

DOWNLOAD PDF BEYOND COMPETITION : SERVICES OF GENERAL INTEREST AND EUROPEAN COMMUNITY LAW JULIO BAQUERO CRUZ

Chapter 1 : EU Law and the Welfare State: In Search of Solidarity - Oxford Scholarship

His publications include: Between Competition and Free Movement: The Economic Constitutional Law of the European Community (Hart,); Beyond Competition: Services of General Interest and European Community Law, in G. de B rca (ed.), EU Law and the Welfare State(OUP,) and The Legacy of the Maastricht-Urteil and the Pluralist Movement.

Advanced Search Despite the fact that it is part of the economic freedoms on which the European integration project is said to be built, free movement of capital has never attracted the attention it deserves – at least as far as the English literature is concerned. This was understandable until the late s, since this freedom was not politically fostered until then. However, two decades later just a couple of monographs are devoted exclusively to the matter, 1 and not too many others deal with it within a broader context. In addition, the main importance of this book is the fact that it brings to the English literature on free movement of capital the intense and sharp German debate on economic law, and on the legal regime of capital movements in particular; and it does so acutely distinguishing the stances – and their nuances – of each relevant author towards each particular aspect of the legal regime. Hence, not just an intra-Community liberalization of capital movements has been achieved, but also a rather contentious erga omnes liberalization. However, scholars have not resolutely engaged in the study of the reasons why the latter has been achieved on a unilateral basis and without any explicit rationale, nor have they debated as deeply as required the limits for capital movements originating from or directed to a non-European Union Member State. The main thesis which the book supports is that because capital flows between a Member State and a third country were liberalized to exactly the same degree as were movements within the Community – with the sole exception of the specific provisions the Treaty contains for each particular category of movement – foreign direct investment will also enjoy the same guarantees as intra-Community direct investment. In order to prove this thesis the author adopts a comparative approach with respect to the legal regimes for both types of movements, describing first the breadth and scope of those within the Community, and then comparing them with those towards or from a third country. The author proceeds as follows: It is true that the scope of the whole freedom will determine the scope of foreign direct investment. Therefore, the approach of the book, dealing first with the general legal regime and after that with the particularities of foreign direct investment, is adequate. Less convincing is some of the reasoning included in the book. This happens, for instance, when he deals with the controversial issue of whether the protection of the national system of property ownership, which Article TFUE – ex Article EC – affords, 3 constitutes a limit to the free movement of capital. Can Member States impose conditions on the ownership of privatized companies which could restrict the free movement of capital? Thus, for him the correct way of settling the conflict seems to be paying attention to the effects on liberalization and integration. Instead, when interpreting both provisions he should have taken into account the legal context as well as the aims of the Treaties: The same feeling, although to a much lesser extent, remains when one reads the pages which support the cumulative application of economic freedoms – particularly free movement of capital and freedom of establishment – instead of considering them exclusive domains. The relevance of this distinction for foreign direct investment is of major importance, due to the fact that, while inside the European Union all movements are liberalized, beyond its borders just capital flows are. However, his effort to determine whether a paradigm developed by the ECJ for one freedom is applicable to another, and indeed if this is giving rise to the application of the same jurisprudence to the whole set of economic freedoms, remains of great doctrinal interest and is worth future research. Finally, a comment on how the Lisbon Treaty affects the legal regime of the free movement of capital would have been a valuable contribution to the book. In particular, the changes it introduces are likely to reduce the scope of free movement of capital in the international context. In substance, these changes are: As a result of both changes, it is highly probable that the scope of the freedom will be reduced, because regulating a fully liberalized regime can only, by definition, restrict such regime, and because national tax regimes are explicitly considered able to limit capital flows. The Four Freedoms or M.

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While this argument might be in practical, but not doctrinal terms not be dismissed right away, the outcome of the exclusivity theory would be devastating when it comes to third country capital movements. A
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Chapter 2 : Baquero Cruz Julio

It examines how one particular provision of the EC Treaty, Article 86(2), regulates the manner and the extent to which entities providing services of general economic interest are subject to the other treaty rules, in particular the competition law rules.

Previous Title Next 1. This case offers an interesting opportunity to analyze the possible developments that might take place within European Community law, regarding the WTO Agreements, 4 and questions relating to the jurisdiction of the Court and the direct effect 5 of the TRIPs Agreement in particular. Article 50 lays down some procedural provisions relating to provisional measures granted in order to protect intellectual property rights. Dior alleged that Tuk had infringed its trade mark rights by selling perfumes bearing those marks when they had not been put on the market in the European Economic Area. Layher Netherlands is the exclusive importer of the Allroundsteiger for the Netherlands. Assco also manufactures scaffoldings, including one known as the Rondosteiger, also marketed in the Netherlands, and whose interlocking and measurements system is identical to that of the Allroundsteiger. Layher applied to the President of the Utrecht District Court for interim measures prohibiting Assco from importing into the Netherlands, selling, offering for sale or otherwise trading in the Rondosteiger as then manufactured. Layher alleged Assco was wrongfully copying an industrial design. The application for interim measures was granted and the President of the District Court ruled that the reasonable period referred to in Article 50 6 of TRIPs - a period during which an action on the merits should be initiated, and during which time the interim measures granted according to Article 50 can have effect- was to be one year. Assco appealed to the Supreme Court of the Netherlands. These could be fundamentally affected by a decision as to whether TRIPs is recognized as having direct effect or not, and, as a threshold matter, as to whether the Court could even accept its jurisdiction. Both issues are not a foregone conclusion. Accordingly, Community law neither requires nor forbids that the legal order of a Member State should accord to individuals the right to rely directly on the rule laid down by Article 50 6 of TRIPs or that it should oblige the courts to apply that rule of their own motion. A close analysis of Parfums Dior will try to put these issues into a new perspective. The analysis will focus on two subject-matters developed by the Court in the case under study. The first part of the paper will concentrate on the jurisdiction of the Court, whether the competence of the Court to answer such references was really as obvious as the Court assumed. Even if some authors argue in favor of a distinction between the concepts of direct effect and direct applicability - see e. Public Interest versus Individual Rights? As an analysis of the semantics of the Court would go beyond the object of this paper, the terms direct effect and direct applicability will be considered as equivalent, both referring to the aptitude for provisions of an international agreement to be relied on by an individual in front of a court, implying that this norm grants rights to individuals. However, we admit that the concept of direct effect as used in connection with international agreements might be different than the one used in internal Community law. Had Dior put or given its consent to put its perfumes on the market in the European Economic Area, the principle of exhaustion would have precluded Dior, other than in exceptional circumstances, to oppose the use of the trade mark by others in subsequent transactions anywhere in the Community. Dior alleged that it did not put the products on the market within the EEA, therefore the principle of exhaustion could not be opposed to it and as a result Tuk was infringing its trade mark. The Court found the connection between intellectual property and trade in goods not sufficient to bring intellectual property rights within the common commercial policy of the Community. Moreover, if the Community were to be recognized as having exclusive competence to enter into TRIPs, it would make it possible at the same time to achieve harmonization within the Community and thereby to bypass the internal procedural constraints to which the institutions are subject when they act in order to harmonize internal legislations. Likewise, the theory of implied external powers did not lead to the conclusion that the Community had exclusive competence to conclude TRIPs since the harmonization achieved within the Community in certain areas covered by TRIPs is

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only partial and in other areas has not yet been envisaged, even if the Community could exercise its powers, in so far as intellectual property rights "directly affect the establishment and functioning of the common market", as provided for in Article 94 EC, giving the scope in which the approximation of laws can take place. Questions or comments about this site?

Chapter 3 : Julio Baquero Cruz

Competition: Services of General Interest and European Community Law", in G. de B rca (ed.), EU Law and the Welfare State (Oxford University Press, Oxford,), pp. ; "De la cuesti n prejudicial a.

Chapter 4 : EC Competition Law: A Critical Assessment: Giuliano Amato: Hart Publishing

EU Law and the Welfare State In Search of Solidarity Edited by Gr inne de B rca Collected Courses of the Academy of European Law. Advances the idea that social welfare should have a distinctive EU dimension.

Chapter 5 : Bloomsbury - Competition Law

This volume contains a set of essays which examine different aspects of the impact of European Union law on national welfare state systems, with each chapter looking at a different dimension of the subject.

Chapter 6 : Private Parties in European Community Law - Albertina Albers-Llorens - Oxford University Press

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Chapter 7 : EU Law and the Welfare State - Hardcover - Gr inne de B rca - Oxford University Press

Does a special responsibility not to impair competition constrain the actions of the State? Is the State bound by specific competition law obligations where its administrative or legislative.