

EC INTERNAL MARKET LAW

25/11/2009

**Test 1**  
**(Interim examination)**

**Question 1:** Discuss thoroughly the general structure of the examination of a potential violation of a fundamental freedom guaranteed in the FEU/EC Treaty. Which aspects and important sub-aspects have to be examined? In which order? Please explain in this context the difference between art. 51 and 52 FEU Treaty (45 and 46 EC Treaty). What do you think of the idea of a "convergence" of the fundamental freedoms?

4/10 points

+ 0.5 extrapoints

+ 1 extrapoint

Please add [in brackets] suitable Latvian translations for all important legal terms in your answer. If you are not a student from Latvia, you may also add translations in other official languages of the EU or add short definitions or descriptions for the most important terms.

- *Outline of the answer: A fundamental freedom is violated if (1.) the sphere of protection (= scope of protection) is concerned, (2.) there is an encroachment on (= interference with) the concerned freedom (that means an acting of an addressee of the fundamental freedom in the form of a discrimination or restriction) and (3.) this encroachment is not justified by the fundamental freedom's limits (explicit or inherent limits) in compliance with the limits of limits (in particular with the principle of proportionality and the fundamental rights). See for the details Diagrams 2 - 6 (in particular Diagram 2) and Transparency film 2.<sup>1</sup> In this context, there is the following difference between art. 51 and art. 52 FEU Treaty: Art. 51 excludes some activities from the sphere of protection of the freedom of establishment (with the consequence that measures with regard to these activities a priori do not concern the freedom), while art. 52 has the function of a limit of the freedom (with the consequence that measures, which can be based on this provision, still have to pass the test of the compliance with the limits of limits, in particular the principle of proportionality). - The notion of the "convergence" of the fundamental freedoms describes the phenomenon that due to the development of the jurisprudence of the European Court of Justice, to the contributions of legal scholarship and to some amendments of the wording of the EC Treaty, a consistent and homogeneous dogmatic understanding for all fundamental freedoms has emerged, which is reflected in the structure of the examination of a potential violation. However, there is still some scepticism among legal scholars. The reference to the convergence does not allow to override the continuing differences in detail, set by the different wording in the Treaty.*
- *For the Latvian legal terminology see the following excerpt from the "Eiropas tiesību pamattermini" ("Grundwortschatz Europarecht" / "Basic vocabulary of European Union law"), which were distributed in the course:*

Grundfreiheiten - Träger (Berechtigter) - Adressat (Verpflichteter) - Schutzbereich - Eingriff/Beeinträchtigung - Beschränkung (Form des Eingriffs)	fundamental freedoms - holder (entitled subject) - addressee (obliged subject) - sphere (scope/area) of protection - encroachment/interference - restriction (form of encroachment)	pamatbrīvības - subjekts (nesējs) - adresāts (pienākuma nesējs) - aizsargājamā joma - iejaukšanās/ierobežojums - nediskriminējošs ierobežojums (ierobežojuma forma) - robeža - pārkāpums, prettiesisks aizskārums - horizontālā iedarbība - konverģence - konkurence
- Schranke - Verletzung - Drittwirkung - Konvergenz - Konkurrenz	- limit - violation - third-party effect, horizontal effect - convergence - concurrence	

<sup>1</sup> All course materials can be downloaded from the special website for this course, [http://home.lanet.lv/~tschmit1/Lehre/EC\\_Internal\\_Market\\_Law.htm](http://home.lanet.lv/~tschmit1/Lehre/EC_Internal_Market_Law.htm).

**Question 2:** Discuss the decisions *Dassonville*, *Keck* and *Bosman* of the European Court of Justice  
3/10 points

- *Answer: In the decision Dassonville (case 8/74) the ECJ developed a very large concept of encroachments on the free movement of goods in the form of restrictions. Technically, it presented a wide interpretation of the term "measures having equivalent effect to quantitative restrictions on imports" in today's art. 34 FEU Treaty. "All trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade" can be such measures and therefore encroachments on the free movement of goods. This idea later was applied to other fundamental freedoms. However, the concept was too large and therefore reduced in the decision Keck (joined cases C-267, C-268/91), according to which only product-related, not general sales-related rules (as, for example, on shop closing times) are to be considered as encroachments. These two decisions have to be seen together.*

*In the decision Bosman (case C-415/93) the ECJ developed a very large concept of restrictions of the freedom of movement of workers, according to which all provisions "which preclude or deter a national of a member state from leaving his country of origin ... constitute an obstacle to that freedom". It also stated that not only the acting of the member states or the Community institutions can encroach on this freedom but also regulations of sport associations for professional football players, which can have a similar hindering effect on the exercise of this freedom. This is an example of a horizontal effect of a fundamental freedom.*

*See Diagrams 2, 3 and 4 and Transparency film 2.*

**Question 3:** Please give three or more examples for important secondary law concerning the Economic fundamental freedoms. What are they about? (some keywords please!)

3/10 points  
+ 0.5 extrapoints

- *Examples from the course: Directive 2004/38 (right to move and reside freely within the territory of the member states - see Diagrams 4 - 6); Regulation 1612/68 on freedom of movement of workers within the Community (see Diagram 4); Regulation 883/2004 on the coordination of social security systems (see Diagrams 4 and 5); Directives for the mutual recognition of professional qualifications (Directive 98/5, Directive 2005/36 - see Diagram 5); Directive 2006/123 ("Services Directive" - facilitating providing certain services in other member states - see Diagram 6); Directive 1996/71 ("Posting Directive" - concerning employing workers from the own state when providing services in another state - see Diagram 6)*

Time limit: 90 minutes

The papers will be given back on Wednesday, December 2. Every participant has the option to talk individually about the good and not so good aspects of his paper!