







The completion and smooth functioning of the Internal Market

- 1) Any national measure impeding market participants, goods, services and capital from moving across the Union's internal frontiers should be dismantled
- 2) Free and effective competition within the market should not be distorted either by undertakings or by MSs
- 3) Common rules should be enacted to the extent that market regulation is needed

The Internal Market's regime (from a **broad** perspective)

- 1) Free movement provisions → prohibition on any restrictive national measure
- 2) Competition rules applicable to (a) undertakings → prohibition on cartels and anti-competitive agreements and on abuse of dominance and (b) Member States → prohibition on State aids
- 3) EU common policies (ex. agricultural and transport sectors) and EU rules ensuring the proper functioning of the internal market (approximation of MSs' laws)

The Internal Market's regime (from a **narrower** perspective)

Only rules aimed at ensuring intra-EU free movement of

- 1) Products → goods, services
- 2) Production factors → workers, capital
- 3) Market participants → self-employed persons, companies, consumers

Thus, bearing in mind Art 26(2) TFEU, the "internal" market can be defined as

a marketplace embracing the territory of the 28 Member States of the European Union in which

- > goods, services, persons and capital freely move
- > since Member States are prevented from hindering intra-EU free movement

EU Internal Market = intra-EU free movement

the fundamental freedoms set out by the Treaty on the Functioning of the European Union (TFEU)

- 1) Free movement of goods: Art 28 et seq.
- 2) Free movement of workers: Art 45 et seq.
- 3) Right of establishment: Art 49 et seq.
- 4) Freedom to provide services: Art 56 et seq.
- 5) Free movement of capital and payments: Art 63 et seq.

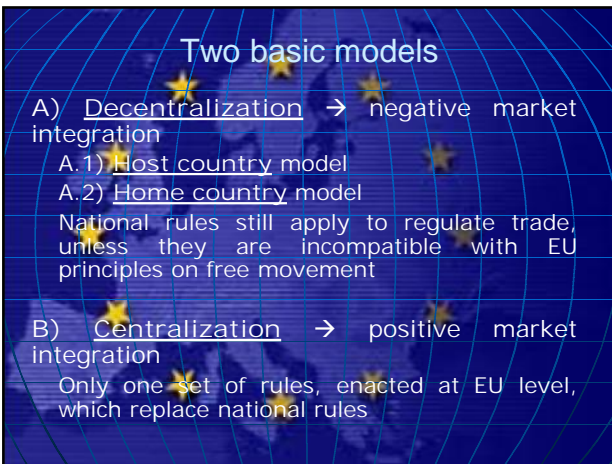
The ideal models of market integration

THE NATURE OF THE INTERNAL MARKET



Different possible ways an internal market could be arranged

The fundamental question is: who is to set the rules for the European internal market?



Two basic models

A) Decentralization → negative market integration

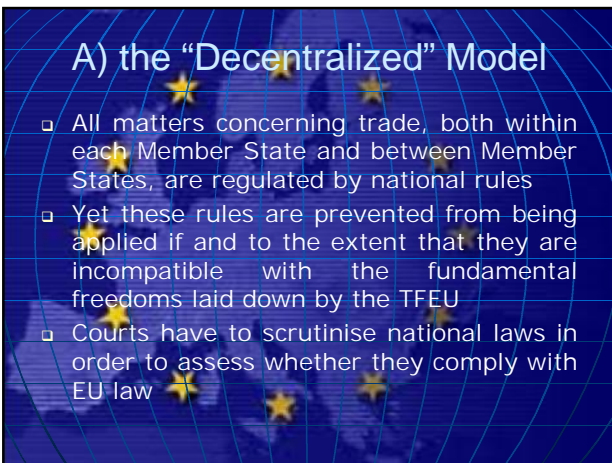
A.1) Host country model

A.2) Home country model

National rules still apply to regulate trade, unless they are incompatible with EU principles on free movement

B) Centralization → positive market integration

Only one set of rules, enacted at EU level, which replace national rules



A) the “Decentralized” Model

- All matters concerning trade, both within each Member State and between Member States, are regulated by national rules
- Yet these rules are prevented from being applied if and to the extent that they are incompatible with the fundamental freedoms laid down by the TFEU
- Courts have to scrutinise national laws in order to assess whether they comply with EU law

a.1) Host country control model

The rules of the country where the economic activity takes place apply

- Trade between independent countries → this is the normal situation → each State applies its own law within its territory (territoriality principle)
- Trade within a single integrated market → the host country control has to be tempered → principle of non-discrimination

a.2) Home country control model

The mirror image of the previous model

- The rules of the country of origin apply, even where the economic activity takes place abroad: "the product moves together with its own rule"
- The host country does not apply its own rules to economic activities originating in a foreign country → principle of mutual recognition within the integrated area → the foreign rules are considered equivalent to the domestic ones → mutual recognition requires mutual trust between Member States

Decentralisation → "Negative" integration

- EU law does not set out the norms governing intra-EU trade (ex. product standards, qualifications to practise) → under both Host and Home country control models, States retain power to regulate trade
- EU law only prohibits national rules from being applied where either (i) they are discriminatory (host country control) or (ii) the rules of origin have to be applied instead (home country control)

Decentralisation
→ Regulatory Competition

If States are free to regulate trade → different national norms coexist within the integrated market and compete each other → EU principles (non-discrimination, mutual recognition) govern regulatory competition between national rules

Regulatory competition = Competitive federalism

Economic activity within the Single Market is regulated by different national rules
But they are prevented from being applied if they result in an obstacle to intra-EU trade
The core issue then is:
What is an "obstacle" (trade barrier)?
Keep in mind that the larger that notion is, the wider the impact is on national laws (i.e. MSs' legislative choices)
The principles in the ECJ's jurisprudence:
a) non-discrimination on ground of nationality or origin
b) mutual recognition
c) market access

Who is to set the rules for the integrated market in the 2 kinds of decentralised models?

1. The fewest constraints on States' sovereignty
◦ It is for the States to regulate the market
◦ The task of the EU (i.e. the central or supranational entity) is essentially to ensure the coexistence of national regulations within the integrated market

2. The judiciary (national courts cooperating with ECJ) is the dominant player → by assessing the compatibility of trade rules with the integrated market, courts decide on the applicability of national rules

B) the Centralized Model

- Economic activities are regulated by one single set of rules, produced by the EU legislature
- These rules either replace or harmonise national rules → "Positive" integration
- They apply not only to cross-border trade between Member States but also to trade within each single country

Who is to set the rules for the integrated market in the centralised model?

1. The most constraints on States' sovereignty → powers to regulate trade are transferred from the national to the European (central) level
2. The (EU) legislature is likely to play a dominant role

WHICH IS THE VERY PURPOSE OF TFEU PROVISIONS ON FREE MOVEMENT?

Two different views

A) Conferring upon market participants an absolute right to economic or commercial freedom (unhindered pursuit of commerce) → general deregulation of national economies or

B) Liberalising inter-state trade → opening-up of national markets, offering producers and consumers the possibility of fully enjoying the benefits of a EU-wide internal market

**Opinion of Advocate General Tesauro
Case C-292/92, *Hünernmund***

The very purpose of Treaty provisions of fundamental freedoms is "to liberalise intra-[Union] trade [and not to] encourage the unhindered pursuit of commerce in individual Member States"

See also Opinion AG Poiares Maduro in *Alfa Vita Vassilopoulos* (Joined Cases C-158/04 and C-159/04)

**Opinion of Advocate General Tizzano
Case C-442/02, *CaixaBank France***

An interpretation of the Treaty provisions on the fundamental freedoms which extended their applicability beyond their own limits "would be tantamount to bending the Treaty to a purpose for which it was not intended: that is to say, not in order to create an internal market in which conditions are similar to those of a single market and where operators can move freely, but in order to establish a market without rules. Or rather, a market in which rules are prohibited as a matter of principle, except for those necessary and proportionate to meeting imperative requirements in the public interest"



Freedom of Movement within the European Single Market

GENERAL PRELIMINARY REMARKS



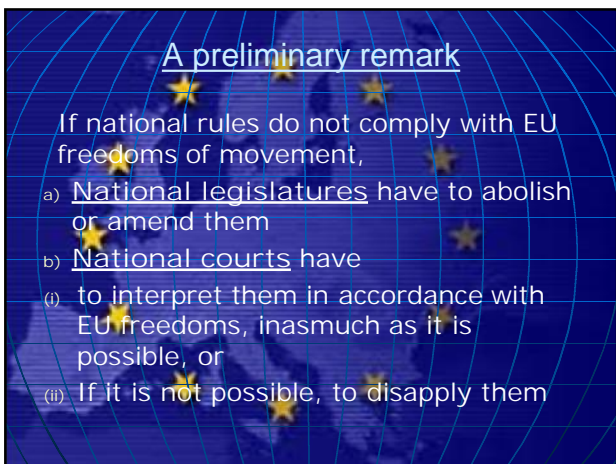
1) IS A SINGLE APPROACH TO ALL FUNDAMENTAL FREEDOMS POSSIBLE?

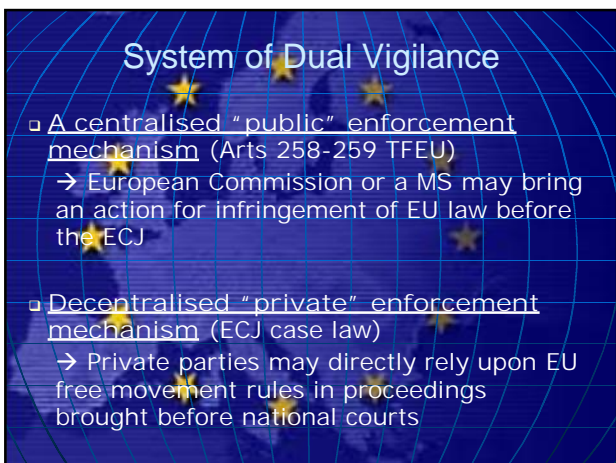


TFEU rules on free movement: Common features

1. They impose prohibitions (mainly) on Member States → obstacles on free movement are forbidden
2. They confer rights on individuals
3. Only intra-EU trade is dealt with
4. With a few exceptions, obstacles on free movement are not totally banned, but some derogations and justifications are allowed
5. The stricter the notion of "obstacle" to free movement is interpreted, the lesser a national measure is needed to be justified under EU law







A) action for infringement

- A "centralised" mechanism
 - It must be brought before the Court of Justice of the European Union
- A "public" enforcement mechanism
 - It is for public authorities only (European Commission, a Member State) to bring proceedings before the ECJ

B) direct effect of fundamental freedoms

- A "decentralised" mechanism
 - Courts in all Member States are competent to enforce EU fundamental freedoms
- A "private" enforcement mechanism
 - Claiming for the rights they derive from EU law be enforced, private parties make it possible that national courts enforce EU rules on free movement

"The vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Arts 169 and 170 EEC (now Arts 258 and 259 TFEU) to the diligence of the Commission and of the Member States"
(case 26/62, Van Gend en Loos)

Private enforcement of EU freedoms

It is founded upon 3 main pillars:

- i. The direct effect of EU rules on free movement (Van Gend & Loos) which prevail on incompatible national rules (Costa/ENEL)
- ii. The right to an effective remedy before a national court (Art 47 Charter fundamental rights, Art 19.1 TEU)
- iii. The judicial cooperation between national courts and ECJ (preliminary rulings under Art 267 TFEU)

The Treaty bans as individual freedoms

Private parties enjoy a right

- a) To buy/sell goods and provide/receive services
- b) To move and reside in another Member State in order to take up and pursue an economic activity
- c) To move their capital within the integrated market area (EU + EEA) without being impeded by unjustified national regulations
