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European Economic Community: Approaching Complete Formation Treaty

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TREATY NOTE

EUROPEAN ECONOMIC COMMUNITY:
APPROACHING COMPLETE FORMATION

Kynthia D. Colyvas†

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EUROPEAN ECONOMIC COMMUNITY: APPROACHING COMPLETE FORMATION

Kynthia D. Colyvas

I. INTRODUCTION

For centuries European states dreamed of a peaceful union. Yet it was not until the devastation of World War II that political cooperation was perceived as essential to ensure Europe's survival. Despite the realization that a union was necessary, national governments remained reluctant to surrender any substantial authority to a supranational body. Countries with longstanding and bitter rivalries were especially skeptical of a friendly European alliance. Nevertheless, the European Economic Community (EEC) was established in 1958 upon signing of the Treaty of Rome.

The six original signing members included: Belgium, France, Italy, Luxembourg, Netherlands and West Germany. In 1973, Denmark, Ireland, Greenland, and the United Kingdom joined the EEC. Greece followed with the signing of the Accession Treaty of May 28, 1979, making it a member as of 1981. Portugal and Spain were the last to sign an accession treaty in June of 1985, creating a community of twelve countries, referred to individually as “Member States.”

The Treaty in original form did not provide a deadline for completion of its objectives. A subsequent agreement, the Single

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1. The scope of this paper is limited to a broad survey of the EEC, merely touching upon the various issues and considerations faced by U.S. investors and their advocates. The primary goal is to introduce readers to the EEC. It also seeks to dispel the mystery surrounding the 1992 hype.


3. Id.

4. For example, France and Germany were longstanding rivals and for years hesitated to enter an alliance. Therefore, it is especially ironic that the first European Community to form, the European Coal and Steel Community (ECSC), was primarily a coalition between France and Germany. These strange bedfellows united for the purpose of joining coal and steel production on a European scale. ECSC served as a prototype for the formation of the EEC seven years later.


European Act of 1987,\textsuperscript{8} assigned December 31, 1992 as the target date for completion of the Treaty's implementing legislation.\textsuperscript{9} Some commentators question the significance of the EEC deadline; one columnist stated, "1992 is a big catch phrase but it's a useful boost to moral. . . . the aim is to move forward [and] to solve problems that have been sitting around for decades."\textsuperscript{10} Despite its origin, the target date has proved to be more than a mere forecast. Completion appears inevitable.

II. FUNDAMENTAL PRINCIPLES OF THE EEC

A. Objectives and Motivations Behind Unification

Article 2 of the Treaty states that the primary objectives of the Community are: "promotion of a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."\textsuperscript{11} While it is apparent that widespread economic integration is the principle goal of the EEC, social benefits are implicit in notions of an increase in stability and an acceleration of the standard of living.

There are at least four motivations behind the economic harmonization advocated in Article 2. First is the fear of adverse economic outcome. "It has been found that a common market without the harmonization of policies between members can create problems, especially with production, employment and investment decisions that respond to differential monetary and fiscal policies."\textsuperscript{12}

Second is the hope of reaping the economic harvest. "The European Community anticipates that the dismantling of government barriers will promote competition, generate larger economies of scale, increase productivity, lower prices to the consumer, and increase the economic welfare of nations and the Community alike."\textsuperscript{13}

\textsuperscript{9} Legislative acts drafted by EEC governing organs are covered by the 1992 deadline; however, the deadline does not apply to Member State implementing legislation, in response to EEC directives. In theory, Member States are afforded approximately 5 years to create national implementing legislation. Realistically, Member States often take more than five years, with the aid of numerous exemptions.
\textsuperscript{10} San Jose Mercury News, Mar. 26, 1989, at E1, col.2 (columnist unknown).
\textsuperscript{11} Treaty of Rome art. 2, 298 U.N.T.S. at 15.
\textsuperscript{12} S. OVERTURF, THE ECONOMICS OF EUROPEAN INTEGRATION 3 (1986). See Appendix A for a full reading of Article 3 which elaborates on the objectives set out in Article 2.
Third is the desire for a larger market share. "The European industries realize that they cannot compete with companies from the United States, Japan and elsewhere without a large home market."\(^{14}\) Not only does integration provide the opportunity to increase sales by opening eleven new markets for each member state but it also provides the incentive, if not demand to become more competitive.

Finally, economic unification offers an opportunity to bind Europe, politically and socially, as well as economically. Social and political unification of Europe seems wise on an intuitive level. Some commentators argue that political merger was the true impetus behind European integration rather than economic motives. Despite the effort at political unification, the common view is that "the EC's political power would continue to be substantially less than that of the U.S. Federal government."\(^{15}\)

B. Community Law Preempts National Law

The objectives of the Treaty could not have been realized had it not been for the principle of Community law preemption. Under this two-fold principle, Community law is the supreme law where (1) national law exists but conflicts with Community law and where (2) no national legislation exists on a particular issue.

If domestic and Community laws conflict, Community law supercedes, regardless of when the national law was enacted. The Court of Justice has repeatedly affirmed the supremacy of Community law over national law. In the case of \textit{Italian Finance Administration v. Simmenthal}, the Court of Justice held that "...any subsequent national measures which directly conflict with those [Community law] provisions must be \textit{directly disregarded} without waiting until those [national] measures have been eliminated by [repeal] action on the part of the national legislature concerned."\(^{16}\)

The rationale behind this view is that Member States agree to limit their sovereignty in favor of the community and thus the single unilateral act of a state is ineffective at circumventing Community law.

The EEC has the authority to make its provisions directly applicable to Member States and their citizens without further execution of legislation by national governments. Article 189 states that an EEC regulation "shall be binding in its entirety and directly ap-

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\(^{14}\) U.S. Dep't of State, \textit{supra} note 2 at 24.

\(^{15}\) S. OVERTURF, \textit{supra} note 12 at 3.

 Direct applicability in all Member States.” 17 In the *Italian Finance* case the Court of Justice held that “direct applicability . . . means that the provisions of Community law must be fully and uniformly applied in all the member States from the date of entry.” 18 The principle of direct applicability applies primarily to Regulations. 19

The common fault of many international treaties is that they lack the capacity to implement their objectives. The Treaty of Rome, however, not only formed the EEC but also established governing institutions. In turn, these institutions made implementing treaty objectives conceivable if not inevitable through the principles of direct applicability and preemption.

III. STRUCTURE OF THE EEC

A. The Governing Institutions

The principle objective of the EEC governing organs is to carry out the law of the land. Specifically, their common goal is to propose, draft, approve, interpret and execute legislation. In the United States, three branches of government with sole and distinct functions effectuate this task. The EEC, however, is comprised of four institutions which share executive, legislative and judicial roles. For instance, in the EEC all four governing bodies have significant responsibility in the legislative process. Despite the fact that the executive, legislative and judicial functions overlap between the Council of Ministers, Commission, Assembly and Court of Justice, their respective roles are clear. 20

1. The Council of Ministers

The Council of Ministers (Council) generally consists of one representative from each Member State. 21 The Council members meet in Strasbourg once a month 22 in specialized committees. 23 The Ministers are the only EEC officials whose positions permit them to represent their respective Member States rather than the

19. See infra section III(B)(2) for a more complete discussion of Community law, and the distinction between regulations, directives and decisions.
20. See Appendix D for a diagram illustrating the interaction between the EEC institutions.
22. Id. at 17.
23. The specialized committee's are nine and include: Finance, Agriculture, Economy, Foreign Affairs and Transportation.
Community as a whole.\(^{24}\)

The Council performs both legislative and executive functions. Although it cannot draft legislation, the Council is responsible for coordinating economic policy which the Commission will draft into legislation. Once drafted and presented, the Council may approve, reject, or amend the proposed legislation. The approval or rejection is analogous to the President's veto power in the U.S., and, without approval, the proposal will not become law. The power to amend provides the Council with a limited legislative function, as does the power to issue decisions where necessary to implement Treaty objectives.\(^{25}\) Where the Council legislates within the narrow parameter permitted under the Treaty, the Assembly and the Economic and Social Committee must be consulted.\(^{26}\)

In 1966, the Council made a "gentleman's pact", the Luxembourg Agreement\(^{27}\), to require unanimous decisions on important issues such as health, taxation and the environment.\(^{28}\) Otherwise, voting is by a weighted majority. Where the Council is required to act by a weighted majority, the votes are accorded varying weights among the Member States.\(^{29}\) A total of 54 favorable votes are required to adopt a proposal by weighted majority, whereas 23 votes are necessary to establish a blocking minority.\(^{30}\)


\(^{25}\) Treaty of Rome art. 145, 298 U.N.T.S. at 69, "To ensure that the objectives set out in this Treaty are attained, the Council shall, in accordance with the provisions of this Treaty: . . . have the power to make decisions." The Council does not, however, have the general authority to draft regulations and directives, but it does approve them. For a discussion of decisions generally and as distinguished from regulations and directives, see infra Section III(B)(2).

\(^{26}\) Treaty of Rome art. 4, 298 U.N.T.S. at 16, "The Council. . . shall be assisted by an Economic and Social Committee acting in an advisory capacity." See Appendix D for a better understanding of the role of the Economic and Social Committee and the Assembly within the legislative process.

\(^{27}\) The Luxembourg Agreement is not binding. It is merely an agreement among Council members to attempt at unanimous vote in some circumstances. Since the Single European Act in 1987 the scope of issues requiring unanimity has been significantly narrowed.

\(^{28}\) U.S. Dep't of State, supra note 2 at 28.

\(^{29}\) Treaty of Rome art. 148, 298 U.N.T.S. at 70 as amended by Article 4 of the Act of Accession, (signed on 12 June 1985) modified by Article 8 of the Adaption Decision, and amended by Article 14 of the 1985 Act of Accession. Under the qualified majority scheme the votes are weighted as follows: 10 votes each to Germany, France, Italy, the United Kingdom; 8 votes to Spain; 5 votes each to Belgium, Portugal, Greece and Netherlands; 3 votes each to Denmark and Ireland; and 2 votes to Luxembourg. There are 76 total votes.

\(^{30}\) Id.
2. The Commission

The Commission is seated in Brussels and is comprised of 17 members appointed by their respective national governments. Each Member State has one representative except for Spain, the United Kingdom, Italy, France and West Germany each of which can appoint two Commissioners. Even though appointed by their respective governments, Commissioners are required to act independently of their Member States and to represent the interests of the Community as a whole.

The Commission performs primarily a legislative function. The Commission proposes and drafts all legislation. Commissioners are assigned a staff and one or more areas of responsibility, such as agriculture, energy or the environment and can propose and formulate initiatives within the scope of that assignment. If the Commission is unwilling to initiate legislation, the other bodies are powerless.

The secondary functions of the Commission include implementing and enforcing laws and formulating the preliminary draft of the annual budget. The approved budget for 1987-1988 was approximately $45 billion.

3. The Assembly (European Parliament)

The Assembly is comprised of 518 “deputies”, each of whom serve a five year term. Deputies are elected by the voters of each Member State making the Assembly, “the only EC institution that directly represents the people of Europe.” Regardless of the interests of their constituents, the deputies are required to represent the

31. U.S. Dep't of State, supra note 2 at 27.
32. Id.
33. Thompson, supra note 24, at 12.
34. EEC publications often characterize the Commission as the primary executive organ. To the extent that the EEC governing institutions are being analogized to the three branches of government in the U.S., the most accurate depiction of the Commission is as the primary legislative body. It is conceded that the Commission performs executive tasks, in that it has veto and enforcement powers; however since it is the only body permitted to initiate and to draft legislation, it is portrayed as the principle legislative body.
35. Thompson, supra note 24, at 12.
36. In narrow circumstances the Council may legislate. See infra p.9.
37. Thompson, supra note 24, at 12.
38. U.S. Dep't of State, supra note 2 at 28.
39. Id. at 28. The EEC budget is financed primarily by: a customs duty, a 1.4% value added tax collected on the goods and services consumed in member states, and a percentage donation based on the gross national product of Member States.”
40. Id.
41. U.S. Dep't of State, supra note 2, at 28. For a more exhaustive discussion of the
interest of the whole Community. The Assembly meets annually on the second Tuesday in March primarily to discuss the annual report submitted by the Commission.

The Assembly was originally constructed as the chief advisory branch to the Council of Ministers and the Commission. Although the Assembly still functions primarily in a consulting capacity, in recent years its legislative role has significantly expanded. Since the Single European Act in 1987, the Assembly has earned a greater role in the decision-making process. The Assembly now has the right to amend or delay legislation with a two-thirds vote; to reject legislation with a unanimous vote; to remove the Commission as a whole on a two-thirds vote; and to approve, amend or reject the adoption of the budget. All of these powers effectively enhance the Assembly’s overall influence in the legislative process.

4. The Court of Justice

The Court of Justice is seated in Luxembourg and consists of thirteen Judges, each appointed for a renewable six year term. Six Advocate-Generals with the duty of assisting the Justices are also appointed for a period of six years. A common agreement among the Member States dictates the method in which the Justices and Advocate-Generals are appointed. Article 167 states that they “shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required to the highest judicial offices in their respective countries. . . .”

The Court of Justice functions in a manner analogous to the
U.S. Supreme Court. It enforces EEC treaties, determines whether Community legislation is interpreted and implemented correctly, and where it resolves conflicts between Community and national law, it is the supreme law of the land. Decisions of the Court are achieved by a simple majority, binding on all parties, and not subject to appeal. Unlike the Supreme Court Justices of the U.S., the EEC Justices are subject to reappointment every six years and, thus, may be more susceptible to political pressure.

Although the Court of Justice has no role in proposing or drafting the laws of the internal market as do the other three Community institutions, its decisions have had a substantial impact on legislation. Article 173 of the Treaty gives the Court of Justice the authority to review the legality of the legislation and other acts of the Council and Commission. Furthermore, "through its legal decisions it has been a driving force behind European integration generally and in several instances has forced the Member States to eliminate barriers to free trade within the Community." The Court has consistently ruled in favor of business establishment and the movement of goods and people. The decisions of the Court have extended the rights embodied in the treaties to individuals, and have promoted a speedy integration of Community policies and strengthened EEC institutions.

B. Legislative Enactment

1. The Process: From Proposal to Enforcement

The legislative process involves the interaction of all four governing institutions at various levels. Policy considerations begin with the Council of Ministers and with the Commission. The Commission is thereafter responsible for proposing and drafting legislative initiatives. No other body can decide which proposals to draft. Legislation is not enacted until approved by the Council. Once approved by the Council a law is fully effective, leaving no room for input or changes from the Assembly except for complete rejection. If the Council rejects legislation the Assembly is powerless and the Commission can revive an initiative only by redrafting it. The
Council however cannot reject or approve legislation immediately. In order to provide an opportunity for the Assembly to respond to proposed legislation the Council must wait three months before voting to reject, amend or adopt an initiative.

Once proposed and prior to a decision by the Council, the Assembly can choose several courses of action. First, the Assembly can take no action, thus permitting the Council of Ministers to determine whether to approve, reject or amend the proposed legislation after the waiting period. Second, the Assembly can make recommendations or publish opinions on pending legislation. The Commission may alter its original proposal based on Assembly recommendations but only so long as the Council has not yet acted. Third, the Assembly can amend or delay legislation with a two-thirds vote, at which point the initiative goes back to the Commission for changes prior to re-submission to the Council. Fourth, the Assembly can unanimously decide to reject legislation. In turn, the Council can unanimously decide to overrule the Assembly, and the proposal will become law.

The Court of Justice is the only body which can interpret legislation. The Council has the authority to make a preliminary review of a case and if it deals with the interpretation of a treaty it must pass the case to the Court of Justice. The enforcement of laws is the responsibility of the Commission, with the support of the governing institutions.59


Article 189 of the Treaty of Rome delineates the three classifications of EEC law where it states, “In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, and take decisions...”60 The Article then proceeds to define and distinguish the categories of EEC law previously set forth:

59. Treaty of Rome, art. 169, 298 U.N.T.S. at 75, (“If the Commission considers that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the commission, the latter may bring the matter before the Court of Justice.”); art. 171, 298 U.N.T.S. at 75, (If the Court of Justice finds that a Member State has failed to fulfill an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgement of the Court of Justice) art. 17, 298 U.N.T.S. at 21-22, (“the Council... may give the Court of Justice unlimited jurisdiction in regard to the penalties provided for in... regulations [made by the Council].”)

60. Treaty of Rome art. 189, 298 U.N.T.S. at 78.
A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

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

A decision shall be binding in its entirety upon those to whom it is addressed.  

Regulations and directives are enacted by the Council or Commission. Both are binding legislation and supercede national law. Directives mandate the intended result, leaving the method of implementation to the Member States, whereas regulations specify the method to be followed as well as the intended result. Regulations are self-executing. They apply automatically to Member States and their citizens without the enactment of implementing legislation, unlike Directives which direct Member States to implement legislation satisfying the Directive. In other words, regulations legislate the ends and the means, whereas directives merely mandate the ends.

Decisions can be granted by the Council, Commission or Court of Justice. Decisions, like regulations, are fully binding; but are distinguishable in that they are aimed specifically at individual citizens, organizations or Member State governments rather than the community of Member States as a whole. The fact that several governing institutions can enact more than one classification of EEC law further represents the meshing of tasks among the EEC governing institutions.

IV. THE SCOPE OF EEC LEGISLATION

In 1985, the Commission formulated the White Paper, which "designates the specific Directives that . . . need to be passed in

61. Id. (emphasis added).

62. The term "decisions" seems to have two distinct meanings for the EEC. For instance, there are the Decisions which are discussed in Article 189 and there are Judicial rulings which are also referred to as judicial decisions. Judicial decisions should not be confused with Decisions generally as they are two different types of mandates. Decisions generally are akin to legislation whereas judicial decisions are the outcome of an adversarial proceeding. Judicial Decisions can be directed at Member States as a whole or specifically at those before the Court unlike Decisions which apply only to a specific recipient. The best way to distinguish them is with a capital "D" for Decisions and an lower case "d" for judicial decisions.

63. White Paper (com 85) 310 final draft, Brussels, 14 June 1985. The 1985 White Paper was a report and proposal from the Commission to the Council which was later adopted as a binding mandate upon the EEC governing institutions.
order to accomplish the goal of a unified market." The Internal Market Directives deal with the removal of physical, technical, and fiscal barriers and generally implement and correspond to objectives in one or more Articles of the Treaty.

A. Fair Business Competition Rules

Articles 37 and 85 through 94 contain rules governing competition in the Community. These rules "evidence one of the most basic decisions taken in devising the structure of the Common Market, namely, that the Community shall be based on a regime of free competition rather than of extensive official regulation." Regarding the competition policy of the EEC, the Commission's public statement is that "competition is the best stimulant of economic activity since it guarantees the widest possible freedom of action. . . which is the *sine qua non* for a steady economy." The Community anticipates that free competition will lead to a robust Community market. However, some economists criticize the EEC policy on the grounds that competition is not always a stimulant to the economy nor is it always the best stimulant. One economist concluded that "the achievements of the EC competition policy are commendable, yet insufficient."

Despite criticism, the EEC fair competition provisions represent the first exhaustive European body of rules against anti-competitive behavior. Due to the increased number of nations which have become members of the EEC, these provisions enjoy an extensive reach. Furthermore, prior to the establishment of the EEC, "none of the other European counties developed any substantial antitrust legislation." The provisions in Articles 85, 86 and 37 are similar to U.S. antitrust provisions and are the primary basis for a substantial portion of fair business competition legislation.

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68. *Id.* at 190.

69. *Id.* at 192.


71. *Id.*

72. *Id.*
Article 85 of the Treaty provides a general prohibition against all agreements having the "object or effect of preventing, restricting or distorting competition." Section 2 enumerates various types of violative agreements and arrangements, specifically: price-fixing arrangements, volume controls, acting-in-concert, preferential treatment, and illegal tying arrangements.

Section 3 of Article 85 sets out narrow exemptions for these otherwise unlawful agreements. Where the agreement "contributes to improving the production and distribution of goods . . . [or promotes] economic progress. . . ." it will be permitted so long as it does not exceed the objectives behind the exemptions. Prohibited agreements under this Article are automatically void.

Article 86 does not prohibit rising to a dominant economic position; however, it does forbid the abuse of that position. "It is important to see that this seemingly more lenient position . . . is ambiguous from both an economic and legal-practice point of view." The dominant position is defined as "economic strength . . . [such that one has] the power to behave to an appreciable extent independently of . . . competitors." It has been forcefully argued that this definition is all inclusive and overly broad: "Once this richer view of dominant conduct [as independent economic strength] is developed, it is virtually impossible to separate it from abuse." In other words, under the current definition of abuse, holding the dominant position itself effectively becomes abuse.

The EEC's position in favor of a competitive economy is further evidenced by Article 37 which restricts government monopolies of a commercial character. This article and subsequent implementing legislation permits Member State governments progressively to adjust their position out of the monopoly status.

B. Community Tariff Scheme

The Treaty dedicates ten Articles to tariff-related objectives. These articles have served as the basis for all enactments which es-
eavour a Community-wide tariff scheme. Tariff-related legislation has been directed at three major objectives: (1) eliminating internal customs duties between states; (2) abolishing quotas on internal trade; and (3) creating a common external tariff to be applied towards goods of third party countries.

Articles 12 through 17 of the Treaty eliminate customs duties between Member States. Member states were required to abolish existing customs duties and equivalent levies by 1970. Furthermore, Member States may not create new duties nor increase existing ones. The elimination of internal customs duties is intended to remedy customs discrepancies between Member States. For instance, a smaller sized BMW which costs $17,000 in Germany generally costs $50,000 in Greece.

Article 33 of the Treaty contains specific provisions for the gradual elimination of import quotas. These quotas restrict the volume of goods permitted into Member States. Quota restrictions apply to the export and import of goods within the Member States as well as to third party countries. These restrictions also apply to any measures equivalent in effect to export and import quotas. An exception to the broad prohibition against quotas may be permitted on "grounds of public safety, the protection of national treasures or for similar reasons".

Articles 18 through 20 create a common external tariff which will apply to non-Member States as well as Member States. This common tariff is generally the arithmetic average of the tariffs levied in various customs territories as of January 1, 1957. Exceptions to the arithmetic average may include tariffs negotiated by the Member States or cases where no agreement can be reached by the Council.

In light of the sweeping elimination of internal duties, abolition of quantity restrictions, and creation of a common outer tariff, Member States may experience severe economic difficulties. Arti-

83. HENKIN, supra note 66, at 1442.
84. Id.
87. Id. Quotas on internal trade more restrictive than those in effect on January 1, 1958 may not be imposed. Furthermore, all internal quotas on imports had to be abolished in all Member States by 1970.
88. HENKIN, supra note 66, at 1443.
90. HENKIN, supra note 66 at 1443.
91. Id. at 1444.
Articles 115 and 226 permit the states to take some protective measures against these difficulties. Article 115 permits the Commission to authorize states to take protective measures to avoid diversion of trade or economic difficulties occasioned by the common commercial policy. Article 226 generally permits the Commission to authorize a state to take protective measures that involve deviations from the Article's provisions. Deviation will be authorized only where difficulties may seriously impair a region.

C. Common Agricultural Policy

Articles 38 through 47 of the Treaty provide for the achievement of a common agricultural policy. Article 39 states that the objectives of the agricultural policy shall be to increase agricultural productivity, rise to the optimum level of efficiency with factors of production, ensure a fair standard of living for the agricultural community, stabilize markets, assure availability of supplies and ensure reasonable prices. Implementation of these rules has created grave difficulties which threatened the very existence of the EEC.

The focus of implementing legislation has been to replace national market organizations with Community organizations on a product by product basis. The Community market for the various agricultural products has been put into effect with the enactment of hundreds of Council and Commission regulations and decisions. These pronouncements cover all agricultural issues from tariffs and internal price structures to export assistance.

D. Community Transport System

Articles 74 through 84 involve the creation of a Community-wide transport system designed to cover air, land and maritime transportation. The Council of Ministers can, by unanimous vote, adopt rules covering air and maritime transportation. Maritime legislation took effect in July, 1987, permitting phase-in of major changes through 1992. Air transportation legislation became

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92. Treaty of Rome art.115, 298 U.N.T.S. at 60; art.226, 298 U.N.T.S. at 89.
95. Henkin, supra note 66, at 1435.
98. Henkin, supra note 66, at 1444.
99. Id. at 1436.
100. Treaty of Rome arts. 74-84, 298 U.N.T.S. at 44-47.
101. Henkin, supra note 66, at 1440.
effective in January of 1988, and permitted airlines to lower fares and increase route access.

Surface transportation in the Member States is the subject of extensive national regulation. All railway transportation is either directly or indirectly in the hands of national governments, making harmonization of the transport systems particularly difficult. The greatest progress has been made in the area of road transport which contrasts significantly with the progress in rail transport.

E. Elimination of Duplicative Procedures

Steps have been taken to harmonize and replace various national procedures for product testing, marketing, packing, labelling and certification with Community-wide standards. "The European Community is now attempting to develop a sectoral approach to the mutual recognition of test data and certification procedures . . . . The intent is to avoid the wasteful duplication of effort." This effort will not only aid in efficient and uniform marketing but it will also assist the free movement of goods among Member States.

F. Free Movement of Goods and People

Interstate barriers will be removed on almost every level. EEC citizens will not be required to show a passport at each Member State border. Goods will cross borders with limited papers. "In one small but crucial change that went into effect January 1, [1989] truckers are able to drive from the Netherlands to Portugal showing only one piece of paper at border crossing, instead of the two-pounds of documents they needed previously."

G. The European Investment Bank (EIB)

Article 129 establishes the EIB and its membership. All Member States shall be members of the EIB. Article 130 sets out the primary goal of the EIB to promote the modernization and steady development of the common market, and the growth of less developed regions. To facilitate their goal, the EIB has the authority to grant loans funded from the capital contributions of the member

102. Id. at 1440.
103. Id.
104. Id. at 1441.
105. Lamoriello, supra note 64, at 3.
states. A separate Protocol regulates the administration of the bank.

**H. European Social Fund (ESF)**

The ESF is established under Article 123 of the Treaty "[i]n order to improve employment opportunities . . . and thereby raise the standard of living." Administration of the fund falls under the supervision of the Commission. The primary responsibility of this organization is to increase the geographical mobility of workers and to increase employment availability. The fund provides financial assistance for public programs promoting occupational retraining and resettlement, and can grant temporary aid to employees and enterprises harmed by a change in production.

**V. OPPORTUNITIES OPEN TO U.S. TRADE**

The European Community is America's largest commercial partner. Including both exports from the United States and shipments of U.S. subsidiaries established in the EEC, U.S. company sales in the 12-nation European Community are over $500 billion. This compares to U.S. company sales of $200 billion in Canada and $130 billion in Japan.

A single European market may attract U.S. companies in a manner unlike individual national markets. A unified market offers important commercial opportunities for U.S. companies in several significant ways. First, the elimination of many overlapping or conflicting standards and the creation of one set of clearly determinable standards will make expansion of sales territories much more feasible and enticing. For instance, a U.S. Department of Commerce spokesperson states that, "a company now exporting to Germany would apparently face no new hurdles in supplying other countries in the European Community."

Second, marketing techniques for products exported to Europe will be harmonized and are significantly similar to those applied in the U.S. English is often spoken even in countries where it is not the primary language and in several European Countries it is the first language. Marketing techniques are further accessible in the

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109. Id.
111. Lamoriello, *supra* note 64, at 6.
European Community, through a well-established system of distribution and a sophisticated financial system much like our own.

Third, the removal of physical and other barriers enables U.S. products to integrate into the European Community. "If goods and services move truly without bias from one European country to another, U.S. firms should be able to rationalize their operations and concentrate their activities where they are most efficient."113 The EEC assures third party countries that it will not discriminate "provided that the country of the affiliate's parent will provide reciprocal treatment to companies owned by residents of EC countries."114

Fourth, the U.S. Department of Commerce and its agency, the International Trade Administration (ITA) are dedicated to assisting U.S. investors in exporting. "A network of U.S. government commercial officers are there to help . . . [and, in order to] assist small and mid-sized firms to focus on emerging market opportunities in Western Europe, the ITA has initiated the EUROPE NOW program."115 The ITA suggests that "it makes particularly good sense to export now since the dollar exchange rate has decreased some fifty percent against several European currencies since early 1985." With the current fall of the dollar exchange rate, American exports are more competitive than they have been in years.116 Recently many U.S. companies have entered the European market.117

Fifth, financial benefits are not all that is to be gained from a unified Europe. "An open and vibrant Europe reinforces the common bond of democracy, strengthens the Atlantic alliance, and can be a powerful engine for economic growth."118

VI. CONCLUSION: EEC 1992 IS SUBSTANTIALLY FORMED

In 1987, the White Paper indicated that approximately 274 leg-

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113. Id.
116. Id. at 14. Authors conclusion is based on market conditions from April, 1985 to April 1989.
117. San Jose Mercury News, Mar. 26, 1989 at E1, col.2. For instance: in January Whirlpool entered a $2 billion joint venture with Phillips N.V., a Dutch electronics giant; ATT has built a $220 billion semiconductor plant in Spain; Sara Lee Corp. with $3.5 billion in sales, is building up its position by acquisitions (in February, 1988 a $250 million Dutch coffee and tea concern was purchased); General Electric is forming joint ventures with Britain's largest corporation dealing in major appliances and electrical equipment; Coca-Cola Co. has started construction of one of the world's largest canning plants in Dunrick, France; and Shearson, Lehman, Hutton Inc. has expanded investment banking offices in Milan, Italy and Madrid, Spain.
118. U.S. Dep't of State, supra note 2 at 24.
islegislative acts were required to implement Treaty objectives.\textsuperscript{119} The most vital objectives of the Treaty have been implemented. The bulk of the legislation remaining is in the following areas: the adoption of national legislation to implement Community Directives, legislation on less important issues, and legislation in the areas of substantial controversy such as common transport, agriculture, currency, tax, and language policy.

While year-end 1992 was the target date for completion of the internal market, a majority of the Directives are currently finalized.\textsuperscript{120} Of the 274 most recently projected, over 130 have been fully enacted as of early June 1989. Over one-third of those remaining (approximately 100) are at the final stage.

In EEC terminology, proposals in their final stage are termed in "common position." This means that the legislation has been drafted by the Commission and awaits the passing of the three-month waiting period, during which the Assembly may discuss, amend or reject legislation. Since rejection require a unanimous vote, and even amendments require a two-thirds vote, it is probable that many of the initiatives "in common position" will be adopted.\textsuperscript{121} Furthermore, with the reduced voting requirement of a qualified majority rather than the unanimity required prior to the Single European Act,\textsuperscript{122} initiatives are likely to pass through the Council for adoption as well.

The total implementation of the Treaty is nearing completion. The most critical legislation has been executed, and since the initiatives in common position are likely to come into force, the objectives of an integrated Europe are effectively accomplished. The accomplishments to date are especially novel in light of the fact that Member States have relinquished a considerable degree of their own sovereignty in order to cede to this supranational body, the EEC.

\textsuperscript{119} White Paper, supra note 63.
\textsuperscript{120} Lamoriello, supra note 64, at 4.
\textsuperscript{121} Telephone interview with Cesira Klayman, European Economic Community, Washington D.C., (March 12, 1989).
\textsuperscript{122} Single European Act, supra note 8.
ARTICLE 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(a) the elimination, as between Member States, of customs duties and of quantitative restrictions in regard to the importation and exportation of goods, as well as of all other measures with equivalent effect;
(b) the establishment of a common customs tariff and a common commercial policy towards third countries;
(c) the abolition, as between Member States of, the obstacles to free movement of persons, services and capital;
(d) the adoption of a common policy in the sphere of agriculture;
(e) the adoption of a common policy in the sphere of transport;
(f) the institution of a system ensuring that competition in the common market is not distorted;
(g) the application of procedures by which the economic policies of the Member States can be co-ordinated and disequilibria in their balance payments remedied;
(h) the approximation of the laws of Member States to the extent required for the proper functioning of the Common Market;
(i) the creation of a European Social Fund in order to improve the possibilities of employment opportunities for workers and to contribute to the raising of their standard of living;
(j) the establishment of a European Investment Bank intended to facilitate the economic expansion of the Community by opening up fresh resources; and
(k) the association of overseas countries and territories with the Community in order to increase trade and to promote jointly economic and social development.
ARTICLE 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

—any agreement or category of agreements between undertakings;
—any decision or category of decisions by associations of undertakings;
—any concerted practice or category of concerted practices;
which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
(b) afford such undertakings the possibility of elimination competition in respect of substantial part of the products in question.
APPENDIX C

ARTICLE 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:
(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
APPENDIX D

EEC Legislation from Start to Finish
(Directives and Regulations)

The Consultation Procedure

PROPOSAL from the Commission

Council of Ministers

European Parliament

Commission opportunity for amendment

Economic and Social Committee

Council for consideration

REGULATION

DIRECTIVE

Implementation by Member States

The Cooperation Procedure

PROPOSAL from the Commission

Council of Ministers

European Parliament

Commission opportunity for amendment

Economic and Social Committee

Council for consideration

Common Position

European Parliament Second Reading

Commission opportunity for amendment

Council for final adoption

REGULATION

DIRECTIVE

Implementation by Member States