

INTERNAL MARKET

Case 15/81 Schul	<ul style="list-style-type: none"> • The concept of a common market as defined by the Court in a consistent line of decisions involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market. It is important that not only commerce as such but also private persons who happen to be conducting an economic transaction across national frontiers should be able to enjoy the benefits of that market.
Case 7-68 Italian Art Treasures	<ul style="list-style-type: none"> • An Italian Law on the protection of articles of artistic or historic interest contained a progressive tax on their exportation to other Member States. The requests of the Commission to abolish this tax by the end of the first stage of the transitional period, were disregarded, and the Commission brought an application under Article 169 of the Treaty for a declaration that Italy had failed to fulfil its obligations under Article 16 of the Treaty. • Definition of goods: The court defined goods as products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions. • The disputed tax falls within Article 16 by reason of the fact that export trade in the goods in question is hindered by the pecuniary burden which it imposes on the price of the exported articles. • Declares that the Italian Republic, by continuing to levy after 1 January 1962 the progressive tax laid down by Article 37 of the Law of 1 June 1939 No 1089 on the export to other Member States of the Community of articles of an artistic, historic, archaeological or ethnographic interest, has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community
Capolongo	<ul style="list-style-type: none"> • If these custom duties would exist, they would alter the cost price product.
Article 28 and 30 TFEU CD & CEE	
Case C-24/68 Commission v Italy (Statistical Levy)	<ul style="list-style-type: none"> • Italy continued to levy on goods imported and exported a “statistical levy”. Italy argued that it was not fiscal charge by its nature, it was too insignificant in amount to disturb the market and its aim was to have a record of goods imported and exported. The Commission made an application pursuant to Article 169 of the Treaty for a ruling that Italy had failed to fulfil its obligations under Article 16 and Article 189 of the Treaty • Definition of CEE: <ul style="list-style-type: none"> ○ Any peculiar charge, however small ○ Whatever its designation and mode of application ○ Imposed unilaterally on domestic or foreign goods by reason that they cross a frontier ○ Even if it is not imposed for the benefit of the state, is <u>not discriminatory or protective in effect</u> and if the product on which the charge is imposed is <u>not in competition</u> with the domestic product. • So, it does not matter as far as the importation or exportation of goods is concerned within the EU, any pecuniary charge at the border crossing or at any other moment in time, at any place, however small is prohibited.
2 and 3/69 Sociala Fonds	<ul style="list-style-type: none"> • Belgian Social fund law required people importing unworked diamonds to pay a contribution to the Fund.

Με σχόλια [U1]: Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature

by itself, that that legislation is capable of hindering the access to the United Kingdom market of alcoholic drinks that are lawfully marketed in Member States other than the United Kingdom of Great Britain and Northern Ireland, and constitutes therefore a measure having an effect equivalent to a quantitative restriction within the meaning of Article 34 TFEU

- **Justifications:** the legislation at issue in the main proceedings pursues, more generally, the objective of the **protection of the health and life of humans** that ranks foremost among the assets or interests protected by Article 36 TFEU. It is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure
- **Proportionality**
 - **Appropriate:** it is appropriate for achieving the object it pursues
 - It is reasonable to consider that a measure that sets a minimum selling price of alcoholic drinks, the very specific aim of which is to increase the price of cheap alcoholic drinks, is capable of reducing the consumption of alcohol, in general, and the hazardous or harmful consumption of alcohol, in particular, given that drinkers whose consumption can be so described purchase, to a great extent, cheap alcoholic drinks.
 - **Consistent and systematic manner:** the national legislation at issue in the main proceedings is part of a more general political strategy designed to combat the devastating effects of alcohol. The imposition of an MPU, provided for by this legislation, constitutes one of 40 measures whose objective is to reduce, in a consistent and systematic manner, the consumption of alcohol by the Scottish population as a whole, irrespective of where that consumption takes place or the nature of that consumption.
 - **Necessary:**
 - **Less restrictive measures:** a fiscal measure which increases the taxation of alcoholic drinks is liable to be less restrictive of trade in those products within the European Union than a measure imposing an MPU.
- **Articles 34 TFEU and 36 TFEU must be interpreted as precluding a Member State choosing, in order to pursue the objective of the protection of human life and health by means of increasing the price of the consumption of alcohol, the option of legislation, such as that at issue in the main proceedings, which imposes an MPU for the retail selling of alcoholic drinks, and rejecting a measure, such as increased excise duties, that may be less restrictive of trade and competition within the European Union. It is for the referring court to determine whether that is indeed the case, having regard to a detailed analysis of all the relevant factors in the case before it. The fact that the latter measure may bring additional benefits and be a broader response to the objective of combating alcohol misuse cannot, in itself, justify the rejection of that measure.**
- **Question 4 and 6:** how Article 36 TFEU is to be interpreted with respect to the extent of the review of proportionality which that court must carry out when it examines national legislation in the light of the justification relating to the protection of the health and life of humans, under that article
- **Article 36 TFEU must be interpreted as meaning that, where a national court examines national legislation in the light of the justification relating to the protection of the health and life of humans, under that article, it is bound to examine objectively whether it may reasonably be concluded from the evidence submitted by the**

which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State.

- It is true that the transfer rules in issue in the main proceedings apply also to transfers of players between clubs belonging to different national associations within the same Member State and that similar rules govern transfers between clubs belonging to the same national association.
- those rules are likely to restrict the freedom of movement of players who wish to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belong even after the expiry of their contracts of employment with those clubs.
- the transfer rules constitute **an obstacle to freedom of movement for workers** prohibited in principle by Article 48 of the Treaty. It could only be otherwise if those rules pursued **a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest**. But even if that were so, application of those rules would still have to be such as to ensure achievement of the aim in question and **not go beyond what is necessary** for that purpose
- **Justifications:**
 - **(1) the need to maintain a financial and competitive balance between clubs and (2) to support the search for talent and the training of young players**
 - First aim was accepted as legitimate.
 - Regarding second aim it is impossible to predict the sporting future of young players with any certainty and because only a limited number of such players go on to play professionally, those fees are by nature contingent and uncertain and are in any event unrelated to the actual cost borne by clubs of training both future professional players and those who will never play professionally. The prospect of receiving such fees cannot, therefore, be either a decisive factor in encouraging recruitment and training of young players or an adequate means of financing such activities, particularly in the case of smaller clubs.
 - the argument that the rules in question are necessary to compensate clubs for the expenses which they have had to incur in paying fees on recruiting their players cannot be accepted, since it seeks to justify the maintenance of obstacles to freedom of movement for workers simply on the ground that such obstacles were able to exist in the past.
- **Article 48 [Article 45 TFEU] of the EEC Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee.**
- **Question 2:** whether Article 48 of the Treaty precludes the application of rules laid down by sporting associations, under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States.
- **Existence of an obstacle to freedom of movement for workers:**
 - the nationality clauses constitute an obstacle to freedom of movement for workers, prohibited by Article 48.
 - Article 48(2) expressly provides that freedom of movement for workers entails the **abolition of any discrimination based on nationality** between workers of the Member States as regards employment, remuneration and conditions of work and employment.
 - a rule which restricts that participation obviously also restricts the chances of

those where all the relevant elements are confined to a single Member State.

- The compliance of a national authorization scheme with the requirements of the directive presupposes that such a scheme restricting the freedom to provide services, **satisfies the conditions set in Article 9(1) of the directive**, namely it is non-discriminatory, justified by an overriding reason relating to the public interest, and proportionate, but also that the criteria for granting the authorisations provided for by that scheme are in line with **Article 10(2) of that directive**, namely they are non-discriminatory, justified by an overriding reason in the public interest, proportionate to that public interest objective, clear and unambiguous, objective, made public in advance, and transparent and accessible.
- the assessment of whether legislation of a Member State establishing such an authorisation scheme is in line with the two articles above, which lay down clear, precise and unconditional obligations **giving them direct effect**, presupposes that separate and consecutive assessments must be made of, **first**, whether the very principle of establishing that scheme is justified, and, **then**, the criteria for granting the authorisations provided for by that scheme.
- it is for the national courts, first, to assess whether the use by the national legislature of such a mechanism is in line with Article 9 of that directive and, second, to verify whether the criteria set out by that legislature regulating the grant of those authorisations by the local authorities and the effective implementation of those criteria by the local authorities whose measures are contested are in line with the requirements laid down in Article 10 of that directive.
- Regarding, in the first place, the condition laid down in Article 9(1)(b) of that directive, it is apparent from the requests for a preliminary ruling that Article L. 631-7 of the Construction and Housing Code is intended to establish a mechanism for **combating the rental housing shortage**, the objectives of which are to deal with the worsening conditions for access to housing and the exacerbation of tensions on the property markets, in particular by addressing market failures, to protect owners and tenants, and to increase the supply of housing while maintaining balanced land use, since housing is a basic necessity and the right to decent housing is an objective protected by the French Constitution.=> This is an overriding reason relating to the public interest for the purposes of EU law.
- Article 4(8) of Directive 2006/123 states that the overriding reasons relating to the public interest on which the Member States are entitled to rely are reasons recognised as such in the case-law of the Court, which include, in particular, **grounds relating to the protection of the urban environment**
- the Court has already acknowledged that requirements relating to public housing policy and seeking to combat land pressure, especially where a specific market is experiencing a structural housing shortage and a particularly high population density, may constitute overriding reasons relating to the public interest
- **Article 9(1)(b) and (c) of Directive 2006/123 must be interpreted as meaning that national legislation which, for reasons intended to ensure a sufficient supply of affordable long-term rental housing, makes certain activities consisting in the repeated short-term letting, for remuneration, of furnished accommodation to a transient clientele which does not take up residence there subject to a prior authorisation scheme applicable in certain municipalities where rent pressure is particularly severe is (i) justified by an overriding reason relating to the public interest consisting in combating the rental housing shortage and (ii) proportionate to the objective pursued, inasmuch as that objective cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.**

C-36/02 Omega
Spielhallen-
und
Automatenauf-
tellungs-GmbH
v
Oberbürgermei-
sterin der
Bundesstadt
Bonn,

- *Germany imposed laws restricting the marketing of laser games that simulated killing human beings on the grounds that it undermined human dignity. O argued that this was contrary to the free movement of goods (art 28). ECJ said that the protection of human dignity is a principle of EU law, so that the derogation from article 28 was a proportionate and necessary one.*
- **Question: first**, whether the prohibition of an economic activity for reasons arising from the protection of fundamental values laid down by the national constitution, such as, in this case, human dignity, is compatible with Community law, and, **second**, whether the ability which Member States have, for such reasons, to restrict fundamental freedoms guaranteed by the Treaty, namely the freedom to provide services and the free movement of goods, is subject, as the judgment in *Schindler* might suggest, to the condition that that restriction be based on a legal conception that is common to all Member States.
- *The contested order, by prohibiting Omega from operating its 'laserdrome' in accordance with the form of the game developed by Pulsar and lawfully marketed by it in the United Kingdom, particularly under the franchising system, **affects the freedom to provide services** which Article 56 TFEU guarantees both to providers and to the persons receiving those services established in another Member State. Moreover, in so far as use of the form of the game developed by Pulsar involves the use of specific equipment, which is also lawfully marketed in the United Kingdom, the prohibition imposed on Omega is likely to deter it from acquiring the equipment in question, thereby **infringing the free movement of goods** ensured by Article 28 EC.*
- *However, where a national measure affects both the freedom to provide services and the free movement of goods, the Court will, in principle, examine it in relation to just one of those two fundamental freedoms if it is clear that, in the circumstances of the case, one of those freedoms is **entirely secondary** in relation to the other and may be attached to it (**Schindler**)*
- *In the circumstances of this case, the aspect of the freedom to provide services prevails over that of the free movement of goods.*
- **Justifications:**
 - *Treaty Derogations (Article xxx): allows restrictions justified for reasons of public policy, public security or public health. In this case, the documents before the Court show that the grounds relied on by the Bonn police authority in adopting the prohibition order expressly mention the fact that the activity concerned constitutes a danger to public policy.*
 - *since measures for safeguarding public policy fall within a derogation from the freedom to provide services set out in Article 46 EC, it is not necessary to verify whether those measures are applied without distinction both to national providers of services and those established in other Member States.*
 - *The concept of **public policy** particularly as justification for a derogation from the fundamental principle of the freedom to provide services, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without any control by the Community institutions.*
 - *the specific circumstances which may justify recourse to the concept of public policy may vary from one country to another and from one era to another. The competent national authorities must therefore be allowed a margin of discretion within the limits imposed by the Treaty*
 - *the competent authorities took the view that the activity concerned by the prohibition order was a threat to public policy by reason of the fact that, in accordance with the conception prevailing in public opinion, the commercial exploitation of games involving the simulated killing of human beings infringed*

	<p><i>Verwaltungsgericht (German Administrative Court), which applied to the Court for a preliminary ruling to determine whether the activity of granting credit on a commercial basis constituted a provision of services or whether it fell within the free movement of capital.</i></p> <ul style="list-style-type: none"> • <i>The activity of granting a credit on a commercial basis concerns both the freedom to provide services (Article 56 TFEU) and the free movement of capital (Article 63 TFEU)</i> • <i>However, the predominant consideration is services. In essence the provision on capital was an unavoidable consequence of the restriction to provide services and needed to be considered as secondary</i> • <i>Article 56 TFEU cannot be relied on by a company which is established in a non-member country (Switzerland).</i>
<p>Commission v Germany (Volkswagen)</p>	<ul style="list-style-type: none"> • <i>Germany enacted legislation in 1960 (partly) privatizing Volkswagen. The legislation capped the voting rights at 20% even if a shareholder exceeded that holding, fixed a blocking minority at 20% and gave the German Federal State and the Land of Lower Saxony each the right to appoint two representatives to the supervisory board.</i> • <i>The Commission considered that those provisions of the 1960 law restricted the free movement of capital in a manner contrary to Article 56 EC as well as the freedom of establishment guaranteed by Article 43 EC.</i> • <i>The Court of Justice held that the restrictions placed on shareholder rights in Volkswagen were contrary to Article 56 EC on the free movement of capital. It held that while the EC Treaty did not define ‘movement of capital’ within the meaning of Article 56(1) EC, it has previously recognized the nomenclature set out in Annex I to Council Directive 88/361/EEC as having indicative value. Movements of capital within the meaning of Article 56(1) EC therefore include direct investments, i.e. investments of any kind undertaken by persons and which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity (Case C-446/04 Test Claimants in the FII Group Litigation, , and Case C-157/05 Holböck).</i> • <i>The Court held that the capping of voting rights at 20% and the fixing of the blocking minority at 20% taken together enable the German Federal State and the Land of Lower Saxony to exert considerable influence of Volkswagen beyond that which they could exert under general company law. That considerable influence is liable to deter investors from other member States.</i> • <i>The Court also found that the right granted to the German Federal State and the Land of Lower Saxony to appoint two representatives to the supervisory board enables them to exert considerably more influence than their actual level of shareholding would allow normally which thus reduces the influence of other shareholders. That too is liable to deter foreign investors.</i> • <i>The Court of Justice stated that restrictions on the free movement of capital could be justified under Article 58 EC. But it held in this case that the German government had advanced no viable justification for the restrictions.</i>
<p>C-567/07 Minister voor Wonen v Wooncorporatie St. Servatius</p>	<ul style="list-style-type: none"> • <i>This is a Dutch case where we had a public housing corporation active in the south east of the NL, in Maastricht. This public housing company wanted to buy some properties in Belgium. Belgium ministry denied authorization</i> • <i>The Court concluded that the requirement of prior authorization amounted to a restriction which subsequently needed to be justified.</i> • <i>The Court rejected the argument that public policy derogation could be invoked. It looked instead at the overriding req in general interest recognizing the objective directed to a resistant pressure on land.</i> • <i>Then the question was whether this principle of proportionality could be relied upon. Here the Court concluded that certain justification cannot be invoked if it is not clear</i>