

Part III: The Realization and Safeguard of the Internal Market

§ 10 The approximation of laws in the internal market

I. Concept and purpose of the approximation of laws

- every approximation of provisions of national law to a common standard fixed by Community law

II. Approximation of laws and mutual recognition of national standards

III. Approximation of laws according to art. 94 EC Treaty

- of provisions of the member states which directly affect the establishment or functioning of the *common market*
- only by unanimous Council decisions
- only by directives

IV. Approximation of laws according to art. 95 EC Treaty

1) The approximation of laws

a) The power to approximate laws (art. 95(1, 2))

- only to approximate those provisions which have as their object the establishment and functioning of the *internal market*
- using the codecision procedure (art. 251)
- all kinds of measures (including regulations)

b) Only measures aiming at a high level of protection in the fields of health, safety, environmental protection and consumer protection (art. 95(3))

2) The option of the member states to derogate

- under the supervision of the Commission (art. 95(4-8))

V. Approximation of laws according to special clauses

- see in particular art. 44 and 47 EC Treaty

§ 11 The competition law of the European Union

I. Introduction

- the necessary support of the internal market by the protection of competition

II. The prohibition of cartels (art. 81 EC Treaty)

1) The prohibition

2) Consequences of violations

- voidness of agreements and decisions (art. 81(2))
- EC Antitrust procedure (art. 85, *Antitrust Enforcement Regulation* [1/2003])

3) Possible Exemptions

- see art. 81(3) and Regulation 1/2003

III. The prohibition of abuse of a dominant position (art. 82 EC Treaty)

IV. The European merger control

- *Merger Control Regulation* (Regulation 139/2004)

V. The restrictions on state aids (art. 87 et seq. EC Treaty)

1) The prohibition of state aids which distort competition (art. 87(1))

2) Exceptions from the prohibition (art. 87(2, 3))

3) The supervision of state aids by the Commission (art. 88)

- see for the procedure Regulation 659/1999
- a) Constant review of all systems of existing state aid (art. 88(1))
- b) Formal procedure for the review of existing and new state aids (art. 88(2))
 - If an aid is incompatible with the common market or misused, the Commission *must* decide that the State concerned shall abolish or alter such aid (and reclaim the money). The national authorities must follow that decision.
- c) Provisional examination of new (notified) state aids (art. 88(3))
 - member states must notify new state aids
 - without notification no protection of the beneficiary for good faith

VI. The prohibition of favouring public undertakings (art. 86 EC Treaty)

- submission to the EU competition law, but limited exceptions for services of general economic interest
- see also art. 16 EC Treaty