

European Law and Institutions

Thursday 16th May 2024

12pm to 1.30pm

Candidates are required to answer TWO out of four questions.

The paper is divided into two sections. Candidates will be required to answer ONE question from section A, and ONE question from section B. All four questions are of equal value.

Section A

Question 1

In Commission v. Poland (C-204/21) the European Court of Justice stated:

“The principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States (judgment of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraph 53 and the case-law cited).

That principle therefore requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraph 54 and the case-law cited).

In that regard, it should, inter alia, be pointed out that the principle that national law must be interpreted in conformity with EU law, by virtue of which the national court is required, to the greatest extent possible, to interpret national law in conformity with the requirements of EU law, is inherent in the system of the treaties, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgment of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraph 55 and the case-law cited).

It is also in the light of the primacy principle that, where it is impossible for it to interpret national law in compliance with the requirements of EU law, the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (judgment of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraph 58 and the case-law cited)”.

Discuss the theoretical justifications for the principle of the primacy of EU law. Why is this principle considered necessary for the functioning of the EU legal order?

and

Evaluate the future of the principle of primacy in light of recent developments in the EU and its Member States. Consider factors such as Brexit, the rise of Euroscepticism, and the challenges posed by national legal and political developments to the authority of EU law.

Question 2

In the Åklagaren v. Hans Åkerberg Fransson case (C-617/10), the European Court of Justice addressed the application of the Charter of Fundamental Rights of the European Union in relation to national legislation implementing EU law. It stated inter alia:

"The Charter of Fundamental Rights of the EU is applicable in all situations governed by European law, but does not extend the power of the EU beyond the competences given to it by the Treaties. Consequently, the Court specified that the Charter must be applied in all cases where national legislation falls within the scope of European Union law."

Discuss the theoretical underpinnings of the principle that the Charter of Fundamental Rights is applicable in all situations governed by EU law. What does this imply about the relationship between national law and EU law, especially in areas where competencies are shared?

END OF SECTION A

Section B

Question 3

"Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer." *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* (120/78).

Explain the significance of the "Cassis de Dijon" ruling in the context of the free movement of goods within the European Union. How did this case change the approach towards national regulations that potentially hinder intra-EU trade?

and

Discuss the concept of "mandatory requirements" as outlined by the European Court of Justice in this case. What are the implications of allowing exceptions based on public health, consumer protection, and other mandatory requirements for the principle of mutual recognition?

Question 4

According to the European Court of Justice in the *Slovak Telecom* case (C-857/19),

"It follows that, where, pursuant to the first sentence of Article 11(6) of Regulation No 1/2003, the Commission initiates proceedings against one or more undertakings for an alleged infringement of Article 101 or 102 TFEU, the competition authorities of the Member States are relieved of their competence to bring proceedings against the same undertakings for the same, allegedly anticompetitive, practices occurring on the same product and geographical market or markets during the same period or periods".

Discuss how Article 11(6) influences the enforcement dynamics of EU competition law. How does this provision facilitate cooperation and coordination between the European Commission and the competition authorities of the Member States'?

END OF SECTION B

END OF PAPER