

# Supremacy of eu law essay sample

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The legal doctrine of supremacy of EU law means that EU labour law takes precedence over domestic labour law. The creation of a new legal order of EU law and its supremacy means that EU institutions may create rules affecting employment and industrial relations, even where some Member States oppose such rules and vote against them in those EU institutions, provided that a voting procedure based on a majority rule applies to that specific field. Where adopted, these rules must be enforced in national courts, even where this involves overriding rules produced by domestic law-making institutions. In the course of time, national constitutional courts have accepted the principles of supremacy of the EU law affirmed by the European Court of Justice, but at the same time they have envisaged a limit to it in the fundamental principles of each national constitution. This supremacy is well known in certain areas such as sex discrimination, where the domestic law of many Member States has been shaped, and, in cases of conflict, has been repeatedly overridden, by the rulings of the European Court of Justice.

Probably the best known example of the impact of these rulings in labour law is *G. Defrenne v. Sabena*, Case 43/75, (1976) ECR 455, where the European Court decided that, 'The principle that women and men should receive equal pay, which is laid down by Article 119 EC [now Article 157 TFEU], may be relied on before the national courts. These courts have a duty to ensure the protection of the rights, which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin in legislative provisions....' The wider the range of EU competences in the field of employment and industrial relations, the more the EU law they create will come to replace increasingly wide areas of national labour law. An example

is the decision of the European Court in *Commission v. United Kingdom*, Case C-382/92 and Case C-383/92, [1994]. There the Court required the United Kingdom to create a system of worker representation where none existed. Designation of worker representatives was made mandatory by the Court, due to the consequences for the rights of workers under two directives ‘ which require Member States to take all measures necessary to ensure that workers are informed, consulted and in a position to intervene through their representatives in the event of collective redundancies [or the transfer of an undertaking]’ (Case C-383/92, paragraph 23; Case C-382/92, paragraph 26).

In order to perform effectively the tasks of information and consultation specified in the directives, Member State laws or practices must ensure the designation of worker representatives. Given that it may be applied in national courts, the doctrine of supremacy also applies to rules on enforcement of labour law, including remedies and procedures. The ECJ has developed special techniques and principles by which EU labour law may be enforced in national courts. Where EU enforcement requirements come into conflict with national procedures and remedies, again, they take precedence and must be applied by national courts overriding domestic rules.

Remarkable instances have included the Court’s decision in *Marshall v. Southampton and South West Area Health Authority (No. 2)*, Case C-271/91, (1993), abolishing the limits on compensation for sex discrimination in the UK legislation. Through the doctrine of supremacy, EU law has promoted the Europeanisation of employment and industrial relations by ensuring that EU law applies in many areas falling within the competence of the EU, ranging

from equality between women and men to workers' representation. • Free movement

Article 3 of the TEU (aims of the Union)

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

### THE FUNDAMENTAL FREEDOMS

Freedom results directly from peace, unity and equality. Creating a larger entity by linking 27 States affords at the same time freedom of movement beyond national frontiers. This means, in particular, freedom of movement for workers, freedom of establishment, freedom to provide services, free movement of goods and free movement of capital. These fundamental freedoms guarantee business people freedom of decision-making, workers freedom to choose their place of work and consumers freedom of choice between the greatest possible variety of products. Freedom of competition permits businesses to offer their goods and services to an incomparably wider circle of potential customers. Workers can seek employment and change job according to their own wishes and interests throughout the entire territory of the EU. Consumers can select the cheapest and best products from the far greater range of goods on offer that results from increased competition. However, transitional rules still apply in some cases to citizens of the Member States which joined the EU on 1 May 2004 and 1 January 2007. The Accession Treaty contained exceptions in particular with regard to

the free movement of workers, the freedom to provide services and the freedom of establishment.

As a result, the ‘old’ EU Member States can restrict the free movement of workers who are nationals of the ‘new’ Member States for a period of up to seven years by making access to employment subject to national or bilateral law. On this basis, the Court has recognised a number of freedoms as basic rights secured by Community law: right of ownership, freedom to engage in an occupation, the inviolability of the home, freedom of opinion, general rights of personality, the protection of the family (e. g. family members’ rights to join a migrant worker), economic freedom, freedom of religion or faith, as well as a number of fundamental procedural rights such as the right to due legal process, the principle of confidentiality of correspondence between lawyer and client (known as ‘privileged communications’ in the common-law countries), the ban on being punished twice for the same offence, or the requirement to provide justification for an EU legal act. The European Commission has taken action to improve worker mobility, and particularly to ensure that educational diplomas and job qualifications obtained in one EU country are recognised in all the others.

The free movement of persons is a fundamental right guaranteed to European Union (EU) citizens by the Treaties. It is realised through the area of freedom, security and justice without internal borders. Lifting internal borders requires strengthened management of the Union’s external borders as well as regulated entry and residence of non-EU nationals, including through a common asylum and immigration policy. The concept of free

movement of persons came about with the signing of the Schengen Agreement in 1985 and the subsequent Schengen Convention in 1990, which initiated the abolition of border controls between participating countries.

Being part of the EU legal

and institutional framework, Schengen cooperation has gradually been extended to include most EU Member States as well as some non-EU countries.

Right of Union citizens and their family members to move and reside freely within the territory of the Member States

The Union has adopted a Directive on the right of citizens of the Union to move and reside freely within the Member States, which brings together the piecemeal measures found in the complex body of legislation that has governed this matter to date. The new measures are designed, among other things, to encourage Union citizens to exercise their right to move and reside freely within Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, to limit the scope for refusing entry or terminating the right of residence and to introduce a new right of permanent residence.

ACT : European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

## The mutual recognition principle in the single market

### IMPORTANCE OF MUTUAL RECOGNITION FOR THE SINGLE MARKET

The mutual recognition principle guarantees free movement of goods and services without the need to harmonise Member States' national legislation. Goods which are lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced to technical or quality specifications different from those applied to its own products. The only exception allowed – overriding general interest such as health, consumer or environment protection – is subject to strict conditions. The same principle applies to services. In general, the rules of the Member State of origin prevail. This guarantees compliance with the principle of subsidiarity by avoiding the creation of detailed rules at EU level and by ensuring greater observance of local, regional and national traditions and makes it possible to maintain the diversity of products and services. It is thus a pragmatic and powerful tool for economic integration.

### PROBLEMS WITH APPLICATION AND ANALYSIS OF THE CAUSES

Available information. One of the problems concerns availability of reliable information necessary for evaluation. Available figures do not allow a precise estimation of the economic impact of mutual recognition, but it is clear that the principle is a very important mechanism for a large number of industry and services sectors. The only figures available concern the number of complaints lodged with the Commission. The number of cases where producers have complied with countries' requirements or withdrawn their products is unknown. Obstacles. According to the results of surveys

conducted in industry, there are still some obstacles at the level of technical standards and regulations. The service sector estimates that in general the obstacles to free movement of goods remained practically the same between 1996 and 1998. Other problematic issues have been identified: • on consumer protection grounds, controls that are not always necessary are imposed in the countries of destination; • in the internal administrative organisation, better management is hampered by administrative delays, costs of procedures and inability to deal with complex issues (for example innovative products and services); • a lack of mutual confidence in the acts of other Member States continues.

These problems have prompted some operators to adapt their products to local requirements or even, in extreme cases, to forgo marketing their products or services in another Member State. Products. Most problems relate to guaranteed protection, since the country of destination is often convinced that its safety arrangements are the only good ones. The fields most affected are food, electrical engineering, vehicles, precious metals, construction and chemicals. Services. The service sectors about which the Commission receives most complaints are as follows: business communications, construction, patent agents and security services. Available figures do not give an accurate picture of the situation because of the small number of complaints lodged with the Commission. In the regulated professions, difficulties in the implementation of the mutual recognition principle continue to affect individuals. In the field of financial services, the Commission finds evidence of inappropriate use of the notion of “ general interest” and of consumer protection designed to inhibit the marketing of



financial products. In the field of business communications, national differences, in particular in advertising, frustrate the creation of a genuine single market. Finally, as regards electronic commerce, legal barriers still restrict the opportunities in the single market. PROPOSALS

Ensure credible monitoring. In order to assess progress, the Commission will prepare, every two years, evaluation reports, whose conclusions will be included in the single market scoreboard in order to make Member States more aware of the existing problems and to find solutions. The Commission undertakes to give greater attention to the compliance with obligations by the Member States, including the opening of infringement proceedings. Moreover, the possibilities offered by the notification procedure should be fully used to promote mutual recognition and prevent the emergence of new obstacles.

Actions targeted at citizens and economic operators. The Commission proposes two action plans, one for the Commission itself, the other for the Member States. Action by the Commission. The Commission undertakes to facilitate dialogue between the citizens and companies. To improve information and economic analysis, the Commission proposes: • producing a Guide on application of the mutual recognition principle in the field of industrial products and a brochure explaining the implementation of Decision 3052/95 concerning the measures derogating from the principle of free movement of goods; • an economic analysis of the application of mutual recognition in various different sectors in order to obtain a better evaluation (economic benefits and costs of non-implementation); • an analysis of the

national consumer protection rules for financial products. The Commission proposes the following training measures:

- organise sectoral roundtables of representatives of Member States' competent authorities and professional organisations;
  - draw up specific projects at national level in order to disseminate information about the mutual recognition principle to the target public. In order to make mechanisms for dealing with problems more effective, it is planned to:
  - use biennial reports to assess more accurately whether or not new harmonisation initiatives are needed;
  - draw up a model application form to be used between bodies responsible for application of mutual recognition and the European and national federations;
  - make it possible for economic operators to ask for reasons why an application has been rejected and improve the handling of complaints by the Commission, in particular in problem sectors;
  - extend the “ package meetings” on goods between the Commission and Member States to the services sector and follow more systematically solutions proposed by Member States;
  - develop a Community network for handling complaints in the field of financial services;
  - take specific sectorial initiatives for better application of the principle in services, in particular in the sectors of air transport and telecommunications.
- In order to take into account the international dimension of mutual recognition and to reduce, or even eliminate, barriers to trade, the Commission intends to conclude mutual recognition agreements under the General Agreement on Trade in Services (GATS) and in the area of trade in goods under the World Trade Organisation (WTO). Action by Member States.

As Member States are the main actors in the implementation of the mutual recognition principle, the Commission proposes that they give the following undertakings: • to apply the judgments of the Court of Justice on including mutual recognition clauses in national legislation; • to reply within a reasonable time to requests for the application of mutual recognition, except in particularly sensitive cases; • to strengthen cooperation between the national administrations of Member States with the new telematics contact network, meetings of heads of coordination centres, and more systematic use of contact points as well as greater involvement of national coordinators (particularly in the area of regulated professions); • to prepare regular reports on problems with application and potential solutions. Background

In 1997, the Commission adopted the Single Market Action Plan, which set out in detail the priority measures to be taken to improve the functioning of the single market by 1 January 1999. These included the application of the principle of mutual recognition. Two years later in 1999, the Commission published this Communication, which serves as a basis for the Council Resolution on mutual recognition (see “ Related Acts”). RELATED ACTS

Council Resolution of 28 October 1999 on mutual recognition [Official Journal C 141 of 19. 5. 2000]. The Council stresses the importance of mutual recognition for the proper functioning of the single market. This requires a coherent combination of harmonised legislation, standardisation, instruments for conformity assessment and mutual recognition. The Council considers further efforts necessary in the area of products (in particular food, electrical engineering, construction and motor vehicles), services (in

particular financial services) and professional qualifications (recognition of diplomas). It criticises unduly burdensome and complicated administrative procedures and the lack of information in the administrations of several Member States about legislation and verification procedures in other Member States. The Council urges Member States to:

- review and simplify relevant national legislation and application procedures, step up the effectiveness and speed of these procedures, and strengthen administrative cooperation;
- make economic operators and the general public aware of their rights;
- keep the Commission informed about the problems with application and ensure that obligations relating to exchange of information are honoured.

The Council calls on the Commission to:

- gather all information about successes and shortcomings and their economic impacts and publish this in the single market scoreboard;
- make the general public and economic operators aware of their rights via general information campaigns;
- ensure that the policies in that domain are coordinated with other Community policies.

Economic operators and citizens are encouraged to inform the Member States and the Commission about all problems they have encountered. Commission interpretative communication on facilitating the access of products to the markets of other Member States: the practical application of mutual recognition [C/2003/3944 – Official Journal C 265 of 4. 11. 2003]. This communication aims to clarify the “ mutual recognition” principle and thus help businesses and national administrations make it work better. It is a practical guide which describes how this principle

should work in practice and summarises the rights it gives to economic operators. The communication forms part of the internal market strategy 2003-06. It will be followed by wide consultation with Member States, industry and consumer organisations. Depending on the results of this consultation, the Commission could submit a proposal for legislation to reinforce the way mutual recognition is implemented. EXTERNAL ASPECTS – AGREEMENTS WITH THIRD COUNTRIES

Council Resolution of 24 June 1999 on the management of agreements on mutual recognition [Official Journal C 190 of 7. 7. 1999]. The Council welcomes the conclusion of mutual recognition agreements between the European Community (EC) and Australia, Canada, New Zealand and the United States of America. These agreements aim to ensure effective market access across the whole territory of the parties to all products covered by the agreements. The Council calls on the Commission to:

- prepare a proposal for guiding principles for the management of agreements on mutual recognition with third countries and draft a model agreement for future negotiations;
- prepare a vade mecum explaining the agreements on mutual recognition and their application;
- prepare regular reports on the application of existing agreements.

- Fiscal barrier:

This free movement of goods will promote efficiency in production because it will permit producers in different countries to compete directly with each other. To follow this free movement of goods notion, it is necessary to remove all internal trade barriers; physical, technical and fiscal barriers,

which create discriminatory restrictions, between EU States. As a result, all EU Member States must refrain from imposing all kinds of trade restrictions on imports, exports or goods in transit between themselves. However, although it has been nearly half century since the creation of the EC Treaty, its free movement of goods notion is still on the way of journey.

It has not yet reached the star. The goods still could not enjoy true freedom to move within the European Community. There are two obstacles which impede the free movement of goods. The first obstacle is the interpretation of the European Court of Justice (the ECJ) on the general provisions concerning free movement of goods in the EC Treaty, especially on the general provisions of technical barriers under Article 28(formerly 30) and Article 29(formerly 34). The second obstacle is the exceptions to the general provisions of Articles 28(formerly 30) and 29(formerly 34) based on Article 30(formerly 36) and the mandatory requirements arising from the ECJ in the *Cassis de Dijon*. A. The Background

As mentioned earlier, the objective of the European Community is to establish a Common Market which is built on a Customs Union. The first basic concept of a customs unions is the free movement of goods produced in Member States. Goods produced in one Member States should be able to move freely in all Member States without the payment of custom duties. The second is the common customs duties. If goods produced in third countries are imported into any Member States, they are subject to the payment of the common customs duties. The third is the free movement of goods from a third country. Once goods are imported into a Member State, they must be

allowed to move freely in all other Member States without the payment of any further customs duties. Thus, the free movement of goods notion is based very much on the concept of a Customs Union. It is not the end in itself, but it is rather the means to reach the end, so called a Common Market. This free movement of goods notion goes beyond the concept of Free Trade Area because it is the creation of Common Market which establishes the common external customs tariffs and abolishes the internal customs duties and other forms of trade restrictions for goods coming from one Member State to another.

#### B. The General Provisions of the Free Movement of Goods in the EC Treaty

The free movement of goods is the cornerstone of the European Community and appears at the heart of the EC Treaty. It is the important pillar of the internal market in which Article 14(formerly 7A) of the EC Treaty defines as: 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 this Treaty. Article 14(formerly 7A) provides the legal basis for the creation of internal market within the European Community. To create the internal market, it is required to remove internal barriers to allow goods(as well as persons, services and capital) to move freely within the Community. Barriers to free movement of goods can be divided into three categories. They are physical barriers, technical barriers and fiscal barriers. Physical barriers involve the stopping and checking system to monitor goods passing the national borders. Fiscal barriers are tariffs and other indirect taxes imposed on exports, imports, or goods in transit. Technical barriers are quantitative restrictions or measure

having a equivalent effect to quantitative restrictions which impede the free movement of goods.

The common examples of technical barriers are national law and regulations for marketing goods and standard measures to protection public health and safety. Of all three barriers, technical barriers seems to be the most significant barriers because they cause the real obstacles to free movement of goods and the creation of the internal market. Thus, this research will mainly focus on technical barriers and will touch upon the others when necessary. According to the EC Treaty, the free movement of goods provisions can be broken down into four groups. (1). Articles 23(formerly 9) and 24(formerly 10):

The rights of goods produced in a Member State and from a third country to move freely with the Community Article 23(1)(formerly 9(1)) provides: The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries. According to Article 23(1)(formerly 9(1)), the European Community shall be based upon a customs union. This union shall cover all trade in goods and shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect. There are two important aspects arising from this Article. (1. 1). The meanings of “ goods”



In Art Treasures case, *Commission v. Italy*, the facts were that the Italian Government prohibited the exportation of art treasures (articles of artistic, historic, archaeological or ethnographic nature) and claimed that the art treasures did not constitute “goods”. The ECJ defined goods as “products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions.” Therefore, art treasures fell within the meaning of “goods” under Article 9(1) (now 23(1)). The ECJ also extended this definition in a few cases. In *Region of Wallonia case, Commission v. Belgium*, the facts were that Belgium prohibited the importation of waste and contended that waste did not constitute “goods” if it could not be recycled or reused because they have no commercial value. The ECJ rejected this submission and held that all waste was to be regarded as goods.

In *Almelo v. Energiebedrijf IJsselmij* case, the ECJ made it clear that electricity constituted “goods”. However, the ECJ did not come up with the conclusion that all intangibles constituted “goods”. (1. 2). The application of the free movement of goods provisions The free movement of goods provisions within EC Treaty should apply to all types of movements of goods. First and basically, they apply to movement of goods from one Member State to be sold in another Member State. Secondly, they apply to movement of goods in transit through one Member State to be sold in another Member State or outside the European Community. In *SIOT v. Ministry of Finance* case, the ECJ confirmed that the freedom of transit within the Community constituted a general principle of Community Legislation. Thirdly, they apply to reimportation of goods which are imported from one Member State to

another, where they were produced or put on the market. Fourthly, they apply to parallel imports.

Fifthly, they apply to movement of goods by individuals.

In *GB-Inno-BM v. Confederation du Commerce Luxembourgeois* case, the ECJ confirmed that free movement of goods concerned not only traders but also individuals by holding that it requires, particularly in frontier areas, that consumers resident in one Member State may travel freely to the territory of another member State to shop under the same conditions as the local population. In *Schumacher v. Hauptzollamt Frankfurt Am Main* case, the facts were that the Customs Office in Germany rejected the importation of personal medicines from France by Mr. Schumacher. The ECJ held that the German law was inconsistent with Article 30(now 28) because a general prohibition of individuals imports was not justified. Finally, they apply to movement of goods involving no commercial transactions. It was confirmed by the ECJ in the waste disposal case, *Commission v. Belgium*.

Article 24(formerly 10) of the EC Treaty recognizes the third concept of a Customs Union or the free movement of goods from a third country by providing: Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges. According to Article 24(formerly 10), goods from a third country shall be freely moved within the Member States if three conditions are met. First,

goods have been passed the import formalities. Secondly, goods have been paid in Import Member States any customs duties or charges having equivalent. Finally, the goods must not have benefited from a total or partial drawback of such duties or charges. Example Company A in France imports Tuna cans from Thailand and has already paid the common customs duties in France. If Company A wants to export these tuna cans to Germany, it will have the freedom to do so without paying any other customs duties because both France and Germany are the Member States of European Union. (2).

Article 25(formerly 12): The abolition of customs duties and charges having equivalent effect Article 25(formerly 12) of the EC Treaty deals with customs duties. It aims to abolish customs duties and charges having equivalent effect. Article 25(formerly 12) provides:

Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other. According to Article 25(formerly 12), it prohibits the introduction of new customs duties or charges having equivalent effect, and equally prohibits the increase of those which are already in existence. This prohibition applies both to imports and exports. The impact of this Article was enhanced by the ECJ in the following cases. In Van Gend en Loos case, Van Gend en Loos v. Nederlandse Administratie der Belastingen , the ECJ held that Article 12(now 25) had direct effect (the principle that Community legislation must be applied by national courts as the law of the land) and created individual rights which national courts must protect. Therefore, individuals could invoke Article 12(now 25) before national courts. In Social

Fonds voor der Diamantarbeiders v. Brachfeld & Chougol Diamond Co case , the facts were that the Belgian authorities imposed a duty on diamonds to raise money for Belgian diamond workers.

The ECJ held that customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom. Therefore, the duty came within Article 12(now 25) and was prohibited. In Re Statistical Levy case, Commission v. Italy , even though there was no definition of charges having an equivalent effect in the EC Treaty, the ECJ defined this term as “ any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic and foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge ... even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect and if the product on which the charge is imposed is not in competition with any domestic product.”

However, the problematic cases concerning charges having a equivalent effect are these two following cases. In Re: Storage Charges case, Commission v. Belgium, the facts were the Belgian authorities imposed charges on the goods undergone customs clearance in a warehouse. The ECJ held that charges for customs clearance constitutes charges having an equivalent effect if they are imposed solely in connection with the completion of customs formalities. In Re: Animals Inspection Fees case, Commission v. Germany , the facts were that German imposed charges

covering actual costs incurred in maintaining the inspection facilities. The ECJ held that the fee does not exceed the actual costs incurred as a consequence of the inspections. The inspections themselves are prescribed by European law and have the objective of promoting the free movement of goods. Hence, imposing charges genuinely incurred for such services do not amount to charges having equivalent effect to customs duties. According to the two ECJ judgments above, charges made for services authorized by the Community legislation may not constitute charges having a equivalent effect to customs duties if they have met the following conditions. 1. The charges do not exceed the actual cost of the services. 2. The services are required by Community legislation.

3. The services promote the free movement of goods.

4. The charges must not be imposed solely in connection with the completion of custom formalities. (3). Article 90(formerly 95): The abolition of measures of discriminatory domestic taxation Article 90(formerly 95) provides:

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

According to Article 90(formerly 95), internal taxation may not be discriminatory imposed between domestic products and imports. This covers not only the finished products but also the raw materials or components of such products. In *Re Tax on Beer and Wine case, Commission v. United*

Kingdom , the facts were that the United Kingdom maintained different levels of internal taxation on wine and beer. The ECJ held that wine and beer were similar and that the differential in taxation amounted to the discrimination contrary to Article 95(now 90). (4). Articles 28(formerly 30) and 29(formerly 34):

The elimination of quantitative restrictions and measures having an equivalent effect to quantitative restrictions Articles 28(formerly 30) and 29(formerly 34) deals with the prohibition of quantitative restrictions and measures having an equivalent effect to quantitative restrictions on imports and exports. They are the central provisions of the free movement of goods under the ECJ because they deal with the elimination of technical barriers which are the most dangerous to free movement of goods notion. Article 28(formerly 30) provides: Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States. Article 29(formerly 34) provides: Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States. According to Articles 28(formerly 30) and 29(formerly 34), they lay down the basic prohibition on quantitative restrictions on imports and exports respectively. Member States are prohibited to impose quantitative restrictions and all measures having equivalent effect on imports and exports between themselves. (4. 1). Quantitative Restrictions

The ECJ has decided the meaning of quantitative restrictions in the following cases. In *Riseria Luigi eddo v. Ente Nazionale Risi* case , in defining the

meaning of quantitative restrictions, the ECJ stated that the prohibition on quantitative restrictions covers measures which amount to a total or partial restraint of, according to the circumstances, imports, exports or goods in transit. Therefore, the concept of quantitative restrictions covers not only quotas which appears in Articles 32 and 33(now repealed by the ToA), but also the total or complete bans on imports or exports. In *Import of Lamb case* , *Commission v. France* and *Import of Potatoes case* , *Commission v. UK*, the ECJ held that the most obvious examples of quantitative restrictions on imports and exports are complete bans or quotas restricting the import or export of a given product by amount or by value. (4. 2). Measures having an equivalent effect to Quantitative Restrictions Measures having an equivalent effect to quantitative restrictions mean laws, regulations, administrative provisions, administrative practices, and all instruments issuing from a public authority including recommendation which have similar effect to quantitative restrictions.

However, the ECJ has also clarified the concept of measures having equivalent effect to quantitative restrictions in the cases below. In *Procureur du Roi v. Dassonville case* , the facts were that a trader imported Scotch whisky, produced in England, from France into Belgium. The Belgium laws required a certificate of origin which could only be obtained from British customs. The trader claimed that the requirement of a certificate of origin in these circumstances was equal to a measure having an effect equivalent to a quantitative restriction and therefore was prohibited by Article 30(now 28). The ECJ defined the meaning of a measure having an effect equivalent to a quantitative restriction as all trading rules enacted by Member State which

are capable of hindering directly or indirectly, actually or potentially, intra-Community trade and held that the requirement of a certificate of authenticity, which is less easily obtainable by importers of an authentic product than importers of a product in free circulation, constitutes a prohibited measure of equivalent effect to a quantitative restriction as prohibited by the Treaty. Therefore, Belgium laws violated Article 30(now 28).

In *Re Buy Irish Campaign case, Commission v. Ireland* , the facts were that Irish government sponsored advertising campaign. The ECJ held that the campaign was designed to substitute domestic products for imports, therefore, the Irish Government violated Articles 30(now 28). In *Cinetheque SA v. Federation Nationale des Cinemas Francais case* , the facts were that French law banned for sale of rental of videos of films during the first year in which the film was shown. This law applied equally to domestic and imported videos. The video-cassette distributors challenged the law as a violation of Article 30(now 28).

The ECJ held that Article 30(now 28) of the EEC Treaty must be interpreted as meaning that it does not apply to national legislation which regulates the distribution of cinematographic works by imposing an interval between one mode of distributing such works and another by prohibiting their simultaneous exploitation in cinemas and in video-cassette form for a limited period, provided that the prohibition applies to domestically produced and imported cassettes alike and any barriers to intra-Community trade to which its implementation may give rise do not exceed what is necessary for



ensuring that the exploitation in cinemas of cinematographic works of all origins retains priority over other means of distribution. (c) Tax barriers

Tax barriers have been reduced by partially aligning national VAT rates, which must be agreed by the EU member states. Moreover, in July 2005, an agreement came into force between the EU member states and some other countries (including Switzerland) on taxing investment income.

(e) The Court of Justice

The Court of Justice of the European Union, located in Luxembourg, is made up of one judge from each EU country, assisted by eight advocates-general. They are appointed by joint agreement of the governments of the member states for a renewable term of six years. Their independence is guaranteed. The Court's role is to ensure that EU law is complied with, and that the Treaties are correctly interpreted and applied.

The Court of Justice ensures that European law is fully respected. It has, for example, confirmed that discrimination of handicapped workers is forbidden.