



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 6 – EUROPEAN UNION LAW*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's EU Treaties and Legislation 2018-2019, 29th edition, N. Foster, Oxford University Press, 2018.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. Critically assess the operation of the preliminary reference procedure and its contribution to the development of the EU legal order (Art. 267 TFEU).

(25 marks)

2. 'In the past the European Commission believed it could see anti-competitive arrangements being made at every trade fair and demanded to scrutinise every business relationship in Europe. Today, by contrast, it simply sets out groundrules and leaves companies to police themselves.'

Critically assess the impact of Art. 101 TFEU in the light of this observation.

(25 marks)

3. Critically assess the following aspects of the law relating to free movement of people:

(a) the concept of a worker;

(10 marks)

(b) the right to move and reside freely conferred by Directive 2004/38 under Art.20 and 21 TFEU;

(7 marks)

(c) Art. 27 of Directive 2004/38.

(8 marks)

(Total: 25 marks)

4. Explain and evaluate the role of the European Commission in the organisational and legal structure of the EU.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Michael is a manufacturer of Christmas decorations established in the Republic of Ireland. His decorations are innovative in design, incorporating microchips which allow them to produce musical sounds and light displays. Michael is now trying to expand into the EU but has encountered some difficulties.

Advise Michael as to any redress he may have under EU law in the following situations:

- (a) In the Czech Republic, Christmas decorations are subject to a special luxury tax of 10%. However, this tax is not levied on decorations produced by small manufacturers. Michael has observed that in the Czech Republic, there are a considerable number of small manufacturers of traditional Christmas decorations, and because the turnover limit for the tax concession to apply is so low, in practice only these small Czech manufacturers can benefit from it.

(10 marks)

- (b) Michael has had difficulty entering the Dutch market. None of the established distributors or retailers of Christmas decorations have been prepared to enter into arrangements with him, because they say there would not be a demand for his decorations. Michael has therefore decided to rent stalls at some of the Dutch Christmas markets. However, he has been informed by the Dutch authorities that he can only do so if he has permanent business premises in the Netherlands, at which customers can register any complaints and the authorities can carry out any necessary safety checks on his products.

(15 marks)

(Total: 25 marks)

Turn over

Question 2

(Fictitious) Directive 2014/27 provides that employees who cycle to work are entitled to free breakfasts and 'secure cycle storage' facilities from their employers and to a tax credit from the state tax authorities. The Directive provides for three distinct methods of calculating these tax credits.

Nicola and Rodger are Irish citizens and both reside in Dublin. Both cycle to work. Nicola works for Sopers, a large department store. Rodger works for the Environmental Testing Agency (ETA). The ETA, which was formerly part of the Irish government Department for Environmental Affairs, has now been privatised, but is responsible for carrying out statutory tests of air and water quality. Its officials have compulsory powers of entry on land, in order to carry out these tests.

Both Sopers and the ETA insist that they have complied with the (fictitious) Irish Sustainable Travel Act 2017, which provides that employers must provide 'cycle parking' facilities. Both employers provide a car park for their employees, which cyclists are also entitled to use. The Act does not impose any obligation on employers to provide breakfast or on the tax authorities to provide tax credits.

Neither Nicola nor Rodger has received a tax credit from the Irish tax authorities.

Advise Nicola and Rodger on their rights under EU law.

(25 marks)

Question 3

Deckel AG is a German manufacturer of metal lids for food jars and bottles. It has two principal product lines: one is for screw-top jars and bottles, where the product is usually consumed gradually (for example jam and pickles) and needs to be kept fresh; and a 'lever-off' lid for jars and bottles, where the product (for example fruit and sauces) is usually consumed at once. One machine produces metal blanks in different sizes, but they are then processed into different styles of lid, using a range of machinery. Glass vacuum lids can also be used for products to be consumed at once.

Deckel has about 60% of the EU market for both kinds of metal lids. There are a number of small manufacturers, the largest of which has a market share of about 8%, which share the remainder of the market. This has been stable for several years, but some changes have occurred recently.

- Nearly all screw-top lids have until now been metal (except for coffee), but plastic lid manufacturers are now competing strongly for the whole market, offering lower prices and quicker delivery times. Some jam and pickle manufacturers are starting to switch to plastic lids. The overall share of the market taken by plastic lids, including coffee containers, has risen from 10% to 25% over the past 12 months.
- In most of the EU, metal 'lever-off' lids and glass vacuum lids share the market equally. However, in Poland, Hungary, Romania and Bulgaria, metal lids have 90% of the market, because glass vacuum lids are unacceptable to consumers, as they were linked to a series of serious episodes of food poisoning in the 1980s. In the past, plastic lids have not been suitable for this use, but a new type of plastic lid is now available and is being aggressively marketed, especially in Poland, Hungary, Romania and Bulgaria. This type of lid has now achieved a market share of approximately 10% across the EU.

Deckel is considering various marketing strategies, in particular offering: substantial discounts to customers who order large quantities; further cumulative discounts on additional orders within a 12-month period; and loyalty discounts to customers who agree to buy only from it. This will respond to similar strategies being adopted by the new entrants to the market, some of which are themselves part of major industrial groups.

Advise Deckel whether these actions offend against Art. 102 TFEU.

(25 marks)

Turn over

Question 4

Aristotle operates the only boat in Cyprus that provides commercial dolphin-watching trips for tourists. He has been in receipt of assistance from the Cypriot government, to assist with the provision of a specially designed diesel engine for his boat, which has additional sound insulation in order not to interfere with the dolphins' hearing.

The European Commission has issued a Decision addressed to Cyprus, to the effect that all assistance of this kind is an unlawful state aid and must be repaid. Aristotle believes that the assistance is permitted under the (fictitious) EU Framework Plan for Ecological Tourism, which specifically authorises support for enterprises operating only in the field of ecological tourism.

Aristotle believes that he can prove that the Decision was made on the incorrect assumption that he also uses the boat for commercial fishing operations. This is because Aristotle knows that Xerxes, a disgruntled former employee, made a malicious complaint to the Commission to this effect.

Advise Aristotle as to any possible basis on which he can, directly or indirectly, seek to challenge the Decision.

[Note to candidates: this question does not require any knowledge or discussion of the substantive law relating to state aid.]

(25 marks)

End of Examination Paper

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