



# Introduction to the course “European Commercial Law” 2019/20

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# Course overview

- ▶ Focus on internal market – free movement persons, goods and services
  - ▶ Overview basic rules free and fair competition ensuring smooth operation of internal market
  - ▶ Treaty provisions + CJEU case law
- Negative integration = prohibitions in the treaty + case law built thereon

# Course Objectives

- (1) History of the Internal Market. – Legal developments and ECJ case law on financial restrictions on the free movement of goods. Common External Tariff; Import duties; Charges having equivalent effect; Internal taxation.
- (2) Legal developments and case law on quantitative restrictions; quotas; measures having equivalent effect; certain selling arrangements; justifications (including proportionality)
- (3) Development of EU citizenship; the notions of worker; self-employed persons; rights of family members; prohibition on discrimination on nationality; restrictions in the free movement and limitations of the free movement based on Treaty, secondary legislation and case-law.
- (4) Free Movement of Establishment and Services; diploma recognition of professionals.
- (5) Position of TCN; residence and equal treatment. Long Term Residence Status; Family Reunification; Association Agreements.
- (6) Basic conditions of the free movement of capital.
- (7) Prohibition of agreements, concerted practices and decisions of associations of undertakings; prohibition on abuse of a dominant position. Rules on enforcement of competition law
- (8) State aid, both substantive and procedural rules.

# Logistics

- ▶ Each week : 2 sessions (lecture and tutorials)
- ▶ Lecture = overview subject + necessary structure to complete written assignment
- ▶ Tutorial devoted to discussion assignment (case 1 + 2)
  - ▶ At tutorials you familiarize yourself with problem solving methodology used at exam
  - ▶ Attendance strongly encouraged – participation in class is graded !
  - ▶ One of the written assignment is graded

# Literature

(1) Paul Craig and Gráinne De Burca, *EU Law, Text, Cases and Materials*, 6th edition, Oxford University Press, Oxford, 2015.

(2) Nigel Foster, *Blackstone's EU Treaties & Legislation 2018-2019*, Oxford University Press, Oxford, 2018.

→ as an alternative you can buy a copy of the consolidated version of the treaties or download a pdf via [the EU bookshop](#).

**NB: Next to the prescribed literature every tutorial will indicate relevant case-law! All case law is mandatory for the tutorial and the written exam BUT only a selection of cases will be necessary for the oral exam.**

# Assessment, Examination and Grading

- ▶ Written assignments : You will receive 3 assignments throughout the course. Each of them will have to be handed in writing before the tutorial session.
  - ▶ The assignments serve as the basis for the discussion in the tutorial group. **ONE** assignment will be selected after the course for grading. The grade for the selected assignment will count for **33%** of the final grade.
  - ▶ Written exam : the last session of the course will be devoted to the written exam, which will be (again) a case to be solved. The grade for the written exam will count for **33%** of the final grade.
  - ▶ Oral examination: the final examination will either confirm, lower or raise your grade (but only in the first session of exams available)
  - ▶ Exemptions of deadlines or the possibility to redo an assignment during the course will only be granted in *exceptional* circumstances.
- Must inform me before tutorial !
- NB Attendance and participation in class discussions is also graded !

# Rules for assignment and exam

- ▶ (1) The grade for the assignment counts as the third question in the exam. The grade for the course is determined as follows:  $(\text{score examination} + \text{score assignment})/2 = \text{grade to be presented at the oral examination}$ . In the event of a fail grade you must resit **the entire exam**. For those students who have to take a resit another assignment out of the remaining ones will be graded.
- ▶ (2) The written exam is open book. You can bring any written material you deem necessary; digital devices are, unfortunately, not allowed.
- ▶ (3) The oral examination will consist of a discussion on case law and its relevance to the content of the course (for the list of relevant cases see separate document).
- ▶ (4) The grade at the oral examination can either confirm, lower or raise your final grade (written assignment + written examination).
- ▶ (5) Written assignments must be handed **by email before the beginning of the tutorial**. Assignments are individual assignment and they are checked for plagiarism. If you do not attend the tutorial on a specific week you **MUST** make sure to send your assignment via email **BEFORE** the tutorial.

# Assignments

# Assignments

- ▶ Tutorial on 17/04/2020
  - ▶ Discussion on cases n. 1 and n. 2 (available online – teaching materials and TEAMs group)
  - ▶ NB no grading for this assignment
- ▶ Tutorial on 14/05/2020
  - ▶ Discussion on cases n. 3 and n. 4 (provided by professor on 24/4/2020)
  - ▶ Two weeks to work on the assignment
  - ▶ NB this assignment will be graded!

# Purpose

- ▶ What are the relevant problems in the case?
- ▶ How can I translate these problems into relevant legal questions to solve ?
- ▶ simulation of a real life situation
- deeper understanding/knowledge of the course subject matter
- ▶ Very important formal purpose: requiring you to draft assignment makes sure you prepare for the tutorial meetings and get the best out of them!

# Methodology to solve the cases

- ▶ IRAC method: identification, rule selection, analysis and solution.
  - ▶ start by identifying problems and translate them into legal questions.
  - ▶ Then select appropriate legal rules that apply to the question.
    - ▶ study them.
- lecture offers overview and textbook provide case law and additional literature
- ▶ Once you have studied the material start build your argumentation.
- ▶ start building the way to your answer.
  - ▶ important to include all relevant building blocks.
- ▶ Identify and settle all the steps to get from questions to answer.
- ▶ What if blocks are missing?
  - ▶ Blocks can relate to facts or theory.
    - ▶ facts are missing in the case you can always ask me.
    - ▶ Theory is missing you must go back to your studying.
- ▶ conclusion: solve the legal question and this will solve legal problems presented in the case.
- ▶ You need to do this on the argumentation that you have built.

# Formalities

- ▶ Max 2000 words excluding footnotes.
- ▶ You need to reference!
  - Use the style sheet provided !
- ▶ When grading I look for:
  - ▶ correct answers
  - ▶ building blocks (is argumentation in order)
  - ▶ referencing system
  - ▶ level of details
  - ▶ level of elaboration!