



28 January 2022  
Level 6  
EUROPEAN UNION LAW  
Subject Code L6-6

## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 6 – EUROPEAN 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 2021-2022, 32nd edition, N. Foster, Oxford University Press, 2021.**
- 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.**

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

1. Critically assess the following in the context of Art. 102 TFEU:
- (a) cross elasticity of demand; **(8 marks)**
  - (b) market share; **(8 marks)**
  - (c) anti-competitive abuse. **(9 marks)**
- (Total: 25 marks)**
2. Critically assess how effectively the preliminary reference procedure under Art. 267 TFEU has contributed to the effective development of the EU legal order. **(25 marks)**
3. Critically assess the extent to which the EU rules on free movement of persons integrate those elements which derive from Art. 45 and Art. 49 TFEU and those which derive from Art. 20 and Art. 21 TFEU. **(25 marks)**
4. (a) Critically assess the effectiveness of the Commission in fulfilling its function as 'guardian of the treaties'. **(12 marks)**
- (b) Critically assess the extent to which the ordinary legislative procedure permits all stakeholders to contribute effectively to the creation of the body of EU legislation. **(13 marks)**
- (Total: 25 marks)**

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

**Question 1**

Dirk is a Dutch producer of tonic wine. He produces this by blending Bulgarian red wine with a secret blend of herbs and spices. The brand name is 'Merry Monk'. The label shows a cheerful old monk with a speech bubble, saying 'To your very good health!'. This is translated into the language of the various member states. Dirk's advertising is heavily focused on the supposed general health benefits of Merry Monk.

Dirk has encountered problems when marketing Merry Monk in three different member states.

In Czechia, Merry Monk is categorised for alcohol duty purposes as a fortified wine, on which the duty is 25%. Czech spirit-based tonic drinks are categorised as special-purpose beverages, on which the duty is 10%. Dirk considers that these spirit-based tonic drinks are in direct competition with Merry Monk.

(a) Advise Dirk in relation to the Czech measures.

**(7 marks)**

Dirk's attempts to enter the market in Poland and Hungary respectively have encountered difficulties.

The Polish authorities are insisting that Merry Monk can only be sold in pharmacies, pursuant to legislation relating to any products claiming medicinal properties.

The Hungarian authorities have stated that only products containing at least one ingredient listed in the Hungarian pharmacopoeia (the official list of approved medicaments) may be marketed in Hungary as conferring health benefits. Merry Monk does not contain any such ingredients, but does contain ingredients included in the Dutch pharmacopoeia, which includes a number of herbs and spices as natural remedies.

(b) Advise Dirk in relation to the Polish and Hungarian measures.

**(18 marks)**  
**(Total: 25 marks)**

**Turn over**

## Question 2

Roberta is a farmer who owns a small plot of land in central Italy. The land has been used for growing vines for many years. Roberta has been struggling to make a living selling the grapes from her vines for commercial wine production, so has decided to convert her farm into a living museum demonstrating traditional agricultural practices of the region.

She has started to grow various heritage varieties of traditional crops and has installed traditional wine and olive presses and other traditional agricultural equipment. She has converted some of her farm buildings into guest accommodation, and offers holidays with an introduction to traditional farming life. She also welcomes day visitors.

Roberta also sells her produce in a farm shop. She has obtained organic status certification for her produce.

Roberta successfully applied for, and received, funding from an Italian government scheme to support diversity and regeneration in rural areas. The Commission has recently issued a Decision, addressed to Italy, to the effect that this scheme constitutes unlawful state aid to the agricultural sector, and requiring that all funding be reversed.

Roberta considers that the scheme, and the funding she has received, are justified by the [fictitious] Eco-Friendly Rural Regeneration Directive, which authorises funding for diversification from agriculture, and believes that the Decision is accordingly unlawful.

Recently, the Commission, acting under delegated powers, has issued a Regulation amending a Regulation of the Council and Parliament so as to include, within a list of prohibited chemicals, the pesticide Gromazole. Roberta uses this to treat some of her crops. It is the only pesticide available for the purpose that is approved for use in organic farming.

Advise Roberta whether she can challenge these measures, directly or indirectly, and as to the criteria for doing so.

**(25 marks)**

### Question 3

Trenchcoat plc is a manufacturer of cladding for buildings established in England. One of its products is a type of cladding that is particularly valued for use in extreme weather conditions, because of its high thermal insulation value. There are four other companies based in various EU member states that also produce cladding to similar specifications. All of the manufacturers rely on a single source for supplies of an essential raw material, which ensures the high insulation value.

This type of cladding is distributed in two principal ways. It can be supplied on a wholesale basis to builders' merchants, who then sell it on to builders who require it for use in smaller projects. It can also be supplied directly to building contractors engaged in larger projects, normally after a competitive tendering process.

Swedbuild, a construction company based in Sweden, has complained to the Commission. Its principal complaint is that on the last three occasions, when it sought tenders for this type of cladding in relation to major construction projects that it was bidding for, the quotation from Trenchcoat was high but still significantly lower than those provided by the other manufacturers. In the past, all quotations have been within a narrow margin.

Swedbuild also reports that it has had discussions with other construction companies across northern Europe and a similar pattern has been disclosed, although the company putting in the lowest tender varies from place to place.

Furthermore, Swedbuild has disclosed correspondence that it has had with a number of builders' merchants, who report that the prices for this type of cladding from the various manufacturers have been increasing at approximately the same time, and by approximately the same amount, for the past three years.

(a) Advise the Commission whether there appear to be grounds for investigating Trenchcoat and the other manufacturers for breaches of Art. 101 TFEU.

**(18 marks)**

(b) On the assumption that Trenchcoat is in breach of Art. 101, explain the actions that it could take to protect its position.

**(7 marks)**

**(Total: 25 marks)**

**Turn over**

#### Question 4

The [fictitious] Sustainable Transport Directive 27/13 ('the Directive') has the objective of encouraging the use of transport other than private motor vehicles. Article 7 of the Directive provides as follows:

'Employers with a total of more than 50 full-time equivalent employees at any establishment shall ensure that employees have available to them:

1. Shower and changing facilities and storage facilities suitable for cycling and running clothing and equipment.
2. Secure cycle storage facilities.'

In Ireland, the [fictitious] Health and Safety at Work (General) Regulations 2014 provide as follows:

'All places of employment shall provide appropriate facilities for staff to wash and change and store clothing not required at work.'

The Irish authorities have not taken any specific steps to transpose the Directive.

Sean and his husband Rory are both keen cyclists. Each owns a high-specification all-terrain bicycle valued at over €5,000. Sean is a social worker employed by Careways, which has a contract with the Irish Ministry of Health to provide statutory aftercare services to former psychiatric patients. Rory is the general manager of a large department store in Dublin.

Both Sean and Rory work in establishments with more than 50 employees on site. Neither establishment provides shower facilities nor secure cycle parking. Despite requests, their employers have not taken any action to remedy this.

Advise Sean and Rory whether they may rely on EU law in order to obtain the facilities they have requested.

**(25 marks)**

**End of Examination Paper**