

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

Mandatory reading:

What constitutes services?

See: Art. 56 TFEU + Directive 2006/123/EC on services in the internal market (so-called Services Directive)

Freedom to provide services applies to all of those services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons (see Case C-159/90 Grogan para.17). The person providing a 'service' may, in order to do so, temporarily pursue her or his activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.

Caselaw:

In that regard, it should be borne in mind that, according to the case-law of the Court, the concept of 'services' within the meaning of Article 50 EC implies that they are ordinarily provided for remuneration and that the remuneration constitutes consideration for the service in question and is agreed upon between the provider and the recipient of the service (see Case 263/86 Humbel and Edel [1988] ECR 5365, paragraph 17; Case C-109/92 Wirth [1993] ECR I-6447, paragraph 15; and Case C-355/00 Freskot [2003] ECR I-5263, paragraphs 54 and 55)

MANDATORY - Joined Cases C-286/82 and C-26/83 Luisi & Carbone (case required by Prof Krepelka):

What is the difference between freedom to provide services and freedom of movement of goods, capital and persons.

Does the freedom to provide services cover both the service providers and services recipients?

See: It has also been held that the freedom to provide services includes the freedom for the recipients of services, including persons in need of medical treatment, to go to another Member State in order to receive those services there (see Joined Cases 286/82 and 26/83 Luisi and Carbone [1984] ECR 377, paragraph 16).

Example of services: medical?

It should be noted in that regard that, according to settled case-law, medical services provided for consideration fall within the scope of the provisions on the freedom to provide services (see, inter alia, Case C-159/90 Society for the Protection of Unborn Children Ireland [1991] ECR I4685, paragraph 18, and Kohll, paragraph 29), there being no need to distinguish between care provided in a hospital environment and care provided outside such an environment (Vanbraekel, paragraph 41; Smits and Peerbooms, paragraph 53; Müller-Fauré and van Riet, paragraph 38; and Inizan, paragraph 16).

MANDATORY: C-158/96 - Kohll v Union des caisses de maladie

What constitutes capital?

See: Arts. 63-66 TFEU

Caselaw:

MANDATORY - Centros (mandatory Prof Filip Krepelka)

Coordination with Freedom of Establishment: No simultaneous application (CJEU practice)

Coordination with free movement of services: Art 58 TFEU ∪Centre of gravity approach (CJEU Fidium Finanz)

Literature:

On freedom to provide services, see a colage of the relevant ECJ judgments in GUIDE TO THE CASE LAW ff the European Court of Justice on Articles 56 et seq. TFEU written by the European Commission

On free movement of capital see: Gelter, M. (2017). Centros, the Freedom of Establishment for Companies and the Court's Accidental Vision for Corporate Law. In F. Nicola & B. Davies (Eds.), EU Law Stories: Contextual and Critical Histories of European Jurisprudence (Law in Context, pp. 309-337). Cambridge: Cambridge University Press.