

§ 12 The economic fundamental freedoms

I. General theory

1) Legal nature and special features of the fundamental freedoms

- direct applicable subjective rights (ECJ, case 26/62, van Gend & Loos)
- primacy over national law and secondary Union law
- convergence in jurisprudence and legal doctrine

2) Functions of the fundamental freedoms

- attention: protection of *cross-border mobility* only!
- a) **Prohibitions of discrimination (equality rights)**
 - the problem of discriminations against one's own citizens [reverse discrimination]
- b) **Prohibitions of restrictions (liberty rights)**
 - developed as such by the jurisprudence of the ECJ (see cases 8/74, Dassonville; C-415/93, Bosman; C-55/94, Gebhard)
- c) **Rights to provisions and basis of (state) duties of protection**
 - see ECJ, case C-265/95, French blockades
- d) **Objective elements of the Union's legal order**
 - all secondary Union law and national law must be interpreted in the light of the FF

3) Holders and addressees of the fundamental freedoms

a) Holders (entitled subjects)

- aa) Citizens of the member states
- bb) Legal persons in the member states (cf. art. 54, 62 FEU Treaty)
- cc) In some cases citizens and legal persons from non-member states

b) Addressees (obliged subjects)

- aa) The member states
- bb) The institutions of the Union
- cc) In some cases private organisations with regulative power or private enterprises
 - see ECJ, cases 36/74, Walrave and Koch; C-415/93, Bosman; C-341/05, Laval

4) The concepts of sphere of protection, encroachment and limits

- see diagram 8; common *three step examination* as known from fundamental rights
- a) **The sphere [scope] of protection** ["Schutzbereich"]
 - geographic, temporal, personal and material sphere of protection
 - see on the different material spheres of protection diagram 7
- b) **Encroachments** [= "interferences"] ["Eingriff"/"Beeinträchtigung"]
 - open discriminations, hidden discriminations and restrictions
- c) **The justification of encroachments by the fundamental freedom's limits** ["Schranken"] **and the limits of limits** ["Schranken-Schranken"]
 - explicit and inherent limits
 - the principle of proportionality and fundamental rights as the most important limits to encroachments on the fundamental freedoms

5) The complementation of the fundamental freedoms by the prohibition of discrimination (art. 18 FEU Treaty)

- no discrimination on grounds of nationality
- addresses also to private organisations with regulative power

II. The free movement of goods (art. 28 et seq., 110 et seq. FEU Treaty)

- see diagram 9

III. The freedom of movement for workers (art. 45 et seq. FEU Treaty)¹

- among the holders are also those citizens of the Republic of Moldova who also enjoy Romanian citizenship

IV. The freedom of establishment (art. 49 et seq. FEU Treaty)²

V. The freedom to provide services (art. 56 et seq. FEU Treaty)³

VI. The free movement of capital and payments (art. 63 et seq. FEU Treaty)⁴

Transparency film 7 (EU Law))

¹ For a detailed presentation see diagram 8 from the course EU Internal Market Law (Hanoi Law University, Semester 2, 2013/14, www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_EUIntML-HLU_diagram8.pdf).

² For a detailed presentation see diagram 9 from the course EU Internal Market Law, www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_EUIntML-HLU_diagram9.pdf.

³ For a detailed presentation see diagram 10 from the course EU Internal Market Law, www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_EUIntML-HLU_diagram10.pdf.

⁴ For a detailed presentation see diagrams 10 and 11 from the course EU Internal Market Law, www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_EUIntML-HLU_diagram11.pdf, and [_diagram12.pdf](http://www.thomas-schmitz-hanoi.vn/Downloads/Schmitz_EUIntML-HLU_diagram12.pdf).