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10.1 The General Framework Regarding the State Aids

10.1.1 The Prohibition of the State Aids as a Measure to Promote the Free Competition in the Common Market

One of the issues with respect to which is more important the problem of resolving conflicts between national law and EU law is the provision of financial differentiated treatments arranged and facilitated by a Member State in favour of certain categories of domestic enterprises or economic activities.

The establishment of a common market presupposes the establishment and the operation of a unified economic space in which the exchange of products and services, and in general the commercial transactions can take place under the same conditions as those applying in the domestic market. Therefore it is necessary

not only that barriers and obstacles to the free movement of goods and services are removed, but also that the competition between enterprises resident in the European territory is not distorted by the financial measures taken by the Member State that produce an economic benefit confined to a narrow audience of national subjects.

Therefore, it must reconcile the two requirements to avoid that the national legislation more favourable may collide with the EU freedoms on which the common European market is founded and to allow, at the same time, that Member States maintain their margins of autonomy in decision-making regard to the choices about economic policy and internal tax. The point of balance between the conflicting interests (EU aims and national demands) can be essentially identified through the distinction between permitted measures and prohibited measures.

In this context the provision of the art. 107 TFEU (formerly art. 87 Treaty of Maastricht and art. 92 Treaty of Rome) prohibits the granting of the State aids which, by favouring certain economic activities or certain products, may affect trade so as to distort (or threaten to distort) the system of free competition; the admitted benefit, however, must necessarily be selective, since it is suitable to benefit certain firms (or sectors of economic activities) and not even the majority of the firms (in which case there would not be a State aid, but rather a controllable measure of support to national enterprises, to be detected with respect the principle of non-discrimination).

The aim pursued by the rules of the State aids is thus clearly related to the promotion and the protection of an open European economic space, in which it is definitively removed the possibility of a centrifugal and self-referential economic policy, direct to pursue some selfish goals of the nation-States, in favour of the development of the European integration through the removal of a power of financial facilitation potentially distorting the free competition.

10.1.2 Procedural Nature and Degree of Competence of the EU Guidelines on the State Aids

The discipline laid down in the art. 107 establishes that, through a complex procedure, the Commission is required to initiate a “formal investigation”, in principle with a preventive nature, about the compatibility with the EU law of the financial measures taken to support the national enterprises and decided by the Member State in order to issue (or at the opposite to deny) the relevant authorization regarding the national financial measure recognized as a State aid.

Therefore it is not established the principle of the absolute and automatic inadmissibility of the State aid, but rather it is defined the jurisdiction of the EU body with regard to the assessment of compatibility of the most favourable national rules with the principles and rules of the EU law.

It is a rule that applies to establish an area of competence in favour of the EU institutions (and especially the competence of the Commission).

In fact, the extent of benefit provided for by the internal discipline of a Member State until it was expressly approved by the Commission is to be considered devoid

of a direct and immediate legal effect. The act of the national legislation comes formally into force, but substantially remains suspended until the decision of the Commission approving the norm by judging the compatibility with the EU law. The approval of the Commission arises as a legal condition of the effectiveness of the national law providing for a measure of domestic advantage.

In this perspective it can be argued that the discipline of the State aids, although it contains some descriptive elements of the prohibited measures, does not assume a substantial connotation, but is to be qualified as a discipline essentially with a procedural nature.

10.1.3 The Character of the State Aids Prohibited Under the EU Law

The State aids consist in the attribution of a financial benefit to the recipient by a provision of a Member State, such as to affect trade within the common market and to distort the free competition between the European firms.

The qualifying features of the State aids are to be regarded as constituting a plurality of elements:

- the public nature of the entity which materially pays the financial measure;
- the financial nature of the resource to be given to the domestic recipient;
- the allocation of selective financial resources;
- the potential distortive effect on the free competition among the European firms.

For the classification of a financial measure as a State aid, it is required at first that the subject called upon to provide the financial resources is a public entity; in this category it can be included the territorial or non-territorial entities, public administrations or governmental bodies, or even a private entity acting under a power delegated by the State or other public body.

The resource used for business (or other economic agents) must have a financial content, to be clearly identified in an increase of financial liquidity for the recipient and not even in a mere utility economically significant. Especially it is to be considered in the area of the State aids either the positive financial measure (consisting in financial contributions) as well as the “negative” financial measures, which resulted in a reduction of the costs that would ordinarily sustain the beneficiary. Consequently the taxation benefits can be ascribed to the category of the State aids, because they may be assimilated peacefully to the reductions of the burdens and charges imposed over the business (or over the economic agents).

A decisive character for the recognition of the State aids is to be found in the selective destination of the financial measures taken in support of the business (or of the economic agents). The selectivity of the financial measures is the guiding principle in the verification of the compatibility of the State aids with the EU law, imposing the need to check case by case the existence of the selective destination.

Finally, it is consolidated the belief in the EU bodies that is necessary to evaluate the actual effectiveness of the financial measure determined by the Member State in

terms of potential obstruction with respect to the freedom of competition in the common market. In particular, it must be verified the potential effect that may occur with regard to the transactions on the market for the economic agents who are not beneficiaries of the measure of support, also in order to establish the existence of possible specific disadvantages that could limit the presence on the market or, in any case, penalize the business action.

If the elements described above are found as a result of a positive judgment made by the Commission, the facilitative extent decided by the Member State qualifies as a State aid and therefore it is to be considered inadmissible under the EU law as a prohibited measure.

It must be distinguished with respect to this last figure the “illegal” aid, in which the judgment of compatibility has not yet been made by the Commission, but the support measure decided by the Member State has not been notified to the Commission; in this case, the aid is to be considered illegitimate for failure to observe the procedure required by the art. 108 TFEU.

It should also be noted that no new State aid can be found compatible with the EU law until the beneficiary of a previous unlawful State aid has failed to return it (case 15.5.1997, C-355/95, *Deggendorf*). This is clearly a rule of fiscal caution intended to protect the EU interest with respect to the recurrence of violations to the rules on State aids in favour of the same beneficiary.

10.1.4 The Procedure for the Judgment on the EU Compatibility of the State Aids

As mentioned above, the discipline of State aid has as its primary goal the establishment of a procedure for the assessment of the financial measures taken to support domestic enterprises (or other economic agents) adopted by the Member States.

The competence to decide on this matter is expressly conferred on the Commission (art. 108 TFEU) and is regulated by some specific rules of implementation (Regulation of 03/22/1999 n. 659).

Member States are required to notify the Commission “in good time” the draft legislation devoted to grant or to modify some financial measures in favour of domestic enterprises (or other economic agents) that are potentially qualified as State aids. Member States are also obliged not to give effect to the support measures before the Commission expressed about the admissibility of the same measure with the EU law (art. 108 par. III).

Therefore, by the EU law, there are two specific obligations for Member States that wish to proceed with the establishment of financial measures in their national territory:

- a positive obligation, consisting in the communication of the proposed aid to the Commission;

- a negative obligation, having the contents of a *non facere* (not to do), defined in terms of a prohibition to implement the same support measures.

In this regard it should be noted that often the Member States include in the national law which introduces a support measure a referral clause about the effectiveness of the financial arrangement pending the authorization of the Commission (standstill clause). This is clearly a rule of precaution dictated by the need to avoid the complex procedures of the recovery of the State aids in the event of a negative decision on the compatibility of the national measure with the EU law.

The Commission shall conduct an examination about the financial measure determined by the Member State, judging the compliance of individual items to the model of the State aid. Particularly, the investigation focuses on two aspects of the facilitative selectivity of the measure and of the potential distortion of the free competition. The verification is typically accomplished with a casuistic approach, through an examination of the effects of the aid on the relevant market according to an assessment of a prognostic kind conducted in the same way of the normal parameters of the economic evaluation.

The investigation concludes with a decision of the Commission on the admissibility of the financial measure designed by the Member State. The decision may be positive (and therefore admitting the eligibility of the national aid), or negative, as it establishes the incompatibility of the State aid with the EU law. The decision may also predict a “conditioned eligibility”, subject to some appropriate actions to be taken by the Member State in order to make compatible the financial measure with the EU law.

The Member State is bound by the decision taken by the Commission on the State aids, subject to a recourse to the Court of Justice to challenge the content of the decision. In the event of failure to comply with the decision of the Commission, the State is liable to the infringement of the proceedings.

The Commission has also the power to declare in advance for some economic sectors the compatibility with the European law and therefore the inapplicability of the procedure mentioned in art. 108 (in accordance with Regulation n. 994/98). In application of these Regulation some categories of “horizontal” State aids, for which it is possible to formulate a previous judgment about the admissibility, can be exempted from the prior notification to the Commission.

In this regard it should be noted that the Commission has adopted a code of some best practices in the field of the State aids, for which it is established a simplified procedure for the approval of the support measures adopted by the Member States (Communication of 04/29/2009).

10.1.5 A Progressive Perspective Regarding the Exceptions to the Prohibition of the State Aids

The interest of the European Union begins to take on a “social” connotation with regard to the guidelines on the State aids. Some indicators of this approach may be

found typically in the State aids considered to be compatible with the EU law, which promote settlement mechanisms of social conflicts or otherwise are aimed at encouraging acts of solidarity towards “weak” categories.

Particularly, some kinds of State aids are expressly considered eligible by the Member States, as always compatible with the European framework:

- the social aids granted in favour of individual consumers, subject to the exclusion of any discrimination with regard to the origin of the products (art. 107 par. II, let. a);
- the aids devoted to recover the damages generated by natural disasters or extraordinary events (art. 107 par. II, let. b);
- some aids recognised in favour of some territories of Germany, as a consequence of the national unification (art. 107 par. II, let. c).

In these cases, it is excluded a discretionary evaluation by the EU bodies about the compatibility of the State aids with EU law; however, the Member States must notify to the Commission the national provision in order to permit the acknowledgment of the case with the EU law.

For other kinds of State aids the Commission may formulate a discretionary judgment about the eligibility of the facilitation under the EU law; especially in this category are considered the following cases:

- aids to promote the economic development of areas where the standard of living is abnormally low or where there is a high level of unemployment (art. 107 par. III, let. a);
- aids devoted to promote an important European project or to remedy a situation of serious distress or disturbance in the economy of a Member State (art. 107 par. III, let. b);
- aids aimed at facilitating the growth and development of certain regions or certain economic activities as long as the distortion of competition is not contrary to the EU interest (art. 107 par. III, let. c);
- the aids for the promotion of the cultural initiatives and the protection of the artistic and cultural assets (art. 107, par. III, let. d);
- the other categories of aids decided by the Council on the basis of a proposal coming from the Commission (as the aids for promoting the employment or the development of small and medium enterprises) (art. 107 par. III, let. e); it must be noted that, for this last case, it has been issued the Regulation n. 994/1998 which has entitled the Commission to verify the compatibility with the European discipline about the national State aid regarding the promotion of small and medium enterprises, the research, the protection of the environment, the development of the employment.

With regard to these cases, it is attributed a wide discretionary power to the Commission for the balancing of the interest promoted by the State aids (and so the

social or political aims pursued by the Member State) with the European freedoms and principles (case 15.5.1997, C-278/95, *Siemens*; case 19.9.2000, C-156/98, *Germany vs. Commission*; case 17.5.2001, C-310/99, *Italy vs. Commission*). Therefore, the Commission is required to operate a global evaluation of the State aids, considering the functionality, the proportionality and the consistency of the national provision in the general European framework, in order to judge the eligibility of the same provision as a derogation to the ordinary prohibition of State aids which can distort the free competition on the common market (case 21.3.1991, C-303/88 *Italy vs Commission*; case 9.1.2003, C-157/00, *Greece vs. Commission*).

From the mentioned catalogue of State aids deemed eligible by the EU law some significant indications emerge.

At first, it may be identified a traceable interest (as a collective interest of the European Union) to promote the economic and social development of the Member States. In this respect the choices of economic policy, although theoretically conflicting with the rules of the competitive game, are to be compatible with the EU law as belonging to the same “social” purpose of collective development. The State aids relating to the social and ideological purposes are considered eligible with the European legal framework, although they produce a definite impact on the competitive neutrality of the market, since it is well appreciated the promotional value of the benefit to the general community and the solidarity intent involved in such facilitation measures.

In particular, it is assigned a specific relief to the “European interest” as a term of reference for the assessment of compatibility of certain categories of State aids, appearing clear the axiological dimension of the European community with respect to the “social” purposes.

Secondly, in the list of the allowed aids there are some cases which recall the general social needs, not only due to macro-economic purposes, nor to instances of the development of certain territories. This can be read as a recognition of the need to promote (or, at least, to admit) tax rules that favour a promotional character of the social evolution according to a plan to raise the situations of under-protection.

Although the social policy has not been the central component of the European integration process, it seems possible to some extent to establish a connection of this profile of the European Union with the principle of substantial equality in the EU legal framework; in fact, it can be acknowledged, as a reference for the assessment of collective interests, an evolutionary process directed to the removal of economic and social obstacles that reduce on a factual level the freedom and the equality of European citizens, so as to hinder the development and the self-realization of the person. The goals that make up the teleological and axiological horizon of the EU legislative action may not be reduced to the mere protection of the values of freedom and of economic efficiency (even though they are taking a prominent relief), but shall be combined with the promotion of the progressive social values in order to support an overall growth of the European Union such as to promote the personal elevation of the individual citizens.

10.1.6 The Preventive Regulation for the Exceptions to the Prohibition of State Aids

According to the art. 109 TFEU it is recognised the possibility to regulate preventively the State aids admitted by the EU legal order, defining the category of measures which are exempted from the procedure of authorization.

At this purpose it has been issued the Regulation n. 994/1998 that establishes the power of the Commission to adopt specific regulations for the execution of the discipline of the State aids, with the aim to identify the categories of measures which do not need to be authorised by the Commission.

Then, several Regulations have been issued time by time by the Commission in order to admit specific categories of State aids with a preventive decision. Especially, the Regulation n. 800/2008 (also called “general regulation of the exemption for categories”) defined the general criteria for the preventive determination of the compatibility of the national measure in favour of the enterprises with the European discipline of the State aids and, therefore, the exemption from the compulsory procedures to be followed in front of the Commission.

Particularly, it is expressly established the application of some general principles of the European legal order for the evaluation of the specific categories of State aids:

- according to the principle of the benefit, it must be considered the benefits obtained by the European Union for the process of the European integration and related to the State aids to be introduced; these benefits are to be compared with the distortion of the common market coming from the State aids; if the comparison produces an advantage for the European Union superior than the distortion, the national measures can be considered allowed;
- on the basis of the principle of transparency, the impact of the State aids over the common market must be evaluated through a clear and verifiable analysis, also applying some mathematic parameters (so called “ESL”) in order to verify the grade of intensity of the national measure.

Periodically, the Commission elaborates some general reports, applying the mentioned principles and through a cooperation with the Member States, with the aim to specify the regional areas which need some contributions (or other measures of support) and the categories of State aids allowed. In these reports (so called “regional papers”) the Commission usually identifies the kind of disadvantage of the regional areas compared to the national or European average.

10.1.7 The Eligibility of de minimis Aids

The Commission considered that the State aids of a minimum content do not fall under the regulations provided by the art. 107 TFEU—and therefore are not subject to the prior notification—on the assumption that these measures are not likely to

have a significant impact on the international trade and may not lead to distortions of the competition among the economic agents in the common market. Those measures of small size are usually referred to as *de minimis* aids regulations (from the Latin sentence: “*de minimis non curat lex*”).

In particular, the benefit measures are mostly targeted at the small and medium-sized enterprises whose dimensions are fixed by law. Into the category of *de minimis* aids are considered the measures that do not involve an advantage over € 200,000 over three financial years for the individual beneficiary (according to the Regulation of 12/28/2006 no. 1998). This limit, however, has recently been raised up to € 500,000 by the Commission (with the communication of 11/26/2008 no. 800), as part of the European economic recovery plan as a result of the global financial crisis (so-called *European economic recovery plan*).

Where the total amount of the State aids exceeds the above mentioned limit, the full extent of the benefit will be submitted to the European guidelines on the State aid (and therefore it may not be included in the exemption even the part of the aid that fits within the limit).

10.2 The Tax Relief as a Possible State Aid

10.2.1 The Qualification of Tax Relief as a State Aid

The national provisions which introduce a tax relief in favour of domestic enterprises (or in favour of the products generated in the national territory) can surely be included in the conceptual area of the State aids as measures potentially devoted to distort the free competition in the same way of the expenditures (and indeed in the literature the two facilitation measures are considered equivalent). In this sense, it is often expressed by the Court of Justice that the category of the State aids includes not only subsidies and public services with a positive content, but also the public measures that result in a reductions of the burdens on business (case 03/15/1994, C-387/92 *Banco Exterior*, where the problem has been examined for the first time; case 05/08/2003, C-328/99, *Italy and SIM 2 multimedia*; case 09/14/2004, C-276/02, *Spain vs. Commission*).

In fact, the tax benefits, resulting in a favourable treatment to the beneficiaries, are likely to reduce the cost of production and thus are detrimental to the competition on the common market.

Otherwise, the “purpose taxes” or the special contributions do not seem to fall within the scope of the regulation on the State aids, since any assessment of compatibility with the EU law does not apply to the structure of the tribute, but rather to the destination of the fiscal flows (and so to the expenditure made as a result of the tax revenues).

The restriction of the European regulation on the State aids with regard to the adoption of tax facilitations looks like a typical application of the principle of non-discrimination (and therefore it recalls the scheme of the “negative” taxation), as it introduces a limit to the power of taxation of the nation-States.

Naturally, the national provisions to be included in the discipline of the State aids must be qualified as tax benefits and thus they have to produce a tax advantage which derogates from the ordinary fiscal regulation, regardless to the favourable elements of the norm (so the advantage may regard the assumption, the taxpayer, the tax rate or the tax base). Therefore the national provision must present a “promotional” nature, devoted to promote some constitutional values with a prevalence over the tax interest of the national State (such as the protection of the family, health, work, savings, etc.). Consequently, the tax rules which appear as a consistent implementation of the ordinary structure of a tribute or which are a deductive application of the general principles of the national tax system may not be qualified as tax reliefs as they miss the promotional nature; so these rules are not covered by the discipline on the State aids (Communication of the Commission C-384/98).

Obviously, the tax benefits, according to the general rule formulated by the art. 107, must present a selective nature, regarding limited categories of beneficiaries or specific sectors of productivity and not also referring to the general economic agents.

It should be further noted that the selectivity of the tax benefits is to be considered, according to the prevalent doctrinal opinion, not with regard to the mere event that the benefit can actually regard only a few individuals, but rather with regard to the pursuit of singular and specific aims of economic policy, not related to the logic of development of the general productive system as a whole.

On the contrary, the national measures intended for the generality of economic agents and productions are to be considered eligible under the EU law. In fact, although the general tax facilitations may determine some advantages for the domestic enterprises or the national production, for the purposes of the regulations on the competition such facilitation falls within the area of the sovereignty of the Member States and is not objectable by the European law (except for the processes of harmonization to be achieved on the basis of the EU legislation).

10.2.2 The Eligibility of Tax Incentives at a Regional or Local Level

One of the most topical issues of the discipline on the State aid is the suitability of tax benefits determined by the sub-state legislation, given the need to prevent forms of decentralization of the tax power which may circumvent the ban on the State aids.

This issue has been repeatedly examined by the Court of Justice which defined the guidelines of the applicable European regulation.

First of all, it is not excluded that the provision of a tax relief restricted to a certain regional or local territory automatically integrates the requirement of selectivity (which, as mentioned above, is one of the features of the provisions to be qualified as State aid) (case 09/19/2000 C-156/98, *Commission vs. Germany*). Instead, it is required that the Region (or the sub-state territorial entity) has a statute (of fact and law) to be considered sufficiently autonomous in relation to the central government of a Member State in order to play “a key role in the definition of the

political and economic environment in which the business operates” (case 09/06/2006, C-88/03 *Azores*).

In particular, the Court of Justice has identified three different types of legal relations between the national tax system and the local tax system (case 09/06/2006, C-88/03 *Azores*, to be evidently considered a leading case):

- the State unilaterally decides the tax to be applied in a limited territory and the Region suffers such a decision;
- all the Regions (and all the local authorities placed on the same level) have the power to determine the tax advantage as a competence conferred directly by national law (symmetrical federalism);
- only some Regions have the power to set the tax relief in their territory pursuant to a regulatory autonomy attributed by the national law (asymmetrical federalism).

In the first case, the Court identifies a clear manifestation of the territorial selectivity, appropriate to generate a situation of State aid, considering to be able to verify only the existence of the reasons of social and political solidarity that justify some derogations from the general EU prohibition.

In the second case, the existence of a territorial selectivity is excluded as the rules about the tax benefits can be taken by each local authority, thus assuming a general nature and not limited geographically. Clearly, the facilitation must be available to all enterprises and to all sectors of the economy and not be subject to a further selection of an objective or material nature (because otherwise there would be a form of material and non-territorial selection).

In the third case, finally, the adoption of a tax relief can be considered legitimate if the fiscal advantages are limited to the territory of the Region of decision and, above all, it is verified the existence of an adequate regulatory autonomy. In this latter regard, some parameters are identified, whose compliance is decisive for the verification of the existence of a sub-state decision-making capacity of the regional institution:

- *institutional autonomy*, identified on the basis of the existence of a political and administrative statute which confers distinct and autonomous decision-making powers compared to the central Government
- *decision-making autonomy*, by virtue of which the final decision is taken by the regional entity without direct intervention of the central government (being admitted, however, processes of consultation in which the final decision is left in any case to the regional entity);
- *economic and financial autonomy*, which is to recognize in the ability of the regional authority to assume a regulatory determination regarding the extent of the tax benefit that is established without financial compensation and/or financial assistance from the central government (through grants or direct subsidies to compensate for the lost revenue resulting from the tax facilitation).

These elements are functional to verify that the Region plays a “key role” in the definition of a political and economic context in which the economic agents operate and not be constrained by decisions taken at the level of the general economic policy of the Member State. Indeed, the real test of the local financial autonomy (namely the third parameter above mentioned) is crucial for the verification of the eligibility of the tax facilitation, since it clearly expresses the amenability of the effects of the tax advantages to the territory and to the economic capacity of the regional institution which issued the facilitation norm. It should be noted in this regard that in the ECJ jurisprudence it has been identified a large series of financial relationships that can occur between national tax system and local tax system in order to verify if there is a State coverage of the tax advantages decided at the local level (case 09/11/2008, C-428/06 and C-434/06, *Basque Country*; Tribunal of First Instance, 12/18/2008, TE-211/04 and TE-215/04, *Gibraltar*).

10.2.3 The Urban Free Zones

The European regulation on the State aids also applies to the provision of tax measures which are devoted to introduce some benefits for disadvantaged geographical areas, mostly attributable to urban centres with reduced economical and industrial capacity (so-called “urban free zones”).

The Commission approved and authorized these favourable provisions (with specific reference to urban free zones initially envisaged by France) as falling within the exception subject to the aids of social economic and political solidarity (as provided by art. 107 par. III, let. c). Moreover, these measures are to be considered proportionate as they were limited to a restricted number of the national population and therefore not likely to be an element of distortion of general competition and trade.

The conclusions reached by the Commission have been collected in a separate document (“*State aid and regeneration of deprived urban areas*” of 2007) in order to give a general nature to the information contained therein.

10.3 The Recovery of the State Aids

The recovery of the State aids unlawfully granted by the Member States is substantiated through a series of administrative measures intended to recover the benefits unduly received by the economic agents and hence to restore the financial balance foreshadowed by the EU law.

There are no specific EU rules governing the procedures for the recovery of the unlawful State aid, being left to the laws of each Member State to identify the steps necessary to perform the recovery action.

Moreover, there is a general application of the principles of equivalence and effectiveness of the recovery (communication of the Commission C-272 of 2007). In particular, it is expected that the procedures of national law applicable to the

recovery of incompatible State aids are to be implemented without delay and must not be less favourable than those governing similar domestic rules nor make excessively difficult the recovery of the illegitimate tax facilitation measures. In essence, according to the EU law the discipline of the recovery of the State aids must ensure an immediate and effective rebalancing of the financial situation unlawfully determined by the facilitation provision granted by the Member State.

Therefore it seems to be excluded the configurability of specific provisions of the internal law of the Member States dedicated to the recovery of the unlawful State aids, precisely by reason of the application of the principles of equivalence and effectiveness.

On a theoretical level, a matter of considerable complexity is represented by the legal classification of the act of recovery. At first, it is argued that such an act acquires the same nature as the measure of advantage granted by the Member State, having to qualify the administrative power (and the relative procedure) in the same perspective of the rule of facilitation; therefore, in the case of the tax relief, the recovery act should take the fiscal nature. On the other hand, it is argued that the administrative activities carried out for the recovery of State aid are to be considered as a merely satisfying activity which reflects the execution of a legally binding normative instrument of the EU institutions, qualified by reference to the due and non-discretionary administrative acts; in this respect, the recovery act lacks its authoritative character and becomes simply and executive activity of the European law; so it is excluded that the act of recovery can be classified as a fiscal activity (or a fiscal procedure).

In the literature it seems to be consolidating the belief that the recovery act has a fiscal nature, also in consideration of the administrative competence entrusted to the tax authorities and the jurisdiction often accorded to the tax or administrative courts.

For the recovery of the tax benefits qualified as State aids is often required the issuance of a notice of assessment in respect of the beneficiary containing the invitation to a refund of the tax benefit as a result of the unlawful State aid.

It should be noted that if the internal legislation has produced the legitimate entrust in the beneficiary in order to the eligibility of facilitation domestic measure, the recovery order may not be executed (art. 14 of Regulation no. 659/1999). The evaluation of the circumstances that led to the legitimate expectations of the beneficiary should be carried out by the national court applying the usual parameters of the ordinary diligence of economic operators (case C-280/95, *Commission vs. Italy*).