

# § 4 The European internal market (overview)

## I. The European Union as a unified economic area

### 1) The Europeanisation of the economy in Europe

- 1968: customs union; 1969: accomplishment of the common market
- 1992: accomplishment of the internal market
  - a big step, accomplished by more than 300 legislative acts
  - followed since 1995 by the elimination of border controls in the growing *Schengen Area* on the basis of the *Schengen Agreement* of 1985 and the Schengen Convention of 1990
- 2002: accomplishment of the Economic and Monetary Union
  - 1999: introduction of the euro (€); 2002: introduction of the euro coins and notes

### 2) The principle of an open market economy with free competition

(art. 119 FEU Treaty)

- a specific principle for the field of economic policy; not a fundamental value
- a decision in favour of an open (not social) market economy and to eliminate obstacles to competition

### 3) The customs union (art. 28 et seq. FEU Treaty)

#### a) General aspects

- no custom duties on import or exports within the Union
- regulation of the custom duties on imports or exports from/to third countries in the *Common Customs Tariff* (Regulation 2658/87)
- partly unitary procedural law, see *Union Customs Code (UCC)* (Regulation 952/2013)

#### b) Prohibition of charges having equivalent effects to custom duties

(art. 28, 30 FEU Treaty)

- wide concept of ECJ (see *case 2, 3/69, Diamandarbeiders*)

#### c) Prohibition of favouring domestic goods through internal taxation

(art. 110 FEU Treaty)

### 4) The economic and monetary union (art. 119 et seq. FEU Treaty)

- *common currency* with primary objective of price stability (art. 127 et seq. FEU Treaty)
- participation in the common currency requires to meet four *convergence criteria* (cf. art. 140(1) sub-sect. 1 FEU Treaty and Protocol on the convergence criteria)
  - price stability
  - sustainability of the government financial position
  - stability of exchange rates
  - convergence of interest-rates levels
- *Fiscal Pact* of 2012 strictly limits government deficits ("Schuldenbremse")
- *European Stability Mechanism* provides financial assistance to euro area member states in a serious financial crisis

## II. The concept and the realisation of the internal market

### 1) The concept of the internal market as an area of free economic movement without internal frontiers

- *legal definition* in art. 26(2) FEU Treaty:

"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."

- establishment required more than 300 legal acts; maintenance requires continuously new legal acts reacting to new threats and developments
- has changed economic life in Europe fundamentally
  - benefits: lower prices, faster innovations, new agriculture products in some countries, higher living standard
  - side effects: end of responsible enterprise management, race to the bottom regarding social and environmental standards, desertion of less competitive regions, work intensification

### 2) The realisation and development of the internal market by approximation of laws (art. 114 et seq. FEU Treaty)

- approximation of provisions of national law to a common standard fixed by Union law in order to eliminate obstacles and distortions of competition
  - by all kinds of measures (even on particular products), but aiming at a *high level of protection* in sensitive fields (art. 114(3))
  - member states may derogate under strict supervision of the Commission (art. 114(4-8))
- complemented by an approximation of laws for the realization and protection of the fundamental freedoms (e.g. art. 46, 50, 53 FEU Treaty)

## III. The protection of the internal market

- basically the *protection of competition* in the internal market, to prevent distortions that would cause unfair advantages or disadvantages for market players in different member states
- EU competition law complements national competition law, only covering distortions of competition that affect trade between member states

### 1) The protection of competition against the power of undertakings

(art. 101 et seq. FEU Treaty)

#### a) The prohibition of cartels (art. 101 FEU Treaty)

- prohibition of *agreements, decisions by associations* and *concerted practices* which may affect trade between member states and have as their object or effect the prevention, restriction or distortion of competition within the internal market (art. 101(1))
- in case of violations:
  - voidness of the concerned agreements and decisions by virtue of EU law (art. 101(2))
  - *EU antitrust procedure* before Commission leading to sanctions, incl. high fines and periodic penalty payments (art. 105 FEU Treaty, Antitrust Enforcement Regulation 1/2003)
- exemptions possible (see art. 101(3) FEU Treaty, Regulation 1/2003)

#### b) The prohibition of abuse of a dominant position within the internal market (art. 102 FEU Treaty)

- if it may affect trade between Member State
- common case groups: obstruction of competitors, exploitation of market partners, manipulation of market structure
- bad intention not necessary
- some very high fines have been imposed

#### c) The European merger control (cf. Merger Control Regulation 139/2004)

- only of concentrations with a Union dimension (art. 1)
- such concentrations need to be notified to the Commission before their implementation (art. 4)

## 2) The protection of competition against distortion by state aids

(art. 107 et seq. FEU Treaty)

- prohibition of state aids which distort competition if they affect trade between member states (art. 107(1) with exceptions in sect. 2, 3)
- constant strict supervision of state aids by the Commission (cf. Regulation 2015/1589)
  - Commission *must* request member state to abolish or alter an aid incompatible with the internal market; national authorities must follow and reclaim the money (art. 108(2))
  - *national authorities must notify state aids to the Commission*, which will first proceed to a preliminary examination and then, if necessary, start a formal investigation procedure (art. 108(3) FEU Treaty), art. 4 ff. Regulation 2015/1589)
  - aid paid without prior notification of the Commission must be recovered - without protection of the beneficiary for good faith

## IV. The economic fundamental freedoms

### 1) General aspects

- direct applicable subjective rights of the citizen with primacy over national law and secondary Union law (cf. ECJ, case 26/62, van Gend & Loos)
  - dogmatic structure similar to that of fundamental rights
  - convergence in jurisprudence and legal doctrine
  - design as subjective (personal) rights turned out helpful to ensure the development and enforcement in practice
- protection of economic cross-border mobility only
  - in addition protection of non-economic mobility by the freedom of movement and residence (art. 21 FEU Treaty)
- prohibitions of discriminations and of restrictions
  - furthermore, duty of the authorities to protect against encroachments by private persons
- usually addressing (obliging) the member states and the Union institutions but in some cases also private organisations with regulative power or private enterprises (→ see in particular ECJ, case C-415/93, Bosman)
- complemented by prohibition of discrimination on grounds of nationality (art. 18 FEU Treaty)

### 2) The individual fundamental freedoms

- see **Diagram 4**
- free movement of goods (art. 28 et seq., 110 et seq. FEU Treaty)
  - cross-border mobility of goods, unhindered by customs, other tariff barriers or non-tariff barriers
- freedom of movement for workers (art. 45 et seq. FEU Treaty)
  - cross-border mobility of gainful occupation as an employee
- freedom of establishment (art. 49 et seq. FEU Treaty)
  - cross-border mobility of gainful occupation as self-employed person or via own undertakings, branches, agencies etc.
- freedom to provide services (art. 56 et seq. FEU Treaty)
  - cross-border mobility of services, service providers and service recipients
- free movement of capital (art. 63(1), 64 et seq. FEU Treaty)
  - cross-border mobility of monetary assets (for the purpose of investment) or material assets
- free movement of payments (art. 63(2), 65 et seq. FEU Treaty)
  - cross-border mobility of payments (for the purpose of the fulfillment of financial obligations)