



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

June 2022

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 2021-2022, 32nd edition, N Foster, Oxford University Press, 2021.***
- 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 the extent to which the principles of direct effect, indirect effect and Member State liability have ensured that natural and legal persons can effectively utilise EU law before national courts.

(25 marks)

2. Critically evaluate:
 - (a) the procedures under Arts 258 – 260 TFEU;

(13 marks)
 - (b) non-contractual liability of the Union under Art 340 TFEU;

(6 marks)
 - (c) the Recast Brussels Regulation (Reg 1215/2012).

(6 marks)

(Total: 25 marks)

3. Critically assess whether the operation of Art 102 TFEU achieves an appropriate balance between the interests of potentially dominant undertakings, and the interests of their customers and their competitors.

(25 marks)

4. Critically assess the extent to which the preliminary reference procedure under Art 267 TFEU has:
 - (a) Achieved an appropriate balance between the role of the Court of Justice of the European Union and that of the Courts and Tribunals in the Member States.

(15 marks)
 - (b) Contributed to the evolution of the EU through the development of principles and concepts.

(10 marks)

(Total: 25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Metalwise Foundries Ltd (MFL) is a manufacturer of metal components for use in civil engineering. It is established in the United Kingdom. It has a 25% market share in the relevant market within the EU.

- (a) In anticipation of supply chain difficulties consequent upon Brexit, MFL has established a wholly owned subsidiary Europa Metalwise Foundries GmbH (EMF) in Germany. EMF is responsible for the marketing of the MFL product range in northern Europe. EMF uses a price list produced by MFL and takes instructions from the directors of MFL in all respects. MFL is proposing to appoint Tecnica Bolognese (TB), an Italian company, as its sole distributor for Italy, Spain, Portugal and Greece for a period of seven years. TB has 11% of the relevant market in those countries. MFL wishes to ensure that TB adheres to MFL's price list and wishes to prevent TB seeking or accepting orders originating outside the four designated countries, or to distribute goods which are in competition with those of MFL.

Advise MFL whether these proposed arrangements are compatible with EU competition law, and if they are not, how compatibility can be achieved.

(17 marks)

- (b) MFL has been approached by Uppsala Stal (US), a Swedish manufacturer of similar metal components. The technical directors of the two companies had previously had discussions at a trade fair about the possibility of developing new manufacturing techniques relating to part of their product ranges. Each company has decided that the investment in research and development is beyond its means, but that they could afford to undertake it jointly. They have a combined market share of 22% in the relevant market. They are also considering joint production of products if the research and development results in a patent or relevant know-how.

Advise MFL whether these proposed arrangements are compatible with EU competition law.

(8 marks)

(Total: 25 marks)

Turn over

Question 2

Otto is a German citizen who, at the age of 55, decided to take early retirement in 2018. Otto has a modest private pension and a small income from investments. He will become entitled to a full German state pension in January 2023. Otto moved to Spain in January 2018 where he has been renting a flat. His income normally suffices for his living expenses, including his health insurance, but on two occasions he has applied to the Spanish authorities for the Spanish equivalent of Universal Credit to meet extraordinary expenses.

Otto has now met and wishes to marry Frida, a Mexican citizen who has been living in Spain without a residence permit. They also wish to bring Frida's son Aldo, aged 19, who is also Mexican, over to Spain to live with them. Aldo has just been released from prison in Mexico having served a two-year sentence for membership of an illegal terrorist organisation. This organisation is also illegal in Spain.

Frida wishes to enrol on a degree course at a Spanish university but has been told that she will not qualify for a student loan as she has not been legally resident in Spain for the required three-year period, and that she will have to pay the international student fee for the course.

When Otto attended at the local authority offices to give notice of marriage and to register Frida at his address, he was told that the authority was not satisfied that he had sufficient means to support himself and Frida and that this would be reported to the Interior Ministry with a view to his residence permit being revoked.

Advise Otto, Frida and Aldo as to the EU law relevant to their respective situations.

(25 marks)

Question 3

Gaston is a French distiller. He has recently developed a liqueur which is based on absinthe (a distilled spirit flavoured with wormwood and other botanicals). Gaston adds sugar, Cynar (an artichoke liqueur) and tonic water to the absinthe. He markets this product as 'Absent' in a special bottle with an elaborately moulded neck and stopper representing a green fairy. Historically absinthe was known as the green fairy in French slang. Absent has an alcohol content of 18°.

Gaston seeks your advice on a series of problems with his attempts to market Absent in various EU Member States. He wishes to know whether the actions of the three states are consistent with EU law.

- (a) In Italy Absent is taxed as a cocktail at a rate of 30% while liqueurs are taxed at 15%. This includes Cynar itself which has an alcohol content of 16.5°. There are no Italian bottled cocktails on the market, although there are a few German and Dutch products containing two or more alcoholic beverages that are taxed as cocktails.

Advise Gaston.

(8 marks)

- (b) In Estonia, Gaston has been told that the distinctive Absent bottle cannot be used because all alcohol containers sold in Estonia have to be compatible with the Estonian deposit recovery system*, and in the case of bottles this requires distinctive markings on the neck of the bottle to allow it to be recognised as qualifying for the refund of the appropriate deposit. These markings cannot be combined with the special 'green fairy' stopper.

In Latvia Absent cannot be advertised on television because it contains absinthe, which is on a list of spirits the Latvian government considers to be more hazardous to health. A major Latvian distiller has for many years marketed an absinthe-based drink.

Advise Gaston.

(17 marks)

* In a deposit recovery scheme, a deposit is charged when alcohol is sold. Empty containers can be returned to a unit at a supermarket which automatically recognises containers within the scheme and generates a voucher for the amount of the deposit.

(Total: 25 marks)

Turn over

Question 4

Greta is a Swedish farmer who specialises in rare breed animal and plant varieties. She has also helped to establish a cooperative group who use wool from her rare breed sheep to knit a range of clothing to traditional patterns. Greta is concerned about a number of aspects of the way in which the [fictitious] EU Heritage Subsidy Regulation (HSR) made by the European Parliament and Council has impacted on her activities and those of the cooperative.

The preamble to the HSR includes a recital that one of the purposes of the HSR is to ensure that all economic activities, which are capable of contributing to the preservation of the cultural, social or agricultural heritage of the Member States, shall receive support to enable them to operate on a sustainable economic basis. Sweden has allocated funding under the HSR only to preserving the heritage of minority groups such as the Sami in Swedish Lapland, stating that other groups such as Greta's cooperative have access to alternative funding from the local community.

The Commission has used powers conferred upon it by a provision of the HSR to make a regulation specifying the rare animal breeds that are capable of attracting support under the HSR. This regulation does not specify Swedish longhorn cattle, a rare and endangered breed of which Greta is the only commercial breeder. As a result, Greta is unable to apply for funding for her breeding programme from EU funds.

The Commission has recently issued a Decision addressed to Sweden requiring it to cease providing funding under a Swedish programme to support seed banks for rare plant varieties on the grounds that this support is incompatible with the HSR. Greta currently operates the only seed bank that is eligible for and has received support under this programme.

Advise Greta as to whether she can, directly or indirectly, challenge these measures under EU law.

(25 marks)

End of the examination

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