

Market Unity

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A recent judgment of Spanish Supreme Court, of 29th September 2012, has just declared null and void a complete Annex of Spanish Regulation of Structural Concrete. Regardless of its legal relevance, by setting an important precedent, the matter has significant economic consequences. Indeed, the Code is a technical regulation that regulates all the projects and works of concrete, whether public or private (the Regulation was approved by Royal Decree 1247/2008, of 18th July). And the annulled precepts are exactly those that establish the criteria for the Spanish Administration to carry out the official recognition of quality marks from other Member States of the European Union in relation to the construction products that are used in concrete structures.

The Supreme Court, following the pronouncements of the judgment of CJUE (Court of Justice of the European Union), which resolved that question at the time, has considered that those precepts involves an obstacle to the free movement of goods and has therefore declared their nullity, for infringing the Articles 34 and 36 of the Treaty on the Functioning of the European Union.

Without entering into a detailed analysis of this decisions, I consider it of great interest to stress the basic principle on which they are based: the mutual recognition. Indeed, it is well known that community case-law has established the principles of non-discrimination and mutual recognition of products lawfully manufactured and marketed in other Member States. The principle of mutual recognition plays an important role within the functioning of the internal market. According to it, a Member State can't forbid on its territory the sale of products from other State Member of the EU , even if those products are manufactured according to technical or quality standards different from those imposed on its own products (except for justified reasons of general interest, such as the protection of human life).

It is not a secret that national standards of industrial quality, as well as the quality marks of products, that have a voluntary nature and are issued by certification bodies (which undoubtedly fulfill an estimable function), have sometimes become -not only in Spain- real barriers to the community market.

Technical standards adopted by importing countries, sometimes under the influence of industrial lobbies, have prevented or obstructed the fundamental right of free movement of goods assured by the Treaty. This has been warned by the European Commission in different communications and is evidenced in recent European Regulations that have established procedures to end these illegal situations. And the same thing happens with several administrative controls and approvals that often survive under the leafy undergrowth of provisions with tiny grade.

In one of the editions of "The Rebellion of the Masses", Ortega wrote an "epilogue for Englishmen" in which he proclaimed his faith in the European mission of English people. Actually in Spain, almost feels the need to finish any comment about the Law in European Union with an "epilogue for Spaniards". When everything points to "a perfect union" in the community scope, it seems that some insist on circulate, as "kamikaze" drivers, in the opposite direction to the rest of the world. While, as we can see, in Europe the almost automatic recognition of the equivalence of certifications and accreditations issued in the State of origin is imposed to the receiving State, or it is coming for towards supranational supervisory entities, here in Spain, it seems that the return to the old barriers of the tolls and tips of the old Regime is defended.

The license that authorizes an activity is not homologous to the other side of territorial demarcation; the multiple ratings, grades and classifications that still are issued by a constellation of administrative authorities, are not accepted or recognized by the others, which follow different criteria. The announced Law of Market unity seems to be about removing the administrative barriers that impedes the markets access or the transparent functioning of them.

A primer step would be to assure to the companies operating in Spain, at least, the same level of freedom for the movement of goods and products that is already recognized by European Community Law.

José Manuel Sala Arquer
Professor of Administrative Law
Rey Juan Carlos University