

## Syllabus for EU law seminar (MP720Z/01)

Where: MS Teams – you will receive invitations from Madalina Moraru for the Tuesday's seminars (every two weeks). You are encouraged to live your camera turned on, as the seminar is an open platform of exchange of views.

### Seminar I – Free movement of goods 13 October 2020, 12.00-13.40

In this seminar we will discuss the free movement of goods, as one of the four fundamental freedoms, which are the cornerstone of the EU's internal market. The current Treaties provision refer to the internal market (pre-Lisbon Treaty – single market). In order to achieve an internal market without borders (see definition in Art 26 TFEU), obstacles to the four FFs must be abolished. As regards the free movement of goods, the obstacles refer to (see Art 28 TFEU).

#### Learning objectives

1. 'Internal', 'common' or 'single' market?
2. What is an internal market?
3. Why an internal market?
4. Who is competent to regulate in the internal market?
5. How was the internal market created?
6. What is a 'good'?
7. What is a Quantitative Restriction (QR)
8. What is a measure having equivalent effect (MEE) in imports and what are its conditions?
9. What is a selling arrangement?
10. What are the exceptions on the prohibitions of quotas and MEE?
11. Do third countries' goods qualify for the benefit of free movement of goods?

#### Mandatory reading (these contain the answer to the learning objectives):

1. Legal basis for the internal market: Articles 2, 3(3) TEU; 4, 26, 34- 36 TFEU
2. EU secondary law: Directive 70/50/EEC, see Articles 2 and 3:
  - provided to give indications on what constituted MEE;
3. Caselaw clarifying EU law provisions:
  - C-168/78 *Commission v France* (Whiskey taxation) – taxation in customs union
  - C-8/74 *Dassonville* – clarifies what is a MEE: "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, Intra-Community trade"
  - C- 120/78 *Cassis de Dijon* (indistinctly applicable rules)
  - C- 7/68 *Commission v Italy* (Art Treasures)
  - *UHT* (this was recommended by Prof Krepelka)
  - *Commission v Belgium (waste)* (this was recommended by Prof Krepelka)
  - C-267/91 *Keck* (how to deal with indiscriminatory barriers, and what is a selling arrangement)
  - Joined cases C-34/95, C-35/95 and C-36/95, *DeAgostini*

Examples of Quantitative Restrictions: see Henn and Darby

What is ME a Dassonville: "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, Intra-Community trade"

Optional reading:

- CJEU, Case C-201/15, *AGET Iraklis*, judgment of the Grand Chamber of 21 December 2016.

*Why is this case relevant?*

In a Grand Chamber judgment of 21 December 2016 (*AGET Iraklis*), the Court of Justice held that a Greek law subjecting collective dismissals to a prior administrative authorisation constitutes an unlawful restriction of the freedom of establishment of companies, as guaranteed by the TFEU. That judgment is of topical interest given the broader context of the imposition on Greece, as part of the financial rescue programme of the European Stability Mechanism, of a duty to make its employment laws more 'flexible'. But it reflects a long-standing doctrine of the Court of Justice, namely that the generally applicable laws of a Member State can be in breach of the free movement of persons. It is an expansive reading of free movement that contrasts with the original understanding that free movement is about guaranteeing *equal rights* to workers and companies from other EU states, but not more than that.

- M. Markakis, 'Case C-201/15 AGET Iraklis: Can governments control mass layoffs by employers? Economic freedoms vs labour rights', *EU Law Analysis*, 3 January 2017.

## **Seminar II – Free movement of persons 27 October 2020, 12.00-13.40**

Learning objectives:

Mandatory reading:

Caselaw:

- Calfa,
- Bosman,
- Com/Belgium - public service,
- Schumacker

## **Seminar III – Free movement of services, corporations, capital 10 November, 12.00-13.40**

Learning objectives:

Mandatory reading:

Caselaw:

- Centros,
- Luisi and Carbone,
- Kohll)

## **Seminar IV – Competition 24 November, 12.00-13.40**

Learning objectives

Mandatory reading:

Caselaw:

- Consten+Grundig,

- "Chiquita",
- Continental Can,

### **Seminar V – Fundamental rights 8 December, 12.00-13.40**

This week is dedicated to human rights protection under the two main European inter-governmental organisations: the Council of Europe (CoE) and the European Union (EU). This Week will take at its focus three aspects of the European regional human rights protection system: (1) the overlapping standards and continuous judicial dialogue on fundamental/human rights protection system; (2) fundamental rights as the policy field within the EU, (3) human rights external policy of the EU, Finally, we shall take the current migration crisis in order to focus on what happens if fundamental rights protection is applied to the concrete, very complex situation.

Since the entry into force of the Treaty of Lisbon the Charter of Fundamental Rights of the European Union has become a legally binding instrument. Importantly, the European Union is not a party to the ECHR – it should become one in line with Article 6(2) TEU. At the same time the EU Member States are bound to observe the European Convention on Human Rights (ECHR) and the fundamental rights guaranteed in national constitutions The resulting interaction of the three legal systems is governed by relevant provisions of the Treaty of the European Union (Article 6) and the Charter itself (Title VII), however, the effectiveness of such arrangement from the point of view of fundamental/human rights protection standard depends to a large degree on the ability and willingness of judges to engage in fundamental rights discussions and on the decision makers' due diligence in assessing impact and progress from fundamental rights perspective.

The accession of the European Union to the ECHR would be an important contribution to the consolidation of a coherent and harmonised system of human rights protection across the region. Unfortunately, it will be postponed following the recent judgement of the Court of Justice of the European Union outlining the criteria under which the accession is feasible (see: Opinion 2/13 of the Court of Justice of the European Union of 18 December 2014 on the EU accession to the ECHR). This means that from the judicial perspective the search for the adequate fundamental/human rights protection standard will continue in line with the previously established practices until the future accession to the ECHR will have been completed.

At the same time, the European decision makers have been developing the wide array of instruments aiming at establishing and complying with fundamental/human rights standards within on the European continent. In particular, in the EU perspective, fundamental and human rights have become so important that both internally and externally they grew in concrete policy fields. Over the years, some areas of the two policy fields have turned out exemplary (see for instance the European data protection standard), in others the EU has proven its potential as an international standard setter (see: the contribution to the setting of the review standard for the terrorist listing at the UN level following the *Kadi* judgment of the CJEU).

Learning objectives:

Mandatory reading:

Stauder, Hauer, Bosporus, opinion on EU accession to ECHR.

**Seminar VI = Accession and exit from the EU and EU policy crises**  
**12 January, 12.00 – 13.40**

Learning objectives:

Mandatory reading:

Brexit (Ynos, Skoma-Lux, Wightman, Weiss, Com v. H, PL, CZ - refugee quota and others.)