

## European Law | Fundamental Freedoms

### The four fundamental freedoms of the TFEU

- The free movements of goods (Art 34, 35 TFEU, Art 28, 30 TFEU, Art 110 TFEU)
- The free movements of workers (Art 45 TFEU), freedom of establishment (Art 49 TFEU), free movement of persons
- The free movements of services (Art 56 TFEU)
- The free movement of capital (Art 63 TFEU)

fundamental freedoms prohibit national rules discriminating against citizens from other Member States

but: grounds for justification & proportionality test:

- protection of health and life
- protection of nature
- protection of national cultural heritage
- protection of industrial and commercial property

## Proportionality Test – Effect

- suitable for achieving the goal
- necessary to achieve the objective
- proportionate in this respect

Treaty violation procedure

direct (!) application by citizens

effect: no application of Member State's law

## Fundamental Freedoms

**Commission/Germany ('Reinheitsgebot für Bier'), ECJ 12.3.1987, Case 178/84, [1987] ECR 1227**

### Facts:

- German 'Reinheitsgebot': only barley, hops, yeast and water permitted for production of beer
- No distribution under the designation 'beer' from beverages of other Member States when not in accordance to the 'Reinheitsgebot'
- Commission: infringement of Art 30 TEC (now Art 34 TFEU) **free movements of goods**

# Fundamental Freedoms

**Commission/Germany ('Reinheitsgebot für Bier'), TJEU 12.3.1987, Case 178/84, [1987] ECR 1227**

## **Decision of the ECJ (Treaty violation proceeding (Art 258 TFEU))**

- 'Reinheitsgebot' is a restriction of the free movement of goods
  - Are there any grounds for justification used in a proportionate manner?
    - protection of health?
      - No, beer not brewed in accordance with 'Reinheitsgebot' is not per se health damaging
    - Consumer protection?
      - Yes, consumer can have interest in consuming beer in accordance with the 'Reinheitsgebot'

# Fundamental Freedoms

**Commission/Germany ('Reinheitsgebot für Bier'), ECJ 12.3.1987, Case 178/84, [1987] ECR 1227**

## **Decision of the ECJ (Treaty violation proceeding (Art 258 TFEU))**

- complete prohibition of other beer is a disproportional measure (too restrictive)
- **but** the ECJ protects the responsible citizen and sensible consumer
- Solution: '**doctrine of labelling**'
  - consumer protection is achieved by adequate labelling of the product
  - consumer decides to consume products with certain ingredients or not

# Fundamental Freedoms

**GB-Inno-BM, ECJ 7.3.1990, Case C-362/88, [1990] ECR I-683**

## Facts:

- public limited company GB-Inno operated supermarkets in Belgium near the border to Luxembourg
- GB-Inno distributed prospectuses to consumers in BE and LU
- Prospectuses which quoted older, higher prices and limited product discounts to a certain period of time were allowed in BE but not in LU
- Luxembourgian Cour de cassation prohibited distribution: **infringement of free movement of goods?**

# Fundamental Freedoms

**GB-Inno-BM, ECJ 7.3.1990, Case C-362/88, [1990] ECR I-683**

## Decision of the CJEU (preliminary reference procedure (Art 267 TFEU))

- Cross frontier requirement is also fulfilled when the **purchaser crosses the border** or when cross-border advertising for a product takes place
- Model of the responsible and sensible consumer:
  - her interest in information must be protected
  - is handling the correct information on her own responsibility
- Free movement of goods does **not only protect cross-frontier vendors of products**, but also protects **consumers who cross border** out of their own initiative to purchase products
- **Result:** Luxembourgian courts are not permitted to apply Luxembourgian regulation to cross-frontier product purchases, because it is contrary to the free movements of goods