**Delft University of Technology**

Faculty of Technology, Policy and Management

Course manager: Nienke Saanen

**Course**: SPM4423

**Date**: 10 April 2013, 9.00 – 12.00 a.m.

**Location**: TN-TZ 4.25

The exam consists of:

A. 3 open questions (3 pages)

B. 1 Annex (separate document)

You can receive a maximum of 100 points for this exam. Each question states the maximum amount of points you can receive. The grade for this exam is determined by dividing the amount of points awarded by 10.

The answers to the questions are not to be written on this exam, but on **separate paper**, and should be given in correct English. Be brief but complete, and write in clear characters. Answers that cannot be read due to sloppy writing are considered wrong. Make sure that your **name** and **student number** is on every piece of paper.

This is an open book exam. You may use the book *EU Law* (or another handbook), the Reader *spm4423, 2012-2013*, lecture slides and lecture notes. You may also use your dictionary.

Cell phones have to be switched off and out of sight during the exam.

Every suspicion of fraud will be notified to the Exam Commission.

The results will be available not later than 8 May 2013.

Good luck!

**Question 1**

Read the Annex and answer the questions below.

1. Describe, in your own words, the facts that gave rise to the dispute in case C-244/12.
2. The national court does not seem to have any (real) doubts about the outcome of the dispute. Why then does it still ask for a preliminary ruling?
3. Do works that change the infrastructure on an existing airport but do not extend a runway and do not lead to an extension of aircraft movements (at all) fall within the scope of Directive 85/337/EEC? Substantiate your answer.
4. Explain in your own words why the ECJ rules that the provision of Austrian law violates EU law. Refer to relevant paragraphs of the judgment.

**Question 2**

In Flanders, Belgium, there are certain municipalities that have a high rate of internal (persons already living in Belgium) and external (persons from other countries) migration. Those municipalities cannot house all those people. In order to prioritize, the Flemish government has adopted a Decree which holds certain requirements for the purchase or rent of a plot or a house within the borders of those municipalities. A purchaser or tenant has to have a sufficient tie with the municipality he or she wants to live in. That sufficient tie is present in the following three situations:

* A person has continuously been resident in this municipality for the past six years
* A person performs real economic activities for more than 20 hours a week on average in this municipality, either as a worker or as a self-employed person
* A person has, due to grave and long-standing circumstances, a professional, family, social or economic tie with the municipality

The Flemish government claims that the ratio of these criteria is for reasons of urban and spatial planning, maintaining the social en economic cohesion within the municipalities by requiring either social or economic ties with the municipality. That way, it is prevented that the plots and houses are bought by the persons that pay the highest price but do not have any link with the municipality, and also less wealthy persons can buy or rent a plot or house. However, the French speaking community in Flanders argues that these requirements are only meant to maintain a Dutch speaking majority in those municipalities.

1. Is this Flemish Decree in violation of EU law on free movement? Substantiate your answer.

Ms. Floor Zilverpeer, of Dutch nationality, works for the Legal Department of the European Commission. She wants to move to such a municipality to which the Decree is applicable. However, she does not fulfill the criteria, so the municipality decides that she does not have a sufficient tie with this municipality and cannot live there. A residence permit is refused. Ms. Zilverpeer thinks this Decree, on which the refusal of the residence permit is based, is a violation of EU law.

1. What legal steps can Ms. Zilverpeer, as an individual, take? Substantiate your answer by describing the steps.
2. What legal steps can Ms. Zilverpeer, as a member of the Legal Services of the Commission, take? Substantiate your answer by describing the steps.

**Question 3**

In Lithuania, there are still quite a few areas that are not connected to the digital highway. In those areas, households do not have the possibility to acquire a high speed broadband connection. Research shows that in the coming years, it is not likely that the market will fill this gap. The existing providers (cable network operators) are not willing to construct a new infrastructure or to upgrade their existing infrastructure. Because the Lithuanian government finds it very important that all households do have the possibility of high speed broadband, it decides to do something about that. It organizes an open and competitive tender procedure. Interested parties can submit a tender in order to win a subsidy. This subsidy has to be used for the construction of a glass fibre network in the areas that lack such an infrastructure. Authorization to build this network is attached to the subsidy, as well as authorization to exploit it.

The result of the tender procedure, in which several candidates participated, is that the subsidy will be granted to the company GiFi. In the decision, a description of not only the location of the network is put down, but also of the task of providing high speed broadband services to the households. The decision contains provisions on the minimum capacity of the network, the minimum coverage of areas (both were already in the documents used in the tender procedure) and the maximum tariffs that the households have to pay for the services provided. Because the government foresees that the service will not be profitable for at least the coming 15 years, the government and GiFi agree upon a yearly contribution (lump sum) of € 1.000.000 for the next 15 years.

1. Was the Lithuanian government obliged to put this decision up for tender? Substantiate your answer.
2. Is the contribution a state aid measure in the meaning of the TFEU? Substantiate your answer.
3. Under what conditions can the government grant the contribution?

For the actual construction of the glass fibre network, GiFi decides to close a contract with a specialized building company. In order to get the best for the lowest price, GiFi conducts a tender procedure. The value of the work is estimated at approximately € 6.300.000. The restricted procedure is used. The contract will be awarded on the basis of the lowest price. Seven parties showed their interest in the contract. Four of them were invited to submit a tender. DIG offered the lowest price, so the contract was awarded to DIG. GRR, a competitor that also submitted a tender, objected to this award and started legal proceedings. The main argument of GRR was that the tender procedure violated the EU-directives on public procurement.

1. What violation in the tender procedure is meant by GRR? Will the national court rule that GiFi violated its obligations under the procurement rules? Substantiate your answer.