

ESSENTIAL EU LAW IN TEXT

5th, “post-Brexit” edition

**Christa Tobler
Jacques Beglinger**

hvgorac

Lap- és Könyvkiadó Kft.
BUDAPEST, 2020

Content overview

PART 1: THE LEGAL FOUNDATIONS OF THE EU	13
A. INTRODUCTION.....	15
B. THE DEVELOPMENT OF THE EUROPEAN UNION.....	17
C. THE INSTITUTIONAL FRAMEWORK OF THE EU.....	26
D. COMPETENCES OF THE EU AND THE ADOPTION OF SECONDARY MEASURES	33
E. THE NATURE OF THE EU AND EU LAW.....	41
PART 2: BASIC ECONOMIC LAW OF THE EU	51
A. INTRODUCTION.....	53
B. THE INTERNAL MARKET	57
C. COMPETITION LAW	84
PART 3: SOCIAL LAW	95
A. EU SOCIAL LAW IN GENERAL	97
B. BY WAY OF EXAMPLE: TWO IMPORTANT SUB-FIELDS.....	99
PART 4: INTEGRATION TECHNIQUES	105
A. POSITIVE AND NEGATIVE INTEGRATION AS LINKED TO PRIMARY AND SECONDARY EU LAW	107
B. DIFFERENT INTEGRATION TECHNIQUES	110
PART 5: ENFORCEMENT	113
A. GENERAL REMARKS	115
B. THE ACTIONS FOR ANNULMENT (ARTS. 263 TFEU ET SEQ.) AND FOR FAILURE TO ACT (ARTS. 265 AND 266 TFEU)	116
C. THE INFRINGEMENT PROCEDURE (ARTS. 258 TFEU ET SEQ.)	118
D. THE PRELIMINARY RULING PROCEDURE (ART. 267 TFEU)	119
E. ACTIONS FOR DAMAGES AND FOR UNJUST ENRICHMENT	121
F. EXERCISES	123

Table of contents

PART 1: THE LEGAL FOUNDATIONS OF THE EU	13
A. INTRODUCTION	15
I. “EU law” and “Community law”	15
II. EU law as a special type of international law	15
III. Aim, means, specific objectives and fundamental values of the EU	16
IV. The principle of sincere cooperation between the Member States and the EU	16
V. Language versions of EU law and web-based information	16
B. THE DEVELOPMENT OF THE EUROPEAN UNION	17
I. European integration against the global background	17
II. Early steps of integration in Europe: the European Communities	17
III. From the Communities to the larger construct of the EU	18
1. The creation of the EU through the Maastricht Treaty	18
2. Subsequent changes in the structure of the EU	19
a) The EU after the Amsterdam Treaty	19
b) A failed attempt: the Constitutional Treaty	20
c) The EU after the Lisbon Treaty	20
IV. Changing the reach and content of the Treaties	21
1. EU membership	21
a) Accession	21
b) Withdrawal	21
2. Changing the content of the Treaties	22
a) Treaty revisions	22
b) Renumbering of the Treaties	23
V. The global background of European integration revisited	24
VI. Exercises	25
C. THE INSTITUTIONAL FRAMEWORK OF THE EU	26
I. General remarks	26
II. The political institutions of the EU	26
1. The European Council (Art. 15 TEU and Arts. 235-236 TFEU)	26
2. The European Parliament (Art. 14 TEU and Arts. 223-234 TFEU)	27
3. The Council (of Ministers) (Art. 16 TEU and Arts. 237-243 TFEU)	28
4. The European Commission (Art. 17 TEU and Arts. 244-250 TFEU)	28
5. The High Representative of the Union for Foreign Affairs and Security	29
III. The judicial institution: the European Court of Justice (Art. 19 TEU and Arts. 251-281 TFEU)	29
IV. Financial institutions and bodies	30
1. The European Central Bank (Arts. 282-284 TFEU)	30
2. The Court of Auditors (Arts. 285-287 TFEU)	31
3. The European Investment Bank (Arts. 308-309 TFEU)	31
V. Size and cost of the EU administration	31
VI. Exercises	31
D. COMPETENCES OF THE EU AND THE ADOPTION OF SECONDARY MEASURES	33
I. The division of powers between the EU and its Member States	33
1. Conferral of powers on the EU	33
2. Exercise of EU competences	33
3. Ways of attributing competences to the EU	33
II. Legal basis provisions	34
III. Form of action and procedures for the adoption of secondary measures	34

1. Type of act that can be adopted.....	35
a) Secondary measures or legal acts: an overview	35
b) Specification by legal basis provisions: the examples of Arts. 114 and 115 TFEU	35
2. The adoption of secondary legal acts	35
a) General remarks on the different procedures	35
b) Legislative procedures and emergency brakes	36
i. General remarks	36
ii. The ordinary legislative procedure (Art. 294 TFEU).....	36
iii. The consultation procedure.....	37
iv. The consent procedure	37
v. Emergency brakes.....	37
c) Non-legislative procedures	38
d) Combination of different procedures.....	38
IV. What can be done if the institutions breach the rules?	38
V. Exercises.....	39
 E. THE NATURE OF THE EU AND EU LAW	 41
I. General remarks	41
II. Primacy or supremacy of EU law	41
III. Direct effect.....	43
1. Introduction	43
2. Direct effect of Treaty provisions.....	43
a) Vertical direct effect (as against the State)	43
b) Horizontal direct effect (as against other individuals).....	45
3. Direct effect of secondary EU measures	45
a) Direct effect of provisions of regulations	45
b) Direct effect of provisions of directives	46
c) Direct effect of provisions of decisions	47
d) Direct effect of treaties with third states.....	47
e) If there is no direct effect: alternatives	47
f) Based on more recent case law: direct effect of the Union's general principles and the Charter of Fundamental Rights in favour of individuals	48
4. The autonomy of European Union law.....	48
IV. Exercises.....	48
 PART 2: BASIC ECONOMIC LAW OF THE EU	 51
 A. INTRODUCTION.....	 53
I. EU law in the context of economic integration	53
II. Stages of economic integration and their relevance for the EU.....	53
III. "Overarching" substantive law.....	54
1. Overarching rules.....	54
a) The general principles of the EU.....	54
i. Fundamental rights.....	54
ii. Proportionality	55
iii. Equality/equal treatment and non-discrimination	55
b) Data protection.....	55
c) The prohibition of discrimination on grounds of nationality	55
d) Union citizenship	55
2. Overarching tasks	56
IV. Exercises.....	56
 B. THE INTERNAL MARKET	 57
I. Introduction	57
1. The internal or single market in the EU.....	57
2. Analysing and applying free movement provisions	58

II.	Free movement of goods (Arts. 28 TFEU et seq.).....	59
1.	General remarks	59
2.	Fiscal restrictions	59
a)	The prohibition of customs duties	60
b)	The prohibition of discriminatory and protective taxation.....	60
3.	Quantitative restrictions	61
a)	General remarks	61
b)	Quantitative restrictions on imports	61
i.	The prohibition under Art. 34 TFEU	61
ii.	Justification under Art. 36 TFEU	63
iii.	Applying the complex provision of Art. 34 TFEU.....	64
c)	Quantitative restrictions on exports	65
i.	The prohibition under Art. 35 TFEU	65
ii.	Justification under Art. 36 TFEU	66
iii.	Applying the complex provision of Art. 35 TFEU.....	66
4.	Exercises.....	67
III.	Free movement of persons (Arts. 45 TFEU et seq.) and of services (Arts. 56 TFEU et seq.)	69
1.	Introduction	69
2.	EU citizens and third-country nationals	69
3.	Free movement for workers (Arts. 45 TFEU et seq.)	70
a)	The scope of the provision.....	70
b)	The prohibition/rights	71
i.	Market access	71
ii.	Movement and residence rights	72
iii.	Family rights	72
c)	The possibility of derogations (justification).....	73
4.	Freedom of establishment (Arts. 49 TFEU et seq.).....	74
a)	The scope of the provision.....	74
b)	Rights/obligations.....	74
c)	The possibility of derogations (justification).....	75
d)	Arts. 50 and 53 TFEU: the need for facilitating secondary legislation	75
5.	Free movement of services (Arts. 56 TFEU et seq.)	75
a)	General remarks	75
b)	Scope	76
c)	Rights/obligations.....	76
d)	The possibility of derogations (justification).....	77
6.	An overarching issue: facilitating legislation.....	78
a)	Mutual recognition of professional qualifications	78
b)	Other professional rules.....	79
c)	The so-called Services Directive	80
7.	Exercises.....	80
IV.	Free movement of capital (Arts. 63 TFEU et seq.).....	82
1.	General remarks on the free movement of capital (and of payments)	82
2.	Free movement of capital.....	82
a)	Scope	82
b)	Rights/obligations.....	82
c)	Derogations and the grandfather clause	83
3.	Exercises.....	83
C. COMPETITION LAW	84	
I.	General remarks	84
II.	Conduct of undertakings	84
1.	General remarks	84
2.	Collusive conduct: Art. 101 TFEU	85
a)	The prohibition: the relevant conduct	85
i.	Three forms of relevant conduct.....	85

ii. The inter-state element.....	86
iii. The competition element.....	86
iv. Examples of prohibited conduct.....	86
b) The legal consequences.....	86
c) Exemptions	86
3. Abuse of a dominant position: Art. 102 TFEU.....	87
a) The prohibition: the relevant conduct.....	87
i. Abuse of dominance.....	87
ii. The inter-state element.....	87
b) The legal consequences	88
4. Enforcement of Arts. 101 and 102 TFEU	88
III. Merger control under Regulation 139/2004	88
IV. Undertakings with a special position under national law: Art. 106 TFEU	89
V. State conduct	90
1. Art. 4(3) TEU, Protocol No 27 and Arts. 101 or 102 TFEU	90
2. State aid control under Arts. 107 TFEU et seq.	90
a) The prohibition: the relevant state conduct	91
i. The concept of "aid"	91
ii. The inter-state and competition elements	91
b) Derogations.....	91
c) The legal consequences	91
d) Enforcement of Art. 107 TFEU.....	91
VI. Private enforcement	92
VII. Exercises.....	92
 PART 3: SOCIAL LAW	95
 A. EU SOCIAL LAW IN GENERAL	97
I. Introduction	97
II. The development of EU social policy	97
III. Social policy objectives and the means to achieve them.....	98
IV. Exercises.....	98
 B. BY WAY OF EXAMPLE: TWO IMPORTANT SUB-FIELDS	99
I. Social non-discrimination law.....	99
1. Relevant legislation	99
2. Field of application	99
3. Forms of discrimination	100
4. Same and different treatment	101
5. Remedies and sanctions.....	102
II. Social security law	102
1. Coordinating social security law.....	102
2. Non-discrimination in social security law	103
III. Exercises.....	103
 PART 4: INTEGRATION TECHNIQUES	105
 A. POSITIVE AND NEGATIVE INTEGRATION AS LINKED TO PRIMARY AND SECONDARY EU LAW	107
I. Positive and negative integration	107
II. Primary and secondary law: which level applies?.....	108
 B. DIFFERENT INTEGRATION TECHNIQUES	110
I. Harmonisation	110
1. Formal and substantive aspects	110

2. Scope of harmonising law	110
3. Intensities or degrees of harmonisation	110
II. Mutual recognition	111
III. Coordination	111
IV. Notification of standards	111
V. Exercises	111
 PART 5: ENFORCEMENT	 113
A. GENERAL REMARKS	115
B. THE ACTIONS FOR ANNULMENT (ARTS. 263 TFEU ET SEQ.) AND FOR FAILURE TO ACT (ARTS. 265 AND 266 TFEU).....	116
I. The action for annulment (Arts. 263 TFEU et seq.) and alternatives	116
1. Admissibility	116
a) Reviewable act	116
b) Standing of applicants	116
c) Time-limit	116
2. Annulment grounds	117
3. Finding by the CJEU	117
4. Alternatives to the annulment procedure	117
II. The action for failure to act (Arts. 265 and 266 TFEU)	117
C. THE INFRINGEMENT PROCEDURE (ARTS. 258 TFEU ET SEQ.)	118
I. First round of the infringement procedure	118
II. Second round of the infringement procedure	118
D. THE PRELIMINARY RULING PROCEDURE (ART. 267 TFEU)	119
I. Two types of questions	119
II. National courts and tribunals	119
III. Types of preliminary rulings	119
IV. Ruling by the CJEU	119
E. ACTIONS FOR DAMAGES AND FOR UNJUST ENRICHMENT	121
I. Actions for damages and for unjust enrichment against the EU (Art. 340 TFEU)	121
1. Contractual liability and internal liability	121
2. Non-contractual liability of the EU	121
3. The action for unjust enrichment	121
II. Non-contractual liability of the Member States (based on case law)	122
F. EXERCISES	123