



FREE MOVEMENT OF GOODS
General Introduction
ARTICLES 28 – 30 EC TREATY

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Treaty Establishing the European Community (1)

Part Three: Community Policies

Title I: Free movement of goods

CHAPTER 2

PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

- **Article 28 (ex Article 30)**

“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

- **Article 29 (ex Article 34)**

“Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.”

Treaty Establishing the European Community

(2)

- **Article 30 (ex Article 36)**

“The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

The Subject Matter

(1)

- The Meaning Of “Goods” :
 - No definition of “goods” in the EC Treaty
 - ECJ has clarified the meaning
- a. Goods “originating in Member States”
- b. Goods from “third countries” in “Free circulation”
in the Community
- The Nationality of the Owner

The Territory

- Article 299 (ex Article 227) of EC Treaty:
The Treaty applies to Member States, without referring to their respective territories, although the concept of “territory” appears in Articles 39 to 43 (ex 48 to 52) on the free movement of workers and the right of establishment respectively.

Persons Bound

- Member States
- The Community Institutions
- Private Parties:
 - a. Are private parties bound to observe Articles 28 to 30?
 - b. If not, can those provisions nevertheless be relied on against private parties in legal proceedings?

Negative and Positive Harmonization

(1)

- The application of the Free Movement of Goods principles in the NON-HARMONISED AREA

Articles 28, 29 and 30 of the EC Treaty do not apply when free movement of goods within EU is guaranteed by other (secondary) Community legislation, in e.g.:

- directives,
- regulations etc.

Negative and Positive Harmonization

(2)

➤ The Scope of Harmonisation in the Community

Legislation:

a. Incomplete Harmonisation

b. Total Harmonisation

Infringement Proceedings

The Commission as guardian of the Treaty

(1)

- The Commission is responsible for ensuring the correct application of Treaty provisions and of Community legislation
- Any individual may lodge a complaint with the Commission concerning a practice or a measure which, in his opinion, infringes a Community provision

Infringement Proceedings

The Commission as guardian of the Treaty

(2)

Information sources on barriers to intra-Community trade

- a. “Own initiative” infringement cases
 - Own findings of the Commission
 - Parliamentary questions, petitions, documents received under the notification procedure (Dir. 98/34)
- b. Complaints
 - by companies, citizens, associations and other interest groups

Infringement Proceedings

The Commission as guardian of the Treaty

(3)

The semi-official phase of the infringement procedure

- Registration of the complaint by the Secretariat General of the Commission
- Gathering of information on the facts presented
- First legal evaluation : Harmonised area or Art. 28 EC?

Infringement Proceedings

The Commission as guardian of the Treaty

(4)

- **First request for information from the Member State:**
 - Sending of an administrative letter ("pre-226 letter")

- **At any stage Package Meeting with the National Authorities**

Infringement Proceedings

The Commission as guardian of the Treaty

(5)

The official phase of the infringement procedure

➤ Letter of Formal Notice

- Delimits the subject matter of the dispute, provides the Member State with the necessary information
- Answer of the Member State within the period granted

Infringement Proceedings

The Commission as guardian of the Treaty

(6)

➤ Reasoned opinion

- Clearly and definitively sets out the basis of the infringement of Art 28 EC Treaty
- Enumerates the measures which the Member State should take
- Answer of the Member State within the period granted

Infringement Proceedings

The Commission as guardian of the Treaty

(7)

Referral to the Court of Justice of the European Communities

- Application of the Commission admissible if Member State has not remedied the infringement in time
- Defence by the defendant Member State
- Reply by the Commission
- Rejoinder by the Member State
- Intervention by other Member States
- Oral hearing (if required by one Party or deemed necessary by the Court)

Infringement Proceedings

The Commission as guardian of the Treaty

(8)

➤ **Judgement**

- Finding may serve as the basis for claims for damages

➤ **Closure of the infringement case by the Commission**

- If Member State has taken the measure necessary to comply with the Judgment

Infringement Proceedings

The Commission as guardian of the Treaty

(9)

- **If the Member State has not taken the measure necessary to comply with the Judgment**
 - Letter of Formal Notice
 - Reasoned Opinion
 - Referral to the Court of Justice of the European Union
 - Judgment

Infringement Proceedings

Penalties (Article 228 EC Treaty)

(1)

➤ **Lump Sum:**

➤ is based on assessment of the effects on public and private interests of the Member State's failure to date to comply with its obligations, in particular where the breach has persisted for a long period since the judgment which initially established it.

➤ **Periodic Penalty Payment:**

➤ to induce the Member State to put an end as soon as possible to a breach of obligations which would tend to persist.

Infringement Proceedings

Penalties (Article 228 EC Treaty)

(2)

- Case C-304/02 [2005], *Commission v. French Republic*
 - a penalty by day of delay after the delivery of the judgment under Article 228, and
 - a lump sum penalising the continuation of the infringement between the judgment on non-compliance and the judgment delivered under Article 228.

Infringement Proceedings

Penalties (Article 228 EC Treaty)

(3)

- Commission Communication on the application of Article 228 EC Treaty (13th December 2005)
 - The Commission considers the decision should be based on three fundamental criteria:
 - a. the seriousness of the infringement
 - b. its duration
 - c. the need to ensure that the penalty itself is a deterrent to further infringement

For more information

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