFEU, can also be deduced from the use of the present indicative, by the community legislator. Specifically, the second paragraph of the art. 107 TFEU expressly establishes that, the categories of aid indicated in it, “are compatible with the internal market”, [58] without leaving any doubt about their possible declaration of incompatibility.

Specifically, the art. 107 in paragraph 2, provides strictly [59] three exceptions to the general principle of incompatibility of State aid, for particular types of aid, namely:

a) social aid granted to individual consumers, provided that they are granted without discrimination due to the origin of the products;

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[57] See, in this sense, M. ORLANDI, State aid in Community law, cit., p. 229.

[58] This provision differs fundamentally from what is established in the third paragraph of article 107 TFEU, given that the categories of aid indicated in it, “can be considered compatible with the internal market”.

[59] On the point, in the tax doctrine, two theories are opposed. See: CHIARA FONTANA, The State Aids of Natura Fiscale, Turin, Giappichelli, p. 153.

b) aid intended to make good the damage caused by natural disasters or other exceptional events;

c) aid granted to the economy of certain regions of the Federal Republic of Germany affected by the division of the country, insofar as it is necessary to compensate for the economic disadvantages caused by this division.

With regard to this last category of State aid, letter c) of the second paragraph of the art. 107 TFEU expressly provides that, five years after the entry into force of the Lisbon Treaty, the Council, on a proposal from the Commission, will be able to adopt a decision abrogating this letter, although it is already evident that its concrete application, failed after the reunification of Germany. [60]

With regard to the first type of derogation provided for in the Treaty, that relating to social aid granted to consumers, compatibility with the rules on State aid can be easily understood.

In fact, as highlighted by the Doctrine, [61] the prohibition of State aid is only applicable if these are aimed at favoring certain enterprises or productions and not even individual consumers.

Furthermore, the expression "individual consumers" is merely intended for the end consumers of a good or service, and not to those who, in the exercise of a business or profession, use them to produce other goods or on a professional level. By way of example, they fall within the scope of application of letter a) of paragraph 2 of the art. 107 TFEU, [62] the provision of public services (such as transport) at reduced prices, in order to favor "weaker" social categories such as the elderly or young people.

Finally, the exception referred to in letter b) of the second paragraph of the art. 107 TFEU, was introduced because, these categories of aid, are aimed at re-establishing the situation prior to a disaster or an exceptional event that occurred. [63]

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[60] A demonstration of this is shown in the "Twentieth Report on Competition Policy", referring to 1990 (Luxembourg 1991), point 178, p. 150, in which the Commission has specified that "the political unification has removed all justification to the maintenance of subsidies to the aforesaid Regions; the Commission therefore welcomed the intention expressed by the federal authorities to completely eliminate this aid".

[61] See M. ORLANDI, State aid in Community law, cit., p. 230; U. LEANZA, Commentary on the art. 92, EEC Commentary, Milan, 1965, p. 723, cited by M. ORLANDI, State aid in Community law, cit., p. 230, for which, "the final consumer does not affect competition [...] products will be paid at the same price, both by consumers who benefit from State aid, and by those who do not benefit from such aid"; A.M. RICIGLIANO, The European single market, Turin, Utet, 1990, p. 75, cited by M. ORLANDI, State aid in Community law, cit., p. 230, for which, "the beneficiary categories, consumers, certainly cannot be configured as companies".

[62] On the sentence of June 15, 2010, in Case C-177/07, on Digital Decoders.

[63] In this sense it is useful to remember how on the basis of the provision of art. 9, of the Law,

Only if the facilitation measures have been provided for that purpose will they not be able to alter free competition and, consequently, will not fall within the scope of incompatible aid.

What emerges is a fundamental requirement for measurability of the extent of the damage and also of the aid granted.

Furthermore, in order for this aid to actually fulfill its function, it must be provided promptly and have a limited duration.

A final clarification must be made regarding the meaning to be attributed to the expressions of "natural disasters" and "exceptional events".

As highlighted by the Doctrine,[64] earthquakes, floods, floods, fires, animal epidemics, drought and other natural phenomena of extraordinary gravity can be considered as "natural disasters".

The attribution of meaning to the expression "exceptional events" is more difficult. Generally, wars and internal insurrections are considered as such. On the other hand, strikes are not considered as such, since they represent normal situations in democracies, sometimes constituting constitutionally guaranteed rights.

It remains to emphasize the fact that, all the aid granted must have another requirement, that of proportionality, in the sense that they must be considered necessary to remedy unforeseeable events or events of extraordinary gravity and, at the same time, be paid in proportion to the damage suffered.

7. The compatible aid on decision of the European Commission or the Council of State: the art. 107, paragraph 3 of the TFEU.

A second exception to the general principle of incompatibility of State aid is provided by the third paragraph of the art. 107 TFEU.

This provision establishes textually that, the categories of State aid identified by it, "can be considered compatible with the internal market".

This highlights the fact that the European Commission, and also the Council, can exercise a wide discretion in the evaluation of a State aid and decide, later on, if this can be considered compatible or not with the community legislation for the protection of free competition.

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of 27 July 2000, n. 212, containing "Provisions regarding the Statute of the rights of the tax payer", the Italian Ministry of Economy and Finance was able to adopt the decree dated 9 April 2009, entitled "Suspension of obligations and tax payments in favor of the residents of the province of L"Aquila, affected by the earthquake of 6 April 2009".

[64] See M. ORLANDI, State aid in Community law, cit., p. 232.