

Balance of Competence Review

Free Movement of Goods Review.

The **balance of competences** between the EU (and the European Commission) and the Member States (MS) can be divided (although not neatly or precisely) into three distinct areas:

- Global or international
- Extra EU
- Intra EU

International

Competence for the first area must clearly lie with the EU. The adoption and implementation of internationally agreed standards (United Nations, World Customs Organization, International Standards Organization), conventions (ICAO and IATA, IMO, IRU), and other international instrument, norms and good practice must be conducted in a uniform manner to ensure success. The EU can and should promote and encourage this consistent and harmonized approach. To allow the individual MS independent action could result in unequal implementation and in the worst case the adoption of differing, competing standards as in the instance of e-invoicing in Denmark and Finland.

Extra-EU

In the second area competencies should be shared and allocated where the value can be added to EU processes and the best result can be achieved through national procedures. The EU must recognize and acknowledge the diverse nature of membership. MS have traditional, cultural and trading differences that enrich the Union. A further distinction is geographic such as landlocked States (Austria, Czech Republic, Slovakia) and island States (Cyprus, Malta, Ireland, UK) and the location of the external border (Finland, Poland).

Consequently, when considering issues relating to transit the experience and knowledge and competencies of the landlocked MS should carry greater weight in discussions and decisions making. Equally when procedures about the import and export of goods are being formulated, the competencies of MS with an external border must be given careful consideration.

Intra-EU

For intra EU movement of goods (and services) the competence should fall with the EU remit. The EU institutions should now devote resources to perfecting the Single Market created over 20 years ago. Here the EU can ensure the aspirations of MS can be realised by

introducing policies, regulations and administrative procedures that genuinely offer the free movement of goods, free of **technical barriers** to intra EU trade. In many instances national standards, over and above EU requirements, are imposed on products from other MS resulting in distortion of trade and in the worst case scenario a form of national protectionism in complete contradiction conflict with the concept of free movement.

Single Market

To perfect the Single Market the EU should employ its undoubted competencies to develop a policy, with proportionate regulation, to move from the destination-based to an origin-based system for Value Added Tax (VAT). To many observers it seems the height of folly to allow goods to move freely within the EU border effectively free of tax. To many this situation is a positive incentive to commit fraud, and some do with the EU then spending vast amounts of its budget trying to combat the activity it encourages. With a single stroke the EU could reduce the level of fraud and result in MS collecting more tax by receiving from economic operators the correct revenue.

The fundamental principle of a value added tax system is that the tax is levied on consumption. This basic rule remains with an origin-based system where the VAT 'sticks' with the customer or end-user. However a 'clearing house' mechanism at the macroeconomic level would need to be designed to overcome the potential problem of a diversion of trade to MS with the lowest VAT rate for a particular product or service. The clearing house could be used to ensure a redistribution of internal market tax revenues based on an agreed formula where manufacturing or distributive trades proliferate in an individual MS economy or there are high levels of consumption for a specific product or service because of traditional or cultural lifestyle.

The idea of a clearing house mechanism (floated at the time of the creation of the single market) is now more attractive and feasible with the introduction (at least in eleven MS) of a single currency and greater fiscal and monetary consolidation in the eurozone. Given the undoubted competencies of the European Union and its institutions it should not be beyond the ability of EU to develop and implement an origin-based VAT system for the benefit of MS, economic operators and citizens.

Balance between trade facilitation and regulation

The balance between trade facilitation and regulation is, on the whole, right. However, in some instances the EU tends to micro manage procedures through over complicated regulation. For example the regulations for a Border Inspection Post (BIP) excessively prescribe the design and operation of the facility. In most cases the requirements do not encourage or promote the co-ordination of border controls with Customs administrations and other authorities and agencies that operate checks and inspections at the external border.

On this point - as Customs administrations move away from border to systems based audit control - an increasingly holistic approach is being adopted of controlling economic operator and not the individual trade movements. However as customs have left a vacuum at the border it has been quickly filled by other authorities and agencies that see the border as the

natural place to perform their controls. This is in direct contradiction to both the spirit and the regulatory operation of the EU.

On some occasions the EU insists through regulation of a one-size-must-fit-all approach. This can often result in MS that have introduced trade facilitation measures taking retrograde steps to comply with the regulation. As examples Sweden (the Stairway approach) and the UK (temporary import and export facilitation measures, period entry) have to regress to the minimum core requirement or more accurately to the lowest common denominator of trade facilitation. Here the EU should respect the competencies of the MS and be more imaginative and innovative in proposing procedures for the control of the movement of goods.

Legal

Any review of the balance of competencies within the four freedoms enshrined by the treaties of the EU, must tackle the thorny issue of legal jurisdiction. The majority of MS apply Roman Law (sometimes referred to as Napoleonic Codified Law) although application is far from uniform. The UK applies Common Law supported by the concept of Precedent and this system is replicated in some other MS or is administered in an adapted form due to local historic, traditional and cultural reasons.

The mix of legal jurisdiction means the EU and its institutions must acknowledge and accept the differences in the way EU law is applied and administered. Where the EU has competency for strategic policy development or the drafting of implementation regulations and administrative rules its officials must be aware and fully appreciate that laws and regulations will be adopted and transposed into national legislation according to the dictates of the legal system of the individual MS. This situation, frustrating though it must be at times, protects and serves wishes of the citizens of the MS. Also the situation militates against the imposition of 'one-size-fits-all' policies and laws for enhancing and deepening the Union; recognition must be given to the individual legal structure of the MS.

As the EU looks eastward for the enlargement, the issue of legal jurisdiction can only increase in complexity. Application nations on the eastern border have a recent tradition of a centralised, command legal system based on the tenets of communist doctrine. To the southeast Turkey, although an avowed secular society, has a legal system based on the fundamental teachings of Islam supported by the dictates of the text of the Koran. Any enlargement to the east or southeast will place greater emphasis on ensuring the balance of competencies between the MS and the EU and its institutions is properly maintained, proportionately and practically applied, and protects both the Union and its citizens.

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