



**CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma**

**Unit 6 – European Union Law**

**Question paper**

**January 2023**

**Time allowed: 3 hours and 15 minutes (includes 15 minutes' reading time)**

**Instructions and information**

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – **Blackstone's EU Treaties and Legislation, 33rd edition, Nigel Foster, Oxford University Press, 2022**.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

**Turn over**

## SECTION A

Answer at least one question from this section

1. Critically assess how the principles of direct effect, indirect effect and Member State Liability have contributed to the ability of natural and legal persons to utilise EU law within national legal systems.

**(25 marks)**
  
2. In the context of the action for annulment by non-privileged applicants (Art 263 TFEU):
  - (a) critically assess the significance of the concepts of direct concern, individual concern and regulatory act;

**(17 marks)**
  
  - (b) explain and assess the effectiveness of the alternatives to an action for annulment available to non-privileged applicants.

**(8 marks)**

**(Total: 25 marks)**
  
3. Explain the formal and informal roles played by the Commission, European Parliament and the Council in relation to the ordinary legislative procedure and critically assess how effective this procedure is in operation.

**(25 marks)**
  
4. Critically assess the effectiveness of the preliminary reference procedure (Art 267 TFEU) in securing the harmonious interpretation of EU law and its contribution to the development of the law.

**(25 marks)**

## SECTION B

### Answer at least one question from this section

#### Question 1

Soraya, a Dutch citizen, has over the past few years developed a business manufacturing and selling a range of Asian cosmetics. These are primarily intended for adults, but a number of children also make use of them. She initially marketed the cosmetics in the Netherlands in compliance with all local regulatory requirements. She now wishes to expand her business to other Member States. However, she has encountered certain difficulties and seeks your advice in relation to three specific issues.

- (a) The Belgian and French authorities have objected to the marketing of the range of cosmetics for two distinct reasons:
- The Belgian authorities have pointed out that the cosmetics contain a number of traditional ingredients, sourced from India, which contain chemicals that have not been approved for use in Belgium. They have been approved, not only in the Netherlands, but also in 20 of the other 25 Member States.
  - The French authorities have objected to a television advertising campaign that Soraya intended to undertake. The reason is that television advertising of cosmetics considered to be targeted at children is not permitted. Soraya believes that this prohibition will seriously prejudice her attempts to successfully enter the French market.

Advise Soraya as to the position under EU law.

**(18 marks)**

- (b) In Italy, two popular products in Soraya's range of cosmetics are being subjected to an additional sales tax of 10%, in addition to standard rate VAT, because they have been categorised as luxury items of personal adornment. This is because they contain a tiny quantity of very small flecks of gold leaf. The gold represents only 1% of the overall cost of the product. Most cosmetics sold in Italy are of Italian manufacture and these are taxed at the standard rate of VAT.

Advise Soraya as to the position under EU law.

**(7 marks)**

**(Total: 25 marks)**

**Turn over**

## Question 2

Nathan, a UK citizen, married Olivia, a Dutch citizen six months ago. Initially they lived together in London. They are planning to move to Spain where they are hoping to buy a house. Nathan is retired and has a UK state pension. Olivia is a practitioner of alternative medicine and has qualifications recognised by the Dutch Council for Complementary Medicine in aromatherapy, reflexology and Reiki (a Japanese form of alternative medicine). Olivia intends to practise these therapies in Spain, but until she can establish herself, she has secured part-time work there as a shop assistant.

Nathan and Olivia want Nathan's two children by a previous marriage, Zach, aged 20, and Emily, aged 15, to join them. Neither lived with them previously, but their relationship with their mother has now broken down. Zach has been very actively involved in the more extreme forms of environmental protest and has been convicted on several occasions of public order offences. He is currently subject to a suspended sentence. Emily has significant special educational needs and will require a place in a suitable special school.

At present Nathan and Olivia have been in Spain for a month and are living in a rented flat. They have calculated that their income is sufficient to cover the rent and other expenses of living, but they are struggling with the cost of heating the flat and believe that they may need at some stage to apply for assistance from the Spanish authorities to cover this.

Olivia has also discovered that the Spanish authorities will not give her permission to establish herself as a practitioner of alternative medicine unless she obtains a Spanish diploma, which normally requires two years study. Olivia has reviewed the requirements of this diploma and is convinced that everything contained within it is already covered by her Dutch qualifications.

Advise Nathan and Olivia as to the extent to which EU law will facilitate them in achieving their objectives.

**(25 marks)**

### Question 3

Carlton Digesters Ltd (CD) is a UK-based manufacturer of anaerobic digester equipment. This equipment converts organic matter into fertiliser and methane. The digesters come in two types. The first is a large type for major waste disposal sites. The client invites tenders from manufacturers in accordance with a detailed specification. There are three other EU manufacturers of this type of digester.

The second type is much smaller for use by individual farmers.

CD consults you in relation to two issues that have arisen.

- (a) An article has appeared in a trade magazine alleging collusion between the manufacturers of the larger type of digester. The specific complaints are that (i) the prices quoted by each manufacturer seem to increase at the same time and by similar amounts, (ii) customers in a number of Member States have reported that only one manufacturer is willing to tender, and in each country it is always the same manufacturer.

Advise CD whether there appears to be any breach of Art 101 TFEU disclosed by this article.  
**(12 marks)**

- (b) CD previously marketed the smaller digesters itself. However, following Brexit, it has established a wholly-owned subsidiary in the Netherlands which imports these digesters and distributes them in the Netherlands, Denmark, Sweden, Germany, Belgium, Luxembourg and France. CD is in negotiation with PKO, a distributor based in Czechia. The intention is that PKO will be a sole distributor for Czechia, Slovakia, Poland and Hungary. The agreement is intended to last for seven years. PKO is expected to have regard to the CD price list, will not be involved in distributing any other anaerobic digesters, will not actively market to customers in the territory allocated to the CD subsidiary and will not accept orders from such customers. The relevant market share of the parties is above 15% but below 30%.

Advise CD of the extent to which these objectives can be secured while maintaining conformity with Art 101.

**(13 marks)**

**(Total: 25 marks)**

**Turn over**

#### **Question 4**

Safegear is established in the UK and is a manufacturer of industrial footwear. It produces a range of ordinary safety boots and has an EU wide market share of 20%. It also produces a higher specification of safety boot, which, in addition to heavy duty materials and a reinforced toe, is highly resistant to acid and other industrial and chemical corrosion. These boots are required to be worn by all workers on oil production platforms and in chemical plants, but are also worn by a significant number of workers in other environments in preference to ordinary safety boots.

Safegear has an 80% share of the market for the higher specification safety boot. If the market for the two types of boot is taken together, Safegear has a market share of 45%. The remainder of the market is supplied by about 15 suppliers none of whom has a market share exceeding 7%.

Recent surveys have shown that, following a 10% increase in the average price of ordinary safety boots, the sales of the higher specification boot increased significantly. Previous surveys have not shown a similar pattern.

Safegear is seeking to expand sales and has formulated plans to require distributors to stock its ordinary safety boots as a condition of being supplied with the higher specification boots. Distributors will also be prohibited from distributing competing higher specification boots. Safegear also sells direct to some large end users and is proposing to offer them significant discounts if they commit to placing minimum orders for higher specification boots on a regular basis. These discounts will increase if the end user agrees to take all its supplies of higher specification boots from Safegear.

Advise Safegear whether its actions are compatible with Art 102 TFEU.

**(25 marks)**

**End of the examination**