EATLP 2014 Poster Program for Doctoral Students - Istanbul, 29-31 May 2014

Sub-National Authority to Tax and the EU Law: A Relationship in Search of Principles

Conceptual bases

The EU is not interested in the structure of the national government

allocating

competences to the

local entities, in

order to avoid

problems with the

EU system

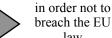


The European Treaties do not include any explicit restriction



from the general principles of prevalence and the direct effect of the EU law

there is an indirect influence stemming



More attention neutrality principle should be paid at the central level in

Moreover, when there is an infringement of European law → The EU is not interested which level of the State allows the internal system to become consistent with the European order



in negative

harmonization:

in positive

Despite the fact that the only subject responsible on an international level for non-compliance with the European law is



harmonization, when the EU provision is not directly applicable

the MS and not the sub-national authority



For this mechanisms are provided derogating from the ordinary rules, in order to allow the correct implementation of the EU law (i.e. art. 120(2) Italian Constitution

and art. 19(2) LOFCA)



This is left to the MSs, they can do what

they believe to be more appropriate and

consistent with their internal system

The EU is only interested in the result achieved (i.e. 8th additional measure to the law 42/1994 (Spanish case))



Application

Customs union (artt. 28-37 TFEU)



prohibition of customs duties

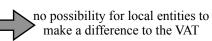


it involves not only national boundaries but also internal ones (i.e. Carbonati Apuani case (C-72/03))



read together with the free movement of goods (customs union and artt. 110-113 TFEU)

• Harmonized taxes (art. 113 TFEU)





but there is the possibility to levy other indirect taxes

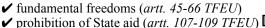


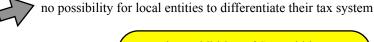
If some specific conditions are met (*Directive 2008/118/CEE*)

Approximation of law (art. 115 TFEU)



✓ directives on direct income tax





the prohibition of State aid is a complementary measure to the fundamental

freedoms and it has a residual function

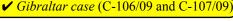
C-88/03, para. $63-66 \Rightarrow$ when all the local entities have an autonomous power to decide (↑\taxation) → there is no selectivity, because a general framework is missing (EU Commission Decision n. 198/2005 - Italy - para. 44)





✓ Azores case (C-88/03)

✓ *UGT La Rioja case* (C-428/06 to 434/06)





evolution of the selectivity principle



regional selectivity



relevance is given to independent local entities

For the first time the Court of Justice opposed the circumstance in which the undertaking producing its income abroad has an advantage over the internal situation



the prohibition of State aid could be helpful to avoid the "reverse discrimination"

- Regioni a statuto ordinario;
- Regioni a statuto speciale.



the comparability test (i.e. R/NR) is shifted

CC AA de régimen comun;

- CC AA de régimen foral.

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 Islas Canarias

it is a special CC AA de régimen comun (art. 349 TFUE)