

EU STATE AID LAW AS A PASSEPARTOUT: SHOULDN'T WE STOP TAKING THE EFFECT ON TRADE FOR GRANTED? / Bernardo Cortese

Prof. Dr. Bernardo Cortese.
University of Padova, School of Law,
Department of Public, International
and EU Law; Via Anghinoni 3,
Padova; Italy.
bernardo.cortese@unipd.it.
ORCID: 0000-0002-3479-0755

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Abstract: *The present contribution addresses the excessive amount of discretion left to the EU Commission (and Courts) in defining the enforcement priorities in the field of EU State aid Law, by singling out one element of the (inherently vague) the notion of State aid, namely the effect on trade between member States. The approach taken by the Commission's practice and the ECJ case law in this field ends up building a rather unpredictable legal framework. This risks unreasonably undermining both member States' legislative choices in fields not necessarily falling under an EU competence, and undertakings' legitimate expectations.*

Key words: *EU Law, EU Competition Law, EU State Aid Law, EU Internal Market, Notion of State Aid, EU Commission, Self-Restraint*

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1. INTRODUCTION

In my contribution to the EU Law section of 2020 Bratislava Legal Forum I tried to address the excessive amount of discretion left to the EU Commission (and Courts) in defining the enforcement priorities in the field of EU State aid Law. During the conference, I referred to some cases where the vagueness of several elements of the notion of State aid, together with the approach taken by the Commission's practice and the case law of the European Court of Justice, ends up building a rather unpredictable legal framework. This risks unreasonably undermining both member States' legislative choices in fields not necessarily falling under an EU competence, and undertakings' legitimate expectations. For reasons of both time and space, I will frame this written contribution under a somehow narrower perspective, by addressing the interpretation of the effects on trade clause as a clear example of how giving too much discretion to the interpreter (basically, but not exclusively to the Commission) risks overexposing EU State aid law, and puts at risk far more important goals of the European integration.

In the next paragraph I will first of all try to put the inherent vagueness of the notion of State aid as resorted to by art. 107 TFUE in its overall framework, shortly highlighting some pros and cons of a vague notion in this field (¶ 2). Then, I will address the presumption of interstate trade effects, recalling first of all some of the cases in which that presumption was originally affirmed (and worked properly) (¶ 3), to highlight then

two exemplary cases where this approach proved extremely problematic (¶ 4). In the next paragraph, I will try to signal some consistency issues arising from the case law where the effect on trade plays not the usual substantive role, but a procedural one (¶ 5). As I will show, any possible explanation of the different approaches based on a formal distinguishing between substantial and procedural applications would be just misleading. If one looks just a bit under the surface of the formal appearances, a unifying *fil rouge* emerges: that of giving green light to the most extensive application of EU State aid law. In the end, however, using State aid law as a *passepartout*, permitting EU law (and the Commission in particular) to have a the largest possible say in framing member State choices is rather problematic as it runs counter some fundamental, structural principles upon which the European integration process rests (¶ 6). *En guise de conclusion*, I'll try to make the case for a form of rule of reason to be adopted in this field, too (¶ 7), to avoid allowing room to Euroscepticism.

A caveat before continuing: the reader will not find here a systematic and in-depth analysis of the relevant practice and case law, and...*surtout pas* an exegetic and apologetic one, but just a line of (somehow piquing) arguments based on some cases I found particularly interesting (and problematic). Lots of manuals, treatises, articles and... Commission's guidelines will however help the reader restoring faith in "*dell'umana gente le magnifiche sorti e progressive*"¹.

2. VAGUENESS OF THE STATE AID NOTION: PROS ANS CONS

The starting point to be stressed is the inherent vagueness of the concept of State aid included in art. 107 TFEU: it is surely a legal concept, but it is also a political one, in that so much discretion is left to the interpreter (in general, see Piernas López, 2015). This state of things has, of course, both "pros" and "cons".

That vagueness ends up giving the Commission a very wide margin of appreciation in deciding its enforcement priorities. No wonder, therefore, that it is in the Commission's interest to leave the State aid concept an open one, in order to be able to adapt it to possible modifications in member States' practices that might be detrimental to the good functioning of the internal market. Along the same lines it is well understandable that, at least to a certain extent, the General Court and the Court of Justice acquiesce to that vision. It may be in fact a sound approach to leave the controller of such a complex and ambitious project as the internal market some space of manoeuvre. That may sound all the more reasonable when the public body entrusted with that control is also called upon to balance the internal market goals with different ones, thus giving green light to member States' choices rendering the ...playing field rough, rather than levelled.

The problem with maintaining a too big marge in the definition of what State aid is, however, manifold.

A non-exhaustive appraisal of the "cons" starts with the hollow linkage between the State aid law enforcement practice of the Commission and the internal market goals: very often the EU State aid control appears to be meant as a tool to modernize (i.e. render more free market oriented) member States' policies, giving rise to the delicate situation where a (*de facto*) non-democratically accountable institution substitutes its discretionary choices to the ones of (at least partially) democratically-accountable

¹ «Dipinte in queste rive / son dell'umana gente / „Le magnifiche sorti e progressive“ » [„Depicted on these hills / are the human race's / „Magnificent and progressive fate“. “]. Giacomo Leopardi, *Canti*, 1831, Canto XXXIV, *La Ginestra* (The Wild Broom), where the Poet hironically refers to the ruins of the ancient roman towns annihilated by the Vesuve. The translation of the verses here is that of Willet (2015).

national legislators and governments. That list continues with the disturbing possibility that the Commission chooses not to step in *ex ante* and clarify its priorities in normative or para-normative acts, but to keep its choice intact for the more or less casual emerging of a “good” case from a complaint or even a national court request for information: a sort of... angling the State aid case² – a kind of fishing that would be different from the “fishing expedition” of 101 enforcement cases,³ but would still be somehow problematic, in terms of legal certainty.

That list of “cons” is further supplemented by the non-exclusive character of the public enforcement side of State aid law, which makes the non-foreseeability of the State aid character of a given national measure even more disturbing, as it may leave its application in the individual case not to the political discretion of the Commission, but to the technical discretion of a national court: whereas the former is submitted to some form of political accountability, this is (and should not be) the case of courts.

In the following part of the article the authors will deal with selected case law in order to analyse the question of judicial interference with mandatory and default regulation in commercial law. In connection with the commercial contracts, the authors selected a case dealing with the contract on silent partnership and in connection with the regulation of companies the authors selected a case dealing with the regulation of election and removal of the members of the board of directors by the supervisory board in a joint stock company.

3. THE INFLUENCE ON TRADE BETWEEN MEMBER STATES CONCERNING LOCAL TAX REGIMES: THE LANDMARK CASES

The risks inherent in a too vague concept of State aid are in my view confirmed by the Commission’s practice, and by the EU courts’ case law, concerning the requirement that a measure, in order to be classified as State aid under art. 107 TFEU, should affect trade between member States, thus risking to disrupt the smooth functioning of the internal market.

When is trade between member States affected?

Essentially, one can rely on the recurring *dicta* of the ECJ, consolidated in the Commissions’ Notice on the Notion of State aid of 2016, to affirm that “where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid”.⁴

Now, one is surely at ease to find such a principle applied to schemes inherently affecting, because of their object or of their reasonably foreseeable effects, the internal market competitiveness of a given sector (by favouring an individual big player, or a national industry considered as a whole). That was actually the case in *Philip Morris*, a leading 1980 case where that principle was clearly affirmed. The Dutch measure involved,

² Imagine that you go angling along the river: you just sit down there, relax and, well, if the reels start turning, you got something! And imagine you take anything gets caught on you hook, no matter whether big fish or not, good or less good, just for the sake of telling friends you’ve got a great day at the river...

³ For what might be fine in private enforcement cases in some jurisdictions is not necessarily admitted in public enforcement ones in the EU. Cf., on one side, the volume edited by Basedow (2007), in particular for the reference to the US Supreme Court dictum in *Hickman v Taylor* (Basedow, 2007, p. 71); on the other side see Court of Justice of the European Union, judgment of 18 June 2015, Case C-583/13 P *Deutsche Bahn*, paras. 55-60. For an overall assessment see a paper by Michalek (2014).

⁴ European Commission, Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, C/2016/2946, OJ C 262, 19 July 2016, pp. 1-50, para. 190.

in fact, granted a premium for major investment projects, and it was applied to a project involving the actual increase of cigarettes production in that State by 13%, thanks to an increase by 40% of the production capacity of the local subsidiary of a tobacco multinational.⁵

One is moreover convinced by the relaxing of statement of reasons requirements relating to actual effect in *Boussac*,⁶ because the peculiarities of that case rendered evident that a real risk of perturbing the internal market was there: *ad hoc* subventions benefitting the third largest French textile producer had reached by the time an amount of almost 1 billion ECU...

Another situation of straightforward application of that principle is that of *Unicredito Italiano*, a 2005 judgment rendered in a case involving a major tax reduction for State controlled banks entering merging operations, giving rise to a selective advantage capable of reaching a theoretical amount of 2.7 billions euros: such an advantage, in an area of operation where internal market operations are routine, is clearly capable of affecting trade between member States.

4. ...AND TWO EXAMPLES OF HOW THAT PRACTICE JUST...TURNED SOUR

A completely different thing, however, is to find that *dictum* referred to by the Commission in cases where the possibility that the interstate trade be affected is essentially theoretical, and to continue finding justifications to such an approach in the relevant case law, based on a presumption that becomes rather difficult to sustain.

A good example of such a mechanical application is the case of the social security relief for firms having their operative seats in the Venetian lagoon.⁷ According to the applicable Italian legislation, small enterprises based in the islands of the Venetian lagoon were granted a reduction in their social security charges, taking into consideration the high costs they face because they do business in such a complex environment. In that case, the Commission qualified the relevant scheme, considered on its general terms, as a State aid regime, and that on the basis of a general presumption of involvement of the beneficiaries in the inter State trade. On that basis, however, the Commission found it appropriate to proceed to an individual analysis for some municipal undertakings benefitting that measure, and excludes any effects on the intra-Community trade. All's well that ends well? Not really, because at the same time the Commission did not find it necessary to proceed to the same analysis for other undertakings and sectors allegedly in identical situations,⁸ and the ECJ found that all that posed no problem, as any "false positive" cases could essentially be ... discovered and corrected in the recovery phase.⁹

⁵ Court of Justice of the European Union, judgment of 17 September 1980, Case 730/79 *Philip Morris v. Commission*, para. 11.

⁶ Court of Justice of the European Union, judgment of 14 February 1990, Case C-301/87 *France v Commission*, para. 33.

⁷ European Commission, Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos. 30/1997 and 206/1995, 2000/394/EC (notified under document number C(1999) 4268), OJ L 150, 23 June 2000, pp. 50-63 (hereinafter "*Venetian lagoon decision*").

⁸ *Venetian lagoon decision*, para. 49, according to which "competition and trade between Member States is affected, in that all companies benefit from reductions in social security contributions, including those operating in areas where *there is trade* between Member States" (italics added).

⁹ Court of Justice of the European Union, judgment of 9 June 2011, Joined Cases C-71/09 P, C-73/09 P and C-76/09 P, *Comitato 'Venezia vuole vivere'*; paras. 105 et seq.

Another example of the mechanical application of the presumption of effects in the interstate trade, that shows all too well some cons of the indiscriminate application of the interstate trade presumption, is that of the Italian earthquake damages scheme against which the Commission issued a negative decision in 2015.¹⁰ In what was a State aid “angling” decision,¹¹ an earthquake damages scheme - involving a temporary reduction of the general taxation viz. social security charges for undertakings having establishments in the geographical areas actually affected by a disruptive earthquake that caused more than 300 deaths and 80.000 displaced – was declared to be State aid incompatible with the internal market. In that case, again, the Commission considered that the tax and social security temporary reductions regime at stake may affect trade between member States as it “cover[ed] undertakings that can be supposed to be involved in trade between Member States”.¹²

The unavoidable question raised by the consideration of similar cases of essentially local tax advantages regimes – besides the bold approach to local selectivity, which is *de facto* unchanged even after Azores¹³ - is whether the influence on the internal market can continue being presumed.¹⁴

Can we just presume, as the Commission essentially did in the venetian lagoon case, that hotels and bars and groceries in the historical city centre of Venice islands are in competition for the general touristic market of the EU, without analysing whether this is true, whether that offer is really substitutable with, say, that of Costa Brava, or Vienna or Berlin?

More than that. The real question is whether it is tolerable that the Commission practice on State aid regimes be essentially erratic, on the illusory assumption that everything can still be redressed on the next step – that of the recovery order

¹⁰ European Commission, Commission Decision (EU) 2016/195 of 14 August 2015 on State aid measures SA.33083 (12/C) (ex 12/NN) implemented by Italy providing for reduced taxes and contributions linked to natural disasters (all sectors except agriculture) and SA.35083 (12/C) (ex 12/NN), implemented by Italy providing for reduced taxes and contributions linked to the earthquake in Abruzzo in 2009 (all sectors except agriculture), (notified under document C(2015) 5549), OJ L 43, 18 February 2016, (hereinafter “Abruzzo earthquake decision”).

¹¹ In the sense I tried to evoke in the final part of para. 2 above. Here the Commission just jumped on a... possible case revealed by a request for information of a national court, arising from a case that showed no real (nor reasonably foreseeable) connection with the internal market.

¹² *Abruzzo earthquake decision*, para. 111.

¹³ Court of Justice of the European Union, judgment of 6 September 2006, Case C-88/03, *Portugal v. Commission*. The conditions set to accept that the reference framework be infra-national, set the bar very high. It is in fact required that the local government adopting the tax measure enjoys both constitutional and economic autonomy. This means that an inextricable link is set between local tax measures and federalism, so that a centralized government decision to mold its tax or social security legislation according to different areas is in any case selective.

¹⁴ A connected but slightly different question seems to be that of affirming a principle according to which “there’s no threshold or percentage below which it may be considered that trade between Member States is not affected” (Court of Justice of the European Union, judgment of 20 September 2003, case C-280/00, *Altmark Trans*, para. 81; judgment of 14 January 2015, case C-518/13, *Eventech*, para. 68). Once that said, it remains in fact for the judge to establish whether that effect is there or not: one thing is to say that such an effect “is conceivable” (*Eventech*, § 70), a completely different one is to say that is presumed. The different procedural setting in which the principle plays in both *Altmark* and *Eventech* makes the finding of the effect depending on the procedural rules of the forum. On the shift between an initially rigorous approach, and a subsequent relaxed attitude both in the Commission’s practice and in the ECJ case law on these two connect issues, and on the links of this shift with the changing policies pursued by the Commission in the field, see work of Piernas López (2015, p. 12 et seq.).

implementation before national authorities and courts.¹⁵ That was, however, the way the ECJ chose to go through in the *Venetian lagoon* case: we should content ourselves that, before ordering a recovery based on such a regime decision, national authorities should assess “*in each individual case, whether the advantage granted was, in the hands of its beneficiary, capable of distorting competition and affecting intra-Community trade...*”.¹⁶

I don't think this is a workable model.

Despite the “modernization”, in fact, national authorities and courts essentially lack the expertise to go through such complex assessments. Essentially, it is the same ECJ case law that stresses the opportunity to concentrate State aid litigation before the General Court, as national courts are not the most appropriate forum to discuss such a complex and politically sensitive matter, in particular when validity issues might arise: the ECJ Grand Chamber decision in *Georgsmarienhütte* goes strikingly in that direction.¹⁷

5. FURTHER ON EFFECTS ON TRADE: SOME CONSISTENCY ISSUES

Moreover, if one looks at other segments of the case law, a question of consistency arises.

Why should the application of such rules be based on (highly unlikely but still) presumed effects in the Venetian lagoon case, while in *Greenpeace Energy*¹⁸ the same General Court and ECJ take an extremely rigorous approach, and ask the complainants - a group of small renewable energy community producers - not just to show the foreseeable (indeed, almost certain) consequences in terms of modification of output prices in the highly interconnected market for electric energy, but to further define the relevant market, and to show the actual consequences of the contested measure in terms of modification of their market share, when it comes to check their legitimation to attack a Commission decision approving the aid to a giant nuclear project in another member State?

We are dealing in both cases with competition and internal market law rules, as State aid law is part of the more general framework of competition law of the EU and has to be construed as a tool to ensure the proper functioning of the internal market.¹⁹ Effects should therefore matter more or less the same way in both cases. To be provocative, one could ask whether the Commission and the EU Courts are influenced by the ... culture of the member State or area to which their decisions apply: competition and internal market law would then consequentially be applied as farce in the Venetian lagoon in homage to Goldoni's *Baruffe Chiozzotte*, while when applying to some German renewables *Papagenos* those same rules would transform to adapt to the mystic drama atmosphere, in homage to Schikaneder and Mozart's *Zauberflöte*!

An easy, and maybe technically correct (as of today) answer to this piquing question, could be that the very different approaches followed in the cases I am referring to are justifiable on the basis of the different goals they serve in the respective litigation: the definition of the applicable substantive law in the first case, the procedural law issue

¹⁵ On the recovery phase see in general the exhaustive study of Merola (2018), in particular on the non-satisfactory state of the matter as regards the recovery aids on the basis of regime decisions (Merola, 2018, p. 147 et seq.).

¹⁶ Court of Justice of the European Union, judgment of 9 June 2011, Joined Cases C-71/09 P, C-73/09 P and C-76/09 P, *Comitato 'Venezia vuole vivere'*, paras. 105 and 113-115.

¹⁷ I shall refer to my analysis of that decision (Cortese, 2020, p. 259 et seq.).

¹⁸ Court of Justice of the European Union, order of 10 October 2017, Case C-640/16 P *Greenpeace Energy*.

¹⁹ On the need to read State aid law as an internal market law tool see the work of Biondi (2010).

of admissibility of an individual action for annulment of a decision of direct and individual concern for the complainant in the second.

Still, that distinction has not always been relevant, and justifying the different approach on that basis is therefore tantamount to avoid the problem. In fact, before *Boussac* the Court *did* require the Commission to define the relevant market and the effects on the interstate trade in the statement of reasons of its State aid decisions (see Piernas López, 2015, p. 193).

Furthermore, if one looks at some other developments in the area of admissibility of individual actions of annulment against State aid decisions, a further element of perplexity emerges. If the effects to be proven were so concrete and specific in *Greenpeace Energy*, why then the question of admissibility in the *Scuola Montessori* case was again resolved on the basis of a presumption of interstate effects? It is perplexing to see such an automatism operate in a case where not only the beneficiaries and the complainants of the contested measure, but also all the 80 parties having presented observations in the formal procedure, had their seat in a single member State, and none of them had any actual connection with a different member State.²⁰

Surely again, the very different approaches followed in the *Greenpeace Energy* and *Scuola Montessori* cases are technically justifiable on the basis of the different kind of litigation in which the issue of admissibility arises. In the former case the Court dealt with an action for annulment brought by an individual against a compatibility decision in favour of an *ad hoc* aid measure. Therefore, the admissibility had to be assessed on the basis of the existence of a direct and individual concern for the complainant.²¹ In the latter case, however, the Court was confronted with an action for annulment brought by an individual against a (*non-recovery*) regime decision, and it chose somehow astonishingly to apply the different admissibility test introduced in Lisbon for regulatory acts.

Nonetheless, if one considers all the above-mentioned cases from a broader perspective, the question of consistency of the approaches followed is there. Sometimes the effects in the interstate trade are presumed, even in cases where there is little evidence of such effects, and the risk they can actually produce is particularly limited, due to the temporary dimension of the contested scheme, or to the actual compensatory nature of that scheme, or due to the actual limitation of the markets concerned, which do not attract any activity from outside the interested local area.²² Sometimes, to the contrary, a clear risk of such effects is not considered enough to trigger the only real chance of control over a Commission decision.²³

6. STATE AID LAW AS A PASSEPARTOUT?

What unifies the cases shortly discussed above, however, is the net outcome, which is paradoxically always the same: it gives free way to the effective application of EU State aid law. This is a hardly surprising trend, but still a problematic one, in light of many principles that should govern the use of public powers in the EU.

²⁰ Court of Justice of the European Union, judgment of 6 November 2018, Joined Cases C-622/16 P to C-624/P, *Scuola Elementare Maria Montessori*.

²¹ Cf. the criticism I raised, in the framework of a wider analysis of the access to court (Cortese, 2020, p. 267 et seq.).

²² See, to different extents, the Italian natural disasters' compensatory measures; the Venetian lagoon case; the fiscal reduction for charities in Italy, all referred to above in this contribution.

²³ I refer to the order of the Court of Justice of the European Union of 10 October 2017 in Case C-640/16 P *Greenpeace Energy*, referred to above in this contribution.

In the end, one could say, State aid law becomes a tool permitting the Commission to participate in the shaping of member State decisions in fields where harmonization tools are not so easily available. In particular, the Commission is given a say on how member States frame their fiscal policies to pursue general interests which do not in principle fall under the EU competences; in any case, it becomes possible for the Commission to interfere with such choices well above the level of intervention of the EU concurrent competences²⁴ and without any need to prove a breach of internal market rules.

To remain in the areas covered by the cases referred to above, the approach described above determines the involvement of the Commission in fundamental national choices relating, *inter alia*, to the following: the adoption of policies to foster socioeconomic recovery after natural disasters; a choice of favour for charitable or religious activities of NGOs;²⁵ the fostering of economic activities in islands which are in part depopulating areas and in part the object of aggressive gentrification phenomena; the choice of the mix between renewable energies and nuclear energy, as well as the role of consumers' communities in the switch to an environmentally sound model of development ...

Now, the fact that such a development has not been covered up, but has been substantially endorsed by the Commission in its policy documents²⁶ does not detract from the fact that such *procedere* has significant shortfalls in terms of opportunity, in light of some fundamental principles governing the EU: subsidiarity, and proportionality, just to start with. That's why the generalized recourse to the interstate effect presumption, which is the magic wand transforming State aid control in a *passerpartout* for the Commission to influence national policies, should definitely leave place to a more balanced approach.

7. EFFECTS ON THE INTERSTATE TRADE: BETWEEN PRESUMPTIONS AND ... RULES OF REASON

In order to revert to a more balanced and acceptable approach to State aid law, it is for the EU Courts to stop understanding the effect on trade between member States as just a fictional element of the State aid notion. Just as in *Keck* the ECJ finally conceded that not any commercial measure is relevant under art. 34 TFEU, it is time to concede that not any selective advantage granted by the State on the local dimension is capable of triggering the application of art. 107 TFEU.

What is needed is a kind of a rule of reason approach, based on the need (for the Commission, or any private enforcer) to prove a sufficiently real threat to trade in the internal market trade.

This does not mean doing away with any presumption of interstate effects. Such a presumption cannot, however, be framed as a general one, but should be based on some peculiarities of the relevant cases.

I refer to cases where some factual elements could suffice to presume an internal market effect. This can be the case when the place of establishment of the

²⁴ On the ineffectiveness of such an approach in the tax law area see Graetz & Warren (2006).

²⁵ Not involving an element of discrimination capable of harming the internal market functioning. For the ECJ case law dealing with cases where such an element was there, see Faulhaber (2014).

²⁶ Think of the 2005 State Aid Action Plan, referring openly to the necessity for State aid law to induce member States to prioritize choices, when using taxpayers money – European Commission, State Aid Action Plan - Less and Better Targeted State Aid : A roadmap for State Aid Reform 2005-2009 (Consultation document), (presented by the Commission) {SEC(2005) 795}, COM/2005/107 final, 7 June 2005.

complainant / negatively affected undertaking lies in a different member State than the beneficiary of the advantage. Further, a presumption might be drawn from the fact that either the negatively affected competitor(s) or the beneficiary are controlled by a mother company established elsewhere. Again, it would be wise to presume effects on the interstate trade when there's actual evidence that the beneficiary is either involved in interstate trade, as the relevant market extends over several member States, or when it enjoys a non-negligible market position in a single member State geographical market.

All such elements could justify a presumption that an interstate effect is there, and leave to the other interested party the burden to rebut the presumption.

To the contrary, I feel that a stronger burden of proof should be required in other cases, where no such *prima facie* elements justify the operation of a presumption.

The reasons are quite evident, if one interprets the relevant treaty provisions in light of the principles of subsidiarity, proportionality and, in the end, democracy: unless the Commission (or a private enforcer) is capable of showing a strong case of a real risk of internal market perturbation, the better place to weigh *pros* and *cons* of using the public money is not in Brussels, nor in Luxembourg, nor in a court of justice of a member State, but it is rather where the taxpayers send their elected representatives to decide such measures.

In any case, for what concerns the role of the Commission as an independent EU authority in this field, any intervention in cases not clearly giving rise to internal market concerns should be thoroughly discussed from a political point of view in the college of Commissioners.

If incorrectly managed, in fact, State aid tools can be dangerous for the European integration like magic for a *Zauberlehrling*: should we fear more the risk of overcompensation of some marginal undertaking established in an underdeveloped Italian region hit by an earthquake... or the political earthquake the Commission provokes imposing the restitution of the individual aid possibly disguised under the Italian compensation regime? Does it make political sense to offer such an assist to anti-European populist movements?

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