

Syllabus for EU law seminar (MP720Z/01 autumn 21/22)

Where: In person, seminar room 038. Wearing masks is recommended.

Seminar I – Free movement of goods 12 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' provisions 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 fundamental freedoms must be abolished.

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 benefits 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*
 - *Commission v Belgium (waste)*
 - C-267/91 *Keck* (how to deal with non-discriminatory 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:

- Chapter, Free Movement of Goods, by Oliver and Navarro, in *European Union Law* 3rd ed, Barnard and Peers (uploaded in the IS)
- CJEU, Case C-201/15, *AGET Iraklis*, judgment of the Grand Chamber of 21 December 2016.

Seminar II – Free movement of persons
26 October 2020, 12.00-13.40

In this seminar we will discuss the free movement of persons, as one of the four fundamental freedoms which are the bedrock of the EU's internal market. The free movement of persons commonly applies to three categories of persons: workers, self-employed and EU citizens.

The first provisions on this subject were provided already in the 1957 Treaty establishing the European Economic Community, but covered only the free movement of workers and freedom of establishment, and thus individuals as employees or service providers. The Treaty of Maastricht introduced the notion of EU citizenship in 1993, to be enjoyed automatically by every national of a Member State. It is this EU citizenship that underpins the right of persons to move and reside freely within the territory of the Member States. The Lisbon Treaty confirmed this right and also recognised it a fundamental right by including it in the EU Charter of Fundamental Rights.

In terms of EU secondary legislation, the exercise of free movement rights by EU citizens is governed by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This Directive replaced different pieces of legislation¹ and codified a large body of CJEU case-law linked to the free movement of persons. The Directive is designed to encourage Union citizens to exercise their right to move and reside freely within the Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, and to limit the scope for refusing entry or terminating the right of residence. For instance Directive 2004/38/EC includes as family members: the spouse (also of the same sex, as clarified by the Court of Justice of the European Union (CJEU) in its judgment *Coman*, C-673/16; the registered partner, if the legislation of the host Member State treats registered partnerships as equivalent to marriage; direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; and dependent direct relatives in the ascending line and those of the spouse or registered partner.

Notwithstanding the importance of this right, substantial implementation obstacles to the EU citizenship rights as set out in the Treaties and Directive still persist.² One of the persistent question in both literature and CJEU caselaw is the extent of overlap between the rights conferred by Article 21 TFEU and rights conferred by the so-called EU citizenship Directive.

¹ A series of directives were adopted in 1990 in order to grant residence rights to persons other than workers: Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity; Council Directive 90/366/EEC on the right of residence for students; and Council Directive 90/364/EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and for members of their families).

² Check the latest EU citizenship Report (2017) here: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51132 A new one will be issued this year.

Learning objectives:

At the end of this seminar you should have a comprehensive understanding of the development of EU citizenship; the notions of worker; self-employed, persons; rights of family members; prohibition on discrimination on, nationality; restrictions in the free movement and limitations of the, free movement based on Treaty, secondary legislation and case-law.

Mandatory reading:

EU primary law

Articles 2, 3, 6, 9, 10 & 11 TEU

EU citizenship: Articles 18-25 TFEU

Workers: Articles 45-48 TFEU

Self-employed: Articles 49-55 TFEU

Article 45 of the Charter of Fundamental Rights of the European Union.

EU secondary law:

Directive 2004/38/EC on EU citizenship

The EU primary law provisions are written with striking economy and for this reason they have given rise to a vast number of cases from the CJEU.

CJEU Caselaw:

- Case C-348/96 *Calfa* ECLI:EU:C:1999:6
- Case C-415/93 *Bosman* ECLI:EU:C:1995:463
- C-317/14 *Commission v Belgium* ECLI:EU:C:2015:63
- C-279/93 *Schumacker* ECLI:EU:C:1995:31

A must read for EU citizenship is also: C-34/09 *Zambrano* ECLI:EU:C:2011:124

Literature (mandatory)

R Schutze, Ch 10 Internal Market: persons from An Introduction to European Union Law (CUP 2015) (uploaded in IS)

Optional reading:

Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents *OJ 2004 L16/44*.

CJEU: C-165/14 *Rendon Marin* ECLI:EU:C:2016:675

Niamh Nic Shuibhne, 'The Developing Legal Dimensions of Union Citizenship' in D. Chalmers and A Arnall (eds), *The Oxford Handbook of European Union Law* (2015 OUP) (uploaded in IS)

Eleanor Spaventa, 'The Free Movement of Workers in the Twenty-first Century' in D. Chalmers and A Arnall (eds), *The Oxford Handbook of European Union Law* (2015 OUP) (uploaded in the IS)

**Seminar III – Free movement of services, corporations, capital
9 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:

- 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

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

Coordination with free movement of services: Art 58 TFEU v 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 from 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.

Seminar IV – Competition 23 November, 12.00-13.40

Learning objectives:

General issues on competition law:

- What is competition?
- Why would we want competition?
- What are the branches of competition law?

Agreements and concerted practice: Art. 101 TFEU

- What is the scope of Arts. 101+102 TFEU
- What is an undertaking?
- What is an agreement?

Abuse of Dominant Market Positions: Art. 102 TFEU

Merger Control: Regulation 139/2004

Enforcement: Regulation 1/2003

Mandatory reading:

Legal Basis: Art 3 TEU, Art 3 TFEU, Arts. 101 and 102 TFEU, Art 119 TFEU

Caselaw:

- C-56/64, *Consten and Grundig v Commission of the EEC*, ECLI:EU:C:1966:41
- Case 27/76, *Chiquita*, ECLI:EU:C:1978:22
- Case 6/72, *Continental Can*, ECLI:EU:C:1973:22

Literature:

Mandatory: EU Competition Law, chapter by Cleynenbreugel in East African Community Law

Institutional, Substantive and Comparative EU Aspects (in the IS)

Optional: Chapter Competition Law in Barnard and Peers 3rd ed. (in the IS)

Seminar V – Fundamental rights 7 December, 12.00-13.40

Fundamental rights have first been protected at the national level on the basis of unwritten principles developed since 1960s by the CJEU in its jurisprudence. Only in 2009, has the EU benefited of a written catalogue, legally binding, of fundamental rights. Given that the Charter

is a young instrument it includes new developments (so-called second generation of human rights) such as right to consumer protection (Art 38) or the right to conduct a business (Art 16).

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 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 the European continent. In particular, from 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).

The different scope of application of the EU Charter for EU institutions, agencies, bodies compared to the Member States' actions.

The EU Charter applies to the EU institutions, bodies, offices and agencies, even when they are acting outside the EU legal framework – see Joined Cases C-8/15 to C-10/15 P *Ledra Dvertising v European Commission and ECB*.

EU Charter overcoming the horizontal application limit of Directives. Charter provisions that are both 'unconditional and mandatory in nature' apply not only to the action of public authorities, but also in disputes between private parties. – *Egenberger*, para. 46

Mandatory reading:

- C-29/69 *Stauder*, <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=87844&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=16938518>
- C-44/79 *Hauer v Land Rheinland-Pfalz*
- European Court of Human Rights, Grand Chamber judgment *Bosphorus*, *Application no. 45036/98*, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-69564%22%7D>

- Opinion of the CJEU on EU accession to ECHR, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013CV0002> .
- C-617/10 Åkerberg Fransson, ECLI:EU:C:2013:105
- Chapter, Fundamental Rights in the EU in Barnard and Peers EU law 3rd ed (in IS)

Optional

Listen to CJEU President Koen Lenaerts keynote speech with the occasion of the 10 years celebration for the entry into force of the EU Charter
<https://www.youtube.com/watch?v=THotpRyHbn0>

Seminar VI - Accession and exit from the EU and EU policy crises

Date to be discussed 14th or 27th of January, 12.00 – 13.40

Learning objectives:

- Understanding the process of withdrawing from the EU (example of UK exit)
- Example of policy changes resulting from recent crises affecting the EU: refugee and rule of law crises
- Reflecting on the future of the EU post-crises

Mandatory reading:

Legal sources:

- Art 50 TEU (withdrawing from the EU)
- Art 78 TFEU – legal basis for asylum
- Art 80 TFEU – principle of solidarity

Caselaw:

1. Brexit:
 - *Ynos*, Case C-302/04 – temporal application of EU law in new acceding Member States
 - *Skoma-Lux*, C-161/06 - temporal effects of CJEU judgments and liability for damage caused in the exercise of public power (preliminary reference originating from the Czech Republic)
 - *Wightman*, C-621/18 – interpretation of Art 50 TEU (preliminary reference originating from Scotland)
 - *Weiss*, C-493/17 – German Constitutional Court asks preliminary questions on validity of the European Central Bank's programme for the purchase of government bonds on secondary markets (PSPP programme) in light of EU law.
2. Refugee and rule of law crises
 - *Commission v Poland, Hungary and the Czech Republic*, Joined Cases C-715/17, C-718/17 and C-719/17 – failure to fulfil the refugee quota, principle of solidarity

Reading materials:

Mandatory: S Peers and D Harvey, Brexit: the Legal Dimension, chapter 26 in European Union Law (3rd ed) 2020 (OUP) (in IS)

Optional: Sara B. Hobolt, 'The Brexit vote: a divided nation, a divided continent', Journal of European Public Policy, 2016 VOL. 23, NO. 9, 1259–1277