TAX SOVEREIGNTY TODAY

Francesco Farri
Independent academic researcher
Italy

Título

Soberanía tributaria hoy

Resumen

El objetivo del presente trabajo es verificar cuál es la dimensión impositiva mas adecuada (estatal, supraestatal, virtual) para valorizar los nuevos horizontes de la economía global y digital. Desde esta perspectiva, el texto lleva a cabo un análisis de la eficiencia de los principales modelos existentes y de la conformidad (o compliance) de estos con los principios constitucionales que los sistemas democráticos occidentales han aplicado a lo largo del tiempo en materia impositiva, y presta particular atención a la certeza del derecho, el consenso sobre la imposición y la función redistributiva de los tributos.

Palabras clave

Soberanía tributaria, fiscalidad de la *digital economy*, globalización, consenso a la imposición tributaria, certeza del derecho.

Abstract

The goal of the essay is to verify which is the most appropriate tax dimension (state, supra-state, virtual) to enhance the new horizons of the global and digital economy. In this perspective, the efficiency of the main models is compared with their compliance to the constitutional principles that western democratic systems have established in matters of taxation, with particular regard to legal certainty, consent to taxation and to the re-distributive function of taxes.

Keywords

Tax sovereignty, digital economy taxation, globalization, consent to tax imposition, legal certainty.

Fecha de recepción: 11-02-2020/Fecha de aceptación: 20-03-2020/Fecha de revision: 4-06-2020.

SUMARIO

1. The new horizons of global economy and their fiscal implementation

1.1. The implementation by State systems

1.2. The implementation by supranational systems

2. The effects on the structure of democratic fiscal systems

2.1. Legal certainty

2.2. Consent to tax imposition

3. Considerations about the European Union tax system

4. Final thoughts for a fiscal governance of globalization: the State model is still «useful» to the tax system

La versión en español de este estudio está disponible en la edición digital de la Revista Técnica Tributaria en www.aedaf.es.

1. The new horizons of global economy and their fiscal implementation

The world that greeted the beginning of the year 2020 is a world in which artificial intelligence and globalization of markets are producing a dramatic increase of the role of intangibles in the creation of economic «value» and the normalization of the circulation of services and goods across State borders, so that «wealth» is progressively segregating from human «community» settlements, as we had known them before. All these aspects – «community,» «value» and «place» – are crucial in taxation matters: in fact, tax systems have precisely the function of identifying the «value» that should be taxed to make possible the financing of the public expenses of a «community» settled in a specific «place».

Tax systems are usually (although not necessarily) interested in conferring relevance to these new horizons that AI and globalization have produced in economic matters, and many studies are devoted to examining the reflections that changes of the concepts of «value» and «place» can produce and should produce in taxation matters. Instead, no studies are specifically dedicated to the influence produced in taxation issues by the changes in the concept of «community». Yet, the identification of the most appropriate community of reference to tax an economic matter appears to be an essential step to efficiently update the dynamics of taxation, even before adapting traditional tax institutes to new forms of production and localization of wealth. And this is even more true today, after the explosion of the coronavirus pandemic. It has caused distress to the patterns that, by inertia, were emerging in the globalized and digitalized world that greeted 2020. According to some analysts, the pandemic will end the race for globalization that was sweeping the world until the preceding moments[1]. According to others, the planetary character of the drama caused by Covid-19 and the consequent commonality of needs of the people of the different States will favor a greater global integration[2]. Today is, therefore, all the more important to ask ourselves about what the most appropriate level of community is, to face the challenges of the world economy from a fiscal point of view.

Generally speaking, the tax phenomenon can be conceived by maintaining a traditional concept of organized community, in terms of a group of people united by collocation in a physically defined and legally organized space-time horizon,

1 The former Minister of Finances of Italy, Tremonti, has compared the spread of the pandemic to the murder of Archduke Franz Ferdinand in Sarajevo in 1914 and affirmed that like Sarajevo put an end to Belle Epoque, in the same way the pandemic will put an end to the «golden» thirty-year long globalization period and to the «enlightened» product of what was the last «ideology» of the 1900s, the «marketism»: the idea that the divine market is everyhting and does everything (see TREMONTI G., Globalizzazione finita. E' come Sarajevo 1914, interview edited by Indini A., in Il Giornale, 30th March 2020)

2 See, among many interventions, VV.AA., European Solidarity Requires EU Taxes, in www.eulawlive.com, 21st April 2020.

or making reference to new forms of communities, as the IT ones, that are independent of the physicality of their members and from their material collocation but can show themselves, at the same time, capable of significant fiscal phenomena within the non-spatial horizon in which they are formed. In this article, I will focus the attention on the first perspective, i.e., the perspective of a community settled in a physically defined and legally organized space-time horizon. It can be declined both looking at juridical-spatial horizons corresponding to those currently in existence (on the model, in particular, of the national States) (see the following par. 1.1.), and enhancing organized collectivities arranged on juridical-spatial horizons progressively wider than the current ones (see the following par. 1.2.).

The merits and the flaws of the various possible configurations deserve to be specifically examined, both in terms of efficiency and in terms of fairness. In terms of efficiency, many States believe in «associating» to better address the issues of the global economy, however other ones, reckon that it is preferable to follow a unilateral path[3]. In terms of fairness, the implementation of taxation institutes aimed at enhancing the evolutions of the globalized economy on a supra-state level may express criticalities with respect to the fundamental principles that characterize taxation in democratic systems and, in particular, with respect to the principle of legal certainty (par. 2.1.) and the principle of consent to taxation (par. 2.2.). This also and with specific reference to the taxation system of the European Union (3.).

Finally (section 4.), after analyzing these aspects, we will study the prospects of the role of the states in the future fiscal governance of globalization, reaching the conclusion that, more than the relative territorial dimension, it is the general and all-embracing nature of the goals of the State systems, to which the greater suitability of a form of personal taxation relates, that represents an essential element for the realization of a taxation system that may be said to be fair and equitable.

1.1. The implementation by State systems

Taxation based on the communities organized according to the State model is certainly suitable, with some limits, to respond to the enhancement of the change of economic «places» represented by the increasingly high shifting of the value and of the wealth at intangibles level and by the increasingly frequent overcoming of national borders in industrial and commercial events.

3 Think to the 2017 Trump reform, *Tax cuts and jobs act*, that introduced measures as the Global Intangible Law Tax Income (GILTI) and the Base Erosion and Anti-abuse Tax (BEAT), which offer unilateral solutions to matters that are part of OECD anti-BEPS plans. See on this matter, in particular, the Forum of 2018.10.25 of the Yale Law Review and especially the essay of GRAETZ M.J., Foreword. The 2017 Tax Cuts: how polarized politics produced precarious policy. Consider, however, that also the Obama administration had unilaterally adopted fiscal policy measures that certainly had an impact on the issues under discussion at the global level, as the Foreign Account Tax Compliance Act (FATCA): see, on this topic, CHRISTIANS A., Putting the Reign back in Sovereign, in 40 Pepperdine Law Review, 2013, 1373 ff.

In this perspective, the main issue is to identify the facts that are currently showing real contributory capability and the new forms and contents of their correlation with institutionalized communities (the correlation criterion consisting in the territorial linking is, in fact, the result of a «metonymy» between the institutionalized community instated on a territory and the territory itself). It is evident that the evolution of the new world economy requires to fill the internal and international norms of contents that can be suitable to reflect the real entity and the concrete trend of the current economic events. The circumstance that the content of law has to continually pursue the factual reality appears as an inevitable characteristic of the legal phenomenon in itself. The efficiency of normative production can undoubtedly mitigate the problem: the institutionalization of permanent commissions for studying the global economy at State level in order to define the best criteria for linking economic events with the organized collectivity, together with the institutionalization of inter-state mechanisms for the periodic review of double taxation agreements, could certainly help to make the regulatory landscape more efficient[4]. These facts, of course, notwithstanding that, in inter-state relations, the binding nature of the updates cannot simply be entrusted to such mechanisms, but it will necessarily have to undergo the acceptance of the single contracting States[5].

Neither the aforementioned problem of adjustment of the normative tax data to the characteristics of the real economy could be overcome by adopting elastic regulatory clauses: indeed, they appear scarcely fit to meet the demands of the democratic systems (as will be stated in next par 2.1) and, in any case, they seem unable to solve the problem, but only to post-pone the solution from the level of the definition of general rules to the level of concrete and case-by-case application of the law.

1.2. The implementation by supranational systems

The enhancement of juridical-spatial horizons wider than the current ones is generally considered one of the most appropriate forms of governance of glo-

4 In this sense, and notwithstanding the intrinsic limitations that characterize them, the projects of Actions 11 and 15 of the OECD anti-BEPS program should certainly be praised. They could be all the more so within the framework of a possible reform that makes the OECD a point of departure of a «*forum where the involved political representatives of the states, the relevant international organizations and the relevant voices of civil society can meet and exchange their arguments in a fair way... based on the deliberative democratic values of equal participation, rational argumentation and openness and transparency*» (PETERS C., On the legitimacy of international tax law, Amsterdam 2014, 321). In this perspective, the OECD seems to start moving with the system of calls for inputs and public consultations, such as those linked to the work of the Task Force on Digital Economy regarding the Action 1 of the anti-BEPS plan (consider, for example, the public consultation about the Secretariat Proposal of October 2019). It remains clear, however, that the form of public consultations can only constitute a first and embryonic step, and certainly not the decisive one, towards increasing the democratic legitimacy of the OECD itself. To say the least, public consultations lack several guarantees: that the message reaches the stakeholders and that the participants are effectively representative of civil society; moreover, there are no machanisms that can impose a legal obligation for OECD to take into consideration the proposals received and, under certain conditions, to accept them.

5 And the acceptances of the various contracting States are just like «*flawed miracles*» (to use the meaningful expression by AVI-YONAH R.S., The structure of international taxation: A proposal for simplification, in 74 Texas Law Review, 1996, 1304).

balization[6], and, in fiscal matters, it certainly lends itself to maximize the results achievable at the State level and previously highlighted. It is not possible, however, to conceal the following aspects.

It is true that the expansion of the collectivity contexts lends itself to maximize the efficiency of the tools described above regarding the current collectivities organized at the State level. In fact, it would transform in internal law relationships events that, in a traditional State context, would translate into issues of international law; and it is known that internal juridical relations are by their same nature more efficaciously and simply implementable than international ones. However, it is evident that the problem is thus only shifted forward: indeed, unless we conceive a worldwide organized collectivity, there will always be economic events that will transcend the updated juridical-spatial context, and that, therefore, will pose problems of international nature similar to those mentioned above. For that reason, the problem appears to be definitively resolvable only by conceiving a sort of super-state or world super-federation: however, that appears to be more of a utopia rather than a possible future event.

On the other hand, the problem arises when it is necessary to establish how to proceed with the enlargement of the juridical-spatial horizon of the institutionalized community to which the fiscal phenomenon is referred to and in which the changing «places» of global economy would be enhanced. This problem concerns both the institutional profile and the fiscal one. In the intergovernmental organizations model, the tax phenomenon does not assume different characteristics from those currently in place at State level: the role of the supra-state institution will essentially be to coordinate the action of the affiliated states, or as far as it is possible to redistribute resources among them, in order to reduce wealth imbalances, but even if they are coordinated at the supra-state level, taxation will still remain essentially settled at State level, though with a higher level of coordination. Things change by conceiving an evolution of integration in a federal sense. However, such an extension can take place efficiently only if there is a real sharing of the social *substratum* among the populations involved. And, certainly, this cannot be given for granted in every situation: it is no longer the time in which mighty emperors or enlightened *elite* decide the fate of the different populations without taking into account their will, tradition, and culture. Where there is no such common planning, the delegation of functions in tax matters to supra-collective institutions will remain circumscribed into specific measures and can hardly assume general or otherwise residual role. In this context, indeed, it is possible to observe that the coronvirus epidemic outbreak is posing the European Union into the condition to offer a convincing unitary response to the problem; and this will be a moment of paramount importance to verify if the Union is or not ready for a level of enhanced integration.

2. The effects on the structure of democratic fiscal systems

It is now necessary to verify if and to what extent the implementation of the new horizons of the global economy lends itself to affect the structural charac-

6 See, for everyone, BULL H.,The anarchical society, London 1995, 286.

teristics of the tax phenomenon, as known by the current democratic regulations, and if this impact deserves to be appreciated or corrected.

2.1. Legal certainty

The interventions that can be adopted internally by the single States and in the international relationships between them do not change the scenario compared to the current one, as they represent the intensification and improvement of already existing and applied legal instruments.

As specified before, however, the aforementioned instruments of domestic and international law do not lend themselves to automatically solve the problem of adapting the tax phenomenon to the multiform being of the economic reality: in fact, to be effective they need to be supported by a constant pursuit of changes of economic reality in order to adapt the current legislation to the forms assumed by it. From this point of view, some more specific considerations should be made with regard to the aforementioned prospect of adopting regulatory instruments of such a flexible nature to be able to absorb *ex-ante* the variations of reality in its application framework: it is known, in particular, that Western systems have come up with the so-called anti-abuse clauses aimed at preventing the exploitation of tax laws in terms of tax avoidance and, actually, these anti-abuse clauses are considered to weigh so heavily to almost be turned into the cardinal principle of the entire tax system[7].

However, these formulas and this approach, not only do not seem decisive in resolving the problem of the run-up of reality (because, as mentioned, they simply shift the problem forward, from the time of the elaboration of the text of the tax rules to the time of the application of tax law to concrete cases)[8], but they show some important critical issues. In fact, they lend to significantly affect the value of legal certainty, namely the predictability *ex-ante* of the legal consequences of its own behavior. This value, which in many legal sectors is currently being criticized[9], continues to remain central and unfailing in tax matters from a logical, sociological and juridical point of view. In particular, it is important to remember that the connection of the tax phenomenon with the

7 A specific anti-abuse clause is seen as an opportunity also to subject the web multinationals to income taxation, according to the model suggested by the European Commission with recommendation C(2012)8806 and by Action 6 of anti-BEPS plan: see, on this issue, KOK R., The Principal Purpose *Test* in Tax Treaties under BEPS 6, in 44 Intertax, 2016, 406; DOURADO A.P. (ed.), Tax Avoidance Revisited in the EU BEPS Context, Amsterdam 2017; PISTONE P., WEBER D. (eds.), The Implementation of Anti-BEPS Rules in the European Union: A Comprehensive Study, Amsterdam 2018. See also the Well-Known art. 6 of EU ATAD Directive n. 1164/UE/2016.

8 As it was exactly observed by SCHOUERI L.E., GALENDI JR. R.A., Justification and Implementation of the International Allocation of Taxing Rights: Can We Take One Thing at a Time?, in Rocha S.A., Christians A. (eds.), Tax Sovereignty in the BEPS Era, Alphen aan der Rijn 2017, 71, often «*the blurred rethoric on tax avoidance*» is something used to avoid the problem of reforming the international tax law rules and that of making them more suitable to internation equity needs.

9 See the weighty considerations of GROSSI P., Sull'odierna «incertezza» del diritto, in Giust. civ., 2014, 921

consent of the collectivity is structural in the democratic systems[10] and it implies limiting the role of the subjects that the community itself considers endowed with a level of connection not believed to be sufficient. Law systems can certainly be distinguished on how they relate to the forms of connection with the public consent, which is deemed necessary in tax matters and the aspects of the tax situation for which such a connection should be requested. It is, however, a generally constant *datum* in Western democratic systems the identification of the representative Parliament as the organ endowed with a level of connection with the collectivity consent considered essential for regulating the fundamental aspects of the fiscal matter: on the other hand, the organs endowed with implementation functions, such as administrations and judges, present a level of connection with the collectivity consent different from that deemed necessary to fix tax obligations in general. Therefore, giving the administrations and the judges an excessive power of defining taxpayers' obligations, as it happens in the case of adopting elastic cases and anti-abuse clauses, may result in problems also in terms of linking taxation with democratic consensus[11] and these problems remain central even in the cases in which the law systems make available to taxpayers instruments (such as anti-abuse preventive rulings) aimed at limiting the consequences on the level of uncertainty.

2.2. Consent to tax imposition

The attribution of a fiscal function to supra-state or virtual collectivities raises, first of all, a possible problem of sufficient consent to the imposition and, in any case, the essential question of the coherence between functions entrusted to these collectivities, on the one hand, and, on the other hand, the means used to carry out and finance them.

10 Actually, the principle of no taxation without representation, as was fully elaborated at the time of the American Revolution, has its roots in the English Middle Ages of the Magna Charta Libertatum of 1215, chapters 12 and 14. In the Civil Law systems, the article 14 of the Déclaration des Droits de l'homme et du citoyen of August 26, 1789 was fundamental in that sense. The subject has recently been the subject of studies of FREGNI M.C., Legitimacy in decision-making in tax law: some remarks on taxation, representation and consent to imposition, in Pistone P. (ed.), European Tax Integration, Amsterdam 2018; PEETERS B., GRIBNAU H., BADISCO J. (eds.), Building *trust* in taxation, Cambridge 2017; DI PIETRO A., Imposte moderne e Stati post-nazionali, in European Tax Studies, 2016, 1; PETERS C., On the legitimacy of international tax law, cit.; DOURADO A.P. (ed.), Separation of powers in tax law, in EATLP International Tax Law Series, 2010; DE CROUY CHANEL E., La citoyenneté fiscale in 46 Archives de philosophie du droit, 2002, 39-77.

11 The idea of the critical relationship between the general anti-abuse clause and the reserve to statutory law of the power to regulate tax issues has been developed firstly and with particular clarity by HULTQVIST A., Legalitetsprincipien *vid* inkomstbeskattningen, Stockholm 1995, 408 ff. The issue has been the object of a wide debate in the Nineties, summarized especially by COOPER G. (ed.), Tax avoidance and the rule of law, Amsterdam 1997: see, in particular, VANISTENDAEL F., Judicial interpretation and the role of anti-abuse provisions in tax law, ibid., 131 ff., while BROOKS N.,The role of judges, ibid., 93 ff. seems to forget completely that the answer to the question he asks of himself («*why should we assume that the role of judges in a democracy is to discern the wishes of the majority*» instead of deciding on the base of «*public policy objectives and evaluative criteria*»: see ibid., 102-103) can be found exactly in the principle «*no taxation without representation*» (which goes beyond the sheer rule of law) and in the consequent reserve of decisions of «*public policy objectives*» in tax matters to the bodies which are an expression of such representation (among which, in most law systems, judges are not included).

From the first point of view, the fact that some of the possible supranational integration schemes (think, in particular, to intergovernmental organizations) imply the adoption of tax decisions by organs with a level of representativeness lower than that of the organs endowed with a level of connection with the collectivity consensus ordinarily considered necessary for regulating tax issues (in particular, the national representative Parliaments). In this regard, however, it is possible to observe that the parliamentary representativeness and the law produced by Parliaments constitute only a *species* of the *genus* collective consent and, therefore, it should not be ruled out that different forms of connection to the community can be considered equally suitable to satisfy that need for consensus which by its same nature reconnects with taxation in democratic systems. The question, however, requires to be specifically thematized with reference to the each specific institution considered for this aim and involves a delicate work of comparison between sociological data (the forms in which a community actually expresses its consent) and their translation into appropriate legal forms, since the respect for the mere rule of law is not sufficient to guarantee consent to regulatory decisions[12] which, on the other hand, is an indefectible value in tax matters for democratic or at least evolved systems.

Under the second profile, it is essential to highlight that the intervention of supra-state institutions in tax matters has to be consistent with their structure and with the functions attributed to them. The fiscal discipline that each organized community adopts is one of the most typical manifestations of the (juridical) sovereignty of the community itself. Consequently, in the case in which a community that can be considered as institutionalized in such a way as to express full tax regulatory capacity (as States are) decides to entrust to other institutions functions related to tax issues, a form of division of competences is created which, keeping directly to the heart of sovereign functions, manifests particular delicacy. Indeed, given the direct relevance of taxation to the sovereign functions of the community, the overcoming by the supra-national institution of the fiscal powers attributed to them immediately translates into a problem of violation of sovereignty of the conferring collectivity. Given the limited character of this kind of delegation, it can neither be extended beyond the extent permitted by it nor properly be considered as a means to overcome the fiscal sovereignty of the delegating communities. Consequently, in the event that the limits of the delegation are exceeded, the resistance of the single delegating communities will constitute a legitimate manifestation of the protection of their own tax sovereignty.

12 On the inability of the simple principle of the rule of law to guarantee the values to which the representation is instead connected, see, lastly, BETZU M., Stati e istituzioni economiche sovranazionali, Torino 2018, 89. In this perspective, it is possible to observe that the level of protection offered on this point by the European Court of Human Rights is insufficient, since, as is known, it essentially concerns the profile relating to the predictability of the decision, while the aspect relating to the democratic legitimacy of the discipline considered is not an object of real valorization, albeit the declarations of principle. In fact, it is usually affirmed by the ECHR that the concept of law should be considered as comprising «*statute law as well as case-law*» (ECHR, 2006.03.29, Achour v. France, 67335/01, § 42; ECHR, Grand Chambre, 2010.05.17, Kononov v. Latvia, 36376/04, § 185) and, more in general, that «*law covers not only constitutions, international law, statutes and regulations, but also, where appropriate, judgemade law, such as common-law rules, all of which is of a binding nature*» (COUNCILE OF EUROPE – VENICE COMMISSION, The rule of law checklist, Strasbourg 2016, § 46).

3. Considerations about the European Union tax system

The story of the taxation of the European Union is included in this discourse. The EU is certainly collocated among the hybrid models of supra-state entities: in fact, it is characterized, at the same time, by the attribution of broad collective functions, and, on the other hand, by a financial system based essentially on transfers by member States[13]. In this context, EU tax intervention has been until now much more often dictated to regulations that member States should respect in the exercise of their tax sovereignty[14], rather than to establishing a system of direct contribution to their own costs from the members of the European communities. This may also be due to the fact that the implementation of EU policies is still predominantly left to the administrations of the various member States (and their intra-state local entities), with the consequence that the direct origin of the public services or goods bestowed to European citizens lies in each member State, and not directly in the European Union. The discussions that came after the coronavirus emergency have made this aspect particularly evident.

In this context, adopting a restrictive interpretation of the interventions that the supra-state institution is legitimated to carry out in tax matters does not appear as a manifestation of short-sighted sovranism, but rather the necessary protection of national fiscal sovereignty, which the European Union is not legitimized to affect, if not in circumscribed limits in which it is delegated for specific matters.

Moreover, it is dubious that the expansion of competences in tax issues can work in itself as an instrument to prelude to a broader political and collective integration: even if hypothesizing a man sadly reduced to economic instrument at the anthropological level in the globalized world, only the sharing of culture, values and needs more profound than those underlying the allocation of public expenditure can give life in the Western context to a cohesive political community and, as such, can be susceptible to give life to general political institutions solidly founded. It follows that «*putting the cart in front of the horse*» by forcing the extension of the competences in a subject so sensitive to the communities, as it is taxation[15], does not appear functional to the success of such an evolution, but may exacerbate the resistance of collectivities to a broader integration and, consequently, produce an effect that can be opposite to what, in this perspec-

13 See on the point, EUROPEAN COMMISSION, European Union Public Finance, Luxembourg, 2014, 193.

14 See, for example, HIGH LEVEL GROUP ON OWN RESOURCES, Future financing of the EU, December 2016.

15 The consequence from this is that a forcing of competences such as the ones that the European Commission and the Court of Justice in Luxembourg give way, for example, in the interpretation of the concept of state aid or the protection of the economic interests of the Union, represents real forms of violation of the fiscal sovereignty of the States and do not bring anything in favor of a project to strengthen the integration among the peoples of Europe.

tive, it intends to pursue[16]. Now, if to this we would have to add that when States ask for solidarity, as is happening today to face the economic crisis following the coronavirus emergency, the answers would not go in the direction of greater integration, due to the resistence of some States, the counterproductive effect would be multiplied, questioning the same sense of the existence of the Union. On the contrary, the perspectives opened by the need of higher integration caused by the covid epidemic have brought truly common needs and values to the surface: and that could really set the stage for a true common public expenditure framework and, as such, for a public finance system truly shared at European level[17].

4. Final thoughts for a fiscal governance of globalization: the State model is still «useful» to the tax system

Considering what we have highlithed above, the conclusion is that an effective fiscal governance of the globalized economy requires interventions at several, intertwined levels.

Interventions at State and inter-State level are the first requirement. A continuous *fine*-tuning of internal and international tax rules is requested to cope with the evolution of economic and technological realities. It is just not possible to intervene with single measures. They would simply be not enough and insufficient. What is really needed is rather to create structural mechanisms to regularly *fine*-tune internal and international legislation.

These mechanisms should make it possible to adapt the public finance framework to the constantly changing and renewing forms of manifestation of the economic capacity on the end of internal, global and virtual operators. In this perspective, the trend to adopt elastic clauses of anti-abuse nature may be more straightforward for legislators, but it is questionable whether it could be respectful of the fundamental principles that stand at the basis of the constitutions of democratic States.

On the other hand, extending the territorial circle of traditional communities could be a potentially useful measure to enhance the achievement of the objectives mentioned above. However, the problems that the global economy brings about cannot be solved just by the creation of new and more extensive forms of communities. The reasons are sometimes obvious: for one, the problem could be solved only by a new community having a real global perimeter, and this appears to be more utopic than a real possibility, secondly, because a commu-

16 Classical are the works on the subject by LASCH C., The revolt of the elite: and the betrayal of democracy, New York 1996 and, recently, by BERMAN S., The Pipe Dream of Undemocratic Liberalism, in 28 Journal of democracy, 2017, 29 ff., who clearly highlighted the problem that «*the more the people view democratically elected governments as being overruled by unelected bureaucrats, unaccountable regional or international institutions, and global economic forces, the more attractive populism's call to regain national sovereignty becomes*».

17 As highlighted by the previously mentioned appeal of the tax law European Scholars, European Solidarity Requires EU Taxes, in www.eulawlive.com, 21st April 2020.