

# FREE MOVEMENT OF GOODS: LEGISLATION SINCE 2009

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# The Regulatory Scheme of the Free Movement of Goods

	<b>NEGATIVE INTEGRATION</b> (prohibitions addressed to the Member States)	<b>EXCEPTIONS</b> (Member States may invoke to escape the prohibitions)		<b>POSITIVE INTEGRATION</b> (legal bases for legislation by the EU institutions)
Free Movement of Goods	<b>Art. 30:</b> no customs duties or charges having equivalent effect	<b>None</b> (EU is a free trade area + common external tariffs + abolition of non-tariff barriers = internal market)		<b>None</b> (CCT, Art. 31, for <i>external</i> tariffs)
	<b>Art. 110:</b> no discriminatory or protective taxation	<b>None</b> (strict prohibition of distinctly applicable fiscal burdens ⇒ Art. 30)	For indistinctly applicable measures additionally “ <b>mandatory requirements</b> /imperative reasons in the public	<b>Art. 113</b> (indirect taxation only)

Non-Harmonised Areas  
of the Free Movement of Goods,  
and the Principle of 'Mutual Recognition'

[8] In the **absence of common rules** relating to the production and marketing of [a given product], it is for the Member States to regulate all matters relating to the production and marketing of [this product] on their own territory. **Obstacles to movement** within the Community resulting from disparities between the national laws relating to the marketing of the products in question **must be accepted in so far as** those provisions may be recognized as being **necessary** in order **to satisfy mandatory requirements** relating, in particular, to ... the defence of the consumer.

**[14] [Where the national measures] do not serve a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods, ... there is no valid reason why products lawfully produced and marketed in one of the Member States should not be introduced into any other Member State.**

– Case 120/78 *Rewe Zentrale v Bundesmonopolverwaltung für Branntwein* (“Cassis de Dijon”) ECLI:EU:C:1979:42.

# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 1

## **Mutual Information among the Member States about Draft Technical Regulations: Directive 2015/1535**

- Technical regulations, not for blanket prohibitions: fine distinction, not convincing in substance
- Member States must notify Commission, who notifies other MSs
- Standstill obligation
- CJEU: Technical regulations adopted in breach are unenforceable

# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 2

## **The Internal Market Problem Solving Network (SOLVIT)**

- Fast and informal means of resolving problems that individuals and businesses encounter when exercising their rights in the internal market
- Involvement of 2 SOLVIT centres, Home and Lead
- Short time periods for reaction and resolution
- No private enforcement, recourse to litigation not redundant
- Commission intervenes under Article 258 TFEU if necessary

# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 3

## **Standardising European Standardisation: Regulation 1025/2012**

- Exchange of information between the national standardisation bodies, the European standardisation organisations, and the Commission, including on adopted standards (on drafts, voluntarily).
- Procedure for objections to standards that do not fulfil protection requirements in EU legislation
- EP may now also object to standards

# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 4

## **Internal Market Information System: Regulation 1024/2012**

- Software application on the internet
- Assists Member States with the practical implementation of information exchange requirements laid down in Union acts
- Each Member State appoints one national IMI coordinator to act, inter alia, as the main contact point for IMI actors of the other Member States and the Commission
- So far, IMI applies only to SOLVIT, but Commission may extend



# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 5

## **Transparency in Mutual Recognition-Procedures in the Member States: Regulation 764/2008**

- Rules and procedures to be followed when a national authority intends on the basis of a non-harmonised technical rule to prohibit the future or continued marketing of a product lawfully marketed in another Member State
- Not applicable to mere authorisation requirements
- Member States must establish one or several Product Contact Points (PCPs); those of other Member States may intervene in the procedure
- Commission may establish a ‘telematic network’ for the exchange of information among and between PCPs and national authorities

## Legislation in the Non-Harmonised Area of the Free Movement of Goods – 6

### **The Proposed Reform of the Mutual Recognition-Regulation, COM(2012) 292 final**

- Commission concluded that mutual recognition was not functioning as it should, and that the principle and the Regulation had had limited effects
- Introduction of a ‘mutual recognition declaration’ by producers to demonstrate lawful marketing in another Member State
- Information exchange between PCPs inter se, and with Commission
- Economic operators to use SOLVIT first, before triggering the problem-solving mechanism under the Regulation
- “Union information and communication support system” to be established by Commission

# Legislation in the Non-Harmonised Area of the Free Movement of Goods – 7

## **Remaining problems**

- Multitude of bodies and communication channels
- Some lack of conceptual coherence between acts: which national rules are covered, when?
- Several problem solution mechanisms, partly overlapping
- Legal certainty and enforceability only through litigation: costly & confrontational

# Legislation in the Harmonised Area of the Free Movement of Goods – 1

1. Motor vehicles and craft
2. Fuels and fuel-burning appliances
3. Measuring equipment
4. Electricity and electrical equipment
5. Explosives
6. Food
7. Other products: toys, cosmetics, seal products, personal protective equipment ...

# Legislation in the Harmonised Area of the Free Movement of Goods – 2

## **Remaining Problems**

- Proliferation of procedures, bodies, and information exchanges
- Ever-increasing demands on Member States' resources
- Enforcement difficult: decentralisation at national level, time-consuming and selective under Article 258 TFEU

# CONCLUSION

- Much achieved, now mostly fine-tuning
- Multiplication of acts, general and specific, of bodies, procedures, and communication channels
- Do we still see the wood for the trees?