

European Union Law

Thursday 25 July 2024

13.00 – 17.00

(four hours)

Please read the following instructions carefully

The examination is of four hours' duration. Candidates are required to answer **FOUR** questions. **ONE** question must be answered from **Section A** and **ONE** question from **Section B**.

The **third** and **fourth** questions can be answered from anywhere in the paper. All four questions are of equal value. Answers must be fully reasoned and supported by authority where appropriate. Candidates need to take care to **read the questions carefully and to answer what is asked**.

Candidates MUST answer at least ONE question from this section.

Section A

Question 1

Critically evaluate the concept and implications of retained EU law in the UK post-Brexit. Discuss the processes for amending or repealing retained EU law and the potential long-term effects on legal certainty and regulatory divergence between the UK and the EU.

Question 2

"The Charter of Fundamental Rights of the European Union has the same legal value as the Treaties."

Discuss the significance of this statement from the CJEU decision in Case C-399/11, Melloni, in relation to the scope and application of the EU Charter of Fundamental Rights and evaluate the impact of the Charter on the protection of fundamental rights within the EU.

Question 3

"The ordinary legislative procedure in the European Union is a mechanism which has been designed to ensure the representation of diverse interests and the maintenance of a balance of power among EU institutions."

- a) How are the principles of subsidiarity and proportionality applied and safeguarded throughout this procedure?

and

- b) Can the ordinary legislative procedure be reformed to enhance democratic legitimacy and better reflect the interests of EU citizens?
- c)

Question 4

Directive 2018/ABC was adopted by the European Union to harmonise employment rights across Member States, with a transposition deadline of 1 January 2021. Member State C has failed to implement the Directive. Sarah, an employee in Member State C, wishes to rely on specific provisions of the Directive to claim enhanced maternity leave benefits as stipulated by the Directive. Under the existing national law of Member State C, maternity leave benefits are significantly less favourable.

Her employer argues that under the law of Member State C, the existing maternity leave benefits are compliant, and that Sarah cannot rely on the Directive because it has not been transposed. Additionally, the claim of Sarah is complicated by a recent national court ruling that

restricts the direct invocation of unimplemented directives in Member State C. Furthermore, the employment contract of Sarah includes a clause that refers disputes to arbitration under rules that do not recognise unimplemented EU directives.

Assume Member State C transposed the Directive, but with significant errors, resulting in less favourable maternity leave benefits than those mandated by the Directive. Emma, another employee in Member State C, suffered financial and health issues due to inadequate maternity leave benefits that would have been prevented with proper implementation of the Directive. She seeks compensation from the state for its failure to correctly implement the Directive. The case of Emma is further complicated by a recent ruling from the national supreme court upholding the validity of the incorrect transposition, citing legislative discretion.

Discuss the position of Sarah and Emma under EU law.

END OF SECTION A

Candidates MUST answer at least ONE question from this section.

Question 5

Maria, a Spanish national, moved to France to work as an IT specialist. After working for three years, she loses her job due to company downsizing and starts receiving social assistance. The French authorities decide to deport her, claiming that she has become an unreasonable burden on the social assistance system.

During her employment, Maria contributed to the French social security system and paid taxes. She is actively seeking new employment and has registered with the French employment agency. Furthermore, Maria has integrated into the local community, participating in various local cultural and volunteer activities and has enrolled in a French language course to improve her proficiency.

Complicating the situation further, a recent change in French legislation has introduced stricter criteria for assessing whether an EU citizen can be considered an unreasonable burden on the social assistance system, explicitly targeting those who have been unemployed for more than six months. The French authorities also argue that Maria's field of work is not experiencing significant demand, thus questioning her likelihood of finding new employment soon.

Maria has a French partner, Claude, with whom she has been living for two years in a stable, committed relationship. They share a rented apartment, have joint bank accounts, and Claude has provided financial and emotional support during her period of unemployment. Claude has also recently been diagnosed with a chronic illness requiring ongoing care and support, which Maria is heavily involved in providing.

Assess whether the decision to deport Maria is compatible with EU law

Question 6

Company B, which is based in Germany, manufactures and exports electric scooters to various EU Member States. France imposes a law requiring all electric scooters sold in its territory to undergo a specific safety certification process that is different from the EU-wide standards. Company B claims that this law is a barrier to the free movement of goods. France argues that the law is necessary due to unique geographical and environmental conditions in France that require higher safety standards for electric scooters.

Company B also faces a requirement from Italy mandating additional labelling in Italian on all imported electric scooters, citing consumer protection reasons. Italy argues that the additional labelling is necessary due to a high incidence of accidents involving electric scooters, attributed to users not understanding the operational and safety instructions provided in other languages. Italy also contends that the measure is essential for protecting vulnerable consumers, including elderly and non-native speakers who primarily understand Italian. Company B contends that the additional labelling requirement significantly increases production costs and delays market entry, something that has a detrimental effect in its competitive position.

Analyse whether the French law and the Italian labelling requirement are compatible with EU law.

Question 7

Maria, an employee at a private tech company in Member State X, has been denied a promotion to a managerial position despite having superior qualifications and experience compared to her male colleague, John, who was promoted instead. Maria believes she has been discriminated against on the grounds of her gender. During the promotion process, the performance reviews of Maria were consistently higher than those of John, and she had completed several successful projects that exceeded the company's targets. Additionally, an internal email leak revealed that senior management discussed the need for "a more assertive male presence" in managerial roles.

It is also revealed that the employer of Maria has a policy of offering part-time positions predominantly to women and full-time positions predominantly to men, arguing that this practice is based on the different preferences of male and female employees. The recruitment and promotion processes of the company involve discretionary decisions by senior management, who have been found to have a pattern of favouring male candidates. Further investigation shows that female employees, including Maria, receive lower performance bonuses compared to their male counterparts, despite comparable performance evaluations.

Discuss whether Maria has a valid claim under EU law and consider the potential remedies available to her if the claim is upheld.

Question 8

Company A, a leading manufacturer of smartphones in the European Union, has entered into exclusive supply agreements with key component manufacturers, preventing them from supplying components to Company A's competitors. Additionally, Company A has been offering significant rebates to retailers who agree to stock only its smartphones, effectively excluding competitors from the market.

Company A has recently acquired a controlling interest in Company B, a major software provider, which supplies essential operating systems for smartphones. This acquisition potentially enables Company A to integrate its software with its smartphones in a manner that could disadvantage competitors who rely on the software of Company B. There have been reports that Company A has been using its position to influence industry standards in ways that favour its products.

Assume that the European Commission initiates an investigation to assess whether the conduct of Company A is in violation of EU competition law. In its defence Company A argues that its exclusive supply agreements and rebate practices are justified by the need to ensure high-quality standards and innovation in its products. Company A also claims that its acquisition of Company B is aimed at enhancing integration and efficiency in the production of smartphones and software, something that ultimately benefits consumers.

Discuss:

- a) Whether the conduct of Company A breaches EU law.

and

- b) Evaluate the validity of the arguments of Company A and how the European Commission might address them in determining the appropriate remedies and sanctions.

END OF SECTION B

END OF PAPER