

## **Co-operatives: compatibility of the tax concessions with the European law.**

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*Abstract. This work aims at assessing the suitability of tax concessions with the regulations on State Aid. For this purpose, it should be appropriate to rebuild the EU orientation about co-operatives and then, in the light of the EU regulations on State Aid, proceed with a resistance proof of tax facilities. That assessment will be carried out taking into account the overall applicable tax regime rather than testing the single tax allowance rules. It will be possible to assess the proportionality of tax concessions against the management limits of openness to the market that co-operatives have to bear.*

### **1. The co-operatives role in the home market.**

In all the member States, the co-operatives are disciplined by a legal system roughly *ad hoc*, which protect the interests of the partners. Also in the European Community, the co-operatives find gratitude, particularly in the Treaty of Rome of the 1957, now the Treaty on the functioning of the European Community (TFUE), after the alterations inserted by the Treaty of Lisbon.

The co-operatives are a “kind of society” e.g. art 54 TFUE (already art.48 2°paragraph, ECT ) which profit from the right of establishment. Also the community derived law works in the cooperatives to fulfill the aims established by the pre-existing the Treaty of Rome. Starting from the primary aim of the dispositions of the EC Treaty, the abolition of all the state barriers which interfere with the exercise of the fundamental right, an important role is undoubtedly carried out by the strengthening and the expansion of the European businesses. The co-operatives are enterprises so they face problems like those of the traditional capital firms: concentration, globalization, variation. However they have to face up with particular challenges linked with their specific nature of voluntary organization, they have to be open to a democratic control and guarantee a fair economic participation of the

partners. At community level, it has been verified that, on the one hand, the co-operatives have to cope with difficulties for their specific characteristics and on the other hand they can give a contribution to the development of the European economy.

The community intervention of the Commission and of the Council fit into this context by different legal transactions and not, as regulation, decision and communication, improving and reinforcing the co-operatives position in the European economy. The first meaningful intervention, even if not legal, is the White Paper on the co-operatives called *the co-operatives in the Entrepreneurial Europe* written in 2001. This document drawn up by the Commission, inspects the co-operative phenomenon that is an important part of the European Economy (in 2001 there were 132.000 cooperatives in EU with 2,3 million employees), but overall stressed the importance of the role that it could have on the economic, social and cultural life in the European Community. Particularly the contribution of the co-operatives is underlined in pursuing the community aims.

Precisely, the Commission believe that they can: create positive effects on the employment; create and preserve the social capital thanks to the democratic control and economic participation; increase the economic activity in regions and divisions where they are active; allow the little enterprises, organized as co-operatives, to take part in the public contracts.

In conclusion, the Commission established that the co-operatives can have a fundamental role in the drawing of the economic-social integration as well as in the creation of the home market.

## **2. The legal community picture.**

The home market completion creates inevitably positive effects on the social and economic situation of the EU Community. The home market completion requires the adaptation of the productive structures to the one of the community market, over the elimination of the obstacles for the commercial exchanges. The adaptation to the community market have to be carried out in the organization, therefore the enterprises have to organize their activity on the community

scale and not just on the local one, in the legal view, so the enterprises have to present a legal structure suitable for the community market. As far as this second aspect is concerned, the legal picture in which the co-operatives run their activities, until July 2003, it was fundamentally based on the national legislations. The Council, with the regulation of 22 July 2003, outlines specific legal rules for the co-operatives so that they can operate in all the European Community with one legal status and the same rules, as predicted for the stock companies in the article of European Society. It concerns the status of the European Cooperative Societies (ECS) that gives the bases for the community legislations of the co-operatives. Its principle aim is to regulate the establishment and the economic activity. The aim of the ECS is to assure the co-operatives, in the community market, of the equal condition of competition removing the obstacles for the commercial exchanges to allow their economic development. In this way, the co-operatives can adapt their productive structure to the community dimension of the market and develop the transnational activities, helping the creation of new co-operatives of physic or legal people on the European scale. Let us verify briefly the main features of the ECS. The principal object of the ECS is the fulfillment of the needs and the promotion of the economic and social activities of its members, through the conclusion of the terms with them for the provision of services or goods or the execution of works in the activities that the ECS practices and not the distribution of a profit or an investment. The constitution of the ECS is disciplined by the legislation applicable to the co-operatives of the member States where it established its social seat. With the ECS we can have a simplification of the structures and a uniform legal context. Among different advantages, there is the possibility of moving the seat of the society from a country to another without dissolving the society or the co-operative; it is possible to have fusions and trans-national transformations that were impossible before. In conclusion, the ECS is one of the measures of promotion of the European home market and integration. The creation of a suitable law context to allow the co-operatives to operate at European level, with one legal status and uniform rules, it surely represents an important fact in the completion of the home market. The directive 2003/72 of 22 July 2003 completes the article of the European co-operative society, disciplining the involvement of the workers in the co-

operative. The aim of the directive, that promotes the social aims of the Union, is to establish the specific rules to promote practices of involvement of the workers and guarantee that the constitution of an ECS will not involve the disappearance or the reduction of the rules of involvement of the workers that are in the entities which participate in the constitution of the ECS. Precisely with the directive, the national co-operative societies that adopt the new legal form of the ECS to organize their activities on the community scale, have to guarantee their employees to keep on exercising some collective rights (information, consultation and representation rights) also in the ECS. In the international ambit too, the co-operatives have been interesting objects. It is important the adoption in 2002 of the recommendation on the promotion of the co-operatives from the International Labour Organization (ILO). In this document the co-operative is defined as an independent association of people that voluntarily form a partnership to satisfy their own ambition and economic, social and cultural needs, through an enterprise of collective property in which the power is exercised in a democratic way and where these co-operative principles are pointed out: voluntary adherence and open to everyone; democratic control exercised by the partners, economic participation of the partners, autonomy and independence, education, formation and information, cooperation between co-operatives and care for the community (see ICA co-operative principles).

## **2.1. The tax treatment.**

The care of the EU Commission in supporting the development of the co-operatives sector has its formal confirmation in the publication of the “Document of the Commission on the promotion of the Co-operative Societies” of the 23rd of July 2004 (COM (2004) 18 def.). This communication aims at helping the development of the co-operatives integrating the status of the European Co-operative Society. The starting point is the establishment, from the Commission, of the European dimension that the co-operatives have reached. Precisely, the sector has around 300.000 co-operatives, having influence with all the 140million citizens that are their members. In spite of these figures the Commission is sure that the potentialities of this sector aren't completely exploited and thinks that is important to adopt every initiative

that can outline the importance of the co-operatives in the EU economy. The main lines are: a) promoting the development of the cooperatives in Europe inviting the States to start initiatives in that aim; b) improving the legislation that regulates the co-operatives in Europe; c) maintaining and increasing the role of the co-operatives especially in the realization of the community aims. The lines are divided in 12 specific “actions”, addressed to the Commission, the member States and the co-operatives. What is very interesting are some of these actions which verge on the realization and the actuation of the community legislation as far as the co-operatives are concerned, respecting the co-operative principles fixed by the ICA and stressed by the ILO. First of all, the Commission, incites the member States to guarantee that, in case of dissolution or transformation, the assets of the co-operatives have to be distributed according to the co-operative principle of the “disinterested distribution”, that is either to other cooperatives whom members can participate or to co-operative organizations that have equal or general interest aims. It is important to precise that in the Italian code legislation, the art. 2514 (civil Code) establishes that the co-operatives with prevalence of mutual aid have to provide in their own statutes the duty of devolution, in case of dissolution of the society, of the entire social property to the mutual funds for the promotion and the development of the co-operation. Going back to the reading of the communication COM (2004) 18def., the fundamental aspect of this analysis is broached: the suitable fiscal treatment. The Commission underlines that some States reckon a particular fiscal treatment for the co-operatives because of the restrictions concerning the specific nature of the capital (the actions are not quoted on the Stock Exchange and they are not negotiable) and of the rigorous rules as far as the endowments of reserve are concerned. Moreover a *specific tax treatment may be welcomed, but in all aspects of the regulation of co-operatives, the principle should be observed that any protection or benefits afforded to a particular type of entity should be proportionate to any legal constraints, social added value or limitations inherent in that form and should not lead to unfair competition* (v. communication, 3.2.6). In the end, the Commission concludes inviting the States that intend to apply a suitable fiscal treatment to assure that these dispositions don't create anticompetitive situations. This last aspect allows the same institution (European Commission) to precise that the

cooperatives, which are organisms that practice economic activities, are considered enterprises and so subject to the EU laws concerning competition and State aid. From the document drawn up by the Commission it is possible to evict some useful elements for the exam on the evaluation of the community compatibility of the fiscal reductions. First of all, the Commission underlines the importance of the co-operative principles and the need to proceed to the control on the effective mutual aid finality to avoid cases of fictitious co-operatives. Then it approves a particular fiscal regime for the co-operatives provided that it is proportional to the laws and economic limitations and to the *social added value*. These two aspects deserve to be considered because they are necessary for our analysis on the compatibility. It's advisable, initially, to explain the concept of proportionality that is written in the document COM(2004). The identification of the fiscal reductions is conditioned to the proportionality of the law restrictions and to the *social added value*. The Commission does not define the proportionality, however in application of the general community principle of the proportionality, we can consider that it will be satisfied when it is not possible to achieve the aim through a measure of inferior kind or intensity. Bringing those contents down to the cooperative system, the measure of the fiscal system has to constitute the proportioned way that compensates the restrictions fixed for the co-operatives from the national legislator in performing the activities. A) after this specification, the first point to examine is the law restrictions and the limitation of this form. We can think about all the law limitations that are inherent to the form of cooperative enterprise and that, in particular, depend on the mutual finality that is proper of the society. In fact, the distinctive and unifying element of the co-operative form is the mutual aim, it consists – depending on the kind of the co-operative - in assuring the partners the work, or goods and services to consumers, at better conditions compared to the ones they will obtain from the open market (on the contrary the aim of the capital societies is the realization of the profit and it takes shape in the distribution of the patrimonial profit). Here is underlined the “social function” of the co-operative, that means democratic participation of the partnership in the management of the enterprise. This function achieves the mutual nature of the cooperative (see paper Ingrosso M., “Tax concessions and co-

operatives in direct taxation in Italy”§.1). As we said before (see paper Ingrosso M., “Tax concessions and co-operatives in direct taxation in Italy”§.2.1), in Italy, the cooperatives that take advantage of the tax concessions are subject to law restrictions and limitations. But the Italian civil law legislator fixes these standards to define the prevalence of mutual aid: 1) qualitative conditions of prevalence (art. 2512 civil Code defines the qualitative standards of the cooperative with a prevalent of mutual aid, so the co-operatives “with prevalence mutuality” will be considered, that is, those ones in which the services for the partners and their work contribution or their goods and services contributions is prevalent in spite of the rest of the activity); 2) the quantitative conditions of prevalence (numerical as in art. 2513 civil Code) and 3) the statutory requirements (as the prohibition to distribute the dividends in superior measure of the greatest interest of the fruitful postal bill, increased of two points and a half compared to the actually paid-up capital; the prohibition to recompense the financial instruments offered in signing to the cooperator partners in superior measure of two points compared to the greatest limit provided for the dividends; the prohibition to distribute the reserves among the cooperator partners; the obligation of devolution, in case of dissolution or transformation or loosing of the standards of prevalent mutuality of the society, of the entire social property, deduced only the social capital and eventually the matured dividends, to the mutual funds for the promotion and the development of the cooperative). Together with the prevalence of mutual aid, the Italian law requests the enrolment in the appropriate Register (v. paper Ingrosso M., “Tax concessions and co-operatives in direct taxation in Italy”§.2.1). In conclusion of this point, in the Italian law system of co-operatives there are law rules and limitations that, for the European Commission, can find compensation in the tax relief given to the co-operatives.

B) The other point to examine is the *social added value* that the co-operative can bring to the economic system for the function performed in the economic growth of the community market and for the contribution to the achievement of the social community aims and that becomes a justifying element of the *ad hoc* fiscal treatment for the co-operatives. Here the Commission does not refer to their “social function”, as our Constitution, but gives evidence to the role that they can exercise in the EU economic-

social system. The co-operative, in fact, seems to be like an enterprise that can reach at the same time both entrepreneurial and social aims and so it is the ideal structure to increase the occupation and the social cohesion.

In conclusion, the Commission with the communication COM(2004) 18def. underlines the importance of the mutual finality of the co-operatives, so it demands that the State guarantees effective controls on the real presence of the mutual aid, so to avoid cases of fictitious co-operatives. It accepts the fiscal advantages specifically provided only if proportioned to the mutual scope, for that it invites all the member States to a careful control of the rules as far as their funds and the co-operative reserves are concerned to avoid to modify the competition in the common market.

It is important to remember that for what concerns the value of the Communication, the Court of Justice has specified that the Communication contains “guidelines setting out the course of conduct which the commission intends to follow and with which asks the member states to comply with”; and the Court of Justice has also declared the European Commission bound to those disciplines and communications it issued relating to control of State aid, in the limits in which they don't derogate to norms of the ECT and they are accepted from member States (see verdicts 24 February 1987, case 310/85, Deufile/Commission, point 22; 24 March 1993, case C-313/90, CIRFS eand a./Commission, point 36, and 15 October 1996, case C-311/94, Ijssel-Vliet, point 43) (see Tesauro G., 2008,p.162).

It would be possible, in conclusion, to deduce, from the existence of the aforementioned act both binding and not binding, the presence of a community juridical system of the co-operatives.

It is important to remember that the Italian civil law legislator, with the reform of the company law established a distinction between the “co-operative with prevalence of mutual aid” and the “co-operative with non-prevalence of mutual aid”, reserving a differential treatment for taxation purposes just for the cooperatives that present mutual aid parameters and the enrolment in the register. These elements will be undoubtedly of

great interest for the analysis on the compatibility of the tax concession with the community rules concerning State aid.

### **3. Tax concession to the cooperatives and state aid.**

#### **3.1 Short account on the notions of State aid.**

To proceed in this analysis we have to give a notion about State aid.

The EU Treaty does not define what we intend for state aid, but the art.107 TFUE (ex art. 87 ECT) in the first paragraph established that “apart from any derogations considered in the treaties , they are incompatible with the common market ,in the measure in which they affect the exchanges among member States, the aid granted by the States, that is through State resources in any forms that facilitate some enterprises or some productions ,distort or threaten to distort the competitors. The primary rule of the community law indicates the essential elements , inevitable and sufficient to configure a State aid. We can talk about aid only if there are these elements:

- a)movement of state resources;
- b)economic advantage for the beneficiary enterprise coming from the public measure;
- c)incidence of it on the infra-community commerce;
- d)selection or specification, so that some enterprises only and not all of them will be favored.

Therefore for State aid we have to intend any sanction of the public administration, or of people that manage public resources for it, that imply a movement of resources from the State or other public companies to public or private enterprises. Consequentially, the forms of the aid can be different (cost reductions, tax concessions, preferential rate) they are included in the notion of relevant aid for the community discipline , “any measure of original public provenance that, in any form, directly or indirectly produces an economic “selective” benefit for the beneficiary enterprise, whose sensible effects could threaten of distort the competition and the infra-community commerce” (Tesauro G., 2008, p. 77).

### **3.2. The community compatibility of the tax concessions.**

Based on the brief considerations reminded to outline the notion of “State aid”, we can proceed to the analysis of the community compatibility of the fiscal measures provided for the cooperatives. To check this, we have to define the method with which we intend to proceed with the analysis. One of the possible methods to check the compatibility could be to analyze the applicable taxation to the cooperatives as a whole.

In this way, the overview of the tax system wouldn't be lost and it would certainly be simpler to evaluate the selectivity of the relieving measure

Another method that could be profitable to follow is the fragmentation reduction scheme, hence the examination of the single reduction forms. This methodological approach cannot be followed because every single rule would necessarily be subjected to the resistance proof as regards to the art. 107 TFUE (already art. 87 ECT), in this way it could lose completely the perception of the entire reductive fiscal system in favour of the co-operatives.

We have to proceed, trying to notice in the rules provided for the co-operatives, the requirements, as regards to the art. 107 TFUE, whose cumulative presence is necessary to configure a State aid. These elements are:

- a) the movement of State resources

The fiscal measures which advantage co-operatives, as expenses, have a negative incidence on the State budget. They are referable to a State behavior and so we can consider them to be granted by the States and so through state resources.

- b) the economic advantage for the beneficiary enterprise deriving from the public measure, which falsify the competition.

The allowances rules benefited by the co-operatives could perfect an advantage for the beneficiary enterprise. The advantage would be a special treatment reserved to the addressee.

This advantage would be of a fiscal nature, because the aid is directly to lighten the burdens that are normally charged on the balance of the beneficiary enterprise. Among these tax relieves provided to the co-operatives we can find some that apparently seem to be advantageous for the partners, but in the reality only the enterprises benefit from them. It is the case of the deduction with duty securities on the interests returned to the partners. This rule is presented as a relief destined to the cooperative partners, they can benefit from fiscal incentive if they invest their own money into the co-operative. If we deepen our analysis we could see that the co-operatives are the real beneficiaries of the measure, because according to this rule they can obtain financial instruments at conditions which are better than the ones offered by the capital market. The same thing happens for the refunds to partners, when the co-operative closes the exercise with a profit. The sums acknowledged to the partners (they are a refund of part of the price referring to the transactions occurred between partner and co-operative or as higher remuneration for the work done, see paper Ingrosso M., “Tax concessions and co-operatives in direct taxation in Italy”, §. 4.1.1.) they reduce the basis of the proportion of the tribute on the passive subject: the co-operative. So we can certainly talk about fiscal measures that affect the fiscal position of the co-operatives.

Nevertheless, the conclusion can be reached that there cannot be an advantage under the economic profile, because the general taxation system of the legal entity is not suitable to be applied to the societies that follow the mutuality principle.

The imposition for such “subjects” is in fact tied up with particular dispositions. It’s possible to reach that conclusion if one considers that in order to decide whether it is an advantage or not, it is necessary to compare the situation of the beneficiary of the aid with that of other enterprises in a similar factual and legal situation, it is complex to find the level of taxation which the juridical people are subject to in a national fiscal system.

This analysis requires a survey on the taxation of the economic factors that contribute to the generation of income.

It is important to remember that the work of members in co-operative is essential to create the economic value of the assets

of the cooperative society and that Member States may decide the imposition of production factors.

In conclusion, a tax advantage granted to cooperatives might not be an advantage in economic terms, if the general system of taxation of legal entity it is not suitable to be applied to those companies that follow the mutuality principle.

c) the incidence on the infra-community market

This principle can be considered satisfactory if the beneficiary of the measure runs an economic activity. In the co-operatives case the condition of the incidence on the exchanges is satisfied, because they perform an activity that means exchanges among the member States.

d) its selection or specification, as to favour some enterprises only and not all of them

The selection consists of favouring only some enterprises or productions and consequentially of modifying the balance of the enterprises. A measure is selective when its application does not have general capacity and its applicative capacity is limited either to the activity sector, or to the effective production exercised or to the dimension of the enterprise, as well. Said that, we can affirm that the fiscal measures that support the co-operatives, intended to help this business category, are undoubtedly selective. They are measures exclusively directed to the co-operatives, which will benefit from them in conformity with the requirement of prevalence or not of the mutual aid, but that certainly are not accessible from other enterprises.

However, you might add that the selective character is lacking if the measures tend to favour certain enterprises that are not in a factual and legal situation similar to other companies.

In the presence of co-operative societies, it seems that it is necessary to assess whether “an aim of mutuality” company purposes are in a situation which is comparable to companies for commercial gain.

Consequently, one might conclude that the tax regime of co-operative societies cannot be considered to be selective, since these companies are not in a situation comparable to that of profit companies.

### **3.2.1.The selective character of the reductions justified by the nature and the structure of the system.**

However, the selective character of a measure can find a justification in the nature or the general scheme of the system (see Communication 98\C384\03point 23). In this case, the measure will not be included in the ambit of the application of the art.107 TFUE. For what we have said , it is necessary to demand if the fiscal selective measure provided for the co-operatives can be justified by the nature and the structure of the European system, both legal and economic, of the co-operatives or if it can be justified by the nature and the structure of the national tax system. In other terms, it is necessary to verify the existence of the ratio that can justify the selective reduced regime of the co-operatives. The answer might be found in the EU ambit, that could be national, depending on the approach.

#### **3.2.1.1.The EU perspective**

If the perspective is European, a valid aid in this case can be given by the position expressed by the Commission in the communication COM(2004)18 and 98\C 384\03. The relieving treatment has to be justified by the logic and the structure of the law system if, for the increase of the restrictions and the limitations imposed by the legislator to the productivity of the company, this fiscal treatment seems to be proportional, compensative of the restrictions fixed by the national legislator himself. The aforesaid restrictions can be those restrictions and limitations above mentioned, which always come from the absolute characteristic of the co-operatives: the mutual aid. In fact, it is because of the mutuality that the legislator: a)imposes restrictions on the productivity of the company, b)limits the property rights of the partners , c)obstacles the competition on the market. These restrictions and limitations, that find their content in the legal system of the State in which the co-operative works, can be found in the Italian legislation of the sector that was reformed in 2003 (ex Bill (D.Lgs.) 17.1.2003, n.6) that made distinction between the co-operatives with prevalent mutuality from the other co-operatives, reserving the tax concessions only to the former. The fiscal favour treatment granted them so, could be fixed to equalize the qualitative and quantitative conditions of the principle of prevalence, the statutory requirements and the registration in the Register as

required by the national legislator. As regards to the justification that can derive from a logic of development of the economic-social system, we can verify as follows. The commission has specified the particular function that the co-operative can exercise in the economic-social European system for the mutual scope that they pursue institutionally. In particular, this function has a *social added value* and can be at the basis and justify the selective fiscal treatment. So, the instrument of the tax concessions can be considered as a mere device, necessary and sufficient, to allow the co-operatives to contribute to the EU social- economic increase. In addition, the discrimination to their advantage is only apparent if we compare the co-operative societies with the other lucrative companies, which without the same mutual principles cannot suffer from competitive distortions and so be discriminated. In conclusion, in the EU ambit, the selective measure that the co-operative benefits from, can be justified also on the basis of the nature or the structure of the European economic-social system.

#### **3.2.1.2. The domestic perspective**

We have just verified that the selective fiscal measures provided to the co-operatives would find legitimacy, in the EU ambit, in the nature and structure of the co-operative system. It means that there is a ratio that justifies the favour treatment with benefit for the co-operatives. For completeness we have to examine also the domestic tax legal system, on the wake of the greatest part of the experts. The privileged fiscal treatment benefited by the co-operatives finds its ratio in the constitutional cover: the legislator has to “promote” the singular function and structure of these companies. The relieving law, hence becomes the instrument that permits to “reward” the true co-operation. For the Italian legislator the fiscal reduction is a supporting measure of the State for the prevalent mutual scope of the co-operative. The allowance has an extra-fiscal scope (the intervention in the national economy, see paper Ingrosso M., “Tax concessions and co-operatives in direct taxation in Italy”, §.3) that finds its justification in “being highly deserving” of the co-operatives with prevalent mutuality, in the light of the art. 45 of the Constitution. At this point, the question is whether the fiscal instrument will be more suitable, from the EU point of view, and up to which point a State, in the exercise of its own tax power, can proceed in the promotion of the co-operative activities,

without affecting the principle of free competition rules in the TFUE, which is in charge of safeguarding the entire discipline concerning State aids. Undoubtedly the imposing tax authority is exerted in function of discretionary choices of economic politics and public finance. It means that the fiscal instrument is valued as the most suitable one for the promotion and the development of the co-operative form. However, the political discretionary power of the national legislator has to face the supremacy principle of the EU law. We can notice that, not for case, the recent modifications given to the fiscal regime of the co-operatives are the result of pressure from the EU. In conclusion the tax relief provided to co-operatives are tax laws of advantages that find their ratio in superior fiscal finality of economic-social intervention of the State: they appear then as tax laws of advantages which oppose to the EU laws concerning state aid.

#### **4. Conclusions**

After some orders sent to the Commission from the Court of Cassation, as we can deduce from the answer (IP\08\953), the Commission states that we can consider as State aid:

*a) the deduction from the taxable income of prevalently mutual cooperatives of the profits allocated to indivisible or divisible reserves corresponding to revenues generated from non-members of the cooperative. For large cooperatives and non-mutual cooperatives, the totality of the deduction is considered to be aid, because where the members are not really involved in the cooperative the company seems more similar to a profit-making company. These deductions are however considered compatible aid for obligatory indivisible reserves and in the case of SMEs for all indivisible reserves;*

*b) the tax reduction on the interest paid to members for short-terms deposits, because it does not relate to activities with participating in the cooperative as such. Indeed, in providing interest-bearing loans to the cooperative the members act as third party lenders and are not sharing economic risks with the cooperative. This measure is not considered compatible with the common market at this preliminary stage.*

Concerning point a) the Commission already expresses its own position on the allowances with divisible or indivisible reserves, protecting the co-operatives of small reduced dimension, for the strong connection with their own partnerships and for the encouragement to reach social finality. In fact the allowances effected by the SMEs are compatible with the law on the State aid. The Commission as far as this hypothesis is concerned, sets aside the mutual character, considering, maybe, that the verification, for the co-operative, of the SME concept, given by the regulations of the Commission n.70\2001, will impose limits and restrictions to it. So that, once exceeded the dimensional limits fixed by the regulation 70\2001 the incompatibility with the law on "State aid" is absolute, at least concerning the activity developed by the co-operatives as regards third parties. This position of the Commission deserves some specifications. Firstly, the deduction from the income of the profit set aside as reserve, is considered State aid if these profit derive from an activity carried out by third parties. In this case it does not reveal the mutual aid of the co-operatives, because the third subject with whom the activity is performed, will assume more importance. Actually, a definition like that should not be surprising if we consider that the co-operatives can benefit from the application of tax concessions only if they correspond to the principles of the "prevalent mutuality", it will not exclude, but lessen the possibility for the society of giving goods or services to thirds that are not in partnership. Secondly, the Commission in distinguishing between co-operatives with bigger and reduced dimension, introduces its own principle of mutuality, different from the one provided by the domestic law. It makes large use of its own discretionary power, considering that this principle adapts better to the demands of the co-operatives than with the ones of the market. What is interesting is if the mere concept of SME will always have to be used to define the figure of the co-operative with prevalence mutual aid, apart from the national law or if it is applied only in this case, namely in the presence of a profit derived from the activities performed by third parties which are not part of the co-operative. To this end, we can only wait for further developments from the Commission after the information that the Italian State will provide.

As regards to the point b), the Commission considers incompatible the law that provides a fiscal reduction of the

deduction on the interests perceived by the members for short-term deposits. Undoubtedly the law favours the co-operatives in the gathering of capitals as regards to the other subjects that cannot offer the same compensation. Concerning that, two clarifications are needed. The first is that the Bill 112\08 has increased the tax deduction from 12.5% to 20%, reducing in this way the possible lack of balance with the non - co-operative societies that stock up form the market of capitals. The second specification is that the relieving law seems as it can be inserted in to the picture of the selective measures justified by the nature and the structure of the system. In fact the access to the credit for the co-operatives of reduced dimension, or those based prevalently on the labour contribution or the labour capacity of the single members, can be, as it is obvious, more difficult as regards to the other typologies of economic activities. In this context the law prevision to apply a reduced deduction seems completely justified. We have to remember that the European Parliament in a document of 2009 (REPORT on Social Economy 2008/2250(INI) has demanded the Commission to consider the real social economy in the revision of the policy of State aids, inviting it (the Commission) not to obstruct national company law and fiscal provisions, *“also calls on the Commission not to obstruct national company law and fiscal provisions such as those applying to cooperatives, which operate on the basis of mutuality principles, company democracy, the integrative transmission of assets, the indivisibility of reserves, solidarity, the work ethic and business ethics”*.

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