

# European Legislation

## Lecture Title: Labour Legislation and EU Competition Law

Lecturer: Dr Christopher L. Vella

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**Diploma in Law (Malta)**



CAMILLERI PREZIOSI  
ADVOCATES

MAMO TCV  
ADVOCATES

# Free movement of capital and payments

- Includes elements such as purchase of currency, buying of real estate, company shares and loans, foreign direct investment
- Considered as supplementary to the three other freedoms
- The Treaty of Maastricht consolidated this freedom



# Free movement of services

- Hard to distinguish from other freedoms
- Article 57 TFEU: *'Services mean those activities which are provided for remuneration and are not governed by the rules relating to freedom of movement of goods, capital and persons'*
- A person can offer his services in another EU country without setting up a company or a branch there



# EU Labour Law



# Introduction to Labour Law

- Forms part of a supranational legal system
- Falls within the shared competences of the EU
- Regulated by means of the Treaties and Secondary Legislation



# Main pieces of legislation in EU Labour Law

- Directives
  - Fixed Term Work Directive (1999/70/EC)
  - Citizens Rights Directives
  - Posted Workers' Directive – (92/85/EC)
  - Parental Leave Directive (96/34/EEC and 2010/18)
  - Working Time Directive (2003/88/EC)
- Regulation



# Working Time Directive

- Sets minimum standards
- Protects the Employees
- Certain Rights include
  - 48 hour week
  - 24 hours of rest in a 7 day period
  - Vacation Leave
  - Rest breaks of 20 minutes in 6 hour period



# Emergence of EU Labour Law

- Why should the EU delve into Labour Law?
  - European Social Model
  - Economic Integration as an opportunity for the ESM
  - European Social Model as an end itself





# 1. European Social Model

- Member States' shared understanding of the level and nature of the social protection their citizens should enjoy
- Social inclusion, democracy, employment, opportunities of all, equality
- Two main elements of the ESM were SOCIAL WELFARE and LABOUR LAW
- Labour Law aims to achieve basic protection of workers, equal treatment and collective bargaining, minimum standards for health and safety



## 2. Economic Integration as an opportunity for ESM

- Empowerment and rights to employees and lower class citizens
  - By raising labour standards
  - Guaranteeing certain rights
  - Having a sustainable work force
- Effect of reducing number of people on welfare
- Ensures fair distribution of wealth



# 3. European Social Model as an end in itself

- Labour law as an end in itself
- Protection of fundamental rights of workers



# Free Movement of Workers

- Enabling workers from high unemployment states to high employment states
- Principles of mutual recognition and non-discrimination at the core of the FMW



# Who is the worker?

- Labour law set to protect the weaker party
- No definition of worker exists
- Contract of service vs Contract for service – self employed are excluded – mutuality of obligation test
- Importance of having a definition of a “worker”



# Definition of a “worker”

- *Hoekstra case – C-75/63*
- *“In addition, it would be very difficult to accept any definition of a worker that comes from national law. Thus, if there is a different definition applied to all the cases on workers’ rights in the EU, this would create confusion and disparity. Therefore, to ensure consistency and to harmonise rights, the CJEU could not accept a national definition of worker.”*
- *Lawrie Blum – C-66/85* - The ECJ stated that the concept of ‘worker’ in Article 48 should be interpreted broadly as (I) a person (II) performing services (III) under the direction of another (IV) for remuneration, and that included a trainee teacher. Article 48(4) is to be construed narrowly, and only to safeguard a state’s interests,
- *17. The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.”*

# Three criteria for a person to qualify as a worker

- 1. Relationship of subordination
- 2. A 'genuine and effective' economic activity
- 3. The economic activity must not be on 'such a small scale as to be purely marginal and ancillary'



# Genuine and effective economic activity

- Various jobs considered as being as genuine and effective economic activity
  - BUT

Limitations exist as to what is genuine and effective economic activity

*Bettray – 1989*

*Trojani - 2004*





# Is it marginal or ancillary?

- *Levin – 1982* – Not necessary to earn a particular wage or work a certain number of hours per week – marginal work may still be considered as a “worker”
- *Brown – 1988* – if ancillary not deemed as a “worker”



# Is payment in kind accepted?

- *Steymann – 1988*
- *” In a case such as the one before the national court it is impossible to rule out a priori the possibility that work carried out by members of the community in question constitutes an economic activity within the meaning of Article 2 of the Treaty. In so far as the work, which aims to ensure a measure of self-sufficiency for the Bhagwan Community, constitutes an essential part of participation in that community, the services which the latter provides to its members may be regarded as being an indirect quid pro quo for their work. ”*



# Rights conferred on workers

## • The Treaties

- Article 45(1) TFEU – Workers enjoy the right of free movement
- Article 45(2) TFEU – abolition of any discrimination based on nationality between workers of the Member States
- Article 45(3) TFEU – Free movement comprises of:
  - Right to accept offers of employment
  - Move freely for that purpose
  - Stay in a Member State
  - Remain in a Member State

# Does Article 45 have direct effect?

- *Clean car case*
- *Angonese case*
- *Is it vertical only?*



# Secondary Legislation

- Other Secondary Legislation amplified on article 45 TFEU
- Directive 2004/38 – Free Movement Directive
- Regulation 492/2011



# Right to equal treatment

- Article 1 of Regulation – guarantees right for every individual
- Article 7 of Regulation – not to be treated differently from national workers
- Instances where Free Movement of workers may be denied:
  - Public Policy
  - Public Security
  - Public Health
- *Kobler case, Biehl case, Schoning case*



# Direct and Indirect Discrimination

- Direct – where migrant worker is treated less favorably than the national workers
- Indirect – the measure is intrinsically liable to affect the migrant worker more than the national worker



# Justifications recognised by Court

- Justification of a discriminatory rule
  - To avoid disturbances on the labour market
  - Protection of workers
  - Combatting illegal employment







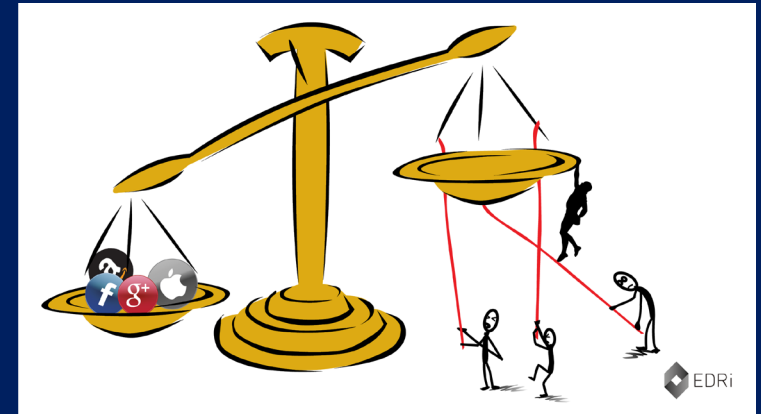
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# Competition Law



- Creation of a level playing field for all actors
- Regulating undertakings' behaviour which may be deemed as anti-competitive
- Based on the premise that competition is healthy and therefore anti-competitive activity is deemed as unacceptable
- One of the exclusive competences of the EU
- EU competition law tackles three types of anti-competitive activity
  - Restrictive trading agreements between independent business undertakings
  - Abusive anti-competitive practices
  - Major mergers of undertakings resulting in position of market dominance

# Article 101 TFEU

- Directed against cooperation between companies that operate in an anti-competitive way
- *“The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market...”*



# Examples of agreements covered 101(1)

- Article 101(2) provides a non-exhaustive list – “... *and in particular those which*”
  - a) Directly or indirectly fix purchase or selling prices or any other trading conditions
  - b) Limit or control production, markets, technical development, or investment
  - c) Share markets or sources of supply
  - d) Apply dissimilar conditions to equivalent transaction with other trading parties, thereby placing them at a competitive disadvantage

# Article 102 TFEU – Abuse of a dominant position

- *“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may effect trade between Member States.*
- *Such abuse may, in particular, consist in:*
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

# Dominant Position and abuse of a dominant position

- To be viewed in the context of the relevant market
- *United Brands Co vs Commission (C-27/76)*
  - The 'Banana market' as compared to other fruit markets

Article 102 includes a list of abuses of a dominant position



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