

EXERCISES

taken from

Tobler Christa/Beglinger Jacques, Essential EU Law in Text, [companion publication to Tobler Christa/Beglinger Jacques, Essential EU Law in Charts], Budapest: HVG-Orac 2010, 122 p., ISBN 978-963-258-087-6.



Suggested solutions to these Exercises may be retrieved from:

<http://www.eur-charts.eu/webcompanion/suggested-solutions-to-the-exercises>

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Part 1, B.VI. The development of the EU (ibid, p. 24)

1. There is a (not very serious) booklet with the title “Bluff your way in the EEC, EC, EU”, in which both the words “EEC” and “EC” are crossed out. Using this title, please explain briefly the development from the EEC to the EU in legal terms.
2. In a letter to the editor published in the news magazine “The Economist” of 14 May 2005, a reader wrote the following: “I believe that the citizens of the European Union would be best served if the next expansion of the EU was not to the east but rather to the west, to incorporate Canada [...]. The advantages for both parties are too significant to ignore.” What do you think about the chances of applications for membership from countries such as Canada, Ukraine and Israel, in the event that they should wish to apply?

Part 1, C.VI. The institutional framework of the EU (ibid, p. 31)

1. During a press conference on the fatwa, which Islamic authorities had pronounced over him, the writer Salman Rushdie expressed the hope that “the government of the European Union” would do everything in its power to help him. What could he have meant by the expression “the government of the European Union”?



2. Discuss the following propositions:

- a) “The boast of the European Commission is that it is the engine-room of the Union.”¹
- b) “The main force behind Community integration has been, surprisingly, neither the Commission nor the Parliament, but the Court. In this role, the Court must always be looking over its shoulder for fear that, like the Emperor with no clothes, it will cease to command respect. But so far, every time it has thrown the dice, the Court has won.”
- c) “The European Parliament [...] is a powerless farce. A toothless tiger. Its membership is made up of failed politicians who fell short of requirements in their own national assemblies and who have been pensioned off to the fat salaries and huge expense-accounts of Strasbourg. Their deliberations are so tedious and meaningless that few newspapers ever bother to report them.”²
- d) “The European Parliament is the cradle of a new democratic order which is becoming increasingly important as the EU develops. Its members are directly elected by universal suffrage and therefore have a legitimacy which no amount of criticism can undermine. The Parliament has significant powers: it can, and sometimes does, throw out the annual budget of the [Union]. It can sack the entire Commission if it feels so inclined. It scrutinises and often changes legislation.”³

Part 1, D.V. Competences of the EU and the adoption of secondary measures (ibid, pp. 37-38)

- 1. What is the importance of legal basis provisions for the division of competences between the EU and its Member States and what are the most relevant provisions of the TFEU that can serve as a legal basis for secondary Union law on the internal market?
- 2. The Council (of Ministers) wants to adopt a regulation on rail transport. The Commission in its proposal has suggested Art. 91(1) TFEU, while the European Parliament thought it should be Art. 114 TFEU. How does the Council (of Ministers) determine the appropriate legal basis and which of the two is the appropriate legal basis?
- 3. You are a specialist working at the Ministry for Agriculture in an EU Member State. One day you learn that the Commission plans to present a proposal for a common regime on the production of and the trade in potatoes (so-called Common Market Organisation, CMO; see Art. 40 TFEU). Fearing that the EU might adopt what they see as ridiculous product rules, as it did in the case of bananas where there are rules on the length and curbing of the fruits, the farmers in your country hope the government of your Member State will be able to do something to prevent the adoption of the CMO on potatoes. Some farmers from your Member State are Members of the European Parliament. As they take great pride in the wide variety of different kinds and the excellent quality of the potatoes grown in their country, they are determined to exercise as much influence as possible on the legislative process.
 - a) What is the role of the European Parliament in the legislative process leading to the adoption of an agricultural measure such as a CMO on potatoes?
 - b) Assume that the majority of the Member States is convinced by the usefulness of a potato CMO. Can they adopt it against the will of your Member State?

¹ Taken from the booklet “Bluff your way in the European Union” (by Michael Toner/Christopher White, Horsham: Ravette Publishing 1995), p. 15.

² Idem, p. 17.

³ Idem.



- c) What legal arguments could the government of your Member State bring forward when trying to convince the other governments that it is not a good idea to regulate the potato market on the EU level?
4. In Part Three of the TFEU, choose ten areas of activity of the EU and look for the specific legal basis provisions for these areas. What do they prescribe in terms of the type of act that the institutions can adopt and in terms of the procedure for their adoption?
5. List the legal basis provision(s) in the TFEU that can be used in the context of the free movement of goods.
6. Consult a few recent editions of the C series of Official Journal and look for a proposal of the European Commission for a new piece of secondary legislation. In your opinion, did the Commission choose the correct legal basis?

Part 1, E.IV. *The nature of the EU and EU Law (ibid, pp.45-46)*

1. There is a huge surplus of meat and dairy products in the EU. It is therefore imperative to reduce the production of meat and milk. In that context, the Council (of Ministers) adopts a regulation regarding the slaughtering of cows. According to a provision of this regulation, every farmer who within a certain time period slaughters cows receives a premium from his or her Member State. Ms. Visconti from San Gimignano (Italy) has slaughtered some cows, but is refused the premium by the Italian authorities. Before the judge of San Gimignano, the Italian State acknowledges that according to EU law, the premium should be paid, but points out that this is not possible under national law. Being part of the Italian State, the Italian authorities have to respect Italian law before everything else. Will the judge in San Gimignano agree with this view? On what will the judge's view be based?
2. Kirsi Henonen, a Finnish national, is teaching in a State school in a new Member State of the European Union. In the course of a talk with a colleague who is doing the same work as she, Ms. Blokker realises that she makes less money than her male colleague. This situation is in line with the legislation of the new Member State. Ms. Blokker has heard about Art. 157 TFEU, on equal pay for equal work of men and women. She takes her employer to court in order to get more pay. Will she succeed? Does it make a difference if Ms. Blokker's employer is a big supermarket?
3. Adam Louwerse, a student of international law in Amsterdam, sets up a private website where he places legal texts which he has taken from a CD-rom issued by the publishing house Vermande. Vermande demands that Adam immediately takes the legal texts off his site. Adam refuses. The publishing house wishes to take him to court. It is aware of the existence of a European Directive on databases which aims at protecting the makers of all kinds of databases, including CD-roms. There is a provision in this directive which provides that the maker of a database can deny third persons certain types of use of the database, including copying it in order to put its content on the internet. Vermande is confident that this provision will help it and consults an attorney-at-law. You are this person. What will you tell Vermande?
4. The official slogan of the Dutch tax authorities is "Leuker kunnen wij het niet maken, wel makkelijker." (We cannot make it nicer for you, but at least we can make it easier.) Wishing to live up to this slogan, the tax authorities put the most important tax provisions on their website, along with easy to understand explanations. The legislative texts are taken from Vermande's CD-rom. Vermande takes the tax authorities to court and (as above) points to the Database Directive. Will the national court accept Vermande's argument?
5. What degree of liberty does a Member State enjoy in view of a new EU regulation? What are the consequences of this situation with regard to direct effect?



6. *Pfeiffer*, a very important case decided by the ECJ in 2004, concerned a dispute between a number of workers engaged in emergency medical services (ambulances) and their employer, the German Red Cross, over the interpretation of provisions of the so-called Working Time Directive. The Court found that the Directive's provision that limits the average working week to at the most 48 hours is sufficiently clear and precise and unconditional. In spite of this, the Court found that in a case such as the one before it, the applicants are unable to directly rely on the provision. What might have been the reason for this?
7. What alternative argument might individuals have in order to have their rights under an EU directive protected in a situation where there is no direct effect?
8. In the context of the direct effect of directives, why is the notion of "state" so important?

Part 2, A.IV. *Basic economic law of the EU: introduction (ibid, p. 52)*

1. The EU and her Mediterranean partners state in the so-called Barcelona declaration: "A free trade area will be established through the new Euro-Mediterranean Agreements and free-trade agreements between the partners of the European Union. The parties have set 2010 as the target date for the gradual establishment of this area which will cover most trade with due observance of the obligations resulting from the World Trade Organization." What precisely is a "free trade area"?
2. What distinguishes a free trade area from a customs union such as that existing between Turkey and the EU?
3. On 11 December 2008, the news service "EUobserver" reported that Iraq had unveiled plans for the creation of a regional economic and security union for the Middle East explicitly modelled on the European Union. At the end of its report, the EUobserver recalled that already the African Union, which it describes as a confederation of 53 African States, has taken the EU as its model, as does the Union of South American Nations. As you know, the economic part of the EU is essentially based on the TFEU. Explain the nature of economic integration provided for by this Treaty, and in doing so indicate the relevant Treaty provisions.

Part 2, B. *Basic economic law of the EU: The internal market*

Part 2, B.II.4. *Free movement of goods (ibid, pp. 63-64)*

1. The famous *Van Gend en Loos* (1963) case concerned a transitional provision on customs duties in the then EEC Treaty. Under the present EU law, what would be the relevant provision and what would be the substantive outcome of the case?
2. A case decided by the ECJ in 2004 concerned the famous Carrara marble. In Italy, a charge had to be paid on marble from Carrara whenever it was transported out of Carrara in order to be worked elsewhere. In contrast, no such charge was payable where the marble was worked in Carrara itself. The Court was asked whether such a case falls under Art. 30 TFEU (then: Art. 25 EC), or rather under Art. 110 TFEU (then: Art. 90 EC). What is your opinion? Would it make a difference if the charge only had to be paid for marble transported out of Italy to be worked abroad?
3. In its issue of 26 March 2005, the news magazine "The Economist" reported that, in Turkey and over the past two years, "the taxes on beer have risen by a huge 450 %, to three-and-a-half-times the European Union average. [...] Taxes on wine, whisky and other spirits have risen at similarly dizzying rates. Only raki, the national drink, has been spared, with an increase in



- duties of around 150 % in the past couple of years”. As you know, Turkey and the EU form a customs union, which is based, essentially, on the same rules as the EU rules on free movement of goods. Against this background, assess the above rules in the light of EU law (remembering, of course, that in reality it is not EU law that applied but rather the law under the Ankara Agreement).
4. In the framework of Art. 34 TFEU, the landmark cases *Dassonville*, *Cassis de Dijon*, *Keck* and *Towing Trailers* are extremely important because they explain the meaning of one particular element in the prohibition contained in Art. 34 TFEU. What is this element and why is it part of the prohibition under Art. 34 TFEU?
 5. In a surprising result in the general election in an EU Member State, a coalition government comprised of the Animist, the Green and the Catholic parties comes to power. Analyse the compatibility of the following regulations of the new Government with EU law on the free movement of goods:
 6. The government immediately enacts a law prohibiting the slaughter of animals except in accordance with an ancient and complex druidical rite, which, the government believes, ensures a place for animals' souls in heaven. Since there is no known method of ensuring whether abattoirs abroad comply with this rite, the law bans the importation of all meat and meat products.
 - a) The second law bans the use of motorcars which do not comply with prescribed standards of emission control. The standards are stricter than those set out in an EU Directive which was adopted by authority of Art. 114 TFEU by a majority vote which included the support of the Irish government.
 - b) The third law, which the government enacts, regulates the sale in the country of Catholic religious artefacts (e.g. crucifixes, rosary beads, palms, scapulars). All Catholic artefacts are required to be blessed before sale by a priest, and it is made a criminal offence to sell any such artefact that has not been blessed. Artefacts representative of other religions are subject to no such requirements.
 7. The minister of the Dutch State department of health wishes to reduce the consumption of cigarettes. To that end, she wants to make cigarettes less easily available. She is suggesting a law providing that cigarettes may only be sold in shops that have obtained a special licence from the state for that purpose. Outside of shops, cigarettes may be sold only through vending machines. You are a staff member of the health department. You are asked to evaluate the compatibility of such a regulation with the relevant EU law.
 8. There was a time, not too long ago, when refrigerators and freezers did not exist in Europe. At that time it was quite difficult to preserve certain types of food. Salt was the most important means to keep, for instance, meat and fish. Because salt was so important and often rare, the State (at those times: the prince or the city) controlled the salt trade and set up rules regulating that trade. Consider the following cases and assess the rules in question in the light of today's EU law and against the background of today's Europe.
 - a) The salt used in Vienna, Austria, comes mostly from other Austrian areas but also from what today are other European countries. For reasons of local tradition, the rulers of Vienna (the house of Habsburg) set up the rule that salt has to be sold in a specific form, namely in a cylindrical shape.
 - b) The Italian salt dealer Salina transports salt from the “*Salzkammergut*” (an area in Austria) to Vienna. There he wants to sell it on the market in front of the Dome of St. Stephan. However, he is stopped from doing so because the law prohibits selling any food close to the entrances of holy places, including the Dome.
 - c) Much of the salt used in the Grand Duchy of Baden (now Germany), originates from places in Austria. The rulers of Baden decide that salt can only be sold in a special building,



namely the local salt hall. The reason for this is to make sure that there is always sufficient salt of a good quality.

9. In Malta, it is discovered that a person who has just died owned some spectacular objects from ancient times. As there are only very few of this type, the State obliges the heirs to keep them within the country. This means that they cannot take them to a show of art treasures in London. Will the heirs have to accept this or will EU law be of any help to them?

Part 2, B.III.7. Free movement of persons and services (ibid, pp. 75-77)

1. A few years ago, the ECJ had to decide on a case involving Mr. Igor Simutenkov, a professional footballer of Russian nationality who, at the relevant time, worked for the Spanish football club *Deportivo Tenerife*. Before a national court, Mr. Simutenkov had complained about a rule set up by the Spanish Football Association which limited the number of professional players having the nationality of non-EU/EEA Member States who may appear on a team in a football competition. Mr. Simutenkov relied on the European Communities-Russia Partnership Agreement which provides under Art. 23(1) that “the Community and its Member States shall ensure that the treatment accorded to Russian nationals legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals”. The Court’s interpretation of this provision was such that Mr. Simutenkov had to win the case before the national court.
2. Assume that the case involves a footballer with an EU nationality other than that of Spain. Which provisions of EU law are relevant in such a case and why?
 - a) Which right of the footballer is infringed and what type of infringement is at issue?
 - b) Assume that the Football Association argues that its rule is justified in the interest of the clubs’ constitutional right to freedom of association, a right that is also part of international human rights law. In the framework of EU law, will such an argument succeed?
3. Ms. Eleni Jannidis is a Greek national who works as a receptionist at a hotel on the island Patmos. She considers that she is working very hard for little money and decides to look for work elsewhere. Consider the following situations:
4. Ms. Jannidis succeeds in finding a job in Denmark. When arriving at the airport in Denmark, the immigration officials refuse to let Ms. Jannidis enter because she suffers from tuberculosis. Are the authorities entitled to keep Ms. Jannidis out?
 - a) When arriving at the airport in Denmark together with her husband Giorgis and their two small children, only Ms. Jannidis is allowed to enter. The reason for this is that, in the view of the authorities, Ms. Jannidis will not make sufficient money to support her family. Under EU law, do Giorgis and the children have a right to accompany their wife and mother? Do they also have a right to reside in Denmark?
 - b) Ms. Jannidis takes up her new job. However, when she gets her first tax bill, she finds that she has to pay higher income taxes than her Danish colleagues. Is that acceptable under EU law?
5. Marcu Manninen is a Finnish horse dentist and horse enthusiast. He intends to set up his office and treatment rooms in Vienna. In this way, he will be close to the Hofburg where there are often splendid horse shows. However, the Austrian authorities refuse to accept his Finnish horse dentist diploma. Mr. Manninen is wondering whether or not in this situation EU law might help him.



6. Ms. Valmont is the manager of a French insurance company that plans to open extra offices (branches) in a number of other Member States. However, when trying to do so, the company encounters problems. In Member State A, there is a rule that in order to be allowed to set up a branch, an insurance company must have been doing business in that country for at least twenty years. In Member State B, Ms. Valmont is informed that the setting up of branches is possible only for insurance companies of that very country but not for those from other Member States. In both cases, the authorities argue that the insurance business is of a particularly delicate nature and therefore requires consumer protection. Ms. Valmont finds all of this very tiresome. She asks you to assess the rules of the two Member States in light of EU law.
7. The same company wishes to expand its business to other EU Member States. It has plans to do so by offering its services via the internet not only in its country of establishment (France) but also in other EU Member States. However, when obtaining information on the legal situation in other Member States, its director, Ms. Valmont, finds that in Member State A, the law requires that each large insurance contract must be authorised by the state authorities before being concluded with the client. In Member State B, there is a rule that only domestic companies can offer certain types of insurance, which also covers the business of Ms. Valmont's company. Ms. Valmont doubts that these rules are in line with EU law and asks you to assess them.
8. In the year 2005, the European Commission held its annual Conference of the Action Programme to Combat Discrimination at Lisbon. The subject was "Access to Justice: Knowing, Understanding and Asserting Rights to Equal Treatment". The numerous participants not only enjoyed the meeting but, of course, also the beautiful city of Lisbon. When visiting the famous Castelo do São Jorge (St. George's Castle), some participants who were nationals from other Member States found that whilst they had to pay an entrance fee, persons below the age of 10 and above the age of 65 as well as persons resident in the city of Lisbon were allowed to enter for free.
 - a) Assess these entry rules in the light of EU free movement law.
 - b) Does it make a difference if the person who is faced with the entry rules in question is a national of Mexico?
 - c) Does it make a difference if the person who is faced with the entry rules in question is a Portuguese national who lives in the Portuguese city of Porto?

Part 2, B.IV.3. Free movement of capital (ibid, p. 78)

1. How is the term "capital" defined under Art. 63(1) TFEU? Does the investment in a company fall under this term? What about the free movement of capital and third countries? For example, would the investment of a Swiss person in the EU be covered?
2. Magnus Axelsson, an entrepreneur having his business in Sweden, has negotiated a loan with the Nordic Investment Bank, an institution set up by the Nordic States. In Sweden, there is a State guarantee system for loans. However, much to his astonishment, Mr. Axelsson realises that the fees for such a guarantee differ according to whether the loan is granted by a Swedish institution or by a foreign established institution. As the Nordic Investment Bank is considered a foreign institution, Mr. Axelsson has to pay higher fees than if he were to receive his loan, for instance, from the Swedish Investment Bank. He wonders whether under EU law the difference in the amount of the fees is acceptable.
3. Daiva Gauskite from Lithuania has bought shares in a German company. Her participation in the company amounts to 3%. She also holds shares in a number of Lithuanian companies. When she gets her tax bill, she realises that her income from these investments (i.e. the dividends paid to her as a share-holder) is taxed more heavily in the case of the German companies than in the case of the Lithuanian companies. Is that acceptable under EU law?



Part 2, C.VI. Competition law (*ibid*, p. 87-88)

1. Potz GmbH, Glanz GmbH and Blank GmbH are three big Austrian companies producing household cleaning products. In June 2008, the directors of these companies participated in an international conference on the cleaning business in Europe. Two months later, the prices for the products made by them all rise simultaneously by 10%. Assess this situation in the light of EU law.
2. Two beer brewing companies, Kilsen and Amphtel, are operating in the horeca (hotels, restaurants, and cafés) sector of an EU Member State, each of them holding roughly a 37.5% share of that market. They independently set their wholesale prices (i.e. the prices they charge to their outlets). The basic list prices are publicly available. Each company reserves, however, the freedom to negotiate secret rebates bilaterally with its outlets. They agree to exchange information about their sales volumes for every type of beer sold and to do so on a monthly basis, with the purpose of having some “guidelines” as to how the market will behave and adapt their planning accordingly. In doing so, are they liable of infringing EU competition law? Further, does it make a difference if the product concerned is not beer but milk?
3. Häberli and Böckli are well known chocolate companies having their seats in Berne and Zurich respectively (both in Switzerland). They sell their products all over Europe. Lately, the European Commission has received complaints from Belgian chocolate producers about the pricing policy of Häberli and Böckli. After a detailed investigation the Commission comes to the conclusion that the two Swiss chocolate companies have entered into an agreement that is contrary to Art. 101 TFEU. Can the Commission issue a decision imposing fines on Häberli and Böckli?
4. Mr. Schmidt is a judge in Freiburg, Germany, and is very eager to improve his knowledge about European law. During a course he has heard that a “dominant position” is one of the requirements in the context of Art. 102 TFEU. Mr. Schmidt asks you to explain to him how to determine whether in a given case an enterprise is in a dominant position. He would also like to know whether a dominant position is considered something bad under EU law.
5. Assume that the two retail companies established in the EU, Save and LüdL, wish to merge into one single company. In developing their plans in this regard, do they have to consider EU law?
6. How is the term “state aid” defined? To what extent is state aid acceptable under EU law?
7. In an EU Member State, the formerly state-owned airline has been privatized. Unfortunately, it does less and less well and finally threatens to go bankrupt. In order to save it, a new shareholding company is set up which takes over the assets of the old company. In this new company, the State holds 80% of the shares. However, economists are warning that the reorganisation has not been taken sufficiently seriously. They are unanimous that the airline has too many large airplanes, too many employees and too many economically non-viable destinations to which it flies. The economists therefore predict that is impossible for the new company to operate without very grave losses. Against this background, some citizens of the relevant Member State complain that their tax money is being wasted by putting it into this company and that in addition such an investment is contrary to EU law. A low cost airline operating in the same country is also unhappy and thinks that EU law is being infringed. Do you agree?



Part 3, Social law

Part 3, A.IV. EU social law in general (ibid, p. 92)

1. You have heard that the original EEC Treaty constituted essentially a means for economic integration. Was EEC law of a purely economic nature or did it also have a social dimension?
2. In what fields of social law does the EU enjoy competences?
3. Art. 157 TFEU is a particularly important provision in the TFEU's social policy title. Which parts of this provision are of a substantive nature and which give competences to the EU?

Part 3.B.III. By way of example: two important sub-fields (ibid, p. 97)

1. Over time, a substantial body of social non-discrimination law of the EU has developed. What types of discrimination are prohibited under such law, and what about types of discrimination not mentioned (e.g. genetic discrimination, discrimination on grounds of health etc.)?
2. In the year 2005, the European Commission held its annual Conference of the Action Programme to Combat Discrimination at Lisbon. The subject was "Access to Justice: Knowing, Understanding and Asserting Rights to Equal Treatment". The numerous participants not only enjoyed the meeting but, of course, also the beautiful city of Lisbon. When visiting the famous Castelo do Saõ Jorge (St. George's Castle), some participants who were nationals from other Member States found that whilst they had to pay an entrance fee, persons below the age of 10 and above the age of 65 as well as persons resident in the city of Lisbon were allowed to enter for free. Assess these entry rules in the light of EU social non-discrimination law.
3. Helga Schober wants to visit a nightclub in her city, Vienna. Because she is blind, she takes along her guide dog. However, she is refused entry into the club because dogs are not allowed. Ms. Schober is of the opinion that to prohibit the presence of animals means to disadvantage blind people in particular, since many of them rely on guide dogs. Is there EU law that applies in Ms. Schober's situation?
4. Would the answer to the previous question be different if the case concerned not blind Helga Schober, but Jean-Paul Nkufo from Zaire, who is told that there are already too many men in the club? Mr. Nkufo's impression is that it is rather the colour of his skin than the number of male visitors that is the reason for the refusal. If there is applicable EU law, does the refusal of entry to Mr. Nkufo amount to discrimination?
5. Gunnar Axelsson, a Swede, considers moving to another EU Member State for the purpose of employment. He finds out that the social security system in a number of other countries is less generous than that of his country of origin. He wonders whether it is possible to rely on EU law in order to demand, in these other states, benefits on a comparable level as in Sweden.

Part 4.V. Integration Techniques: different integration techniques (ibid, pp. 104-105)

1. Consider the following examples from secondary law and explain whether they involve positive or rather negative integration:
 - a) Art. 14(1) of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents: "A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term



- residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.”
- b) Art. 14(1)(a) of Directive 2006/123/EC on services in the internal market (the so-called Services Directive): “Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following: a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider’s management or supervisory bodies; [...]”
 - c) Art. 14(1) of Regulation 1107/2006/EC concerning the rights of disabled persons and persons with reduced mobility when travelling by air: “Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated in its territory. Where appropriate, this body or bodies shall take the measures necessary to ensure that the rights of disabled persons and persons with reduced mobility are respected, including compliance with the quality standards referred to in Article 9(1). The Member States shall inform the Commission of the body or bodies designated.”
2. It is well known that garlic is beneficial for human health. However, because of its strong smell, many people prefer not to eat the raw product in large quantities, but instead take it in the form of capsules containing garlic powder. A few years ago, the Commission received a complaint from a company whose application for authorisation to import and market a garlic preparation in capsule form was refused by the German Ministry for Health on the ground that the product was not a foodstuff but a medicinal product. Under EU law (namely Arts. 2 and 6(1) of Directive 2001/83/EC on the EU code relating to medicinal products for human use) no industrially produced medicinal product may be placed on the market in a Member State unless a marketing authorisation has been issued by the competent authorities of that Member State or by the European Agency for the Evaluation of Medicinal Products. The case led to an infringement procedure against Germany. Before the ECJ, opinions of Germany and of the Commission differed as to whether or not garlic in capsules is a medicinal product. According to Germany, it is; according to the Commission, it is not. The Commission took the view that the German rules infringe what is now Art. 34 TFEU. From a legal point of view, why is the Commission arguing that garlic in capsules is not a medicinal product?
3. You are the human resources manager of a company established in an EU Member State. Being responsible for the company’s personnel (the employees), you have helped draft rules regarding the reimbursement of travel costs incurred for training done by the employees in the course of their work. Your in-house legal department warns you that such rules have to respect EU law. There is no specific EU law on the reimbursement of employees for expenses incurred in the context of their work (e.g. no regulation or directive on such issues). Does that mean that your company is free to set the rules as it likes or are there nevertheless certain limits imposed by EU law?

Part 5, F. Enforcement (*ibid*, pp. 118-119)

- 1. What does the term “enforcement” of EU law mean? Can you mention five important elements of the EU enforcement system?
- 2. What is the role of national courts in the enforcement of EU law?
- 3. In a dispute before a national court it emerges that the interpretation of EU law may be of essential importance to the case. Since the national court is not sure about the meaning of the potentially relevant provisions of EU law, it decides to ask the ECJ for a preliminary ruling. However, one of the parties is fiercely opposed to this decision. It therefore argues before the ECJ that, first, the national court was neither entitled nor obliged to send a question and, second, that the ECJ should refuse the request in terms of its substance matter, since it essentially



constituted an abuse of the procedure. In contrast, the other party claims that the national court is always obliged to send questions and the ECJ is always obliged to take them. What do you think about these arguments?

4. Through the Lisbon revision, the rules on the standing of individuals in the annulment procedure have been somewhat changed. Art. 263 TFEU provides in this respect: "Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures." The term "regulatory act" does not appear elsewhere in the Treaty. What might be its meaning?
5. Fictitious Directive 123/2005/EC on the protection of the environment against visual pollution was adopted on 1 April 2005. The directive includes an Article 5, which reads as follows: "Member States shall take all necessary measures, including provision for criminal sanctions in the form of an appropriate fine or imprisonment or both to ensure that householders do not place plastic gnomes in a position where they are visible to neighbours or to members of the public. Any person suffering visual pollution as a result of the placing of plastic gnomes in a neighbour's garden shall be entitled to a remedy in damages." The date for the implementation of the directive is 1 April 2007. On 2 April 2005, the responsible Minister said in the German Parliament: "This is a useful piece of legislation, but Article 5 makes no sense. We intend to implement the Directive with the exception of Article 5, the validity of which we are going to challenge in the Court of Justice. If we lose in the Court, then of course we shall implement Article 5; but in any event, we should consider one euro as the appropriate amount for any fines or damages pursuant to the Article, and we shall legislate accordingly." Advise:
 - a) The German Government, as to whether it can challenge the validity of Article 5 of Directive, and if so, on what grounds;
 - b) Euro-Gnome, the trade association representing all the European Union's plastic gnome manufacturers, as to whether the association or its members have standing to bring an action for the annulment of Article 5;
 - c) Blumenau City Council, which is anxious to banish plastic gnomes from the city's gardens, as to whether it will be able to take any action against gnome owners pursuant to Article 5, once the deadline of 1 April 2007 has passed;
 - d) Heike, who is driven to distraction by the crowd of plastic gnomes in the garden of her neighbour Karl, as to the implication(s) of the Minister's statement regarding her prospects of obtaining an effective remedy against Karl.
6. Is it possible to call the plea of illegality according to Art. 277 TFEU a procedure for the enforcement of EU law? In what circumstances can it be used, and by whom?
7. The Commission has decided to take a Member State to Court for retaining in its national legislation a general prohibition on night work for women. The relevant internet communication says: "The Commission is asking the ECJ to impose a daily fine of 142.425 EUR, payable for each day of non-compliance with the [...] judgment of the ECJ [...]." Explain the procedural steps that led to this action by the Commission.
8. The Norwegian firm Fresh Marine specialises in farmed Atlantic salmon which it exports at very competitive prices to, among other countries, the UK. After having received complaints from competitors of Fresh Marine, the Commission initiated an anti-dumping procedure against Fresh Marine. In the course of this procedure Fresh Marine agreed not to sell its salmon beneath a certain average price. In order to avoid anti-dumping duties, Fresh Marine had to submit satisfactory reports to the Commission. After having received one of these reports, the Commission nevertheless decided to impose anti-dumping duties on Fresh Marine's imports into the EU right in the middle of the Christmas period in which sales are substantial. Obviously,



Fresh Marine was horrified. Its salmon no longer being competitive, it had to stop its exports. The company lost huge amounts of money and almost went bankrupt. The management of Fresh Marine was all the more vexed because it had always respected its undertaking and had never sold salmon under the agreed average price. Taken to the General Court, the Commission acknowledged its mistake. Its earlier and wrong impression was due to a careless reading of Fresh Marine's report. The General Court found in favour of Fresh Marine and awarded it damages. Explain what led the Court to this finding.

