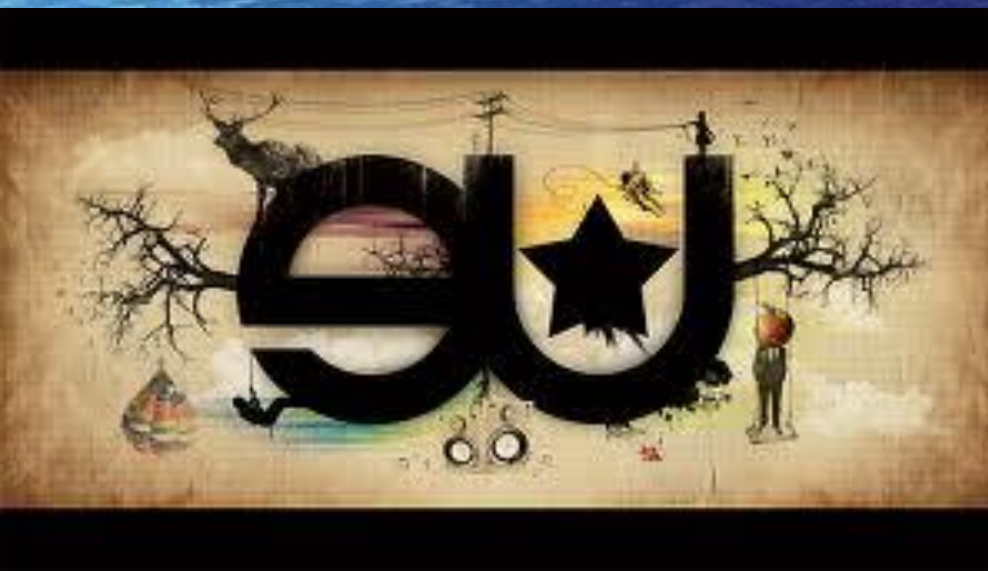




EU Common Market



EU Common Market

- **Freedom of movement of goods (most developed and most court decisions)**
- Freedom of movement of persons
- Freedom of movement of services
- Freedom of movement of capital
- Freedom of establishment

EU Common Market



- Meaning of “Freedom”
 - A principle of EU internal market
 - A subjective right of EU citizens and firms
 - A complex of rights and obligations, connected with such “freedom”

Rule for freedoms – “All EU principles applicable”

EU Common Market - movement of goods

- **Goods** – all products rightfully produced within the EU, as well as all third country products imported with all formalities completed and custom duties paid)
- The “movement of goods” is applied also to possible barriers within each EU country

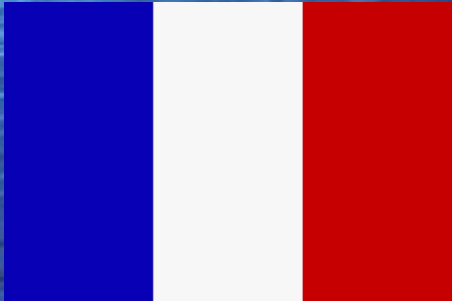
EU Common Market - movement of goods

“Community should be based on custom union, which should include prohibition of all custom duties and all charges having similar effect, as well as introduction of common custom tariff with respect to third countries”

This prohibits quotation and any discriminative taxation.

EU Common Market - movement of goods

- “Effect test”
- Procureur de Roi v. Dassonville.



EU Common Market - movement of goods

- Belgium had no right to stop the Scotch whiskey import from France, on the grounds of non-availability of a certificate of origin from a Scottish producer.
- Reason – whiskey was already rightfully imported into the EU.



EU Common Market - movement of goods

- Dasonville results:
 - **Any rules which can directly or indirectly hinder the intergovernmental trade (actually or potentially) should be banned**
 - Consumer protection trade rules should be “reasonable”, “should not create a trade obstacle” and “should be available to all EU citizens”

EU Common Market - movement of goods

- Any charges regardless of size, aim, collection
- Imposed single-handedly on EU or EU-imported goods
- Fact of crossing the border
- Non-custom duties



EU Common Market - movement of goods

Allowed, if:

- Charge is part of national tax system;
- Charge is the compensation for services, provided to importer;
- Charge compensates the cost of legal inspection.



EU Common Market - movement of goods

- What about the rules which apply to both national and non-national producers?
- Cassis de Dijon



EU Common Market - movement of goods

- Real case name - *Rewe-Zentral*
AG Rewe-Zentral AG v
Bundesmonopolverwaltung für Branntwein
- German legislation had imposed several provisions concerning the minimum alcohol content for beverages – 25%.
- Importer had 20%. Can't advertise.

EU Common Market - movement of goods

- **Court statement – “Not reasonable”**
- “If there is no EU rule on a certain matter, states can make such rules by themselves, aimed at fiscal control, public health, honesty and consumer protection, as long as they are reasonable and proportionate”.

EU Common Market - movement of goods

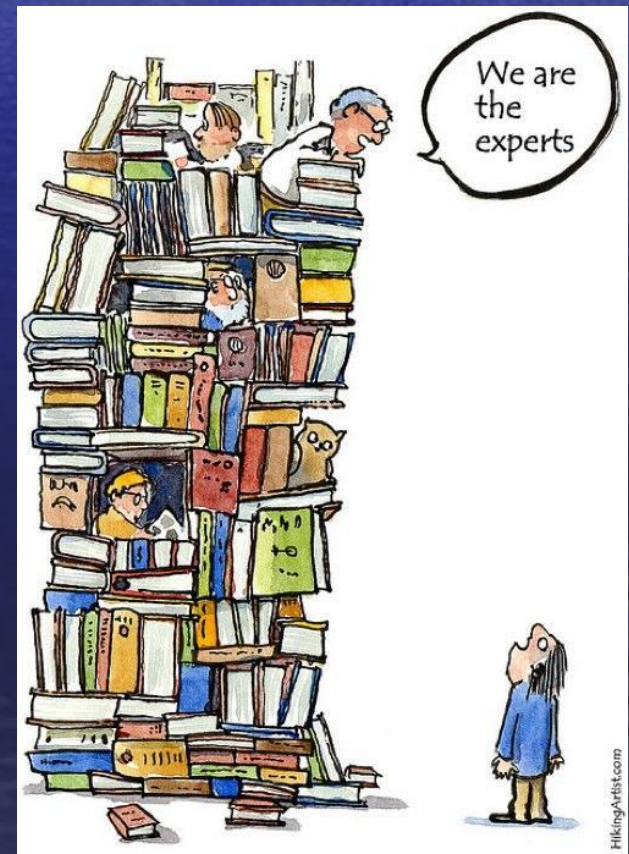
- Cassis results:
 - Reason test
 - Proportionality
 - Mutual recognition rule (if produced in one, can be sold in another)



EU Common Market - movement of goods

Lots of discrimination cases:

- “Comission v. Italy” – difficult registration
- “Rewe” – plant sanitation inspection
- “Bouhelier” – export “quality” control
- “Commission v Germany” (“Beer Purity” law)



EU Common Market - movement of goods

- Quotas and such – any full or partial quantitative limitation of legal and administration nature, whether in money or pcs
- 2/73, Geddo v. Ente Nazionale Risi



EU Common Market - movement of goods

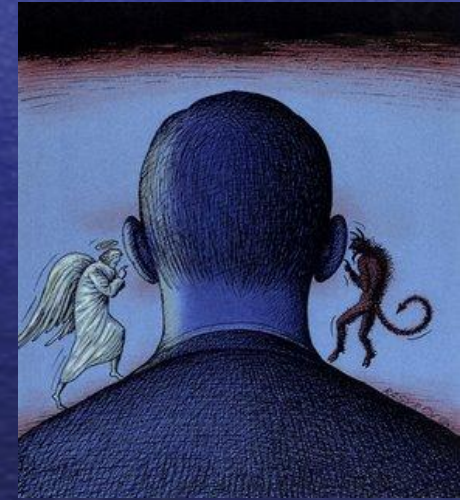
Limitations to movement of goods

- Public morale
- Public order/security
- Health protection
- National heritage protection
- Commercial or industrial property protection

EU Common Market - movement of goods

Public Morale

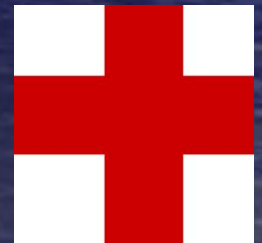
- The court approved the prohibition of pornographic materials import from Netherlands to UK, because such products could not be made in UK.
- The court cancelled the prohibition of rubber dolls import (based on same legislation) from Germany, because such production was legal within UK.



EU Common Market - movement of goods

Health protection

- “Special beer recipe” for sales in Germany was prohibited, as well as special pasta recipe for sales in Italy
- However, the requirement for food producers to print out potential risk information about artificial additives on food packages was held legal



EU Common Market - movement of goods

Public security

- Campus Oil v Minister for Industry and Energy.
- Essence: All petroleum importers had to buy 35% of their import from a state oil refinery.
- Court approved with remarks.



EU Common Market - movement of goods

Public order

- Very wide range of different cases.
- Court finally stated, that only dangers to fundamental public interests can be defended by this concept, and not some specific areas, for example, consumer rights protection.
- A state should first try all other instruments.



EU Common Market - movement of persons

Parts of freedom

- Residence movement
- Workers and their families
- Non-EU Workers and their families
- Schengen agreements

EU Common Market - movement of persons

- “Absence of all discrimination on the grounds of citizenship of member-states workers concerning hire, reimbursement and other terms of work and hiring”
- A “worker” is any EU citizen carrying out a work for hire in another member state.
- This includes part-time, below-min-wage workers, anyone performing “a real and effective activity”
- Only EU law can interpret what a “worker” is.
- Students and entrepreneurs are not workers.

EU Common Market - movement of persons

Most important features:

- A worker can accept any job offer in any member state.
- After retiring from it, a worker can stay and look for work on the same ground with the host country citizens
- The same goes for their family members
- All issues concerning medical and social care, wage level should be the same as
- An arriving worker can also receive the pension in the host state

EU Common Market - movement of persons

Limitations to movement of persons

- Public order/security
- Public service
- Health protection

EU Common Market - movement of persons

Public order/security

- Van Duyn v Home office
- Essence: The British government denied Yvonne Van Duyn an entry permit because she was affiliated with the Scientology religion, which the government had believed to be socially harmful.

EU Common Market - movement of persons

Van Duyn results:

- Participation in a certain organization can be a ground for movement of persons limitation
- It's the views of the destination state on issue that matter
- Absolute equality between host and visiting persons is not achievable

EU Common Market - movement of persons

Public service

- The movement of persons freedom is not applicable to public service positions
- Public service – “a number of posts, which are connected with authority execution in accordance with public law and a duty to protect national interests”
- Police, military, public officers, having real authority (not just financed by state budget)

EU Common Market – freedom of establishment

“Freedom of movement of persons” for legal entities

- Entrepreneur movement
- Legal entity establishment freedom

EU Common Market – freedom of establishment

- An entrepreneur will have no restrictions for setting up and management of companies, branches, agencies and associated firms
- For the purposes of this freedom, a legal entity will be equated to a person.
- Non-commercial organizations limitation

EU Common Market – freedom of establishment

Limitations

- Official duties execution (each state decides)
- Public order
- Public security
- Health protection

EU Common Market - movement of services

- All payable activities not falling under the regulations of goods, persons and capital movement shall be considered to be “services”
 - Two types:
 - Services provided at the producer turf
 - Services provided at the consumer turf

EU Common Market - movement of services

- All restrictions, access limitations and discrimination aimed at service provision at the territory of another member-state, should be removed.
- No need to comply with all the national rules regulating the provision of similar services by host citizens.
- Capital and transport are not regulated by this freedom. Most services require a separate “liberalization” regulation by the EU.
- Official duties limitation.

EU Common Market - movement of capital



EU Common Market - movement of capital

- Capital freedom:
 - Finance operations connected with investment
 - Other member-state investment itself
 - Non-return of invested funds to deriving country for a reasonable period

Luisi and Carbone v Ministero del Tesoro

EU Common Market - movement of capital

- Current payments freedom:
 - Simple transfer of foreign currency between two states
 - Such transfer should be a payment for a service
 - The member-state currency should be used (either creditor or beneficiary)

EU Common Market - movement of capital

Limitations:

- Taxation law usage
- National law infringement prevention
- Administrative and statistics information gathering procedures
- Public policy and security provisions
- Most regulations – in national law (FDI, Financial services, Securities governance)

EU Common Market – Consumer right protection

- Approach difference
- Rights protected:
 - Health and security
 - Economic interests
 - Loss reimbursement
 - Information and training
 - Representation



Thank you for your attention