

EU INTERNAL MARKET LAW

Diagram 4

The most important decisions of the European Court of Justice¹

Preliminary remark

Since European Union law is a continental European and not a common law system, there is *no "case-law"* in the proper sense *but only jurisprudence of the European Court of Justice*. The doctrine of precedent (*stare decisis*) does not apply. However, the ECJ often refers to dogmatic statements in previous judgements. Therefore, the practical effect of its jurisprudence can be rather similar.

Basic concepts, implementation and enforcement of Community (Union) law			
name	year	substance	reference
Van Gend & Loos (case 26/62)	1963	<ul style="list-style-type: none"> Community law as an independent (distinct) legal order direct applicability of primary Community law 	[1963] ECR 1 We ² , 95, 109, 185
Costa/ENEL (case 6/64)	1964	<ul style="list-style-type: none"> primacy of Community law - also over <i>later</i> national law 	[1964] ECR 585 We, 85, 185, 187
Internationale Handels-gesellschaft (case 11/70)	1970	<ul style="list-style-type: none"> primacy of Community law also over national constitutional law³ 	[1970] ECR 1125
Ratti (case 148/78)	1979	<ul style="list-style-type: none"> direct applicability of directives in favour of the citizen after expiration of the implementation period⁴ - if the directive is unconditional and sufficiently precise 	[1979] ECR 1629 We, 129
Deutscher Milchkontor (joint cases 205-215/82)	1983	<ul style="list-style-type: none"> obligation of member states to implement Community law - application in accordance to national law; this must not, however, affect the scope and effectiveness of Community law when recovering unduly paid Community aids, exceptions (with regard to the protection of legitimate expectation etc.) may be applied, but the Community's interests must be "taken fully into account" 	[1983] ECR 2633
Harz (case 79/83)	1984	<ul style="list-style-type: none"> national law to be interpreted in the light of the directives 	[1984] ECR 1921
Foto-Frost (case 314/85)	1987	<ul style="list-style-type: none"> national courts have no jurisdiction to declare community acts invalid 	[1987] ECR 4199 We, 203, 247
Factortame (case C-213/89)	1990	<ul style="list-style-type: none"> national courts must grant interim relief to enforce Community law (regardless of adverse provisions of national law) 	[1990] ECR I-2433 We, 123
TA-Luft (case C-361/88)	1991	<ul style="list-style-type: none"> strictly no implementation of directives through administrative practice or administrative provisions 	[1991] ECR I-2567
Francovich ⁵ (joint cases C-6/90 and 9/90)	1991	<ul style="list-style-type: none"> state liability pursuant to Community law for non-implementation of directives 	[1991] ECR I-5357 We, 162

¹ See also the more extensive compilation at <http://lehrstuhl.jura.uni-goettingen.de/tschmitz/Lehre/Jurisprudence-on-integration-1.htm>.

² Casebook *Weatherill, Cases and Materials on EU Law*, 8th edition 2007.

³ Since this judgement and its acceptance by the then member states, the primacy over national constitutional law constitutes a central *component of the acquis communautaire*. Only its limits (the identity of the national constitution) are disputed. All later joining states recognized it in the accession treaties as a legal condition for their membership. Nevertheless, it is challenged in the constit. jurisprudence in Greece, Spain, Poland and Lithuania.

⁴ Note: There is no direct application *against* the citizen (horizontal effect), ECJ, case 152/84, Marshall I, [1986].

Economic fundamental freedoms			
name	year	substance	reference
Diamantarbeiders (cases 2 and 3/69)	1969	<ul style="list-style-type: none"> • large concept of charges having equivalent effect to custom duties in art. 12 EEC Treaty (today: 30 FEU Treaty) - any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product. 	[1969] ECR 211
Dassonville (case 8/74)	1974	<ul style="list-style-type: none"> • large concept of measures having equivalent effect to quantitative restrictions on imports in art. 30 EEC Treaty (today: 34 FEU Treaty)⁶ - "all trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade" 	[1974] ECR 837 We, 336
van Binsbergen (case 33/74)	1974	<ul style="list-style-type: none"> • large concept of encroachments on the freedom to provide services: also non-discriminating restrictions (by indistinctly applicable measures) - all "requirements ... which may prevent or otherwise obstruct the activities of the person providing the service" (however, they may be justified by the general good) 	[1974] ECR 1299
Walrave and Koch (case 36/74)	1974	<ul style="list-style-type: none"> • horizontal effect of the freedom of movement for workers on collective regulations of private persons concerning employment or the provision of services 	[1974] ECR 1405
Cassis de Dijon (case 120/78)	1978	<ul style="list-style-type: none"> • regulations on necessary properties of products as measures having equivalent effect to restrictions on imports (in the sense of art. 30 EEC Treaty, today: 34 FEU Treaty) - de facto introduction of the country of origin principle - however: possible justification by "mandatory requirements" of public interests (⇒ inherent limits - proportionality) 	[1979] ECR 649 We, 375
Keck (joint cases C-267, C-268/91)	1993	<ul style="list-style-type: none"> • corrective reduction of the Dassonville formula: only product-related, not sales-related rules - regulations on the general conditions of sale are no measures having equivalent effect to quantitative restrictions on imports 	[1993] ECR I-6097 WE, 391; HV, 466
Gebhard (case C-55/94)	1995	<ul style="list-style-type: none"> • the freedom of establishment as a general prohibition of restrictions: Measures liable to "hinder or make less attractive the exercise" of the freedom also represent an encroachment that needs to be justified • such encroachments are only justified if they are <ul style="list-style-type: none"> • applied in a non-discriminatory manner; • justified by imperative requirements in the general interest; • proportionate (suitable and necessary) 	[1995] ECR I-4165 We, 316
Bosman (case C-415/93)	1995	<ul style="list-style-type: none"> • freedom of movement for workers of professional football players - large concept of encroachment: even non-discriminative restrictions⁷ - <i>direct horizontal effect</i> of art. 48 EEC Treaty (today: 45 FEU Treaty): applies also to regulations of sport associations for professional football players - unjustified encroachment by transfer rules and the nationality clauses for matches in championships 	[1995] ECR I-4921
French blockades (case C-265/95)	1997	<ul style="list-style-type: none"> • member states obliged to intervene against import blockades set up by private persons (art. 30 read together with art. 5 EC Treaty, today: art. 34 FEU Treaty read together with art. 4(3) EU Treaty) - dogmatic background: a <i>duty of protection</i> of the member states to ensure the enforcement of the fundamental freedoms 	[1997] ECR I-6959 We, 347
Schmidberger (case C-112/00)	2003	<ul style="list-style-type: none"> • fundamental rights as inherent limits to the economic fundamental freedoms 	[2003] ECR I-5659 We, 349, 407

(Datei: Diagram4 (EUIntML-HLU))

⁵ Confirmed and developed in ECJ, joint cases C-46/93 and 48/93, Brasserie du Pêcheur/Factortame, [1991] ECR I-5357.

⁶ Note, however, the important corrective reduction of the Dassonville formula in the decision Keck from 1993.

⁷ Note, however, the corrective reduction in ECJ, case C-190/98, *Graf*, [2000] ECR I-493: the effect must not be too uncertain or too indirect to affect the access to the labour market.