

European Internal Market Law (Free Movement)

Code: 102260
ECTS Credits: 6

Degree	Type	Year	Semester
2500786 Law	OT	4	0

The proposed teaching and assessment methodology that appear in the guide may be subject to changes as a result of the restrictions to face-to-face class attendance imposed by the health authorities.

Contact

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Use of Languages

Principal working language: english (eng)
Some groups entirely in English: Yes
Some groups entirely in Catalan: No
Some groups entirely in Spanish: No

Other comments on languages

Although the course will be taught in English, students may also participate in Catalan or Spanish, and they may also answer the questions of the exam or other exercises in any of the three languages.

Teachers

Marta Pons de Vall Alomar

Prerequisites

There are no specific prerequisites. There will be a single group for this course. This course will be taught in English, but students may participate in class or produce their exams or exercises also in Catalan or Spanish. The teachers will be miquel Gardeñes Santiago and Marta Pons de Vall Alomar.

Objectives and Contextualisation

This course aims at offering:

- a basic overview of the principles and main legal framework of the European Union internal market: the "four freedoms" of movement (persons, goods, services and capital) and EU competition law. Most of the course will be devoted to the four freedoms,
- an analysis of the impact of EU internal market law on the legal order of Member States, and the limits that internal market law imposes on Member States,
- an explanation of the criteria used by the Court of Justice of the European Union to solve possible conflicts between free movement rights and other public interest objectives,

- a basic knowledge of the topics analysed during the course, so as to facilitate further specialised studies in this area, such as for instance in the context of the elaboration of an end-of-degree essay (TFG) or postgraduate studies.

Competences

- Apprehending the necessary mechanisms in order to know, assess, and apply the legislative reforms as well as to follow the changes produced in a concrete subject.
- Arguing and laying the foundation for the implementation of legal standards.
- Demonstrating a sensible and critical reasoning: analysis, synthesis, conclusions.
- Identifying and solving problems.
- Identifying the underlying conflicts of interest in disputes and real cases.
- Identifying, assessing and putting into practice changes in jurisprudence.
- Identifying, knowing and applying the basic and general principles of the legal system.
- Integrating the importance of Law as a regulatory system of social relations.
- Managing bibliographic and documentary resources: databases, browsing, etc.
- Memorising and utilising legal terminology.
- Present information in a way that is appropriate to the type of audience.
- Searching, interpreting and applying legal standards, arguing every case.
- Students must be capable of demonstrating the unitary nature of the legal system and of the necessary interdisciplinary view of legal problems.
- Students must be capable of learning autonomously and having an entrepreneurial spirit.
- Using the main constitutional principles and values as a working tool in the interpretation of the legal system.

Learning Outcomes

1. Applying an interdisciplinary and integrated vision of the legal problems in an international environment.
2. Assessing legislative changes and reforms in a context of plurality of systems.
3. Assessing the underlying conflicts of interest in the legal problems proposed in an international environment.
4. Building a legal reasoning or discourse in the field of Public International Law, Private International Law and European Union Law.
5. Demonstrating a sensible and critical reasoning: analysis, synthesis, conclusions.
6. Identifying and assessing the changes and evolution of jurisprudence in a context of plurality of systems.
7. Identifying and knowing the basic contents of every stipulated speciality.
8. Identifying and solving problems.
9. Integrating the importance of Law as a regulatory system of social relations, and the contextualisation of the legal phenomenon in the international environment.
10. Managing bibliographic and documentary resources: databases, browsing, etc.
11. Memorising and using the specific terminology of Public International Law, Private International Law and European Union Law.
12. Present information in a way that is appropriate to the type of audience.
13. Seek out, interpret and apply legal provisions related to Public International Law, Private International Law and European Union Law.
14. Students must be capable of learning autonomously and having an entrepreneurial spirit.
15. Using the constitutional values as a criterion for interpretation and solution of conflicts, specially in case of a contradiction between the main fundamental principles of several legal systems.

Content

Lesson 1: Introduction.

Aims and principles of the European Union (EU). The internal market: the "four freedoms" (persons, goods, services and capital) and competition policy. The role of the Court of Justice of the European Union (CJEU) and the role of national judges. Primary EU law and secondary EU law.

Possible remedies against breaches of the free movement provisions by Member States: complaints addressed to the European Commission. Recourse to the administrative and / or judicial remedies existing in Member States (with a possible preliminary ruling procedure). The "Solvit" system.

PART I: THE FREEDOMS OF MOVEMENT

Lesson 2: Free Movement of Goods (I)

General aspects: concept of "good". Goods covered by the free movement provisions. The legal regime applicable to commerce between Member States and its distinction with the regime applicable to commerce with third countries (common commercial policy). Extension of the regime applicable within the EU towards the countries of the European Economic Area (EEA).

Basic concepts: the customs union. The common external tariff. Tariff barriers (customs duties) and other tax obstacles. Non-tariff barriers to trade.

Customs duties and charges having equivalent effect (art. 30 of the Treaty on the Functioning of the European Union, TFEU): the concept of charge having an equivalent effect to a customs duty in the case-law of the CJEU. Taxes that fall outside this concept. Taxes required for the entry to or exit of a part of the territory of a Member State.

Article 110 TFEU: higher internal taxes imposed on goods coming from other Member States ("discriminatory" taxes) and internal taxes on goods imported from other Member States indirectly protecting national products ("protective" taxes). Discriminatory taxes: similarity of goods and higher taxation. Protective taxes: goods in a "competitive relationship" and an indirect "protective effect".

Remedies against customs and tax obstacles which are not in conformity with EU Law: restitution of the sums paid but not due. Compensation for damages and losses.

The specific issue of para-fiscal charges which are imposed on all goods but then refunded in some form to the domestic producer.

Lesson 3: Free movement of Goods (II)

Restrictions non related to customs or taxation. Articles 34 to 36 TFEU: the prohibition of "quantitative restrictions" and "measures having an equivalent effect" (hereafter, MEE). The existence of a non-tax restriction to trade in goods between Member States and its possible justification.

Conditions for the existence of a measure restricting imports from other Member States under Article 34 TFEU and the "Dassonville" case-law: 1) the measure derives from the activity of the authorities of Member States or has a "regulatory" nature; 2) It has an effect, direct or indirect, real or potential on trade in goods between Member States; 3) the measure must not be already foreseen in other provisions of the TFEU.

Detailed analysis of the condition relating to the effects on trade between Member States in the context of art. 34 TFEU (MEE affecting imports): sense of this condition. The ruling in *Commission vs. Italy* (10-2-2009) and the criterion based on restriction of access to the market of a Member State. Possible restrictive measures: A) measures the object or effect of which is to treat products coming from other Member States less favourably; B) in the absence of harmonisation, measures relating to the requirements to be met by products, even if those measures apply to imported and domestic products alike; C) any other measure which hinders access of a product coming from a Member State to the market of another Member State. Specific problem: is the "Keck/Mithouard" case-law (24-11-1993), as far as it relates to measures on "selling arrangements" (rules relating not to the requirements for products, but to their marketing or commercialisation) still applicable? New case-law rendered in the context of directive 2006/123, on services in the internal market.

Measures hindering exports: Article 35 TFEU. Evolution of the case-law.

Possible justification of restrictive measures: A) secondary EU law; "mandatory requirements" or reasons of public interest ("Cassis de Dijon" case-law, 20-2-1979). The conditions relating to non discrimination, necessity and proportionality of the measure. The doctrine of "mutual recognition" of national rules which are equivalent as to the level of protection of the general interest concerned; C) article 36 TFEU: cases and conditions of application.

Other legal acts: A) the harmonization of laws in the EU; B) the prevention of new restrictive rules and the information procedure laid down in directive 2015/1535 (formerly 98/34); C) Regulation 2019/515, of 19-3-2019, on mutual recognition of goods lawfully marketed in another Member State; D) Regulation 2018/32, of 28-2-2018, on unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market.

Lesson 4: Free movement of persons

Introduction and general aspects: personal scope of the provisions on the free movement of persons, distinction of the different categories enshrined in the Treaties and main legal provisions. Impact of the agreement on the European Economic Area (EEA) and on the agreement with Switzerland on the free movement of persons. Extension of the scope of the free movement rules to persons who do not undertake an economic activity. The citizenship of the European Union. The principle of non discrimination among nationals of Member States.

The regime applicable to nationals of third countries in the EU: basic concepts. Specific reference to the nationals of the United Kingdom after Brexit: the second part of the withdrawal agreement.

Entry and residence in Spain of nationals of other Member States and other persons assimilated to them. Directive 2004/38 and its incorporation into Spanish law.

Free movement of workers: concept of "worker" in the sense of art. 45 TFEU. Conditions for the application of the TFEU provisions on the free movement of workers. Regulation 492/2011, of 5-4-2011, on the free movement of workers. Directive 2014/54, of 16-4-2014, on measures to facilitate the exercise of rights conferred by the free movement of workers. The rights conferred on workers: equal treatment with the nationals of the host Member State

The access for nationals of a Member State to posts in the administration of other Member States.

Limitations justified on grounds of public policy, public security or public health.

Lesson 5: Right of establishment and freedom to provide services

General aspects. Distinction between the freedom of establishment and the freedom to provide services. Activities concerned by these two freedoms. Excluded activities: interpretation of the exclusion of activities connected with the exercise of official authority. Beneficiaries of this rights: special consideration of companies and other legal persons. Principal and secondary establishment. Application of the TFEU provisions on establishment and services in purely internal cases: the rulings of 15-11-2016 (case C-168/15) and 8-12-2016 (cases C532/15 and C-538/15).

Historical development of both freedoms: from the prohibition of discriminatory measures to the prohibition of unjustified measures, even if they are indistinctly applicable. Directive 2006/123, on services in the internal market.

Possible justification of restrictive measures on grounds of general interest and the introduction of the "mutual recognition" rule in the field of establishment and services. Limitations expressly provided in the TFEU: public policy, public security or public health.

A specific issue: temporary posting of workers in the context of an international provision of services by their employer.

Lesson 6: Free movement of capital and payments

Distinction between movements of capital and payments.

Evolution of the EU legal framework on capital movements: provisions of the Treaty of the European Economic Community (1957). Directives on partial liberalization. Directive 88/361, of 24-6-1988, abolishing restrictions of capital movements between Member States. The new provisions introduced by the Treaty of the EU (1992).

Current regime established by the TFEU: liberalization of capital movements and its limits. Case law of the CJEU.

Texts of EU secondary law: Regulation 2018/1672, of 23-10-2018, on controls on cash entering or leaving the Union. Regulation 2019/542, of 19-3-2019, establishing a framework for the screening of foreign direct investments into the Union. Provisions against money laundering.

PART II: EU COMPETITION LAW

Lesson 7: Introduction and fundamental concepts

Objectives and addresses of EU competition law.

Concepts of "undertaking" and "relevant market".

Sources of EU competition law.

Territorial scope of EU competition law.

Relations between EU competition law and Member States' competition law,

Lesson 8: Conducts relevant for EU competition law

1) Prohibited conducts:

1.1. Agreements between undertakings that restrict or distort competition (cartels): agreements between undertakings, decisions by associations of undertakings or concerted practices. Examples. Block exemption regulations. Horizontal agreements and vertical agreements.

1.2. Abuse of a dominant position. Concept of "dominant position" and concept of "abuse".

Regulation 1/2003, on the implementation of the rules on agreements restricting competition and on abuse of a dominant position. Directive 2014/104 on antitrust damages actions.

2) Conducts subject to control:

2.1. Control of mergers: the situation before 1989. The current merger control Regulation: Regulation 139/2004.

2.2. Control of aids granted by Member States to undertakings: concept of "aid". Procedural obligations. The duty of the undertaking to return an illegally granted aid, and the duty of the Member State to recover it.

Methodology

The theoretical lectures refer to the teacher's general presentation of the lessons of the programme. Work in classroom refers to the analysis of selected case-law of the CJEU and debating and solving practical cases. Comments and questions by the students will also be considered work in classroom.

The usual *modus operandi* of the practical exercises will be as follows: the teacher will propose a practical case, that students should resolve it in writing, in the classroom, in approximately one hour. After having submitted their written exercises, an oral discussion will take place, among the students and with the teacher.

Communications by the teachers to the students, and particularly those which are more important, such as the publishing of grades or warnings, will be published in the space of the "campus virtual" corresponding to this subject,

During the 2020/2021 academic year, the teaching activities explained above will take place in the classroom, unless restrictions to on-site or face-to-face teaching activities are imposed for sanitary reasons.

The teachers of this course will be Miquel Gardeñes and Marta Pons de Vall.

Annotation: Within the schedule set by the centre or degree programme, 15 minutes of one class will be reserved for students to evaluate their lecturers and their courses or modules through questionnaires.

Activities

Title	Hours	ECTS	Learning Outcomes
Type: Directed			
Theoretical Lectures.	25	1	7, 6, 9, 11, 15, 2, 3
Work in Classroom- debating and solution of practical cases, comments and questions.	20	0.8	1, 4, 5, 10, 7, 6, 9, 8, 14, 15, 2, 3
Type: Autonomous			
Search, reading and study of bibliography, legal texts and case law.	100	4	7, 6, 9, 11, 8, 2, 3

Assessment

According to the usual grading system, marks will range from 0 to 10. For passing the subject it is necessary to obtain at least an average grade of 5.

1) Ordinary assessment or evaluation:

For the grading of the course, three activities will be considered:

1.1. Participation in classroom, mainly through written exercises on practical cases, but also through the oral discussion following those exercises (20 %, 2 points out of 10). In the context of this activity, more than the results obtained what matters is students' participation.

1.2. A practical case to be solved by the students, in classroom and in writing, at the end of the course. Students will have a maximum time of one hour to solve the case. The exact date of this exercise will be announced at the beginning of the course (40 %, 4 points out of 10).

1.3. A theoretical exam, that will take place on the official date indicated by the Faculty. This exam will have two questions, and students will have a maximum time of an hour to answer them (40 %, 4 points out of 10)

2) Extraordinary assessment or reevaluation:

Those students who have not passed the subject in the ordinary assessment phase may take the reevaluation proof, that will take place on the date indicated by the Faculty. The possibility of participating in the reevaluation proof is subject to the condition that the student has obtained a minimum of 1 point in the activity of classroom participation (number 1.1. above) and that he or she has taken, in the frame of the ordinary assessment, either the end-of-course practical case (number 1.2. above) or the final exam (number 1.3. above), or both of them. Students who have taken, in the frame of the ordinary assessment, both the end-of-course practical case and the final exam and have passed the subject may not take the reevaluation proof in order to try to improve the grade previously obtained.

The reevaluation exam will have two parts:

2.1. A practical case (50 %, 5 points out of 10), to be solved in a maximum time of one hour.

2.2. A theoretical exam with two questions, to be answered in a maximum time of one hour (25 % each question, so 5 points out of 10).

According to applicable academic regulations, students may ask for a review of their exams or proofs. The minimum time between the publishing of the grades in the "campus virtual" and the moment of such review will be 24 hours.

Apart from other possible responsibilities according to the disciplinary rules, those students who cheat or try to cheat in an exam or proof will be graded with a 0 mark in such exam or proof. Proofs or exercises in which plagiarism is detected will also be graded with 0, and their author will receive a warning. In case of reiteration of such conducts the student will fail the subject with a 0 mark.

Assessment Activities

Title	Weighting	Hours	ECTS	Learning Outcomes
Final Exam	40 % (4 points out of 10)	1	0.04	1, 4, 5, 7, 6, 9, 11, 15, 2, 3
Final practical case	40 % (4 points out of 10)	1	0.04	1, 13, 4, 5, 7, 6, 12, 8, 14, 15, 2, 3
Participation in class (written and oral)	20 % (2 points out of 10)	3	0.12	1, 13, 4, 5, 10, 7, 12, 3

Bibliography

Preliminary note: there is no textbook that adapts perfectly to the content of the programme, so there is not a compulsory reference textbook for this course. Having said this, several titles might be useful, as merely recommended bibliography, for the purposes of this course (the most relevant ones indicated in bold letter):

Introductory bibliography:

Abellán Honrubia, Victoira and Vilà Costa, Blanca (dirs.); Olesti Rayo, Andreu (coord.), *Lecciones de Derecho Comunitario Europeo*, Barcelona, Ariel, 2012, lessons VIII to XI.

Ortega Álvarez, Luis Ignacio and De la Sierra Morón, Susana (dirs.), *Estudios de la Unión Europea*, Centro de Estudios Europeos, Universidad de Castilla-La Mancha, 2011, pp. 103-120 (free movement of persons), pp. 121-136 (free movement of goods), pp. 137-149 (freedom to provide services), pp. 151-158 (free movement of capital).

Sánchez, Víctor M^a (dir.), *Derecho de la Unión Europea*, Barcelona, Huygens, 2017, lessons 23 to 26.

Specialised bibliography:

Albors-Llorens, Albertina et al. (eds.), *Cassis de Dijon. 40 Years On*, Hart Publishing, 2021.

Barnard, Catherine, *The Substantive Law of the EU: The Four Freedoms*, Oxford University Press, 6th ed., 2019.

Beneyto Pérez, José M^a (dir.), Maíllo González-Orús, Jerónimo, Becerril Atienza, Brelén (coords.), *Tratado de Derecho y políticas de la Unión Europea (tomo VI: mercado único europeo y unión económica y monetaria)*, Aranzadi, 2014.

Beneyto, José M^a and Maíllo, Jerónimo (dirs.), Corti, Justo and Milla, Pilar (coords.), *Fostering Growth in Europe: Reinforcing the Internal Market*, Madrid, CEU ediciones, 2014 (available at the UAB digital library).

De Grove-Valdeyron, Nathalie, *Droit du marché intérieur européen*, Paris, LGDJ, 5th ed., 2017.

Dubois, Louis and Blumann, Claude, *Droit matériel de l'Union Européenne*, Paris, Montchrestien, 8th ed., 2019.

EU Commission, *Free movement of goods. Guide to the application of Treaty provisions governing the free movement of goods*, Luxembourg, Publications Office of the EU, 2010 (available on line, open access).

Fernández Navarrete, Donato, *Fundamentos económicos y políticas de la UE*, Madrid, Delta, 2014.

Garben, Sacha and Govaere, Inge (eds.), *The Internal Market 2.0*, Hart Publishing, 2021,

García Cruces, José Antonio(dir.), Tratado de Derecho de la competencia y de la publicidad, tomo I, Valencia, Tirant lo Blanch, 2014.

García Murcia, Joaquín (dir.), Libertad de circulación y derechos de protección social en la Unión Europea, Lisboa, Jurvá editorial, 2016.

Gardeñes Santiago, Miguel, "La circulación de personas físicas en el Acuerdo de Retirada del Reino Unido de la Unión Europea", Revista Electrónica de Estudios Internacionales, nº 40, december 2020.

Górriz López, Carlos and Arenas García, Rafael (coords.), Libertad de establecimiento y Derecho europeo de sociedades, Barcelona, Atelier, 2017.

Górriz López, Carlos, *Brexit y libertad de establecimiento. Aspectos fiscales, mercantiles y de extranjería*, Barcelona, Atelier, 2021.

Grynfogel, Catherine, Droit européen de la concurrence, Paris, LGDJ, 2016.

Gutiérrez Velasco, Íñigo (coord.), El Tribunal de Justicia de la UE ante el espejo del Derecho social, Tirant lo Blanch, 2017 (available at the UAB digital library).

Hyltén-Cavallius, Katarina, EU Citizenship at the Edges of Freedom of Movement, Hart Publishing, 2020.

Kaupa, Clemens, The Pluralist Character of the European Economic Constitution, Hart Publishing, 2016.

López Escudero, Manuel y Martíny Pérez de Nanclares, José (coords.), Derecho comunitario material, Madrid, McGraw-Hill, 2000.

Lorenz, Moritz, An Introduction to EU Competition Law, Oxford University Press, 2013.

Martos García, Juan Jesús, "Las exacciones de efecto equivalente a los derechos de aduana en la Unión Europea. Análisis jurisprudencial", Crónica Tributaria, núm. 144, 2012, pp. 55-87 (available at the UAB digital library).

Miquel Rodríguez, Jorge and Pérez Troya, Adoración, Derecho de sociedades europeo, Aranzadi, 2019.

Oliva, Anne Marie, Leçons de droit matériel de l'Union Européenne, Paris, Ellipses, 2013

Pérez de las Heras, Beatriz, El mercado interior europeo. Las libertades económicas: mercancías, personas, servicios y capitales, Universidad de Deusto, 2011.

Reich, Norbert et al., Understanding EU Internal Market Law, Intersentia, 3rd ed., 2015.

Signes de Mesa, Juan Ignacio; Fernández Torres, Isabel and Fuentes Naharro, Mónica, Derecho de la competencia, Civitas/Thomson Reuters, 2013.

Vogel, Louis, *Droit européen des affaires*, Paris, LGDJ, 2nd. ed., 2019.

Vogel, Louis, European Competition Law, LawLex/Bruylant, 3rd. ed., 2020.

Internet pages:

- European Union:

<http://www.europa.eu/>

- Law and legislative procedures of the EU:

eur-lex.europa.eu/homepage.html

- Court of Justice of the European Union:

<http://curia.europa.eu/>

- Web on several topics about the EU:

europa.eu/european-union/topics_es.htm

Particularly, the following topics: "Citizenship of the Union", "Competition", "Consumers" and "Internal market".

- SOLVIT network:

<http://ec.europa.eu/solvit/index.htm>

Software

This course does not require the use of specialised software.