

Dassonville and Cassis de Dijon – as the basic jurisprudence of the free movement of goods

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Abstract

One of the main tasks of the EU is to create a common market to achieve the objectives set out in Article 2 of the Lisbon Treaty. These include the creation of a customs union and a single market, at the core of which are the four fundamental freedoms of the EU Treaty, which are:

free movement of goods under Articles 28, 29, TBE,

free movement of persons in the form of free movement of workers (39 TBE),

freedom of services, regulated in Article 49 TBE

free movement of capital, regulated in Article 56 TBE.

Free movement of goods serves to create a common customs market and a unique borderless market. The customs union, the common market and the free movement of goods pursue the objective of ensuring free competition between goods from Member States, which is not distorted or hindered by state norms. These distortions of competition or skill can be:

> In-kind fee (Customs, tax), or

> Quantitative restrictions on cross-border movement of goods, or

> Measures that have the same effect as quantitative restrictions.

In the context of the above, the main purpose of this article is the analysis of the free movement of goods based on two of the basic decisions of the ECJ, such as Dassonville and Cassis de Dijon.

Keywords: Lisbon Treaty, freedom of goods, Dassonville, Cassis de Dijon, ECJ.

Introduction

In the context of the free movement of goods, EU legal procedures act against obstacles tariff and quantitative measures or measures having the same effects, with the primary aim of goods produced and traded in the EU to be included in a common market without internal borders and free competition, so that only consumer preferences and product quality determine their success, and not the origin of one or the other state. High quality products that meet the interests of consumers should expand their activity without hindrance even outside the EU market. Other traders and manufacturers of goods are obliged to produce and trade similar high quality goods. This brings a full distribution of economic resources, increasing the wealth and well-being of member states. Those states which give priority to their national production, or trade in these products, as opposed to foreign products, and that hinder the export of domestic goods, harm their economy and prevent the positive welfare effects that may arise from free competition in the Community market.

This principle of unlimited competition in the internal market is based not only not only on the free movement of goods, but also on other fundamental freedoms of the EU.

Work is one of the factors of production, one of the basic elements which is used to produce good materials. This factor of production may have been valued more in

some areas than in others and it would be so if there is an oversupply of supply over demand, such as in southern Italy, and an oversupply of supply over supply in a certain part of Germany. In this situation, the work is more valuable in Germany than in Italy. The value of working within the community as a whole, thus, it will become maximum or at least close to the maximum value, if workers move freely within the market, in the area where they are most valued. Let's take another example, this time of a business which is headquartered in the Netherlands and is considering setting up a branch in France. The idea is that if a firm which is established in the Netherlands and believes you can cover parts of the French market, the possibility of relocation is related to allowing the establishment of a business there, and in this case EU law plays the primary role of creating a truly common market by preventing the rules of French law, which discriminate on the basis of nationality. The economic theme of optimal resource allocation also highlights this area. Although in a slightly different way than in the case of workers a fairly simple argument can be brought up. If the Dutch firm is correct and more effective than its French counterpart, the latter may lose part of its trade — or be forced to go bankrupt. If we take the extreme example, the French firm is forced to close, because its Dutch competitor is more efficient, then the economic resources used by the French firm to date they will be redistributed by the market mechanism for some other uses and ventures where they are most valuable. In this sense, the resources of the community as a whole will increase.

As quantitative restrictions on trade between Member States have been reduced, as a consequence of the activity of the ECJ, the main importance of Articles 28 and 29 of the EU within the freedom of goods lies in the prohibition of “measures having the same effect”, within quantitative restrictions. As mentioned above, the national law of a member state may impede imports of goods from foreign countries or make it difficult for companies to export. The fact that the latter is regulated in Article 29 TBE. As countries tend to promote rather than hinder exports, cases of export freedom in practice are much fewer than import restriction. Export restrictions may be imposed on exporters in the country on condition stricter legal than domestic entrepreneurs offering his goods locally. In the past, the ECJ interpreted export freedom more narrowly than import freedom, and considered it only as a discrimination, while the freedom of import as a discrimination, but also as a restriction. This unreasonable attitude has been changed by the ECJ to the freedom of services and is already expected to change to another fundamental freedom, that of goods.

Dassonville, Decision no. 837 of the ECJ dated 11.7.1974

Case: The object of the process was a Belgian provision prohibiting the importation of goods, if the importers could not present an official certificate of origin. Such a certificate could be obtained without serious difficulty, only from those importers who received the goods directly from the country of origin. Belgian trading company *Dassonville* imported Scotch-Whiskey Real to Belgium, which bought it from a French import company, but without the presence of the necessary certifications. For such a violation, a criminal case was initiated against the owner of the company. The Court of First Instance in Brussels, as a result of the incompatibility of the Belgian

provision under Article 28 of the TEU, requested the ECJ in a preliminary process to decide on the matter. In the *Dassonville* judgment, the ECJ defined very broadly the restrictions on the free movement of goods: Any (non-discriminatory) rule of the Member States, “which is appropriate, to directly or indirectly hinder trade within the community concretely or, potentially”, is classified as a “measure having the same effect” as the prohibition of restriction on import freedom. According to this formula there is a very wide field, almost incalculable regulation of national legal systems subject to control through the free movement of goods. There are very few national rules, which, indirectly and potentially, have no impact on the free movement of goods. If we apply this formula to other fundamental freedoms, then this field expands even further.

Cassis de Dijon, ECJ Decision no. 120 dated 20.2.1979

Case: The company, Rewe in September 1976 asked the Federal Administration of the German Monopoly for wine brands, a license, to bring from France a consignment of *Cassis de Dijon* liqueur to the German market and to sell it. *Cassis de Dijon* in France has an alcohol content of 15-20%. Under the German wine brand monopoly law, wine brands are allowed to have an alcohol content of at least 30%, while for fruit liqueur there is the exception for a minimum alcohol content of only 25%. The German authorities refused to allow the trade of this liqueur, because it was contrary to national legal provision. In the reasoning of the German federal government for the application of this rule, it is stated that the legal provision is applicable, regardless of both domestic and imported products. In addition, allowing the marketing of liqueurs with different alcohol percentages leads to alcohol consumption and the promotion of alcoholism.

The *Cassis de Dijon* judgment confirmed the broad definition of free movement of goods, as a restriction prohibiting the *Dassonville* decision and the concept of “compelling reasons of public interest” was introduced, which is suitable for passing a strict proportionality test to justify the violation of fundamental freedoms. As mentioned above, these are mandatory requirements for an open category, which was supplemented by the ECJ in further decisions with other protective criteria.

The *Cassis de Dijon* ruling created the so-called “principle of recognition” or “country of origin principle”. A product that has been manufactured in accordance with domestic legal standards in a foreign country a Member State (of origin) must not contain an additional regulation of the host state of the goods. The host country should recognize the regulatory standards of the country of origin and should not restrict them. An exception to the principle of recognition is achieved only when the rule of the state the host proportionally justifies a justifying condition, whose realization is not guaranteed by the rules of the country of origin.

Conclusions

From what was analyzed in this article, the fundamental freedoms of the European common market were designed largely extensively by the ECJ with the *Dassonville* and

Cassis de Dijon decision, which met with considerable criticism in the literature and politics. This critique has contributed to a change in trend, among others, especially in the jurisprudence of the ECJ, accompanied by the Keck judgment and subsequent judgments. In this decision, the ECJ begins to consider the rules of national legal systems, which should not be subject to the control of fundamental freedoms and thus establishes a recent trend. How far can and should the review of fundamental freedoms go by the ECJ, on the one hand, the issue of the competences of the ECJ and its legislation must be taken into account in the form of directives and directives as well as competencies between the EU and member states, and on the other hand legal issues of policies for further development of the EU system. In a deeper analysis, the fundamental freedoms themselves are vaguely formulated. Whether they will be determined as at the beginning - the development of EU law - as a simple prohibition of discrimination - or further - as a prohibition of any restriction on the common market, then, this will be determined by the ECJ. The case law of the ECJ practically shows a relatively broad interpretation of the scope of application of fundamental freedoms and thus severely limits the legal powers of the member states.

Almost every area regulated by national law, which lies in a relationship with the common market, regulated through ECJ decisions. It becomes an instance, a monitoring body of the entire national law of the member states.

Second, such a broad interpretation of fundamental freedoms implies that the scope of action of EU legislation will also be limited. The ECJ has expanded its powers through the interpretation of fundamental freedoms, thus not only at the expense of the competencies of the member states, but also at the expense of EU legislation. This trend is worrying, not only by the member states, but also by the EU institutions, as their competencies are limited by this institution without having to obtain their consent, although this institution has no democratic legitimacy (this is the ECJ).

EU legislation has an indirect democratic impact because: The EU Council is made up of officials, who are members of the governments of the member states and that by participating in the European Parliament they influence the preparation of EU legislative acts. The ECJ, meanwhile, plays a role in establishing EU secondary law (Directives, Ordinances) as well as fills legal vacuums and fulfills tasks that belong to the legislature.

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