

Part III: The Realization and Safeguard of the Internal Market

§ 10 The approximation of laws in the internal market

I. Concept and purpose

- approximation of provisions of national law to a common standard fixed by Union law in order to eliminate obstacles and distortions of competition

II. Approximation of laws and mutual recognition of national standards

III. Approximation of laws according to art. 115 FEU Treaty

- of provisions of the member states which directly affect the establishment or functioning of the internal market
- only by directives taken by unanimous Council decisions

IV. Approximation of laws according to art. 114 FEU Treaty

1) The approximation of laws

a) The power to approximate laws (art. 114(1, 2))

- only for those provisions which have as their object the establishment and functioning of the internal market
- all kinds of measures, also regulations and measures concerning particular products

b) Only measures aiming at a *high level of protection* in the fields of health, safety, environmental protection and consumer protection (art. 114(3))

2) The option of the member states to derogate

- under the (strict) supervision of the Commission (art. 114(4-8))

V. Approximation of laws according to special clauses

- for the realization and protection of the fundam. freedoms (eg. art. 46, 50, 53 FEU Treaty)

§ 11 The competition law of the European Union

I. Introduction

- the protection of the competition as a necessary supporting measure to the establishment of the internal market

II. The prohibition of cartels (art. 101 FEU Treaty)

1) The prohibition

- directly addressed to the undertakings

2) Consequences of violations

- a) **Voidness of the concerned agreements and decisions** (art. 101(2))
- b) **EC Antitrust procedure** (art. 105 FEU Treaty and secondary law)
 - *Antitrust Enforcement Regulation* (Regulation 1/2003)

3) Possible Exemptions

- see art. 101(3) EU Treaty and Regulation 1/2003

III. The prohibition of abuse of a dominant position (art. 102 FEU Treaty)

IV. The European merger control

- *Merger Control Regulation* (Regulation 139/2004)

V. The restrictions on state aids (art. 107 et seq. FEU Treaty)

1) The prohibition of state aids which distort competition (art. 107(1))

- only insofar as they affect trade between member states (!)

2) Exceptions from this prohibition (art. 107(2, 3))

3) The supervision of state aids by the Commission (art. 108 FEU Treaty)

- see for the procedure *Regulation 659/1999*

a) **Constant review of all systems of state aid existing in the member states** (art. 108(1))

b) **Formal procedure for the review of existing and new state aids** (art. 108(2))

- If an aid is incompatible with the common/internal market or misused, the Commission *must* decide that the State concerned shall abolish or alter such aid (and reclaim the money). The national authorities must follow that decision.

c) **Provisional examination of new (notified) state aids** (art. 108(3))

- notification obligation of the member states
- without notification no protection of the beneficiary for good faith

VI. The prohibition of favouring public undertakings (art. 106 FEU Treaty)

- submission of public undertakings to the competition law (art. 106(1))
- limited exceptions for services of general economic interest (art. 106(2); see also art. 14)