**The internal market: general principles**

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The internal market is an area of prosperity and freedom, providing access to goods, services, jobs, business opportunities and cultural richness. Continuous efforts are required to ensure the further deepening of the single market, which could yield significant gains for EU consumers and businesses. In particular, the digital single market opens up new opportunities to boost the economy (through e-commerce), while also cutting red tape (through e-governance and the digitalisation of public services). Despite the substantial moves towards a (digital) single market, challenges remain. COVID-19 has brought back some obstacles to the four freedoms (free movement of goods, services, capital and persons).

**Legal basis**

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

The common market created by the Treaty of Rome in 1958 was intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to ‘an ever closer union among the peoples of Europe’. The Single European Act of 1986 included the objective of establishing the internal market in the European Economic Community (EEC) Treaty, defining it as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’.

**Achievements**

A. The common market of 1958

The common market, the Treaty of Rome’s main objective, was achieved through the 1968 customs union, the abolition of quotas, the free movement of citizens and workers, and a degree of tax harmonisation with the general introduction of value added tax (VAT) in 1970. However, the freedom of trade in goods and services and the freedom of establishment were still limited due to continuing anti-competitive practices imposed by public authorities.

B. The launch of the internal market in the 1980s and the Single European Act

The lack of progress in the achievement of the common market was largely attributed to the choice of an overly detailed method of legislative harmonisation and to the rule that required unanimity for decisions taken in the Council. This changed with the Court of Justice of the European Union rulings in the Dassonville ([Case 8-74](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0008)) and the Cassis de Dijon ([Case 120/78](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61978CJ0120)) cases in the 1970s, which ruled that import restrictions having an effect equivalent to quantitative restrictions are unlawful, thereby introducing the principle of mutual recognition[[1]](https://www.europarl.europa.eu/factsheets/en/sheet/33/the-internal-market-general-principles" \l "_ftn1). Through these rulings, the political debate on inter-community trading regained momentum and led the EEC to consider a more thorough approach to the objective of removing trade barriers by mid-1980: the internal market.

The [Single European Act](https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/single-european-act) entered into force on 1 July 1987, setting a precise deadline of 31 December 1992 for the completion of the internal market. It also strengthened the decision-making mechanisms for the internal market by introducing qualified majority voting for common customs tariffs, the freedom to provide services, the free movement of capital and the approximation of national legislation. By the time the deadline had passed, over 90% of the legislative acts listed in the 1985 White Paper had been adopted, largely under the qualified majority rule.

C. Towards a shared responsibility to complete the internal market: 2003-2010

The internal market has made a significant contribution to the prosperity and integration of the EU economy. A new internal market strategy running from 2003 to 2010 focused on the need to facilitate the free movement of goods, integrate services markets, reduce the impact of tax obstacles and simplify the regulatory environment. Substantial progress was made in opening up transport, telecommunications, electricity, gas and postal services.

D. The relaunch of the internal market in 2010

In order to boost the European single market once again and put the public, consumers and SMEs at the centre of single market policy, the Commission published in October 2010 a communication entitled ‘Towards a Single Market Act’ ([COM(2010)0608](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1534167760484&uri=CELEX:52010DC0608)). A series of measures were presented to boost the EU economy and create jobs, resulting in a more ambitious single market policy.

In October 2012, the Commission presented the Single Market Act II ([COM(2012)0573](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1534172039517&uri=CELEX:52012DC0573)) to further develop the single market and exploit its untapped potential as an engine for growth. The act sets out 12 key actions to be rapidly adopted by the EU institutions. These actions are concentrated on the four main drivers of growth, employment and confidence: (1) integrated networks (2) cross-border mobility of citizens and businesses; (3) the digital economy; and (4) actions that reinforce cohesion and consumer benefits.

In its communication entitled ‘Better governance for the Single Market’ ([COM(2012)0259](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52012DC0259)), the Commission proposed horizontal measures such as an emphasis on clear, easily implementable new regulations, better use of existing IT tools to facilitate the exercise of single market rights, and the establishment of national centres to oversee the operation of the single market. Monitoring is an integral part of the annual reports on single market integration in the context of the European Semester process.

On 28 October 2015, the Commission published a communication entitled ‘Upgrading the Single Market: More opportunities for people and business’ ([COM(2015)0550](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1534172388870&uri=CELEX:52015DC0550)), which focused on ensuring practical benefits for people in their daily lives and creating additional opportunities for consumers, professionals and businesses. It complemented the Commission’s efforts to boost investment, reap the opportunities of the digital single market and improve competitiveness and access to finance. The strategy also aimed to ensure a well-functioning internal market for energy and promote and facilitate labour mobility while preventing abuse of the rules. To further improve trading practices in the internal market, [Directive (EU) 2019/633](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0633) banning certain unfair trading practices was adopted on 17 April 2019.

In May 2015, the Commission adopted a digital single market strategy ([COM(2015)0192](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192)), which set an intensive legislative programme for building a European digital economy. In Ursula von der Leyen’s 2019 [Agenda for Europe](https://www.consilium.europa.eu/en/eu-strategic-agenda-2019-2024/), the Commission firmly placed the strengthening of the digital single market at the heart of its working guidelines. This commitment was renewed in the Commission strategy paper entitled ‘[Shaping Europe’s Digital Future](https://eufordigital.eu/library/shaping-europes-digital-future/)’ of February 2020, which outlines how the completion of the digital single market is to be achieved. Specifically, this is to be done by establishing a European single market for data and creating a level playing field on- and offline by means of consistent regulation.

During the COVID-19 pandemic, in its communication entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’ ([COM(2020)0456](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2020/0456/COM_COM(2020)0456_EN.pdf)), the Commission further highlighted the pivotal role that the digitalisation of the single market would play in the recovery from the crisis. The recovery would be based on four elements: (1) investment in better connectivity; (2) a stronger industrial and technological presence in strategic parts of the supply chain (e.g. AI, cybersecurity, cloud infrastructure, 5G); (3) a real data economy and common European data spaces; and (4) a fairer and easier business environment.

**Free movement of goods**

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The free movement of goods has been secured through the elimination of customs duties, quantitative restrictions and measures having an equivalent effect. The principles of mutual recognition, elimination of physical and technical barriers and promotion of standardisation gave additional momentum to the completion of the internal market. The adoption of the New Legislative Framework in 2008 strengthened the free movement of goods, the EU market surveillance system and the CE (European conformity) mark. However, challenges for the harmonisation of the EU internal market still lie ahead, as the COVID-19 pandemic and other distortions may still obstruct the full free movement of goods.

**Legal basis**

Article 26 and Articles 28-37 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

The right to the free movement of goods originating in Member States, and of goods from third countries which are in free circulation in the Member States, is one of the fundamental principles of the Treaty (Article 28 of the TFEU). Originally, the free movement of goods was seen as part of a customs union between the Member States, involving the abolition of customs duties, quantitative restrictions on trade and equivalent measures, and the establishment of a common external tariff for the Union. Later on, the emphasis was placed on eliminating all remaining obstacles to the free movement of goods, with a view to creating the internal market.

**Achievements**

The elimination of customs duties and quantitative restrictions (quotas) between Member States was accomplished by 1 July 1968. This deadline was not met in the case of the supplementary objectives – the prohibition of measures having an equivalent effect, and the harmonisation of relevant national laws. These objectives became central in the ongoing effort to achieve free movement of goods.

A. Prohibition of charges having an effect equivalent to that of customs duties: Article 28(1) and Article 30 of the TFEU

Since there is no definition of the aforementioned concept in the Treaty, case law has had to provide one. The Court of Justice of the European Union considers that any charge, whatever it is called or however it is applied, ‘which, if imposed upon a product imported from a Member State to the exclusion of a similar domestic product has, by altering its price, the same effect upon the free movement of products as a customs duty’, may be regarded as a charge having equivalent effect, regardless of its nature or form ([Joined cases 2/62 and 3/62](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61962CJ0002), and [Case 232/78](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A61978CJ0232)).

B. Prohibition of measures having an effect equivalent to quantitative restrictions: Article 34 and Article 35 of the TFEU

In its ‘[Dassonville](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0008)’ judgment, the Court of Justice took the view that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade were to be considered as measures having an effect equivalent to quantitative restrictions (see [Case 8/74](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0008) of 11 July 1974 and paragraphs 63 to 67 of [Case C-320/03](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62003CJ0320) of 15 November 2005). The Court’s reasoning was developed further in the ‘[Cassis de Dijon](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588620862331&uri=CELEX:61978CJ0120)’ judgment, which laid down the principle that any product legally manufactured and marketed in a Member State in accordance with its fair and traditional rules, and with the manufacturing processes of that country, must be allowed onto the market of any other Member State. This was the basic reasoning underlying the debate on defining the principle of mutual recognition, operating in the absence of harmonisation. Therefore, even in the absence of EU harmonisation measures (secondary EU legislation), Member States are obliged to allow goods that are legally produced and marketed in other Member States to circulate and to be placed on their markets.

Importantly, the field of application of Article 34 of the TFEU is limited by the ‘[Keck](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61991CJ0267)’ judgment, which states that certain selling arrangements fall outside the scope of that article, provided that they are non-discriminatory (i.e. they apply to all relevant traders operating within the national territory, and affect in the same manner, in law and in fact, the marketing of domestic products and products from other Member States).

C. Exceptions to the prohibition of measures having an effect equivalent to that of quantitative restrictions

Article 36 of the TFEU allows Member States to take measures having an effect equivalent to quantitative restrictions when these are justified by general, non-economic considerations (e.g. public morality, public policy or public security). Such exceptions to the general principle must be interpreted strictly and national measures cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States. Finally, the measures must have a direct effect on the public interest to be protected, and must not go beyond the necessary level (principle of proportionality).

Furthermore, the Court of Justice recognised in its Cassis de Dijon judgment that Member States may make exceptions to the prohibition of measures having an equivalent effect on the basis of mandatory requirements (relating, among other things, to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer). Member States have to notify national exemption measures to the Commission. Procedures for the exchange of information and a monitoring mechanism were introduced in order to facilitate supervision of such national exemption measures (as provided for in Article 114 and Article 117 of the TFEU and [Council Regulation (EC) No 2679/98](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998R2679)). This was further formalised in [Regulation (EC) No 2019/515](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0515#:~:text=Regulation%20(EU)%202019%2F515,(Text%20with%20EEA%20relevance.)) on mutual recognition, which was adopted in 2019, repealing the previous regulation on the matter.

D. Harmonisation of national legislation

The adoption of harmonisation laws has made it possible to remove obstacles (for example by making national provisions inapplicable) and to establish common rules aimed at guaranteeing the free circulation of goods and products, and respect for other EU Treaty objectives, such as protection of the environment and of consumers, or competition.

Harmonisation has been further facilitated by the introduction of the qualified majority rule, required for most directives relating to the completion of the single market (Article 95 of the Treaty establishing the European Community, as modified by the Maastricht Treaty), and by the adoption of a new approach, proposed in a [Commission White Paper](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A51985DC0310) (1985), aimed at avoiding onerous and detailed harmonisation. In the new approach based on the Council Resolution of 7 May 1985 (confirmed in the [Council Resolution of 21 December 1989](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31990Y0116%2801%29) and [Council Decision 93/465/EEC](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31993D0465)), the guiding principle is the mutual recognition of national rules. Harmonisation must be restricted to essential requirements, and is justified when national rules cannot be considered equivalent and create restrictions. Directives adopted under this new approach have the dual purpose of ensuring free movement of goods through the technical harmonisation of entire sectors, and guaranteeing a high level of protection of the public interest objectives referred to in Article 114(3) of the TFEU (e.g. toys, building materials, machines, gas appliances and telecommunications terminal equipment).

E. Completion of the internal market

The creation of the single market necessitated the elimination of all remaining obstacles to the free movement of goods. [The Commission White Paper (1985)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A51985DC0310) set out the physical and technical obstacles to be removed and the measures to be taken by the Community to this end. Most of these measures have now been adopted. However, the single market still requires substantial reforms if it is to meet the challenges of technological progress, and some non-tariff barriers still persist.

**Free movement of capital**

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The free movement of capital is one of the four fundamental freedoms of the EU single market. It is not only the most recent one but, because of its unique third-country dimension, also the broadest. The liberalisation of capital flows progressed gradually. Restrictions on capital movements and payments, both between Member States and with third countries, have been prohibited since the start of 2004 as a result of the Maastricht Treaty, although exceptions may exist.

**Legal basis**

Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

All restrictions on capital movements between Member States as well as between Member States and third countries should be removed, with exceptions in certain circumstances. The free movement of capital underpins the single market and complements the other three freedoms. It also contributes to economic growth by enabling capital to be invested efficiently and promotes the use of the euro as an international currency, thus contributing to the EU’s role as a global player. It was also indispensable for the development of Economic and Monetary Union and the introduction of the euro.

**Achievements**

A. First endeavours (before the single market)

The first Community measures were limited in scope. The Treaty of Rome (1957) required the restrictions to be removed only to the extent necessary for the functioning of the common market. The [First Capital Directive](https://eur-lex.europa.eu/eli/dir/1960/921/oj) from 1960, amended in 1962, ended restrictions on certain types of commercial and private capital movements, such as real-estate purchases, short- or medium-term lending for commercial transactions, and purchases of securities traded on the stock exchange. Some Member States went further by introducing unilateral national measures, thereby abolishing virtually all restrictions on capital movements (e.g. Germany and the Benelux countries). Another [directive](https://eur-lex.europa.eu/eli/dir/1972/156/oj) on international capital flows followed in 1972.

B. Further progress and general liberalisation in view of the single market

Amendments to the First Capital Directive in 1985 and 1986 brought further liberalisation in areas such as long-term lending for commercial transactions and purchases of securities not dealt on the stock exchange. Capital movements were fully liberalised by a [Council Directive](https://eur-lex.europa.eu/eli/dir/1988/361/oj) in 1988 which scrapped all remaining restrictions on capital movements between Member State residents as of 1 July 1990. It also aimed to liberalise capital movements involving third countries in a similar way.

C. The definitive system

1. Principle

The Maastricht Treaty introduced the free movement of capital as a Treaty freedom. Today, Article 63 TFEU prohibits all restrictions on the movement of capital and payments between Member States, as well as between Member States and third countries. The Court of Justice of the European Union is charged with the task of interpreting the provisions related to the free movement of capital, and extensive case law exists in this area. In cases where Member States restrict the freedom of capital movement in an unjustified way, the usual infringement procedure set out in Articles 258-260 TFEU applies.

2. Exceptions and justified restrictions

Exceptions are largely confined to capital movements related to third countries (Article 64 TFEU). In addition to the option for Member States of maintaining restrictions on direct investment and other transactions which existed on a given date, the Council may also, after consulting the European Parliament, unanimously adopt measures which constitute a step backwards in the liberalisation of capital movements with third countries. In addition, the Council and the European Parliament may adopt legislative measures involving direct investment, establishment, provision of financial services or the admission of securities to capital markets. Article 66 TFEU covers emergency measures vis-à-vis third countries, limited to a period of six months.

The only justified restrictions on capital movements in general, including movements within the EU, are laid down in Article 65 TFEU. These include: (i) measures to prevent infringements of national law (namely for taxation and prudential supervision of financial services); (ii) procedures for the declaration of capital movements for administrative or statistical purposes; and (iii) measures justified on the grounds of public policy or public security. The latter was invoked during the European sovereign debt crisis, when Cyprus (2013) and Greece (2015) were forced to introduce capital controls in order to prevent an excessive outflow of capital. Cyprus removed all of the remaining restrictions in 2015 and Greece did so in 2019. The emergence of digital finance, especially blockchain-based cryptocurrencies, may challenge current concepts designed to ensure the free movement of capital.

Article 144 TFEU allows, within the framework of the balance of payments assistance programmes, for protective balance of payments measures where difficulties jeopardise the functioning of the internal market or where a sudden crisis occurs. This safeguard clause is only available to Member States outside of the euro area.

Finally, Articles 75 and 215 TFEU provide for the possibility of financial sanctions either to prevent and combat terrorism or based on decisions adopted within the framework of the common foreign and security policy. Free movement of capital is restricted in relation with the economic sanctions imposed against Russia following its invasion of Ukraine.

3. Payments

Article 63(2) TFEU stipulates that ‘all restrictions on payments between Member States and between Member States and third countries shall be prohibited’.

In 2001, a [regulation](https://eur-lex.europa.eu/eli/reg/2001/2560/oj) harmonising the costs of domestic and cross-border payments within the euro area was adopted. It was [repealed and replaced](https://eur-lex.europa.eu/eli/reg/2009/924/oj) in 2009, offering benefits for Member State residents by bringing down the fees for cross-border payments in euro practically to zero. It was then [amended](https://eur-lex.europa.eu/eli/reg/2019/518/oj) in 2019, with the aim of bringing down the fees for cross-border payments between euro and non-euro Member States.

The [Payment Services Directive](https://eur-lex.europa.eu/eli/dir/2007/64/oj) (PSD) provided the legal foundation for establishing a set of rules applicable to all payment services in the EU to make cross-border payments as easy, efficient and secure as ‘national’ payments, and to foster efficiency and cost reduction through more competition by opening up payment markets to new entrants. The PSD provided the necessary framework for an initiative of the European banking and payments industry, called the ‘Single Euro Payments Area’ (SEPA). SEPA instruments were available, but not much in use by the end of 2010. Consequently, in 2012, a [regulation](https://eur-lex.europa.eu/eli/reg/2012/260/oj) was adopted, setting EU-wide end-dates for the migration of the old national credit transfers and direct debits to SEPA instruments. In 2015, the co-legislators adopted the revised [Payment Services Directive](https://eur-lex.europa.eu/eli/dir/2015/2366/oj) (PSD 2), which repealed the existing directive. It enhances transparency and consumer protection and adapts the rules to cater for innovative payment services, including internet and mobile payments. The directive entered into force on 12 January 2016 and took effect on 13 January 2018.

D. Further developments

Despite the progress achieved in liberalising capital flows in the EU, capital markets have remained, to a large extent, fragmented. Building on the Investment Plan for Europe, the Commission launched, in September 2015, its flagship initiative: [the Capital Markets Union](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0468). This includes a number of measures aimed at creating a truly integrated single market for capital by 2019. A [mid-term review](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0292) of the Capital Markets Union Action Plan was published in June 2017. In addition, the Commission and the Member States are working on eliminating obstacles to cross-border investment which fall within national competences. The expert group on barriers to free movement of capital was set up to examine this issue. In March 2017, by way of follow-up to the work of the expert group, the Commission published a [report](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0147&qid=1682673729852) outlining the situation in the Member States. In March 2019, the Commission published a [communication](https://ec.europa.eu/info/publications/190315-cmu-progress-report_en) entitled ‘Capital market union: Progress on building a single market for capital for a strong economic and monetary union’. This was followed by a [second CMU action plan](https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF), with 16 priorities, in September 2020.

The Commission is also working towards discontinuing the existing intra-EU bilateral investment treaties (BITs), many of which existed before the most recent rounds of EU enlargement. These agreements between Member States are considered by the Commission to be an impediment to the single market as they both clash and overlap with the EU legislative framework. For example, the arbitration mechanisms which are integrated into the BITs exclude both the national courts and the Court of Justice of the European Union, thus preventing the application of EU law. BITs may also result in more favourable treatment being given to investors from certain Member States which concluded intra-EU BITs. An agreement was reached on 24 October 2019 which paves the way to terminating these. On 29 May 2020, 23 Member States [signed](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22020A0529%2801%29) an agreement for the termination of BITs between the Member States of the EU. The Commission also publishes yearly [reports and studies](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/enforcement-and-infringements-banking-and-finance-law/monitoring-free-movement-capital_en) on capital flows within the EU and in the global context. During the COVID-19-induced crisis, it appeared that, despite the extreme stress exerted on the financial system, no EU Member State resorted to capital controls on financial outflows.

**Freedom of establishment and freedom to provide services**

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The freedom of establishment and the freedom to provide services guarantee the mobility of businesses and professionals within the EU. Expectations concerning the full implementation of the Services Directive are high, as the (full) freedom to provide services is of crucial importance for the completion of the internal market. Yet, obstacles to these freedoms remain and the COVID-19 pandemic introduced new challenges altogether. A European Parliament resolution on tackling non-tariff and non-tax barriers in the single market, adopted in plenary in February 2022, spells out how the economic recovery from COVID-19 should be carried out in order to mitigate the negative effects on the freedom of establishment and the freedom to provide services most effectively.

**Legal basis**

Articles 26 (internal market), 49 to 55 (establishment) and 56 to 62 (services) of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

Self-employed persons and professionals or legal persons within the meaning of Article 54 TFEU who are legally operating in one Member State may: (i) carry out an economic activity in a stable and continuous way in another Member State (freedom of establishment: Article 49 TFEU); or (ii) offer and provide their services in other Member States on a temporary basis while remaining in their country of origin (freedom to provide services: Article 56 TFEU). This implies eliminating discrimination on the grounds of nationality and, if these freedoms are to be used effectively, the adoption of measures to make it easier to exercise them, including the harmonisation of national access rules or their mutual recognition ([2.1.6](https://www.europarl.europa.eu/factsheets/EN/sheet/42/the-mutual-recognition-of-diplomas)).

**Achievements**

A. Liberalisation in the Treaty

1. ‘Fundamental freedoms’

The right of establishment includes the right to take up and pursue activities as a self-employed person, and to set up and manage undertakings, for a permanent activity of a stable and continuous nature, under the same conditions as those laid down by the law of the Member State concerned regarding establishment for its own nationals.

Freedom to provide services applies to all services normally provided for remuneration, insofar as they are not governed by the provisions relating to the freedom of movement of goods, capital and persons. The person providing a ‘service’ may, in order to do so, temporarily pursue their activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.

2. The exceptions

Under the TFEU, activities connected with the exercise of official authority are excluded from freedom of establishment and provision of services (Article 51 TFEU). This exclusion is, however, limited by a restrictive interpretation: exclusions can cover only those specific activities and functions which imply the exercise of authority. Furthermore, a whole profession can be excluded only if its entire activity is dedicated to the exercise of official authority, or if the part that is dedicated to the exercise of public authority is inseparable from the rest. Exceptions enable Member States to exclude the production of or trade in war material (Article 346(1)(b) TFEU) and to retain rules for non-nationals in respect of public policy, public security or public health (Article 52(1)).

B. Services Directive – towards completing the internal market

The Services Directive ([Directive 2006/123/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123)) strengthens the freedom to provide services within the EU. This directive is crucial for the completion of the internal market, since it has huge potential for delivering benefits to consumers and SMEs. The aim is to create an open single market in services within the EU, while at the same time ensuring the quality of services provided to consumers. According to the [Commission communication entitled ‘Europe 2020 – A strategy for smart, sustainable and inclusive growth’](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52010DC2020), the full implementation of the Services Directive could increase trade in commercial services by 45% and foreign direct investment by 25%, bringing an increase of between 0.5% and 1.5% in GDP. The directive contributes to administrative and regulatory simplification and modernisation. This is achieved not only through the screening of the existing legislation and the adoption and amendment of relevant legislation, but also through long-term projects (setting up the Points of Single Contact and ensuring administrative cooperation). The implementation of the directive has been significantly delayed in a number of Member States in relation to the original deadline. Its successful implementation calls for sustained political commitment and widespread support at European, national, regional and local levels.

**Free movement of workers**

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One of the four freedoms enjoyed by EU citizens is the free movement of workers. This includes the rights of movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State. Restrictions apply for the public service. The European Labour Authority serves as a dedicated agency for the free movement of workers, including posted workers.

**Legal basis**

Article 3(2) of the Treaty on European Union (TEU); Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

Freedom of movement for workers has been one of the founding principles of the EU since its inception. It is laid down in Article 45 TFEU and is a fundamental right of workers, complementing the free movement of goods, capital and services within the European single market. It entails the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment. Moreover, this article stipulates that an EU worker has the right to accept a job offer made, to move freely within the country, to stay for the purpose of employment and to stay on afterwards under certain conditions.

Some non-EU nationals have the right to work in a Member State on an equal footing with EU citizens. Nationals of Iceland, Liechtenstein and Norway (i.e. the non-EU countries that are members of the European Economic Area) can work in the EU with the same rights and obligations as EU workers. The EU also has special agreements with other non-EU countries.

**Achievements**

In 2020, according to Eurostat data, among EU citizens of working age (20-64), 3.8% resided in an EU country other than that of their citizenship – up from 2.4% in 2009. Additionally, 1.5 million cross-border workers and 3.7 million postings were recorded. The figure for postings was down from 4.5 million in 2019 because of pandemic-related restrictions. Compared to 2019, the employment rate of movers also fell by 2.6 percentage points to 72.7 %, while the employment rate of non-mobile workers recorded a smaller drop of 0.5 percentage points to 73.3 %. The share of EU mobile citizens varies greatly between Member States, ranging from 0.8% for Germany to 18.6% for Romania.

A. Current general arrangements on freedom of movement

The fundamental right of free movement of workers has been embodied in various regulations and directives since the 1960s. The founding regulation on freedom of movement of workers (Regulation 1612/68) and the complementing directive on the abolition of restrictions on movement and residence (Council Directive 68/360) have been modernised several times. Currently, the key EU provisions are [Directive 2004/38/EC on the right of movement and residence](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038), [Regulation (EU) No 492/2011 on free movement for workers](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011R0492), and [Regulation (EU) 2019/1149 establishing a European Labour Authority](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1149&qid=1606313997052).

1. Workers’ rights of movement and residence

Directive 2004/38/EC introduces EU citizenship as the basic status for nationals of the Member States when they exercise their right to move and reside freely in EU territory. For the first three months, every EU citizen has the right to reside in the territory of another EU country with no conditions or formalities other than the requirement to hold a valid identity card or passport. For longer periods, the host Member State may require a citizen to register his or her presence within a reasonable and non-discriminatory period of time.

The right of Union citizens to reside for more than three months remains subject to certain conditions: for those who are not workers or self-employed, the right of residence depends on their having sufficient resources not to become a burden on the host Member State’s social assistance system, and on them having sickness insurance. Students and those completing vocational training also have the right of residence, as do (involuntarily) unemployed persons who have registered as unemployed.

EU citizens acquire the right of permanent residence in the host Member State after a period of five years of uninterrupted legal residence.

The directive modernised **family reunification** by extending the definition of ‘family member’ (formerly limited to spouse, descendants aged under 21 or dependent children, and dependent ascendants) to include registered partners if the host Member State’s legislation considers a registered partnership to be the equivalent of a marriage. Irrespective of their nationality, these family members have the right to reside in the same country as the worker.

2. Employment

Regulation 492/2011 sets rules for employment, equal treatment and workers’ families. Any national of a Member State has the right to seek employment in another Member State in conformity with the relevant regulations applicable to national workers. Member States are not allowed to apply any discriminatory practices, such as limiting job offers to nationals or requiring language skills going beyond what is reasonable and necessary for the job in question. Furthermore, a mobile worker is entitled to receive the same assistance from the national employment office as nationals of the host Member State, and also has the right to stay in the host country for a period long enough to look for work, apply for a job and be recruited. This right applies equally to all workers from other Member States, whether they are on permanent contracts, are employed as seasonal or cross-border workers, or provide services.

However, these rules do not apply to posted workers, as they are not availing themselves of their free movement rights: instead, it is employers who are making use of their freedom to provide services in order to send workers abroad on a temporary basis. Posted workers are protected by the [Posting of Workers Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0957) (Directive (EU) 2018/957 amending Directive 96/71/EC), which provides for the same rules on remuneration as local workers in the host country and regulates the period after which the labour law of the host country applies ([2.1.13](https://www.europarl.europa.eu/factsheets/EN/sheet/37/posting-of-workers)).

As regards working and employment conditions in the territory of the host Member State, nationals of one Member State working in another have the same social and tax benefits and access to housing as national workers. Moreover, they are entitled to equal treatment in respect of the exercise of trade union rights.

Anti-discrimination rules apply also to the children of a mobile worker. Member States should encourage these children to attend education and vocational training in order to facilitate their integration.

Finally, Article 35 of Directive 2004/38/EC expressly grants Member States the power, in the event of abuse or fraud, to withdraw any right conferred by the directive.

3. Case law on free movement of workers

Since the introduction of EU citizenship, the Court of Justice of the European Union (CJEU) has refined the interpretation of the directive in a range of case law on the free movement of workers. It has defined the right of residence for jobseekers (Case C-292/89, *Antonissen*), access to social benefits (Cases C-184/99 *Grzelczvk* and C-224/98 *D’Hoop*) and the status of first-time jobseekers (C-138/02 *Collins* and C-22/08 *Vatsouras*).

A dedicated Commission online [database](https://ec.europa.eu/social/main.jsp?catId=953&langId=en) presents case law in this area.

B. Restrictions on freedom of movement

The Treaty allows a Member State to refuse an EU national the right of entry or residence on the grounds of public policy, public security or public health. Such measures must be based on the personal conduct of the individual concerned, which must represent a sufficiently serious and present threat to the fundamental interests of the state. In this regard, Directive 2004/38/EC provides for a series of procedural guarantees.

Under Article 45(4) TFEU, free movement of workers does not apply to employment in the public sector, although this derogation has been interpreted in a very restrictive way by the CJEU.

During a transitional period after the accession of new Member States, certain conditions can be applied that restrict the free movement of workers from, to and between those Member States. There are currently no transitional periods in force.

Brexit put an end to the freedom of movement of workers between the UK and the EU-27 on 31 December 2020. The rights of the EU-27 citizens already living and working in the UK and those UK citizens who were living and working in the EU-27 are covered under the Withdrawal Agreement, which allows for their continued right to remain or work, ensures non-discrimination and protects their social security rights. All new cross-border situations starting on or after 1 January 2021 are covered by the [EU-UK Trade and Cooperation Agreement](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.149.01.0010.01.ENG) with respect to social security.

C. Measures to support freedom of movement

The EU has made major efforts to create an environment conducive to worker mobility. These include:

* Reform of the system for recognition of professional qualifications completed in other EU Member States in order to harmonise and facilitate the procedure. This includes the automatic recognition of a number of professions in the health sector and of architects ([Directive 2013/55/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0055&qid=1606314070388) amending Directive 2005/36/EC [2.1.6](https://www.europarl.europa.eu/factsheets/EN/sheet/42/the-mutual-recognition-of-diplomas));
* The issuing in 2016 of a European Professional Card to test an electronic recognition procedure for selected regulated professions;
* The coordination of social security schemes, including the portability of social protection, thanks to [Regulation (EC) No 883/2004](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883&qid=1606314120404) and implementing [Regulation (EC) No 987/2009](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0987&qid=1606314164670), currently under revision ([2.3.4](https://www.europarl.europa.eu/factsheets/EN/sheet/55/social-security-cover-in-other-eu-member-states));
* A European Health Insurance Card (2004) as proof of insurance in accordance with Regulation (EC) No 883/2004, and a directive on cross-border healthcare ([Directive 2011/24/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0024&qid=1606314220449)).
* Improvements in the acquisition and preservation of supplementary pension rights ([Directive 2014/50/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0050&qid=1606314462348));
* The obligation to ensure judicial procedures providing redress for workers discriminated against and to nominate bodies promoting and monitoring equal treatment ([Directive 2014/54/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0054&qid=1606314497741)).

The European Labour Authority (ELA), an initiative under the European Pillar of Social Rights, was established on 31 July 2019. Its main aims are to ensure better enforcement of EU rules on labour mobility and social security coordination, to provide support services for mobile workers and employers, to support coordination between Member States in cross-border enforcement, including joint inspections and mediation to resolve cross-border disputes, and to promote cooperation between Member States in tackling undeclared work.

The agency integrates or absorbs various previous European initiatives of relevance for labour mobility, in particular the job mobility portal, EURES (European Employment Services) and the European platform tackling undeclared work.

In 2022, the ELA ran an awareness-raising campaign, [#Road2FairTransport](https://www.ela.europa.eu/en/campaign/road-fair-transport), to inform drivers and operators in international road transport about the legislative implications of the Mobility Package I.

D. Impact of the COVID-19 pandemic and of Russia’s aggression against Ukraine on free movement of workers

The COVID-19 pandemic, which hit the EU in early 2020, led to unprecedented restrictions on free movement of labour across EU Member States, notably as a result of the re-introduction of border controls at internal borders. Consequently, cross-border, seasonal and posted workers experienced barriers to mobility and increased unemployment. In March 2020, the Commission issued guidelines concerning the exercise of the free movement of workers during the COVID-19 outbreak. On 13 October 2020, the Council adopted a [recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020H1475) with provisions on waiving quarantine requirements for essential workers, following by an [update](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021H0119) to the recommendation on 1 February 2021 in light of the risks posed by new virus variants.

Following the Russian invasion of Ukraine, more than eight million people fled Ukraine for the European Union. The Commission immediately proposed a [Temporary Protection Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0091&qid=1646384923837) to provide effective assistance to people fleeing, which the Council adopted swiftly and unanimously. The Directive grants people fleeing Ukraine a residence permit and access to education and the labour market. The Commission has produced [guidance](https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10294&furtherNews=yes) to help people access jobs, training and adult education. This guidance aims to ensure the rapid and effective integration of Ukrainian refugees into the European labour market and to facilitate the recognition of their academic and professional qualifications.

**The ubiquitous digital single market**

* [Load fact sheet in pdf format](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.1.7.pdf)

The digital single market boosts the economy, decreases environmental impacts and improves quality of life through e-commerce and e-government. Market and government services are evolving from fixed to mobile platforms, becoming increasingly ubiquitous. These developments call for an EU regulatory framework to develop cloud computing, cross-border access to content and borderless mobile data connectivity, while safeguarding privacy, personal data and cybersecurity. The European digital single market has played an essential role in maintaining the EU economy and assisting people in the EU during the COVID-19 crisis. The Digital Services Act and Digital Markets Act are two files that will revolutionise the digital single market in the coming years.

**Legal basis**

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

The digital single market essentially consists in removing national barriers to online transactions. It builds on the concept of the common market, intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to ‘an ever closer union among the peoples of Europe’, and further developed into the concept of the internal market, defined as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’. Following up on the Lisbon strategy[[1]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market#_ftn1), the Europe 2020 strategy introduced the Digital Agenda for Europe[[2]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market" \l "_ftn2) as one of its seven flagship initiatives, recognising the key enabling role that the use of information and communication technologies (ICT) would have to play if the EU was to succeed in its ambitions for 2020 ([2.4.3](https://www.europarl.europa.eu/factsheets/EN/sheet/64/digital-agenda-for-europe)). The digital single market has been recognised as a priority by the Commission in its digital single market (DSM) strategy [(COM(2015)0192)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0192) and more recently in the President of the Commission’s agenda for Europe for 2019-2024[[3]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market" \l "_ftn3).

The digital single market has the potential to improve access to information, bring efficiency gains in terms of reduced transaction costs, dematerialised consumption and reduced environmental footprint, and introduce improved business and administrative models[[4]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market" \l "_ftn4). The growth of e-commerce is generating [tangible benefits](https://www.europarl.europa.eu/document/activities/cont/201209/20120914ATT51402/20120914ATT51402EN.pdf) for consumers, such as rapidly evolving new products, lower prices, more choice and better quality goods and services, as it is leading to a rise in cross-border trade and making it easier to compare offers. Moreover, the increase in e-government services facilitates online compliance, access to jobs and business opportunities for both EU customers and businesses.

**Achievements**

Given that the full potential of the internal market remains unexploited, Parliament, the Council and the Commission have made efforts to relaunch it, and to put the public, consumers and small and medium-sized enterprises (SMEs) at the centre of the single market policy[[5]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market" \l "_ftn5). The digital single market has a salient role to play in these efforts.

In its communication entitled ‘Europe 2020 - A strategy for smart, sustainable and inclusive growth’ ([COM(2010)2020](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52010DC2020)), the Commission presented seven flagship initiatives - including the Digital Agenda - intended to ‘turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion’.

These Commission communications, and Parliament’s [resolution of 20 May 2010](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52010IP0186) on delivering a single market to consumers and citizens, laid the ground for a communication entitled ‘Towards a Single Market Act’ ([COM(2010)0608](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52010DC0608)) in which the Commission presented a series of measures designed to boost the EU economy and create jobs. In October 2012, the Commission put forward a second set of proposals - the Single Market Act II ([COM(2012)0573](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012DC0573)) - comprising 12 key actions focused on four main drivers of growth, employment and confidence: integrated networks, cross-border mobility of citizens and businesses, the digital economy, and actions that strengthen cohesion and consumer benefits.

On 6 May 2015, the Commission adopted the DSM strategy, composed of three pillars: (1) better access for consumers and businesses to digital goods and services across the EU, (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish, and (3) maximising the growth potential of the digital economy. Since the publication of the strategy, the Commission has tabled a number of legislative proposals aimed at achieving a digital single market. They addressed issues such as unjustified geo-blocking ([COM(2016)0289](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0289)), cross-border parcel delivery ([COM(2016)0285](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0285)), cross-border portability of online content services ([COM(2015)0627](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A0627%3AFIN)), a revision of the Consumer Protection Cooperation Regulation ([COM(2016)0283](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016PC0283)), audiovisual media services ([COM(2016)0287](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0287:FIN)), contracts for online and other distance sales of goods ([COM(2015)0635](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450431933547&uri=CELEX:52015PC0635)), and contracts for the supply of digital content ([COM(2015)0634](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450431933547&uri=CELEX:52015PC0634)). The Commission has also published communications explaining future policy approaches, e.g. to online platforms ([COM(2016)0288](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0288)).

In 2018, the Commission presented its strategy on artificial intelligence for Europe ([COM(2018)0237](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A237%3AFIN)) and agreed a coordinated plan with the Member States[[6]](https://www.europarl.europa.eu/factsheets/en/sheet/43/the-ubiquitous-digital-single-market" \l "_ftn6). In April 2019, the High-Level Expert Group on Artificial Intelligence presented its ‘[Ethics Guidelines for Trustworthy AI](https://op.europa.eu/en/publication-detail/-/publication/d3988569-0434-11ea-8c1f-01aa75ed71a1)’, while in February 2020, the Commission presented its white paper entitled ‘Artificial Intelligence - A European approach to excellence and trust’ ([COM(2020)0065](https://ec.europa.eu/info/publications/white-paper-artificial-intelligence-european-approach-excellence-and-trust_en)), its communications on Shaping Europe’s Digital Future [(COM(2020)0067)](https://ec.europa.eu/info/publications/communication-shaping-europes-digital-future_en) and the European strategy for data ([COM(2020)0066](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1582551099377&uri=CELEX:52020DC0066)), and in March 2021 its communication entitled ‘2030 Digital Compass: the European way for the Digital Decade’ ([COM(2021)0118)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021DC0118).

On 8 April 2020, the Commission issued a [recommendation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H0518) on a common EU toolbox for the use of technology and data to combat and exit from the COVID-19 crisis.

In May 2020, the Commission announced in its communication entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’ ([COM(2020)0456](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:456:FIN)) that the digital single market would be a pillar of the EU’s COVID-19 recovery plan. It will focus on: (1) investment in better connectivity, (2) a stronger industrial and technological presence in strategic parts of the supply chain (for example AI, cybersecurity, 5G, cloud infrastructure), (3) a real data economy and European data spaces, and (4) fairer and simpler business environments.

**Internal energy market**

* [Load fact sheet in pdf format](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.1.9.pdf)

In order to harmonise and liberalise the EU’s internal energy market, measures have been adopted since 1996 to address market access, transparency and regulation, consumer protection, supporting interconnection, and adequate levels of supply. These measures aim to build a more competitive, customer-centred, flexible and non-discriminatory EU electricity and gas market with market-based supply prices. In so doing, they strengthen and expand the rights of individual customers and energy communities, address energy poverty, clarify the roles and responsibilities of market participants and regulators and address the security of the supply of electricity, gas and oil, as well as the development of trans-European networks for transporting electricity and gas. Since the Russian invasion of Ukraine and the resulting energy crisis, the structure of the EU energy market has been undergoing profound structural changes.

**Legal basis**

Articles 114 and 194 of the Treaty on the Functioning of the European Union.

**Objectives**

In the energy sector, completion of the EU’s internal market requires: the removal of numerous obstacles and trade barriers; the approximation of tax and pricing policies and measures in respect of norms and standards; and environmental and safety regulations. The objective is to ensure a functioning market with fair market access and a high level of consumer protection, as well as adequate levels of interconnection and generation capacity.

**Achievements**

A. Liberalisation of gas and electricity markets

During the 1990s, when most national electricity and natural gas markets were still monopolies, the European Union and the Member States decided to open these markets gradually to competition.

The First Energy Package was adopted between 1996 and 1998. It consisted of a first liberalisation of the electricity and gas national markets based on the introduction of two new electricity and gas directives, to be transposed into Member States’ legal systems by 1998 and 2000 respectively.

The Second Energy Package was adopted in 2003, with its directives to be transposed into national law by Member States by 2004, and some provisions entering into force in 2007. Industrial and domestic consumers were now free to choose their own gas and electricity suppliers from a wider range of competitors.

The Third Energy Package was adopted in 2009, further liberalising the internal electricity and gas markets. It introduced several reforms, such as the separation of energy supply and generation from the operation of transmission networks (unbundling), requirements for independent regulators, a new European agency for the cooperation of different national energy regulators (ACER), European networks for transmission system operators for electricity and gas (ENTSO-E and ENTSO-G) and enhanced consumers’ rights in retail markets. The package provided the cornerstone for the implementation of the internal energy market.

The Fourth Energy Package was adopted in 2019 and consisted of one directive (Electricity [Directive (EU) 2019/944](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:0864:FIN)) and three regulations (Electricity [Regulation (EU) 2019/943](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581587333688&uri=CELEX:32019R0943), Risk-Preparedness [Regulation (EU) 2019/941](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0941) and EU Agency for the Cooperation of Energy Regulators (ACER) [Regulation (EU) 2019/942](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581587497849&uri=CELEX:32019R0942)). It introduced new electricity market rules for renewable energies and for attracting investments. This provided incentives for consumers and introduced a new eligibility limit for power plants to receive subsidies as capacity mechanisms. It required Member States to prepare contingency plans for potential electricity crises and increased ACER’s competences for cross-border regulatory cooperation in cases involving a risk of national and regional fragmentation.

The Fifth Energy Package ‘[Fit For 55](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0550)’ was published in 2021 with the aim of aligning the EU’s energy targets with the new European climate ambitions for 2030 and 2050. After Russia’s invasion of Ukraine in February 2022 and the complete cutting off of its gas supply to Europe, the EU decided to rapidly phase out all Russian fossil energy imports, introduce energy-saving measures, diversify its energy imports, adopt exceptional and structural measures in electricity and gas markets and accelerate the introduction of renewables.

B. Further steps

As announced in the [Energy Union strategy](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52015DC0080), in order to give consumers secure, sustainable, competitive and affordable energy, the Commission put forward the [Clean Energy for all Europeans](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52016DC0860) package, in 2016. The Fourth Energy Package, currently in force, implements the Energy Union, covering energy efficiency, renewable energy, the design of the electricity market, security of electricity supply and governance rules for the Energy Union. To complete the internal energy market, the Commission adopted measures in the Electricity Directive, Electricity Risk-Preparedness Regulation and the ACER Regulation.

The regulation on the internal electricity market ([Regulation (EU) 2019/943](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02019R0943-20220623)) revises the rules and principles of the internal electricity market in order to ensure its proper functioning and competitiveness. It supports the decarbonisation of the EU’s energy sector, removes barriers to cross-border trade in electricity and enables the EU’s transition to clean energy, honouring the commitments made in the Paris Agreement. The regulation defines a set of market-based principles for the operation of electricity markets: prices will be formed on the basis of demand and supply; customers will benefit from market rules and will be active market participants; incentives for decarbonised electricity generation will be market-based; barriers to cross-border electricity flows will be progressively removed; producers will be directly or indirectly responsible for their electricity sales; and the new conditions under which Member States could set up capacity mechanisms and the principles for their creation will be set out.

The directive on common rules for the internal market in electricity ([Directive (EU) 2019/944](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02019L0944-20220623)) focuses on the Member States and consumers, defining a set of different provisions that put the consumer at the centre of the clean energy transition. Suppliers are free to determine the price at which they supply electricity to customers. The Member States ensure market-based price competition between suppliers; protection of energy-poor and vulnerable household customers; and entitlement for final customers to electricity provided by a supplier, subject to the supplier’s agreement, regardless of the Member State in which the EU-compliant supplier is registered. Consumers are able to request the installation of smart electricity meters at no additional cost; household customers and microenterprises have access, free of charge, to at least one tool comparing the offers of suppliers, including offers for dynamic electricity price contracts; to switch suppliers free of charge within a maximum of three weeks and to participate in collective switching schemes. End consumers with smart meters are able to request dynamic electricity pricing contracts with at least one large supplier; they have the right to act as active customers, for example by selling self-generated electricity, without being subject to disproportionate or discriminatory technical requirements, and to have summarised clear contractual conditions.

On 14 March 2023, the Commission proposed a [reform of the electricity market design](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1591), notably the Electricity Regulation, the Electricity Directive, and the [REMIT Regulation (EU) No 1227/2011](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1227). The proposal introduces measures to incentivise longer-term contracts with non-fossil power production, access to renewables for industry, rules on sharing renewable energy, long-term contracts for consumers, new support schemes for demand response and storage, the protection of vulnerable consumers in arrears from disconnection, the extension of regulated retail prices to households and SMEs in the event of a crisis, and obligations for Member States to establish suppliers of last resort.

The regulation on risk-preparedness in the electricity sector ([Regulation (EU) 2019/941](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.158.01.0001.01.ENG&toc=OJ:L:2019:158:TOC)) strengthens risk-preparedness by encouraging cooperation between transmission system operators in the EU and neighbouring countries and ACER. It also aims to facilitate the cross-border management of electricity grids in the event of an electricity crisis through the new regional operating centres, which were introduced in the related internal electricity market regulation. The European Network of Transmission System Operators for Electricity (ENTSO-E) develops and proposes a common methodology for risk identification in cooperation with ACER and the Coordination Group for Electricity, to be approved by ACER. The regulation proposes common rules on preventing and preparing for electricity crises to ensure cross-border cooperation and on crisis management, common methods to assess risks related to security of supply and a common framework for the evaluation and monitoring of security of electricity supply.

The directive on common rules for the internal market in natural gas ([Directive 2009/73/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0073&qid=1682411653812)) introduces common rules for the transmission, distribution, supply and storage of natural gas with the objectives of providing market access and enabling fair and non-discriminatory competition. It concerns natural gas, liquefied natural gas (LNG), biogas and gas from biomass. EU countries were required to unbundle transmission systems and transmission system operators from integrated energy companies, meaning that companies active in the production or supply of gas or electricity cannot exercise any rights over a transmission system operator, and vice versa. EU countries or the competent regulatory authorities are responsible for organising a system of non-discriminatory third-party access to transmission and distribution systems based on published tariffs.

The regulation on [conditions for access to the natural gas transmission networks (Regulation (EC) No 715/2009/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009R0715)) lays down rules for access to natural gas transmission networks, gas storage and LNG facilities. The regulation determines how tariffs for access to networks are set; the services to be offered; the allocation of capacity to gas transmission system operators (TSOs); transparency requirements and balancing rules; and imbalance charges on the market. EU countries or the competent regulatory authorities are responsible for organising a system of non-discriminatory third-party access to transmission and distribution systems based on published tariffs.

The debate on the energy aspects of the Fifth Energy Package initially took place in the context of high energy prices driven by the post-pandemic recovery. In July 2021, the Commission published the first part of the ‘[Fit For 55](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0550)’ package, which aimed to achieve greenhouse gas emission reductions of at least 55% and a climate-neutral Europe by 2050. In December 2021, the Commission proposed a revision ([COM(2021)0803](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0803), [COM(2021)0804](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:804:FIN) and [COM(2021)0805](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:805:FIN)) of the [Gas Directive 2009/73/EC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0073) and the [Gas Regulation (EC) No 715/2009](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0715), which establish the regulatory framework for competitive decarbonised gas markets. The proposals include the design and development of the new EU hydrogen market and a new regulation on reducing methane emissions in the energy sector. The debate on the Fifth Energy Package changed radically after the Russian invasion of Ukraine and the ensuing energy crisis, which resulted in Russia unilaterally turning off the gas supply from Russia to EU Member States and extremely high gas and electricity prices in Europe.

Reacting to the escalating world energy crisis, the EU put forward several proposals for profound structural changes to its energy markets. In March 2022, the Commission’s [communication on REPowerEU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:108:FIN) immediately stated the EU’s intention to phase out its dependency on Russian fossil fuels. In May 2022, the [REPowerEU plan](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A230%3AFIN&qid=1653033742483) put forward additional actions to save energy, diversify supplies, increase security of energy supply and replace fossil fuels by accelerating the roll-out of renewable energy. In July 2022, the Commission proposed new rules on coordinated demand reduction measures for gas and published a communication entitled [‘Save gas for a safe winter’](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0360&from=EN). Council [Regulation (EU) 2022/1369](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R1369) on coordinated demand reduction measures for gas set a voluntary (mandatory in case of emergency) 15% target for reducing Member States’ gas consumption between 1 August 2022 and 31 March 2023, and entered into force on 9 August. In September 2022, the Commission proposed a new Council regulation on an [emergency intervention](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A473%3AFIN&pk_campaign=preparatory&pk_source=EURLEX&pk_medium=TW&pk_keyword=Energy&pk_content=Proposal) to address high energy prices and reduce energy bills for European citizens and businesses. Between September and December 2022, the Council adopted three exceptional temporary market measures: a voluntary overall reduction target of 10% of gross electricity consumption between 1 December 2022 and 31 March 2023 and a mandatory reduction target of 5% of electricity consumption in peak hours; a market revenue cap at 180 euro/MWh for electricity generators using renewables, nuclear and lignite; and a mandatory temporary solidarity levy for the fossil fuel sector.

C. Energy market regulation: the EU Agency for the Cooperation of Energy Regulators

The EU ACER was created in 2009 and has been operational since March 2011. ACER is mainly responsible for promoting cooperation between national regulatory authorities at regional and European level and for monitoring the development of the network and the internal electricity and gas markets. It also has the competence to investigate cases of market abuse and to coordinate the application of appropriate penalties with the Member States.

In June 2019, the Commission adopted the ACER [Regulation (EU) 2019/942](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02019R0942-20220623) to reform ACER to recast legal acts and strengthen its main role as a coordinator of the action of national regulators, especially in those areas where fragmented national decision-making on issues with cross-border relevance would lead to problems or inconsistencies for the internal market. ACER’s duties in the field of wholesale market supervision and cross-border infrastructure have been increased in order to give it more responsibility in elaborating and submitting the final proposal for a network code to the Commission and in influencing the regional electricity market (bidding zone) review process, laid down in the recast of the electricity [Regulation (EU) 2019/943](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581587333688&uri=CELEX:32019R0943). The ACER regulation introduces fees as an additional source of funding to cover the costs of REMIT-related activities (‘REMIT fees’) performed by ACER. On 15 July 2020, the Commission’s DG for Energy and ACER presented a proposal for a fee structure. On 17 December 2020, the Commission adopted [Decision (EU) 2020/2152](https://eur-lex.europa.eu/eli/dec/2020/2152/oj) on fees, which aims to cover the expenses for the operations such as collecting, handling, processing and analysing information performed by ACER.

As a further step, in 2009 the European Union created structures of cooperation for electricity and gas European Network Transmission Systems Operators (ENTSOs) via [Regulation (EU) 2019/943](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0714) and [Regulation No 715/2009/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009R0715). The ENTSOs, together with ACER, create detailed network access rules and technical codes, and ensure the coordination of grid operation through the exchange of operational information and the development of common safety and emergency standards and procedures. ENTSOs are also responsible for drafting a 10-year network investment plan every two years, which are then in turn reviewed by ACER.

In addition, [Regulation (EU) 2016/1952](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R1952) improves the transparency of gas and electricity prices charged to industrial end-users by obliging Member States to ensure that these prices and the pricing systems used are communicated to Eurostat once or twice a year, while [Regulation (EU) No 1227/2011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1227) on wholesale energy market integrity and transparency (REMIT) aims to guarantee fair trading practices on European energy markets.

D. Security of the supply of electricity, natural gas and oil

[Regulation (EU) 2019/941](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0941) on risk-preparedness in the electricity sector establishes measures aimed at safeguarding the security of electricity supply to ensure the proper functioning of the internal market for electricity, an adequate level of interconnection between Member States, an adequate level of generation capacity, and balance between supply and demand.

[Regulation (EU) 2018/1999](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2018:328:TOC&uri=uriserv:OJ.L_.2018.328.01.0001.01.ENG) on the governance of the Energy Union sets an electricity interconnection target of at least 15% by 2030, defined as import capacity over installed generation capacity of EU countries.

[Regulation (EU) 2017/1938](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017R1938) on security of gas supply establishes measures aimed at safeguarding the security of gas supply to ensure the proper and continuous functioning of the internal market in natural gas, by allowing for exceptional measures in the event of emergencies related to gas supplies, including solidarity measures, the coordination of planning, and strengthening prevention and crisis response mechanisms. This regulation was revised between March and June 2022, after Russia’s invasion of Ukraine and the following weaponisation of its gas supplies. The EU introduced mandatory gas storage filling targets and trajectories, requiring EU countries to fill their gas storage facilities to 80% of their capacity by 1 November 2022 and to 90% in the following years.

[Regulation (EU) 2022/2576](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2022.335.01.0001.01.ENG) enhances energy solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks. It provides a legal framework for the EU Energy Platform to support EU countries in the preparation for the winter of 2023-2024 and, in particular, in the filling of their gas storage facilities.

[Directive 2009/119/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0119-20200101)aims at ensuring security of oil supply, obliging Member States to maintain minimum oil stocks, corresponding to 90 days of average daily net imports, or 61 days of average daily inland consumption, whichever of the two quantities is greater.

The scope of application of the Gas [Directive 2009/73/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0073-20220623) extends to future gas pipelines to and from non-EU countries, with derogations for existing pipelines. Special provisions exist under [Directive 2013/30/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013L0030-20210101) on the safety of offshore oil and gas operations.

E. Trans-European Networks for Energy (TEN-E)

TEN-E is a policy focused on linking the energy infrastructure of the Member States. As part of the policy, eleven priority corridors (three for electricity, five for offshore grids and three for hydrogen) and three priority thematic areas (smart electricity grid deployment, smart gas grids, and a cross-border carbon dioxide network) have been identified.

The TEN-E [Regulation (EU) 2022/869](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0869) lays down guidelines for trans-European energy networks, identifying projects of common interest [(PCIs)](https://ec.europa.eu/energy/infrastructure/transparency_platform/map-viewer/main.html) among EU countries, projects of mutual interest (PMIs) between the EU and non-EU countries, and priority projects among trans-European electricity and gas networks. It ended support for new natural gas and oil projects and introduced mandatory sustainability criteria for all projects.

New PCIs for energy and cross-border renewable energy projects are funded by the Connecting Europe Facility 2021-2027 for Energy ([CEF-E](https://cinea.ec.europa.eu/programmes/connecting-europe-facility/energy-infrastructure-connecting-europe-facility-0/energy-infrastructure_en)), a funding instrument with a 7-year budget of EUR 5.84 billion allocated in the form of grants managed by the Climate, Infrastructure and Environment Executive Agency. Between 2014 and 2020, a total CEF-E budget of EUR 4.8 billion financed 149 energy cross-border infrastructure actions in 107 PCIs in 8 priority corridors. The Commission establishes the list of PCIs via a delegated act, which enters into force only if Parliament or the Council express no objection within a period of two months from its notification.

**Public procurement contracts**

* [Load fact sheet in pdf format](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.1.10.pdf)

Public authorities conclude contracts to ensure that works can be performed and services delivered. These contracts account for a trading volume of EUR 2 448 billion, which shows that European public procurement is a major driver for economic growth, job creation and innovation. The public procurement package adopted in 2014 by Parliament and the Council adds EUR 2.88 billion annually to EU GDP. Furthermore, EU directives on public procurement have led to an increase in total award values from less than EUR 200 billion to approximately EUR 525 billion.

**Legal basis**

Articles 26, 34, 53(1), 56, 57, 62 and 114 of the Treaty on the Functioning of the European Union (TFEU).

**Objectives**

Public procurement contracts play a significant role in the economies of Member States, and are estimated to generate more than 16% of the Union’s GDP. Prior to the implementation of Community legislation, only 2% of public procurement contracts were awarded to non-national undertakings. These contracts play a key role in certain sectors (construction, public works, energy, telecommunications and heavy industry), and are traditionally statutory or administrative rules that have given preference to national suppliers. This lack of open and effective competition was one of the obstacles to the completion of the single market, pushing up costs for contracting authorities and inhibiting competitiveness in certain key industries.

The application of internal market principles to these contracts ensures better allocation of economic resources and more rational use of public funds, with public authorities obtaining products and services of the highest available quality at the best price as a result of keener competition. Giving preference to the best-performing undertakings across the European market promotes the competitiveness of European companies, and reinforces respect for the principles of transparency, equal treatment and efficiency, thereby reducing the risk of fraud and corruption.

**Achievements**

The Community adopted legislation aimed at coordinating national rules, imposing obligations on the publication of calls for tender and the objective criteria used to examine tenders. Starting in the 1960s several normative acts relating to public procurement were adopted, but later the Community decided to simplify and coordinate legislation in this field, and adopted four directives ([Directives 92/50](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992L0050), [93/36](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31993L0036), [93/37](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31993L0037) and [93/38](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31993L0038)). For the purposes of simplification and clarification, three of these directives were merged into [Directive 2004/18/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0018) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, and [Directive 2004/17/EC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0017) coordinating the procurement procedures of entities operating in the water, energy, transportation and postal services sectors. A few years later, [Directive 2009/81/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0081) introduced specific rules for defence procurement, which aimed to facilitate access to the defence markets of other Member States.

**Reform**

In 2014, Parliament and the Council adopted a new public procurement package which includes [Directive 2014/24/EU](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0024) on public procurement (repealing Directive 2004/18/EC) and [Directive 2014/25/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0025) on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC). The public procurement package was completed by a new directive on concessions ([Directive 2014/23/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_094_R_0001_01)), which establishes a legal framework for the award of concessions[[1]](https://www.europarl.europa.eu/factsheets/en/sheet/34/public-procurement-contracts#_ftn1), ensuring that all EU economic actors have effective and non-discriminatory access to the EU market, and provides greater certainty on applicable legal provisions.

The external aspect of public procurement was also taken into account in the Commission’s 2012 [proposal](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2012/0124/COM_COM(2012)0124_EN.pdf) for a regulation establishing rules on the access of third-country goods and services to the EU’s internal market in public procurement and procedures supporting negotiations on access of EU goods and services to the public procurement markets of third countries. A deadlock in negotiations resulted in a new [proposal](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0034/COM_COM(2016)0034_EN.pdf) by the Commission in 2016. The formal adoption procedure was concluded by the co-legislators in June 2022 and the final act was signed on 23 June 2022.

In April 2012, the Commission adopted a [strategy for e-procurement](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2012:0179:FIN) with the aim of reaching full e-procurement by mid-2016. On 16 April 2014, Parliament and the Council adopted [Directive 2014/55/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0055) on electronic invoicing in public procurement.

On 3 October 2017, the Commission published two communications: ‘Making Public Procurement work in and for Europe’ ([COM(2017)0572](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN)) and ‘Helping investment through a voluntary ex ante assessment of the procurement aspects for large infrastructure projects’ ([COM(2017)0573](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A573%3AFIN)). With the aim of further improving European public procurement as part of the public procurement strategy package, it also published a [recommendation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.259.01.0028.01.ENG&toc=OJ:L:2017:259:TOC) entitled ‘The professionalisation of public procurement – Building an architecture for the professionalisation of public procurement’.

**Public procurement procedure**

All procedures must comply with the principles of EU law, and in particular with the free movement of goods, the freedom of establishment and the freedom to provide services, as well as the principles that derive from them, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Competition, confidentiality and efficiency must also be respected.

A. Types of procedure

Calls for tender must correspond to different types of procedure, which are used on the basis of a threshold system. The directives also specify the methods for calculating the estimated value of each public contract[[2]](https://www.europarl.europa.eu/factsheets/en/sheet/34/public-procurement-contracts" \l "_ftn2), and indications for the procedures to be applied. In the ‘open procedure’, any interested economic operator may submit a tender. In the ‘restricted procedure’, only candidates that have been invited may submit a tender. In the ‘competitive procedure with negotiation’, any economic operator may submit a request to participate, but only candidates that have been invited to do so may submit an initial tender after the information provided has been assessed. In the ‘competitive dialogue’ procedure, any economic operator may submit a request to participate, but only the candidates invited to do so may participate in the dialogue. It is used when contracting authorities[[3]](https://www.europarl.europa.eu/factsheets/en/sheet/34/public-procurement-contracts" \l "_ftn3) are unable to define the means of satisfying their needs or of assessing what solution the market can offer. The contract is awarded solely on the basis of the best price-to-quality ratio. A new procedure, the ‘innovation partnership’, has been created for cases in which there is a need for an innovative solution that is not already available on the market. The contracting authority decides to establish an innovation partnership with one or several partners conducting separate research and development activities in order to negotiate a new and innovative solution during the tendering procedure. Finally, in specific cases and circumstances, contracting authorities can award public contracts through a negotiated procedure without prior publication.

B. Criteria for the award of a contract

Contracting authorities must award public contracts to the most economically advantageous tender. The reform of public procurement rules introduced this new award criterion, the principle of the ‘Most Economically Advantageous Tender’ (the ‘MEAT’ criterion), which aims to ensure the best value for money (rather than the lowest price), i.e. it takes into account the quality of the works, goods or services in question, as well as the price and life cycle costs. This criterion places greater emphasis on quality, the environment and social considerations, as well as innovation.

C. Rules on publication and transparency

Procurement procedures must ensure the required transparency at all stages. This is achieved in particular through the publication of the essential elements of procurement procedures, and by publishing information on candidates and tenderers, as well as through the provision of sufficient documentation on all steps of the procedure.

D. Remedies

In order to address breaches of public procurement rules by contracting authorities, the Remedies Directive ([Directive 2007/66/EC](https://eur-lex.europa.eu/eli/dir/2007/66/oj)) provides for an effective review system covering both public procurement directives and the concessions directive, and it introduces two important elements, including the ‘standstill’ period. Following the decision to award a contract, the standstill period allows bidders the opportunity to examine the decision and decide whether to initiate a review procedure. During this period of at least 10 days, the contracting authorities cannot sign the contract.

E. Other aspects of public procurement

The new rules promote green public procurement through a life cycle costing approach, and allow for the possibility of referring to a specific label or eco-label. Social aspects are also important, with the directives including specific provisions for social inclusion, social criteria and subcontracting, and a simplified regime for service contracts. Cutting red tape and enhancing the access of SMEs to public procurement are also central features. The new rules introduce the ‘European single procurement document’ and the use of self-declarations. Access by SMEs to public procurement will be enhanced in particular by the possibility of dividing contracts into lots, and by the limitation of annual turnover requirements. The new directives require the phasing in of e-procurement, and set specific rules on techniques and instruments for electronic and aggregated procurement, such as framework agreements, dynamic purchasing systems, electronic auctions, etc. The directives also incorporate European Union Court of Justice case-law on in-house relationships, making it possible, under certain conditions, for contracting authorities to award a contract to an undertaking without a procurement procedure. The new rules strengthen the legislation in force on conflicts of interest, favouritism and corruption.

On 11 March 2020, the Commission published a [working document](https://ec.europa.eu/environment/gpp/pdf/20032020_EU_GPP_criteria_for_data_centres_server_rooms_and%20cloud_services_SWD_(2020)_55_final.pdf) on EU green public procurement criteria for data centres, server rooms and cloud services with the aim of ensuring that data centre equipment and services are procured in an environmentally friendly way in line with the EU’s energy, climate change and resource efficiency objectives.

Following the COVID-19 outbreak, the Commission proposed a regulation on the establishment of a programme for the Union’s action in the field of health (EU4Health, [COM(2020)0405](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2020/0405/COM_COM(2020)0405_EN.pdf)), which plans to assign a higher budget for public procurement contracts in fields such as medicines, vaccines, new treatments and data. [Regulation (EU) 2021/522](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0522) entered into force on 27 March 2021 and applies retroactively from 1 January 2021. The Commission also released [new guidance for public buyers](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG) to help public authorities use the EU’s public procurement framework to ensure rapid purchases of necessary equipment and launched [five joint procurements](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_523) of personal protective equipment with Member States. On 27 May 2020, the Commission issued a communication concerning the post-COVID-19 recovery plan ([COM(2020)0456](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2020/0456/COM_COM(2020)0456_EN.pdf)) and highlighted the need to digitalise public procurement by developing national e-procurement systems and platforms.

**ntellectual, industrial and commercial property**

* [Load fact sheet in pdf format](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.1.12.pdf)

Intellectual property includes all exclusive rights to intellectual creations. It encompasses two types of rights: industrial property, which includes inventions (patents), trademarks, industrial designs and models and designations of origin, and copyright, which includes artistic and literary property. Since the entry into force of the Treaty on the Functioning of the European Union (TFEU) in 2009, the EU has had explicit competence for intellectual property rights (Article 118).

**Legal basis**

Articles 114 and 118 TFEU.

**Objectives**

Although governed by different international and national laws, intellectual property rights (IPR) are also subject to EU legislation. Article 118 TFEU provides that in the context of the establishment and functioning of the single market, Parliament and the Council, acting in accordance with the ordinary legislative procedure, establish measures for the creation of EU intellectual property law in order to provide uniform protection of IPR throughout the EU, and for the setting-up of centralised, EU-wide authorisation, coordination and supervision arrangements. The legislative activity of the EU consists chiefly of harmonising certain specific aspects of IPR through the creation of its own system, as is the case for the EU trademark and design, and as will be the case for patents. Many of the EU instruments reflect the Member States’ international obligations under the Berne and Rome Conventions, as well as under the [World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf)and the 1996 [World Intellectual Property Organization](https://www.wipo.int/portal/en/index.html) (WIPO) international Treaties.

**Achievements**

A. Legislative harmonisation

1. Trademarks, designs and models

In the EU, the legal framework for trademarks is based on a four-tier system for trademark registration, which coexists with national trademark systems harmonised by means of the Trademark Directive ([Directive (EU) 2015/2436](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32015L2436) of 16 December 2015 to approximate the laws of the Member States relating to trademarks). In addition to the national route, possible routes to trademark protection in the EU are the Benelux route, the EU trademark, introduced in 1994, and the international route. [Regulation (EU) 2017/1001](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581521274609&uri=CELEX:32017R1001) of 14 June 2017 on the European Union trademark (the EU Trademark Regulation) codifies and replaces all earlier EC regulations on the EU trademark. The codification was carried out in the interests of clarity, given that the EU trademark system had already been substantially amended several times. The EU trademark has a unitary character and equal effect throughout the EU. The [European Union Intellectual Property Office](https://euipo.europa.eu/ohimportal/en) (EUIPO) is responsible for managing the EU trademark and design. The EU Trademark Regulation also sets the fee amounts payable to EUIPO. They are fixed at a level which ensures that the revenue they produce covers EUIPO’s expenses and that they complement the existing national trademark systems.

[Directive 98/71/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998L0071&qid=1621411539509) of 13 October 1998 approximated national legislation on the legal protection of designs and models. [Council Regulation (EC) No 6/2002](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002R0006&qid=1621411640841) of 12 December 2001 (amended) instituted a Community system for the protection of designs and models. [Council Decision 2006/954/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0954) and [Council Regulation (EC) No 1891/2006](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1891%2801%29), both of 18 December 2006, linked the EU system for the registration of designs or models to the international registration system for industrial designs and models of [WIPO](https://www.wipo.int/portal/en/index.html).

2. Copyright and related rights

Copyright ensures that authors, composers, artists, filmmakers and others receive payment and protection for their work. Digital technologies have profoundly changed the way creative content is produced, distributed and accessed. EU copyright legislation consists of 13 directives and two regulations which harmonise the essential rights of authors, performers, producers and broadcasters. By setting some EU standards, national discrepancies are reduced, a level of protection required to foster creativity and investment in creativity is ensured, cultural diversity is promoted and access for consumers and businesses to digital content and services across the single market is facilitated.

a. Copyright

[Directive 2001/29/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029) of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society adapted legislation on copyright and related rights to technological developments, but is out of pace with the extraordinarily fast developments that have taken place in the digital world, such as the distribution of and access to television and radio programmes, with 49% of internet users in the EU accessing music, audiovisual content and games online (Eurostat estimate). Harmonised copyright legislation across the EU for consumers, creators and companies is therefore necessary.

The EU Copyright Directive (Directive [(EU) 2019/790](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0790)) of 17 April 2019 provides for an ancillary copyright for press publishers and fair remuneration for copyrighted content. So far, online platforms have had no legal responsibility for using and uploading copyrighted content on their sites. The new requirements will not affect the non-commercial upload of copyrighted works to online encyclopedias such as Wikipedia. Directive (EU) 2019/789 (the [CabSat Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2019.130.01.0082.01.ENG)) was adopted on the same day and aims to increase the number of TV and radio programmes available online to EU consumers. Broadcasting organisations are increasingly offering online services in addition to their traditional broadcasts, as users expect to have access to television and radio content at anytime, anywhere. The directive introduces the country of origin principle to facilitate the licencing of rights for certain programmes that broadcasters offer on their online platforms (e.g. simulcasting and catch-up services). Broadcasters have to obtain copyright permissions in their EU country of establishment (i.e. country of origin) in order to make radio programmes, television news and current affairs programmes, and fully financed own productions available online in all EU countries. Member States had until 7 June 2021 to pass appropriate legislation to meet the directive’s requirements.

[Directive (EU) 2017/1564](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32017L1564) of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled facilitates access to books and other print material in appropriate formats and their circulation in the single market.

[Regulation (EU) 2017/1128](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1557493780595&uri=CELEX:32017R1128) of 14 June 2017 on cross-border portability of online content services in the internal market aims to ensure that consumers who buy or subscribe to films, sports broadcasts, music, e-books and games can access them when they travel to other EU Member States.

b. Term of protection of copyright and related rights

These rights are protected for life and for 70 years after the death of the author/creator. [Directive 2011/77/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0077) amending Directive 2006/116/EC on the term of protection of copyright and certain related rights extended the term of copyright protection for performers of sound recordings from 50 to 70 years after recording, and for authors of music, such as composers and lyricists, to 70 years after the author’s death. The term of 70 years has become an international standard for the protection of sound recordings. Currently 64 countries around the world protect sound recordings for 70 years or longer.

c. Computer programs and databases

[Directive 91/250/EEC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31991L0250) required Member States to protect computer programs, by copyright, as literary works under the Berne Convention for the Protection of Literary and Artistic Works. It was codified by [Directive 2009/24/EC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0024). [Directive 96/9/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01996L0009-20190606&qid=1608557299843) (the Database Directive) provides for the legal protection of databases, defining a database as ‘a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means’. The directive stipulates that databases are protected both by copyright, which covers intellectual creation, and by a *sui generis* right protecting investment (of money, human resources, effort and energy) in obtaining, verifying or presenting content. On 23 February 2022, the Commission presented a proposal for a new regulation on harmonised rules on fair access to and use of data (the [data act](https://digital-strategy.ec.europa.eu/en/library/data-act-proposal-regulation-harmonised-rules-fair-access-and-use-data)) aimed at ensuring fairness in the allocation of value from data among actors in the data economy and at fostering access to and the use of data. Parliament’s plenary adopted the [report](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0069_EN.html) on 14 March 2023, opening the path for trilogue negotiations. The data act will review certain aspects of the Database Directive. Notably, it will clarify that databases containing data from internet-of-things devices and objects should not be subject to separate legal protection. This will ensure they can be accessed and used. On 30 May 2022, Parliament and the Council adopted the [Data Governance Act](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R0868), which introduces mechanisms to facilitate the reuse of certain categories of protected public sector data, increase trust in data intermediation services and foster data altruism across the EU.

d. Collecting societies

A licence must be obtained from the different holders of copyright and related rights before content protected by such rights may be disseminated. Rights holders may entrust their rights to a collecting society, which manages those rights on their behalf. Unless a collective management organisation has justified reasons to refuse management, it is obliged to manage these rights. [Directive 2014/26/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0026) on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market lays down requirements for collective management organisations, with a view to ensuring high standards of governance, financial management, transparency and reporting. It aims to ensure that rights holders have a say in the management of their rights and envisages a better functioning of collective management organisations by means of EU-wide standards. Member States must ensure that collective management organisations act in the best interests of the rights holders whose rights they represent.

3. Patents

A patent is a legal title that can be granted to any invention having a technical character, provided that it is new, involves an inventive step and could have an industrial application. A patent gives the owner the right to prevent others from making, using or selling an invention without permission. Patents encourage companies to make the necessary investment in innovation, and provide an incentive for individuals and companies to devote resources to research and development. In Europe, technical inventions can be protected either by national patents granted by the competent national authorities, or by European patents granted centrally by the [European Patent Office.](https://www.epo.org/index.html) The latter is the executive branch of the European Patent Organisation, which now has 38 contracting states. The EU itself is not a member of this organisation.

After years of discussions among the Member States, Parliament and the Council approved the legal basis for a European patent with unitary effect (unitary patent) in 2012. An international agreement between the Member States thus set up a single and specialised patent jurisdiction.

The Court of Justice’s (CJEU’s) confirmation of the patent package in its judgment of 5 May 2015 in cases C-146/13 and C-147/13 cleared the way for a [truly European patent.](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1257) The previous regime coexists with the new system with [transitory measures](https://www.epo.org/applying/european/unitary/unitary-patent/transitional-arrangements-for-early-uptake.html) in place. The Unitary Patent system is expected to start its full operation on 1 June 2023.

Once granted by the European Patent Office, a unitary patent will provide uniform protection with equal effect in all participating countries. Businesses will have the option of protecting their inventions in all EU Member States with a single unitary patent. They will also be able to challenge and defend unitary patents in a single court action through the UPC. This will streamline the system and save on translation costs. The wording of the UPC Agreement (UPCA) provides that the primacy of EU law must be respected (Article 20 of the UPCA) and that the decisions of the CJEU are binding on the UPC. In September 2021, Germany deposited [its ratification instrument for the UPCA at the General Secretariat of the Council](https://data.consilium.europa.eu/doc/document/ST-12098-2021-INIT/en/pdf), thereby triggering the countdown for the implementation of the unitary patent system in its entirety.

4. Trade secrets

The practice of keeping business information (know-how) confidential goes back centuries. Legal instruments to protect trade secrets, whether or not defined as part of IPR, exist in many countries. The level of protection afforded to confidential information cannot be compared to other areas of intellectual property law such as patents, copyrights and trademarks, but can, in principle, apply indefinitely, rather than for a limited period only. The protection of trade secrets varies more from country to country than other areas of IPR law, and can be even more advantageous and cheaper than seeking formal patent protection. Since 2016, an EU legal framework has existed, namely [Directive (EU) 2016/943](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0943) on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

5. IPR for plant varieties

Plant variety protection, also called the ‘plant breeder’s right’, is a form of IPR granted to the breeder of a new plant variety. The EU’s system of protection for plant varieties, based on the principles of the [1991 Act of the International Convention for the Protection of New Varieties of Plants](https://www.wipo.int/treaties/en/notifications/upov/treaty_upov_39.html), contributes to the development of agriculture and horticulture. A system for the protection of plant variety rights was established by EU legislation. The system allows IPR to be granted for plant varieties. The Community Plant Variety Office implements and applies this scheme.

6. Geographical indications

Under the EU’s [IPR system](https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en), names of products registered as having a geographical indication are legally protected against imitation and misuse within the EU and in non-EU countries with which a specific protection agreement has been signed. Product names can be granted a geographical indication if they have a specific link to the place where the product is made. This recognition enables consumers to trust and distinguish quality products while also helping producers to market their products better. Recognised as intellectual property, geographical indications are playing an increasingly important role in [trade negotiations between the EU and other countries](https://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/). On 31 March 2022, the Commission put forward a legislative [proposal on EU geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0134). On 20 April 2023, the Committee on Agriculture and Rural Development adopted its position concerning the proposal. The plenary vote is scheduled for the end of May 2023. On 7 March 2023, the Committee on Legal Affairs adopted a [report](https://www.europarl.europa.eu/doceo/document/A-9-2023-0049_EN.html) on the [proposal](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0174) for a regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754. After plenary’s confirmation of the Committee on Legal Affair’s decision to enter into interinstitutional negotiations, Parliament and Council negotiators reached an [agreement](https://www.europarl.europa.eu/news/en/press-room/20230502IPR84003/deal-on-geographical-protection-for-local-craft-and-industrial-products) on 3 May 2023.

7. Combating counterfeiting

According to estimates, imports of counterfeit and pirated goods into the EU amount to approximately EUR 85 billion (up to 5% of total imports). Worldwide, trade in pirated goods accounts for as much as 2.5% of trade and is worth up to EUR 338 billion, which causes significant damage to rights holders, governments and economies.

As differences in national systems for penalising counterfeiting and piracy were making it difficult for Member States to combat those offences effectively, Parliament and the Council adopted [Directive 2004/48/EC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0048&qid=1621411923468) on the enforcement of intellectual property rights as a first step. It aims to step up the fight against piracy and counterfeiting by approximating national legislative systems to ensure a high, equivalent and homogeneous level of intellectual property protection in the single market and provides for measures, procedures and compensation under civil and administrative law. [Regulation (EU) No 608/2013](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R0608) concerning customs enforcement of intellectual property rights provides procedural rules for customs authorities to enforce IPR with regard to goods liable to customs supervision or customs checks.

B. Concept of the ‘exhaustion’ of rights

1. Definition

This legal concept or doctrine applying to all fields of industrial property means that after a product covered by an IPR (e.g. a [patent](https://en.wikipedia.org/wiki/Patent)) has been sold by the IPR holder or by others with the consent of the owner, the IPR is said to be exhausted. In the EU, the CJEU has always interpreted the EU Treaties as meaning that rights conferred by IPR are exhausted within the single market by virtue of putting the relevant goods on the market (by the rights holder or with their consent). The proprietor of an industrial or commercial intellectual property right protected by the law of one Member State cannot invoke that law to prevent the importation of products which have been put into circulation in another Member State.

2. Limits

‘Exhaustion’ of EU rights does not apply in the case of the marketing of a counterfeit product, or of products marketed outside the European Economic Area (Article 6 of the TRIPS Agreement). In 1999, the CJEU ruled, in its judgment in *Sebago Inc. and Ancienne Maison Dubois et Fils SA* v *GB-Unic SA* (C-173/98), that Member States may not ‘provide in their domestic law for exhaustion of the rights conferred by the trademark in respect of products put on the market in non-member countries’.

3. Legal acts in this area

EU rules on exhaustion are largely the result of the jurisprudence of the CJEU interpreting Article 34 TFEU on measures having equivalent effect to quantitative restrictions between Member States[[1]](https://www.europarl.europa.eu/factsheets/en/sheet/36/intellectual-industrial-and-commercial-property" \l "_ftn1). This jurisprudence is reflected in each of the relevant pieces of EU law relating to IPR.

C. Recent case-law of the CJEU

In 2012, the CJEU confirmed in the SAS case ([C-406/10](http://curia.europa.eu/juris/document/document.jsf;jsessionid=3F59DE450658BE402FFF59CD5077819B?text=&docid=122362&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=469222)) that, in accordance with Directive 91/250/EEC, only the expression of a computer program is protected by copyright and that ideas and principles which underlie its logic, algorithms and programming languages are not protected under that directive (paragraph 32 of the judgment). It stressed that neither the functionality of a computer program nor the programming language and format of data files used in a computer program in order to exploit certain of its functions constitutes a form of expression of that program for the purposes of Article 1(2) of Directive 91/250/EEC (paragraph 39).

In its judgment in [Case C-160/15](http://curia.europa.eu/juris/document/document.jsf?text=&docid=183124&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=469747) (*GS Media BV* v *Sanoma Media Netherlands BV and Others*), the CJEU declared that the posting on a website of a hyperlink to works protected by copyright and published without the author’s consent on another website does not constitute a ‘communication to the public’ when the person who posts that link does not seek financial gain and acts without the knowledge that those works have been published illegally.

In its judgment in Case [C-484/14](http://curia.europa.eu/juris/document/document.jsf?text=&docid=183363&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=469870) of 15 September 2016, the CJEU held that making a Wi-Fi network available to the general public free of charge in order to draw the attention of potential customers to the goods and services of a shop constitutes an ‘information society service’ under Directive 2000/31/EC, and confirms that, under certain conditions, a service provider who provides access to a communication network may not be held liable. Consequently, copyright holders are not entitled to claim compensation on the grounds that the network was used by third parties to infringe their rights. Securing the internet connection by means of a password ensures a balance between, on the one hand, the IPR of rights holders and, on the other hand, the freedom to conduct a business of access providers and the freedom of information of the network users.