Free Competition in EU: An Exploratory Study about Tax Benefits to Foreign Investment as a Distortion Measure of Free Competition

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Abstract

This is an exploratory and comparative study about the political and institutional constraints of tax harmonization in EU and its effect on free competition. Objectives: to explore and compare the different tax systems in EU members for answer three questions: there are or not a disloyal competition resulted from the differences in tax between EU countries? Which is the impact in foreign investment in EU countries? Why EU do not have more tax harmonization to fight against tax disloyal competition between members States? Methodology: we used the comparative study about income taxes in several EU countries and the relation to GDP, as well the deductive method to analyze the results we find and some reference studies on the subject. Results: the principal reason for less tax harmonization is the great advantages for the biggest and strongest economies in EU. Secondary, they did and still do use the tax system for introduce a new way of disloyal and dissimulated competition between countries members. European governments don´t want tax harmonization. Some of them has used tax benefits to catch more foreign investment, economic growth and avoid an effective free commercial competition.

Keywords: *competition; foreign investment; tax law harmonization; state aid.*

JEL Classification: K11, K23, K33.

1. Introduction

Free competition is the first pillar of the European Union. Since 1957, with the signature of Rome Treaty, this is perfectly clear. In the 60´s and 70's years of XX century the great goals were the implementation of free competition in commerce and people circulation. All the process of European Union construction is based on integration and liberalization of markets based on a free competition model[3]. This pillar has become even more important in recent decades after the implementation of the free movement of capital, security and enlargement to new countries.

All over this path we saw several times companies and even member States trying to avoid competition rules of law. In spite of that we can say that apparently this whole path was successful, until the successive economic crises in the early 21st century, as it did in 2003, 2008 and 2011. The situation of the deep crisis has now been aggravated by the COVID 19 pandemic destroying the small signs of economic growth in the EU.

Considering the introductory statement, this exploratory study is about the problem of disloyal competition resulted from the tax competition between European

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[3] See Alesina, A. & Perotti, R., *Fiscal Discipline and the Budget Process*, „American Economic Review", Vol. 86 (2), 1996, pp. 401-407.

countries in the field of foreign investment, with several types and species. In this work paper we focus the analyze on the tax benefits that some member states offer to the foreign investors, even if they are companies from other member state.

The central issue is why the EU no longer goes further in tax harmonization and the fight against unfair tax competition between Member States. This issue is very important because of the current risk of disintegration in the EU. In fact, the economic and financial crisis of the last two decades has had serious consequences in the process of European construction. The emergence of financial stabilization was the absolute priority. The questions related to the free competition and harmonization of tax law came in second place[4].

At the same time, globalization posed new challenges on a global scale and greater need for each Member State to adapt to the new circumstances[5]. Additionally, the old Europe needs new instruments to face this new reality and the foreign investment is crucial for that. Thus, some Member States use the tax system to introduce a new form of unfair and covert competition between them: tax benefits to foreign investors[6].

The problem of tax harmonization is not new and still is very sensitive issue, since the beginning of EU[7]. Actually, non-European government seems to want tax harmonization, and some of them has been use tax benefits to catch more foreign investment[8].

Nowadays all the European project seems to be in crisis, lost, without values and common purposes. In the beginning of 2020, EU faced the challenge of BREXIT. But other problems are on table and the division between countries members is quite evident.

More tax harmonization is the answer to prevent distortions of free competition and crisis superaction in UE. Will have the EU courage to move forward with this challenge?

The impact of taxes on free competition, economic growth and employment is quite evident since the EU foundation. This study intends, also, to reflect on the political and institutional constraints for more tax harmonization, necessary to an effective process of economic and social integration in EU. This issue is also related to the State aids that, as we know, are forbidden in EU. On the other hand, the attraction of foreign investment is seriously conditioned by the economic and fiscal advantages that Member States can offer to investors which can violated the European competition rules. How can EU compatibilized all these issues? So, there are, obviously, several important political and legal constraints to the tax law harmonization in EU[9]. All these issues are more than ever on the EU agenda for years to come. The battle between member states will be tough, because many of them have gained enormous advantages with their

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[4] Anjos, M. R., *Free Competition and Fiscal Policy in European Union*. ESD - international conference, Zagreb - 2019 Book Proceedings, pp. 254-262.

[5] Axel Dreher, *Does globalization affect growth? Evidence from a new index of globalization,* „Applied Economics", 38, (10), 2006, 1091-1110.

[6] Anjos, M. R. & Fionda, R., *Prohibition of restrictive Competition Agreements in the European Union: Analyzing the 'EXPEDIA' Case*, in 52nd International Scientific Conference on Economic and Social Development. Book of Proceedings, 2020, pp. 505-515.

[7] Montagnier, G., *Harmonisation Fiscale Communautaire*, in „Revue Européenne", nº5, 1995, pp. 25-34.

[8] Anjos, M. R., *op. cit.*, 2019, pp. 254-262.

[9] Haan, J. de & Sturm, J.-E., *Does more democracy lead to greater economic freedom? New evidence for developing countries*, „European Journal of Political Economy", Volume 19, Issue 3, September 2003, pp. 547-563.

reduced tax policies and tax benefits granted to multinationals investing in their countries. In this paper we selected some of these examples as case studies.

2. Free competition and fiscal policy in EU

2.1. Basis principles

The EU is the most advanced stage of economic integration in economic theory. According to the Treaty on the Functioning of the European Union (TFEU) in its current Article 3(3), in line with Article 26(2), is established an internal market (as called, single market), consisting of the free movement of products, persons, services and capital, without technical, legal and bureaucratic barriers - between the different Member States - as well as focused on combating social exclusion and discrimination. The TFEU also establishes, in Articles 113 to 115, a process of tax harmonization by the EU institutions and imposed on Member States with the aim of bringing the legal system as close as possible[10]. In this sense, we have two instruments for legal harmonization: 1st) the negative - all legal rules that have prohibited any kind of obstacles to free trade; 2nd) the positive one - all instruments for cooperation and coordination of different legal systems in the EU, in order to achieve the greatest possible harmonization of national legislations[11].

Looking at Articles 3(1) and 101b, it should be noted that the Treaty imposes objective rules to promote positive integration into the single market in order to ensure that countries and large enterprises do not take action against free and fair competition in the EU. If this happens, such actions are illegal and punished through the intervention of the European Commission, which has the power to initiate a process of violation of the Treaty and order the payment of sanctions[12]. A competitive market is a market with many buyers and many sellers, so that each of them individually has negligible impact on the market price. So, the existence of various economic agents, companies that see their potential customers opt for the goods or services of other companies rather than their own, are exposed to a competitive situation, with high level of free competition[13]. Consequently, in order not to lose their place on the market, companies tend to (try) eliminate their competitors and thus eliminate competition.

2.2. State aid, tax benefits and competition in the internal market

As measures of economic promotion, they are measures carried out by the State, through its role intervening in the economy. These measures are translated into support for the activities of private economic operators through the award of grants and provide

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[10] Azevedo, F. M., *Auxílios de Estado e auxílios de minimis no panorama concorrencial*, in „Revista Julgar", online, 2018, available: http://julgar.pt/wp-content/uploads/2018/05/20180508-ARTIGO-JULGAR-Direito-da-Concorr%C3%AAncia-Filipa-Azevedo.pdf, accessed on 25.06.2020.

[11] Pereira, P. R., *Princípios do Direito Fiscal Internacional – Do paradigma clássico ao Direito Fiscal Europeu,* Ed. Almedina, S.A., Coimbra, 2010, p. 125.

[12] Ibid, p. 125.

[13] Collins & Hutchins, *Articles 101 and 102 of the EEC Treaty: completing the internal market,* Centro de Estudos Europeus da Universidade Católica Portuguesa, Porto, 1988.

for addressing existing market failures[14]. Where a State attributes a benefit to a certain undertaking or production, the economic structure of that entity is clearly modified because, by obtaining a revenue which it would otherwise not obtain or, by avoiding bearing an expense which it would have to bear in a normal situation, the beneficiary entity is in an advantageous position vis-à-vis other undertakings/productions which, in an equivalent situation, would not obtain such a benefit[15].

In fact, the possibility of State aid having undesirable effects at Community level has determined from the outset the need for community bodies to assess these measures[16]. Article 108 TFEU regulates the procedure for supervision, control, and also the application of sanctions by the Commission in respect of all matters concerning State aid, both in relation to existing ones or projects of new aid as well (even if in embryonic phase). The same with derogations from the principle of incompatibility.

European law requires the recovery of aid values that violate TJEU rules or derived European law. This recovery is regarded as consequence of the recognition of aid's illegality. According CJEU case-law, the recovery of the aid is not a sanction for the beneficiary, "but a return to legality"[17]. Since the Commission does not have the power to implement the decision in each Member State, the procedures to be observed in the aid recovery procedure are applied by the domestic legislation of each Member State and its litigation takes place before the national courts. If necessary, the national court may use Article 267º of the Treaty and requires a preliminary decision from the CJEU to clarify the interpretation and application of any concept or legal rule.

2.3. Tax benefits as a distortion measure of free competition

In this legal picture how shall we qualify the "tax benefits" about direct taxation of companies?

In our point of view, a large part of tax benefits is nothing more than disguised aid granted to beneficiary companies. Some of them can be justify for economic policy according some programs defined from EU institution.

We must therefore ensure that member states do not use their tax sovereignty to grant tax benefits to companies (as a rule foreign investors) and thereby indirectly violate the prohibition provided for in the TFEU. Obviously, the granting of tax benefits implies a breach of free competition because it confers an advantage on the beneficiary undertaking over other competitors[18].

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[14] Pereira, L. S., *As medidas fiscais selectivas e o regime dos auxílios de Estado na União Europeia: selectividade regional e capacidade fiscal dos 97 entres infra-estatais no "Caso Açores",* in Ferreira, E. P., Torres, H. T., Palma, C. C. (editors), *Estudos em Homenagem, Professor Doutor Alberto Xavier*, vol. II, Almedina S.A, Coimbra, 2013, p. 27 – 63.

[15] Alves, S. V., *O mercado único e os Auxílios de Estado concedidos à Banca: erosão da soberania ou garantia da ideia de Estado?* in „Policy Papers", no. 1, 2017, Lisboa: FDUL /CIDEEFF.

[16] Cunha, P. S., *Auxílios de Estado fiscais e principio da não descriminação fiscal,* in *Estudos Jurídicos e Económicos em Homenagem*, Professor João Lumbrales, Coimbra: FDUL/Coimbra Editora, 2000, p. 885 – 926.

[17] Santos, A.C., *Auxílios de Estado e Fiscalidade*, Ed. Almedina, S.A., Coimbra, 2003, p. 75.

[18] Santos, A.C., *O estranho caso do conceito comunitário de autonomia suficiente em sede de auxílios de Estado sob forma fiscal* (Comentário ao acórdão do TJCE de 6 de Setembro de 2006 relativo à insuficiente autonomia da Região Autónoma dos Açores), in „Revista de Finanças Públicas e Direito Fiscal", no. 1, 2008, p. 235-258.

It should also be noted that Tax benefits are outside the provision of Article 95 of the Treaty laying down the principle of non-discrimination in the field of indirect taxation in trade in the internal market. Article 95 prohibits only higher taxation of imported products in the face of taxation on similar domestic products, preventing a Member State from putting products from another Member State at a disadvantage compared to domestic products. In fact, the granting of tax benefits cannot be framed as discrimination prohibited by Article 95. And we must not forget that in the light of the TFEU the fiscal sovereignty of MS is indisputable, provided that discriminatory practices contrary to the Treaty are not carried out. It is, therefore, in this precise concept of "discriminatory practices contrary to the Treaty" that lies the solution to the problem that is the subject of this study. We concluded that if a "tax benefit" gives an advantage to a specific company, so it has an effect on the internal market similar to a restrictive competition practice or a State aid, both forbidden by Articles 101 to 108º TFEU, and then that tax benefit must be regarded as incompatible with EU law.

3. Foreign investment in EU

3.1. Old problems in a new global order

Although Europe is an old continent and an indisputable historical[19] reference (for good and bad reasons) the truth is that its economic prosperity depends on the resources obtained in the rest of the world. It was this need that led the Portuguese to start the discoveries and all other countries trying to conquer new markets. Many centuries later, the need for resources and commercial expansion to the rest of the world remains a necessity for Europe.

Until the 1970s, the European project was very much contained within the beacons defined by the treaties and the sponsorship of the US and the Marshall Plan. The 1980s mark a turning point in the direction of the European economy, which needs liquidity in its markets. The EU seeks new partners for economic and above all financial investment in order to promote greater liquidity for the European economies.

The end of the cold war with the fall of the Berlin Wall introduces a new paradigm in the political and economic landscape worldwide and the globalization process begins to emerge.

The need to raise foreign investment is becoming stronger and stronger. The two decades of the 21st century, marked by successive economic crises since 2003, but with particular gravity in 2008, 2011 and 2019 leave no room for doubt: in the new world order Europe is poorer, older, more lost in its objectives and, as far as the EU is, the risk of disintegration hangs in the air since BREXIT.

Competition between the member states themselves begins to be visible and aggressive taxation practiced by some member states has given rise to divisions and discussions that could jeopardize the EU project.

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[19] See Popa Tache, C. E., *Introduction to International Investment Law,* Adjuris – International Academic Publisher, Bucharest, 2020, pp.16 -23.

3.2. The problem of inequality of fiscal systems in EU

How can we capture foreign investment in the EU on an equal footing with 27 tax systems?

That is the point. In fact, we look at the 27 EU countries and realize that diversity of taxation between Member States is the major problem to face the new global order, global, very competitive, with new strong players (some of them are not democracies neither respect the human rights) and maintain loyalty to the Treaty and its fundamental principles.

The structure of the European fiscal system comes down to the EU budget as the only instrument for implementing the fiscal policy from the central supra-national EU level[20]. The rest of the fiscal system can be seen as a set of different rules and arrangements through which the member countries harmonize and coordinate other segments of fiscal policy. This primary refers to "harmonization of taxation and coordination of stabilization fiscal (budget) policies through Stability and Growth Pact (SGP) and Maastricht convergence criteria"[21].

The impact of taxation on free competition is indisputable. The poorest countries in the EU need to attract foreign investment so much that they have no alternative to granting tax benefits to investors[22]. In some of these countries (e.g. Portugal) income taxes are so high that the only way to capture foreign investment is to offer good tax benefits. And some of the rich countries do have lower taxes and are much more attractive to investors (e.g. Netherlands). On the other hand, other Member States have high taxes, but in a comparative study we realize that the basis of incidence is much more attractive. We can also see that southern countries have a tradition of fiscal indiscipline between 2006 and 2011 that condemned the country's prosperity. Economic cycles and the crisis condition governments in such a way that governance is not determined by ideology, but by the circumstances in which each government comes to power.

High income taxation has a negative impact on economic growth and countries development. Budgetary discipline and good allocation of resources by governments of the different member states are also essential to the economic and social success[23].

So, if we want to guarantee a free competition market but allow differences on income taxation the economic integration will not be real. Tax harmonization is the only solution to a real free competition in EU market.

The existence of two very different cultures in the EU, one based on a more popular and interventionist governance model and the other more restrained and disciplined, has resulted in an economic and social gap between two distinct groups of countries. The best results are presented by the second group: richer, more disciplined but also with lower tax rates or a better incidence basis. It is obvious that the older

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[20] Andrade, F. R., *Concorrência Fiscal Internacional na Tributação dos Lucros das Empresas*, „Boletim de Ciências Económicas", Vol. 45, 2002, p. 76.

[21] Mitchell, D. J., *The Economics of Tax Competition: Harmonization Vs. Liberalization*. Index of Economic Freedom, 2004, Heritage Foundation, 2004, p. 25.

[22] Mimoso, M.J. & Anjos, M. R., *Foreign Investment and Social and Corporate Responsibility.* „International Journal of Innovation, Creativity and Change", Issue 5, 2019, pp. 131-139.

[23] Stankivicius, E. & Vasiliauskaité, A., *Tax Burden Level Leverage on Size of the Shadow Economy*, *Cases of EU Countries 2003-2013* in 19th International Scientific Conference Economics and Management 2014, ICEM 2014, 23-25 April 2014 November 2014, Procedia - Social and Behavioral Sciences, 2014, p. 156.

countries of the eurozone and some other EU countries that have opted for lower taxes in recent years are able to attract more foreign investment and are more attractive for the European companies, that change their fiscal residence to these countries with a more "friendly taxation" (ex. Netherlands; Luxembourg or Ireland). This situation is a serious distortion on free competition between UE member States.

There are a "fiscal gap" between EU member States that means a seriously problem of disloyal competition in market. Lower taxes or more tax benefits mean lower prices and an advantage in the internal market and in international transactions as so. This is not a new problem in EU. In 1985, Bressand talked about a world economy and an European Community on three speed: "*une Europe au trois vitesses vers une economie mondiale au trois vitesses*"[24]. More than 30 years later we see that the EU remains unequal and no cohesion in sight. Between the texts of the Treaties and reality there is such a difference that it makes us think that EU has followed the wrong way and is at serious risk of disaggregation. The new generations do not understand or accept an unequal and aimless EU. BREXIT was a first start, but perhaps it is not the only one. So, the only way to keep the European project alive is to do the next step: fiscal policy harmonization in order to guarantee a fair and free competition between member States.

3.3. The regulation of investment relations

Another important issue is the regulation of foreign direct investment in EU countries. The national laws of the host state, which would of course be applicable, such as laws of the place where the investment takes place, are often removed by the imposition of investors. The option lies in the application of the rules of their own investment agreements (bilateral investment treaty) and private international law.

Companies (investors) impose regulations they want for the development of their activities. We note the enormous economic and political power of these investor companies, that usually develop their activities in oligopolistic markets and holding a dominant position capable of controlling the political power of host states[25]. Foreign investment focuses mainly in certain sectors, particularly in mining, chemical, iron, petrochemical, among others. These sectors, as we know, are responsible for the emission of pollutants with significant environmental impacts. Therefore, in an EU with 27 countries, so different, the regulation of investment contracts should be supervised by the EU institutions. In some cases, European democracies may be at stake. Strange investment has risks and can have very relevant social, political and economic costs.

In a word, the EU institutions should oversee all these processes to ensure fair, effective and growth-friendly taxation and social cohesion.

The EU has no direct responsibility for tax collection or the setting of its fees or tax benefits. However, the EU oversees national tax provisions in some areas, notably those relating to European policies affecting businesses and consumers. So, the same must be done in foreign investment regulation, in order to:

- ensuring the free movement of goods, services and capital within the European single market;

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[24] Bressand, *Une Europe au trois vitesses vers une economie mondiale au trois vitesses,* Que Sais – Je, Paris, 1985, p. 25.

[25] Mimoso, M.J. & Anjos, M. R., *op. cit.*, 2019, pp. 131-139.

- ensure that companies in one country do not benefit from an unfair advantage over their competitors from other countries

- ensure that taxes do not discriminate against consumers, workers or businesses in other EU countries;

- fair and approached tax harmonization.

It is clear the difficulty of harmonizing tax rates and rules for determining the subject of tax in an environment such as the EU. The same happens with the foreign investment contracts, usually celebrated between a country and a multinational company but some coordination helps to prevent tax evasion and competition distortions[26]. While a greater degree of tax harmonization in the EU is not being achieved, it is important, for less, to coordinate and supervise the behavior of members on such foreign investment incentives because tax rate and benefits greatly influences a country's GDP[27] and, certainly, influences the free competition in single market[28].

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[26] Dombrovskis, V., *Challenges and impacts of implementing BASE III,* Bruxelles, 2019, available: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6269, accessed on 02.06.2020.

[27] Stankivicius, E. & Vasiliauskaité, A. *op. cit*., (2014), p. 156.

[28] The following are some case-study showing that it is possible to control these undesirable situations with the current rules in force in the EU:

1. *The Starbucks Case:* In November 2014 a financial scandal called "Luxemburgo Leaks" or "LuxLeaks", released by media, shocked the whole Europe. A scheme based on tax agreements between the Luxembourg tax authorities and some 343 multinational companies concluded between 2002 and 2010 avoided the payment of millions of euros in taxes to these companies (e.g. case of illegal aid to Apple in Ireland and Amazon in Luxembourg). These agreements aimed to reduce the tax burden through the use of legal methods of tax evasion practices and aggressive tax planning. The investigation begins in 2011, in the explosion of the worst financial crisis of ever. Is in this tsunami that Starbucks case arises. In 2013, the European Commission decided that the Starbucks industry (EMEA BV) had selective tax advantages offered by the Dutch Tax Administration to a subsidiary of the Starbucks Corporation group, the only entity outside the United States of America controlled by the Starbucks group operating in the Netherlands. This is a prior agreement recognized by the Dutch tax authorities, in which prices for goods and services sold between companies in the Starbucks group were fixed for 10 years. For European Commission this agreement is a kind of State aid offer by Netherlands to Starbucks. The results of this agreement were an income transfer between the group for the company in Netherlands, were they did not pay tax. In the end the company did not pay taxes in Netherlands neither in UK. The point is that for EC this is a state aid forbidden by article 107º of TJUE. The agreement was signed by a member State administration, the Starbucks group is present in all Member States, so the relevant market is remarkable, which means that any advantage offered to that group will affect competition in the internal market. So, this agreement has all elements for being consider a State aid forbidden by TJUE. As result of the agreement Starbucks avoid to pay 20 to 30 million of euros of taxes. The Commission required the Netherlands to charge Starbucks for payment of the estimated the amount of the missing taxes.

2. *The Google Case***:** Google is one of the "big three" search motors of internet and one of the biggest multinationals of software services in the world. In 2004 Google created a price comparison service in Europe (initially named Froogle and later Alphabet) that allowed consumers to compare products and prices across platforms, manufacturers and resellers. When Froogle entered the market, several operators were already established and thus, to be competitive and mark their position in the market, they need to be promoted in internet. From 2008 Google began to apply strategies to promote this service: it often highlighted its own price comparison service (Froogle) and deprived the appearance of price comparison services of other companies (e.g. the best rated competing service only appeared on the 4th page of search results). This practice translates into the abuse of Google's dominant position in the search engine market by giving substantial advantages to its own Google product. In fact, a dominant position is not in itself illegal under EU rules, however, undertakings which hold such a position should take particular care not to abuse their market position so as not to restrict competition. In June 2017, the Commission issued a Communication in which it imposed a fine of approximately 2.42 billion euros. Never before European Commission had charged a similar amount. The justification was the duration and gravity of the

4. Findings

In the end, we return to our initial questions to present the answers based on the results of our study.

We concluded that there are, in fact, a tax disloyal competition resulted from the differences in tax between EU member states. Tax benefits as instrument to get more foreign investment have the similar effect to state aids and competition distortion measures, forbidden by the TJEU. The case studies realized show that tax benefits and tax agreements allowed in some member states (e.g. Netherlands, Ireland, Luxembourg) are a dangerous distortion of free competition in EU market.

Which is the impact in foreign investment in EU countries?

The EU member states that are almost "tax heaven" are more attractive for foreign investors. They harm and affects the wealth generated in other member states, producers of goods and services whose financial income goes directly to countries with more favorable taxation. This is unfair and violates the basic principles of competition law in the EU. Actually, we can say that these countries put in danger the European project and the economic and social cohesion in EU.

Why EU do not have more tax harmonization to fight against tax disloyal competition between members States?

The main reason for less tax harmonization is the great advantages for some member states with strong economic power in EU. Secondary, they did and still do use the tax system for introduce a new way of disloyal and dissimulated competition between member states. On the other hand, the European governments in general don´t want tax harmonization because they want to keep their fiscal sovereignty. Some of them has used tax benefits to catch more foreign investment, economic growth and avoid an effective

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infringement. In fact, Google has introduced this practice in the 13 countries of the European Economic area since 2008. After the application of this sanction, paid one day before the deadline, Google announced that its service was no longer the only one to appear, primarily, as a result of searches and, in order to avoid future sanctions sent documentation to the Commission in which the guidelines they intended to follow to comply with Community standards.

3. *The Apple Case***:** The Apple case involves the Republic of Ireland, which is known almost as a "tax haven" and for accepting as legal several forms of aggressive tax planning that other countries do not accept. The Apple case is a good example of this. In fact, Ireland is a country known to serve as a European home for some of the largest Us technology companies, such as Google, Facebook and Apple. As an incentive, the state offers lower rates on the profits of these companies. But this regime has been called into question in recent times. In 2018, the European Commission forced the Irish State to recover €13.1 billion in taxes that had not been levied on the iPhone manufacturer, and more €1.2 billion in interest. In a first reaction, the government rejected it but later did assume the irregular behavior face to the TJEU rules about state aids and competition law. At the end Apple eventually transferred the amount to the Irish Treasury. Recently, about this issue, Paddy Cosgrave, the Web Summit founder, said in an interview published in journal The Irish Times that "the Irish strategy of giving more favorable fiscal conditions to large companies has reached the expiry date". Cosgrave suggests a "transition" to another model that does not put into question international perception of the country. He said that "Ireland's power and influence over the world is real. But it's not because of our size, it's because of our brand. However, international sentiment towards the Ireland brand is increasingly negative." Cosgrave goes further and accused the Government to defend itself with a "naïve" argument when the subject of tax benefits is mentioned "The Government's defense that the OECD 'does not classify Ireland as a tax haven' simply no longer works. [...] Continuing to assure the Irish that everything is fine is "naïve". We have to admit that our most favorable tax system, especially for foreign companies, has been our economic model for decades, but we must also admit that this model has reached its expiry date." Apple case marks perhaps a turning point in Irish tax policy.

free commercial competition.

All this has led the EU to a dangerous situation, with large foreign investors from other continents (e.g. China) taking dominant positions in some key economic sectors such as services of general economic interest that should remain in European hands. The risks to democracy and loss of sovereignty are much greater in this area than fiscal harmonization could be.

In order to avoid the accentuation of such situations, there must be a better and more specific regulation of the treatment standards of the international investments considering their protective role, in particular regarding: the national treatment (NT); most-favored-nation (MFN) treatment; fair and equitable treatment (FET); full protection and security; prohibition of unreasonable, arbitrary and discriminatory measures; expropriation; conflict protection; transfer of funds; prohibition of performance requirements (PR); umbrella clause; entry and stay of staff (subject to local laws) and senior management or board of directors (regarding nationality).

The study of these standards serves as a tool to understand trends in the development of IIA, as well as the possibility to assess the prevalence of policies of different approaches and identify examples of treaties useful to doctrine and practice in this field, method of legal conductivity towards better development and evolution means of investment protection.

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