

The Principles of the Internal Market

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Principles and general completion of the Internal Market

(Articles 2, 3c, 14, 18 EC Treaty)

Completion of the
Common Market - Single Market - Internal Market - Home Market

The **Common Market** is

- one of the essential cornerstones of the European Union and
- the backbone of economic integration within the Union.

Created 1958 by the Treaty of Rome to promote throughout the Community:

- a harmonious development of economic activities
- a continuous and balanced expansion
- an increase in stability
- an accelerated raising of the standard of living and
- closer relations between the States belonging to it

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Two complimentary ways of achieving this aim:

- opening up the borders, allowing people, goods, services and capital to move around freely within the Community
- organising solidarity among the Member States by setting up common policies and financial instruments

The completion of the Common Market is a dynamic process:

- the Union is regularly required to intervene to overcome new obstacles thrown up by national legislation
- the development of the market often necessitates adjustments to the body of Community law on the part of the European institutions.

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The Common Market has been from the beginning and still is a "work in process", constantly developing and facing numerous political and technical challenges.

- **1 July 1968**, the customs duties were abolished and a common external tariff was introduced.
- However, subsequent **delays** occurred and a concealed protectionism, combined with a plethora of new technical standards, drove Europe's national markets even further apart

To put an **end to this stagnation**, the Commission under President Jacques Delors published 1985 its **White Paper** which:

- spurred the then 12 Member States into action,
- stressing that the expanding Community's tremendous potential to become a single market was being thwarted by many obstacles
- pointing out that this was a high "cost of non-Europe".

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A number of facts combined to relaunch the driving force behind Europe:

- the European Court of Justice established the principle of mutual recognition of national rules (*Cassis de Dijon* judgement)
- the Member States resolved a series of disputes at the 1984 Summit giving new impetus to the construction of the European Community
- the convictions grew that fragmentation of the Community market was an obstacle to the Member States' competitiveness at international level.

In the **Single European Act** of 1986, Member States set a timetable for taking the steps necessary for completing the single market by 1993. Thereafter, progress became rapid and physical, fiscal and technical barriers were falling one after another.

The **Internal Market** was finally declared 'complete' on 1 January 1993.

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The **Internal Market** is founded on a number of principles:

1. The principle of non-discrimination

One of the fundamental principles of the Internal Market is the prohibition of any discrimination (meaning different treatment under the same circumstances) on grounds of nationality" as stated in Article 12 EC Treaty.

Therefore it is prohibited to treat imported goods differently to domestic goods.

At the instigation of the European Court of Justice, this principle has been adapted to other circumstances like in the context of services, where cases of discrimination were considered from the point of view of both nationality and residence.

Other criteria, such as gender equality, have also been included in the scope of the principle.

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2. Mutual recognition

The principle of mutual recognition is closely linked to the Principle of non-discrimination

The European Court of Justice laid down this principle in the *Cassis de Dijon* judgement of 1979, according to which a product, which is lawfully produced and marketed in one EU Member State must be accepted in the other
i.e. legislation of another Member State is equivalent in its effects to domestic legislation.

This principle has also an impact on the other freedoms, particularly those involving the performance of services, where it underlies the concept of the recognition of diplomas.

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3. Community Legislation

In addition to

- the provisions of the **EC Treaty** (Articles 94 and 95), which have a direct effect (non-discrimination) and
- the principles deriving from **case law** (mutual recognition),
- Article 3 of the EC Treaty provides for “the **approximation** of the laws of Member States to the extent required for the functioning of the common market”, including
 - opening up public procurement contracts,
 - company law,
 - financial services and
 - intellectual industrial and commercial property.

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Since the principle of mutual recognition is not sufficient to guarantee health protection, safety or fair trade, **directives** have been adopted to harmonise national rules on foundations which engender mutual confidence between Member States.

A new system for technical **harmonisation and standardisation** was implemented by a Council resolution of 1985.

Accordingly, the harmonisation directives would from then on focus on the essential demands of health, safety and environmental protection.

This more **flexible approach** to harmonisation has successfully avoided the over-concentration on detail, unnecessarily prolonging the process of drafting and negotiating legislation.

Defining technical standards is left to specialised bodies such as

- CEN (European Committee for Standardisation),
- CENELEC (for Electrotechnical Standardisation) and
- ETSI (European Telecommunications Standards Institute).

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The four main Freedoms of the Internal Market:

1. Freedom of movement for goods

It follows from the abolition, in intra-Community trade

- of customs duties and charges having equivalent effect (any duty whatever its name or procedure)
- as well as of quantitative restrictions (any national trade regulations likely to hinder Community trade directly or indirectly, actually or potentially).

Since 1 January 1992, the Community is allowed

- to eliminate physical barriers (border checks and customs formalities)
- to tackle the constantly increasing number of technical barriers via the principle of mutual recognition of standards and the “new approach” to Community harmonisation.

This dismantling of barriers is based on the standstill concept, which does not authorise the restoration of such instruments.

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2. Freedom of movement for persons/workers

- The **Treaty of Amsterdam**, which came into force on 1 May 1999,
- brought the provisions of the **Schengen agreement** within the framework of the EU's institutions and
 - provided for the creation of an “area of freedom, security and justice” without checks on persons on the internal borders of the EU, whatever their nationality (opt-out by UK, DK and Ireland).

The free movement of workers, stipulated by the EC Treaty, involves the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

This principle was extended to persons seeking employment.

Directives also regulate the right of students, pensioners and non-economically active persons to reside in any Member State.

The sole exception to the principle is certain kinds of work in the civil service. The freedom may be subject to certain restrictions if they are justified on grounds of public policy, public security and public health. This freedom of movement came into force through the use of two instruments, Council Regulations and Directives.

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3. Freedom of establishment, to provide services and mutual recognition of diplomas

The concept of the freedom to perform services is closely linked to the right of establishment:

Non-nationals or Community business in question must be given national treatment, i.e. the conditions applied to them must not be different from those applied to nationals or national businesses.

The right of establishment includes the possibility for self-employed persons to set up and perform their activities in another Member State.

The sole condition attached to the freedom to perform services in the Community is previous establishment in one of the Member States.

The EC Treaty set up certain limits, excluding services linked to the civil service where restrictions can be justified on grounds of public policy, public security and public health.

Certain sectors such as transport, banking and insurance needed their own systems, since the application of the freedom of movement for services could not easily be achieved simply through mutual recognition of standards.

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4. Freedom of movement for capital and payments

As a general rule, all restrictions on movements (investments) and on payments (for goods and services) are prohibited.

There are, however, important exception to this rule, namely:

- measures taken by Member States that are justified by the wish to prevent infringements to their own legislation (fiscal provisions),
- national procedures laid down for declaring capital movements for administrative or statistical information purposes,
- measures associated with public policy or public security

These national measures or procedures must not be a means of arbitrary discrimination or a disguised restriction on the free movement.

Since the beginning of the third phase of economic and monetary union on 1 January 1999, these safeguard clauses to remedy crises in the balance of payment, remain applicable only to those Member States which do not belong to the euro zone (UK, DK, S) and not to those 12 having adopted the single currency.

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Rules on competition (Articles 81-89)

For goods, services, people and money to move around freely within the single market, rules were introduced to ensure fair competition

These rules prohibit

- any business agreements with the object or effect of preventing, restricting or distorting competition within the common market
- any abuse of a dominant market position

The Commission is given the power to act as a watchdog.

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Functioning of the Internal Market

Decision making

Rules concerning the Internal Market are adopted in accordance with the co-decision procedure with the Council deciding with qualified majority.

(Article 95 EU Treaty)

Some sectors remain excluded from this procedure, requiring a unanimous decision by the Council like fiscal provisions, some aspects of movement of persons and rights and interests of employed persons

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Administrating the rules

As guardian of the Treaties, the European Commission plays a key role in managing the rules of the Internal Market, particularly in regard to their performance, updating and technical harmonisation.

To make sure that these rules are obeyed the Commission was given the power to

- impose penalties on any firm or EU country that breaks them – including the ban on operations agreed between companies outside the EU if this could affect the single market.
- monitor 'State Aid' (i.e. help given to companies by EU governments), which is, in principle, not compatible with the single market and therefore prohibited.

Individual Commission decisions are based on consultation and opinions gathered from Community agencies such as

- the European Agency for the Evaluation of Medical Products (London)
- the Office for Harmonisation in the Internal Market (Alicante).

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Commitology

Meeting within (regulatory) committees, which have an advisory role or are required to give their imperative opinions, the Commission is updating the existing rules in close cooperation with Member States representatives.

The measures adopted have the same legal status as the primary act which has been amended.

Standardisation mandates are entrusted by the Commission to European standardisation bodies such as CEN, CENELEC and ETSI, allowing industry to reach agreements each year on hundreds of certain common standards.

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Monitoring the application of Community rules

In the first instance, it is the national authorities, which must verify that EU directives are correctly applied.

The Commission and the European Court of Justice also ensure that Community law is adhered to and that directives are actually transposed.

The Commission publishes an annual report on the application of Community law in the Member States.

The Single Market Scoreboard contains information on progress in adherence to Community rules.

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The state of play

Overall, the Internal Market is certainly up and running and its achievements so far have been very satisfactory in so far as it

- opened up the national public contract markets
- ironed out disparities between national tax systems by certain common rules on indirect taxation, value added tax and excise duties
- liberalised the money markets and financial services markets
- harmonised national laws on safety and pollution
- made Member States recognise the equivalence of each other's laws and certification systems
- removed obstacles hindering the free movement of persons by abolishing passport checks and mutually recognising professional qualifications
- harmonised company law, by bringing into line national laws on intellectual and industrial property rights (trade marks and patents)

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However, the Internal Market still remains a "work in process", continuing to face numerous challenges, including:

- legislative omissions (the some 10% measures not adopted include some very important ones like taxation)
- failures to transpose legislation into national law (like in the fields of public procurement and intellectual property)
- failures in implementation.

Freedom of movement, too is far from complete and steps are being taken to improve worker mobility by ensuring that educational diplomas and job qualifications obtained in one EU country are recognised in all the others.

The introduction of the Euro in 12 Member States on 1 January 2002 further helped market transparency and competition

It may be hoped that Member States not yet taking part in the third phase of economic and monetary union will in time decide to join the euro zone to create what may be called the domestic European Market.

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Such a future **European Home Market** as a fully integrated market on national lines would comprise:

- a single currency (monetary union is now a “fait accompli”)
- harmonised tax system (indirect taxation, an integrated VAT system, etc.)
- integrated infrastructure (trans-European transport, energy and telecommunications networks)
- complete freedom of movement for persons (total abolition of frontier controls on persons; an unconditional right of residence throughout the Union)
- legal instruments to enable business to operate effectively throughout the market