

BUSINESS LAW - EC INTERNAL MARKET LAW
for students of the MBA program of the Faculty of Economics and Management

30/01/2008

Test 2
(Final examination)

Question 1: Competition is an important factor for the functioning of a market. How is it guaranteed and protected in the EC Internal Market Law?
(3/10 points
+ 1 extrapoint for details)

• *Answer: see Transparency film 3:*

- *the prohibition of cartels (art. 81 EC Treaty), enforced by the European Commission*
- *the prohibition of abuse of a dominant position (art. 82 EC Treaty), enforced by the Commission*
- *the European merger control (by the Commission)*
- *the restrictions on state aids which distort competition, in so far as they affect trade between member states (Art. 87 EC Treaty) and the supervision of state aids by the Commission (art. 88 EC Treaty)*
- *the prohibition of favouring public undertakings, with limited exceptions for services of general economic interest (art. 86 EC Treaty)*

Question 2: After her divorce, Mrs. X, a European Union citizen and housewife, is looking for work. Since she has no professional education, she wants to work as a cleaning woman. She also wants to flee for a while the boring provincial town she is living in, and therefore would love to work abroad in exciting cities like Paris, London, Amsterdam or Rīga. She has heard about options opened up by the economic fundamental freedoms of the EU citizens. In her own town, there is a local cleaning company which cleans office-buildings and apartments in capital cities all over Europe and sends employees from her town to these cities to do the job. But she has also seen on the internet that there are cleaning companies in many European capital cities, which are desperately looking for cleaners.
(5/10 points)

What options does she have as a union citizen, due to what fundamental freedoms, and where are they guaranteed? What are the advantages and disadvantages of the particular options? Does it make a difference from which member state Mrs. X is coming and in which member state she wants to work?

- *Answer: Mrs. X has the option to work as an employee for a cleaning company in another member state (→ freedom of movement for workers, art. 39 et seq. EC Treaty). She also has the option to establish her own, independent cleaning business (→ freedom of establishment, art. 43 et seq. EC Treaty). Finally, she can work for an employer in her own member state who provides cleaning services in other member states, executed by staff brought along from his home state (→ freedom to provide services [but only for the employer], art. 49 et seq. EC Treaty). See for details diagrams 4 - 6 of the course. Generally, working for an employer in that other member state will be the most advantageous solution, since in this case, the employee will enjoy the same rights and social benefits as his foreign colleagues. If she makes use of her freedom of establishment and opens her own business, she will not enjoy the protection of labour law and might not have the same access as an employee to all systems of social security but will be free of the corresponding constraints. If she works for an employer in her own member state but is sent (temporarily) to another member state to do the necessary work for services provided by this employer in that state, she will not be protected directly but only indirectly by the freedom to provide services of her employer (this is DISPUTED). In addition, due to the Posting Directive (1996/71), some parts of the labour law and other legal benefits of the*

foreign member state will not apply. Depending on the levels of protection in the concerned states, this can make an important difference. However, if she lives in a member state with high standards of protection and benefits for employees, it might even be advantageous to work for a local company which provides services abroad. That will also be advantageous, if she wants to work for short periods only but in a variety of other member states. But if she wants to work in one other member state for a long time, working and living like the locals, enjoying the same rights and duties and integrating into the foreign society, this is not an option.

It does make a difference from which member state Mrs. X is coming and in which member state she wants to work, because due to the transitional agreements in the accession treaty the access of workers from the new member states to the labour market in some old member states can be restricted until 2011. As already mentioned, it also makes a difference, if Mrs. X is living in a member state with a very developed or a less developed system of social rights and social security.

Question 3: Which are the two most important acts of EC secondary law in the field of the freedom to provide services, which every well-informed European business man should know?
(2/10 points
+ 1 extrapoint for details)

- *Answer: 1. the Posting Directive (Directive 1996/71 concerning the posting of workers in the framework of the provision of services), which guarantees the application of certain minimum standards but allows to evade considerable parts of the labour law of the state, in which the service is provided; 2. the Services Directive (Directive 2006/123 on services in the internal market, to be transposed until december 2009), which aims to facilitate the free exchange of services, in particular by facilitating administrative procedures, and which has been very controversial in the making. One could also mention the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. For details see diagram 6.*

The papers will be given back on Friday, February 1, at 18.00. Those who have failed the test, will have a second possibility to pass the test on February 27. Every participant has the option to talk individually about the good and not so good aspects of his paper!