



International tax policy

Tashkent state university of economics

Lecture 10



Direct effect, applicability and supremacy of non-discrimination and fundamental freedoms

- ⊙ Principle of direct effect: European citizens may rely directly on rules of EU law before their national courts (Van Gend & Loos C-26/62)
- ⊙ Principle of direct applicability: If a national rule violates EU law, MS is prohibited to apply it
- ⊙ Principle of supremacy: EU law overrides conflicting national law. The application of EU law must be ensured by national courts and administration

Sovereignty of MS in the field of direct taxation vs. negative integration

- ◎ MS have sovereignty in direct taxation but only conditional:
 - Conditional to positive integration (i.e. directives)
 - Conditional to the respecting the TFEU (i.e. non-discrimination and fundamental freedoms)

Sovereignty of MS in the field of direct taxation vs. negative integration

- ◎ Egon Schempp C-403/03, para 19 (and cited case law)
 - While in the present state of Community law direct taxation falls within the competence of the MS....
 - they must none the less exercise that competence in accordance with Community law ...
 - protecting the right of every citizen of the Union to move and reside freely within the territory of the Member States, and therefore avoid any overt or covert discrimination on basis of nationality

Sovereignty of MS in the field of direct taxation vs. negative integration

- ◎ D C-376/03, para 52 (and cited case law):
 - Member States are at liberty in the framework of double tax conventions to determine the connecting factors for the purposes of allocating powers of taxation
 - The Court has also accepted that differential treatment that results from that allocation cannot constitute discrimination contrary to the fundamental freedoms

Court of Justice of the European Union (CJEU)

- ◎ Supreme guardian of legality within the EU
- ◎ Ensures that the law is observed in the interpretation and application of EU law (rule of law)
- ◎ 11 advocate-generals (AG) submit “opinions”
 - Not binding upon the CJEU
- ◎ Preliminary rulings submitted by national courts concern interpretation of EU law

Court of Justice of the European Union (CJEU)

- ◎ Highest national court shall bring a matter before the CJEU, if doubts arise concerning the interpretation of EU law
 - To ensure the effective and uniform application of European Union legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of EU law, so that they may ascertain, for example, whether their national legislation complies with that law.
- It is thus through references for preliminary rulings that any European citizen can seek

Court of Justice of the European Union (CJEU)

- ◎ *Acte éclairé* (correct application of EU law is obvious) and *acte clair* (CJEU has already interpreted) doctrines
 - highest national court shall refer only unclear cases to the CJEU
- ◎ Finland: highest court = Supreme Administrative Court (KHO)

European Commission

◎ The Commission's role

- It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union

◎ If the Commission suspects a violation of EU law, the Commission can launch formal infringement procedure

- Non- or wrong-implementation of a directive
- Breach of fundamental freedoms of TFEU

European Commission

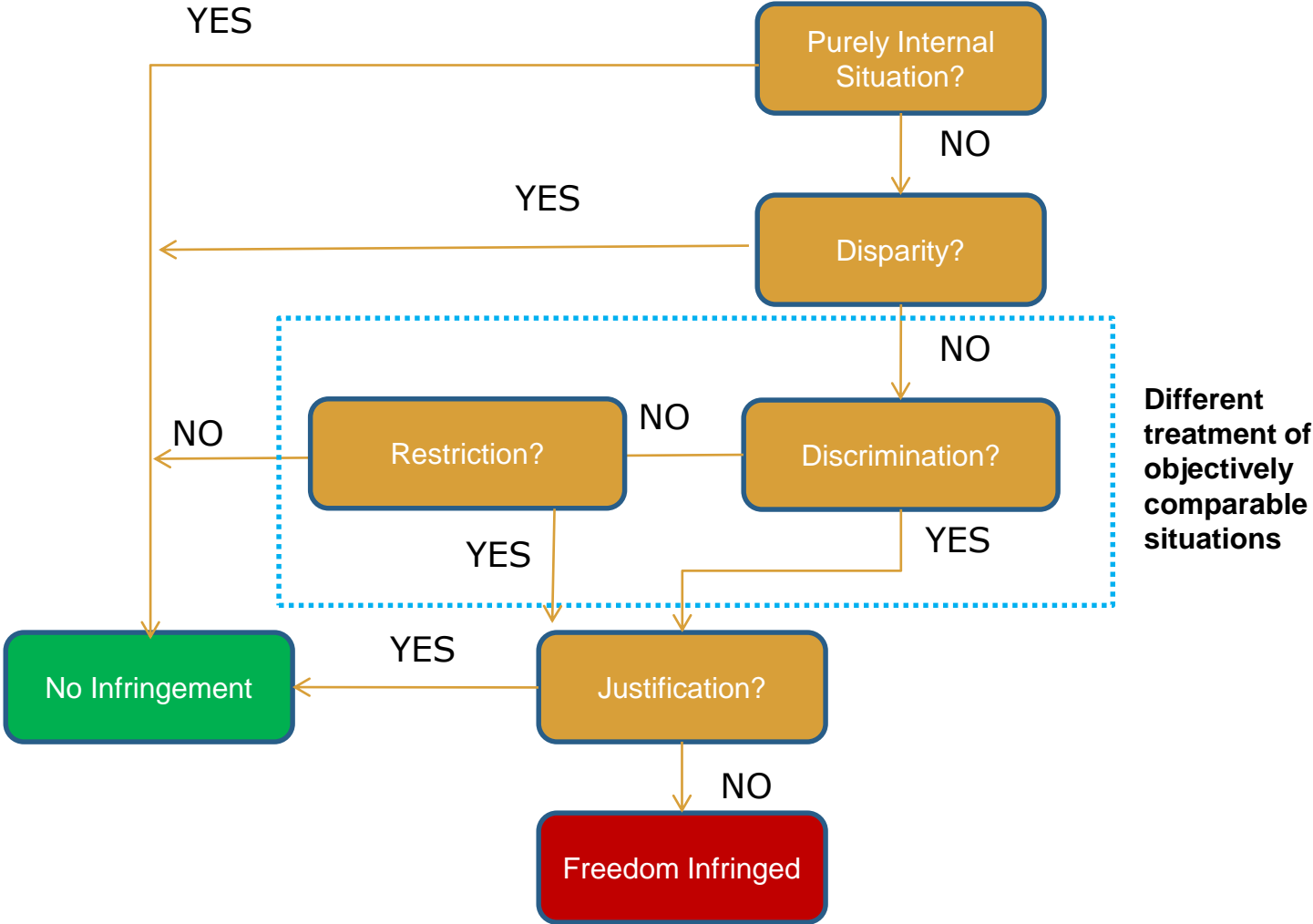
- ◎ "Early settlement" procedure
- ◎ Formal procedure
 - 1. letter of formal notice
 - 2. reasoned opinion
 - 3. referral to CJEU
- ◎ Principle of sincere co-operation
 - The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union

European Commission

© Finland has been subject to many infringement procedures e.g.

- Car taxation
- Discriminatory taxation of dividends paid to foreign pension funds
- Unfavourable income tax treatment of non-resident workers
- Exit taxation for individuals/companies

CJEU's approach



Access to EU law

- ◎ A link with another Member State needed = cross-border situation
 - No link: purely internal situation → no access to EU law
- ◎ Link
 - Economic activity in/to another MS
 - Personal status (e.g. resident of another MS)