

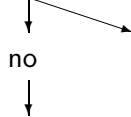
Handout № 10

Common Market IV

Scheme of analysis¹

1. Facts

1.1 *lex specialis*



yes

Apply these to the case and take primary law into consideration; “national opt out” is only possible in the instances provided for by Art. 95 EC!

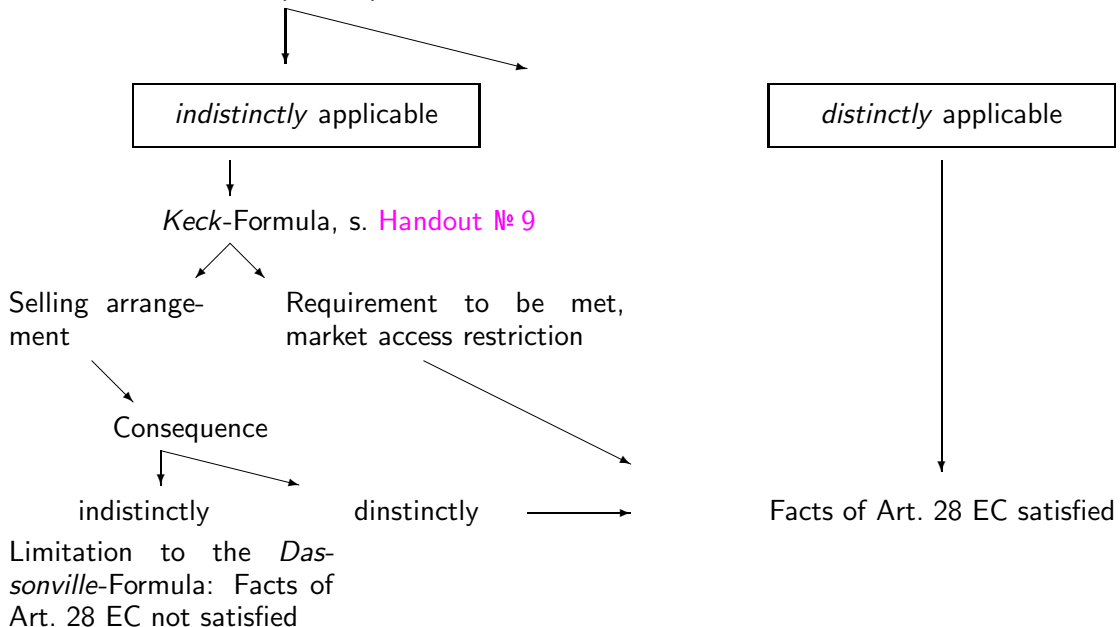
1.2 Goods according to Art. 23 II EC

1.3 State measure

1.4 Quantitative restriction according to the *Dassonville*-Formula, s. Handout № 8

1.5 Cross-border aspect

1.6 Domestic and imported products



2. Justification

2.1 Constraint

2.1.1 Art. 30 EC

2.1.2 “mandatory requirements” (immanent constraint of Art. 28 EC) according to first *Cassis*-Principle, s. Handout № 8

Art. 30 EG (ECJ: possibly mandatory requirements, e.g. rules on waste, disp'd)

2.2 Constraint-constraint

Proportionality (Art. 30 EC, resp. “necessary” according to the *Cassis*-Principle)

Art. 30 EC: objective justification of the discrimination

Proportionality

Adherence to fundamental rights of the Community

¹According to STREINZ, RUDOLF, *Europarecht*. 5th edition. Heidelberg, 2001, p. 314 and [594]hsv (both in German).

Case²

Part A MS-A foresees for vermouth intended for the domestic market a minimum alcohol content of 18%. Vermouth intended for export is not explicitly covered by this rule. Producer M from MS-A sees a potential profit in the production and export of vermouth with a minimum alcohol content of less than 18%. The products sell profitable in some other MS of the EC, e.g. in D. D does not foresee a minimum alcohol content since there has not been a need so far.

After protests of its domestic producers D passes a law which prescribes for imported products that they must be marketable in their respective export countries. According to this new rule M can only export its products if in compliance with the minimum alcohol content rules of MS-A.

To justify its new rule MS-D puts forward reasons of health and consumer protection: consumers in MS-D who know products from MS-A mainly from holiday trips would be deceived by M's products since they would expect to receive goods of the same quality as in MS-A. Also, it alleges, that MS-A would support a dumping-like abuse of the single market by permitting lesser quality for export goods. D would have to have the right to take counter measures. Even if MS-A's rules were lawful, D would be able to claim *vice versa* that the respective goods from MS-D were not marketable in MS-A. The benefits of the single market would have to be applied reciprocally.

Part B Based on the differences in the national legal systems the rules for producing and marketing of vermouth are harmonised by a Council Regulation. Art. 2 I provides for a community-wide minimum alcohol content and prohibits the use of certain noxious substances. Art. 3 I obliges MS to introduce efficient compliance inspections; spot tests are foreseen for imports from other MS. The Regulation contains no provision for the costs of these inspections.

Based on Art. 3 I MS-D inspects import goods from A. For the inspections it levies administrative charges from the exporter. M considers the inspections as a discriminative import restriction since they apply in addition to the general food inspections at the retailer; the charge would be a protective duty in disguise. D, in contrast, holds that the inspections would also be carried out in the interest of M since they established compliance with the law and thus the right to import the products. In addition, the measure was not introduced based on D's own decision but only as a result of the implementation of the EC Regulation.

Are D's measures in compliance with EC law?

²S. LECHERER, HELMUT/GUNDEL, JÖRG, Übungen im Europarecht. Berlin, 1999, B II 14, p. 101 (in German).