

# European Legislation

Lecture Title: The Four Freedoms

Lecturer: Dr Christopher L. Vella

Date: 28th February, 2023



Diploma in Law (Malta)



CAMILLERI PREZIOSI  
ADVOCATES

# Part II: The Four Freedoms



# Free movement of persons

- Study, work, settle in any of the Member States without discrimination



- Requires mutual recognition of qualifications
- Originally focused on the free movement of employees but
- then developed to travel

# Directive 2004/38/EC

- Consolidated the various rights towards citizens of Member States in relation to free movement of persons
- Included the rights towards family members of EU nationals
- Right to reside for up to 3 months which can be extended upon valid reasons



# Free movement of Goods

- Key element for an internal and single market
- Once a product has been produced and marketed in a Member State it can be sold in the whole EU
- Developed by the European Customs Union in 1958 – removed customs barriers and applied common customs policy for third countries



# Abolition of Customs Duties and Charges

- Article 28
  - To prohibit MS from establishing custom duties including charges having equivalent effect
  - To create a Common Customs Tariff in relation to third countries
- Focus is on the effect of a charge not the its purpose. Charges having equivalent effect are equally prohibited.
- Commission vs Italy (1968) – Tax on export of artistic, historic and archaeological items

# Charges having equal effect

- Case 2/69 – Diamtarbeiders case – 0.33% of the value of imported diamonds to be paid into a social fund
- Criteria for CHEE
  - Charge must be imposed at time of importation
  - Imposed on a product imported from another Member State in exclusions of a similar national product
  - Results in the variation in the price of the product



# What if inspections are to be carried out?

- *Bresciani case – 87/75*
- *Commission vs Germany – 1988*
  - Accepted the view that a charge imposed by the state may escape this prohibition where it is to cover the cost of a mandatory inspection



# Discriminatory Tax Provisions

- Article 110 TFEU
- *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**.*

# Quantitative Restrictions

- Article 34 TFEU: ‘quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States
- What are Quantitative Restrictions?
- Geddo case – 1973 – ‘measures which amount to a total or partial restraint of, according to the circumstances, imports, exports or goods in transit’
- Relating to limitation of quantity

# Measures of equivalent effect

- Dassonville judgment (1974) – validity of a Belgian law requiring importers to acquire possession of a certificate of origin of goods
- Dassonville formula: “all trading rules enacted by Member States which are capable of hindering directly or indirectly, actually or potentially, intra-Community trade”

# Other barriers to trade

- Import and export restrictions
- Promotion or favouring of domestic products
- Price fixing
- Measures which make imports more difficult or costly



# Cassis de Dijon – 1979

- Developed further the Dassonville formula
- Once goods have been lawfully marketed in one Member State, they should be admitted into any other state without restriction.
- Rule of reason



# Defences to Discriminatory measures

- Article 36 TFEU – number of grounds on which a discriminatory rule may be saved from the prohibitions of article 34 and article 35
- Public morality
- Public policy
- Public security
- Protection of health and life of humans, animals or plants



# 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





**Diploma in Law (Malta)**



CAMILLERI PREZIOSI  
ADVOCATES