## THE SUBSTANTIVE LAW OF THE EU

## THE FOUR FREEDOMS

Third Edition

**CATHERINE BARNARD** 

## **CONTENTS**

P	reface	xii
T	able of Legislation	/X
T	able of Cases	xxxv
Te	able of Equivalences	xci
A	bbreviations	ci
Li	ist of Tables and Figures	CV
	PART I INTRODUCTION	
1	INTRODUCTION TO THE ISSUES	3
	A. Introduction	3
	B. The Importance of Free Trade	3
	C. The Different Stages of Integration	8
	D. Understanding the Integration Process	14
	E. The Principles Underpinning the Common Market	17
	F. Conclusions	29
	PART II FREE MOVEMENT OF GOODS	
2	INTRODUCTION TO THE FREE MOVEMENT OF GOODS	33
	A. Introduction	33
	B. The Scope of the Provisions on Goods	33
	C. The Internal Dimension: The Rules on Free Movement of Goods	36
	D. The External Dimension	37
	E. Conclusions	41
3	FISCAL MEASURES: CUSTOMS DUTIES AND INTERNAL TAXATION	42
	A. Introduction	42
	B. Article 30: Customs Duties and Charges Having Equivalent Effect	42
	C. Article 110: Internal Taxation	51
		- 1

viii CONTENTS

	D. The Boundary Between Article 110 and Other Treaty Provisions	66
	E. Conclusions	69
	NOVERSON AND ASSISTED OUT AND DESCRIPTIONS AND	
4	NON-FISCAL MEASURES: QUANTITATIVE RESTRICTIONS AND MEASURES HAVING EQUIVALENT EFFECT	70
	A. Introduction	70
	B. Quantitative Restrictions	71
	C. Measures Having Equivalent Effect	72
	D. Distinctly Applicable Measures	80
	E. Indistinctly Applicable Measures	90
	F. The Market Access Approach	103
	G. Litigation Avoidance: Directive 98/34 on the Provision of Information in the Field of Technical Standards and Regulations	ı 108
	H. Conclusions	116
5	ARTICLE 34 AND CERTAIN SELLING ARRANGEMENTS	117
	A. Introduction	117
	B. Market Circumstances Rules and Article 34	117
	C. The Decision in <i>Keck</i>	123
	D. Problem Situations	130
	E. Unfair Commercial Practices Directive 2005/29	145
	F. Conclusions	148
6	DEROGATIONS AND JUSTIFICATIONS	149
	A. Introduction	149
	B. The Article 36 Derogations	149
	C. The 'Mandatory' Requirements	165
	D. Proportionality	171
	E. Fundamental Human Rights	188
	F. Harmonization and Trust	189
	G. The Mutual Recognition Regulation 764/2008	190
	H. Conclusions	192
7	THE COMMON COMMERCIAL POLICY	193
	A. Introduction	193
	B. Tariff Barriers to External Trade: The CCT	194

CONTENTS	ix

	C. Non-Tariff Barriers to External Trade	204
	D. Goods in Free Circulation	212
	E. The Bananas Dispute	214
	F. Conclusions	219
	PART III FREE MOVEMENT OF PERSONS AND SE	RVICES
8	INTRODUCTION TO THE FREE MOVEMENT OF PERSONS	223
	A. Introduction	223
	B. The Scope of Application of the Treaty Provisions on the Free Movement of Persons	226
	C. The Scope of the Treaty Prohibition	235
	D. Conclusions	262
9	FREE MOVEMENT OF WORKERS	264
	A. Introduction	264
	B. The Definition of A 'Worker'	266
	C. The Rights Conferred on Workers	269
	D. Conclusions	294
10	FREEDOM OF ESTABLISHMENT	295
	A. Introduction	295
	B. The Scope of the Provisions on Freedom of Establishment	295
	C. The Rights Conferred on Natural Persons: The Self-Employed	297
	D. The Rights Conferred on Legal Persons: Companies	319
	E. The Services Directive	348
	F. Conclusions	354
11		356
	A. Introduction	356
	B. Who can Rely on Articles 56 and 57?	357
	C. The Rights Conferred on Service Providers and Receivers	370
	D. The Services Directive	403
	E. Conclusions	416

X CONTENTS

12	UNION CITIZENSHIP	417
	A. Introduction	417
	B. Citizenship of the Union	418
	C. Rights and Duties	419
	D. Membership	461
	E. Participation	465
	F. Conclusions	477
13	DEROGATIONS, LIMITATIONS, CONDITIONS,	
	AND JUSTIFICATIONS	479
	A. Introduction	479
	B. Public Policy, Public Security, and Public Health	480
	C. Public Service Exception	500
	D. Other Limitations and Conditions	504
	E. Justifications	510
	F. Proportionality	516
	G. Conclusions	518
14	THIRD-COUNTRY NATIONALS AND THE EU	519
	A. Introduction	519
	B. The Development of an Area of Freedom, Security, and Justice	520
	C. Union Legislation on Free Movement, Residence, Employment, and Family Rights for TCNS	535
	D. The Rights of Turkish Workers and their Families in the EU	548
	E. Conclusions	555
	PART IV FREE MOVEMENT OF CAPITAL	
15	FREE MOVEMENT OF CAPITAL AND ECONOMIC	559
	AND MONETARY UNION A. Introduction	559
		559
	B. Free Movement of Capital	592
	C. Economic and Monetary Union	
	D. Conclusions	600

CONTENTS xi

## PART V COMPLETING THE SINGLE MARKET

16	REGULATING THE INTERNAL MARKET	603
	A. Introduction	603
	B. The Power to Harmonize: Article 114 TFEU	603
	C. Different Approaches to Harmonization	624
	D. Completing the Internal Market: Beyond 1992	647
	E. Conclusions	656
Ind	dex	657