

## **IMPLEMENTATION OF THE EU LAW ON THE INTERNAL MARKET IN SPAIN**

**Pavel Biriukov** \*

---

### ABSTRACT

*The article deals with questions of implementing of EU law in the field of the internal market in Spain. The author outlines key documents regulating the implementation of EU law in Spain. Main attention is paid to the description of the existing concept of the relationship between the international law and the domestic law of Spain. The author describes the legal mechanism of the implementation in Spain of EU law. The article explores the role of public authorities of Spain in the implementation of EU documents in the common market.*

---

---

\* Professor at Voronezh State University, Department of Law

## 1. INTRODUCTION

Common Market, Single Market, Internal Market: the changes to the name over the years reflect the dual phenomena of the deepening and enriching of the big European market. While it deepened around the four major freedoms of movement of persons, goods, services and capital, it was also complemented and enriched by the consolidation of economic integration, the creation of a single currency and the development of the cohesion policy. A cohesion policy to support the single market is essential to ensure that all citizens, regardless of where they live, can benefit from and contribute to it.

The internal (common) market of the EU is:

- a) an area without internal frontiers in which persons, goods, services and capital can move freely, in accordance with the Treaty establishing the European Community;
- b) essential for prosperity, growth and employment in the EU, contributing to the achievement of its objectives under the Lisbon strategy;
- c) as an integrated, open and competitive area, it in fact promotes mobility, competitiveness and innovation, interacting in particular with the EU sectoral policies.

To ensure that everyone, citizen or business, can make the most of the advantages of the common market, the EU concentrates on dismantling barriers still impeding its operation. It seeks to harmonize legislation in order to improve its response to the challenges of globalization and to adapt to advances, such as the new technologies.

## 2. THE EU LAW ON THE INTERNAL MARKET: GENERAL PROVISIONS

The EU law of the internal market includes:

- a) concept and principles of the internal market; the concept of “internal market”; principles of the internal market;
- b) freedom of movement of goods; definition of “goods”; freedom of movement of goods; restrictions on the movement of goods;
- c) freedom of movement of persons, contents of movement of persons, the right to live, exceptions to the principle of free movement, freedom of establishment of legal entities, the recognition of diplomas and qualifications;

- d) freedom of movement of services, the concept of “service”, the content of the freedom of movement of services, restrictions on freedom of movement of services;
- e) freedom of movement of capital, the concept of “movement of capital”, the content of the movement of capital, the concept of the movement of payments, restricting the movement of capital.

Key documents regulating the creation of a general common market of EC/EU are following.

The primary EU law:

1. Treaty establishing the European Economic Community (1957), known as EEC Treaty;
2. Basic Treaties that amended EEC Treaty: Single European Act (1986), Treaty on European Union, known as the “Maastricht Treaty” (1992), Treaty of Lisbon (2007);
3. Treaties of accession of new States Members: Treaty of Accession of the United Kingdom, Denmark and Ireland (1972), Treaty of Accession of Greece (1979), Treaty of Accession of Spain and Portugal (1985), Treaty of Accession of Austria, Finland and Sweden (1994), Treaty of Accession of Cyprus, Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Slovakia and Slovenia (2003), Treaty of Accession of Bulgaria and Romania (2005), Treaty of Accession of Croatia (2011).

The secondary EU law:

- a) Regulations. For example, Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers<sup>1</sup> within the Union Text with EEA relevance Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community<sup>2</sup>;
- b) Directives (Directive EC 123/2006 on Services in the internal market<sup>3</sup>, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market<sup>4</sup>, etc.).

---

<sup>1</sup> Official Journal of the European Union L 141/1. 27.5.2011

<sup>2</sup> URL: <http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31968R1612>

<sup>3</sup> URL: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:en:pdf>

<sup>4</sup> URL: [http://www.ec.europa.eu/internal\\_market/e-commerce/directive/index\\_en.htm](http://www.ec.europa.eu/internal_market/e-commerce/directive/index_en.htm)

c) Judgments of the Court (C- 358/93 “Bordessa” [1995]<sup>5</sup>, C-149/79 “Commission v. Belgium” [1980]<sup>6</sup>, etc.

The single market must become a reality so that creators, producers and consumers have the continental scale they need to ensure that the economy develops. Only sustainable growth can guarantee the creation of sustainable jobs<sup>7</sup>. Free movement and healthy and open competition are also indispensable to growth and progress, and are a valuable tool for tackling demographic, environmental and social challenges.

The mutual recognition principle guarantees free movement of goods and services without the need to harmonize Member States’ national legislation. Goods which are lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced to technical or quality specifications different from those applied to its own products. The only exception allowed - overriding general interest such as health, consumer or environment protection - is subject to strict conditions.

In general, the rules of the Member State of origin prevail. This guarantees compliance with the principle of subsidiarity by avoiding the creation of detailed rules at EU level and by ensuring greater observance of local, regional and national traditions and makes it possible to maintain the diversity of products and services. It is thus a pragmatic and powerful tool for economic integration.

In 2010 the Commission published Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Towards a Single Market Act: For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another”<sup>8</sup>.

In 2010 the Commission proposed an action plan against counterfeiting and piracy, including both legislative and non-legislative measures<sup>9</sup>. In 2011 it made legislative proposals, in particular to adjust the legislative framework to meet the needs generated by the development of the Internet and to enhance customs work in this area, and it will re-examine its strategy on the implementation of intellectual property rights in third countries.

---

<sup>5</sup> URL: <http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61993CJ0358>

<sup>6</sup> ECR 3881.

<sup>7</sup> Commission staff working document. Free movement of workers in the public sector. SEC (2010) 1609 final. Brussels, 14.12.2010.

<sup>8</sup> URL: <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>

<sup>9</sup> URL: <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1132684&l=en&t=D>

The European Parliament and the Council are took the necessary steps to adopt the proposals for the EU patent, its languages and the unified patent litigation system.

In 2011 the Commission submitted a proposal for a Directive on the management of copyrights, with the aim of opening up access to online content by improving the governance, transparency and electronic management of copyright<sup>10</sup>. The Commission will also be proposing a Directive on orphan works.

The Commission and the Member States are cooperated in continuing to develop the internal market in services on the basis of the 'mutual evaluation' process set out in the Services Directive and currently implemented by the Member States and the Commission. In 2011, the Commission indicated specific measures to this end, including in the business services sector.

In 2011, the Commission took initiatives to develop electronic commerce in the internal market. It concentrated in particular on problems faced by consumers in the digital economy. These initiatives include a Communication on the operation of electronic commerce and guidelines for the Member States to guarantee the effective application of provisions in the Services Directive to combat discrimination against recipients of services because of their nationality or place of residence.

In 2011, the Commission adopted a proposal to revise the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (Energy Tax Directive)<sup>11</sup> so as to better reflect the EU's climate and energy objectives in the fiscal context. Council Directive 2003/96/EC of 27 October 2003 establishes the European framework for the taxation of energy products and electricity and is intended mainly to ensure the proper functioning of the single market and thereby avoid distortion of competition between energy consumers. However, it fails to fully reflect the EU's goals concerning the fight against climate change and more efficient energy use. It therefore does not enable Member States to make optimum use of taxation as a tool. The proposal is intended, in particular, to ensure the consistent treatment of energy sources in the Directive and therefore truly equal treatment for energy consumers, regardless of the source of the energy being consumed. By doing so, it will also ensure an appropriate

---

<sup>10</sup> URL: [http://www.google.ru/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0C-C8QFjAB&url=http%3A%2F%2Fec.europa.eu%2Finternal\\_market%2Fsmact%2Fdocs%2Fsingle-market-act\\_en.pdf&ei=KzISU5THE6WFyQPHqICADg&usg=AFQjCNHDGR76b-FTSqiSZqHzLAzygv\\_rxuQ&bvm=bv.65058239,d.bGQ&cad=rjt](http://www.google.ru/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0C-C8QFjAB&url=http%3A%2F%2Fec.europa.eu%2Finternal_market%2Fsmact%2Fdocs%2Fsingle-market-act_en.pdf&ei=KzISU5THE6WFyQPHqICADg&usg=AFQjCNHDGR76b-FTSqiSZqHzLAzygv_rxuQ&bvm=bv.65058239,d.bGQ&cad=rjt)

<sup>11</sup> URL: [http://www.ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/energy\\_products/legislation/index\\_en.htm](http://www.ec.europa.eu/taxation_customs/taxation/excise_duties/energy_products/legislation/index_en.htm)

balance between the taxation of energy and the EU's greenhouse gas emission quotas trading scheme while avoiding overlap between the two systems. It is necessary to improve the coordination of national tax policies, notably by proposing a Directive introducing a common consolidated corporate tax base (CCCTB). The current existence of 28 highly disparate corporate tax systems in the single market means that companies are faced with significant tax obstacles which discourage, if not impede, their cross-border activities. Such fragmentation gives rise to significant market distortions and compliance costs.

The Single Market Act<sup>12</sup> was presented by the Commission in April 2011 set out twelve levers to boost growth and strengthen confidence. These measures concern businesses, citizens and the governance of the single market.

In October 2012 the Commission proposed a second set of actions (Single Market Act II<sup>13</sup>) to develop further the Single Market and exploit its untapped potential as an engine for growth.

Internal Market Problem Solving System (SOLVIT network<sup>14</sup>) helps find out-of-court (informal) solutions to complaints by consumers and businesses regarding the incorrect application of internal-market laws by public authorities. By way of example, the network might find solutions to cross-border problems in the European Union (EU) relating to employment, the recognition of university qualifications, car registration, business start-ups or the supply of goods and services. It operates in all EU Member States, Norway, Iceland and Liechtenstein.

But, as we now, the implementation of EU law in Members States depends on the concept of the relationship between the international law and the domestic law.

### 3. IMPLEMENTATION OF THE EU LAW IN SPAIN

Key documents of national law of Spain regulating the implementation of EU law in Spain are following: the Constitution 1978<sup>15</sup> (art. 10.2, 93-96), the De-

---

<sup>12</sup> URL: <http://www.eur-lex.europa.eu/en/treaties/index.htm>

<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions. Single Market Act II. Together for new growth. Brussels, 3. 10. 2012. COM(2012) 573 final

<sup>14</sup> Constituciyn Espacola // URL: [http://www.es.wikisource.org/wiki/Constituciyn\\_espaola\\_de\\_1978](http://www.es.wikisource.org/wiki/Constituciyn_espaola_de_1978)

<sup>15</sup> Decreto 801/1972, de 24 de marzo, sobre ordenaciyn de la actividad de la Administraci3n del Estado en materia de Tratados Internaciones // BOE. N3 85. de 8 de abril de 1972. P. 6264-6267.

ree 801/1972 of 24 March on the management of the activity of the Central Government in respect of Treaties Hospitalizations<sup>16</sup>; Civil Code of Spain<sup>17</sup> (art. 1.5); Organic act 10/1985 of 2 August, authorization for the accession of Spain to the European Communities<sup>18</sup>; Decision of the Constitutional Court of Spain No 1/2004 of 13 December 2004<sup>19</sup> etc.

In Spain is existed the monistic concept of the relationship between the international law and the domestic law. But for today the heat of discussion “monism-dualism” in Spanish science came to naught. The main attention is focused on system of acceptance by Spain of international agreements (automatic or special).

Spain adheres to the moderate monistic concept of the relationship between international and domestic law. The international treaties of Spain after their publication become the part of an internal order of the country. The predominating role of international agreements concerning laws admits. The primacy of the international agreements on the laws is recognized in Spain (both ordinary and organic). However, the Spanish Constitution takes priority over international norms, including the norms of EU law.

The legal mechanism of implementation of the international norms, operating in Spain, demands only official publication of the treaty for its application. Thus the publication of the agreement does not “transform” international treaties to the internal law. The international norms operate *proprio nomine*. Thus, Spain proceeds from model of “automatic acceptance” treaties<sup>20</sup>.

The legal mechanism of implementation of rules of EU law, operating in Spain, assumes “single” implementation of each treaty of primary EU law. At ratification in Spain is published a special act defining an order of implementation of provisions of the treaty. During the ratification of the primary treaty of the

---

<sup>16</sup> Código Civil. URL: [http://noticias.juridicas.com/base\\_datos/Privado/cc.html](http://noticias.juridicas.com/base_datos/Privado/cc.html)

<sup>17</sup> Ley Orgánica 10/1985, de 2 de agosto, de autorizaciyn para la adhesiyn de Espaca a las Comunidades Europeas. URL: [http://noticias.juridicas.com/base\\_datos/Admin/lo10-1985.html](http://noticias.juridicas.com/base_datos/Admin/lo10-1985.html)

<sup>18</sup> Declaracia del Tribunal Constitucional 1/2004. URL: <http://www.tribunalconstitucional.es/es/jurisprudencia/restrad/Paginas/DTC122004en.aspx>

<sup>19</sup> See: Acyn, Roig M. J. Derechos, justicia y estado constitucional : un tributo a Miguel C. Miravet. - Valencia: Tirant Lo Blanch, 2005; Balaguer Callejon F., Camara Villar G., Lopez Aguilar J.F., Balaguer Callejon M. L. Manual de Derecho Constitucional. - Madrid: Tecnos, 2012; Iglesias R. Problemas juridicos de la adhesion de Espana a la Comunidad Europea // Cursos de Derecho Internacional de Vitoria-Gasteiz, 1984.

<sup>20</sup> See: Бирюков П. Н. Право исплании. Актуальные проблемы государства и права Европы: материалы круглого стола / отв. ред. П. Н. Бирюков, А. А. Слинюко. - Воронеж: БГУ, 2013. Вып. 6. – С. 6-9; Jimeno-Bulnes, M. La aplicación del derecho comunitario. // Los principios de efecto directo y primacía, 2006.

EU law, a special act is published in Spain, which defines the procedure for implementing their provisions.

As for implementation of provisions of the secondary EU law, in Spain implementation norms have to be published by the same authority, as the norms of the national law governing the corresponding relations. However, the implementation of secondary EU law could be made by delegated legislation - the adoption of a normative act of a lower level (for example, the decree of the Government instead of the act)<sup>21</sup>. In the implementation purposes government is allocated with the right to change acts of higher level that is feature of legal system of Spain. In purpose of implementing issues, the government of Spain has the right to change the regulations of a higher level.

Spanish public authorities plays the differ role in the implementation of EU documents.

The Government of Spain adopts of the decisions regarding to the execution of documents of EU institutions<sup>22</sup>. It is engaged, mainly, in implementation lawmaking at the initiative of Government and control of single questions.

The Parliament`s role in the course of their implementation is less significant. Regarding to the European Union, Cortes Generales are mainly engaged in implementing legislation and the control of separate issues.

Courts of Spain directly apply published international treaties. The EU law is not special object of constitutional control in Spain. Spain`s Constitutional Court resolves disputes arising from the primary law of the EU, on the basis of the general provisions on the constitutional control of international treaties. In other words, the founding treaties of the EU are the usual international treaties to the Spanish Constitutional Court<sup>23</sup>.

Constitutional court of Spain considers questions of international law, being guided by the following provisions. First, article 93 of the Constitution is considered only as “the procedural rule”, regulating activities of Parliament and Government for performance of treaties or documents proceeding from the

---

<sup>21</sup> La Moncloa. Informe sobre la transposición de directivas comunitarias. URL: [http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/\\_2009/refc20090430.htm#Impuestos](http://www.lamoncloa.gob.es/ConsejodeMinistros/Referencias/_2009/refc20090430.htm#Impuestos)

<sup>22</sup> See: Closa C. Las raíces domésticas de la política europea de España y la Presidencia de 2002 // *Etudes et Recherches*. - Paris : Fondation Notre Europe, 2001. - No 16; Pacheco M. Proceso de transposición de Directivas // *Derecho Comunitario*. - January 2008.

<sup>23</sup> See: Legido S. Las relaciones entre el derecho comunitario y el derecho interno en la jurisprudencia del Tribunal Constitucional // *Revista Espanola de Derecho Constitucional*. 1991. No 11. P. 175-191; Rosario Álvarez Conde, Enrique Tur Ausina. *Derecho Constitucional*. - Madrid, 2012.



international organizations<sup>24</sup>. Secondly, application by government bodies of international law does not mention competence of Constitutional court; its activity concerns only protection of the Constitution. Thirdly, norms of international law have to be applied according to distribution of powers between central bodies and institutes of power of autonomous communities.

#### 4. CONCLUSION

The government of Spain plays the dominating role in the execution of international treaties and documents of EU bodies in the field of internal market. The parliament of Spain adopts implementing act and deals with reports of the government. Spain's Constitutional Court examines the constitutionality of primary EU treaties. With respect to the documents adopted by the EU institutions, the control is exercised by the Spanish courts of general jurisdiction.

#### LITERATURE:

1. Álvarez Conde, R., *Curso de derecho constitucional*. Tecnos, Madrid, 2008.
2. Álvarez Conde, R., Tur Ausina, E. *Derecho Constitucional*. Madrid, 2012.
3. Acyn Roig, M. J. *Derechos, justicia y estado constitucional : un tributo a Miguel C. Miravet*, Tirant Lo Blanch, Valencia, 2005.
4. Balaguer Callejon, F., Camara Villar, G., Lopez Aguilar, J.F., Balaguer Callejon M. L. *Manual de Derecho Constitucional*. Tecnos, Madrid, 2012
5. Closa, C. Las raíces domésticas de la política europea de España y la Presidencia de 2002. *Etudes et Recherches*, Paris, Fondation Notre Europe, 2001. - No 16
6. Iglesias, R. Problemas juridicos de la adhesion de Espana a la Comunidad Europea. *Cursos de Derecho Internacional de Vitoria-Gasteiz*, 1984.
7. Jimeno-Bulnes M. La aplicación del derecho comunitario. *Los principios de efecto directo y primacía*, 2006.
8. Legido S. Las relaciones entre el derecho comunitario y el derecho interno en la jurisprudencia del Tribunal Constitucional. *Revista Espanola de Derecho Constitucional*. 1991. No 11. P. 175-191.
9. Pacheco, M. Proceso de transposición de Directivas. *Derecho Comunitario*. January. 2008.
10. Бирюков П. Н. Право Исплании. Актуальные проблемы государства и права Европы : материалы круглого стола / отв. ред. П. Н. Бирюков, А. А. Слинко. - Воронеж: ВГУ, 2013. Вып. 6. С. 6-9

---

<sup>24</sup> See: Álvarez Conde, R. *Curso de derecho constitucional*. - Madrid: Tecnos, 2008.

