

Substituted Service of Letters and Customs Decisions. Comments Against the Background of Polish Legal Regulations

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Abstract: *It frequently happens that the customs proceedings concerning the regularisation of the situation of goods (e.g. goods in hiding places disclosed during customs border control in international public transport) are conducted against an unknown person. However, it is more common that the customs authorities know the person (customs debtor), but despite the actions taken, have not been able to determine the place of stay or address of this person. The proper substituted service of decisions and letters containing declarations of will of the customs authorities to the addressees is very important from this point of view, and it is connected with the assumed acceptance of such letters and decisions by the parties to the proceedings. This, in turn, is a condition for legal effects that will occur as the result of issued customs decisions as it begins a period of time for specific legal actions.*

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I. GENERAL COMMENTS

Outwardly, it may seem that substituted service instrument is so simple and clear that putting it into legal norms is an unnecessary casuistry redundantly burdening legal regulations. This opinion would, however, be a superficial attitude to the important and significant role by which substituted service produces legal effects in the customs proceedings. The proper substituted service of decisions and letters containing declarations of will of the customs authorities to the addressees is very important from this point of view, and it is connected with the assumed acceptance of such letters and decisions by the parties to the proceedings. This, in turn, is a condition for legal effects that will occur as the result of issued customs decisions as it begins a period of time for specific legal actions. This is why these provisions are particularly important in the case of customs debt. This is because customs obligations arising from the law are involved, for which the service of a fixing decision is not required. It is inasmuch as important as the customs decision delivered to the customs debtor in a substituted manner is of declaratory nature, as it only states the resulting public-law obligation, its amount and the fact of its non-performance. In the absence of effective service of the decision in a substituted manner, the customs debtor is deprived of information about the correct amount of the debt, which may result in exposing him to negative financial consequences as a result of enforcement carried out by administrative authorities.

The subject of further considerations contained in this publication are issues related to substituted delivery of letters and customs decisions against the background of Polish legal regulations and how they are applied in the jurisdiction of administrative courts. The purpose of the study is also to present the principles of liability for customs debt under the EU customs law. The last and the last but one parts of the work will be devoted to the analysis of the representative ad litem in the proceedings before the customs authorities and the conditions for the admissibility of issuing letters and decisions to an unknown person. In order to do it, the relations between Polish customs law and the European Union law will be indicated. It is all the more important to undertake the research mentioned in the subject of this study, because in the Polish and the EU doctrines of customs law there are no scientific studies on substituted delivery of letters and decisions in the light of customs law.

The Concept and Principles of Liability for Customs Debt

Unless law provides otherwise, including international agreements, if goods are brought into the EU customs territory or moved out of it, it *ipso jure* gives rise to specific rights and obligations¹. As the goods are in fact imported or exported, the established standards of the EU and the local customs law define the scope of rights and obligations of importers and customs authorities. The goods are brought into the customs territory of the European Union only when, as a result of the actual event, the goods are in fact and physically located in this territory. This means that the bringing in goods should be understood only as a specific event of a factual nature, consisting in moving goods in relation to the European Union border, regardless of how it happened. This situation results in a customs debt in relation to the goods and the persons that brings them in².

The customs debt instrument has been defined in Article 5, Item 18 of the Union Customs Code³. According to it, a customs debt means an obligation imposed on a specific person to pay an appropriate amount of import or export duty, defined for particular goods under the applicable customs legislation. Taking into account the legal definition of a customs debt, it should be acknowledged that it is an obligation to pay a duty arising under the law. This means that the customs obligation arises on the basis of a normative act, which is the Union Customs Code rather than a customs decision. So, a customs debt is an obligation, which means that, in addition to the creditor, the debtor is also present in this legal relationship. This view has also been reflected in Article 5, Item 19 of the UCC, according to which every person liable for a customs debt is a customs debtor. In this context, the linguistic interpretation directive makes us accept that any person liable for payment of a customs debt is a debtor⁴. This definition covers any person (natural or legal) and association obliged to pay a customs debt. As a rule, the debtor is the declarant, but in the case of indirect representation, the debtor is also the person on whose behalf the customs declaration is made. The direct representative may also be a debtor, although he is not the declarant, because he is among a group of people defined by law as a person who knew or should have known that the data provided for the customs declaration are false and customs duties will not be collected in part or in full. It may be both a customs agent and any other person who acts in direct representation and meets the above-mentioned objective conditions. According to the law regulations, there can also be several customs debtors in relation to the same customs debt, and then their liability is joint and several.

In view of the above, it should be noted that the customs debt is incurred where the customs declaration or re-export notification is made or where the supplementary declaration is made. In other cases, the customs debt is incurred where the events giving rise to it occur. Where that place cannot be determined, the customs debt is incurred where the customs authorities find that the goods are in a situation which gives rise to the debt, while where the customs authorities have information that the customs debt may have been incurred in several places, it is found that the customs debt was incurred where it was first incurred⁵.

Conditions for The Admissibility of Issuing Letters and Decisions to An Unknown Person

As already indicated earlier, Polish customs law regulations allow the customs authorities to carry out all necessary actions to regulate the legal situation of the goods. It is particularly visible in the case of the inability to identify the person who has obligations under the customs law. It can particularly be seen if it is impossible to identify the person who has obligations under the customs law. These typical actions of the customs authority are carried out by the customs procedure. As a result of the customs procedure instrument, the customs authority may set the correct amount of the calculation elements for the duty. In the course of customs proceedings, evidentiary proceedings are most often conducted. Its purpose is to establish the actual state, and then, on its basis, to determine the correct amount of the customs liability. Therefore, in order to clarify the situation from the customs debtor, it is necessary to obtain all documents, evidence and testimonies. A customs debtor who is a party to the proceedings, has the right to participate in every stage of the proceedings. It is worth noting that in the European Union, the customs proceedings are not subject to harmonization, and thus, there is

¹ Article 2 of the Act of March 19, 2004, Customs Law (consolidated text, Journal of Laws of 2020, item 1382, as amended) - hereinafter referred to as the Customs Law or CL.

² MACHALICA-DROZDEK K., *Stosunek prawny zobowiązania celno-podatkowego w obrocie towarowym z zagranicą [The Legal Relationship of Customs and Tax Obligations in Foreign Trade]*, Warszawa 2015, p. 211.

³ Regulation of the EU No. 952/2013 of the European Parliament and of the Council of October 9, 2013 establishing the Union Customs Code (recast) (Journal of Laws of the UE L No. 269 of October 10, 2013, p. 1 as amended) - hereinafter referred to as the UCC.

⁴ Cf. DROZDEK A., *Charakter prawny cla jako daniny publicznej w krajowym i unijnym prawie celnym [The Legal Nature of The Duty as A Public Levy in National and EU Customs Law]*, Szczecin 2017, pp. 138-141.

⁵ Article 87 of the UCC.

no separate, single legal act that regulates customs proceedings in all 27 EU Member States. Each member state has been authorised to establish customs proceedings legal regulations independently.

In the Polish legal regulations, the principle has been adopted that in the customs proceedings, a customs debtor may act independently or by a representative. In certain cases, the provisions of Polish customs law also provide for a service representative. According to the provisions of Article 84 of the CL, a person who has no place of residence, habitual residence or seat in the territory of the country or in another EU Member State, if he/she has not appointed a customs representative, he/she is obliged to appoint a representative for service in the country. Based on the above-mentioned legal regulation, it should be inferred that a person who has no place of residence or seat in the territory of the country or in another EU Member State, at the request of the customs authority and on the date it indicated, is obliged to appoint a service representative in the country, while the customs authority is obliged to instruct this person about the consequences of failure to appoint a service representative⁶. This provision does not apply to the delivery of letters and decisions by the customs authority to the customs debtor by electronic means of communication. This provision, *a contrario*, also implies that the service representative may not take any action against the customs authorities on behalf of the party. This obligation applies not only to natural persons, but also to legal persons and associations. When analysing this issue, it should be noted that in some cases the provisions of customs law impose an obligation on the customs debtor to appoint a service representative. The appointment of a service representative in proceedings before a civil court if the customs authority applies for a declaration of forfeiture of goods is an example.

In the Polish administrative judiciary, it is indicated that the above-mentioned legal regulation is used as a guarantee. And so, for example, in its judgment of September 9, 2009, when interpreting Article 84 of the CL, Regional Administrative Court in Lublin stated that in each case when a party to the customs procedure is a person not residing in the Republic of Poland or having no seat in its territory or having no seat in another EU Member State, the customs authority is obliged to instruct it in the form of a written report on the consequences of failure to appoint a service representative, and this instruction should be made when the authority takes its first action⁷. This implies that it is the duty of the customs authority to instruct that a service representative can be appointed, and thus, this provision is also applicable before the customs procedure is initiated.

Important conclusions concerning the service representative were also presented by The Court of Justice of the European Union. In the ruling of December 19, 2012, in the case of *Krystyna Alder and Ewald Alder v. Sabina Orłowska and Czesław Orłowski*, it stated that the provisions of EU law oblige the Member States to regulate the provisions on the service of court and extrajudicial documents in civil and commercial matters⁸, so that customs documents intended for a customs debtor whose place of residence or habitual residence is in different Member State are filed in the proceedings file as serviced⁹. According to Article 1, Paragraph 1 of the Regulation No. 1393/2007 of the European Parliament and of the Council of November 13, 2007, on the service of judicial and extrajudicial documents in civil and commercial matters in the Member States, this provision applies where the customs debtor has not appointed a service representative residing in a Member State where the customs procedure is pending. The aforementioned legal regulation implies that if the customs debtor, who has his place of residence or seat in different Member State, has not appointed a service representative, then letters may not be left in the case files as serviced. The provisions of Regulation No. 1393/2007 prevail over the provisions of the Polish customs procedure. As a result, in the event of a contradiction between them, the latter should not be applied. Polish customs provisions violate the objectives of the free movement of documents and the promotion of fundamental rights, including the right to a fair trial, which is implemented, inter alia, by establishing effective methods of delivering customs letters and decisions in customs and court proceedings. Although these restrictions are very often applied by the customs authorities of the Member States, they do not apply when the service of letters takes place by electronic means of communication and when the party has appointed a general or specific representative. If a party's fails to fulfil the obligation to appoint a service representative, the letter is deemed to have been delivered to the current

⁶ Cf. Sentence of NSA [The Supreme Administrative Court] of June 24, 2014, file ref. I GSK 100/13, Lex No. 1517818.

⁷ Sentence of WSA [The Provincial Administrative Court] in Lublin of September 9, 2009, file ref. I SA/Lu 204/09, Lex No. 525709.

⁸ Regulation No 1393/2007 of the European Parliament and of the Council of November 13, 2007, on the service of judicial and extrajudicial documents in civil and commercial matters in the Member States ('service of documents') and repealing Council Regulation (EC) No. 1348/2000 (Journal of Laws U. UE of 2007, No. 324, p. 79) .

⁹ Sentence of the CJEU of December 19, 2012, file ref. C-325/11 in the case of *Krystyna Alder, Ewald Alder v. Sabina Orłowska, Czesław Orłowski*, ZOTSiS 2012/12/I-824.

address in the country, and the tax authority leaves the letter in the case files¹⁰. The power of attorney for deliveries only applies to the situation where the customs debtor has been effectively informed about the pending customs proceedings. *A contrario*, one could accept the conclusion that the customs debtor cannot be required to appoint a service representative if the decision to initiate the customs procedure has not been properly and effectively served on the party.

At this point, it is worth reminding by summing up that the service of letters to a customs debtor in customs proceedings is a material and technical action of great importance. Service plays an important role in shaping the rights and obligations of the customs debtor, as it is the beginning of the time limits for performing many procedural actions. It is therefore important to carry it out properly, so that the party can undertake these actions on time. Therefore, the legal instrument of service is of fundamental importance in carrying out the obligation to make sure that the customs debtor is really part of customs proceedings.

When analysing the premises for substituted service of letters and decisions under the provisions of the Polish customs law, the principles of liability for the customs debt should be indicated. According to Article 84 of the UCC, if several debtors are liable to pay the amount of import or export duty corresponding to the same customs debt, then they are jointly and severally liable for payment of this amount, which means that any person who knew or with due diligence could have known that when the customs goods are brought into the territory of the European Union (the customs goods moved out of the territory of the European Union) the obligations resulting from the customs legislation have not been fulfilled. The above means that the customs authority is obliged to conduct customs proceedings towards all customs debtors, as their liability is joint and several. It is also worth noting that the provision of this form is made to secure the Union's financial interests as widely as possible¹¹. In this case, the customs authority should call all debtors who have not fulfilled the obligations arising from the application of the customs law to participate in the customs proceedings. The intention of the EU legislator is to ensure that customs authorities have a choice between different debtors in order to satisfy financial claims of the EU bodies. In the context of the above, it should be noted that if one of them failed to fulfil his obligations under the customs legislation, and thus caused a customs debt, then a joint and several debtor who has been forced to pay this debt may be entitled to a recourse claim in the full amount. The position presented is also confirmed in the provisions of the Tax Ordinance, which is applied by the customs authorities accordingly to proceedings in customs matters¹². When conducting proceedings, customs authorities should take into account Article 133 of TO¹³, which imposes on them the obligation to conduct the proceedings, and then to issue a decision to all joint and several debtors¹⁴. At this point it should be noted that if the customs authorities issue a decision only to one of the joint debtors without taking steps to identify the other customs debtors, then this circumstance will result in the need to recognise the decision as defective, and then the obligation to repeal it. This argument was also raised in the decision of the Supreme Administrative Court of April 29, 2010¹⁵, according to which the customs authority is obliged to search for all persons who have become customs debtors by law. In the context of Article 133 of TO, conducting proceedings against one of the joint and several debtors causes the decision to be defective, resulting in repealing it. If the proceedings is not diligently aimed at detecting all debtors, then it should be considered as a violation of the general principles of proceedings contained in Article 121 of TO (the principle of conducting proceedings so that it inspires confidence in the authorities) and Article 122 of TO (the principle of objective truth).

In the light of the above, it should therefore be assumed that joint and several liability introduced by Article 84 of the UCC means that the creditor may demand payment from all debtors simultaneously or from each of them separately, and the payment made by any of the debtors relieves the remaining debtors. Neither provision of national customs law nor the UCC introduces the principle of co-participation necessary in a

¹⁰ Cf. Article 84, Paragraph 1a of the CL.

¹¹ Aside from these considerations, it should be noted that upon Poland's accession to the European Union, as much as 80% of the booked amounts resulting from customs duties are transferred to the general budget of the European Union (cf. Article 2, Paragraph 1, Letter a) and Paragraph 3 of Council Decision No. 2014/335 / EU, Euratom of May 26, 2014 on the system of own resources of the European Union (Official Journal of the EU L 168 of 07.06.2014, p. 105).

¹² Article 73 of the CL.

¹³ Act of August 29, 1997 Tax Ordinance (consolidated text: Journal of Laws of 2020, item 1325, as amended) - hereinafter referred to as the Tax Ordinance or TO.

¹⁴ Cf. Article 110-117b TO.

¹⁵ Sentence of NSA [The Supreme Administrative Court] of April 29, 2010, file ref. I GSK 972/08, Lex No., Lex No. 594792.

pending proceedings. The customs authority is therefore obliged to initiate and conduct one customs proceedings against several entities that may be potential debtors in the case.

Bearing in mind the above, it must be consistently stated that in order to regulate the legal status of the goods and the principle of speed of the customs proceedings, the customs authority has the right to initiate and conduct customs proceedings and issue decisions against an unknown person. If it is impossible to determine the person who has obligations under the customs law, then on the basis of applicable legal standards, the customs authority is obliged to issue a decision without designating the party, i.e. the customs debtor¹⁶. Moreover, when letters and decisions were addressed to persons whose place of stay or address are unknown, they are displayed for 14 days at the seat of the customs authority that conducts the proceedings. After this time limit, they are deemed to have been served by default¹⁷.

Against the background of the above-mentioned legal regulation, divergent decisions appear in judgments issued by administrative courts. The subject of the dispute is the answer to the question whether and at what stage of the customs proceedings it is necessary to appoint a guardian and his participation in proceedings against a person whose place of stay or address are unknown. This is an insofar significant problem of interpretation, as the correct conducted customs proceedings, including how effective the issued customs decision is, depends on whether the appropriate procedure was chosen. For example, in the judgment of November 26, 2013, NSA [the Supreme Administrative Court] emphasised that the customs authority has a statutory obligation to apply to the court to appoint a guardian for a person incapable of legal actions or an absent person, if a guardian had not been previously appointed. Within the meaning of Article 138, Section 1 of the TO, an absent person is a person staying outside the place of residence, whose place of residence is unknown, and a person who has no place of residence. In the further part of the justification, NSA [The Supreme Administrative Court] also indicated that the provisions of Article 73 of the CL reference to the appropriate application of Article 12 and Section IV of the Tax Ordinance - customs proceedings, contains a reservation that the changes resulting from the provisions of the customs law should be taken into account¹⁸. In other words, the customs authority is obliged to apply to the court to appoint a guardian for an unknown person, if he has not already been appointed by the customs authority. Actions are taken by a guardian before the customs authority in order to ensure that the customs debtor is represented in customs proceedings.

In the literature on the subject, it is noted that a guardian for a person whose place of residence is unknown is considered a legal representative of the customs debtor for whom it has been established¹⁹. According to K. Korzan, the basis for granting the substantive nature of guardianship is the right to undertake legal actions. A guardian in customs proceedings is the type of substantive law guardian who acts only in the proceedings. In other words, a proceedings guardian, who is a statutory representative, who has been appointed only to take proceedings steps in a specific customs case within the limits of the powers he was granted²⁰. So, he is granted kind of a substantive nature, but only within the limits of its authorisation, limited by the needs of the pending customs proceedings. Due to the obligations assumed by a guardian, he cannot be a random person who does not guarantee the proper performance of the function he was entrusted. A passive attitude of a guardian or incorrect actions he may take may be the reason to cancel the proceedings. If a person whose place of residence is unknown finds out about the proceedings, based on a charge that a party was deprived of the ability to protect its rights, he may demand it to be cancelled.

In the legal and administrative jurisdiction, there are also significantly different judgments, according to which no applicable legal norm entitles the customs authorities to apply to appoint a guardian for an absent person. Administrative courts argue that Article 83 of the CL is a *lex specialis* in relation to the provisions of the Tax Ordinance. The operative part of the judgment of November 21, 2013, file ref. I GSK 1466/12²¹, in which NSA [The Supreme Administrative Court] stated that the provision of Article 83 of the CL is a *lex specialis* in relation to Article 138, Section 1 of the TO is an example of such a ruling because it provides for different rules of proceedings when a decision is delivered to a person whose place of residence or address is unknown, which prevail over the legal regulations contained in the Tax Ordinance. This means that the customs authorities do not have a statutory obligation to apply Article 138, Section 1 of the TO, and thus the customs authorities submit a request to the court to appoint a guardian for the absent, if the guardian has not already been appointed. Regional Administrative Court in Gliwice, in turn, clearly indicates that according to Article 83 of the CL,

¹⁶ Article 82 of the CL.

¹⁷ Article 83, Section 2 of the CL.

¹⁸ Sentence of WSA [The Provincial Administrative Court] in Gliwice of November 26, 2013, file ref. I GSK 1464/12, Lex No. 1556422, Lex nr.

¹⁹ PIASECKI K. (red.), *Code of Civil Procedure. Commentary, commentary on Article 144*, Legalis.

²⁰ KORZAN K., *Postępowanie nieprocesowe [Non-Contentious Proceedings]*, Warszawa 2004, p. 151.

²¹ Lex No. 1556424.

letters addressed to people whose place of residence or address is unknown are displayed for a period of 14 days at the seat of the customs authorities conducting the customs proceedings. Letters and decisions after this time limit are deemed to have been served²². So, this provision provides for the so-called fiction of service, which should be considered as a special mode of service of letters and decisions for a person whose place of residence is unknown, as prevailing over legal regulations contained in the Tax Ordinance. Even in the absence of the authority's information about the whereabouts of the customs debtor, it would not justify the appointment of a guardian, but initiating another substituted service procedure. The judicature also indicates that if the customs debtor is a person whose place of residence is unknown at the date of issuing the decision to initiate customs proceedings, the provisions of Article 83 of the CL apply²³. Against the background of the judgments cited, it should be noted that adopting such an interpretation means that the customs authority, in the absence of information of the whereabouts of the customs debtor, there was no need to appoint a guardian.

In the judicature, however, there are also judgments according to which a substituted service pursuant to Article 83 of the CL may only be applied to decisions, not procedural documents issued by the customs authority to an unknown person. These decisions are issued without designating the customs debtor. The judgment of NSA [The Supreme Administrative Court] of June 24, 2014, file ref. I GSK 95/13 is an example of such a ruling. According to its content, what the provision of Article 83 of the CL provides for is that those letters which are addressed to persons whose place of residence or address is unknown can be delivered by substituted service as specified therein. As for whether a decision can be delivered by substituted service, pursuant to Article 83 of the CL only decisions issued to an unknown person can be delivered by substituted service, and these decisions are issued without designating the party (customs debtor)²⁴. However, you should keep in mind that any letters from customs authorities that initiate customs proceedings may be addressed to persons who do not have their place of residence or habitual residence or seat in the territory of the country or in another EU Member State. On the other hand, in the justification of the sentence for the judgment of June 24, 2014 NSA [The Supreme Administrative Court] stated that the linguistic interpretation of Article 83 of the CL indicates that it regulates two separate legal situations, i.e. the service of letters and the service of decisions. In the case of serving letters, the provision of Article 83 of the CL provides for the possibility of substitute delivery of those letters that were sent by the customs authority to persons whose place of residence or address is unknown, while as regards the possibility of delivering a decision by substituted service, pursuant to Article 83 of the CL, only decisions issued to an unknown person can be delivered by substituted service. These decisions are issued without designating the party, which is confirmed by using the phrase 'shall be deemed to have been served after this time limit' by the legislator²⁵. This means that Article 83 of the CL applies only to letters and decisions addressed to people whose place of residence or address is unknown and the decisions referred to in Article 82 of the CL. Regardless of the sentences of the judgments of administrative courts presented, the content of the cited legal regulation shows that the customs authority applies the procedure of substituted service for letters, including decisions addressed to persons whose place of residence or address is unknown, and for decisions. To unknown persons, who are subject to obligations under the customs law, the customs authority may take all necessary actions to regulate the situation of the goods, including initiating and conducting proceedings and issuing decisions against an unknown person that specify the correct calculation elements of the duty. In this case, the decision is issued without designating the party.

In the light of the above, it should be stated that on this issue, i.e. the delivery of letters and decisions in the course of the proceedings, which a fundamental to properly conduct customs proceedings, Polish administrative courts present extremely different views. Moreover, it should be noted that the content of Article 73 of the CL contains a reference to applying the provisions of the Tax Ordinance to proceedings in customs matters. However, this provision omits legal regulations against a person whose place of residence or address is unknown. Moreover, it should be noted that the content of Art. 73 pc contains a reference to the application of the provisions of the tax ordinance to proceedings in customs matters, however, this provision omits legal regulations for a person whose place of residence or address is unknown. This means that the provisions of the Polish customs law should be considered *lex specialis* in relation to the provisions of the Tax Ordinance and all letters (e.g. a decision to initiate proceedings or on a seven-day period for the party to comment on the collected

²² Sentence of WSA [The Provincial Administrative Court] in Gliwice of June 11, 2012, file ref. III SA/GI 1946/11, Lex No. 1402088.

²³ Sentence of WSA [The Provincial Administrative Court] in Gliwice of June 20, 2012, file ref. III SA/GI 1946/11, Lex No. 140213.

²⁴ Sentence of NSA [The Supreme Administrative Court] of June 24, 2014, file ref. I GSK 95/13, Lex No. 1517957.

²⁵ Sentence of NSA [The Supreme Administrative Court] of June 24, 2014, file ref. I GSK 100/13, Lex No. 1517818.

evidence) as well as customs decisions can be served by displaying them on the notice board of the customs authority that conducts the proceedings without designating the party (customs debtor). Actions like these may be taken by the customs authority when taking steps to appoint a guardian is not needed for a person whose place of residence is unknown. In a case where the customs authorities would be obliged only to apply the regulations resulting from the Tax Ordinance, it would be reasonable to expect that the authority that conducts the proceedings based on Article 138, Section 1 of the TO will apply to the court to appoint a guardian for an absent person. These restrictions should be treated as an unfavourable restriction of the rights of the customs debtor in customs proceedings.

II. CONCLUSIONS

When summing up the results of the analysis carried out in this study, in the author's opinion it should be adopted that the instrument of substituted deliveries of letters and decisions in customs proceedings is of significant importance for participants of international trade in goods with foreign countries, because it is the beginning of the time limits for performing specific procedural actions. Therefore, service under Polish customs law should be considered as a material and technical action that plays an important role in shaping the rights and obligations of the customs debtor.

Instruments of publishing letters and decisions against an unknown person and a delivery representative are becoming more and more important in practice, as when used, the customs authorities protect the financial interests of the European Union. Despite this, the Polish jurisprudence of administrative courts has not developed a uniform position on many issues related to these instruments. This also applies to such basic issues as the subjective and objective scope of the obligations provided for by these instruments.

The purpose of publishing letters and decisions against an unknown person is to improve the process of serving letters in the proceedings and to make sure that they are effective, which is primarily possible because they can be displayed for 14 days at the seat of the customs authority that conducts the procedure of publishing letters and decisions against an unknown person.

This fact, however, is the reason why Polish legal regulations concerning the instrument of service by default are inconsistent with the implementation of the objective to ensure the right to defence. They deprive the addressee of the document, who is domiciled or habitually resident outside the Member State where the proceedings are taking place, the right to actually and effectively receive the document, and thus they make it impossible to read its content in time to prepare a defence. As a matter of fact, the instrument of service by default makes a party unable to express its opinion on it at the expense of the revenue to the Union budget. At the same time, the fact that it is used in Poland as a result of the failure to appoint a service representative is irrelevant.

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