

EC INTERNAL MARKET LAW

10/03/2008

**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 EC Treaty. Which aspects and important sub-aspects have to be examined? In which order? Please explain in this context the difference between art. 45 and art. 46 EC Treaty. What do you think of the idea of a "convergence" of the fundamental freedoms? (note: aspects of relevance for question 2 should just be mentioned briefly)

(4/10 points)

- *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. 45 and art. 46 EC Treaty: Art. 45 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. 46 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.*

**Question 2:** Who are the *holders* (entitled subjects) and *addressees* (obliged subjects) of the fundamental freedoms? Are there *differences* between the individual fundamental freedoms? Are there problematic aspects?

(3/10 points)

+1 addit. point

- *For the answer see Diagrams 2 - 6 and Transparency film 2; important relevant ECJ jurisprudence: cases 36/70, Walrave and Koch; C-415/93, Bosman; C-281/98, Angonese; C-341/05, Laval*

**Question 3:** Which different kinds of measures can be qualified as an *encroachment* of the *freedom of establishment*? (→ problem, discussion in literature, jurisprudence of the ECJ...)

(2/10 points)

+1 addit. point

- *Answer: Discriminations and restrictions; there is a dispute about the freedom of establishment as a general prohibition of restrictions (see Diagram 5, p. 2 and 3); This question is politically important because such an understanding could amount in practice to an obligation of the member states to*

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<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).

*generally liberalize the law of settlement. The jurisprudence of the ECJ tends towards this direction (see case C-55/94, Gebhard), but the limits of the concept are still unclear.*

**Question 4:** Discuss the decision *French blockades* of the European Court of Justice

(1/10 points)

- *Answer: In this case (C-265/95), the ECJ made clear that member states are obliged to intervene against import blockades set up by private persons in order to protect actively the fundamental freedoms (→ duties of protection, see Diagram 3 and Transparency film 2). Concerning the protection of fundamental rights in the European Union, such a decision is still missing.*

Time limit: 90 minutes

The papers will be given back on Monday, March 17. Every participant has the option to talk individually about the good and not so good aspects of his paper!

EC INTERNAL MARKET LAW

21/11/2007

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

**Question 1:** Which fundamental freedoms are guaranteed in the Treaty establishing the European Community? Where exactly? Which individual activities are protected?  
(3/10 points)

• *Answer: see Diagram 1*

**Question 2:** Who are the *addressees* (obliged subjects) of the fundamental freedoms? Are there *differences* between the individual fundamental freedoms?  
(3/10 points)

• *Answer: see Diagrams 2, 3, 4*

**Question 3:** Explain the decisions *Dassonville*, *Cassis de Dijon* and *Keck* of the European Court of Justice  
(4/10 points)

• *Answer: see Diagram 3*

**Additional Question** (to get 1 additional point): Is studying in another member state generally protected by the fundamental freedoms? Under which conditions can it be protected?

• *Answer: It is generally not protected, because it is not an economic activity. Moving and residing in another member state is only protected by the general freedom of movement and residence (art. 18 EC Treaty) which is not a fundamental freedom. However, studying for a commercial fee at a private, commercial institution of education in another member state is protected by the freedom to provide services (here: to receive services in another member state, so-called "passive Dienstleistungsfreiheit")*

The papers will be given back on Tuesday, November 28. Every participant has the option to talk individually about the good and not so good aspects of his paper!

EC INTERNAL MARKET LAW

01/11/2006

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

**Question 1:** Which fundamental freedoms are guaranteed in the Treaty establishing the European Community? Where exactly? Which individual activities are protected?

• *Answer: see Diagram 1*

**Question 2:** Explain the basic structure of the examination of a possible violation of a fundamental freedom. Which aspects and sub-aspects have to be examined? In which order?

• *Answer: see in particular Diagram 2, but as well Diagrams 3 and 4*

**Question 3:** Please call and explain 2 important decisions of the European Court of Justice concerning the EC Internal Market Law. Which questions has the Court ruled upon? What was the result?

• *Examples: Judgements Dassonville (case 8/74), Cassis de Dijon (case 120/78), Keck (joined cases C-267, C-268/91), Bosman (case C-415/93), Carpenter (case C-60/00)*

**Additional Question** (for advanced participants - to get additional points): What is the limit for the freedom of movement for workers in the EC Treaty? In case of which encroachments is this limit applicable? (→ arguments please!)

• *Answer: See the limit of the "grounds of public policy, public security and public health" in art. 39(3). It is DISPUTED if this limit is applicable only for the justification of encroachments on the rights under art. 39(3) or as well for the justification of encroachments on other protected positions (eg of discriminations in the sense of art. 39(2)). See Diagram 4, p. 3.*

The papers will be given back on Tuesday, November 7. Every participant has the option to talk individually about the good and not so good aspects of his paper!