



## Summer exam 2020

### Re-exam

Take-home written exam: 460141E035 – International Business Law

Duration: 3 hours

Aids: All aids allowed

Technical problems: As a rule, assignments that have not been uploaded to WISEflow in the right file format (PDF – max. 200 MB) before the deadline will be rejected. If you experience technical difficulties during the exam or your uploading, you should immediately contact **BSS IT-support on phone 8715 0933**.

Contact person (academic staff): Graham butler – [gb@law.au.dk](mailto:gb@law.au.dk)

In case of errors or the like in the examination paper, contact Graham Butler by e-mail during the first hour of the exam. After the first hour, Graham Butler will upload an overall reply to all relevant inquiries on Blackboard.

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**International Business Law**

Spring 2020

Re-exam Paper – August 2020

**Type**

- 3-hour exam.
- Take-home written exam with upload of the exam paper in WISEflow, use of the internet allowed during the exam, own PC required.
- Please read full university policy on the examination format.

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**Note**

- All students should read the exam guidelines and instructions carefully, and read the entire exam paper before writing their answers.
- Students must cite their sources throughout their answer paper appropriately and accurately.
- Students should include a full bibliography of academic literature, case law (where relevant), and all sources used as a reference in their answer paper.
- As far as practicable, students must be able to cite English-language literature in EU law. Only exceptionally should literature in other languages be referred to.
- Students may use a footnote/reference manager (eg. EndNote, Mendeley, Zotero, etc.) to assist them in keeping track of their references.
- Students may use any citation method they use, as long as it is used consistently, and it is clear and unambiguous.
- Students should make sure that they are answering their chosen questions as articulately as they can.



## Format

- There will be five questions in total on the examination paper.
- Of those five questions posed, students must answer a total of **three questions**. They must select their questions in the following way:
  - o Students must answer the single question from **Section A** (Question 1).
  - o Students must answer one question from **Section B** (Question 2 or 3).
  - o Students must answer one question from **Section C** (Question 4 or 5).
- In their answer paper, students should make clear which questions they are answering.

## Technicalities

- The answer paper should have page numbers.
- The answer paper should be completed with the main text in the Times New Roman font, size 12, spaced 1.15, and justified.
- The same applies for the footnotes, except for the font size, which should be 10.



## Exam Paper



*Vestas* is a company domiciled in Aarhus, Denmark, and is a global leader in wind and renewable energy. It makes wind turbines as of various kinds; and services them after installation. In 2019, it celebrated the fortieth anniversary of installing its first wind turbine. Since 1979, the company has gone from strength-to-strength. The company, as

itself, subsidiaries, and joint ventures (the '*Vestas Group*') specialised in three specific areas – onshore wind; offshore wind; and service/maintenance.

*Vestas* engages in the manufacturing, transport, installation, and services related to wind and renewable energy. Therefore, *Vestas* is involved in the 'goods' business, as well as being in the 'services' business. Its main competitors are Siemens Gamesa (Spain/Germany), Goldwind (China), and General Electric (United States of America).



As a European company that is domiciled in the EU, *Vestas* has extensive trade with purchasers in many other EU Member States. For onshore wind turbines that *Vestas* manufactures, Sweden is the destination of many of its goods; followed by France, Spain, Germany, and Italy as the next largest marketplaces. As regards offshore wind energy projects, it has manufactured and installed wind turbines in Aarhus, Esbjerg, Nakskov, and Lindø in Denmark; Vlissingen in the Netherlands; and in Hamburg, Germany.



The supply chain for the wind turbines that *Vestas* manufactures comes from many different places. In Europe, *Vestas* has its own factories in Denmark, Germany, and Spain; that collectively make blades, generators, converters, and towers, which are then assembled.

Across the EU, targets for carbon emission reductions will lead to a greater need for wind and renewable energy. Furthermore, the global marketplace for wind and renewable energy is facing ever-stronger demand and the volume of annual installed onshore wind power capacity is expected to continue to increase all across the EU.





## Questions

### ***Section A***

#### Question 1

The manufacturing of wind turbines has evolved immensely over the past 40 years in which *Vestas* has been manufacturing such goods. Renewable energy now contributes to a significant portion of energy consumption across the EU. Member States are increasingly turning away from the use of non-renewable forms of energy, and turning to renewable forms, for which *Vestas* has been central to providing such goods to meet that demand.

As already pointed to, *Vestas* has its own factories in Denmark, Germany, and Spain. The raw materials needed to make wind turbines include blades, generators, converters, and towers. These raw materials ultimately cross borders of EU Member States to be then assembled, and then across more borders of EU Member States for the final products to reach their sellers.

For international business when operating within the EU internal market, companies like *Vestas* are not, per se, to be restricted from selling their goods on their import from one EU Member State to another. Companies like *Vestas* rely on the free movement of goods, as prescribed in the EU Treaties, to be able to do commerce with customers in other EU Member States.

Given your knowledge of the free movement of goods; from a legal perspective, detail the legal regime governing the free movement of goods in the EU, and how *Vestas* benefits from this aspect of the EU internal market, in particular, the free movement of goods provisions contained in Articles 34, 35, and 36 TFEU. In your answer, make sure you utilise the applicable case law of the Court of Justice of the European Union, and any supporting academic literature.



## **Section B**

### Question 2

*Vestas* has a large workforce that works in both its onshore and offshore wind energy sides of the business, including in its servicing sector. Cumulatively, it employs more than 25,000 people. *Vestas* wishes to continue to be a world-leading company in the renewable energy sector. Accordingly, it must constantly innovate, and have the right mix of people working at the company.

*Vestas* wants to ensure that as an organisation, it has the best possible people working for it. Its Research and Development (R&D) departments are constantly undergoing change to ensure the company can maintain its competitive edge. To facilitate this recruitment, the EU internal market makes this easy to achieve, given that, according to EU law, workers from other EU Member States can take up offers of employment with *Vestas* in any one of its locations within the EU.

Given your knowledge of the legal aspects of EU internal market law, detail and analyse the law concerning the free movement of workers in the EU, and how *Vestas* might utilise this for its recruitment strategy. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws, the relevant case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.

### Question 3

In terms of business operations, *Vestas* has a bigger market share in its onshore wind energy division when compared to its market share in its offshore wind energy division. Its strength in onshore wind has allowed it to built-up its offshore wind energy division, but it is subject to intense competition from other companies.

*Vestas* has decided to expand its offshore wind energy division by opening up a new Research and Development (R&D) department in an EU Member State that it is not already domiciled – Portugal. Given that Member State's proximity of the Atlantic Ocean, the management team at *Vestas* believes it will be a prime location in order to trial its 'new era' offshore wind turbines. It is anticipated that in 5-10 years' time, such a new R&D department will have new product(s) that *Vestas* will be able to sell to customers in EU Member States with extensive coastlines.

*Vestas* are therefore expanding into Portugal. The freedom of establishment of legal persons (companies) in EU law allows the likes of *Vestas* to establish themselves in other EU Member States as part of the internal market. Detail, analyse, and discuss the legal aspects of this freedom. Specifically, in your answer, make reference to the applicable provisions of the EU Treaties, the arising case law of the Court of Justice of the European Union, and academic literature.



## Section C

### Question 4

*Vestas* is primarily a manufacturer of wind turbines for both onshore and offshore use. However, as noted above, also has a services division for its customers. When wind turbines are installed, just like any piece of energy infrastructure, they also need constant maintenance. Therefore, *Vestas* is not just a manufacturer of goods, but also the provider of services to its customers across the EU internal market.

— This strategy of being both a goods manufacturer and services provider is deliberate. Instead of just extracting the sale from customers in many EU Member States; *Vestas* also services such wind turbines as it provides a consistent and reliable form of recurring revenue for the company.

In light of your knowledge of the freedom to provide services in the EU, explain the applicable services aspects of the EU Treaties, taking into account the case law of the Court of Justice of the European Union, and relevant academic literature concerning the freedom to provide services for companies like *Vestas* in the EU internal market.

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### Question 5

*Vestas* needs raw materials in order to make the various components that are needed to manufacture both onshore and offshore wind turbines. *Vestas* purchases the needed raw materials that it needs from companies in other EU Member States. Similarly, when *Vestas* sells the final goods that it has manufactured, it then sells them to companies in other EU Member States. These two types of transfers entail the movement of capital between companies within the EU internal market. EU internal market law makes it possible for companies like *Vestas* to engage in extensive cross-border payments and capital movements, with relative ease.

— Given your knowledge of the legal aspects of EU internal market law, detail and analyse the law concerning the free movement of capital in the EU. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws, the relevant case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.