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SELECTED LEGAL ASPECT OF ENVIRONMENTAL PROTECTION IN THE CONTEXT OF THE REFORM OF EUROPEANUNION CUSTOMS LAW1

Abstract

The paper explores the legal and institutional dimensions of environmental protection within the ongoing reform of the European Union's customs law. It analyses the draft EU Customs Code, which integrates customs policy with the environmental objectives of Article 191 TFEU and redefines the role of customs administrations as protectors not only of the Union's financial interests but also of the internal market's ecological security.

Particular attention is paid to the control of environmentally risky imports, such as lithium-ion batteries, chemicals, and microplastic-based textiles. The paper discusses the interaction between customs controls and secondary EU environmental legislation — notably the REACH, Ecodesign, and Batteries Regulations — which require digital product passports and environmental data disclosure to customs authorities. Implementation challenges are linked to the absence of a unified electronic system among EU customs and environmental agencies.

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Further, the paper analyses customs competences in detecting illegal waste shipments under Regulation (EC) No 1013/2006 and relevant CJEU case law. It highlights the potential of the proposed European Customs Authority and the Customs Data Hub to improve inter-agency cooperation. The conclusion stresses that effective environmental protection in customs practice depends on administrative integration rather than new competences, particularly in monitoring trade in waste and batteries. The analysis and synthesis methods were primarily used to address this issue, supplemented by historical and comparative methods.

Key words: EU customs law, environmental protection, lithium-ion batteries, Customs code, waste shipment

JEL Classification: International law: K33

1. Introduction

The European Union (hereinafter referred to as the "EU") represents one of the strongest economic groups in the international community and therefore the obligation to protect the environment from excessive pollution is one of its basic priorities. Given the interest of the European Union in creating an effective environmental protection policy, it is natural that this goal is also reflected in the challenges associated with the reform of the Customs Code [Cakoci, Balaži 2025: 307–326]. With this reform, the European legislator is trying to address challenges facing the EU, including strengthening its position as a leader in the field of environmental protection [Cakoci 2008: 223–226]. Therefore, according to the draft of the new Union Customs Code, the EU Customs Authority will[2] also supervise environmental protection, i.e. environmental protection will be diversified between existing EU bodies and agencies [ECHA, EMA, EEA] and the European Customs Authority.

The Customs Union is one of the most successful projects within the policies of the EU [Lyons 2028: 1–705; Cakoci, Hrabčák 2025: 4–18]. Its existence ensures the free movement of goods between Member States and at the same time creates common customs rules towards third countries. The Treaty on the Functioning of the European Union (hereinafter referred to as the „TFEU") explicitly enshrines environmental objectives as an integral part of internal market policy, including customs policy, while Article 191 TFEU establishes environmental protection as an objective of the EU and obliges

[2] The draft of the new Customs Code constitutes a new body that is to replace the existing customs authorities of the EU Member States.

EU institutions and bodies to integrate environmental considerations into all policies. Despite this, the last major reform of customs rules took place in 2016 without reflecting the changes in the international community which happened over the past decade. The Commission states in its Communication that "there are demonstrable problems, such as the undervaluation of goods to avoid customs duties (...) as well as the smuggling of illicit or dangerous goods." [European Commission, 2020]. Pursuant to Article 3 of the Customs Code customs authorities have primary responsibilities around protecting financial interests from unfair trade, as well as area of environmental protection. It is obvious that such broadly conceived powers, but also the responsibilities of customs authorities[3] are not sustainable in the long term [European Commission, 2023].

The new regulation of the Customs Code, as a secondary legislative act of EU law, should reflect both the absence of a personnel substrate in the system, but also all the fundamental challenges associated with the customs union, whereas each [fundamental] challenge cannot be systematically separated, as they are functionally and thematically interconnected. The challenges that arose with the emerging need to reform the customs union require special examination and therefore the author in the presented article will focus only on some aspects associated with environmental protection when goods enter the territory of the customs union, as well as the export of waste to EU member states or non-member states. For the sake of completeness, the author points to the challenges presented in connection with the creation of the European Customs Authority, which [if established] will be authorized to carry out control mechanisms instead of the customs authorities of individual member states that currently exist.

The aim of the presented article is to track goods (batteries) after crossing the customs border and their changing nature into waste in accordance with the relevant EU legislative acts[4]. In connection with the text above,

[3] They collect customs duties and VAT on imported goods and, where appropriate, excise duties, but they also control these goods for a range of non-financial reasons, verifying the compliance of imported goods with rules on the protection of intellectual property rights, controlling the import of drug precursors, controlling trade in cultural objects, trade in wild animals and plants and the transport of waste to prevent illegal exports and imports.

[4] According to Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules for specifying certain provisions of the Union Customs Code, the term waste means either goods or products which are classified as waste and scrap

the set objective also includes an examination of the ability to monitor illegal waste shipments in the context of the decision-making practice of the European court of justice (CJEU). The aim is relevant mainly due to the increase in trade between EU states and the rest of the international community. The expansion of international trade creates a disproportionate amount of waste, and the Member States must deal with this waste in accordance with the applicable EU law. The management of goods after their entry into the EU, which are subsequently [after the purpose has been fulfilled] classified as waste, is within the discretion of the Member States, which implement the EU law in different time horizons. This creates contradictions in proceedings before the customs authorities of the Member States [CJEU 2019 C-399/17 (ECLI:EU:C:2019:200)].

2. Regulation of environmental pollution when goods enter the EU through customs.

Environmental protection has several aspects depending on the type of pollution, threat, or [in]direct damage. The current system does not meet the requirements of Article 3[c] of the Customs Code, according to which, among others, customs authorities protect the environment in cooperation with other authorities.[5] We believe that this type of control of goods and environmental protection is due to the existence of the institute of duty-free goods for shipments up to €150. According to the European Commission press release, approximately 4.6 billion shipments with a value of less than €150 were transported to the EU market in 2024, which is an exponential increase compared to previous years, with also a clear increase in goods, that are (secondarily) dangerous to the environment [European Commission, 2025]. Obiter dictum, of the customs duties exemption up to €150 was introduced both to strengthen the purchasing power of the EU population, but also to relieve customs authorities of part of the agenda associated with the transport of these shipments. The abolition of the de minimis threshold

in accordance with the Combined Nomenclature or, in the context of the customs procedures of end-use or inward processing, goods or products which are the result of a processing operation and which have no or low economic value and cannot be used without further processing (Article 1, para 41).

[5] The legal basis for civil cooperation between the authorities of the Member States in customs matters is Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and on cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

has both an economic fiscal dimension [predictions forecast approximately €750 million for the EU budget [European Commission, 2025] but also environmental protection as (especially) Asian trading companies [European Commission, 2024] doing business in the fast fashion sector, often circumvent customs duties by reporting distorted values of textile goods [European Commission, 2024], which has been shown to contain excessive amounts of microplastics [European Environmental Agency, 2022].

Following the various types of environmental pollution, we identify several areas in which environmental threats occur. These types can be distinguished into aspects related to unregistered/dangerous goods and their subsequent transport when exported from the EU[6], aspects of environmental pollution by packages and packaging waste, aspects of textile environmental damage, furthermore there are batteries and vehicles causing ecological hazards imported to the European market, as well as their export after the usage period, including electronics, and the construction industry in the context of ecological requirements for construction products[7].

Of all above mentioned issues, in the presented article the author deals with the entry of [potentially] dangerous goods into the EU as well as the classification of dangerous goods in terms of the relevant legislative acts of secondary EU law. The ability of states to process waste in EU Member States, or its legally regulated export, will also be analysed. The author considers the above selected aspects to be the most significant issues with regards to the ratio of environmental burden [Directorate-General for Environment, 2022] and European Union Risk Management Information System (RMIS) predictions, which are presented in the submitted paper.

2.1. Environmental protection from dangerous goods

The import of dangerous goods into the EU is regulated by several secondary legal acts[8], which mostly regulate the obligation given to manufacturers

[6] Destruction or secondary use is a special issue within the framework of environmental protection, which requires research into the possibilities of individual countries to deal with hazardous waste in an ecological way.

[7] Environmental protection through customs law, including the draft of a new customs code in areas such as electromobility and construction, or ecological requirements for building materials, go beyond the scope of the presented contribution due to their interdisciplinary technical nature.

[8] Relevant EU regulations and directives: (EC) No. 1223/2009 on cosmetic products; Directive 2011/65/EU (RoHS); Regulation (EU) 2019/1020; (EC) No. 1907/2006 (REACH); Directive

to comply with environmental protection requirements. Given the extensive regulation of environmental protection, we consider it necessary to point out the general Eco-design Regulation[9], which aims to set the same requirements for "domestic" and foreign manufacturers for goods provided to the EU market. The regulation defines the mandatory data that the importer or manufacturer must include in the digital products passport. This data functions as a notification for customs authorities, since on their basis it is already possible to identify dangerous goods. According to the OECD report [OECD/EUIPO, 2022] the impact of dangerous goods can be divided into four categories. In line with our stated aim, we will deal only with the impact of dangerous goods on the environment. Among the dangerous products with a significant impact on the environment, we include mainly medications, batteries and chemicals. Three agencies have been established for the purpose of protecting the internal market and the environment[10], which must cooperate with the customs authorities of the individual Member States and each other. According to the Commission Communication on the Customs Union [European Commission, 2020] this cooperation appears so far to be insufficient, mainly due to separate electronic servers.

For all three types of products, the REACH Regulation is essential. This regulation is a significant EU act for the protection of the environment from the risks posed by chemicals in goods. The regulation determines which chemical substances must be registered with European chemical agency (ECHA) together with the risks they pose. At the same time, goods entering the EU from the external border must contain data on the identity of the product, components and materials in accordance with the Eco-design Regulation in the digital product passport, which includes, among other things, the environmental impact and the possibilities of its recycling/refurbishment. If the digital product passport lists a chemical substance that is harmful to the environment (e.g. lithium in batteries), the customs authority is authorized to detain the goods, subject them to sampling and request ECHA to analyse and subsequently prepare an assessment of the environmental burden. The outlined procedure is the explicitly granted

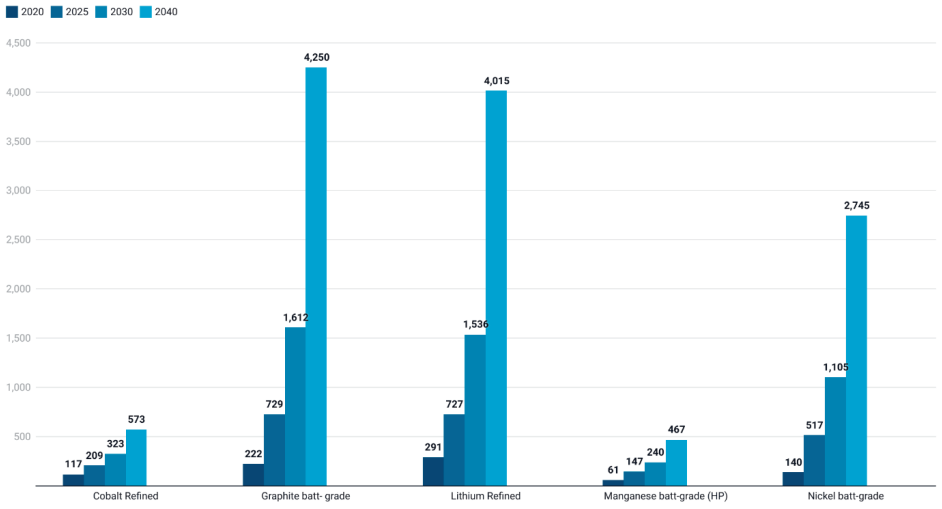
2006/66/EC; Regulation (EU) 2024/1781; (EU) No. 305/2011; (EC) No. 1013/2006

[9] Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of eco-design requirements for sustainable products

[10] European Chemicals Agency, European Environment Agency, European Medicines Agency.

power in the draft new Customs Code to detain goods in case of concern about the threat to the environment[11].

Lithium-ion batteries represent the most significant environmental challenge currently faced by the European Customs Authority. The RMIS forecast states that by 2025 the production of battery cells will cover the consumption of electric vehicles. It is necessary to add the fact that the EU is and will be dependent on raw materials from China or, in the future, from Australia and Canada [European Commission, 2021]. According to RMIS, demand for raw materials essential to batteries such as graphite, lithium, and nickel from the above-mentioned countries is projected to increase fivefold by 2030 and fourteenfold by 2040.



Graph 1. Forecast of demand for raw materials needed for battery production

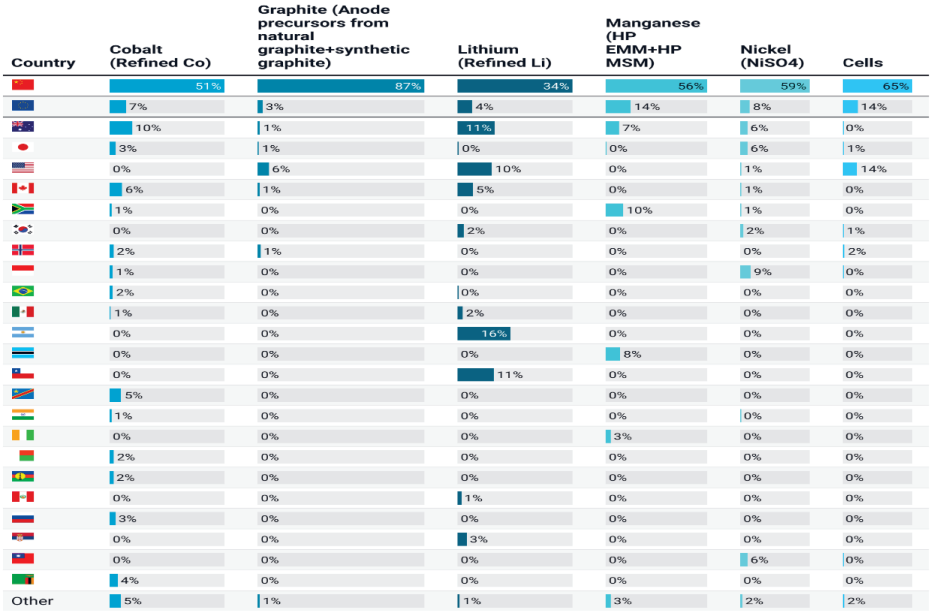
Source: EU RMIS DOI: https://rmis.jrc.ec.europa.eu/analysis-of-supply-chain-challenges-49b749

11 It is necessary to add that, in our opinion, customs authorities have the authority to detain goods for the purpose of examining the environmental requirements of goods even without *expressis verbis* granted jurisdiction. The above statement can be substantiated by an *ad maiori a minus* interpretation in the context of the ECJ decision C-752/18, which frees the use of state coercive powers in violation of environmental obligations arising from EU law.

Lithium-ion batteries have recently become a common commodity due to their widespread use. A significant number of unlicensed batteries are entering the European market, which represent a burden on the environment due to their high energy value and their lithium cells. It can be stated that lithium-ion batteries have not yet fulfilled their potential to the extent that is assumed. Taking into account the generally conceived principle of international environmental law, which is to discharge only such quantities of substances that the environment can naturally neutralize [Declaration on the Human Environment, 1972], it is appropriate to point out the EU's efforts to regulate procedures for waste batteries [Eurostat, 2025].

For this reason, the Battery Regulation 2023/1542 establishes an obligation for importers or manufacturers of batteries to provide data on the composition and content of hazardous substances, which adds a new obligation to the European customs authority to check the data directly on the batteries. According to the Regulation, it will be necessary to deliver documentation to the European customs authority on the percentage of recycled lithium and other chemical substances in the battery as of 2028. This is intended to verify the environmental aspect of production, but at the same time, their burden increases regardless of the personnel and technical substrate of the customs authorities, if there is no rapid verification of the content of the batteries. The draft of the new customs code does not change anything between ECHA and the newly established European customs authority. The EU's ability to produce batteries for electric vehicles is conditioned by the production capacity for processing raw materials, which is largely available to the oligopoly of semi-state trading companies in China[12].

[12] The most important trading companies include China Minmetals Corporation, China Nonferrous Metal Mining Group, Jinchuan Group, Ningbo Shanshan, Zhejiang Huayou Cobalt & CBL, Tinci Materials, China Zirconium Limited.



Country	Cobalt (Refined Co)	Graphite (Anode precursors from natural graphite+synthetic graphite)	Lithium (Refined Li)	Manganese (HP EMM+HP MSM)	Nickel (NiSO4)	Cells
	51%	87%	34%	56%	59%	65%
	7%	3%	4%	14%	8%	14%
	10%	1%	11%	7%	6%	0%
	3%	1%	0%	0%	6%	1%
	0%	6%	10%	0%	1%	14%
	6%	1%	5%	0%	1%	0%
	1%	0%	0%	10%	1%	0%
	0%	0%	2%	0%	2%	1%
	2%	1%	0%	0%	0%	2%
	1%	0%	0%	0%	9%	0%
	2%	0%	0%	0%	0%	0%
	1%	0%	2%	0%	0%	0%
	0%	0%	16%	0%	0%	0%
	0%	0%	0%	8%	0%	0%
	0%	0%	11%	0%	0%	0%
	5%	0%	0%	0%	0%	0%
	1%	0%	0%	0%	0%	0%
	0%	0%	0%	3%	0%	0%
	2%	0%	0%	0%	0%	0%
	2%	0%	0%	0%	0%	0%
	0%	0%	1%	0%	0%	0%
	3%	0%	0%	0%	0%	0%
	0%	0%	3%	0%	0%	0%
	0%	0%	0%	0%	6%	0%
	4%	0%	0%	0%	0%	0%
Other	5%	1%	1%	3%	2%	2%

Graph 2. Projected production capacity for processed raw materials and battery cells in 2030

Source: EU RMIS DOI:https://rmis.jrc.ec.europa.eu/analysis-of-supply-chain-challenges-49b749

3. Environmental protections during the transport of waste within the EU and the export of waste from the EU

The EU, as one of the largest producers of waste, is interested in limiting the export of environmentally harmful waste outside its territory. Customs authorities are key in enforcing the rules that are intended to prevent the export of hazardous, unregulated or unidentifiable waste. We would like to add that, in our opinion, given the increase in criminal activity in the customs area [Council of the European Union, 2025] is this type of task entrusted to the wrong authority. We believe that a more appropriate controller would be the European environmental agency (EEA), which is able to carry out effective targeted controls instead of generalised customs supervision. The regulation of waste exports is regulated in Regulation (EC) No 1013/2006 on shipments of waste. The Regulation prohibits the export of hazardous waste to non-OECD countries and at the same time regulates

the conditions for the export of other waste, including the obligation of notification and consent.

Regarding the changing nature of waste batteries, it is necessary to base it on the definition of waste according to Directive 2008/98/EC on waste. The general definition of waste is formulated in such a way that we consider any substance or object that the holder disposes of, intends to dispose of, or is obliged to dispose of as waste. In other words, it is a broadly conceived definition that includes both voluntary disposal of an item or an order to dispose of an item under the conditions set out in each legislation. Ergo, a battery becomes waste if it is no longer used, i.e. it is unusable, its owner voluntarily gives it up, or if it does not meet technical standards. As of 2024, a battery must also be considered waste under Regulation 2023/1542 on batteries and waste batteries, which sets requirements for the entire life cycle of a battery.

The interpretation of the case law of the CJEU can lead to a specific interpretation of the rules for the export of batteries after their use [already classified as waste under the Waste Directive]. Customs authorities are authorised to refuse the export of waste batteries if environmental protection requirements are not met. This is a reflection of the case law of the CJEU, which stated that customs authorities have the right to apply the precautionary principle and refuse export if there is a suspicion that it is waste. Regardless, the principle of state liability at the vertical level for damage caused to an individual by the incorrect application of EU law remains.

After reviewing the decision-making practice of the CJEU [CJEU, 2019, C-399/17 ECLI:EU:C: 2019:200, CJEU 2023, C-114/22 (ECLI:EU:C:2023:399)] it can be stated that a deliberate violation of the Waste Shipment Regulation [or the Basel Convention] is occurring, mainly through the declaration of waste as used goods or through falsified documents necessary for customs procedures. The competent authority to decide on the nature of the goods, i.e. whether it is waste or a product, is the customs authority. Such a decision is pivotal in terms of the legality of the export. According to the European Environment Agency, only approximately 30% of waste exports from the EU are correctly reported, with a significant part being reported as used goods.

Regulation 2023/1542 also sets minimum requirements for the transport of used batteries[13] regardless of whether the destination is in a Member State or a non-Member State of the EU. The carrier is obliged to declare [to the customs authority] a copy of the invoice and the contract of sale or transfer of ownership of the batteries, which state that the batteries are intended for direct reuse and are fully functional. Furthermore, evidence of the assessment or testing in the form of a copy of the records and a declaration that none of the materials in the consignment are waste within the meaning of Article 3 paragraph 1 of Directive 2008/98/EC. The customs authorities of the Member States are authorised to carry out testing of the battery for the purpose of verifying the accuracy of the information, as well as a chemical analysis aimed at determining the presence of hazardous substances (mostly lithium).

In order to better understand the reporting of waste as used waste during its transport within the EU, it is appropriate to analyse decision C-399/17 [CJEU 2019, C-399/17 (ECLI:EU:C:2019:200)], which together with Decision C-206/88 [CJEU 1990, C-206/88 (ECLI:EU:C:1990:132)] create a legal framework for interpreting the definition of waste and the related obligations during its shipment. The procedural regulation requires the authorities of the Member State of destination to be notified of the type, quantity and type of waste that the State of origin intends to ship. In the above-mentioned decision, the Commission, as the applicant, argued that the Czech Republic had failed to comply with the notification obligation when shipping waste to another EU Member State. The CJEU agreed with the arguments of the Czech Republic, which demonstrated that the waste was not considered waste in the state of destination at the time of shipment[14], but given its secondary use, it was a fuel. At the same time, the CJEU agreed with the Czech Republic's argument that if a substance was registered under

[13] The difference between a used and a waste battery within the meaning of Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 on batteries and waste batteries lies in the legal consequences, with a used battery not being considered waste if it has been reused, repurposed, or reconditioned.

[14] The ambiguous legal regulation in the field of waste transport between EU member states is evident and has not yet been fully harmonised. In order to achieve gradual harmonisation and to avoid disruptions to the transport of goods or waste, the European legislator is calling on the relevant authorities, i.e. the customs authorities of the member states, to base their decisions on the provisions of Directive 2008/98/EC. For more information, see recital 37Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste.

the REACH Regulation, such a substance ceases to be waste [CJEU, 2013, C-358/11 (ECLI:EU:C:2013:146)].

The issue of exporting waste outside the EU Member States in connection with the Customs Code is regulated both in the jurisdiction and the procedure set out in the Customs Code itself, but also in the Waste Shipment Regulation. The decision-making practice of the CJEU is of fundamental importance in this regard, which in the landmark decision C-1/11 [CJEU 2012, C-1/11 (ECLI:EU:C:2012:189)]. ruled that waste traders who intend to export goods outside the EU Member States are obliged to disclose the identity of the waste producer, even if this would result in a breach of trade secrets. In connection with the new challenges posed to the Customs Code, it is therefore necessary to adjust the powers of the customs authority so that, in cooperation with national authorities, it can monitor whether the data reported in the waste consignment note are complete. Following the above decision, the CJEU stated that if the trader or transporter of waste does not report true data to the customs authority, the fine imposed must be proportionate to the extent of the environmental damage [CJEU, 2015, C-487/14 (ECLI:EU:C:2015:794)].

From the perspective of defining waste, it is appropriate to draw attention to the existence of the judgement of the European Court of Justice [CJEU 2012, C-624/17 P (ECLI:EU:C:2012:600)]. According to this judgment, it is necessary for the customs authority to examine the holder's handling of the waste and at the same time assess whether it is waste within the meaning of the Waste Shipment Regulation. The CJEU stated in the judgment that unverified electronics are considered waste and their failure to report [also] to customs authorities is considered illegal transport. Similarly, unlicensed batteries can be considered waste even if they do not meet the requirements under the Waste Directive. Vice versa, even without meeting the requirements for waste, the transporter is obliged to comply with the requirements for the transport of waste within the meaning of the Waste Shipment Directive.

In connection with the proposal for a new customs code, it is necessary to draw attention to the establishment of a European Customs Data Centre, which will be available to all, both to the newly established European Customs Authority and to other institutions with environmental, administrative or criminal jurisdiction. The European Customs Authority was granted a new power to refer a case to an environmental authority for action, provided that

an absence of marking or an excessive amount of non-recyclable material is detected during customs control.

4. Conclusion

Environmental protection, as one of the most important challenges, contains many aspects causing environmental burden, the intensity of which increases with the rise in the amount of goods. The European Union is showing a real and feasible effort to focus on the so-called green transformation, of which the customs union is also a fundamental element. Dangerous goods enter the European Union regularly, which in itself does not pose a threat to the environment. Provided that the carrier provides accurate data, the customs authorities are able to verify their defectiveness and the level of threat in cooperation with the relevant bodies and agencies of the EU. We consider it necessary to state again that the current cooperation between customs authorities and in particular the European Environmental Agency does not fulfil the intended purpose. The new draft of Customs Code, as well as the relevant legislative acts of the Council and the European Parliament, in their recitals, repeatedly encourage cooperation, which has not yet fulfilled its potential. In conclusion, the legislative framework in the field of environmental protection is sufficient and the draft new Customs Code therefore does not need to change the control system but only expand cooperation between the newly established European customs authority and the existing authorities and agencies responsible for the respective procedures.

Within the framework of the set objective associated with the ability of customs authorities to monitor hazardous waste, it can be stated that de lege lata the powers of customs authorities are regulated analogously to the general powers under the applicable Customs Code. Analyses of decision-making practice clearly indicate the competences of customs authorities for the purpose of environmental protection. The draft of the new Customs Code directly regulates the powers of customs authorities as interpreted by the Court of Justice of the European Union in a legislative manner but does not extend them. Given the planned changes associated with the creation of a new customs authority, we believe that it is not appropriate to specifically regulate the extension of powers in waste monitoring.

As follows from the presented article lithium-ion batteries are the new “driving engine” of European industry. Their general use is essential in terms

of the transition to a green economy. Given the absence of raw materials necessary for the production of batteries, the upcoming amendment to the Customs Code is even more significant. Since there is a legal distinction between a used battery and a waste battery, a different method of customs control is naturally applied when entering the customs border. De lege ferenda, it would be appropriate, in order to protect the environment, to adopt an implementing act within the framework of the draft new Customs Code, which would regulate a uniform procedure for performing customs control. In conclusion, we add that the customs authorities of the Member States [pro futuro the European customs authorities] face the challenge of protecting the environment, but also of protecting the European internal market, the irreplaceable pillar of which is undoubtedly the customs union.

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