

# MVŠO

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## **Jurisprudential Evolution and Structural Framework of the EU Four Freedoms From the Treaty of Rome to the Modern Digital Internal Market (Part 1)**

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# The Historical and Theoretical Foundations of the Internal Market

## EU Internal Market – Core Concept

- The EU is built around a **single internal market**
- Defined in **Article 26(2) TFEU**:  
→ an area **without INTERNAL BORDERS**

## The Four Freedoms

Free movement of:

1. **GOODS**
2. **PERSONS**
3. **SERVICES**
4. **CAPITAL**

➔ □ Not one single system – each has **its own rules, laws, and case law**

## Evolution of the EU

- i. Originally focused on **economic actors—workers and traders.**
  - ii. Now includes **EU citizens more broadly**
- ➔ □ Shift to a **broader inclusion of the European citizen** → **value-based union: dignity, freedom, rule of law.**

## Development of the EU Single Market

- **1957 Treaty of Rome**

→ goal: overcome protectionism and post-war trade barriers;

### Early EEC problems

- weak decision-making structures;
- national technical standards = hidden trade barriers.

- ✓ **Turning Point – 1980s**

- **Delors Commission** relaunched the project

- **1985 White Paper (Lord Cockfield)**

→ ~300 measures to remove:

1. **PHYSICAL BARRIERS**
2. **TECHNICAL BARRIERS**
3. **FISCAL BARRIERS**

**Deadline: 31 December 1992.**

## New Integration Strategy – Integration Strategies:

1. **Negative Integration:**

Prohibitions on Member States  
→ banning discriminatory taxes, quantitative restrictions.

2. **Positive Integration:**

Harmonizing laws through EU legislation (**Art. 114 TFEU**).

- **“New Approach” to technical harmonization:**

- i. EU sets **basic health & safety rules**;
- ii. technical details → **standardisation bodies.**

## The Historical and Theoretical Foundations of the Internal Market

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.

Established in 1993, it guarantees that goods, services, people and capital can move freely throughout the territory of the EU: the 'four freedoms'.

# The Historical and Theoretical Foundations of the Internal Market

## Mutual Recognition & the Internal Market

- The EU internal market is not just a space  
→ it is a **legal system based on trust between Member States**

## Key Principle: Mutual Recognition

- A product **lawfully sold in one Member State**  
→ must be **accepted in others**
- Cassis de Dijon (1979)**
  - Germany refused to import a French liqueur (different alcohol content rules)
  - ✓ **Court ruled:**  
→ **product must be allowed if legally sold elsewhere**
- ➔  Created the principle of **mutual recognition**.

## **Impact**

- Enables a **decentralised market**
- Reduces need for full harmonisation
- Allows **competition between national systems**

## **Limits**

- ✓ States can restrict only for **public interest reasons**, e.g. **health, consumer protection**.

# Free Movement of Goods (Arts. 28–37 TFEU)

## Most developed of the four freedoms

✓ Applies to:

1. **Goods from Member States;**
2. **Goods from third countries in free circulation.**

□ **Goal:**

➔ □ **Eliminate barriers to trade**

1. **Fiscal barriers** → duties, taxes;
2. **Non-fiscal barriers** → quotas, regulations.

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

### 1. Article 28 TFEU – **Customs Union:**

No **customs duties** and charges having equivalent effect (CHEE) between Member States. Common External Tariff (CET) for third countries.

### 2. Article 30 TFEU

➤ prohibits:

1. customs duties
2. **charges having equivalent effect (CHEEs)**

✓ **CHEE (CJEU):**

- any pecuniary charge
- imposed unilaterally
- on goods because they cross a frontier
- regardless of amount or purpose

➔ □ **ABSOLUTE PROHIBITION**

### 3. Article 110 TFEU

✓ Regulates **internal taxation:**

✓ Member States may tax products, but:

- I. no higher tax on **similar imported goods** (110(1))
- II. no **indirect protection** of competing domestic goods (110(2)).

## Distinction between a CHEE and a discriminatory tax:

1. **CHEE** → prohibited entirely;
2. **TAX** → must be equalised with the domestic rate.

# Free Movement of Goods (Arts. 28–37 TFEU)

## Non-Fiscal Barriers: Quantitative Restrictions and MEQRs

- **Articles 34–35 TFEU** prohibit:
  - I. **quantitative restrictions (quotas)**
  - II. **measures having equivalent effect to quantitative restrictions (MEQRs)** on imports and exports
    - The scope of these provisions dramatically expanded by the **Dassonville judgment**:
      - ✓ Defined **MEQR** = any **trading rule** by a Member State capable of **hindering intra-EU trade**
        - **directly or indirectly**
        - **actually or potentially**
        - ➡  very broad → covers most national regulations affecting trade

## **Cassis de Dijon judgment** – Rule of Reason

in absence of EU harmonisation:

→ **national rules** allowed if necessary for **mandatory requirements**:

- i. **fiscal supervision**;
- ii. **public health**;

- iii. **commercial fairness**;
- iv. **consumer protection**;
- v. **+ later: environmental protection and cultural preservation.**

## **Keck judgment**:

✓ The Court distinguished between :

- I. **Product requirements** → the physical characteristics of the good: weight, labeling;
- II. **Selling arrangements** → how or when a product is sold: Sunday trading laws, advertising restrictions.

Ad)

- I. **Product requirements** – subject to the broad Dassonville test (subject to Art. 34);
- II. **Selling arrangements** – outside the scope of Art. 34 TFEU altogether (if non-discriminatory).

# Free Movement of Goods (Arts. 28–37 TFEU)

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

Joined cases 36 and 71/80. *Irish Creamery Milk Suppliers Association and others v Government of Ireland and others; Martin Doyle and others v An Taoiseach and others.*

## ❖ Case Background & The Conflict

### Irish Creamery Milk Suppliers v. Government of Ireland (1981)

- **The Dispute:** In 1979, Ireland introduced a **1% levy** on the sale of cattle, milk, and cereals. Farmers argued this tax violated the **European Common Agricultural Policy (CAP)**.
- **Key Question:** *Can a Member State impose a domestic tax on agricultural products that are already regulated by EU-wide pricing systems?*
- **The Conflict:** \* **Farmers:** Claimed the tax lowered their profit margins below the **"Target Price"** set by the EU, effectively distorting the common market.
  - **The State:** Claimed the tax was a **neutral fiscal measure** for national revenue, not a trade barrier.
- **Legal Basis:** Challenged under **Articles 9, 12, and 38-46** of the **Treaty of Rome** (Free movement of goods and CAP regulations).

*Irish Creamery Milk Suppliers Association and others v Government of Ireland and others; Martin Doyle and others v An Taoiseach and others.*

❖ The CJEU Ruling & Implications

Legal Findings and Procedural Significance

- **National Sovereignty vs. EU Law:** The Court ruled that national taxes are **permissible** as long as they do not interfere with the CAP's price-forming mechanisms.
- **Key Findings:**
  - **Not a Customs Duty:** Since the tax applied to **domestic sales (not just exports)**, it was not a prohibited **"charge having equivalent effect" to a customs duty**.
  - **Market Neutrality:** A low, temporary tax on income/value is generally legal unless it specifically prevents the common market from reaching its price objectives.
- **Procedural Precedent:** The Court affirmed that national judges have the **sole discretion** to decide *when* in a trial to refer a question to the CJEU—they do not have to wait for all facts to be proven first.
- **Impact:** Confirmed that EU Member States retain **"fiscal residual power"** even in highly regulated sectors like agriculture.

## Free Movement of Goods

### *Joined Cases C-267/91 & C-268/91 Keck and Mithouard*

#### ❖ Case Background & The Legal Shift

##### **Keck and Mithouard (1993)**

- **The Facts:** Two supermarket managers in France were prosecuted for "resale at a loss" (selling goods below purchase price).
- **The Defense:** They argued the law hindered the volume of imports, constituting a "Measure Having Equivalent Effect" (MEEQR) under Article 34 TFEU.
- **The Problem:** Following *Dassonville* and *Cassis de Dijon*, the Court was flooded with cases where traders challenged any national law that limited their business (e.g., "Sunday Trading" cases).
- **The Court's Objective:** To curb the "increasing tendency of traders" to use EU law to challenge general commercial regulations that have no specific impact on trade between Member States.

## ❖ The "Keck Test" & Its Legacy

### Selling Arrangements vs. Product Requirements

- The Landmark Distinction: The CJEU created a two-tier system for national rules:
  - I. **Product Requirements:** Labels, designation, size, weight, composition, packaging, ingredients → Still strictly monitored. If they hinder trade, they are prohibited unless justified.
  - II. **Certain Selling Arrangements:** How/where/when products are sold, e.g., advertising restrictions, Sunday trading, or resale at a loss → Presumed legal and fall outside Article 34 TFEU.
- The New Test – Conditions for Legality: Selling arrangements are valid only if they:
  1. Apply to **all traders in the national territory** (Universal).
  2. Affect **domestic and imported goods the same way "in law and in fact" (Non-discriminatory)**.
- Impact: This narrowed the scope of the internal market rules, returning power to Member States to **regulate their own domestic markets** without every minor rule being treated as a barrier to trade.

## Free Movement of Goods

### *Joined Cases C-267/91 & C-268/91 Keck and Mithouard*

#### ❖ Final Outcome for Keck & Mithouard

- **The Verdict:** The CJEU ruled that the French prohibition on resale at a loss **did not violate** Article 30 (now Art. 34 TFEU).
- **The Result for the Defendants:**
  - Their "EU Law" defense was rejected.
  - The case was referred back to the **Tribunal de Grande Instance, Strasbourg**.
  - They remained liable for **criminal penalties** under French law.
- **The "Bottom Line":** Traders cannot use EU free-trade rules to bypass general national commercial laws that apply equally to everyone.
- ✓ This stopped the "misuse" of the Court to strike down sensible local business regulations.

## Free Movement of Workers (Art. 45 TFEU)

### Evolution of Free Movement of Persons

- Originally **economically driven freedom: Treaty of Rome (1957):**
  - protection of **workers** (Art. 45 TFEU) and **self-employed** (Art. 49 TFEU)
- ✓ **Maastricht Treaty (1992)**
  - introduction of **the concept of EU citizenship**
- ✓ right of all nationals to move and reside freely throughout the Union.
- **Evolution**
  - **from economically active persons: the factors of production**
  - **into a fundamental right of Union citizenship.**

### Worker Status (Article 45 TFEU)

- ✓ a privileged category in EU law:
  - providing **more robust protections and access to social benefits**
  - **than the status of an economically inactive citizen.**
    - cannot be defined by the varying national laws:
- ✓ **Lawrie-Blum test:**
  - ***The Lawrie-Blum judgment delivered in 1986.***
    1. → **services performed for a period of time;**
    2. → **under direction of another person;**
    3. → **in return for remuneration.**

# Free Movement of Workers (Art. 45 TFEU)

## Definition of a Worker: **The Lawrie-Blum Test**

- ❖ The case (Case 66/85 Deborah Lawrie-Blum v Land Baden-Württemberg) is the origin of **the three-pillar test** used to determine worker status under EU law.
- ✓ **The Lawrie-Blum Test Criteria (1986)**
  1. **Period of Time:** *The person performs services for another person for a certain duration.*
  2. **Direction:** *The person acts under the direction and control of another person.*
  3. **Remuneration:** *The person receives payment in return for those services.*
- i. Before this **1986 ruling**, Member States often tried to use **their own national definitions** to limit who could be considered a **"worker."**
- ii. By establishing this autonomous EU concept in **1986**, the Court ensured that rights like the free movement of persons remained **broad** and **protected against restrictive national interpretations.**

# Free Movement of Workers (Art. 45 TFEU)

## Definition of a Worker: The Lawrie-Blum Test (in detail)

- **Autonomous EU Concept: Status of a "worker"** cannot be defined by national laws; it is strictly defined by EU law to **ensure uniform protection**.
- ✓ **The Three Pillars – The Three Essential Criteria:**
  1. **Activity:** Performance of services over a duration of time.
  2. **Subordination:** Working under the direction and control of another.
  3. **Consideration:** Receiving payment in return for the services.
- **Key Legal Rule:** If these three conditions are met, the person is a worker, regardless of whether they work part-time, as long as the activity is not *"purely marginal and ancillary"*.
- Distinguishes **"Workers" (Art. 45)** from the **"Self-employed" (Art. 49)**.
- Restricts Member States' ability to deny social and residence rights by using narrow national definitions.

# Free Movement of Workers (Art. 45 TFEU)

- ✓ CJEU case law – resisted restrictive interpretations of this status:
  - **Levin:** **part-time work** – "effective and genuine" activity even below subsistence level;
  - **Kempf:** extended – workers may rely on **public funds**; exclusion only for purely **marginal and ancillary activities**;
  
- ✓ Right to seek employment
  - **Antonissen:** a job-seeker has a right to **reside for a reasonable period** (typically **six months**) to find work.
  
- ✓ **Public service exception (Art. 45(4))**
  - narrowly interpreted
  - only posts involving the direct or indirect exercise of public authority.
  
- ✓ Typically excluded: roles in **education, public transport, or healthcare, even when state-funded.**

## Free Movement of Workers: 3 key jurisdictions (cases)

### Levin (Case 53/81)

- **Core Principle:** Established that **part-time work** qualifies for "worker" status.
- **Key Detail:** The Court ruled that activity is considered "**effective and genuine**" even if the income earned is below the minimum subsistence level of the host Member State.
- ✓ **Impact:** *This prevented Member States from **excluding low-wage or part-time employees from the protections of the free movement of persons.***

### Kempf (Case 139/85)

- **Core Principle:** Extended the definition of a worker to those **requiring social assistance.**
- **Key Detail:** The status of a "worker" applies even if the individual supplements their low income from work with public funds (social security or assistance).
- ✓ **Impact:** *It reinforced that as long as the **work itself is "effective and genuine,"** the fact that the person cannot support themselves solely on that income **does not disqualify them from their rights under EU law.***

# Free Movement of Workers: 3 key jurisdictions (cases)

## Antonissen (Case C-292/89)

- **Core Principle:** Affirmed the right of job-seekers to reside in a host state.
- **Key Detail:** The Court stated that the right to move freely includes the right to seek employment. A job-seeker has a right to reside in another Member State for a "reasonable period" to find work:
  - **Duration:** typically interpreted as **six months**.
- ✓ **Impact:** *It ensures that individuals are not immediately expelled if they have not yet secured a contract, provided they are actively seeking work and have a genuine chance of being engaged.*

## Summary: Key Worker Jurisprudence

1. **Levin Case:** Establishes that **part-time work is "effective and genuine"** even if earnings are **below the subsistence level**.
  2. **Kempf Case:** Confirms worker status for those who supplement **low wages with public social assistance**.
  3. **Antonissen Case:** Grants job-seekers **the right to reside in a host state for a reasonable period** (approx. 6 months) to find employment.
- ✓ **The "Rule of Exclusion":** Status is only denied if the activity is deemed **"purely marginal and ancillary"**.

## EU Citizenship & Directive 2004/38 ("Citizens' Rights Directive")

→ Simplifies exercise of movement and residence.

✓ It establishes a tiered system of residence rights

➤ based on the length of stay and the individual's economic status:

1. → **Up to 3 months**: no conditions (ID/passport);
2. → **Over 3 months**: worker / self-employed / or economically inactive – **sufficient resources + comprehensive sickness insurance (not become an "unreasonable burden")**;
3. → **After 5 years**: permanent residence (no conditions).

Family members (derivative rights)

→ spouse (incl. same-sex – **Coman**)

→ registered partner (if recognised)

→ dependent children (<21) and dependent parents;

• Limitations

→ public policy, security, health;

→ must respect the principle of proportionality;

→ cannot be based on economic grounds.

## EU Citizenship & Directive 2004/38 Coman judgment (Case C-673/16)

→ A landmark ruling concerning the definition of "family members" under *the Citizens' Rights Directive (2004/38/EC)*.

### Key Significance of the Coman Case

- Definition of "Spouse": The CJEU ruled that the term "spouse" within the meaning of the Directive includes **same-sex spouses**.
- Derivative Rights: It established that even if a Member State **does not recognize** same-sex

marriage in its own national law, **it must recognize a same-sex marriage lawfully contracted in another Member State** for the sole purpose of **granting a derivative right of residence to the spouse**.

- ✓ Purpose: This ensures that an EU citizen's right to move and reside freely throughout the Union
- is not hindered by the refusal of a host state to recognize their marital status.

## EU Citizenship & Directive 2004/38 Coman judgment (Case C-673/16)

- **Context within Family Rights** ✓

The judgment **places same-sex spouses** within the broader category of family members who enjoy **derivative rights** to accompany or join an EU citizen.

This group also includes:

- Registered partners** (where recognized by the host state).
- Dependent children under the age of 21.**
- Dependent parents.**

- **Limitations**

- the recognition of spouses expanded, but these residency rights = subject to specific limitations:

1. **Grounds for Restriction:** Rights can be limited based on **public policy, public security, or public health.**
2. **Prohibitions:** Restrictions cannot be based on **economic grounds.**
3. **Proportionality:** Any restrictive measure taken by a Member State must comply with the **principle of proportionality.**

## ***DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (summary)***

- **Citizenship of the Union** confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States,
  - subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.

### **Article 1 – Subject**

- This Directive lays down:
  - a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;*
  - b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;*
  - c) the limits placed on the rights set out in (a) and (b) on grounds of **public policy, public security or public health.***

# Summary: a tiered system of RESIDENCE RIGHTS based on the length of stay and the individual's economic status:

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.