**Delft University of Technology**

Faculty of Technology, Policy and Management

Course manager: Nienke Saanen

16 April 2012, 9.00 – 12.00 a.m.

The exam consists of:

A. 4 open questions (5 pages)

B. 5 Annexes (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*, the Reader *spm4423, 2011-2012*, 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.

The results will be available not later than 8 May 2012.

Good luck!

**Question 1**

In the beginning of 2009 Lord Pearson invited Dutch Member of Parliament Geert Wilders (foreman of the PVV, a right wing party) to attend the screening of his film ‘Fitna’ in the House of Lords. On 10 February 2009 Wilders received a letter from the British embassy in the Netherlands, stating that he would be refused to enter the United Kingdom. Wilders decided to go anyway and on 12 February 2009 he landed on Heathrow, London. There, he was stopped by the British Immigration Office. The decision to refuse Wilders to enter was based on an Act that provided for a legal basis for the refusal of terrorists and extremists and was taken for reasons of national security, public order and for the safety of UK citizens. Wilders was considered a hatemonger and the British authorities feared that the presence of Wilders and the purpose of his visit, the film ‘Fitna’, would lead to riots and violence.

1. Assess whether or not the refusal to grant Wilders leave to entry into the UK was in violation of the EU rules on free movement. ***[8 points]***
2. Is there a legal possibility for the Netherlands within the framework of EU law to fight this Decision? Use **Annex I**. If yes, elaborate on the procedure to follow. ***[4 points]***

Read **Annex II**.

1. Annex II holds an opinion of an Advocate-General. What is the role of an Advocate-General in proceedings before the European Court of Justice? ***[3 points]***
2. What are the facts of this case (C-364/10)? Use your own words. ***[6 points]***
3. Can Heads of State of EU Member States, according to the Advocate-General, invoke EU-rights for EU citizens, such as the free movement of persons? Substantiate your answer. Refer to the relevant paragraphs of the opinion. ***[6 points]***
4. Suppose the judgment of the Court of Justice in this case will be in line with the opinion of the Advocate-General. Will this new case law change your answer to question 1a)? Substantiate your answer. ***[5 points]***

**Question 2**

The former cabinet, Balkenende IV, set as a goal concerning climate change, that the emission of greenhouse gasses would be reduced in 2020 with 30% compared to 1990. In order to reach this goal, amongst others the emission of CO2 has to be drastically reduced. One of the promising methods to reduce this emission was Carbon Capture and Storage (CCS). However, this is a (fairly) new method for which a lot of societal suspicion exists. In 2008 the Dutch central government established a Taskforce CCS. This Taskforce was composed of several experts form the Ministries, the local authorities, environmental groups and companies. Its task was to speed up the introduction of CCS in the Netherlands. The central government was willing to financially contribute to two pilot projects for CCS. For each project a maximum of € 30.000.000 was available. In order to grant the subsidy to the best and most cost effective project, it set up an open competitive tender procedure. Candidates could submit a tender in which they described what kind of CCS project they could execute, what the proposed location would be, what technologies would be used, what environmental returns could be achieved etc. The criteria for selecting the candidates were objective and published in advance. The award criterion was the economically most advantageous offer.

Shell won one of the subsidies with its proposal to capture the CO2 emissions from the refinery in Pernis and store the CO2 in an empty gas field underneath Barendrecht. In order to be able to transport the CO2 to Barendrecht and to store it in the empty gas field, the CO2 needed to be compressed. The compressed CO2 had to be transported through a newly constructed pipe line. Then, the CO2 would be injected into the empty gas fields under high pressure. When the gas field was full, the access holes would be closed with CO2 resistant covers. The closed field would then be monitored with highly specialized equipment.

1. Was the government according to the EU public procurement rules obliged to put these subsidies up for tender? Substantiate your answer. ***[6 points]***
2. Does the subsidy to Shell constitute a state aid measure? Substantiate your answer. Use **Annex III**. ***[6 points]***
3. Suppose it constitutes a state aid measure, what has to be done before the government can lawfully grant the subsidy? ***[4 points]***

The project in Barendrecht was, at the end, cancelled because of a severe lack of public support. However, the government still wants to explore the opportunities of CCS. Suppose the government decides to keep the project within its ownership and control. In that case the government needs a company to lay the pipelines, to design the technology, to supply and manage the injection equipment etc. Therefore the government decides to organise an open competitive tendering procedure for the construction and management of a CCS facility (subcontracting is allowed). The selection criteria for the candidates are objective and published in advance. The contract will be awarded to the candidate that makes the economically most advantageous offer. Twelve candidates submit tenders. Shell wins the contract. The value of the contract is € 30.000.000.

1. Was the government according to the EU public procurement rules obliged to put this contract up for tender? Substantiate your answer. ***[6 points]***
2. Does the price paid to Shell constitute a state aid measure? Substantiate your answer. ***[6 points]***

**Question 3**

The municipality of De Wolden (Drenthe) wants to build a small sustainable residential area, Thule, to the north of Anholt, a hamlet (*buurtschap*) that falls under the competence of De Wolden (see **Annex IV** for the location). The purpose of this innovative project is to stimulate inhabitants to live in harmony with nature as much as possible and maintaining a high quality of life at the same time. Not only houses will be built, but also a nature sports facility and a nature playground will be constructed. The public primary school will have a large vegetable garden, which will not only provide fruit and vegetables for the school children but which will also be used for educational purposes. What is not used for school children, the school can sell provided the revenues are used for education. Also the inhabitants are requested to grow fruits and vegetables in their gardens and they will be educated in how to do that and which fruits and vegetables are most promising in the Dutch climate. For all constructions, sustainable materials will be used when available.

The Dwingelderveld, the nature reserve to the north of Anholt, is a Natura 2000-area. It is the habitat of several protected animal and plant species. A large part of the Dwingelderveld consists of different types of heathland (*heide*). This heathland is not particularly rare in the Netherlands, but it is rare for the whole of the EU. It attracts many species of butterflies, such as the protected Silver-Spotted Skipper. The Dwingelderveld, especially the south, is also the habitat of the protected sand lizard.

1. Is it likely that an environmental impact assessment has to be conducted? On what legal factors does this depend? Substantiate your answer. ***[6 points]***
2. The municipality decides to conduct a Habitat assessment for this project. Provide for a ‘quick scan’ of this assessment. Is there a good chance that development consent will be granted? ***[6 points]***
3. The school receives an extra subsidy from the municipality of € 500.000 a year for the coming 5 years for educational purposes. Does this subsidy constitutes state aid? Substantiate your answer. Use the theory on separation and the theory of conversion. ***[8 points]***

The roofs of the houses and building in Thule will be covered with reed. Since this project is a sustainable project, the municipality does not want the reed, and other building materials, to be transported over a long distance (e.g. China and Portugal are large reed producers). So it adopts a local ordinance which provides, in situations where ecological building materials are used, for an obligation to use ecological building materials that are produced within a distance of 150 kilometers of the building plot. Since also the Netherlands, Denmark and Germany produce reed, it is possible for the project developer to fulfill this requirement with regard to the reed for the roof coverage. But the Thule project developer wants to use Chinese reed. The quality is the same but the price is much lower, even when the transport costs are taken into account. The project developer wants to start proceedings in order to have the local ordinance annulled. His main plea will be that the local ordinance violates the EU rules on free movement.

1. What court does the project developer have to address? ***[3 points]***

**Question 4**

In the Netherlands, with its rich gas fields, it is still very common to cook on gas. But not only in kitchens appliances burning gaseous fuels (*gastoestellen*) are used. These appliances are also used for heating, hot water production, refrigerating etc., both in the private sphere and in industrial processes. Therefore the market for appliances burning gaseous fuels is a lucrative and a competitive one. However not all appliances score high on sustainability. In fact, there is environmentally a lot to gain, especially for the Netherlands, with a few extra requirements for the appliances. For instance, the ignition mechanism is often constructed with materials that are environmentally very damaging as waste. Nowadays, ignition mechanisms exist that are almost fully recyclable. For most appliances, the old ignition mechanism can easily be replaced by a new ignition mechanism. Therefore, the Netherlands want to introduce an obligation to equip the appliances with an ignition mechanism that is for at least 75% recyclable. However, Directive 2009/142/EC relating to appliances burning gaseous fuels (**Annex V**) regulates the product requirements for these appliances. This Directive sets certain standards for the ignition mechanisms of the appliances, but it does not (yet) provide for the obligation to use only ignition mechanism that are for the most part recyclable. But since the aim of the measure is to achieve a high level of protection of the environment, an aim which is fully supported by the EU, the Netherlands are quite positive that they can introduce the measure.

1. Is it likely that the Netherlands can introduce the measure? Substantiate your answer. ***[5 points]***
2. What would be the second best route to follow for the Netherlands in order to have this measure lawfully introduced? Substantiate your answer and be precise in the steps to take by what government or institution. ***[5 points]***
3. Suppose no secondary legislation existed, could the Netherlands then introduce the measure? Substantiate your answer. ***[7 points]***