

ECONOMIC SOVEREIGNTY OF THE EU MEMBER STATES AND THE EU’S COMMON CUSTOMS POLICY: PROBLEMATIC LEGAL ASPECTS OF THE RELATIONSHIP

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Abstract

Purpose – The purpose of the article is to assess the problematic question – whether the existing new provisions of the substantive European Union (EU) law (applicable since 2016 according to the Union Customs Code (UCC)), which defines the instruments of the EU’s Common Customs Policy, leaves the possibility for the EU Member States to exercise their economic sovereignty over the regulation of customs duties (as the main instruments for the regulation and how the scope of their competencies can be defined (on the basis of practical examples of legal cases/disputes, mainly focusing on the situation in the Republic of Lithuania).

Design/methodology/approach – to achieve the goal mentioned above, the author used logical - analytical method (analysis and synthesis), systematic, comparative, historical methods and, particularly, the method of thematic analysis. For this reason, the author analyses both the theoretical sources of the legal doctrine and the formal relevant legal regulations of national and EU law (in the first chapter of the article and its subchapters) as well as the legal (judicial) practice of the Court of Justice of the EU (CJEU) and the national courts in the Member States, namely, the Republic of Lithuania (i.e. the Supreme Administrative Court of Lithuania) in cases related to the legality of customs duties administration practices which existed or exists on the national level (in the second chapter of the article). To investigate the research question (for a detailed thematic analysis) the author has selected judicial cases related to the period following the adoption of the Union Customs Code (since 2013), other cases were analysed only if they were essential to disclose the historical context of the research problem.

Finding – the application of the EU Common Customs Tariff (as an integral part of the Common Customs Policy), the uniform rules of customs origin and customs valuation of goods imported into the EU from the third countries (which were enshrined in the Community Customs Code (1992) and subsequently later in the Union Customs Code

(2013)) does not diminish the ability of an individual EU Member State to exert significant sovereign influence on the regulation of international trade. The independence of individual EU Member States in regulating economic trade relations relevant to the functioning of the internal market of the EU is also reflected in the fact that EU customs law, although, quite detailed and partially codified (at the supranational level), can also be a product of sovereign national legislation. For this reason, we can clearly define the areas where the national sources of legislation are applied (the areas left to the priority of national law) such as the organization of national customs administrations, their functions, powers, competencies of officials, peculiarities of their career system. In this way, the creation of a single EU customs administration system remains a significant challenge for the future, especially by since individual differences remain in the national customs administration practices (even after the adoption of the UCC).

Research limitations/implications – the research presented in this article is mostly related to the practice and practical examples involving one particular EU Member State (the Republic of Lithuania), the practical situation which exists in the other Member States is analysed only to the extent that it was reflected in the cases pending in the CJEU (Court of Justice) since 2013. Therefore, complex analysis involving the other EU Member States and their national practices remains an essential area of the future studies and is not fully covered by this article and the research presented in it.

Practical implications – based on the results of the research in the article the author provides the practical recommendations how to reconcile the provisions of national laws (in the EU Member States, i.e. the Republic of Lithuania), which reflects the national interests in the area of international trade regulation with the significant general strategic aim of the UCC to ensure that all customs administrations in the EU (its Member States) should work as one. The article also suggests certain possible areas of the UCC and EU customs law which needs to be improved to ensure the more efficient and uniform system of administration of customs duties in the EU.

Originality/Value – the problem of the national competencies and sovereign rights of the EU Member States in the area of the Common Commercial Policy and the Common Customs Policy (as an integral part of it) remains an essential topic in the doctrine of the EU law, especially after the legal transformations which were introduced since the adoption of the TFEU (Treaty of Lisbon) and the UCC and which have been designed to increase further integration in this area and to create a more uniform legal framework (by expanding the competency of the EU and its institutions). Therefore, similar problems were already assessed by such authors as T. Lyons (2018), C. Barnard (2016), K. Limbach (2015), Saida el Boudouhi (2015), P. Craig and G. De Burca (2015), J. Hojnik (2012), E. Traversa and others. However, on the national level (in the national legal doctrine, i.e. in the Republic of Lithuania) such issues were considered only in historical context (after the entry of the Republic of Lithuania into the EU), see V. Novikevičius (2004) or were only fragmentary mentioned (without any links to the existing practical situation on the national level) in the more fundamental studies of A. Laurinavičius

(2014) and A. Medelienė as well as B. Sudavičius (2011). Therefore, this article seeks to fill this gap in the legal doctrine and to provide an analysis of the current situation in this area (considering recent developments in EU legislation).

Keywords: sovereignty, customs duties, Union Customs Code, EU Customs policy, national customs administrations, EU Member States, EU customs law.

Research type: research paper.

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