



A.D. MDLXII

## **4. COMMUNITY SOURCES OF LAW**

## 4.1 COMMUNITY SOURCES OF LAW

Community sources of laws are composed by

### A. PRIMARY SOURCES

European Treaties and international agreement [art. 117, comma 1, Italian Constitution.]

### B. SECONDARY SOURCES

- Subordinate to primary sources;
- Secondary sources derive from acts made by the European institution;
- **COMMISSION REGULATION (EC):** it has a general scope, it is directly applicable in the European States without a law ratification; it is compulsory in all its elements [art. 249, comma, EU Treaty]
- **EU DIRECTIVE:** it is addressed to the European States and a law ratification is needed unless the directive is *self-executing* (high detailed level for its application)
- **DECISIONS.** Decisions regard to specific matter and they are binding only for the State recipient

## **PREDOMINANCE OF THE EUROPEAN LAWS OVER THE DOMESTIC LAWS [artt. 10 and 11 of the Italian Constitution].**

Disapplication of the conflicting domestic rules by the competent court to settle the dispute;

So-called European constitutional principles

- The direct effect of the European laws is applicable also to the Commission decisions for aids suspension, aid's incompatibility and aids refund;
- Legal, administrative, and contractual invalidation of the acts allowing both the aids and the implementation of the planned measures;
- Acts ineffectiveness towards the member state and to the domestic entities (administrative and juridical authorities)
- Mandatory running of the European laws even through the disapplication of the contrasting domestic laws

## 4.2 HARMONISATION

### TAX HARMONISATION WITHIN THE COMMUNITY [art. 93, EC TREATY]

#### SCOPE

- Ensuring the good functioning of the internal European market .

#### DEFINITION OF INTERNAL MARKET

- The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.[art. 26, comma 2, Ec Treaty].

#### WEAKNESS:

- The definition relates to the indirect imposition; VAT and other indirect taxes (excises);
- Prohibition of similar vat taxes institution;
- Possibility to issue Directives on direct taxes *ex art. 94: “Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market”.*

## 4.3 NON-DISCRIMINATION PRINCIPLE

**PRINCIPLE OF THE FREE MOVEMENT** of persons, goods and capital [art. 14, 39 e 61], [artt. 14 e 49] [art. 14 e 56].

**RIGHT OF ESTABLISHMENT PRINCIPLE** [art. 43, EC Treaty]

- Prohibition of any restrictions on the freedom of establishment between the member States;
- Prohibition of restrictions on the foundation of branches or companies in the interested State of business
- Tax evasion can not be the only reason to restrict the right of establishment principle.



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## **PRINCIPLE OF EQUALITY [art. 3]:**

- Discrimination based on the nationality is forbidden.

## **NON-DISCRIMINATION PRINCIPLE[art. 14, European Convention on Human Rights]:**

- The purpose is to avoid that the tax levy is used both as discrimination instrument and to restrict the principle of the free movement of persons, goods and capital in the community;
- No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products [art. 90, par 1, EC Treaty];
- No Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products[art. 90, par. 2, EC Treaty];
- Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly[art. 91, par 2, EC Treaty].

## **4.4 AIDS GRANTED BY MEMBER STATES**

### **Incompatible Aids**

- State aids are incompatible with the internal market when:
  - They affect trade between Member States;
  - There is a favour for certain undertakings or for the production of certain goods;
  - They distort or threaten to distort competition .

### **Compatible Aids**

- Aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- Aid to make good the damage caused by natural disasters or exceptional occurrences;



## COMPATIBLE AIDS

- aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- aid to promote important projects of common European interest or to remedy a serious disturbance in the economy of a Member State;
- aid to facilitate the development of certain economic activities or of certain economic areas where it does not adversely affect trading conditions to an extent contrary to the common interest;
- aid to promote culture and heritage conservation where it does not adversely affect trading conditions to an extent contrary to the common interest;
- another category of aid determined by decision of the Council acting by qualified majority on a proposal from the Commission.





## **4.5 CUSTOMS DUTY PROHIBITION**

[art. 25, EU Treaty]

- Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States;
- This prohibition shall also apply to customs duties of a fiscal nature.



## RIGHT OF ESTABLISHMENT

Restrictions on the freedom of establishment  
of nationals of a Member State in the territory of another  
Member State shall be prohibited [art. 43, EC Treaty]