

# **European Union Law**

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A.Y. 2017-2018

## **The building of the European single market**

Lesson No 25

One of the very few concepts the Treaties actually define...

Article 26 para. 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”*

But such a definition is somewhat circular → to understand the internal market, the four freedoms have to be understood, and vice versa

### CJEU 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”*

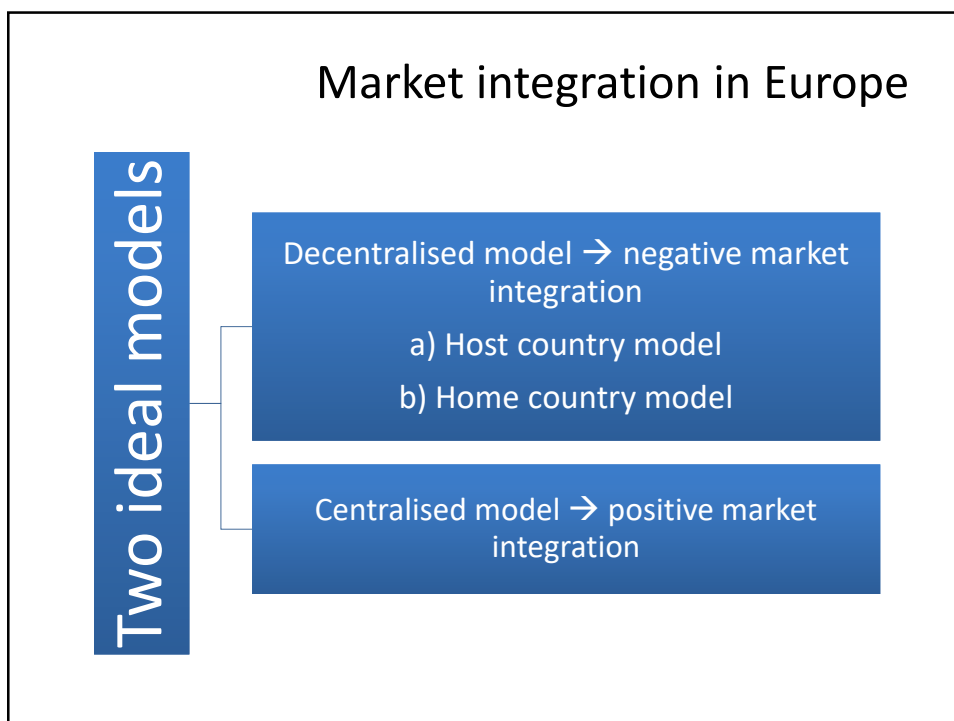
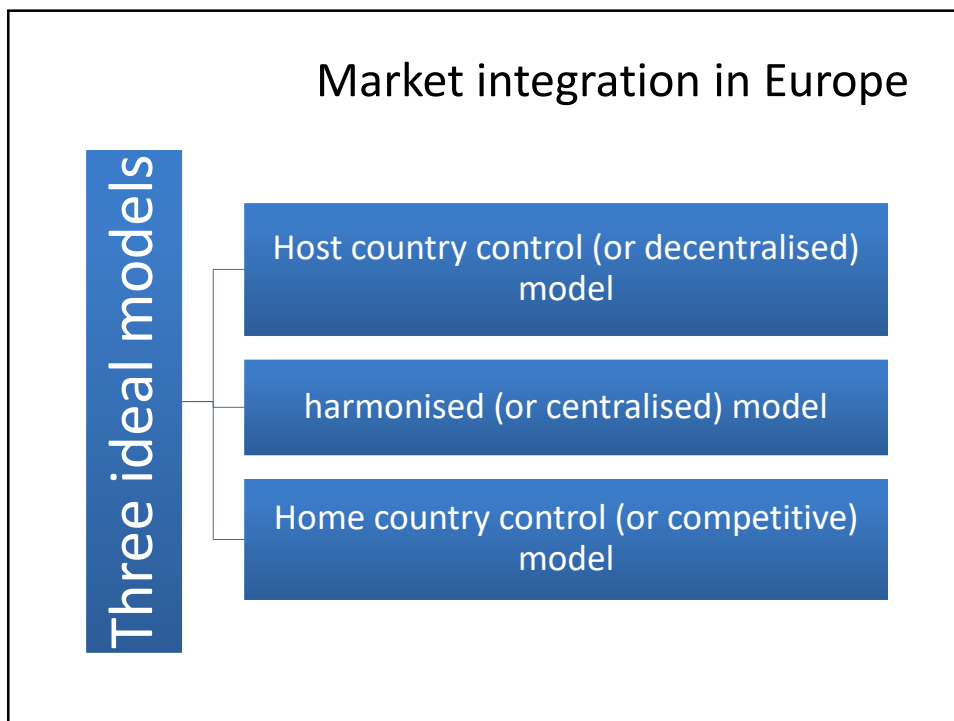
See also Case 270/80, *Polydor*

## The four freedoms

- Goods: Arts 28-37 TFEU
- Persons
  - Workers (employed persons): Arts 45-48 TFEU
  - Right of establishment (self-employed persons): Art 49-55 TFEU
- Services: Arts 56-62 TFEU
- Capital and payments: Arts 63-66 TFEU

## The nature of the internal market: three (or two?) ideal models

- Market integration may be arranged in different ways
- The fundamental question is: who is to set the rules for the European single market?



## Two basic models

- **Decentralization** → **negative** market integration
  - 1) **Host country** model
  - 2) **Home country** modelNational rules still apply to regulate trade, unless they are incompatible with EU principles on free movement
- **Centralization** → **positive** market integration  
Only one set of rules, enacted at EU level, which replace national rules

## (A) “Decentralized” Model

- All matters concerning trade 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

## 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 is tempered by the **principle of non-discrimination under EU law** → right to free movement = out-of-state goods/services/workers/companies cannot be discriminated

## 2) Home country control 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) → both under Host and Home country models, States retain power to regulate trade
- EU law only prohibits national rules from being applied where
  - (i) either they are discriminatory (host country control)
  - (ii) or 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 unjustified obstacle to intra-EU trade



The core issue then is: what is an “obstacle” (trade barrier)?  
→ discriminatory measures only? Also non-discriminatory measures?

The larger the notion of ‘obstacle’ is meant, the wider the impact is on national laws (i.e. MSs’ legislative choices)

## Who is to set the rules?

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



## (B) “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?

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