

# § 11 The European Union as a unified economic area

## I. The Europeanization of the economy in Europe

- 1968: *customs union*; until 1969: creation of the common market
- 1987 - 1992: creation of the *internal market* (by more than 300 legislative acts)
- 1990 - 2002: accomplishment of the *Economic and Monetary Union*
  - 1999: introduction of the euro (€); 2002: introduction of the euro coins and notes

## II. The principle of an open market economy with free competition

(art. 119 FEU Treaty)

- a specific principle for the field of economic policy; not a fundamental value
- a decision in favour of an open (not social) market economy
- a decision in favour of free competition (→ elimination of obstacles to competition)

## III. The customs union (art. 28 et seq. FEU Treaty)

### 1) General aspects

- no custom duties on import or exports within the Union
- regulation of the custom duties on imports or exports from/to third countries in the *Common Customs Tariff (CCT)* (Regulation 2658/87)
- partly unitary procedural law, see *Union Customs Code (UCC)* (Regulation 952/2013)

### 2) The prohibition of charges having equivalent effects to custom duties

(art. 28, 30 FEU Treaty)

- wide concept of ECJ, see case 2, 3/69, *Diamandarbeiders*

### 3) The prohibition of favouring domestic goods through internal taxation

(art. 110 FEU Treaty)

## IV. The concept of the internal market (art. 26 FEU Treaty)

- **legal definition** in art. 26 FEU Treaty:

"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties."

- the internal market needed to be established by several hundreds of legal acts and needs to be ensured continuously by new legal acts reacting to new threats and developments
- the historical consequences: a *fundamental change of economic life* in Europe:
  - lowering of prices for goods and services through competition
  - faster introduction of new technical achievements for lower prices
  - introduction of new agriculture products in many member states
  - general elevation of the standard of living
  - *serious side effects*: end of responsible and sustainable enterprise management in Europe, destructive pressure for rationalisation, race to the bottom concerning social, environmental and other non-economic standards, desertion of less competitive regions, more and harder work for less money for a part of the population

## V. The role of the economic fundamental freedoms in the internal market

- innovative character as *transnational subjective rights*
- *rights of economic mobility*, complemented by the freedom of movement and residence (art. 21 FEU Treaty) as a right of non-economic mobility
- strict and systematic enforcement by the jurisdiction of the ECJ
- an additional motor for the economic boom in the late 20<sup>th</sup> century

## VI. The realization and protection of the internal market

### 1) The approximation of laws (art. 114 et seq. FEU Treaty)

- approximation of provisions of national law to a common standard fixed by Union law in order to eliminate obstacles and distortions of competition
- in particular of those provisions which have as their object the establishment and functioning of the internal market (art. 114)
  - by all kinds of measures (even regulations and measures concerning particular products)
  - aiming at a *high level of protection* in sensitive fields (art. 114(3))
  - member states may derogate under strict supervision of the Commission (art. 114(4-8))
- see also the approximation of laws for the realization and protection of the fundamental freedoms (e.g. art. 46, 50, 53 FEU Treaty)

### 2) The protection of competition against the power of undertakings

(art. 101 et seq. FEU Treaty)

- prohibition of cartels (art. 101 FEU Treaty)
  - prohibited agreements and decisions are automatically void (art. 101(2))
  - EU Antitrust procedure (art. 105 FEU Treaty, *Antitrust Enforcement Regulation 1/2003*)
- prohibition of abuse of a dominant position (art. 102 FEU Treaty)
- European merger control (*Merger Control Regulation 139/2004*)

### 3) The protection of competition against distortion by state aids

(art. 107 et seq. FEU Treaty)

- prohibition of state aids which distort competition if they affect trade between member states (art. 107(1) with exceptions in sect. 2, 3)
- supervision of state aids by the Commission (art. 108 FEU Treaty, *Regulation 659/1999*)
  - constant review of all existing systems of state aid (art. 108(1))
  - Commission *must* request the state to abolish or alter an aid incompatible with the internal market; national authorities *must* follow and reclaim the money (art. 108(2))
  - provisional examination of new state aids after *notification* by the state's authorities (art. 108(3)); without notification no protection of the beneficiary for good faith

## VII. The economic and monetary union (art. 119 et seq. FEU Treaty)

- coordinated economic policies (art. 119 et seq. FEU Treaty)
- common currency with primary objective of price stability (art. 127 et seq. FEU Treaty)
  - participation requires to meet the convergence criteria price stability, sustainability of the government financial position, stability of exchange rates and convergence of interest-rates levels (see art. 140(1) sub-sect. 1 FEU Treaty and the *Protocol on the convergence criteria*)
- *Fiscal Pact* of 2012 strictly limits government deficits
- *European Stability Mechanism* provides financial assistance to euro area member states in a serious financial crisis