



SCHOOL OF BUSINESS AND SOCIAL SCIENCES  
AARHUS UNIVERSITET

**Summer exam 2021**

**Ordinary exam**

**Written exam (take-home):** 460141E035 – International Business Law (HA/BSc)

**Exam day:** Friday 28 May 2021

**Duration:** 3 hours

**Aid:** All

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**All examination results will be announced on Stads Self Service no later than Friday 25 June 2021.**

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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.

Technical problems: Contact BSS IT, phone: 87150933 or e-mail: [bss.it@au.dk](mailto:bss.it@au.dk)

## **International Business Law**

Spring 2021

Exam Paper – May 2021

### **Type**

- 3-hour exam.
- On-site\* 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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\* Given the ongoing COVID-19 pandemic, the exam for the Spring 2021 semester will be online.

### **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. Only exceptionally should literature in other languages be referred to.
- The slides used by the lecturer should not be cited. Instead, primary material should be referred to (e.g., the book).
- Students may use a footnote/reference manager (e.g. 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 (Recommendations: OSCOLA, Chicago 17th).
- Students should make sure that they are answering their chosen questions as articulately as they can.
- Answer papers are anonymised, and graded by both an external examiner and an internal examiner.




## 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.



 **Nilfisk**<sup>®</sup> Nilfisk (officially, *Nilfisk Holding A/S*) is a company domiciled in Brøndby, Denmark, and classifies itself as a global leader in the professional cleaning equipment industry. It serves numerous goods markets, including the manufacture of industrial cleaning equipment, commercial cleaning equipment, and consumer cleaning equipment. Put another way, it makes goods for a wide range of industries, from large multinational contract cleaners, facility management contractors, international hotel and retail chains, to smaller businesses, and individual households.

— Globally, *Nilfisk* is an established global supplier of cleaning equipment, and through a combination of direct and indirect sales, it sells its goods in approximately 100 countries. 48% of *Nilfisk*'s revenue comes from sales in the EMEA region (Europe, Middle East, and Africa), which includes the EU's internal market, and the sales it executes in numerous Member States. *Nilfisk* has four EU Member States in particular where it has extensive sales, including Germany, France, Denmark, and Sweden.



— Despite being a company domiciled in Denmark, *Nilfisk* does not actually manufacture any of its goods in Denmark. Rather, it has assembly and production facilities around the world, including in two EU Member States, in Hungary and Italy. Therefore, as a matter of law, Nilfisk does not manufacture 'Danish goods' *per se*, but rather, has some of its goods manufactured in the European Union, that subsequently make use of free movement, which are subsequently sold in other EU Member States.



In addition to not having its goods manufactured in Denmark, *Nilfisk* no longer even distributes such goods from Denmark either. Rather, for its commercial operations in the EU, *Nilfisk* has recently redesigned its distribution network, and opened up new distribution centres in Belgium, Spain, and Sweden, serving its customers in different geographical areas of the EU's internal market. *Nilfisk* closed its in-house distribution facilities in Denmark in 2020.

— Globally, *Nilfisk* employs over 4,300 people, many of whom work in the company and its subsidiaries in different EU Member States. These workers are divided across different divisions of the company, including operations, sales, and support. *Nilfisk* takes particular pride in having a competent and diverse pool of expertise in its workforce. In the future, as the company seeks to expand, further research and development (R&D) activities will be needed to create the goods of the future, and improve the quality of the goods it offers.



Looking to the future, *Nilfisk* is in the middle of executing its 'Next' strategy, whereby it is seeking to simplify its company structure and processes, drive profitability, and position the company as the leader in intelligent cleaning. Moreover, the COVID-19 pandemic has left its mark on the cleaning industry, which has led to an increase in focus on the type of goods that *Nilfisk* offers.



## Questions

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### Section A

#### Question 1

— *Nilfisk* manufactures some of its goods in other EU Member States like Hungary and Italy, and then has them moved to its distribution facilities in Belgium, Spain, and Sweden. Thereafter, it sells its goods in many EU Member States. Consequently, some of the goods that bear *Nilfisk*'s name may never enter Denmark.

The company is a true international business firm, given it designs, manufactures, distributes, and sells its goods across different Member States. Therefore, a company like *Nilfisk* takes enormous advantage of the market freedoms that EU law affords it, in particular, the free movement of goods, as set out in the EU Treaties. Without the EU internal market, a company like *Nilfisk* would have a completely different business model.

— Given your knowledge of the free movement of goods – taking account of the rules concerning both fiscal measures and non-fiscal measures – from a legal perspective, explain the legal regime governing the free movement of goods in the EU. In particular, set out how a company domiciled in Denmark, such as *Nilfisk*, benefits from this market freedom. In your answer, make sure you utilise the relevant provisions of the EU Treaties on both fiscal measures and non-fiscal measures, the applicable case law of the Court of Justice of the European Union, and any supporting academic literature to support your answer.

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## **Section B**

### Question 2

*Nilfisk* sells its goods in numerous EU Member States. In particular, it has an extensive array of clients in France and Germany, two of its larger markets. Whilst its client base in these Member States is stable, with the company having a sizeable market share, the potential for further growth in these two Member States is limited. Therefore, *Nilfisk* has identified some other Member States where it can sell its goods to achieve sales growth.

At present, *Nilfisk* does not have extensive sales in a number of Member States, including, for example, Austria, Croatia, Greece, and Portugal. *Nilfisk*'s sales department has undertaken new market research, and identified these Member States where the company could begin to increase its sale. To do so, *Nilfisk* is considering setting up new subsidiaries in those Member States. Such a move would entail the company setting up four new secondary establishments, from its primary establishment in Denmark.

Drawing upon your knowledge of the freedom of establishment – which allows companies to establish themselves in other EU Member States within the EU's internal market – detail, analyse, and discuss the legal aspects of this freedom, with a particular focus on secondary establishment. 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.

### Question 3

*Nilfisk* has some of its production facilities in two other EU Member States – Hungary and Italy. For the materials that it needs to manufacture its goods, it has to source some of these raw materials from other EU Member States. Therefore, *Nilfisk*'s subsidiaries engage in cross-border transactions, namely, cross-border payments.

Furthermore, later in the product cycle, once *Nilfisk* has sold its goods in different EU Member States, and its revenue is collected by its subsidiaries, the company's headquarters in Denmark will likely be interested in repatriating its profits from its subsidiaries back to its primary establishment, so that it can disperse dividends to its shareholders. Thus, *Nilfisk* engages in cross-border capital movements. EU internal market law therefore makes it possible for companies like *Nilfisk* to engage in extensive cross-border payments and capital movements, with relative ease, and unhindered by national rules that might seek to hinder its cross-border capital activities.

Given your knowledge of the legal aspects of the free movement of capital, detail and analyse the legal regime governing this freedom. In your answer paper, make sure you refer to the applicable provisions of the EU Treaties, any other EU laws such as secondary law, the relevant case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.



## Section C

### Question 4

Whilst *Nilfisk* is a manufacturer of goods which it distributes and sells in the EU's internal market, it is considering offering services to new clients, namely, in the form of offering cleaning services, instead of just selling them goods. Therefore, *Nilfisk* is considering expanding its array of offerings by offering, in particular, industrial cleaning services.

Given the consideration that *Nilfisk* is going to diversify its business interests away from just selling goods, this will entail the company needing new knowledge of how the law of the EU's internal market works, given that the applicable law concerning service provision is quite different from that which concerns the manufacturing, distributing, and selling of goods.

With your knowledge of EU internal market law, detail and analyse the legal regime governing the free movement of services in the EU, with a particular emphasis on the provision of services, paying particular attention to the relevant provisions of the EU Treaties, relevant case law of the Court of Justice of the European Union, and related academic literature to support your answer.

### Question 5

*Nilfisk* has over 4,300 employees on its payroll, in a range of different positions. Given its pan-European focus to the sale of its goods, the company has a diverse workforce in its respective divisions, enabling it to serve its clients in different sectors and industries, across the EU's internal market, working with existing clients, whilst simultaneously trying to attract new clients.

In order to be able to do this successfully, *Nilfisk* has to have a range of different talents at its operational headquarters in Denmark. Thus, it wishes to employ people with particular forms of expertise, and people with detailed knowledge of different marketplaces in the EU. Ideally, *Nilfisk's* human resources (HR) department is keenly aware that in order to grow, the company has to have optimal talent in its workforce.

Given your knowledge of the legal aspects of EU internal market, discuss how companies like *Nilfisk* have benefited from the existence and operation of the free movement of workers. In your answer, make sure you reference the applicable provisions from the EU Treaties concerning the free movement of workers, as well as any case law of the Court of Justice of the European Union, and relevant academic literature to support your answer.