

The principle of empowerment in the European Union

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Abstract

Delimitation of competences in the EU is governed by the principle of conferral. Based on the content of these provisions work in the first three parts of it, defining and classifying skills appropriate attribution Treaties underlying the European Union (Treaty on European Union and the Treaty on the Functioning of the European Union) and the Court of Justice. The next three parts of the paper detailing each classification in hand, highlighting, clear delineation of the Union competences of the Member States carried out by the Lisbon Treaty and the amendments made by this treaty.

Keywords: power, duty, power control, action skills, exclusive competence, shared competence, skills, express, power subsidiary, implied powers

JEL Classification: K33, K40

I. Definitions prior

The principle of conferral², the governing delimitation of competences in the European Union, according to art. 5 para. 1 TEU. Conferred powers principle has its counterpart in public international law principle known international specialty organization. Conferred powers principle was established, initially, by the Treaty establishing the European Economic Community (TCEE), later confirmed by the Treaty establishing the European Community (TEC) in art. 5, after which it was translated by the Treaty of Lisbon in the Treaty on European Union (TEU).

II. Defining and regulating principle

Under the principle of conferral, the Union shall act only within the powers have been attributed to the Member States in the Treaties to attain the objectives set out therein (Article 5 TEU). Therefore, the transfer member by their will power to achieve the objectives of the Union.

The same article further provides that, competences not conferred upon the Union in the Treaties remain with Member States (Article 5 TEU). Of this latter provision results in a different principle, that power is not conferred upon the Union Member States is treated as a residual competence³.

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² Is specific to the federal system of organization of states. See, Andrei Popescu, Ion Diaconu, European and Euro-Atlantic Organizations, „Universul Juridic” Publishing House, Bucharest, 2009, p. 210.

³ *Idem*.

With specific reference to the task of the institutions of power are the provisions of art. 13 TEU which require that each institution shall act within the powers conferred by the Treaties, in accordance with the procedures, conditions and objectives set by them. According to the Court of Justice, confers jurisdiction - according to Art. 5 TEC (Article 5 TEU) - the legal nature of a transfer is irreversible, further stating that it is "a community equipped with its own power ... and more specifically with real powers arising from a limitation of jurisdiction or transfer power to the states to the Community, the transfer to be carried from the state of their legal order, law, the benefit of the Community legal order, the rights and obligations corresponding to the Treaty, and train (...) a permanent limitation of their sovereign rights"⁴.

Irreversible transfer in the design of the Lisbon Treaty, however, be viewed subject to the provisions according to which any Member State may decide to withdraw from the Union (...) (Art. 50 TEU). Therefore the transfer is irreversible, possibly during the State is a member of the Union.

III. Classification of task competence in the European Union

Prerogative powers are divided by multiple Criteria:

1. According to TFEU and jurisprudence of the Court of Justice, after the extent and nature of the powers conferred Communities/Union⁵, which is unprecedented in international law, prerogative powers are divided into:

- a) control skills and powers of action;
- b) an international skills and competencies of boarding state.

2. Depending on the relations that are established between the national competence of Member States and the EU (institutions), Treaties confer on:

- a) Union exclusive competence and
- b) a shared competence with the Member States.

3. After award technical skills, the doctrine took shape following classification task skills:

- a) express competence (explicit);
- b) subsidiary skills (complementary);
- c) implied powers (extension).⁶

⁴ CJCE, 6/64, Da Costa, 15. 07. 1964, Rec. 1141.

⁵ See Raluca Bercea, *Community law. Principles*, C.H. Beck House, Bucharest, 2007, p. 304.

⁶ See Guy Isaac, Marc Blanquet, *Droit communautaire general*, 8 ed., Dalloz, Paris 2001, p. 36, 40, J.A. Usher, *The scope of Community Competence. Its Recognition and Enforcement*, Journal of Common Market Studiers, n. 2, December 1985, p. 121; A. Tizzano, *Quelques Observations sur le Développement des compétences communautaires*, Revue du Marché unique européen, n. 4/1998, p. 81.

IV. Control skills and powers of action.

Skills and competencies of an international boarding state

Control powers by the fact that, whenever treaties create obligations on the Member States and EU institutions simultaneously granted mainly Commission general power to control their execution (Article 258 TFEU⁷). The Court of Justice of the European Commission exercises control over when it performs its function of supervising the application of EU law (Art. 17 TEU). In a number of cases, the special gives EU institutions jurisdiction treaties derived, authorization, which authorizes, approves or denies the acts adopted by Member States (art. 42⁸, 130⁹, 131¹⁰, all TFEU). In particular, the Commission has the responsibility to implement a safeguard clause allowing Member States to derogate from their obligations¹¹. Power control is exercised through non-binding acts (eg. the Committee which draws attention to risks in the crime, or conduct suggesting recommendations comply with the rules of law), or mandatory (Commission's decisions¹² or approvals exemptions¹³).

Action powers. In certain areas and under the Treaties, the Union shall have jurisdiction to take action to support, coordinate or supplement the actions of Member States, without thereby superseding their competence in these areas (Article 2. 5 TFEU). The Union shall have competence:

- to carry out activities in research, technological development and space, in particular to define and implement programs, the exercise of that power may result in Member States being prevented from exercising its jurisdiction (Article 4 par. 3 TFEU);
- to take action and conduct a common policy, development cooperation and humanitarian aid, the exercise of those powers may have the effect of depriving the Member States the opportunity to exercise its jurisdiction (art. 4 par. 4 TFEU);

⁷ See Guy Isaac, Marc Blanquet, *work cited*, p. 32.

⁸ Council may, on a proposal support.

⁹ European Central Bank, national central banks or members of their decision-making bodies shall seek or take instructions from Union institutions, bodies or agencies, the governments of the Member States or any other body.

¹⁰ Each Member State shall ensure that its national legislation including the statutes of its national Treaties and the Statute of the ESCB.

¹¹ For example, art. 66 TFEU (which provides that the Commission may propose to the Council, after consulting the ECB, adopt safeguard measures if capital movements from third countries or for cause, or threaten to cause serious difficulties for the functioning of economic and monetary union), or art. 143 TFEU (which provides that if the Council did not grant mutual assistance recommended by the Commission to the Member States of the Council has not decided that they fulfill the necessary conditions for adopting the euro), or art. 139 TFEU (the Commission has the right to authorize, the Member State with a derogation is in difficulties to take protective measures and rules whose conditions are defined).

¹² For example art. 96 TFEU, which provides that the Commission may authorize transport policy.

¹³ For example, according to art. 27 TFEU, the Commission may propose measures that take the form of exemptions, which have, however, temporary, and to disturb as little functioning common market.

- to carry out actions to support, coordinate or supplement the action of Member States (Article 6 TFEU). At European, these actions on the following areas: a. protect and improve human health, b. industry, c. culture, d. tourism, e. education, f. civil protection, g. administrative cooperation. An original element of community building / union led and it determines the exercise of the type of international and domestic type - state.

International competence of the Union is made in light of¹⁴:

- The power of information and consultation. For example, according to art. 337 TFEU (ex 284 TEC) "to fulfill the tasks entrusted to him - so in a general way - the Commission may request any information and carry out all necessary checks,, and the TEuratom are considered those specific provisions obliging Member States to inform or consult Community institutions, especially before they consider adopting measures to be taken (Article 34);

- The power of policy coordination and conduct of the Member States. Thus, according to art. 5. 1 TFEU, Member States shall coordinate their economic policies within the Union. In this respect the Union:

1. take measures to ensure coordination of labor employment of the Member States, in particular by defining guidelines for these policies;

2. may take initiatives to ensure coordination of Member States' social policies. This power is exercised through recommendations, which calls for a certain conduct, but "not bound" by the Member States (Article 288 para. last TFEU). Another example is the Commission in specific cases provided for in the Treaties, shall adopt recommendations (art. 292, last sentence, TFEU). The Council also adopted recommendations under Art. 292 para. 1 TFEU, or in terms of art. 168 TFEU¹⁵.

Coordination can take and as required, for example, under a directive, Member States of destination linking the outcome to be achieved, leaving national authorities the freedom to form and methods. The Directive is therefore a specific instrument for coordinating national laws (in accordance with Art. 50 TFEU, the European Parliament, Council and Commission, and art. 53 TFEU, the European Parliament and Council). Another example of coordination is achieved competence in certain cases, through decisions to Member States of the Council (Article 126 § 9 TFEU).

Through boarding skills, the Union has, especially, the power which it exercises directly on the citizens of Member States. They are exercised through:

- Regulation that is clearly the legislature of the Union. It general, impersonal, is directly applicable in Member States, giving rise, in the same time, the rights and obligations not only for Member States but also for their citizens (Article 288 para. 2 TFEU);

¹⁴ See Guy Isaac, Marc Blanquet, *work cited*, p. 34, 35.

¹⁵ Council, the Commission, may also adopt recommendations for the purposes set forth in this Article (Article 168 TFEU).

- Decisions (adopted by the Council or Commission) to "link" which is addressed to individuals (Art. 288 para. 4 TFEU);
- Pretoria Court open to individuals who may act under the action for annulment (Article 263 TFEU);
- International agreements that the Union may conclude with third countries or international organizations through which creates rights and obligations for individuals and have legal force in Member States (according to Art. 216 TFEU¹⁶).
- Special agreements with neighboring countries, according to art. 8 para. 1 and 2 TEU, the Union develop a special relationship with them, in order to establish an area of prosperity and good neighborliness, founded on the Union¹⁷ values, characterized by close and peaceful relations based on cooperation. These agreements may contain reciprocal rights and obligations and the possibility of undertaking activities jointly. Their implementation is subject periodic concentration.

V. Union exclusive competence and shared competence with the Member States

Along with these treaties regulates and competence they consider to be only Member States (or reserved). Treaties provide that it shall not under the exclusive competence of the Union or Union shared competence with the Member States (Article 20 TEU and Art. 326 -334 TFEU).

Exclusive competence the Union shall be exercised in a specific area in which only it can legislate and adopt legally binding acts (Article 2.1, art. 3 TFEU). In these areas Member States may legislate only if ability by the Union or for the implementation of Union acts. The Union's competence is exclusive in the following areas:

- a. customs union;
- b. establish the competition rules necessary for its operation;
- c. Monetary policy for Member States whose currency is the euro;
- d. conservation of marine biological resources under the common fisheries policy;
- e. common commercial policy;
- f. an international agreement when its conclusion is provided by a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as it may affect common rules or may change their scope. Shared competence with the Member States shall be exercised in a specific area, the Union and Member States may legislate and adopt legally binding (Article 4.1 TFEU). Therefore, when the Treaties confer on the Union a competence shared

¹⁶ See P. Manin, *À propos de l'accord instituant l'OMC et de l'accord sur les marchés publics: la question de l'invocabilité des accords internationaux conclus par la Communauté européenne*, RTDE, 1997, p. 399 .

¹⁷ The values referred to in art. 2 TEU.

with the Member States in a given area, Member States shall exercise their competence to the extent that the Union has not exercised its competence, or has decided to cease exercising it more. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular to ensure better compliance with the principles of subsidiarity and proportionality. The Council may, at the request of one or more of its members (representatives of Member States) to submit proposals for repealing a legislative act. Likewise, representatives of the Governments of Member States under the ordinary revision procedure provided for in art. 48 paragraph. 2-5 TFEU may decide to amend the Treaties on which the Union is founded, including either to increase or reduce the competences conferred on the Union (in the said Treaties)¹⁸.

Shared competence between the Union and the Member States applies in the following main areas (Art. 4 para. 2 TFEU): a. internal market; b. social policy, for aspects defined in the TFEU; c. economic and social cohesion; d. agriculture and fisheries, excluding the conservation of marine biological resources; e. environment; f. consumer protection; g. transport; h. trans-European networks; i. energy; j. area of freedom, security and justice; k. common safety concerns in public health matters, for aspects defined in the TFEU.

Exclusive competence of Member States (or reserved) shall be exercised in the realm of enhanced cooperation. According to Art. 20 TEU and 329 TFEU, Member States which wish to establish between themselves a form of cooperation within the competences of the Union non-exclusive may use its institutions and exercise those competences by applying the relevant provisions of the Treaties. Enhanced cooperation shall aim to further the objectives of the Union, protect its interests being open at any time to all Member States.

VI. Skills express (express), subsidiary (complementary) and implicit (extension)¹⁹

According to art. 5 TEU, the Union shall act only within the powers have been assigned by the Treaties to attain the objectives set by them. Also, EU institutions have not only the powers conferred²⁰ upon them, that their actions can and should manifest in a number of areas, limiting determined by the Treaty.

The principle of empowerment is reflected in the functional competence of each institution, to promote the Union's values, its objectives, serve its interests, its citizens and its Member States. (Article 13 para. 1 TEU).

Within the limits of the powers conferred by TEU and TFEU are considered especially binding instruments, especially the legislative power, the

¹⁸ Declaration concerning the delimitation of powers, relating to the provisions TEU and TFEU.

¹⁹ See Guy Isaac, Marc Blanquet, *work cited*, p. 36, 40, J.A. Usher, *The scope of Community Competence. Its Recognition and Enforcement*, Journal of Common Market Studies, n. 2, December 1985, p. 121; A. Tizzano, *Quelques Observations sur le Développement des compétences communautaires*, Revue du Marché unique européen, n. 4/1998, p. 81.

²⁰ Article 13 para. 2 TEU.

institutions "receiving" only specific tasks, not general (Article 288 TFEU, art. TEuratom 161).

Express powers. Prior to the Lisbon Treaty, EU treaties had no skills as subjects²¹, but as goals, actions taken, or functions performed. Confers jurisdiction on the economy treaties are made according to a functional approach in a future economic²² predominant. Reason functionalist method, for which, we believe that the authors chose the constituent Treaties of the European Communities, was the lack of a clear separation between the powers - even explicit - Communities and Member States, therefore, in practice, the extent, the intensity of Community competence was highly variable, depending on areas²³. For example:

- Competent institutions resulting from all their power was allocated to point and limited²⁴;

- The powers were given a synthetic and comprehensive manner²⁵. Functional method sometimes can lead to a potential legal skills, unlimited, viewed in their totality²⁶.

Clear delineation between Member State and the Union is carried out by the Lisbon Treaty, as mentioned above the principle of conferral, under art. 5 TEU.

Skills subsidiary²⁷. Treaty texts resulting from the analysis of awareness of their authors, that the powers conferred specific powers as exercised under the functional competence of the institutions are not sufficient to achieve the objectives set out expressly in the Treaty (according to art. 3 to 6 TFEU, art. 1 and 2 TEuratom).

In this regard, Article 352 TFEU (ex. 308 TEC) and 203 TEuratom, state: "where action by the Union should prove necessary within the policies defined in the Treaties, to attain one of the objectives set out in the Treaty without that they have provided the necessary powers, the Council, acting unanimously on a proposal from the European Parliament's approval, adopt appropriate measures".

²¹ Federal constitutions are presented on materials competence, for example: trade, currency, civil justice, protection etc. See Guy Isaac, Marc Blanquet, *work cited*, p. 36.

²² Example of economic, involves creating a single market such powers. *Ibid*, p. 36.

²³ *Ibid*, p. 36, and Raluca Bercea, *work cited*, p. 306.

²⁴ For example, the powers conferred on the Commission and Council in order to remove obstacles interposed to the free movement of goods, persons and services during the transition. *Ibid*, p. 37

²⁵ For example, institutions powers in matters of common policies. *Ibid*, p. 37.

²⁶ For example, the Council is empowered under Art. 115 TFEU, "to adopt directives for the approximation of laws, regulations and administrative provisions of Member States which directly affect the establishment or functioning of the internal market" or dealing with the "establishment and functioning of the internal market" (Article 114 TFEU). The scope of these provisions shall not circumscribe a subject, but include categories of acts, such diverse rules: fiscal, social, technical, food, veterinary, criminal etc. *Idem*, p. 37; René Berentz, *The Internal Market Unlimited: Some Observations on the legal basis of Community legislations*, Common Market Law Review, 1992, p. 85.

²⁷ See Guy Isaac, Marc Blanquet, *work cited*, p. 37, H. Lesguillons, *L'extension des compétences de la CEE par l'article 235*, AFDI, 1974, p. 886; G. Olmi, *La place de l'article 235 CEE dans le système des attributions de compétence a la Communauté*, Mélanges Dehousse, Labor, Bruxelles et Nathan, Paris, 1979, p. 279.

These items allow to achieve these objectives, extending the functional competence of the institutions the size of material competence of the Union. Subsidiary powers (or complementary) is just a means to extend the functional competence of EU institutions in areas of material competence of the Union. "Appropriate measures" that the Council can take are legal instruments referred to in art. 288 TFEU (ex. art. 249 TEC). For example, through regulations, the Council must, direct, new obligations for Member States or individuals, confer new powers to Community institutions exercise can create new organs, and especially to give them legal status²⁸. The Court pointed out in this respect that art. 352 TFEU (ex 308 TEC) allows Council to "take appropriate measures, including external relations"²⁹, the Council may act by agreement concluded with third countries".

The use of the powers of branches is subject to a number of requirements³⁰: the action envisaged should aim to achieve one of the objectives of the Union, this action must be necessary to achieve that objective (Court With limited control in the field) is required the treaty has not provided skills required for the purpose intended (or even if such powers be reduced).

Implied powers³¹. If at first, international law recognized those powers not expressly assigned but are indispensable to achieve the most complete of the tasks conferred on international organizations subsequently upheld the award of new powers and functions to the extent that they are necessary to achieve goals set by the acts institution³². Community institutions had unwritten skills, according to the theory of implied powers. Court expressly recognized that this theory also applies to Community law³³, by its application in foreign jurisdiction Communities, stating the following "power which assumes external commitments can result not only from a power expressly provided in treated but results in a manner such default provisions"³⁴. "Therefore the Court has recognized a parallel between internal

²⁸ Using art. 352 TFEU (308 TEC) has allowed many community activities - in economic and monetary union, by creating the European Monetary Cooperation Fund (Regulamnetul of 03. 04. 1973, OJEC no. 89/2 of 05. 04. 1973); - in regional, by creating the European Regional Development fund (Regulation of 18. 03. 1975 16. 12. 1980, OJEC no. 73 / 1, 21. 03. 1975 and L.349/10 of 23 . 12. 1980) - on social, by creating the European Centre for the development of professional groups, implementation of the principle of equal tratatament between workers, women and men (guidelines of 09. 02. 1976 19. 12. 1978 OJEC, no. L 39/40 of 12. 02. 1976, L. 6 / 24 from 10. 01. 1979) - Foreign economic relations the Cooperation agreements with third countries. These community actions allowed also the implementation of policies, entirely new, for example, energy policy (Regulation of 09. 11. 1973, OJEC no. L. 412 / 1 of 12. 11. 1973), policy research, in addition, Euratom programs since 1973, environmental policy, such as water quality standards (directives of 12. 06. 1975 and from 08. 12. 1975, OJEC no. L. 194 of 25. 07. 1975 and L. 31 of 05. 02. 1976), or the protection of wild birds (Directive of 02. 04. 1979, OJEC no. L. 103 of 25. 04. 1979, consumer policy (Directive of 19. 07. 1979, OJEC no. L. 158/19 of 26. 06. 1979).

²⁹ CJCE, 22/70, Comm. c/Conseil, 31. 03. 1971, Rec. 263.

³⁰ See Raluca Bercea, *work cited*, p. 307.

³¹ See, Guy Isaac, Marc Blanquet, *work cited*, p. 40.

³² ICJ, Avis, 11.04. 1949, on the damages suffered by the individual serving the United Nations, Rec. 154, p. 174.

³³ ECJ, 8 / 55, Fédéchar, 29. 11. 1956, Rec. 291.

³⁴ Avis, 1 / 76, 26. 04. 1977, Rec. 754.

power and external competence of their Communities, stating that, since these organizations have been given the power to legislate in its own procedure, are necessarily competent, in the same field to agreements with third countries”³⁵.

Currently, through the Treaty of Lisbon, the EU competence to conclude international agreements is exclusive and express, according to art. 3 para. 2 TFEU³⁶ in conjunction with art. 216 TFEU³⁷.

Bibliography

1. Bercea, Raluca, *Community law. Principles*, C. H. Beck Publishing House, Bucharest, 2007.
2. Berentz, René, ”The Internal Market Unlimited: Some Observations on the legal basis of Community legislations”, *Common Market Law Review*, 1992, p. 85.
3. G. Olmi, *La place de l'article 235 CEE dans le système des attributions de compétence a la Communauté*, Mélanges Dehousse, Labor, Bruxelles et Nathan, Paris, 1979.
4. H. Lesguillons, *Lextinsion des compétences de la CEE par l'article 235*, AFDI, 1974.
5. Isaac, Guy ; Blanquet, Marc, *Droit communautaire general*, 8 ed. Dalloz, Paris 2001.
6. Manin, P., *À propos de l'accord instituant l'OMC et de l'accord sur les marchés publics: la question de l'invocabilité des accords internationaux conclus par la Communautés européenne*, RTDE, 1997
7. Popescu, Andrei; Diaconu, Ion; *European and Euro-Atlantic Organizations*, “Universul Juridic” Publishing House, Bucharest, 2009.
8. Tizzano, A., « Quelques Observations sur le Développement des compétences communautaires », *Revue du Marché européen unique*, n. 4/1998.
9. Usher, J. A., “The scope of Community Competence. Its Recognition and Enforcement”, *Journal of Common Market Studiers*, 1985, n. 2.

³⁵ See Raluca Bercea, *work cited*, p. 308.

³⁶ The Union's competence is exclusive in terms of an international agreement (...).

³⁷ The Union may conclude agreements with one or more countries or international organizations (...).