A What does this course deal with?

Market integration in the EU
The EU Single Market Law

One of the main purposes of EU law is building a Europe-wide market (the Internal/Common/Single Market) embracing the nation-wide markets of all the Member States.

Internal market = Market integration

In this course, such a topic will be addressed from a legal perspective.

Market integration: An ongoing process

From the outset it is one of the main aims at the heart of the European integration project:

- Art. 2 Treaty of Rome 1957 (EEC): «It shall be the aim of the Community, by establishing a Common Market (...)»
- Art. 3.3 TEU (after Lisbon): «The Union shall establish an internal market. (...)»

But the goal is still far from being achieved... re-launching the single market

The single market is not “yesterday’s business” (it has still to develop its full potential)

Re-launching the single market does not merely imply to eliminate the remaining obstacles to free intra-EU movement

A stronger and better integrated market which fully plays its role as a platform on which to build European competitiveness (vis-à-vis non-EU countries)

In the Single Market Act (2011), the European Commission identifies twelve “levers” to boost growth and strengthen confidence.
Market integration: a goal to be progressively achieved

From different national markets (those of 28 EU Member States + third States participating in the European Economic Area) towards one single European market

The nature of EU market changes in the course of the history of the EU, but not the pursued aim to merge national markets into a single Europe-wide market, not simply to liberalise trade between EU countries.

The concept of “Internal Market”

The definition laid down in the Treaty and in the case-law

ECJ case-law

Case 15/81, Schul:
“...The concept of a common market (…) involves the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market...”

See also Case 270/80, Polydor
1985 Commission's White Paper

The objective of completing the internal market has 3 aspects:

1) The welding together of the markets of the MSs into one single market
2) Ensuring that this single market is also an expanding market – not stating but growing
3) To this end, ensuring that the market is flexible so that resources, both of people and materials, and of capital and investments, flow into the areas of greatest economic advantage

Art 26(2) TFEU

The internal market shall comprise
- "an area without internal frontiers
- "in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties"

What is a “market”?

The place where supply (of goods or services) meets with demand of them. Any place where the sellers of a particular good or service can meet with the buyers of that goods and service where there is a potential for a transaction to take place. The buyers must have something they can offer in exchange for there to be a potential transaction.
What should be ensured for EU being a single integrated market area?

Any market participant should be able to - Deploy his or her labour and capital - Sell or buy goods - Perform or receive services

Across the Union’s «internal» frontiers without being impeded by national rules maintaining or reintroducing frontiers by means of trade restrictions.

Market integration vs Legal pluralism

A single EU-wide market, but not a single law

Legal pluralism in the European Union

Market activities are regulated by

a) Various (and different) **national** rules

b) **EU** rules, i.e.

1) Basic principles of freedom set out by **primary** law → **negative** integration → incompatible national rules may not be applied

2) Uniform or harmonised **secondary** law → **positive** integration → market is regulated at central (EU) level

**Vertical** and **horizontal** conflicts of laws
I. **Vertical** conflicts of laws

EU rules vs national rules

2 different cases

1) national rules vs **uniform/harmonised EU rules** → the conflicting rules share the same nature (positive market regulation) → final outcome: re-regulation at EU level

2) national rules vs **EU free movement provisions** → the conflicting rules have a different nature (positive market regulation vs negative freedom) → final outcome: de-regulation

**Necessary premise (Direct Effect of EU Law)**

Vertical conflicts actually arise only if EU rules have direct effect → they may be relied on by private parties before national courts → they confer rights upon private parties

**How to solve vertical conflicts of laws?**

**Principle of Supremacy of EU law** → it prevails over any conflicting national provision → the latter cannot be applied by courts in the Member States

Direct effect and Supremacy are 2 fundamental constitutional principles in the EU legal system
**Horizontal conflicts of laws**

National vs national rules

Conflicts (of laws and jurisdictions) between

1) **Public law** rules (ex. dealing with product safety, access to a market activity)

2) **Private law** rules (ex. contract, tort, company law)

What is the impact of EU law on the issue as to how the conflicts above are solved?

a) Compatibility with EU law test

b) Uniform EU conflict rules

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a) Compatibility with EU law test

The case
Conflict between (public or private law) rules of two or more Member States
No regulation at EU level

How does EU law interfere with the solution of such a horizontal conflict?
National rules (i.e. those of the **Host Country**) must be compatible with EU free movement principles → if not, they cannot be applied

The "compatibility test" entails the law of another MS (**Home Country**) to be taken into account → Mutual Recognition → Indirect criterion for solving conflicts between national laws
b) Uniform EU private international law

Judicial cooperation in civil matters → Art 81 TFEU: power to legislate is conferred on EU legislature → rules on choice of laws and jurisdictions are enacted at EU level → they determine in a uniform way

1) Which court has jurisdiction
2) Which law applies
→ Uniformity → legal certainty → foreseeability

B) Course structure

What is this course aimed at?

You will be able:
a) to solve practical problems involving legal issues relating to the EU single market
b) to elaborate papers on the issues above, applying the proper theoretical and methodological approach acquired
Course organisation & Assessment methods

Interactive approach:
1) Introductory lectures on each topic
2) Case-study
3) Class participation
4) Papers on practical cases (to be written, working alone or in group, and discussed in class)
5) Final oral exam? Maybe not

Further reading
- European Commission, White Paper on Completing the Internal Market, COM(85) 310 final
- M. Monti, Report on A new strategy for the single market, 9 May 2010