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EU Model of Making Economic Law



Is EU An Example of Regulatory Cooperation?

- The nature of a common market and how it differs from other forms of economic integration
 - Free Trade Area
 - Customs Union
 - Common Market
 - Economic Union (complete unification of monetary and fiscal policy; common currency controlled by a central authority; Member States become regions within the union)



Custom Unions and Common Market Fundamental Principles

- Part III TFEU
 - Four freedoms
 - Economic aim is the optimal allocation of resources for the EU



Techniques of Economic Integration

- Two main techniques in order to attain a Single Market
 - EU law prohibition of national rules which hinder cross-border trade
 - Negative and deregulatory approach
 - Mutual recognition principle
 - EU law (minimum or maximum) harmonisation of the national rules on certain specific sectors (health, safety, technical specification, consumer protection and the like) (See artt. 114 and 115 TFEU)



The Internal Market: Legislative Reform and the Single European Act

- The SEA entered into force on 1 July 1987 and it contained procedures to facilitate legislation to complete the internal market
- Moreover it introduced two major legislative innovations for the single market project which now are
 - Art. 26 TFEU
 - Art. 114 TFEU



Article 26

(ex Article 14 TEC)

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
- 2. 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.**
3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.



The Obligation given by art. 26 and its possible implementation

- The establishment of the internal market is an ongoing task rather than one that could be deemed as completed by a particular date
- Art. 26 (2) defines the internal market
 - Two-part formulation
 - How freely goods, services, persons and capital can move within the EU
 - Legal effect
 - May be against the EU itself
 - May be legal consequences for the Member States
- Art. 27 TFEU requires the Commission, when drawing up proposals pursuant to art. 26, to take in account differences in developments of certain economies of the EU Member States



Art. 114 TFEU and The Approximation Laws

- Art. 114 TFEU give the possibility to use the ordinary legislative procedure to empower enactment of legislative, regulatory and administrative measures
- Art. 114 TFEU operates as a residual provision
 - See artt. 43 (for agriculture and fisheries); 50 (right of establishment); 53 (mutual recognition); 91 (common transport policies)
- Art. 114 has limits
 - See *Tobacco Advertising* case (Case C-380/03 *Germany v European Parliament and Council* 2006: measure could be validly adopted under art. 114 since there were disparities between the relevant national laws on advertising and sponsorship of tobacco products which could affect competition and inter-state trade)



Qualifications To Article 114 (1)

- 114 (2), exception: fiscal provisions (art. 113 TFEU), provisions relating to the free movement of persons (artt. 21 (2) and 21 (3)), provisions relating to the rights and interests of employed persons
- 114 (3) high level of protection as the base for measures relating to health, safety, environmental protection, and consumer protection



Qualifications To Article 114 (1)

- 114 (4), finite concerns: matters covered by art. 36 TFEU, plus the environment and working environment; a Member State can invoke this provision only to justify the retention of existing provisions
- 114 (5) new scientific evidence relating to the environment and there must be a problem specific to that state
- 114 (6-9) procedures designed to facilitate a negotiated solution to the problem
- 114 (10) safeguard clause