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FREE MOVEMENT OF GOODS

The free movement of goods is secured through the elimination of customs duties and quantitative restrictions, and the prohibition of measures having an equivalent effect. The principles of mutual recognition, elimination of physical and technical barriers, and promotion of standardisation were added in order to continue the completion of the internal market. The adoption of the New Legislative Framework (NLF) in 2008 strengthened the free movement of goods, the EU's market surveillance system and the CE mark. Recent research indicates that the benefits arising from the principle of free movement of goods and related legislation amount to 386 billion euros annually.

LEGAL BASIS

Articles 26 and 28-37 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The right to free movement of goods originating in Member States, and of goods from third countries which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 28 TFEU). Originally, free movement of goods was seen as part of a customs union between the Member States, involving the abolition of customs duties, quantitative restrictions on trade and equivalent measures, and the establishment of a common external tariff for the Community. Later, the emphasis was laid on eliminating all remaining obstacles to free movement of goods with a view to creating the internal market.

ACHIEVEMENTS

The elimination of customs duties and quantitative restrictions (quotas) between Member States was accomplished by 1 July 1968. This deadline was not met in the case of the supplementary objectives – the prohibition of measures having an equivalent effect, and the harmonisation of relevant national laws. These objectives became central in the ongoing effort to achieve free movement of goods.

A. Prohibition of charges having an effect equivalent to that of customs duties: Articles 28(1) and 30 TFEU

Since there is no definition of the aforementioned concept in the Treaty, the case law has had to provide one. The Court of Justice of the European Union considers that any charge, whatever it is called or however it is applied, 'which, if imposed upon a product imported from a Member State to the exclusion of a similar domestic product has, by



altering its price, the same effect upon the free movement of products as a customs duty' may be regarded as a charge having equivalent effect, regardless of its nature or form (Cases 2/62 and 3/62^[1], and Case 232/78^[2]).

B. Prohibition of measures having an effect equivalent to quantitative restrictions: Articles 34 and 35 TFEU

In its [Dassonville](#) judgment, the Court of Justice took the view that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions ([Case 8/74](#) of 11 July 1974 and points 63 to 67 of [Case C-320/03 of 15 November 2015](#)). The Court's reasoning was developed further in the *Cassis de Dijon* (Case 120/78) jurisprudence, which laid down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, and with the manufacturing processes of that country, must be allowed onto the market of any other Member State. This was the basic reasoning underlying the debate on defining the principle of mutual recognition, operating in the absence of harmonisation. As a consequence, even in the absence of European harmonisation measures (secondary EU legislation), Member States are obliged to allow goods that are legally produced and marketed in other Member States to circulate and to be placed on their markets.

Importantly, the field of application of Article 34 TFEU is limited by the *Keck* jurisprudence, which states that certain selling arrangements fall outside the scope of that article, provided that they are non-discriminatory (i.e. they apply to all relevant traders operating within the national territory, and affect in the same manner, in law and in fact, the marketing of domestic products and products from other Member States) ([Joined Cases C-267/91 and C-268/91](#)).

C. Exceptions to the prohibition of measures having an effect equivalent to that of quantitative restrictions

Article 36 TFEU allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (e.g. public morality, public policy or public security). Such exceptions to the general principle must be interpreted strictly, and national measures cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States. Finally, the measures must have a direct effect on the public interest to be protected, and must not go beyond the necessary level (principle of proportionality).

Furthermore, the Court of Justice has recognised in its jurisprudence (*Cassis de Dijon*) that Member States may make exceptions to the prohibition of measures having an equivalent effect on the basis of mandatory requirements (relating, among other things, to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer). Member States have to notify national exemption measures to the Commission. Procedures for the exchange

[1] Judgment of the Court of 14 December 1962 — <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0002>

[2] Judgment of the Court of 25 September 1979 — <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A61978CJ0232>



of information and a monitoring mechanism were introduced in order to facilitate supervision of such national exemption measures (as provided for in Articles 114 and 117 TFEU, [Decision 3052/95/EC](#) of the European Parliament and of the Council and [Council Regulation \(EC\) No 2679/98](#)). This was further formalised in [Regulation \(EC\) No 764/2008](#) on mutual recognition, which was adopted in 2008 as part of the so-called New Legislative Framework (NLF).

D. Harmonisation of national legislation

The adoption of harmonisation laws has made it possible to remove obstacles (such as by making national provisions inapplicable) and to establish common rules aimed at guaranteeing both free circulation of goods and products and respect for other EC Treaty objectives, such as protection of the environment and of consumers, or competition.

Harmonisation has been further facilitated by the introduction of the qualified majority rule, required for most directives relating to the completion of the single market (Article 95 of the EC Treaty, as modified by the Maastricht Treaty), and by the adoption of a new approach, proposed in a [Commission White Paper](#) (1985), aimed at avoiding onerous and detailed harmonisation. In the new approach based on the Council resolution of 7 May 1985 (confirmed in [the Council resolution of 21 December 1989 and Council Decision 93/465/EEC](#)), the guiding principle is the mutual recognition of national rules. Harmonisation must be restricted to essential requirements, and is justified when national rules cannot be considered equivalent and create restrictions. Directives adopted under this new approach have the dual purpose of ensuring free movement of goods through the technical harmonisation of entire sectors, and guaranteeing a high level of protection of the public interest objectives referred to in Article 114(3) TFEU (e.g. toys, building materials, machines, gas appliances and telecommunications terminal equipment).

E. Completion of the internal market

The creation of the single market necessitated the elimination of all remaining obstacles to free movement of goods. [The Commission White Paper \(1985\)](#) set out the physical and technical obstacles to be removed and the measures to be taken by the Community to this end. Most of these measures have now been adopted. However, the single market still requires substantial reforms if it is to meet the challenges of technological progress.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament supported the completion of the internal market and has always given particular support to the 'new approach' in connection with the free movement of goods. It has also made a strong legislative contribution to the harmonisation directives. Parliament was significantly involved in the NLF package adopted in 2008. The key issues for Parliament, in its negotiations with the Council, were to secure agreement that all economic operators involved should increasingly be responsible for assuring the compliance and safety of the products they put on the market, and to strengthen the CE mark by making consumers more aware of it. Parliament continues to work in



this area, with the Alignment Package consisting of nine directives covering different products, including lifts, pyrotechnic articles and explosives.

In its [resolution of 8 March 2011](#)^[3], Parliament called on the Commission to establish a single market surveillance system for all products (harmonised and non-harmonised), based on one legislative act covering both the [General Product Safety Directive](#) and [Regulation \(EC\) No 765/2008](#) on market surveillance, in order to attain a high level of product safety and market surveillance, and to clarify the legal basis. In 2013, at Parliament's request, the Commission presented the [Product Safety and Market Surveillance Package](#), consisting of new enforcement rules for the internal market for goods, which will enable national market surveillance authorities to enforce the law and to provide better and more extensive means of consumer protection. On 17 April 2019, the EP adopted a new [Regulation on market surveillance and compliance of products](#). The provisions on market surveillance in this Regulation should cover products that are subject to Union harmonisation. This will ensure a uniform framework for market surveillance at Union level and will help to increase the confidence of consumers.

Furthermore, standardisation plays a central role in the proper functioning of the internal market. Harmonised European standards help to ensure free movement of goods within the internal market and allow enterprises in the EU to become more competitive. These standards help to protect the health and safety of European consumers and also contribute to environmental protection. Aiming to enhance the content of the standardisation reform, Parliament adopted a [resolution on 21 October 2010](#)^[4] in which it called for the standardisation system's many successful elements to be maintained and improved, and for the right balance to be struck between the national, European and international dimensions.

On 25 October 2012, Parliament and the Council adopted [Regulation \(EU\) No 1025/2012](#) on European standardisation, modernising and improving the mechanism for setting European standards.

The seventh legislature concluded the legislative review of nine directives in the Alignment Package, in areas such as low-voltage equipment, electromagnetic compatibility, measuring instruments, and explosives for civil uses, as well as directives on pressure equipment and radio equipment. Parliament also concluded legislative work on: the regulation laying down harmonised conditions for the marketing of construction products; the labelling and marking of the fibre composition of textile products; the safety and environmental performance of two- and three-wheeled vehicles and quadricycles; and the directive on recreational craft and personal watercraft^[5].

The eighth legislature has continued these efforts through its work on regulations on cableway installations, appliances which burn gaseous fuels, medical devices and personal protective equipment. Parliament has successfully completed work on the

[3]OJ C 199 E, 7 7 2012, p. 1 — <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2012%3A199E%3ATOC>

[4]OJ C 70 E, 8.3.2012, p. 56 — <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2012%3A070%3ATOC>

[5]For more information see the study prepared for Parliament's Committee on the Internal Market and Consumer protection (IMCO) on 'EU Mapping: Overview of IMCO related legislation': [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL_STU\(2015\)536317_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL_STU(2015)536317_EN.pdf)



e-Call regulation^[6] and the decision on interoperability solutions for European public administrations, businesses and citizens (ISA2)^[7]. In the framework of the Circular Economy Package, Parliament prepared legislation on making CE marked fertilising products available on the Single Market^[8].

During the 8th legislature Parliament adopted a new [Notification Directive 2015/1535](#) improving mutual information among the Member States about technical regulations, and a new [Mutual Recognition Regulation 2019/515](#) with improved provisions for the national procedures that lead to the extension of mutual recognition^[9]. On 16 April 2019, Parliament adopted the regulation on type-approval for motor vehicles as regards their general safety and the protection of vehicle occupants and vulnerable road users, aimed at introducing numerous technical measures to save human lives and limit injuries in road accidents which cause over 25 000 deaths and 100 000 serious injuries on European roads annually^[10].

Parliament insisted that this legislation be complemented by online platforms, such as SOLVIT and the Internal Market Information System (IMI) pursuant to [Regulation 1024/2012](#), for the exchange of information between national authorities and with the Commission in order to solve problems that citizens and enterprises experience in buying or selling goods in the EU. Parliament made all these platforms accessible for citizens and businesses through the 'Your Europe' Single Digital Gateway in adopting [Regulation 2018/1724](#)^[11].

Parliament supports the need for stronger cooperation between EU and national authorities in order to improve the quality of EU legislation and identify legislation in need of simplification or codification. Parliament also calls on the other institutions to support co-regulation and voluntary agreements whenever possible, in accordance with the same principle of better law-making.

Recent research indicates that the benefits arising from the principle of free movement of goods and related legislation amount to 386 billion euros annually^[12].

[6]Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC (OJ L 123, 19.5.2015, p. 77) — <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007L0046>

[7]Decision of the European Parliament and of the Council establishing a programme on interoperability solutions for European public administrations, businesses and citizens (ISA2). Interoperability as a means for modernising the public sector (Text with EEA relevance) (COM(2014) 0367) http://ec.europa.eu/isa/documents/isa_2_proposal_en.pdf

[8]Proposal for a regulation of the European Parliament and of the Council laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 (COM(2016) 0157) — <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0157>

[9]Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008 (OJ L 91, 29.3.2019, p. 1) — <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0515>

[10]Workshop on Type-approval requirements for motor vehicles, <http://www.europarl.europa.eu/committees/en/imco/events-workshops.html?id=20181115WKS02022>

[11]Duke Ch. Single Digital Gateway: how EU could meet expectations of citizens and businesses?, Briefing prepared by Policy Department A for IMCO Committee, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614219/IPOL_BRI\(2018\)614219_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614219/IPOL_BRI(2018)614219_EN.pdf)

[12]Study on Contribution to Growth: Free Movement of Goods. Delivering Economic Benefits for Citizens and Businesses (2019), prepared by Policy Department A and ifo Institute for IMCO Committee, [http://www.europarl.europa.eu/RegData/etudes/IDAN/2019/631063/IPOL_IDA\(2019\)631063_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2019/631063/IPOL_IDA(2019)631063_EN.pdf)



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