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CUSTOMS REFORM - ANOTHER STEP TOWARDS CENTRALIZATION OF CUSTOMS?*

ABSTRACT

In May 2023, the European Commission published a proposal for EU customs reform. In terms of its content, it is expected to be the most far-reaching customs reform since 1968. The proposed reform brings a number of innovations, the essence of which lies in the further convergence of the customs authorities of the individual EU Member States. Among other things, the published proposal also aims to create a new institution - the 'EU Customs Authority'. Of particular interest are the functions and powers of the newly created body. The published proposal shows that the EU Customs Authority should, among other things, have the power to order customs controls. These would then have to be carried out by the customs authorities of the Member States concerned. This suggests that the published reform could be a significant step towards the institutional and functional centralisation of EU customs. For this reason, the present paper will be devoted to an analysis of the impact of the proposed customs reform on the relationship of the newly emerging EU Customs Authority with the authorities of the Member States, with a focus on exploring the potential emergence of a vertical institutional and functional hierarchy. The aim of the analysis will be to identify the specific centralising elements of the proposed customs reform in the context of, or in contrast to, the very purpose of the creation and existence of the EU Customs Union, the foundations of which were laid down in the Treaty establishing the European Economic Community.

Keywords (up to five keywords): Customs reform, Customs union, centralisation

1. INTRODUCTION

The last decades have been characterized by a massive development of e-commerce. This is essentially a consequence of economic globalization, and the technological revolution brought about by the emergence of the Internet. Many challenges have arisen for society as a result of this development, and the legal field is no exception. Legislators have had to respond with reforms in several legal sectors, such as consumer law, tax law and, finally, customs law. Equally important is the fact that there is an international element to e-commerce in many cases. For this reason, it is not entirely possible to take a unilateral approach to the issue. The European Union ("EU") responded to the social and technical developments described above by adopting a new Union Customs Code ("UCC").¹ The new Code replaced the older 'Community Customs Code'² from 2016 onwards, with the purpose of simplifying and digitizing customs procedures; increasing security and compliance with EU Member States' legislation; and promoting the EU's international trade objectives. However, there has been a significant increase in customs clearance in recent years, primarily due to the increased use of e-commerce by citizens and businesses based in EU Member States. While the 2017³ reform removed the exemption from value added tax for imported goods based on e-commerce, it did not remove the exemption from customs duty for consignments of up to €150 in value. In addition, from 2022, the obligation to lodge an electronic customs declaration was introduced for this type of consignments, which led to an additional billion customs declarations lodged year-on-year. This brings the total number of declarations lodged in 2021 to 1.691 billion.⁴ In 2023, there were already a total of 2.6 billion import declarations, of which 2.1 billion were for consignments of up to EUR 150.⁵ At the same time, according to available studies, it is estimated that up to 65% of e-commerce shipments imported using postal

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¹ See Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

² The Community Customs Code was introduced in 1992. See Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

³ The 2017 reform was introduced by the adoption of the Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

⁴ 691.5 million were so-called "standard" declarations.

⁵ It is also interesting to note that these 2.1 billion import tariff declarations accounted for only 0.6% of the total price of imported goods. See https://taxation-customs.ec.europa.eu/customs-4/eu-customs-union-facts-and-figures/eu-customs-union-major-trading-partner_en, 28 February, 2025.

services are undervalued⁶ and 66% do not meet EU security requirements.⁷ The European Commission has responded to these developments by publishing on 17 May 2023 a Customs Reform proposal with the working title "Customs Reform: taking the Customs Union to the next level." In particular, the Commission hopes to create a more cost-effective and efficient framework governing the EU Customs Union, based on "a new partnership between EU customs authorities and between customs and business."⁸ However, the way in which the Commission intends to achieve the articulated objectives seems interesting. A key element of the announced reform is to be the creation of a new institution, the EU Customs Authority, which will acquire its own powers and competences. In addition, an EU Customs Data Centre is to be created, the purpose of which will be to centralize Member States' customs IT systems. For this reason, the present paper will be devoted to an analysis of the impact of the proposed customs reform on the relationship of the newly emerging EU Customs Authority with the Member States' authorities, with a focus on exploring the potential emergence of a vertical institutional and functional hierarchy. The aim of the analysis will be to identify the specific centralizing elements of the proposed customs reform in the context of, or in contrast to, the very purpose of the creation and existence of the EU Customs Union, the foundations of which were laid down in the Treaty establishing the European Economic Community.⁹

The paper could thus enrich the growing pool of legal research outputs dealing with the published proposal to reform the EU Customs Union. In general, the topic of the EU Customs Union has been dealt with, for example, by Fabio (2020).¹⁰ In addition, selected issues of the EU Customs Union have been addressed by e.g.

⁶ Basalico, B.; Wahl, J.; Okholm, H., *E-commerce imports into Europe: VAT and Customs treatment*, Copenhagen Economics, 2016, p. 1, https://copenhageneconomics.com/wp-content/uploads/2021/12/e-commerce-imports-into-europe_vat-and-customs-treatment.pdf, 28 February, 2025.

⁷ The European Consumer Organisation, n.d., *Is it Safe to Shop on Online Marketplaces?*, 2021. p. 3, https://www.beuc.eu/sites/default/files/publications/beuc-x-2021-004_is_it_safe_to_shop_on_online_marketplaces.pdf, 28 February, 2025.

⁸ European Commission, *Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee Customs reform: Taking the Customs Union to the next level (COM 257 final)*, Brussels, 2023, p. 5, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0257>, 28 February, 2025.

⁹ Treaty establishing the European Economic Community of 25 March 1957.

¹⁰ Fabio, M., *Customs Law of the European Union*, Alphen aan den Rijn: Kluwer Law International B.V. 2020, p. 768, ISBN 9789041161253.

Drwiłło (1991)¹¹, Viner (2014)¹², Poniewierka (2015),¹³ Gwardzińska et. al. (2017),¹⁴ Lyons (2018)¹⁵ and also Oktaba (2019).¹⁶ Among domestic (Slovak and Czech) authors, we can mention Brodesser et. (1982),¹⁷ Slovinský et. al. (1985),¹⁸ Balko (2007),¹⁹ Cakoci (2008),²⁰ Šimonová (2010),²¹ Šramková (2011)²² and others. We can also mention several authors of recent papers, including e.g. Bérešová (2017),²³ Prosman and Vysocký (2018),²⁴ Stojáková and Popovič (2018)²⁵ and the most recent also Daudrikh and Szakács (2022).²⁶ The issue of the

¹¹ Drwiłło, A., *Zarys prawa dewizowego i celnego* [The basics of exchange and customs duty law], Gdańsk: Wydawn. Uczelniane WSM, 1991, p. 341.

¹² Viner, J., *The Customs Union Issue*, New York: Oxford University Press, 2014 p. 198. ISBN 978-0-19-975612-4.

¹³ Poniewierka, W., *Prawo celne komentarz*, Varšava: Wolters Kluwer, 2015, p. 330, ISBN 978-83-2648-013-3.

¹⁴ Gwardzińska, E. et. al., *Prawo celne*, Varšava: Wolters Kluwer Polska, 2017, p. 624, ISBN 978-83-810-7427-8.

¹⁵ Lyons, T., *EU Customs Law*, USA: Oxford University Press, 2018, p. 599, ISBN 978-0-19-878-402-9.

¹⁶ Oktaba, R., *Prawo celne*, Varšava: C. H. Beck, 2019, p. 202, ISBN 978-83-8158-993-2.

¹⁷ Brodesser, S., *Celnictví v Československu: minulost a přítomnost* [Customs in Czechoslovakia: past and present], Praha: Naše vojsko, 1982. 358.

¹⁸ Slovinský, A. and col., *Československé finančné právo* [Czechoslovak financial law], Bratislava: Obzor, 1985, 338 p. 65-064-85.

¹⁹ Balko, L., *História genézy cla v medzinárodnom obchode* [History of the genesis of customs duties in international trade], In: Medzinárodné vzťahy. Vedecký časopis pre medzinárodné, politické, ekonomické, kultúrne a právne vzťahy Fakulty medzinárodných vzťahov Ekonomickej univerzity v Bratislave, ISSN 1336-1562, 2007, roč. V., č. 2, p. 125-146.

²⁰ Cakoci, K., *Colné právo* [Customs law], Žilina: Knižné centrum, 2008, 148 p. ISBN 9788080643195.

²¹ Šimonová, J., *Právna úprava cla v európskej únii – jej špecifiká, perspektívy a negatíva* [Customs legislation in the European Union - its specifics, perspectives and negatives], In: DÁVID, R., SEHNÁLEK, D., VALDHANS, J. (ed.). DNY PRÁVA – 2010-DAYS OF LAW, Zborník príspevkov zo 4 ročníka medzinárodnej konferencie usporiadanej Právnickou fakultou Masarykovej univerzity, Brno: Masarykova Univerzita, 2010. ISBN 978-80-210-5305-2, p. 792-805.

²² Šramková, D., *Celní právo v prostředí globalizace* [Customs law in the environment of globalisation], Brno: Masarykova univerzita, 2011. 108 p. ISBN 978-80-210-5699-2.

²³ Bérešová, G., *Global Strategy of the European Union*, In: Globalization And Its Socio-Economic Consequences: 17th International Scientific Conference: Proceedings (Part I.), Žilina, 2017, p. 131-138. ISBN 978-80-8154-212-1.

²⁴ Prosman, M.; Vysocký, E., *Colné právo: Nový Colný kódex Únie* [Customs law: the new Union Customs Code], Bratislava: Wolters Kluwer SR s.r.o., 2018. 330 p., ISBN 978-80-8168-814-0.

²⁵ Stojáková, M.; Popovič, A., *Clo ako tradičný vlastný zdroj rozpočtu EÚ a právne aspekty jeho úpravy* [Customs duty as a traditional own resource of the EU budget and legal aspects of its adjustment], In: Bratislavské právnické fórum 2018: ústavnoprávne východiska finančného práva, Bratislava: Právnicka fakulta, 2018, ISBN 978-80-7160-475-4, p. 110-119.

²⁶ Daudrikh, Y.; Szakács, A., *Colné právo a menové právo* [Customs and monetary law], 1. vydanie, Bratislava: Wolters Kluwer SR s.r.o., 2022, 148p.

new customs reform has so far been addressed, e.g., by Schippers (2023);²⁷ Pickett and Wolfgang (2023);²⁸ Antonini and Ioachimescu-Voinea (2023);²⁹ Lux (2024);³⁰ ³¹ Lyons (2024);³² Fabry (2024);³³ Grave (2024);³⁴ ³⁵ van Doornik and Groenewoud (2024);³⁶ and Arendsen (2024).³⁷ All of the outputs mentioned in the

²⁷ Schippers, M.L., *Proposals to Reform the EU Customs Union*, *EC Tax Review*, 2023, 32, Issue 6, p. 253-262, <https://kluwerlawonline.com/journalarticle/EC+Tax+Review/32.3/ECTA2023031>, 28 February, 2025.

²⁸ Pickett, E.; Wolfgang, H.-M., *The European Commission's Proposal for a Modernised Union Customs Code: A Brief Introduction*, *World Customs Journal*, 2023, 17(2), p. 132–147, <https://doi.org/10.55596/001c.90961>, 28 February, 2025.

²⁹ Antonini, R.; Ioachimescu-Voinea, M., *EU Customs Reform: A Bridge Over Troubled Waters and Towards Sanctions Harmonization?*, *Global Trade and Customs Journal*, 2023, 18, Issue 11, p. 437-443, <https://kluwerlawonline.com/JournalArticle/Global+Trade+and+Customs+Journal/18.11/GTCJ2023060>, 28 February, 2025.

³⁰ Lux, M., *Import and the Responsible Person(s): What Would Change under the EU Commission's Reform Proposal?*, *Global Trade and Customs Journal*, 2024, 19, Issue 5, p. 348-359, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.5/GTCJ2024046>, 28 February, 2025.

³¹ Lux, M., *Export and the Responsible Person(s): What Would Change under the EU Commission's Reform Proposal?*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 413-419, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024039>, 28 February, 2025.

³² Lyons, T., *The Proposed EU Customs Authority: A New Agency in a new System*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 362-370, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024049>.

³³ Fabry, V., *Customs Undervaluation Through the Prism of the Proposed Reform of the EU Customs Code*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 371-375, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024048>.

³⁴ Grave, J.M., *The Impact of the European Union Customs Reform on the Exchange of Data With Third Countries for the Purpose of International Customs Cooperation*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 420-435, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024051>.

³⁵ Grave, J.M., *The Impact of the European Union Customs Reform on the Origin and the Customs Value of Goods*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 376-390, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024050>.

³⁶ Van Doornik, E; Groenewoud, G., *EU Customs Data Hub: Data-Driven Approach to Customs in an Ever-Growing Digitalised Custom Landscape*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 396-402, <https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GTCJ2024052>, 28 February, 2025.

³⁷ Arendsen, R., *Towards Digital Transformation of EU-Customs?*, *Global Trade and Customs Journal*, 2024, 19, Issue 6, p. 403-412,

previous sentence focus on the legal aspects of the proposed reform, and as can be observed, there are not many of them at this moment. However, given that this is a current issue, it is likely that publications in this area will increase.

2. METHODOLOGY

As stated in the introduction, the present paper will focus on the identification of specific centralising elements of the proposed customs reform in the context of, or in contrast to, the very purpose of the creation and existence of the EU Customs Union, the foundations of which were laid down in the Treaty establishing the European Economic Community. Hence, for the purpose of this research, it is necessary to define the concept of centralisation in its basic features so that the identified centralising elements can be included in its scope. For this reason, we will apply insights from the field of management science. The use of the vertical element of the power sharing parameter, the essence of which lies in the distribution of management powers within the organisational structure along the vertical line, seems to be appropriate.³⁸ Thus, in principle, centralisation occurs when competences are moved upwards along the organisational structure along a vertical line, or when new management competences are created at the top of the organisational structure in general.

In order to achieve the set objectives, scientific research methods will be used. In particular, the historical method will be used to examine the Customs Union arrangements contained in the Treaty establishing the European Economic Community in order to clarify the origins of the Customs Union, its causes and objectives. In the next part, the proposal for an EU customs reform will be analysed to identify the centralising elements, using the methods of grammatical-semantic and systematic interpretation. Finally, the objectives and principles of the creation and existence of the Customs Union will be compared with the elements identified in the second part using a comparative method. The research will result in an assessment of the evolutionary trend of the Customs Union, i.e. whether the centralisation processes are in line with the objectives and principles on which the Customs Union was originally created.

<https://kluwerlawonline.com/journalarticle/Global+Trade+and+Customs+Journal/19.6/GT CJ2024047>, 28 February, 2025.

³⁸ Blažek, L., *Management: Organizování, rozhodování, ovlivňování. 2., rozšířené vydání* [Management: Organizing, Deciding, Influencing. 2nd, expanded edition], Praha: Grada Publishing, a.s., 2015, p. 5.

3. ESTABLISHMENT OF THE EU CUSTOMS UNION IN THE CONTEXT OF THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY

The EU customs union can be characterised as a Community customs territory with the abolition of customs duties at the internal borders of the Member States, a common external customs policy and tariff, common rules of origin for non-EU goods and a common definition of customs value.³⁹ However, the Customs Union has had to go through a gradual evolution to get to its current form, and it is clear, even in the light of the published Customs Reform, that its evolution is not yet completed.

The emergence and development of the EU Customs Union must be seen in the context of the events following the end of the World War II and in the context of the efforts of European countries to create integration associations in the field of trade, primarily to increase economic interconnectivity between the individual states. This economic integration was ultimately intended to increase the likelihood of maintaining peace. Cooperative efforts led to the signing of the Treaty establishing the European Coal and Steel Community (the 'Treaty of Paris')⁴⁰ in 1951, which subsequently led to the creation of the European Coal and Steel Community (ECSC) in 1952. The founding countries were France, West Germany, Italy, Belgium, Luxembourg and the Netherlands. The aim was to create a common market in the trade of steel, coal, coke, iron ore and scrap. Subsequently, in 1957, the so-called Treaties of Rome were signed. These were the Treaty establishing the European Economic Community (EEC Treaty) and the Treaty establishing the European Atomic Energy Community (EAEC Treaty)⁴¹. The first of these treaties must be regarded as the initial legal act on the basis of which the customs union was gradually built up, evolving into the current form of the EU Customs Union.

As mentioned above, the Treaty establishing the European Economic Community (hereinafter referred to as "EEC") is one of the so-called Treaties of Rome, signed in 1957 to deepen cooperation between European states and to create common institutional structures. The EEC Treaty itself must be considered as a comprehensive source of international law (or, from the perspective of today's legal theory, European law). Already in its Part I it discusses principles. According

³⁹ Šramková, D., *Celní právo ve světle 40. výročí celní unie* [The customs law and the 40th anniversary of the Customs Union], In: Dny práva - 2008 [Days of Law 2008], Brno: Masarykova univerzita, 2008, p. 349.

⁴⁰ Treaty establishing the European Coal and Steel Community of 18 April 1951.

⁴¹ Treaty establishing the European Atomic Energy Community of 25 March 1957.

to Article 2, the mission of the Community (EEC) is to promote, through the establishment of a common market and the gradual approximation of the economic policies of the Member States, the harmonious development of economic activities throughout the Community, continued and balanced growth, increased stability, an accelerated rise in the standard of living and closer relations between the Member States. Furthermore, Article 3 names the specific Community activities which were intended to achieve the objectives defined in Article 2. Among other things, Article 3 lists the following actions:

- "the elimination of customs duties and quantitative restrictions on imports and exports of goods between Member States, as well as any other measures having equivalent effect,"
- "the introduction of the Common Customs Tariff and the Common Commercial Policy in relation to third countries,"
- "the approximation of the laws of the Member States to the extent required for the proper functioning of the common market."

It follows from the above that the establishment of the Customs Union was one of the integral parts of the newly emerging Community. At the same time, the attributes of the Customs Union were already clearly defined in the EEC Treaty itself, i.e. the actions and activities that the Member States were to undertake in order to ensure the establishment and functioning of the Customs Union itself, i.e. the elimination of tariffs and restrictions on the import and export of goods between the Member States and the introduction of the Common Customs Tariff and trade policy towards third countries. In addition to the above activities, this also includes the general activity of approximating the law of the Member States to ensure the proper functioning of the common market, which also includes the proper functioning of the customs union. Under Article 7 of the EEC Treaty, the common market was to be established within twelve years of the signing of the Treaty, a period divided into three relatively distinct phases, each of which was to last four years. The process of establishing the Customs Union also reflected the division into these stages. In terms of content, however, the process of the establishment of the Customs Union can be divided into two categories.

The first category is characterised by the process of regulating customs relations between Member States. This involved refraining from introducing any new export and import tariffs or duties with equivalent effect between themselves, as well as increasing those already applied in mutual trade. At the same time, the Member States undertook to abolish customs duties and all charges having equivalent effect which existed between them up to that time. The process of abolition of customs duties and charges having equivalent effect was to be gradual, the details of which were laid down in a directive issued by the Commission.

The second category included the regulation of the customs relations of the EEC Member States with third countries. To this end, the Member States agreed, within the meaning of Section 1 of Chapter 1 of the EEC Treaty, to create and implement a Common Customs Tariff. However, this was preceded, in accordance with Article 23 of the EEC Treaty, by a gradual adjustment of customs tariffs in relation to third countries, which led in stages to their final unification.

The institutional aspect of the formation of the EEC and its Customs Union cannot be overlooked in the analysis carried out. As it is generally known, four basic bodies with their own competences were created within the EEC. These were the Assembly, the Council, the Commission and the Court of Justice. Their status and competences are mainly dealt with in Part Five of the EEC Treaty. The Assembly was set up as a collective body made up of representatives of the individual Member States, with mainly advisory and supervisory powers. The most important of these was the ability to vote of no-confidence in the Commission. In the area of customs, the Assembly had only an advisory role, which is defined in Article 14(7) of the EEC Treaty. Under that provision, the Council, acting unanimously on a proposal from the Commission and after consulting the Assembly, may amend the other provisions of that Article dealing with the process of progressive tariff reduction between Member States.

The second of the fundamental institutions was the Council. It was a body made up of representatives of the governments of the Member States. The Council was set up to ensure the coordination of the general economic policies of the Member States, with the power to take decisions. In the area of the Customs Union, the Council was granted significant approval powers in the EEC Treaty. In particular, the approval of directives within the meaning of Article 14(2)(c) of the WEEA, the purpose of which was to schedule tariff reductions between Member States under the third stage. In addition, the Council could subsequently approve directives proposed by the Commission in order to address ad hoc problems that may have arisen in the process of reducing reciprocal tariffs. At the same time, the EEC Treaty, in the aforementioned provision of Article 14(7), granted the Council the right to amend the provisions of this Article unanimously, on a proposal from the Commission after consultation of the Assembly. The Council thus has *de facto* the right to amend a specific part of Community primary law. Furthermore, in the context of the implementation of the Common Customs Tariff, the Council had the right to resolve technical difficulties in the process of setting the common customs tariffs, on a proposal from the Commission. The use of this power was time-limited to two years after the entry into force of the EEC Treaty. Under Article 25(1) of the EEC Treaty, the Council could decide, on a proposal from the Commission, to reduce customs duties on specific types of goods in cases where the production of those goods in a Member State was insufficient to supply it and where that supply

was heavily dependent on imports from third countries. Lastly, the Council could decide, under Article 28, on any autonomous modification or suspension of customs duties under the Common Customs Tariff. It is clear from all the above-mentioned powers in the field of the Customs Union or Customs that the Council's main decision-making functions consisted in the adoption of common legislation - directives. At the same time, the Council adopted the legislation and decisions referred to above, but the Commission was the initiator or submitter of the legislation and decisions. The Council thus had no executive powers and did not act in an institutionally superior capacity vis-à-vis any authority of a Member State.

The third newly created institution was the Commission. It was a collective body with a total of nine members. In principle, it was the central body of the executive power of the European Economic Community. From the powers of the Council and the Assembly described above is clear that one of the most important powers of the Commission was that of legislative initiative. Under Article 155 EEC Treaty, the Commission ensured the application of the EEC Treaty itself; gave recommendations or opinions where the EEC Treaty so provided or where the Commission considered it necessary; took decisions and participated in the formulation of measures adopted by the Council and the Assemblies; and exercised the powers delegated to it by the Council. Of the institutions of the European Economic Community discussed so far, the Commission has had the most significant role in the field of customs. In addition to the drafting powers already mentioned, as provided for in Article 14(7), Article 25(1) of the EEC Treaty, the Commission had the following powers:

- Art. 14(6) - power to make recommendations to Member States if they fail to reduce their mutual duties in accordance with an agreed timetable;
- Art. 15(2) - power to make recommendations to Member States that have voluntarily opted for faster reductions in reciprocal tariffs;
- Art. 17(4) - power to allow a Member State to maintain a fiscal duty in force for a maximum period of 6 years from the entry into force of the EEC Treaty, if its abolition causes serious difficulties;
- Art. 20, 21, 22, 25, 26, 27 and 28 - powers to decide, coordinate and make recommendations in relation to the implementation of the Common Customs Tariff. All these powers are directed to the Member States as a whole.

This gave the Commission significant decision-making and coordination powers, including in the field of customs. However, like the previous institutions of the European Economic Community, the Commission had no direct or managerial powers over the customs authorities of the Member States. As one of the EEC

bodies, the Commission participated in the process of adopting secondary EEC legislation and issued decisions which were binding on individual Member States but not on their national authorities.

The Court of Justice is the last of the EEC's fundamental institutions. Under Article 164 of the EEC Treaty, the purpose of the Court of Justice was to ensure compliance with the law in the interpretation and application of the Treaty itself. The Court of Justice's role was to rule on infringements of the EEC Treaty by individual Member States or by the EEC institutions themselves, at the instance of a Member State or the Commission. Under Article 173 of the EEC Treaty, the Court of Justice examined the legality of legal acts adopted by the Council and the Commission (except for opinions and recommendations). To this end, the Court has ruled on actions for lack of jurisdiction, infringement of essential procedural requirements, infringement of the EEC Treaty or misuse of powers. These actions could be brought by Member States, the Council or the Commission and, in certain circumstances, by private individuals and legal persons. It is essential that the judgments of the Court of Justice were enforceable under the procedural law of the State in which the decision was to be enforced. However, apart from these general decision-making powers, the Court had no specific powers in the customs field. That is to say, it was not in a position of functional superiority to the customs authorities of the Member States.

In general, it can be concluded that, although the Member States gave up some competences under the EEC Treaty in order to establish a common customs union, it cannot be said that there was a centralised customs administration at that time. The Common Customs Union at that time was based on the coordination of customs policies between individual Member States among themselves and the EEC as a whole with third countries. To this end, the Common Customs Tariff was created and adopted. However, the exercise of customs administration depended solely on the individual Member States and their customs authorities, without the possibility of direct intervention by the EEC authorities.

4. EU CUSTOMS REFORM UNVEILED IN 2023

In the era referred to as the industrial "digital" revolution 4.0, there is a massive implementation of technological advances in everyday life to simplify or streamline routine activities. There is also a certain reflection on the emerging e-commerce. E-commerce has revolutionised the interaction between consumers and businesses, which is of great benefit to the EU economy as a whole. This

explosive growth in e-commerce⁴² has also multiplied the challenges associated with it. Such challenges include the risk of harm to consumers' health and safety due to non-compliant products, the risk of environmental damage, the negative carbon footprint, as well as many others that are not the subject of this paper. The realisation that customs authorities need to respond more flexibly to these challenges, to contribute more significantly to improving the economic environment, and in particular by ensuring the smooth flow of trade while carrying out the required level of controls to protect the health and safety of all EU citizens, led the EU Commission in May 2023 to propose an ambitious package of customs reforms⁴³ aimed at changing the structure of customs authorities and thereby fundamentally improving and strengthening their position. The role of customs authorities is primarily to supervise the movement of goods entering the customs union and to control their security. Very often, these are dangerous products that pose a serious safety and health risk to consumers, have an unsustainable impact on the environment and promote unfair competition, which has a significant impact on the EU's competitiveness in various sectors. It is becoming increasingly clear that current customs procedures and instruments are no longer fit for purpose, in particular they are unable to handle efficiently the huge volume of consignments generated by e-commerce in particular. E-commerce already accounts for more than 97% of all customs import declarations.⁴⁴ In line with the above, the number of speculative practices that have sought to exploit or outright abuse the imperfections of the current customs union arrangements have also increased. First of all, it is important to recognise that customs authorities have a fundamental and important position by virtue of the fact that they are essentially 'on the front line', providing protection at the border against the importation of non-compliant and potentially dangerous products. Although the European Commission, in an attempt to respond comprehensively and effectively and thus avoid the negative phenomena associated with e-commerce, has begun to promote wider and more intensive cooperation between customs authorities. In our view, this is a legitimate process, in an effort to ensure that customs authorities act as one and thus ensure

⁴² Digitalisation is also manifesting itself in the fact that national central banks are developing their own digital currencies along the lines of crypto-assets, which may trigger further changes in the field of research in the future. For more details see: e.g. Nieborak, T., *Central Bank Digital Currency as a New Form of Money*, In: Białystok Legal Studies, vol. 29, no. 1, p. 189-203, https://bsp.uwb.edu.pl/wp-content/uploads/2024/05/189_Book-BSP-2024-29-1.pdf, 28 February, 2025.

⁴³ The reform consists of a number of draft legislative acts amending and supplementing existing ones in both the customs and tax areas.

⁴⁴ European Parliament, REPORT A9-0065/2024 on the proposal for a regulation of the European Parliament and of the Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013 (COM (2023) 0258 – C9-0175/2023 – 2023/0156(COD)), https://www.europarl.europa.eu/doceo/document/A-9-2024-0065_EN.pdf, 28 February, 2025.

that the fundamental priorities in the customs area are met. Above all, cooperation between customs authorities must be improved and the EU must act as one in customs matters at international level. To achieve this ambition, the European Commission is proposing to establish two key instruments in the framework of the customs reform.

The EU Customs Data Centre, designed as a central element of the Customs Union, which is essential for strengthening supervision and simplifying customs procedures. It should gradually replace the existing customs IT infrastructure. It should bring annual savings of up to €2 billion to the EU and its Member States in the development and maintenance of IT systems.⁴⁵ The EU Customs Data Centre should also perform risk analysis at EU level to achieve more effective protection of its external borders. In this sense, it should improve the efficiency and coordination of customs operations through better management and exchange of data between Member States and other stakeholders. It also acts as a new tool that processes, links and stores information and carries out risk analysis at EU level. All of this should give customs authorities a better understanding of the supply chain when assessing risks and allow customs action to be more targeted and strategic. In addition, it should apply the rules on data protection, access to information, IT security and confidentiality in a horizontal, coordinated and consistent manner. The EU Customs Data Centre will be developed progressively, starting with a new approach to e-commerce. Across the trade chain, businesses would be able to start using the EU Customs Data Centre from January 2032, with mandatory use from 2037, when it should be fully operational.

The EU Customs Data Centre should keep personal data for a maximum of ten years. This period is justified in view of the possibility for customs authorities to notify a customs debt up to ten years after the necessary information on a shipment has been obtained, as well as to ensure that the EU Commission, OLAF and customs and other authorities can cross-check the information in the EU Customs Data Centre with information stored in other systems and information exchanged with other systems. In addition, this period should be aligned with the retention period required by other legislation applied by the customs authorities, where such legislation is relevant for customs controls.

As the objective of the paper already shows, it is possible to see a centralising element at this point, precisely through the introduction of the Customs Data Centre, which is, in our opinion, essential, since the European Commission will have to coordinate customs procedures and customs controls, prioritising products from third countries with a security and non-compliance risk, which are purchased

⁴⁵ *Ibid.*

through online markets and sent directly to consumers in the EU. In fact, if we look at the issue of "centralisation" from a broader perspective, its aim is to address the lack of compliance and to ensure that non-compliant and unsafe products do not reach the market, and subsequently the consumer, precisely by control from above by a single authority.

However, crucial to our analysis is the creation of an EU Customs Authority,⁴⁶ whose main function should be to pool the expertise and competences that are currently scattered across the EU in order to guide, coordinate and support national customs authorities in the EU. In order to ensure the efficient functioning of the EU, the EU Customs Authority should play an important role in simplifying customs rules and procedures. The EU Customs Authority is also designed as a central operational capability to enable coordinated management of the Customs Union in specific areas. This centralised management increases the efficiency and uniformity of customs operations across Member States, which is essential to ensure consistency and predictability in customs procedures. One of the main benefits of the EU Customs Authority is its ability to take into account and manage the growing number and complexity of non-financial risks, which relate to various aspects such as safety, security, sustainability, human, animal and plant health and life, the environment and the protection of human rights.

The EU customs reform itself is materialized in the Proposal for a Regulation Of The European Parliament And Of The Council establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013 (hereinafter referred to as the "EU Customs Reform Proposal"). The EU Customs Reform Proposal is divided into 15 chapters. The creation of the EU Customs Authority and its legal status is regulated in Title XII. This is a broad description of the objectives, mission and tasks that the EU Customs Authority will be required to carry out. In terms of its competences, risk management in accordance with Title IV, Chapter 3 of the EU Customs Reform Proposal is relevant to our analysis.⁴⁷ Under Article 51(5)(e), the EU Customs Authority shall develop and carry out a joint risk analysis to generate risk indicators, risk analysis results and, where appropriate, issue control recommendations and other appropriate mitigating measures to customs authorities, including for the purposes of applying the common priority control areas and common risk criteria and standards established by the Commission and for dealing with crisis situations.

On the other hand, under Article 51(6)(g), the (Member States') customs authorities are obliged to implement the risk indicators, the results of the risk

⁴⁶ *Ibid.*

⁴⁷ Regulated by Article 208(1) of the EU Customs Reform Proposal.

analysis and the control recommendations generated by the EU Customs Authority. In addition, under Article 52(6)(h), the customs authorities of the Member States are required to provide justification to the EU Customs Authority in case a control recommendation has not been implemented. Thus, it follows from the above provisions that the EU Customs Authority has some competence over the customs authorities of the Member States in the area of risk management. However, this is an indirectly formulated competence, since the European Commission used the expression 'making recommendations' in its creation, which corresponds to the obligation of the customs authorities of the Member States to 'implement' those recommendations. However, the EU Customs Reform proposal implicitly accepts that the Member State's customs authority will not ultimately be required to implement the recommended control. In such a case, the customs authority concerned will have to provide the EU customs authority with a justification for not carrying out the recommended control. This is a very vague rule, as it is not clear from the proposal who will assess the sufficiency of the justification for not carrying out the recommended check and on what basis. In addition, it should be noted that the European Commission should have the power under Article 51(1) to establish common priority control areas and common risk criteria and standards for any type of risk, including, but not limited to, risks related to financial interests. This means that the European Commission should have a kind of strategic competence that should be translated into the concrete activities of the EU Customs Authority and, consequently, into the activities of the customs authorities of the Member States, including in the framework of controls. The European Commission will thus have indirect executive powers vis-à-vis the customs authorities of the Member States.

5. CONCLUSION

The analysis contained in the present paper focused on the issue of the EU Customs Union - specifically on the impact of the customs reform introduced on 17 May 2023 on the institutional and functional hierarchy of the EU Customs Union. In the first part of the paper, the Treaty establishing the European Economic Community was analysed with a narrower focus on the issue of the establishment and formation of the EU Customs Union. Within the analysis, the provisions concerning the competences of the different organs of the European Community were discussed. The analysis showed that the common Customs Union at that time was based on the coordination of customs policies between the individual Member States among themselves and the EEC as a whole with third countries. To this end, the Common Customs Tariff was created and adopted. However, the exercise of customs administration depended solely on the individual Member States and their

customs authorities, without the possibility of direct intervention by the EEC authorities.

Subsequently, in the second part of the present paper, the customs reform of 2023 has been discussed. From the perspective of the analysis of the competence changes, the creation of the EU Customs Authority appears to be key. The powers that should be assigned to it on the basis of the published proposal are essential. The analysis shows that the EU Customs Authority will have the power to issue recommendations for the implementation of controls, while the customs authorities of the Member States will be obliged to implement or execute these recommendations. On the other hand, the draft customs reform allows the customs authorities not to implement such a recommendation, but in such case, they are obliged to duly justify their refusal. However, the practical assessment of the sufficiency of such justification is questionable. Furthermore, the reform would give the European Commission executive powers at a strategic level to prioritise controls. In such case, the European Commission would have indirect functional competence vis-à-vis the customs authorities of the Member States. In conclusion, the eventual approval of the customs reforms as published would increase the degree of centralisation of customs in the EU.

We do not consider the centralising elements of the published reform to be a priori negative. In our view, although customs authorities play a key role in ensuring balance and supporting legitimate trade through supply chain control, their role has changed significantly over the last decade, also due to digitisation and the e-commerce boom. Customs authorities themselves face new challenges such as increasing the competitiveness of EU operators, improving the economic environment, in particular by ensuring a smooth flow of trade while carrying out the required level of controls to protect the health and safety of all EU citizens. These challenges are also in response to the growing trend of imports of illegal, dangerous and harmful goods passing through the customs territory, to which they need to react flexibly.

It is for these reasons that the European Commission has proposed a series of structural changes and measures to the regulatory framework, with a particular focus on reforming the customs system to empower customs authorities, with a high priority on taking coordinated enforcement action against the surge in dangerous, counterfeit or otherwise substandard products being sold online and imported into the EU. To be effective, targeted and efficient, change must be coordinated centrally. It must be based on uniform rules. It is for this reason that we see the centralisation element as rational and positive, all things considered, on the part of the European Commission. Customs procedures, customs controls and methods should and must be mutually harmonised and coordinated. However,

flexibility on the part of legislators who are not sufficiently dynamic in reacting to these changes, which may ultimately affect the EU's financial interests, also seems to us to be very problematic.

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