

The Jurisprudential Evolution and Structural Framework of the Four Freedoms in the European Union Internal Market

The conceptual and legal architecture of the European Union is fundamentally anchored in the establishment and maintenance of an internal market. As defined in Article 26(2) of the Treaty on the Functioning of the European Union (TFEU), this market comprises 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. While these four freedoms are frequently presented as a unified legal monolith, they are in practice divisible, governed by distinct treaty provisions, evolving case law, and specific secondary legislation. The historical trajectory of the European project has shifted from a primary focus on economic actors—workers and traders—to a broader inclusion of the European citizen, reflecting a move from a purely mercantile union to a constitutional entity founded on shared values of dignity, freedom, and the rule of law.

The Historical and Theoretical Foundations of the Internal Market

The quest for a unified European market originated with the 1957 Treaty of Rome, which sought to overcome the protectionist attitudes and intangible barriers that characterized the post-war European economy. Initially, the European Economic Community (EEC) struggled to enforce a single market due to the absence of robust decision-making structures and the persistence of national technical standards that functioned as covert trade barriers. The 1980s marked a pivotal turning point when the Delors Commission, spurred by the economic stagnation of the era, initiated a relaunch of the common market project. The 1985 White Paper, authored by Lord Cockfield, identified approximately 300 measures necessary to eliminate physical, technical, and fiscal barriers, setting a firm deadline of December 31, 1992, for the completion of the single market.

This period inaugurated a shift from exhaustive harmonization to a strategy combining negative and positive integration. Negative integration relies on the prohibitions imposed on Member States by the Treaties, such as the ban on discriminatory taxes or quantitative restrictions. Positive integration involves the approximation of laws through secondary legislation, primarily under Article 114 TFEU, to establish common standards where national rules diverge significantly. Central to this evolution was the adoption of the "New Approach" to technical harmonization, which limited legislative intervention to essential health and safety requirements while delegating technical specifications to voluntary standards bodies.

Integration Phase	Key Mechanism	Legal Basis/Instrument	Objective
Early EEC (1957-1985)	Exhaustive Harmonization	Article 100 EEC (now 115 TFEU)	Replacing national rules with identical EU rules.
Single Market Relaunch (1985-1992)	New Approach / Mutual Recognition	1985 White Paper / Single European Act	Removing technical and physical barriers by 1992.
Post-Maastricht (1992-Present)	EU Citizenship / Social Policy	Article 21 TFEU / Directive 2004/38	Transition from "market actor" to "Union citizen".
Modernization (2020-Future)	Digitalization / Enforcement	2023 Customs Reform / Digital Identity	Streamlining borderless trade in a digital economy.

The internal market is not merely a geographic area but a legal construct that demands mutual trust between Member States. The principle of mutual recognition, pioneered in the *Cassis de Dijon* jurisprudence, mandates that a product or service lawfully marketed in one Member State must, in principle, be allowed access to the markets of all others. This facilitates a radically decentralized market where inter-jurisdictional competition can flourish, albeit within a framework of essential protections for the public interest.

The Free Movement of Goods: Fiscal and Non-Fiscal Barriers

The free movement of goods (Articles 28–37 TFEU) is the most mature of the four freedoms, serving as the cornerstone of the EU's economic integration. It applies to all products originating in Member States and to products from third countries that are in free circulation within the Union. The legal framework is designed to eliminate both fiscal barriers (customs duties and discriminatory taxes) and non-fiscal barriers (quotas and technical regulations).

The Abolition of Fiscal Barriers: Articles 28, 30, and 110 TFEU

The Customs Union, established by Article 28 TFEU, entails a total prohibition on customs duties and "charges having equivalent effect" (CHEEs) between Member States, alongside the adoption of a Common External Tariff (CET) for trade with third countries. A CHEE is defined by the Court of Justice of the European Union (CJEU) as any pecuniary charge, however small, imposed unilaterally on domestic or foreign goods because they cross a frontier. This prohibition is absolute and applies even if the charge is not intended to be protectionist or discriminatory.

While Article 30 TFEU prohibits charges related to the act of border-crossing, Article 110 TFEU regulates internal taxation. Member States retain the right to levy taxes on products, but they must do so in a non-discriminatory manner. Article 110(1) prohibits taxes on imported goods that are higher than those on "similar" domestic products, while Article 110(2) prohibits taxes that afford "indirect protection" to domestic

products that are in competition with imports, even if they are not strictly similar. The distinction between a CHEE and a discriminatory tax is critical: a CHEE is prohibited entirely, whereas a discriminatory tax must merely be equalized with the domestic rate.

Non-Fiscal Barriers: Quantitative Restrictions and MEQRs

Articles 34 and 35 TFEU prohibit quantitative restrictions (quotas) and "measures having equivalent effect to quantitative restrictions" (MEQRs) on imports and exports. The scope of these provisions was dramatically expanded by the *Dassonville* judgment, which defined an MEQR as any trading rule enacted by a Member State that is capable of hindering intra-Union trade, whether directly or indirectly, actually or potentially. This broad formula initially captured nearly any national regulation that increased the cost or difficulty of importing goods.

The subsequent *Cassis de Dijon* judgment introduced the "Rule of Reason," acknowledging that in the absence of EU harmonization, Member States could maintain national rules that restrict trade if they are necessary to satisfy "mandatory requirements". These requirements initially included fiscal supervision, public health, commercial fairness, and consumer defense, but the list has since expanded to include environmental protection and cultural preservation.

To curb the proliferation of litigation against non-discriminatory national rules, the CJEU refined its approach in the *Keck* judgment. The Court distinguished between "product requirements" (relating to the physical characteristics of the good, such as weight or labeling) and "certain selling arrangements" (relating to how or when a product is sold, such as Sunday trading laws or advertising restrictions). While product requirements remain subject to the broad *Dassonville* test, non-discriminatory selling arrangements fall outside the scope of Article 34 TFEU altogether.

Case Law	Legal Principle	Application
<i>Dassonville</i> (1974)	Broad MEQR Definition	All rules capable of hindering trade, even potentially.
<i>Cassis de Dijon</i> (1979)	Mutual Recognition / Mandatory Requirements	Goods lawfully marketed in State A must be accepted in State B unless a mandatory requirement applies.
<i>Keck</i> (1993)	Selling Arrangements Exception	Non-discriminatory rules on "how" goods are sold are not MEQRs.
<i>Commission v Ireland</i> (1981)	Restrictive Interpretation of Derogations	Article 36 exceptions must be interpreted narrowly.

The Free Movement of Persons: Workers and EU Citizens

The free movement of persons has evolved from an economically driven freedom for the "factors of production" into a fundamental right of Union citizenship. While the

1957 Treaty of Rome primarily protected "workers" (Article 45 TFEU) and the "self-employed" (Article 49 TFEU), the 1992 Maastricht Treaty introduced the concept of EU citizenship, granting every national of a Member State the right to move and reside freely throughout the Union.

The Legal Status of the Worker under Article 45 TFEU

The status of a "worker" remains a privileged category in EU law, providing more robust protections and access to social benefits than the status of an economically inactive citizen. The definition of a "worker" is a standalone EU concept and cannot be defined by the varying national laws of the Member States. According to the *Lawrie-Blum* test, a worker is a person who:

1. Performs services for a certain period of time.
2. Acts under the direction of another person.
3. Receives remuneration in return for those services.

The CJEU has consistently resisted restrictive interpretations of this status. In *Levin*, the Court held that part-time work qualifies as "effective and genuine" activity even if the income is below the minimum subsistence level. In *Kempf*, this was extended to workers who supplement their low income with public funds. The status is only denied to those whose activities are "purely marginal and ancillary". Furthermore, the right to move includes the right to seek employment; in *Antonissen*, the Court affirmed that a job-seeker has a right to reside for a reasonable period (typically six months) to find work.

Article 45(4) TFEU provides an exception for "employment in the public service," but this is interpreted narrowly by the CJEU. It applies only to posts involving the direct or indirect exercise of public authority and duties designed to safeguard the general interests of the state. This typically excludes roles in education, public transport, or healthcare, even when state-funded.

EU Citizenship and Directive 2004/38/EC

Directive 2004/38/EC, known as the "Citizens' Rights Directive," consolidated previous legislation to simplify the exercise of the right to move and reside freely. It establishes a tiered system of residence rights based on the length of stay and the individual's economic status :

- **Up to Three Months:** EU citizens and their family members (regardless of nationality) have a right of residence with no conditions other than holding a valid identity card or passport.
- **Over Three Months:** Citizens must be workers, self-employed, or "economically inactive." Inactive persons (such as students or retirees) must have sufficient resources and comprehensive sickness insurance to ensure they do not become an "unreasonable burden" on the host state's social assistance system.
- **Permanent Residence:** After five years of continuous legal residence, citizens and their families acquire a right of permanent residence that is no longer subject to the "sufficient resources" or insurance conditions.

Family members enjoy derivative rights to accompany or join the EU citizen. The definition of a family member includes the spouse (including same-sex spouses per the *Coman* judgment), registered partners (where recognized by the host state), dependent children under 21, and dependent parents. These rights are subject to limitations on grounds of public policy, public security, or public health, though such measures must comply with the principle of proportionality and cannot be based on economic grounds.

Residence Duration	Requirements for EU Citizens	Documentation Required
< 3 Months	None (other than non-expulsion).	Valid ID or Passport.
> 3 Months	Worker/Self-employed OR Sufficient Resources + Health Insurance.	Registration Certificate (optional for Member State).
> 5 Years	None (Right of Permanent Residence acquired).	Permanent Residence Document.

Freedom of Establishment and the Free Movement of Services

While the movement of goods and persons involves tangible actors, the freedom of establishment (Article 49 TFEU) and the freedom to provide services (Article 56 TFEU) govern the mobility of economic activities and legal entities. Together, they ensure that businesses and professionals can operate across borders without unjustified restrictions.

The Gebhard Distinction: Establishment vs. Services

The distinction between establishment and the provision of services is essential for determining the applicable legal regime. Freedom of establishment involves a permanent presence in a host Member State to participate in its economic life on a "stable and continuous basis". This includes the right to set up a primary establishment (a head office) or secondary establishments (agencies, branches, or subsidiaries). In contrast, the freedom to provide services involves the pursuit of an economic activity on a "temporary basis" while remaining based in the country of origin.

The *Gebhard* test provides that the temporary nature of a service is determined not just by its duration, but by its frequency, periodicity, and continuity. A service provider may equip themselves with certain infrastructure in the host state (such as an office) without becoming "established," provided the infrastructure is necessary to perform the specific service.

Freedom of Establishment (Article 49 TFEU)

Article 49 TFEU prohibits Member States from imposing restrictions on the establishment of nationals from other Member States. It has direct effect, meaning it can be invoked by individuals and companies against the state (vertical effect) and, in certain circumstances, against private bodies (horizontal effect). The provision

prohibits both direct discrimination (less favorable treatment based on nationality) and indirect discrimination (imposing conditions that are harder for non-nationals to meet, such as residence requirements).

A major component of this freedom is the mutual recognition of professional qualifications. In the absence of harmonization, the CJEU requires national authorities to compare the knowledge and skills acquired by an applicant in another Member State with those required by the domestic qualification. If the qualifications are equivalent, they must be recognized; if there are substantial differences, the applicant must be given the opportunity to demonstrate their competence through professional experience or compensatory measures.

Freedom to Provide Services (Article 56 TFEU)

The freedom to provide services has grown in significance as services now constitute over 70% of the European economy. Article 56 TFEU prohibits restrictions on the provision of services between Member States. A "service" is defined as any economic activity normally provided for remuneration that is not covered by the other three freedoms. This includes industrial, commercial, and professional activities.

The 2006 Services Directive (2006/123/EC) was a landmark legislative effort to eliminate remaining administrative and legal barriers to service provision. It mandates the simplification of procedures through "Points of Single Contact" and prohibits specific restrictive requirements, such as "economic needs tests" or the obligation for a provider to be established in the host state. However, the Directive excludes several sensitive sectors, including financial services, electronic communications, and certain healthcare services.

The Free Movement of Capital and Payments

The free movement of capital (Article 63 TFEU) is unique among the four freedoms due to its external dimension. While the other freedoms apply only within the EU (or the European Economic Area), Article 63 TFEU prohibits all restrictions on the movement of capital and payments both between Member States and between Member States and third countries.

Geographic Scope and Third-Country Relations

The extension of capital freedom to third countries (*erga omnes*) was a deliberate choice by the Member States to ensure the credibility of the Euro on world markets and maintain European financial centers. Article 63 TFEU has direct effect and confers rights on individuals that can be invoked before national courts to challenge restrictive national laws.

However, the Treaty provides specific "grandfathering" clauses. Under Article 64 TFEU, Member States may maintain restrictions against third countries that existed before December 31, 1993 (or later for some countries), provided they concern direct investment, establishment, or the provision of financial services. Furthermore, the CJEU has acknowledged in *Skatteverket v A* that a restriction on capital movement to

a third country might be justified by reasons that would not suffice to justify a restriction between Member States, particularly in areas like tax supervision where administrative cooperation may be less effective.

Interplay with the Freedom of Establishment

There is often an overlap between capital movement and establishment, particularly regarding corporate shareholdings. To distinguish which freedom applies, the CJEU uses the "definite influence" test. If a shareholding gives the holder a "definite influence" over a company's decisions—typically a majority or significant stake—the freedom of establishment (Article 49) is the primary freedom. If the holding is a "portfolio investment" (typically under 10–25%) that does not allow for such influence, the free movement of capital (Article 63) applies. This distinction is vital because if a third-country situation is categorized as establishment, it falls outside the protection of EU law, whereas if it is categorized as capital movement, it remains protected.

Feature	Freedom of Establishment (Art 49)	Free Movement of Capital (Art 63)
Primary Scope	Intra-EU only.	Intra-EU and Third Countries.
Key Criterion	"Definite Influence" over the entity.	Investment without control.
Direct Effect	Vertical and (some) Horizontal.	Primarily Vertical (Horizontal unlikely soon).
Exceptions	Art 52 (Public policy/security/health).	Art 64 (Grandfathering), Art 65, Art 66 (Safeguard).

Justifications and the Proportionality Principle

The exercise of the four freedoms is not absolute. Member States may restrict these freedoms to protect legitimate public interests, provided the measures meet strict legal criteria.

Treaty Derogations and the Rule of Reason

Justifications fall into two categories:

- Treaty-Based Derogations:** Articles 36 (Goods), 45(3) (Workers), 52 (Establishment), and 65 (Capital) provide an exhaustive list of grounds, such as public morality, public policy, public security, and the protection of health and life of humans, animals, or plants.
- Mandatory Requirements (Overriding Reasons in the General Interest):** Developed through case law starting with *Cassis de Dijon*, these are non-exhaustive grounds used to justify non-discriminatory restrictions.

Any restrictive measure must comply with the principle of proportionality. This means the measure must be "suitable" for attaining the objective and must "not go beyond what is necessary" to achieve it. A measure that is more restrictive than required

(e.g., a total ban when a labeling requirement would suffice) will be struck down by the CJEU.

The Evolution of Public Interest Grounds

The list of "mandatory requirements" has expanded over time to reflect contemporary societal values. Initially focused on commercial fairness and consumer protection, it now includes environmental protection, cultural heritage, and the maintenance of the social security system's financial balance. In the *Ålands Vindkraft* case, the Court highlighted the tension between internal market rules and environmental policies, suggesting that environmental protection can sometimes be conflated with the "protection of health and life" under Article 36 TFEU to justify even discriminatory measures.

Synthesis and Future Outlook

The four freedoms of the European Union represent a dynamic legal ecosystem that continues to adapt to the shifting needs of a continental economy and a supranational citizenry. The transition from the "market actor" to the "Union citizen" reflects a deepening of the integration process, though this has brought new challenges regarding the sustainability of national welfare states and the management of physical borders through the Schengen acquis.

Technological advancement and the rise of the digital economy are driving the next phase of the internal market's evolution.¹ The 2023 Customs Reform and the move toward Digital Travel Credentials indicate a future where the "area without internal frontiers" is maintained not just through the removal of barriers, but through the sophisticated synchronization of data and administrative cooperation.² The principle of mutual recognition remains the vital lubricant of this system, ensuring that diversity in national standards does not lead to a fragmented market.³ Ultimately, the resilience of the four freedoms depends on the continued ability of the CJEU and the EU institutions to balance economic efficiency with the protection of the fundamental rights and public interests that define the European project