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Erasmus+ Mobility for Teaching

UNWE University of World and National Economy,  
Sofia/BG

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Prof. Dr. jur. Holger Buck

**EU Internal Market Legislation: The Single Market and the 4  
Freedom (including workshop)**



**Hochschule für  
Technik und Wirtschaft  
des Saarlandes**

University of  
Applied Science

**Fakultät für  
Wirtschafts-  
wissenschaften**  
Business School

**Prof. Dr. jur. Holger Buck**

**[holger.buck@htwsaar.de](mailto:holger.buck@htwsaar.de)**



## International Business Environment: macro environment of a company

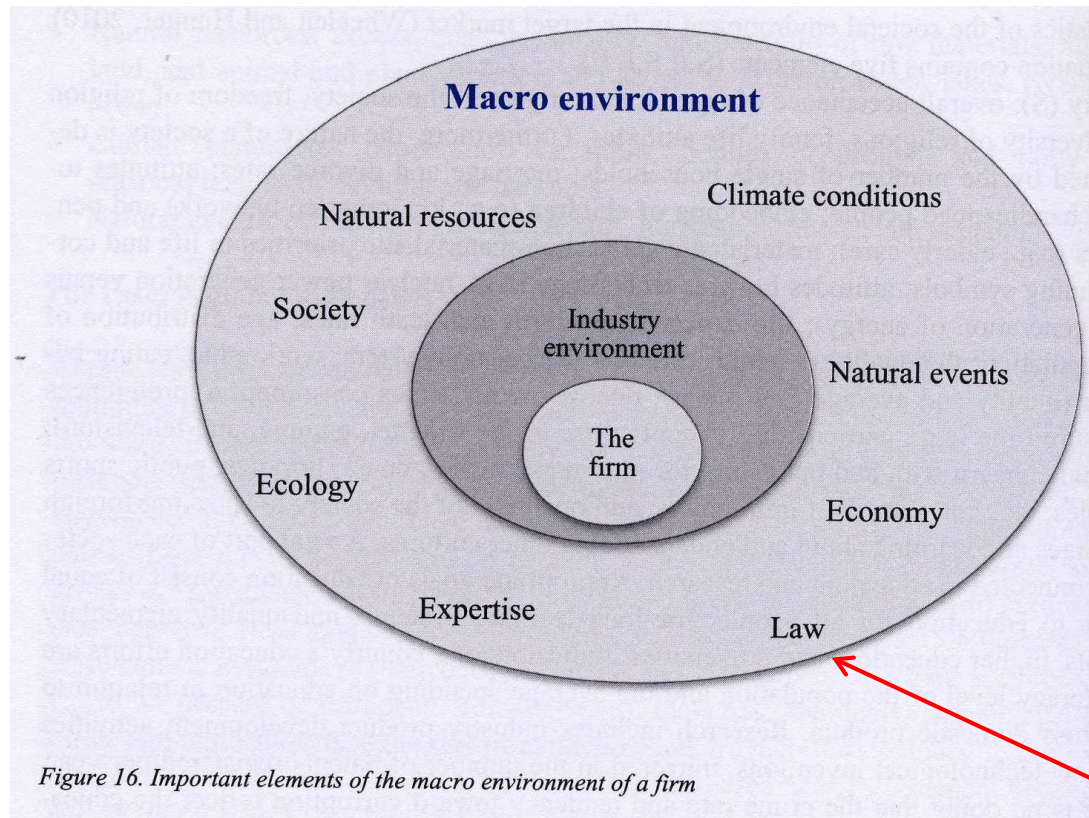


Figure 16. Important elements of the macro environment of a firm

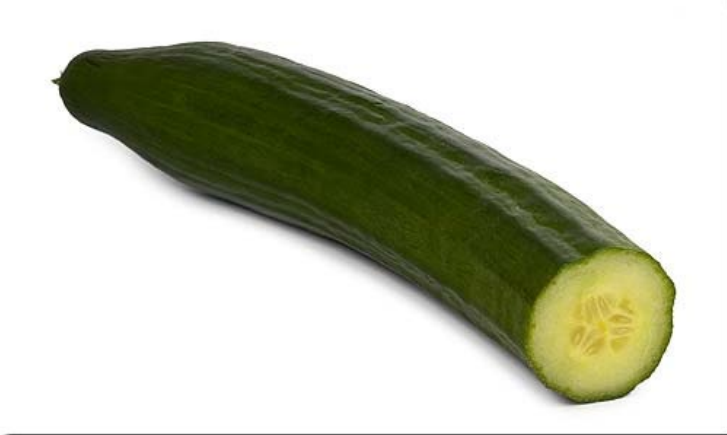
M. Glowik & S. Smyczek (2011) International Marketing Management, München: Oldenbourg, p. 70

**A short quiz:**

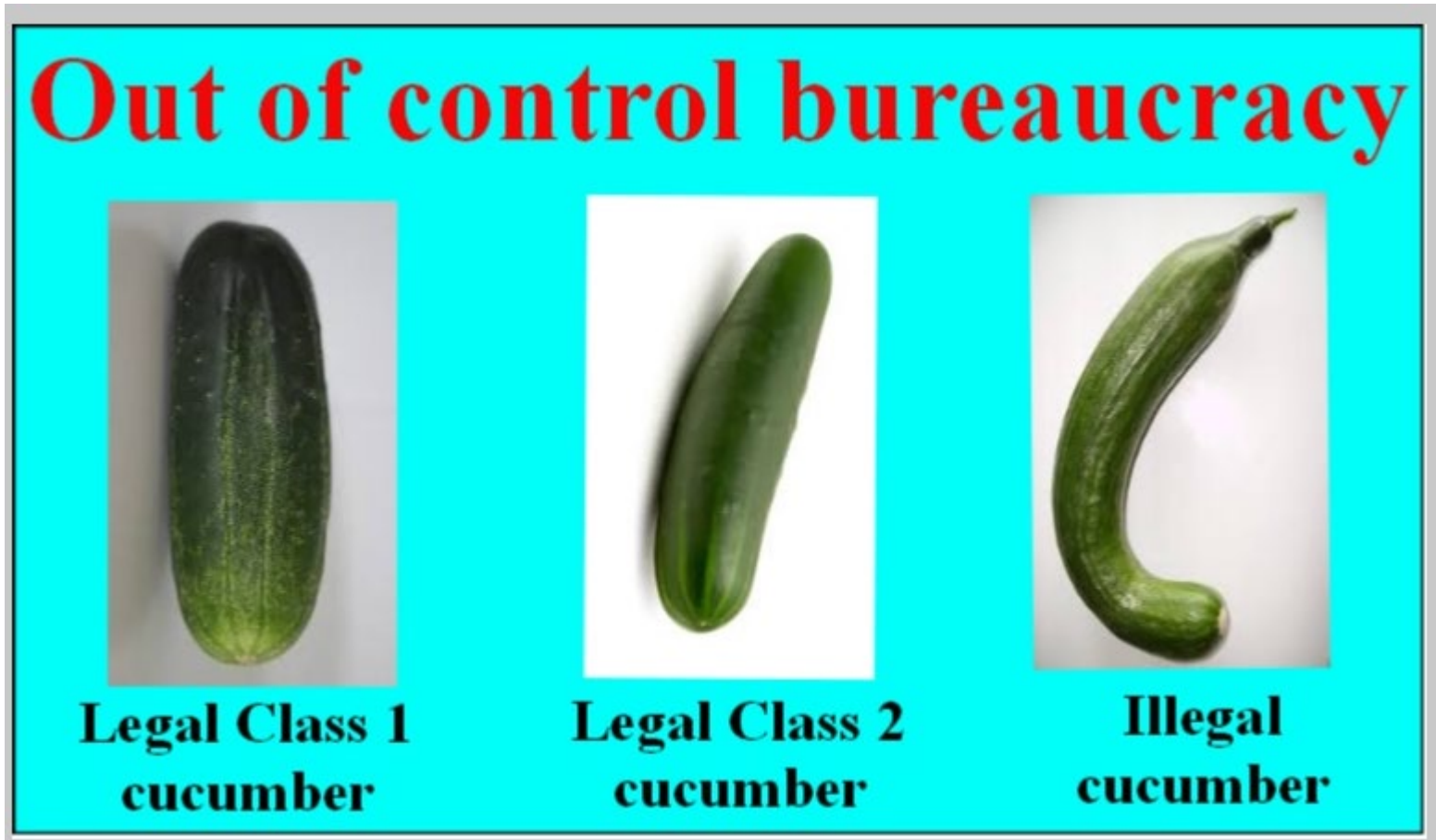
**Who is the most prominent  
European (in Germany)?**



**Quiz: the Answer**



sources: various, Internet



Source: [www.ar15.com/archive/topic.html?b=1&f=5&t=1578609](http://www.ar15.com/archive/topic.html?b=1&f=5&t=1578609)

## European Bureaucracy

### Should the EU Sell Bent Cucumbers?

For years, EU critics only had to mention the "bent cucumber rule" whenever they wanted to mock perceived European over-regulation. Now, the EU's

- **„If Europe cares for the arc of the cucumber then the citizens have the right to say „NO“ to Europe“**
- **„Those bureaucratic idiots in Bruxelles: they even care for the arc of a cucumber!“**  
(EU Parliament election campaigns 2005 and 2009)

**My opinion: irresponsible populist statements, however wrong (see later)**



### Does Europe really dictate the size of cucumbers?

CheckNews, France  
13 March 2019, Updated: 29 March 2019

The size of cucumbers (and other vegetables) is often used as an example of the absurdity of European bureaucracy. In 2016, former French president Nicolas Sarkozy joked about the curve of cucumbers being regulated by the EU. If the curve of the cucumber came for a time to stand for the absurdity of certain European

## Content

1. Creation of the Single Market, What is „Law of the European Union“?
2. EU Law
  - 2.1 Relationship between EU Law and national Law
  - 2.2 Components
  - 2.3 Institutions
  - 2.4 EU legislation: Secondary Law
3. EU law's helpful influence on Private Law
4. Entrepreneurial Freedom of Action
5. The Single Market (Internal Market)
6. The „Four Freedoms“ with a Focus on Free Movement of Workers including a workshop
7. Conclusion
8. Further Reading and Websites



## The creation of the Single Market

The creation of EU's „**Single Market**“ = „Internal Market“ is one of the cornerstones of the EU.

There are legal rules laying down the **Single Market**, however we have to take into account neighbouring/supplementing rules as well.

We can't understand the concept of the Single Market if we do not know

- what the **EU** is and
- what **EU law** is.

The EU: 27 Member States and 447 million citizens (Euro zone: 342 million)



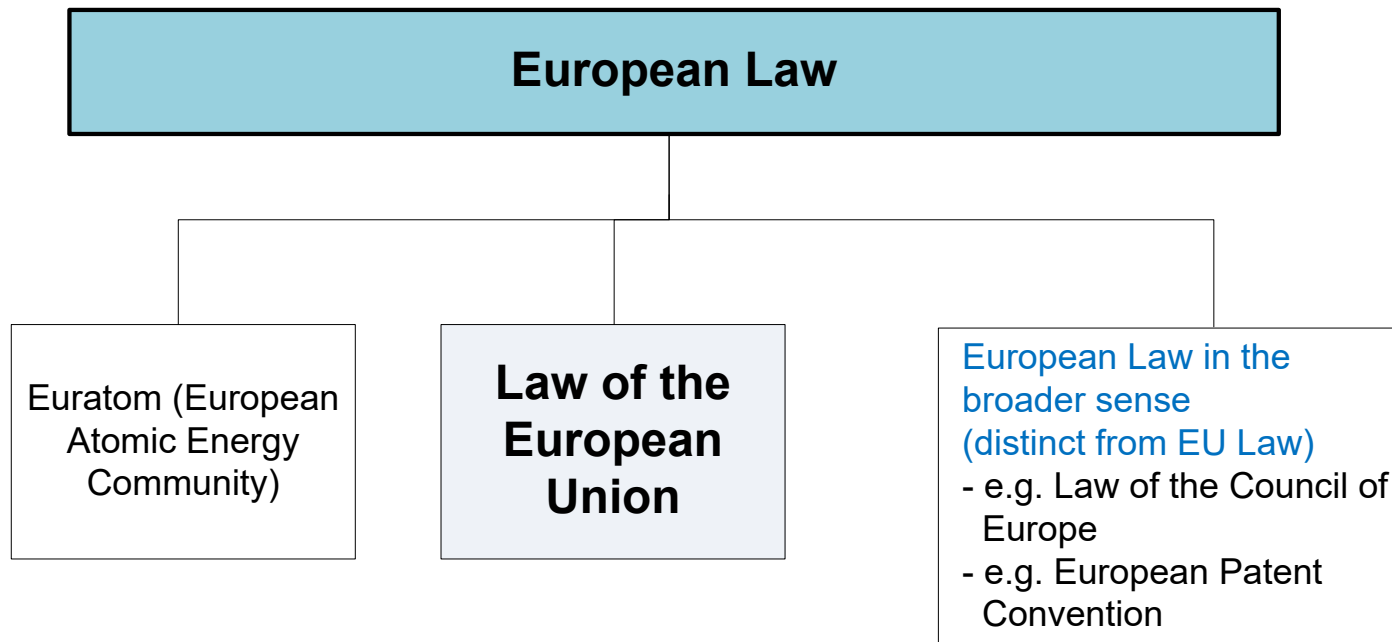
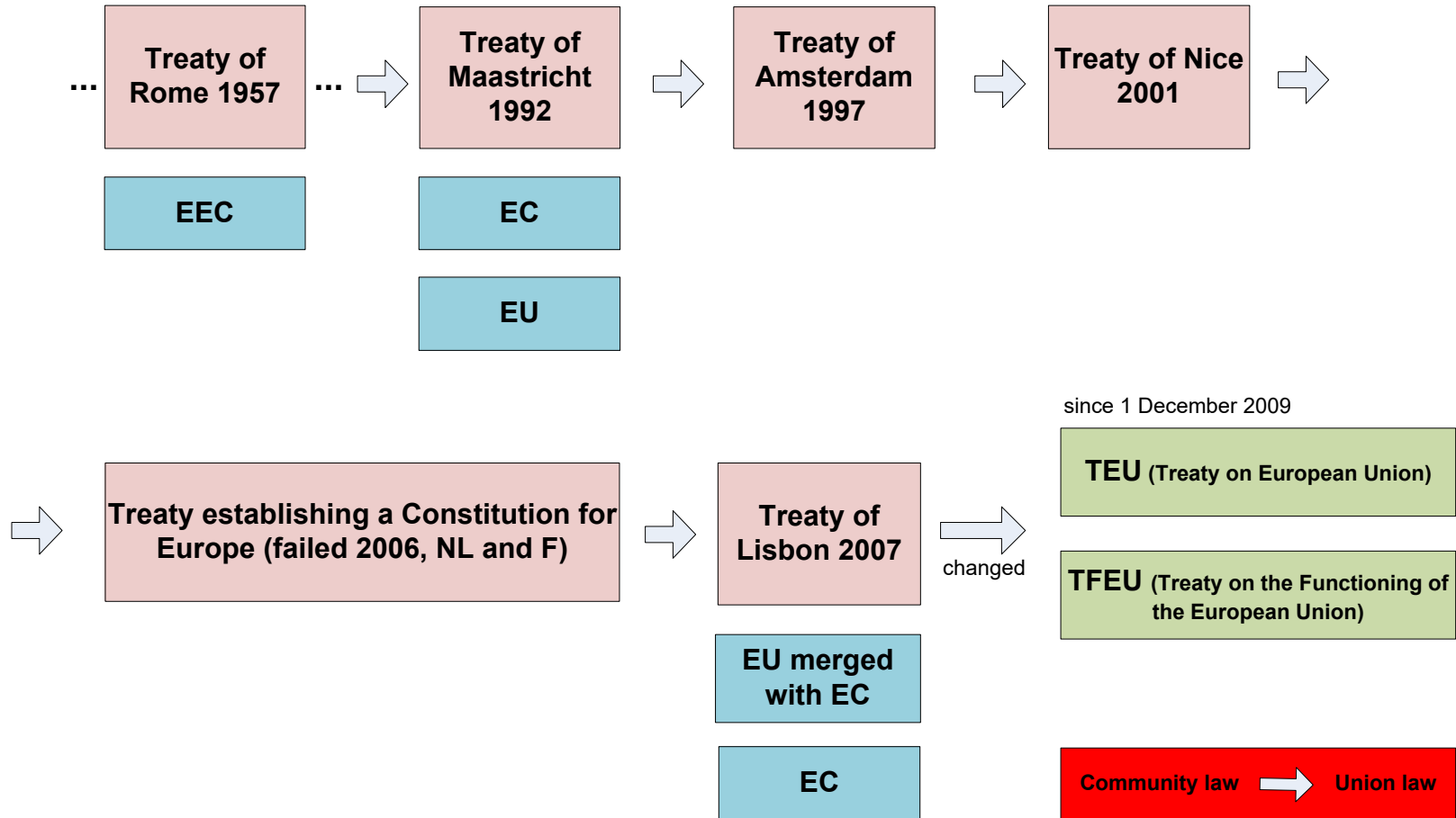


Figure: own

## 2. EU Law



**EU constitutional law** mainly consists of:

- 1) Treaty Establishing the European Economic Community 1957 (**Treaty of Rome**)  
...
- 2) Treaty on European Union 1992 (**Maastricht Treaty**)  
(aims: creation of the EU and deepening of integration, creation of a single currency [€], changing and renaming of the EC)
- 3) **Treaty of Amsterdam** 1997  
(aims: to increase effectiveness and to bring EU closer to the citizens)
- 4) **Treaty of Nice** 2001 (aims: enlargement of the EU; new balance of votes)  
→ Bulgaria Member State since 2004
- 5) **Treaty establishing a Constitution for Europe**, failed 2006 (F, NL)
- 6) **Treaty of Lisbon**, 13 December 2007, entered into force on 1 December 2009
  - ✓ **changes the Treaty of Rome**  
(→ **TFEU = Treaty on the Functioning of the European Union**)
  - ✓ **changes the Treaty of Maastricht**  
(→ **TEU = Treaty on European Union**) and
  - ✓ recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the EU** (Strasbourg version, 2007)

## 6) Treaty of Lisbon (cont.)

- needed two referendums to be accepted in Ireland (6/2008 and 10/2009)
- had to face retarded signings by the presidents of Poland and the Czech Republic
- entered into force on 1 Dec 2009



source: Internet

## 7) Charter of Fundamental Rights of the European Union, e.g.:

- „No one shall be condemned to the death penalty, or executed.“
- „No one shall be subjected to torture or to inhuman or degrading treatment or punishment.“

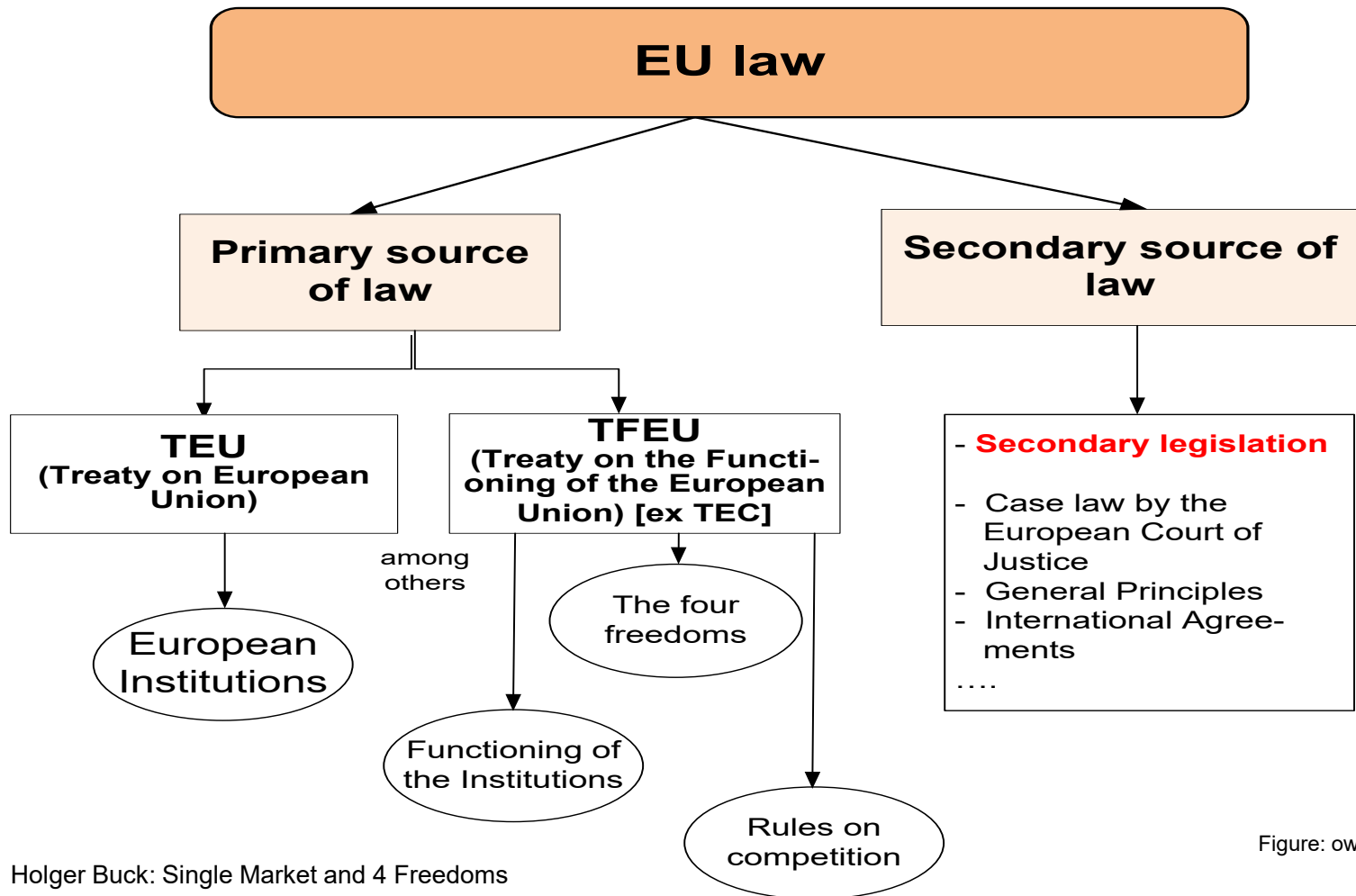
## 2.1 Relationship between EU law and national law

- Absence of an explicit rule within the treaties and in most of the national legal systems

[Art. 4 s. 2 TEU: „... [the Union] shall respect their essential State functions, including ... maintaining law and order ...].

- The European Court of Justice has recognized the **principles** of **direct effect** and of **supremacy** of [EC] EU law (in colliding fields of law).  
→ **EU law is directly applicable and prevails over national law.**

## 2.2 Components of EU law







## 2.3 The EU Institutions (art. 13 TEU)

- 1) **European Parliament** (art. 189-201)
  - 2) **European Council** (presided by the President of the European Council, elected for 2 ½ years; currently Charles Michel)
  - 3) **Council of the European Union** with rotating presidency of six months (currently Sweden): co-legislator on European Parliament's side  
(should not get mixed up with the Council of Europe!)
  - 4) **European Commission** (staff approx. 32,000; proposes and prepares legislation),  
President of the Commission: Ursula von der Leyen
  - 5) **Court of Justice of the European Union (CJ/ECJ)** (should not get mixed up with the European Court of Human Rights of the Council of Europe!)
  - 6) **European Central Bank**
  - 7) **Court of Auditors**
  - 8) **High Representative of the Union for Foreign Affairs and Security Policy**
- ... (ESM et al.)

more precisely: **Court of Justice of the European Union**  
(art. 19 TEU, art. 251-281 TFEU)



source: own and <http://curia.europa.eu>

- ensures that the law and the general principles are observed in the same way in all Member States and that the law is equal to everyone
- different types of proceedings (e.g. preliminary rulings)
- From autumn 2016 onwards consists of 2 courts:
  - Court of Justice (since 1952, at that time established by ECSC)
  - General Court (formerly: Court of First Instance, established 1989)
  - (Civil Service Tribunal, established 2005 and discontinued autumn 2016)

## 2.4 Secondary legislation (wording of art. 288 TFEU)

THE LEGAL ACTS OF THE UNION

*Article 288*  
(ex Article 249 TEC)

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

→ A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

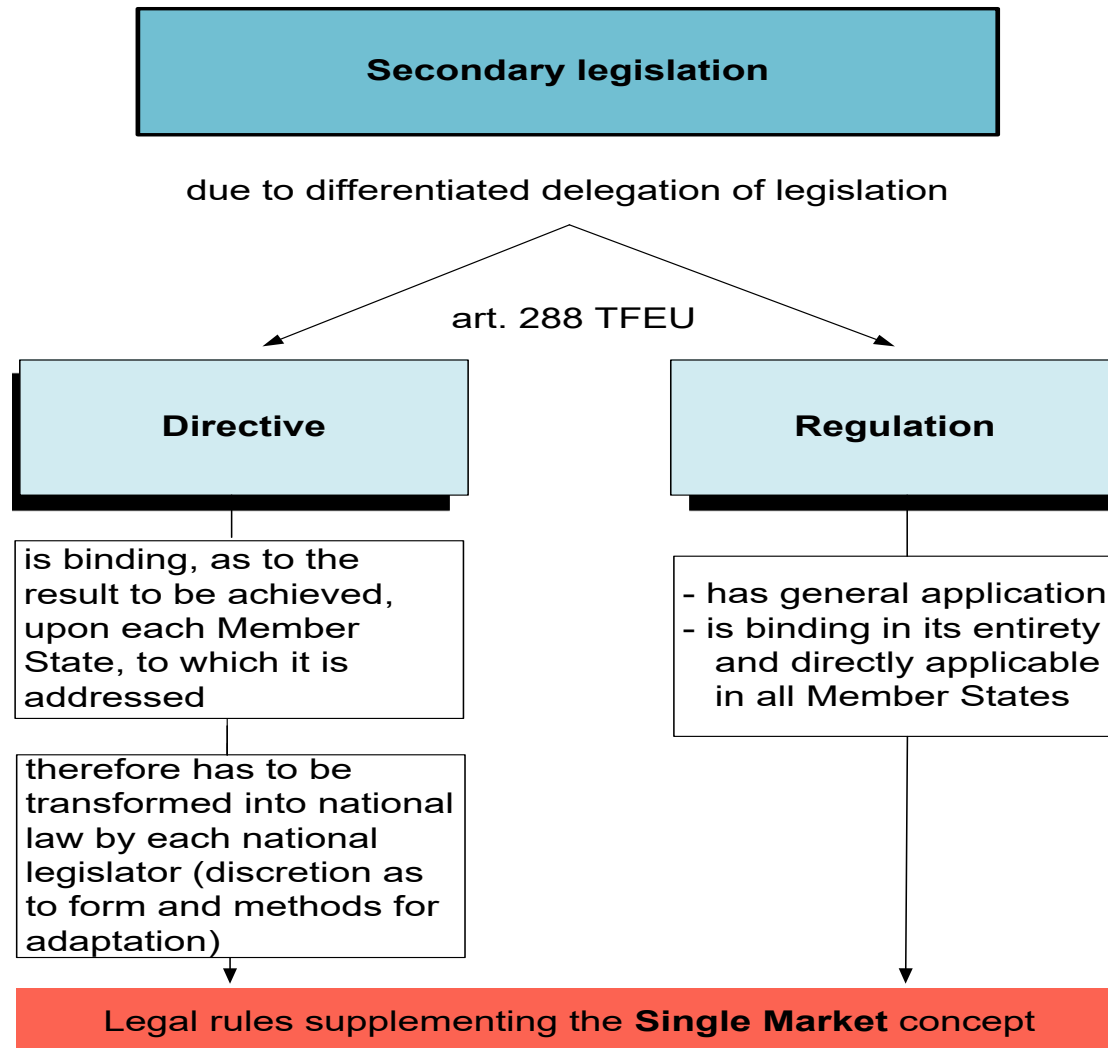
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C 83/172 EN Official Journal of the European Union 30.3.2010

→ A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

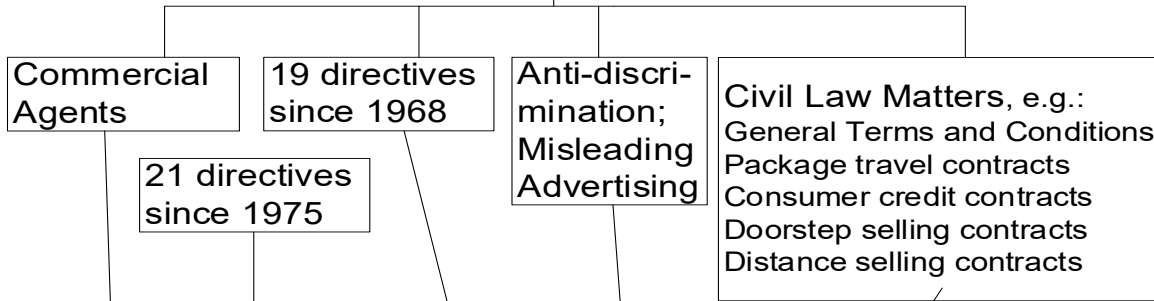
Recommendations and opinions shall have no binding force.



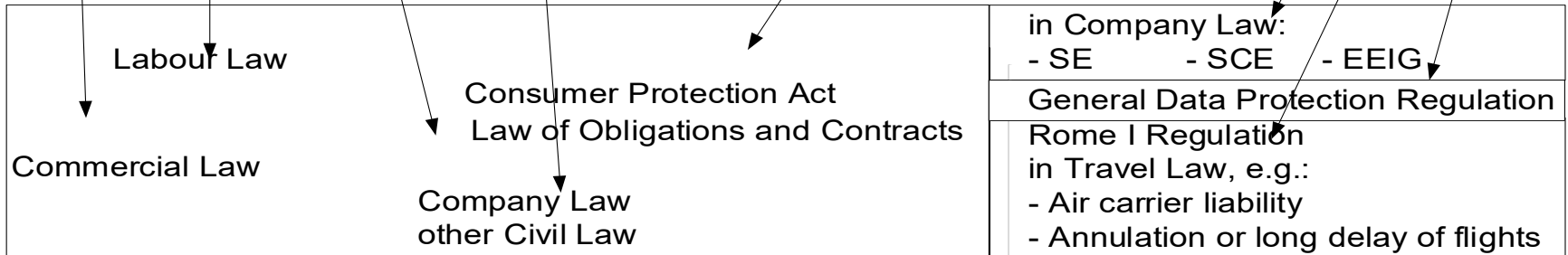
# Influences of EU law on the law valid in Bulgaria

## Directives

e.g.



## Regulations



{ **sum of legal rules valid in Bulgaria in selected fields of private law** }

## e.g. harmonization/standardization of Company Law within the EU

- harmonization of national laws by means of 19 directives + 3 directives on the taxation of companies since 1968

e.g. #19:

„Capital requirements and supervisory review of remuneration policies within banking and finance companies”

(Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, OJ L 329, 14.12.2010, p. 3)

- harmonization by means of regulations: creation of supranational company forms pursuant to EU law (supplemented by national law)

- (1) **EEIC** – European Economic Interest Grouping, since 1989
- (2) **SE** – Societas Europaea, since 2004, to be used by large companies
- (3) **SCE** – Societas Cooperativa Europaea, since 2006.
- (4) unsuccessful projects of a SPE (Societas Privata Europea) and a SU (Societas Unius Personae) for SME (small and medium enterprises)

## 4. Entrepreneurial Freedom of Action

### 4.1 General

A market economic system as used by the EU is characterized by legal freedom of action (individual an entrepreneurial freedom). Such freedom enables self-determined participation in the **Single Market**.

EU Economic Law establishes such entrepreneurial freedom of action.

Generally, EU citizens and entrepreneurs enjoy freedom of contracting provided by the legal system of the respective Member State.

The Charter of Fundamental Rights of the EU codifies some rights that are essential for entrepreneurs:

**Article 6 Right to liberty and security**

Everyone has the right to liberty and security of person.

**Article 15 Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
  2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
  3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.
- Everyone has the right to liberty and security of person.

**Article 16 Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

**Article 17 Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.



## 4.1 Legal rules safeguarding the freedom

EU law contains **rules protecting** the entrepreneurial freedom of action within the **Single Market**.

### a) EU state aid law

State aid issued by a Member State may distort or threaten to distort competition within the **Single Market** – typically only granted to entities of that Member State.

→ art. 107-109 TFEU

## b) **EU cartel law**

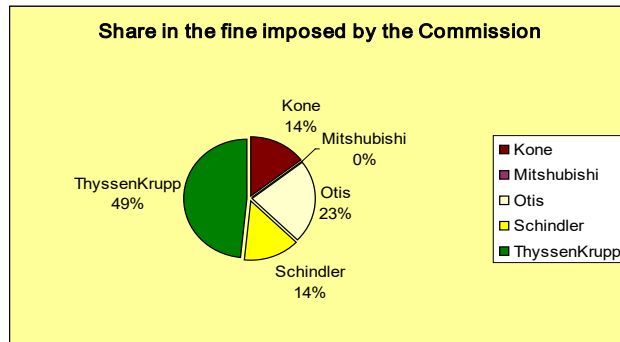
→ art. 101 TFEU

The Commission acting as EU's cartel authority has wide power and discretion to enforce antitrust legislation. The Commission is given several investigative powers to (e.g. inspection at business and non-business premises, written requests for information, e-raids) according to art. 17ff Regulation (EC) 1/2003:

- to conduct inquiry into specific sectors (art. 17)
- to request for information (art. 18)
- power to take statements (art. 19)
- power to conduct inspections at business and non-business premises (art. 20-21)
- including e-raids (inspection of e-mails, data etc.)

## cases in cartel law, e.g.:

1. Lift and Escalators Cartel: Decision of the Commission of 21 February 2007: Fines of € 992 million



2. (Needle and) Zipper Cartel: Fines of € 328 million.

3. etc. etc.

1.5. Ten highest cartel fines per case (since 1969)

Last change: ++10 November 2017++

**Truck cartel** (facts,  
fines and reductions)

[http://europa.eu/rapid/  
press-release IP-16-  
2582 en.htm](http://europa.eu/rapid/press-release_IP-16-2582_en.htm)

Year	Case name	Amount in €*
2016/2017	Trucks	3 807 022 000
2012	TV and computer monitor tubes	1 409 588 000
2013/2016	Euro interest rates derivatives (EIRD)**	1 310 039 000
2008	Carglass	1 185 500 000
2014	Automotive bearings	953 306 000
2007	Elevators and escalators	832 422 250
2001	Vitamins	790 515 000
2010/2017	Airfreight (incl. re-adoption)	785 345 000
++2013/2015++	Yen interest rate derivatives (YIRD)	669 719 000
2007/2012	Gas insulated switchgear (incl. re-adoption)	675 445 000

1.6. Ten highest cartel fines per undertaking (since 1969)

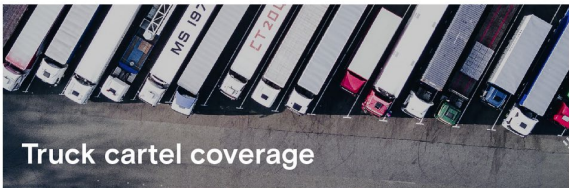
Last change: ++27 September 2017++

Year	Undertaking	Case	Amount in €*
2016	Daimler	Trucks	1 008 766 000
++2017++	Scania	Trucks	880 523 000
2016	DAF	Trucks	752 679 000
2008	Saint Gobain	Carglass	715 000 000
2012	Philips	TV and computer monitor tubes	705 296 000 of which 391 940 000 jointly and severally with LG Electronics
2012	LG Electronics	TV and computer monitor tubes	687 537 000 of which 391 940 000 jointly and severally with Philips
2016	Volvo/Renault Trucks	Trucks	670 448 000
2016	Iveco	Trucks	494 606 000
2013	Deutsche Bank	Euro interest rate derivatives (EIRD)	465 861 000
2001	F. Hoffmann-La Roche	Vitamins	462 000 000

## Hot topic at the moment in Cartel law within EU Member States:

### Victims of the Truck Cartel claim compensation from the cartel members!

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance (OJ L 349, 5.12.2014, p. 1–19) had to be implemented into national law and is for example implemented into national German law (**§§ 33-33h GWB** (Act against Restraints of Competition [Gesetz gegen Wettbewerbsbeschränkungen], English translation: [www.gesetze-im-internet.de/englisch\\_gwb/index.html](http://www.gesetze-im-internet.de/englisch_gwb/index.html))



The validity of assigned damages claims to a litigation vehicle and of the underlying action came under the spotlight as one of Germany's largest follow-on actions arising from the truck cartel was heard before Judge Gesa Lutz in Munich's District Court (24 October).

The case sees Financialrights Claims GmbH (Financialrights) seeking damages of EUR 600m plus interest on behalf of approximately 3,200 potentially injured parties from around 20 EU member states. The claims have been assigned to Financialrights on behalf of the German hauliers' association 'Bundesverband Güterkraftverkehr Logistik und Entsorgung' (BGL) and represent more than 84,000 individual truck acquisitions.

Amongst other issues the court considered fundamental questions surrounding the validity of the statement of claim, whether Financialrights had a legitimate right to bring the claims to court and whether the ultimate claimants had validly assigned their claims to the vehicle.

**c) EU rules against dominant positions**

→ art. 102 TFEU (+ art. 103-104)

## EU's Microsoft case I

The integration of Microsoft's Internet Explorer and Media Player into Windows constitute an abuse of a dominant position according to both U.S. law and EU Law.

(*U.S. v. Microsoft*, U.S. District Court of Columbia, Civil Action No. 98-1232, based on the Sherman Act: Settlement of 2 November 2001, modified final judgement of 7 September 2006; the action is still pending: joint status report relating to Microsoft's compliance with the final judgements of 27 April 2011]; [www.justice.gov/atr/cases/ms\\_index.htm](http://www.justice.gov/atr/cases/ms_index.htm))

- 23 March 2004: the Commission imposed a fine of € 497 million (violation of EU cartel law) and ordered that Microsoft has to disclose interface information (on interoperability) to allow competitors to interoperate with Windows.
- 5 October 2005: English Prof. Barrett appointed as monitoring trustee.
- 17 September 2007: CJ (General Court) upheld the Commission's decision (case T-201/04)
- 27 February 2008: Commission imposed € 899 million penalty for non-compliance with March 2004 decision.
- 9 May 2008: Microsoft appealed the Commission's decision to the CJ (case T-167/08).
- 27 June 2012: Judgement of CJ upheld the Commission's decision and reduces penalty to € 860 million.

+ Google cases (over 8 billion € of fines)

## 4.2 Legal rules protecting Intellectual Property (IP)

EU law provides sufficient protection of IP and connects EU law with International Law.



### a) Trademark protection - Case study from a Bulgarian perspective:

Any entrepreneur/legal entity using a brand, trademark, logo, product design et al. wishes to enjoy the exclusive right to use it in all jurisdictions he is active.

Bulgarian entrepreneurs have registered „signs“ (personal names, letters, numerals, logos etc.) within the EU as **EU Trade Marks**. An EU trademark is protected in the **Single Market** (in all 27 Member States of the EU)!

for example:

004699765 - sopharma BULGARIA <a href="#">+ info</a>		
		
<b>Trade mark information</b>	<b>Owner information</b>	
Trade mark number	004699765	
Type	Figurative	
Filing date	21/10/2005	
Registration date	11/02/2009	
Nice Classification	1, 3, 5, 35, 39	
Trade mark status	Registered	
Basis	EUTM	
Reference		
	Owner ID number	201462
	Owner name	SOPHARMA AD
	<b>Representative information</b>	
	Representative ID num...	32159
	Representative name	AAA LAW
	<b>Last publication</b>	
	14/03/2019	C.2.1

(graphic representation of the figurative mark, EU trade mark 004699765)

source: EUIPO database

## e) Protection of regional production of foodstuffs within the **Single Market**

Council Regulation (EC) 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, consolidated version of 14 December 2012 (replacing a regulation of 1992)

- PDO - protected designation of origin
- PGI - protected geographical indication
- TSG - traditional speciality guaranteed



## Examples from Bulgaria

72 Records

Product type, Country, File number, Na...

Product type	Country	File number	Name	Product category	Status	Date
Food	Bulgaria	PDO-BG-02656	Българско бяло саламурено сирене / Bulgarsko byalo salamureno sirene	Class 1.3. Cheeses	Published	13/04/2023
Food	Bulgaria	PDO-BG-02657	Българско кисело мляко / Bulgarsko kiselo mlyako	Class 1.4. Other products of animal origin (eggs, honey, various dairy products except butter, etc.)	Published	05/04/2023
Food	Bulgaria	PDO-BG-02851	Странджански билков чай / Strandzhanski bilkov chay	Class 1.8. Other products of Annex I of the Treaty (spices etc.)	Applied	07/06/2022
Spirit drink	Bulgaria	PGI-BG-01867	Ямболска гроздова ракия / Гроздова ракия от Ямбол / Yambolska grozdova rakya / Grozdova rakya ot Yambol	4. Wine spirit	Registered	09/10/2019
Food	Bulgaria	PDO-BG-02306	Странджански манов мед / Strandzhanski manov med / Манов мед от Странджа / Manov med ot Strandzha	Class 1.4. Other products of animal origin (eggs, honey, various dairy products except butter, etc.)	Registered	02/04/2019
Spirit drink	Bulgaria	PGI-BG-01865	Карнобатска гроздова ракия / Гроздова ракия от Карнобат / Karnobatska grozdova rakya / Grozdova rakya ot Karnobat	4. Wine spirit	Registered	30/11/2018
Spirit drink	Bulgaria	PGI-BG-01864	Гроздова ракия от Търговище / Grozdova rakya ot Targovishte	4. Wine spirit	Registered	28/11/2018

<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>

### 4.3 Legal rules restricting the entrepreneurial freedom of action

Besides cartel law especially consumer protection law limits the freedom. The goal of EU's ambitious and ample consumer protection policy over the past decades is to reach a **high level of consumer protection** within the **Single Market** (Art. 12, 114(3) and 169 TFEU).

More than a dozen general consumer protection directives and two regulations include the most important parts of consumer protection law, e.g.

- law of General Terms and Conditions
- law of Distance Selling Contracts
- law of Consumer Credit Contracts
- law of Sale of Consumer Goods
- law of Package Travel Contracts.

## 5. The Single Market

The EU is more than a free trade zone. The economic system rather encompasses a common market. The accomplishment of its „**Single Market**“ is one of the major goals of the EU.

[Single market is synonym with „Internal market“ or „Common market“]

cf Preamble of TEU: „His Majesty the King of the Belgians ... *DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the **internal market** and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields ...*“

cf art. 3(3) TEU: „The Union shall establish an **internal market** ...“

cf art. 3 No 1(b) TFEU: „The Union shall have exclusive competence in the following areas: (b) the establishing of the competition rules necessary for the functioning of the **internal market** ...“

Art. 26 and 27 TFEU are the centrepiece of the provisions on the Internal Market.

**„Part 3, Title 1: THE INTERNAL MARKET**

*Article 26*

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.
2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.
3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

*Article 27*

When drawing up its proposals with a view to achieving the objectives set out in Article 26, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate provisions. If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.“

- Since the establishment of the EEC in 1958 it is a common belief among the (then) Member States that many economic advantages may flow from a Common Market benefitting both companies/industries (extended markets etc.) and citizens (accelerated raising of living standards).
- The Treaty of Maastricht (1993) and the Treaty of Amsterdam (1997) added a common currency and improved provisions to the Single Market system.
- In the Internal Market all economic resources should be free to move throughout, unimpeded by national boundaries, national customs duties and quotas.
- The accomplishment of the perfect Internal Market is still an ongoing task of the EU.
- A major means to accomplish the Single Market are the **Four Freedoms**.

## 6. The Four Freedoms

*“The **internal market** shall comprise an **area without internal frontiers** in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.”*

(art. 26(2) TFEU [ex art. 14(2) Treaty of Rome])

### **The impact of the „Four Freedoms“ on the internal market of the EU:**

The „Four Freedoms“ set out in the TFEU are tremendously helpful for carrying out business in the EU and for completing the internal market:

- a) **Free Movement of Goods** (art. 28-37 [ex art. 23-31 Treaty of Rome])
- b) **Free Movement of Persons** (art. 45-55 [ex art. 39-48])
- c) **Free Movement of Services** (art. 56-62 [ex art. 49-55])
- d) **Free Movement of Capital and Payments** (art. 63-66 [ex art. 56-59])



## 1. Free Movement of Goods

→ 28-44 TFEU (complex wording!)

### *„Article 28*

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 30 and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

### *Article 29*

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

## 1. Free Movement of Goods

### *Article 34*

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

### *Article 35*

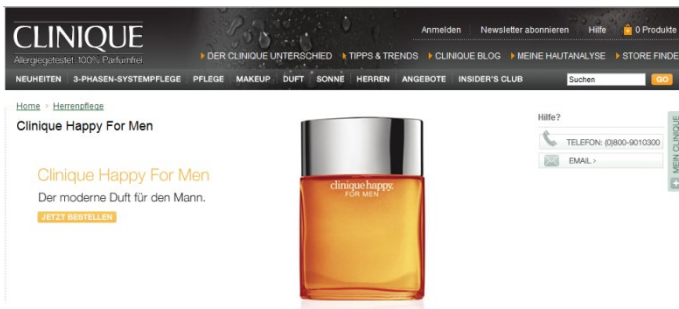
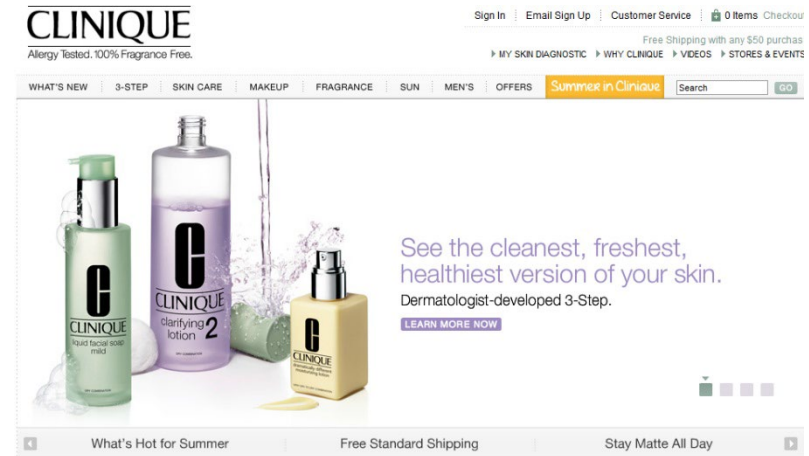
Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

### *Article 36*

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

1. Free Movement of Goods

case study: Clinique [cosmetics]



CLINIQUE Even Better Clinical Dark Spot Corrector

倩碧匀净卓研淡斑精华

CLINIQUE イーブン ベター ブライト セラム

CLINIQUE 이븐 베티어 크리니컬 다크 스팟 코렉터

Now comes a serum that in four short weeks visibly reduces dark spots equal to a leading prescription ingredient. As dark spots retreat, a new luminosity takes hold. Formulated for Asian skins. Allergy Tested. 100% Fragrance Free.

如今，这一款精华露能在短短四周内显著淡化黑斑，效果媲美医学处方。击褪了黑斑，肌肤重新恢复莹透无瑕。专为亚洲肌肤而设。通过过敏性测试。百分之百不含香料。



sources: <http://www.clinique.de> and <http://clinique.com>; commercial Shanghai

## 1. Free Movement of Goods

case study: Clinique [cosmetics]



„Klinik“ =  
German word for hospital

## 1. Free Movement of Goods

case study: **Clinique** [cosmetics]



„Klinik“ =  
German word for hospital

Judgement of German High Court (Bundesgerichtshof): „Clinique“ constitutes misleading advertising pursuant to the German Act against Unfair Competition [UWG]

- overruled by the Court of Justice of the European Union (CJ): German High Court judgement infringes the Free Movement of Goods (Case C-315/92).

## 1. Free Movement of Goods

Justifications, leading to restrictions of „Free movement of goods“:

- codified justifications according to art. 36 TFEU
- justification according to judgements of CJ: provisions necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer ...

## 2. Free Movement of Services

→ art. 56-62 TFEU

### case study: Mr Kohll

Mr Kohll, domiciling in Luxembourg, has received medical service from a dentist in Trier/Germany. His Luxembourg health insurance refuses to cover the costs of the treatment. Luxembourg social law requires the consent of the insurance prior to a treatment in a foreign country.

- Judgement of CJ:  
Luxembourg law discriminates German dentists because no consent is required if a dentist in Luxembourg renders a medical service to Mr Kohll. Therefore Luxembourg law infringes the Free Movement of Services (Case C-158/96)

(Protection of public health [combating drug tourism] justifies a restriction of **Free Movement of Services** imposed by a local authority; CJ, C-137/09 - NL-coffee shops)

### 3. Free Movement of Capital and Payments

→ art. 63-66 TFEU

case study: **German Volkswagen Act** [VWGmbHÜG]

That German Act in its original version privileged the German land Niedersachsen as shareholder of VW. Important decisions of the company required the consent of 80 per cent of the votes and regardless how many shares a shareholder owned the vote was restricted to 20 per cent (= exception of German general company law).

- Volkswagen Group figures:
  - turnover 2021: 279 billion Euros
  - world market share 11,0%
  - 8,3 million cars sold
- The Commission was of the opinion that the German act violated EU law.
- After long years of legal battle last of two judgement of the Court of Justice of the European Union of 22 October 2013 (C-95/12): [the amended German act complies with EU law.](#)





case study: **Golden Shares**

Portugal, France and Belgium used a „golden share“ system in privatisation procedures.

When privatising a state owned company these three countries safeguarded the influence of the state as minority shareholder and state control of former state owned companies in various ways (e.g. a state license was needed to buy shares of the respective company or a total ban on purchases of shares beyond a certain threshold was established).

- Judgement of CJ:  
Those restrictions violate the free movement of capital and payments (Cases C-367/98, C-483/99 and C-503/99).

## one of the results of Free Movement of Capital:

### → Foreign Investors Put Faith in Germany Stocks

#### Hardly "man bites dog"

The amount of faith foreign investors have in Germany's blue-chip companies can be seen in the skyrocketing interest in acquiring shares.



According to the business daily Handelsblatt, foreign investors purchased shares worth a net EUR 60 billion in the 30 major companies making up the DAX, Germany's leading stock index, between the crisis year of 2009 and January 2011. Doing so raised foreign ownership of DAX shares by eight percent to a record 55.8 percent.

And boy were foreign investors happy that they did! In that same period, the index rose by almost 70 percent, with DAX companies more than doubling their net profits. In fact, several of the companies had record figures in 2010. The DAX companies enjoying the greatest increases in foreign stock ownership included Deutsche Bank, sports apparel company Adidas, industrial gases and engineering firm Linde and, of course, Germany's world-class automakers.

For example, Daimler saw foreign ownership of its shares jump by 13 percent to reach 72 percent. The German firm with the most shares owned by foreign investors continues to be the joint-stock company Deutsche Börse, at 83 percent. Only a decade ago, foreign ownership of DAX-listed companies accounted for just a third of the total companies listed. But, for four years in succession, the majority of DAX shares have been held in foreign hands.

source: <http://www.gtai.de/GTAI/Navigation/EN/Invest/Service/Publications/Markets-germany/Archive/Issues-2011/Volume-2/Fdi/foreign-investors-put-faith-germanys-stocks.html>

**4. Free Movement of Persons =** a) **Free Movement of Workers (see below)**  
b) **Freedom of Establishment**

→ Freedom of Establishment: art. 49-55 TFEU

case study: **Inspire Art Ltd**

Dutch concept = German concept of a limited liability company: minimum capital of € 25.000

(different from the Bulgarian concept: the ODD (*Дружество с ограничена отговорност*) requires a minimal capital of 2 BGN)

The „English“ company Inspire Art Ltd operates exclusively in Amsterdam/NL. In this situation Dutch law requires the registration as „formally foreign company“ in the commercial register.

✓ **Judgement of CJ:**

Dutch law discriminates the English company and therefore infringes the Freedom of Establishment (Case C-167/01).

Reponse by the German legislator end of 2008:

→ introduction of a new limited company form: „UG (haftungsbeschränkt“) = small limited liability company

Numerical development of company formations in Germany													
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
GmbH	73469	68478	65801	59974	59472	58331	54526	56004	57299	68292	69474	54512	52803
Others	4181	3920	3467	3439	6387								
Limited					see Others	6019	7712	6466	4884	2884	1978	1265	1152
UG										see GmbH	see GmbH	12927	12740

End of 2003 'Inspire Art' judgment  
legitimation of Limited in Germany  
--> dramatic rise approx. 3000 new Limited's in Germany 2004  
--> rising numbers

End of 2008 'UG' legitimation in Germany  
--> dramatic rise approximately 10.000 new UG's in Germany 2009  
--> reduction of Limited formations

Still high attraction of UG --> Limited mostly lost its attraction

## 5. A focus on Free Movement of Workers

= a cornerstone of the EU and = of great economic and social importance

Wording of the TFEU (Treaty on the Functioning of the European Union), supplemented by Regulation (EU) 492/2011:

### Article 45

1. Freedom of movement for workers shall be secured within the Union.
2. Such freedom of movement shall entail 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.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;
  - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission ...

### **Article 46**

*The European Parliament and the Council shall ... issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:*

*(a) by ensuring close cooperation between national employment services;*

*(b) by abolishing those administrative procedures and practices ...;*

*(c) by abolishing all ...;*

*(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.*

### **Article 47**

*Member States shall, within the framework of a joint programme, encourage the exchange of young workers.*

### **Article 48**

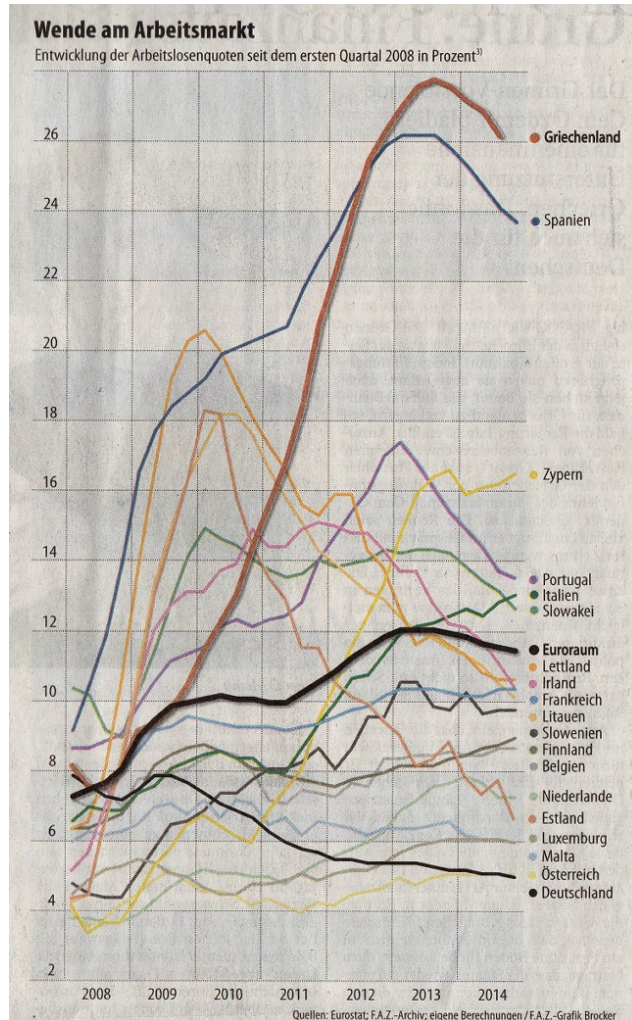
*The European Parliament and the Council shall ... adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants:*

*(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;*

*(b) payment of benefits to persons resident in the territories of Member States.*

*Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council ...*

Labour market of the EU and highly qualified but unemployed young EU citizens



Holger Buck: Single Market and 4 Freedoms

**A new generation of highly qualified immigrants from Southern and Eastern Europe is seeking a future in Germany. Young, well-educated and multilingual, they are precisely what the German economy needs to ensure success in the future. The country has its work cut out if it wants these "godsend" to stay.**

February 28, 2013 - 06:16 PM

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FROM DER SPIEGEL

**Die neuen Gastarbeiter**  
Europas junge Elite für Deutschlands Wirtschaft

Half a century after her grandfather took the train from Seville, Spain, to Germany, Carolina López, 28, bought a ticket on a budget airline to Berlin. It was the dismal situation in Spain that prompted her to make the move in the late summer of 2012. The Spanish economy is reeling, and one in four Spaniards is unemployed. Joblessness is especially rampant among young people. López went to Germany looking for work and, most of all, a future.

It was a similarly distressed situation at home that prompted her grandfather to go to Germany in 1961, because he couldn't make enough money in Spain to feed his family.

When López talks about her grandfather, though, she still thinks of more differences than similarities. The Germany with which she is familiar from his stories no longer exists. The only German her grandfather Juan remembers is the foreman at the Continental tire factory in Korbach, who was constantly shouting at him. Juan, whose goal was to make money quickly, returned to Spain as fast as he could.

Carolina López is indistinguishable from other young women in Berlin. She wears a loose shirt over her skinny jeans, and skateboard shoes on

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**JETZT TESTEN**

source: [www.spiegelonline.de](http://www.spiegelonline.de) [Der Spiegel of February 2013]



## Obviously not everybody is happy with free movement of workers

**theguardian**  
News | Sport | Comment | Culture | Business | Money | Life & style | Travel  
News > Politics > David Cameron

### Cameron to tell EU: cut all tax credits to migrants

Prime minister to announce that UK membership of EU is dependent on measure affecting more than 300,000 EU immigrants

Patrick Wintour and Alan Travis  
The Guardian, Friday 28 November 2014  
Jump to comments (2758)

David Cameron's proposal aims to make Britain a less attractive place to EU migrants. Photograph: Getty Images

### Merkel streitet mit Cameron um Zuwanderung

Nottbremsen, Deckelung oder Quoten: Premierminister David Cameron will die Zuwanderung nach Großbritannien beschränken. Doch von der deutschen Bundesregierung kommt die Gegenwehr.

Twittern 1 | Empfehlen 21 | Teilen 8+1 | Versenden

Bundeskanzlerin Angela Merkel im Gespräch mit dem britischen Premier David Cameron auf dem Nato-Gipfel im September  
© Andrew Winning/Reuters

**NEU: 25 Euro Münze**  
Deutschlands erste 25 Euro Münze aus reinstem Silber – Tauschen Sie 25 Euro gegen 25 Euro!

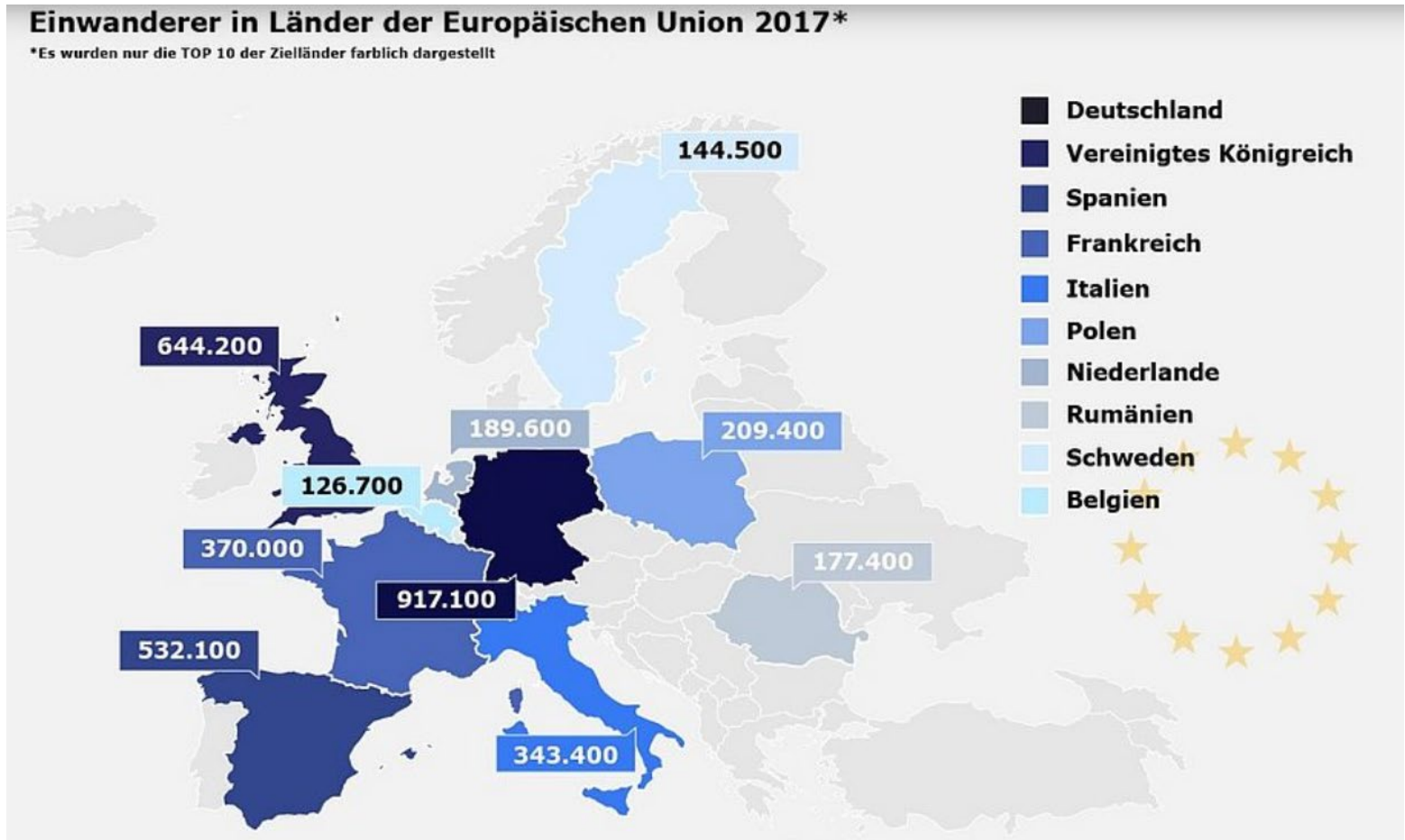
Die Bundesregierung hat Großbritannien indirekt davor gewarnt, auf einer Beschränkung des Zuzugs gering qualifizierter EU-Bürger zu bestehen. "Das hohe Gut der Freizügigkeit in der Europäischen Union darf nicht angetastet werden", sagte

European Commissioner Catherine Oettinger expressed the same views in a radio interview with the German broadcaster Deutschlandfunk. He said the Commission will not necessarily make use of all its powers, but that there would be no official transfer of powers back to the national level.

Is Europe just a market or much more?

The differing German and British views on European unification reflect a long history of traditions. The British Conservative MEP Daniel Hannan claims that the great majority of his countrymen mainly see Europe as a market and nothing more. Hannan does not object to being labeled a Euroskeptic; as a matter of fact, he is even proud of it, he says.

- in 2017 much higher percentage of immigrants in German compared to UK
- In 2017 Germany+Spain = 1,44 million, UK = 644.200



→ art. 45-48 TFEU are backed by Regulation (EU) 492/2011 of 5 April 2011 and elaborated by a bunch of detailed secondary legislation.

### 1) Free movement of workers encompasses:

- ✓ granting free movement to workers of EU Member States (EU citizens)
  - rights of workers:
    - no work permit needed
    - accept offers of employment actually made
    - move freely within the territory of a Member State for this purpose
    - stay in a Member State for the purpose of employment (right of residence)
    - remain in a Member State after having been employed in that state (continued right of residence including e.g right to retire in the host state)
  - rights of residence of work-seekers for up to three months (art. 6 Directive 2004/38 as transposed into the national laws of the EU Member States)
  - rights of family members (EU citizens or not) dependant upon the worker's status as an EU worker (art. 3 Directive 2004/38)
  - these rights are extended to Iceland, Liechtenstein and Norway and vice versa (EEA with these EFTA states), and partially to Switzerland and vice versa

- ✓ equal treatment / abolition of discrimination in employment, occupation and remuneration and other terms of employment based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, applying to **EU** and **non-EU** citizens and covering both public and private sectors
- ✓ equal access to employment, housing, education (including vocational schools and retraining centres) and social and tax advantages (Regulation 492/2011), however equal access not applying to employment in the public sector in total (public-sector positions may be restricted to nationals)
- ✓ free movement of workers rights can be enforced before national authorities and courts

## 2) Situation of non-EU workers

- depending on nationality or on status of family members (e.g. Mexican spouse of an EU citizen)
- some countries have bilateral agreements with the EU (e.g. Tunisia, Russia, ACP states)
- if no bilateral agreement (e.g. not with Turkey): discretion of each EU Member State, however some EU rules (e.g. **EU Blue Card** for highly-skilled university graduates and admission of students)

## Workshop

**Workshop dealing with free movement of workers:**

**1) Please check the Charter of Fundamental Rights of the EU for work related freedoms and rights and report them.**

**2) Are jobseekers entitled to social assistance? Please report the judgement of the Court of Justice of the European Union of 25 February 2016 – C 299/14 (Jobcenter Recklinghausen/Garcia-Nieto et al.)**

**3) Please report the main features of Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union**

## 7. Conclusion

- There is nothing wrong with **Regulation (EEC) No 1677/88 of 15 June 1988 laying down quality standards for cucumbers**: EU logistics industry needs common standards and constantly has asked for them!
- Nevertheless the EU repealed specific marketing standards for cucumbers and 25 other types of fruit and vegetables.

**NEWS** Got a story? Text: 63000 - Email: talkback@the-

### EU scrap bent cucumber ban



Nice curves ... farmer's cucumbers  
Holger Buck: Single Market and 4 Freedoms



**The return of the curvy cucumber: Commission to allow sale of 'wonky' fruit and vegetables**

- The Internal Market has to be considered as one of the most important achievements of the EU.
- To achieve the Internal Market the EU is – with good reasons - empowered to harmonize the laws of the Member States (art. 114 et seq.TFEU).
- Beyond all EU criticism and beyond a hyperbolizing European bureaucracy the law of the European Union endorses the EU industries to comfortably carry out their business all over the Member States without barriers and without discrimination and is helpfull for global business (EU law creates a safe haven for lawfully acting entrepreneurs).
- With efficient effect EU Economic law safeguards lawful entrepreneurial behaviour and actions by
  - providing entrepreneurial freedom of action
  - establishing and defending the four fundamental freedoms.
- There are reasonable restrictions of those freedoms established by e.g. consumer protection law or by prepondering justifications of restrictions
- The Law of the European Union is well shaped to respond to the needs of transborder business and at least in times of „globalization within the EU“.

→ from the entrepreneurial perspective: the EU is a fair deal!

## 8. Further Reading and Websites

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- <http://eur-lex.europa.eu> (Online access to EU law)
- <http://ec.europa.eu> (Commission)
- [http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html) (Directorate General for Competition)
- <http://euipo.europa.eu> (E'U Intellectual Property Office)
- <https://europa.eu.int/celexdev/natlex/> (N-Lex: Gateway to national law)
- [http://www.usdoj.gov/atr/cases/ms\\_index.htm](http://www.usdoj.gov/atr/cases/ms_index.htm) (US Department of Justice: *U.S. v. Microsoft*)