

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 Union law

II. Approximation of laws and mutual recognition of national standards

III. Approximation of laws according to art. 115 FEU Treaty, 94 EC Treaty

- of provisions of the member states which directly affect the establishment or functioning of the *common market* (under the Treaty of Lisbon: of the internal market)
- only by unanimous Council decisions
- only by directives

IV. Approximation of laws according to art. 114 FEU Treaty, formerly 95 EC Treaty

1) The approximation of laws

a) The power to approximate laws (art. 114(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. 294 FEU Treaty, formerly 251 EC Treaty)
- all kinds of measures (including regulations)
 - also measures concerning particular products or categories of products or even individual cases (ECJ, case C-359/92)

b) Only measures aiming at a high level of protection in the fields of health, safety, environmental protection and consumer protection (art. 114(3))

2) The option of the member states to derogate

- under the supervision of the Commission (art. 114(4-8))

V. Approximation of laws according to special clauses

- in particular for the realization and protection of the fundamental freedoms (eg according to art. 46, 50, 53 FEU Treaty, formerly 40, 44, 44, 47(1, 2) EC Treaty)

§ 11 The competition law of the European Union

I. Introduction

- the protection of the competition as a necessary supporting measure to the establishment of the internal market

- II. The prohibition of cartels (art. 101 FEU Treaty, formerly 81 EC Treaty)**
- 1) The prohibition**
 - 2) Consequences of violations**
 - a) Voidness of the concerned agreements and decisions (art. 101(2))**
 - b) EC Antitrust procedure (art. 105 FEU Treaty, formerly 85 EC Treaty, and secondary law based on art. 103 FEU Treaty, formerly 83 EC Treaty)**
 - since 2004 new *Antitrust Enforcement Regulation* (Regulation 1/2003)
 - 3) Possible Exemptions**
 - see art. 101(3) EC Treaty and Regulation 1/2003
- III. The prohibition of abuse of a dominant position (art. 102 FEU Treaty, formerly 82 EC Treaty)**
- IV. The European merger control**
- since 2004 new *Merger Control Regulation* (Regulation 139/2004)
- V. The restrictions on state aids (art. 107 et seq. FEU Treaty, formerly 87 et seq. EC Treaty)**
- 1) The prohibition of state aids which distort competition (art. 107(1) FEU Treaty, formerly 87(1) EC Treaty)**
 - only insofar as they affect trade between member states
 - 2) Exceptions from the prohibition of state aids which distort competition (art. 107(2, 3) FEU Treaty, formerly 87(2, 3) EC Treaty)**
 - 3) The supervision of state aids by the Commission (art. 108 FEU Treaty, formerly 88 EC Treaty)**
 - see for the procedure Regulation 659/1999
 - a) Constant review of all systems of state aid existing in the member states (art. 108(1))**
 - b) Formal procedure for the review of existing and new state aids (art. 108(2))**
 - If an aid is incompatible with the common/internal 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. 108(3))**
 - notification obligation of the member states
 - without notification no protection of the beneficiary for good faith

VI. The prohibition of favouring public undertakings (art. 106 FEU Treaty, formerly 86 EC Treaty)

- 1) The submission of public undertakings to the competition law of the EU (art. 106(1) FEU Treaty, formerly 86(1) EC Treaty)**
- 2) Limited exceptions for services of general economic interest (art. 106(2) FEU Treaty, formerly 86(2) EC Treaty)**
 - see as well art. 14 FEU Treaty, formerly 16 EC Treaty**