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## Simplification of European Law

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Everything should be made as simple as possible, but not simpler...

— Albert Einstein

What EU-customs officer, having the task of executing the European Customs Code (consisting of 253 Articles) and its implementing provisions (consisting of 915 Articles) would not dream of “simplification”? What scholar of EU decision making procedures found in Article 189B of the EC Treaty (500 words) would disagree? Simplicity is, however, an ambivalent notion in any context. It may describe an “elegant,” functionally and esthetically satisfactory system which fulfills all its purposes without a waste of time and energy under many different circumstances. It may, however, also be the characteristic of an inflexible system which fulfills its purpose only approximately, which requires a high amount of energy, and which is not able respond to changing external requirements. While the former is admirable, the latter is a threat to law and order.

Within the context of European law “simplification,” one has to keep in mind the ambivalent quality of simplicity as well as of the possibility that while the same system might have the appropriate degree of simplicity for one purpose, it may be too simple or too sophisticated for another. Hence, discussing simplification of European law requires a discussion of the context and the underlying objectives. This context includes first and foremost the creation of an “ever closer Union” among the people of Europe through legal interpretation and by creating one single market.

A lack of transparency and accessibility seems to be the price to pay for an increase in refinement and justice in any legal system. Hence, the distance between the experts and bewildered citizens has grown and the legitimacy of the system has suffered. Seen in terms of democratic accountability, simplification indicates the intent to shape legislation in a more “citizen-centered” manner to increase legitimacy through accessibility. However, Europe, as a whole, does not have a monopoly over legitimacy crises. All Member States suffer equally from the loss of support of citizens who no longer understand what is being done on their behalf. The question however becomes more complicated on the European level due to a greater number of actors, different legal traditions, an increased distance between the decision-making center and citizens, and the tension between centralized law making and decentralized implementation. The threat to legitimacy is further amplified by the unique, essentially legal, origin of the Union.

Simplification also raises questions about the way a democratic organization manages its self-created complexity. When linking humans through a wide society of cable networks and silicon chips into one collective life, one has to be aware of all the connections. Complexity meets the aspiration of this culture. If this fact is not taken into account, simplification of the laws of this culture might lead to frustration. Consequently, for complexity to be acceptable in a democratic society, it has to be understood as a dynamic concept, which-at least potentially-carries in itself the aims of brevity and accessibility to citizens. In other words, complexity must not ensue from factors outside

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The future growth of the European Union, particularly with regard to strengthening the notions of citizenship, democratization, employment and competitiveness, relies on the concept of simplification. The two issues are interrelated: “Democracy withers if it does not operate effectively; and effectiveness is pointless without democracy. Otherwise democracy becomes nothing more than technocracy.” Until the development of the internal market, the potential adverse effects of functional and economic Community norms were rarely analyzed prior to implementation. In this sense, the appearance of simplification schemes marks an evolution in European development—the functionalistic process of spillover, consisting of sector-based integration, is greatly accelerating. Moreover, within the context of EMU, a method of integration that intends to settle problems one by one is no longer adequate. Simplification serves the objective of this type of integration—the assertion of a community methodology.

Simplification requires reducing the normative activity of the national and/or Community legislators in terms of the economy. As a result, it has an ambiguous resemblance to “deregulation”—a European term without precise legal meaning. Two levels of deregulation can be distinguished: level one, the abolishing of unilateral national measures of economic protection (at least inasmuch as they have a transnational effect), and level two, the introduction of a distinct political objective to create an economic and social Community legal system which attempts to establish parameters of its own with regard to legislative intervention in the market and the protection of collective values. The social debate about this political orientation will not be reviewed here but a discussion of a few particular points is useful in the light of simplification. The following text discusses these different aspects of simplification by describing its aims and application from a constitutional as well as an administrative and a legislative point of view.

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