

EC INTERNAL MARKET LAW

12/01/2010

Test 2
(Final examination)

Question 1: *Adonis* is a personable and charming young EU citizen and a committed, qualified and talented professional gardener. His girl-friend has just left him because he (yet) refused to settle down, get married and found a family. Now he wants to explore gardens (and other aspects of life) in other European countries and therefore live and work for a while abroad. In his national monthly gardener journal he reads a job offer of a big national gardening company which provides gardener's services all over the European Union and sends its national employees to interesting foreign places to do the job. *Adonis* is excited but wants to know if there are other options for him, in particular opened up by the economic fundamental freedoms in the EU.

5/10 points +
1 extrapoint

What options does he have, due to what fundamental freedoms, and where are they guaranteed? What are the advantages and disadvantages of each particular option? Does it make a difference if *Adonis* wants to live and work for a longer time in one other member state or for shorter periods in a variety of member states? Does it make a difference from which member state he comes from and in which member state he wants to work? Does it make a difference if he does not want to work but to study at a professional gardening college in another member state?

• **Answer: I.** *Adonis* has the following options: (1.) to work as an employee for a gardening company in another member state (→ *freedom of movement for workers*, art. 45 et seq. FEU Treaty); (2.) to establish his own, independent gardening business in another member state (→ *freedom of establishment*, art. 49 et seq. FEU Treaty); (3.) to work for a gardening company in his own member state which provides gardening services in other member states that are executed by staff brought along from its home state (→ *freedom to provide services [but only for the employer]*, art. 56 et seq. FEU Treaty); (4.) to establish his own gardening business in his home state and offer gardening services in other member states (→ *freedom to provide services*). See for details diagrams 4 - 6 of the course.

II. 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 he makes use of his freedom of establishment and opens his own gardening business, he 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 he works for an employer in his 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, he will not be protected directly but only indirectly by the freedom to provide services of his employer (this is DISPUTED). In addition, some parts of the labour law, social insurance law and other legal benefits of the foreign member state will not apply. However, the Posting Directive (1996/71) guarantees the application of some standards of the foreign labour law.

III. It makes a difference if *Adonis* wants to live and work for a longer time in one state or for shorter periods in a variety of states: In the first case, it will generally be advantageous to make use of the freedom of movement for workers in order to get the full protection of the foreign labour and social insurance law. The same applies if *Adonis* comes from a state with lower standards of protection and benefits for employees. In the second case it might be advantageous to work for a company in his own state which will send him abroad because this solution provides for more flexibility, less bureaucratic obstacles and uncomplicated homogeneous social insurance at home. It will also be advantageous if *Adonis* comes from a state with particularly high standards of protection and benefits. However, if he wants to work and live in another state for a long time, enjoying the same rights and duties and integrating into the foreign society, this is not an option.

IV. It also makes a difference from which member state Adonis is coming and in which member state he 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 April 2011.

V. It does make a difference whether he wants to work or to study in another member state because the economic fundamental freedoms of the EU citizens only concern economic activities. Studying at a public college in another state is only protected by the freedom of movement and residence (art. 21 FEU Treaty), which is not a fundamental freedom and which is submitted to stronger limitations and conditions in secondary law. Only if Adonis wants to study at a private (commercially run) college, he will be protected - as a service recipient making use of his freedom to receive services.

Question 2: Competition is an important factor for the functioning of a market. How is it guaranteed and protected in the EU Internal Market Law? Is there important relevant secondary law?

3/10 points +
1 extrapoint

- *Answer: see for the necessary details Transparency films 1 and 3; see in particular:*
 - *the prohibition of cartels (art. 101 FEU Treaty); secondary law: Antitrust Enforcement Regulation (Regulation 1/2003)*
 - *the prohibition of abuse of a dominant position (art. 102 FEU Treaty); secondary law: Antitrust Enforcement Regulation (regulation 1/2003)*
 - *the European merger control; see Merger Control Regulation (regulation 139/2004)*
 - *the restrictions on state aids (art. 107 et seq. FEU Treaty); see regulation 659/1999 (concerning the supervision of state aids by the Commission); note that any state aids that might have an impact on the internal market must be notified to the Commission (art. 108(3) FEU Treaty)*
 - *the prohibition of favouring public undertakings (art. 106 FEU Treaty)*

Question 3: The member states of the European Union shall regard their economic policies as a matter of common concern and coordinate them. Which legal instrument is used for this coordination? How is the compliance with these decisions monitored? What is the guiding principle of the economic policy which has to be respected by the member states and the Union institutions?

2/10 points

- *Answer: The legal instrument: the broad guidelines of economic policies of the member states and of the Union adopted by the Council according to art. 121(2) FEU Treaty. The compliance of the economic policies of the member states with the broad guidelines is monitored in the procedure under art. 121(3-5) EC Treaty. The Council may give necessary recommendations and, if necessary, publish them (art. 121(4) EC Treaty). The guiding principle: the principle of an open market economy with free competition (art. 119 FEU Treaty). See Diagram 9.*

Time limit: 90 minutes

The papers will be given back on *Thursday, January 14, 14:30*, in Auditorium 9. After that, they can be collected in room 262. Every participant has the option to talk individually about the good and not so good aspects of his paper! Those who fail may repeat the test on *Tuesday, January 19, 14:00 - 16:00* (Auditorium 9).