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# The Single European Act

By STEFAN A. RIESENFELD\*

## I. GENESIS

The Single European Act of 1986 (SEA)<sup>1</sup> was adopted by the twelve Member States of the three European Communities in 1986 by way of an amendment to the original treaties establishing the three communities.<sup>2</sup> It constitutes the most important modification of the powers and processes of the integrative scheme which originated with the Treaty establishing the European Coal and Steel Community of 1951. Of course, the basic treaties had been amended in the interim by treaties which enlarged the initial membership from six to twelve nations, the so-called treaties of accession of 1972 (United Kingdom, Denmark, and Ireland),<sup>3</sup> 1979 (Greece),<sup>4</sup> and 1984 (Portugal and Spain),<sup>5</sup> as well as by treaties which made organizational changes, especially the Treaty establishing a Single Council and a Single Commission of the European Communities (1967),<sup>6</sup> the Treaty amending Certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities (1970),<sup>7</sup> and the Treaty amending Certain Financial Provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the Eu-

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1. Feb. 28, 1987, 30 O.J. EUR. COMM. (No. L 169) 1 (1987) [hereinafter SEA].
2. Treaty establishing the European Coal and Steel Community, Apr. 18, 1951, 1988 Gr. Brit. T.S. No. 49 (Cmd. 455) 7 (original version at 261 U.N.T.S. 140); Treaty establishing the European Economic Community, Mar. 25, 1957, 1988 Gr. Brit. T.S. No. 49 (Cmd. 455) 82 (original version at 298 U.N.T.S. 11) [hereinafter Treaty of Rome]; Treaty establishing the European Atomic Energy Community, Mar. 25, 1957, 1988 Gr. Brit. T.S. No. 49 (Cmd. 455) 225 (original version at 298 U.N.T.S. 167).
3. Jan. 22, 1972, 1979 Gr. Brit. T.S. No. 18 (Cmd. 7463).
4. May 24, 1979, 22 O.J. EUR. COMM. (No. L 291) 9 (1979).
5. 28 O.J. EUR. COMM. (No. L 302) 9 (1985).
6. Apr. 8, 1965, 1979 Gr. Brit. T.S. No. 15 (Cmd. 7460) 173.
7. Apr. 22, 1970, 1973 Gr. Brit. T.S. No. 1 (part II) (Cmd. 5179) 306.

ropean Communities (1975).<sup>8</sup> But only the Act concerning the election of the representatives of the Assembly by direct universal suffrage (1976)<sup>9</sup> constituted a major institutional advance.

The adoption of the Single European Act was the climax of a protracted effort to revive and expand the process of European integration. The European Economic Community as conceived in the original blueprint, known as the Spaak Report,<sup>10</sup> constituted a common market of the Member States in the form of a customs union with no internal barriers and equipped with an institutional apparatus capable of establishing and enforcing a common policy for the functioning and evolution of an integrated market. As time progressed the original *élan* of the rhythm slackened and the statesmen, inspired by its initial aims, sought to rekindle the fire and to remove the institutional limitations on the process. In 1969 the heads of state or government held a summit at the Hague in which they expressed the determination to transform, by way of a step by step approach, the existing community into an economic and monetary union.<sup>11</sup> Pursuant to that decision, the Council of the European Communities appointed a committee under the chairmanship of the president of the government of Luxembourg to prepare a plan for the achievement of that goal. The *Werner* report was submitted to the Council and the Commission on October 8, 1970.<sup>12</sup> It was adopted by the Council of the European Communities in March 1971 and resulted in the launching of a program for the creation of an *economic and monetary union* in stages either by resort to the existing treaty provisions, or if necessary by resort to articles 235 or 236 of the Treaty of Rome.<sup>13</sup> The idea of an economic and monetary union was reaffirmed by the first summit of the heads of state or government of the enlarged community at Paris in October 1972<sup>14</sup> and again at the next meeting at Paris in Decem-

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8. July 22, 1975, 1977 Gr. Brit. T.S. No. 103 (Cmd. 7007).

9. Sept. 20, 1976, 1979 Gr. Brit. T.S. No. 15 (Cmd. 7460).

10. The German version of the report was published in 1956 under the title: REGIERUNGSAUSSCHUSS, EINGSETZT VON DER KONFERENZ VON MESSINA, BERICHT DER DELEGATIONSLIMITER AN DIE AUSSENMINISTER (Bruxelles Apr. 21, 1956).

11. For the background of this initiative, see Riesenfeld, *Building the Common Market—and Beyond*, 19 VA. J. INT'L L. 1, 30 (1978).

12. The text of the Werner Report (in French), *Rapport au Conseil et à la Commission concernant la réalisation par étapes de l'union économique et monétaire dans la Communauté*, is reproduced in 13 J.O. COMM. EUR. (No. C 136) 1 (1970) and in [1970 No. 11] BULL. DES COMM. EUR. SUPP.

13. *Résolution du Conseil et des représentants des gouvernements des États Membres du 22 mars 1971*, 14 J.O. COMM. EUR. (No. C 28) 1 (1971).

14. For the text of the declaration, see [5 No. 10] BULL. DES COMM. EUR. 15 (1972).

ber 1974.<sup>15</sup> On that occasion the heads of government decided to study the idea of a general *European Union*—which had emerged at their meetings in 1972 and 1973—in greater detail. They entrusted Mr. Tindemans, the Prime Minister of Belgium, with that task.<sup>16</sup> The *Tindemans Report* was submitted on December 29, 1975 suggesting a comprehensive model for the new formation.<sup>17</sup> At its Hague meeting the *European Council*—the name assumed by the meetings of the heads of state or government—decided on the course to be taken to accomplish that goal.<sup>18</sup> It invited annual reports on the progress.<sup>19</sup>

A great step towards the achievement of monetary union was accomplished with the creation of the *European Monetary System*, established in 1978, by the Resolution of the European Council of December 5, 1978, the Agreement between the central banks of the Member States of March 13, 1979, and Council Regulation 3180/78 of December 18, 1978.<sup>20</sup> It revolved around a currency unit called the ECU, which is composed of a weighted quantity of the currencies of the Member States at their central rates.

Because of the lack of progress in the realization of the envisaged European Union new efforts toward a revitalization of economic and political integration in Europe were launched in the eighties. The foreign ministers of the Federal Republic of Germany and of Italy took the so-called *Genscher-Colombo Initiative* and submitted the draft of a European Act<sup>21</sup> and of a declaration on economic integration<sup>22</sup> to Parliament, the Commission and the other governments. As originally conceived, these acts were neither treaties nor formal legislative investments.<sup>23</sup> The proposals were formally presented to Parliament on November 19, 1981,<sup>24</sup> and discussed by the European Council at its London session on

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15. For the respective points of the declaration, see [7 No. 12] BULL. DES COMM. EUR. 7, point 14, at 9 (1974).

16. *Id.* point 13, at 9.

17. For the text, see Tindemans, *Rapport sur l'Union européenne*, [1976 No. 1] EUR. COMM. BULL. SUPP. 11.

18. For the text of the statement of the European Council, see [9 No. 11] EUR. COMM. BULL. 93 (1976).

19. For the annual reports, see [1977 No. 8] EUR. COMM. BULL. SUPP.; [1979 No. 1] EUR. COMM. BULL. SUPP.; [1979 No. 9] EUR. COMM. BULL. SUPP.; [1980 No. 4] EUR. COMM. BULL. SUPP.; [1981 No. 3] EUR. COMM. BULL. SUPP.; [1982 No. 7] EUR. COMM. BULL. SUPP.

20. The three documents are reprinted in J. VAN YPERSELE & J.-C. KOEUNE, *THE EUROPEAN MONETARY SYSTEM* 122, 129, 125 (1984) (Docs. 3, 8, and 4, respectively).

21. The text of the draft of the European Act as proposed by the two foreign ministers is reproduced in [14 No. 11] EUR. COMM. BULL. 87 (1981).

22. For the text, see *id.* at 91.

23. See *Draft European Act*, [14 No. 11] EUR. COMM. BULL. point 1.2.1, at 10 (1981).

24. *Id.*

November 26 and 27.<sup>25</sup> Parliament refrained from formally endorsing the draft. Rather, it embarked on producing an ambitious draft treaty establishing the European Union by a plan of its own which was to form a new European Constitution.<sup>26</sup> Ultimately, however, the governments decided to pursue a more modest approach.<sup>27</sup>

The actual negotiation and drafting of the Single European Act took place at an intergovernmental conference, convened by the Council of the European Communities, pursuant to article 236 of the Treaty of Rome, on the basis of an opinion delivered at its meeting on July 22 and 23, 1985.<sup>28</sup> It is not necessary to recount all the milestones on the road to that Council action. It is sufficient to note that the European Council at its meeting at Fontainebleau on June 25 and 26, 1984, established an "Ad Hoc Committee on Institutional Affairs" to make suggestions for the improvement of the European cooperation in both the Community field and that of political, or any other cooperation, that this Committee (the Dooge Committee) submitted an interim report and a final report, favoring the calling of an intergovernmental conference and that the European Council at its Milan meeting on June 28 and 29 had favored the road provided by article 236 of the Treaty of Rome.<sup>29</sup>

In order to understand the structure and text of the Single European Act of 1986 an intervening aim must be taken account of: the completion of the single internal market by the end of 1992. This goal had been proposed by the new Commission, installed in 1985,<sup>30</sup> and approved by the European Council and Parliament. Pursuant to its pledge the Commission produced its celebrated White Paper, *Completing the Internal Market*, which was submitted to the European Council in June 1985.<sup>31</sup> It is therefore no surprise that the facilitation of that task constituted an important item in the negotiations and drafting of the SEA by the intergovernmental committee, commencing its labors in Luxembourg on Sep-

25. *Id.* points 1.1.6, 1.2.6, at 8, 12.

26. 27 O.J. EUR. COMM. (No. C 77) 32 (1984). For the text as adopted, see *id.* at 33-54.

27. See Riesenfeld, Book Review, 81 AM. J. INT'L L. 294 (1987) (reviewing *EINE VERFASSUNG FÜR EUROPA: VON DER EUROPÄISCHEN GEMEINSCHAFT ZUR EUROPÄISCHEN UNION* (J. Schwarze & R. Bieber eds. 1984)); Stein, *European Foreign Affairs System and the Single European Act of 1986*, 23 INT'L LAW. 977, 979 (1989); Bermann, *The Single European Act: A New Constitution for the Community?*, 27 COLUM. J. TRANSNAT'L L. 529 (1989).

28. For the text, see [18 No. 7/8] EUR. COMM. BULL. point 1.1.13, at 10 (1985).

29. Compare the background described in *id.* points 1.1.2-12, at 7-9.

30. See [18 No. 3] EUR. COMM. BULL. point 1.3.1, at 17 (1985); [1985 No. 4] EUR. COMM. BULL. SUPP. 6, 11, 19.

31. Comm'n of Eur. Comm., *Completing the Internal Market, White Paper from the Commission to the European Council*, COM(85) 310 final (June 14, 1985) [hereinafter *White Paper*].

tember 9, 1985.<sup>32</sup> The preparatory work was assigned to two committees, one on political cooperation to the Political Committee (consisting of the Heads of Political Departments in the Member States), the other, on the revision of the EEC Treaty, to a group consisting of the Permanent Representatives of the Member States, chaired by Mr. Dondelinger.<sup>33</sup> The Commission was represented on both committees. The Commission from the beginning advocated the consolidation of both projects (European Political Cooperation and Revision of the Treaties) into one single instrument<sup>34</sup> and ultimately its position, which had been left undecided by the meeting of the European Council at its meeting at Luxembourg on December 2 and 3, 1985,<sup>35</sup> was adopted by the intergovernmental conference at its last meeting on December 16 and 17 in 1985.<sup>36</sup> The European Council merely endorsed a set of texts relating to amendments of the Treaty establishing the European Economic Community and a separate Draft Treaty on European Cooperation in the sphere of Foreign Policy.<sup>37</sup> The Single European Act was signed by the Member States on February 17 and 28<sup>38</sup> and was approved by the respective legislatures on June 24, 1987.<sup>39</sup> It went into effect on July 1, 1987.<sup>40</sup>

The Act keeps the "European Communities" and "European Political Cooperation" separate organizations, considering the treaty provisions on European Cooperation in the Sphere of Foreign Policy as distinct from the provisions relating to amendments of the treaties establishing the communities.<sup>41</sup>

## II. STRENGTHENING THE COMMUNITIES AND THE SEA

One of the chief aims of the SEA is the infusion of greater strength to the existing communities. Title II of the Act contained the respective provisions, the reforms of the EEC being set forth in its Chapter II. The

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32. [18 No. 9] EUR. COMM. BULL. point 1.1.1, at 7 (1985).

33. *Id.* point 1.1.2, at 10.

34. *Id.* points 1.1.1, 1.1.2, at 7, 10.

35. [18 No. 11] EUR. COMM. BULL. point 1.1.1, at 7 (1985).

36. [18 No. 12] EUR. COMM. BULL. point 1.1.3, at 18 (1985).

37. [18 No. 11] EUR. COMM. BULL. 9-17 (1985).

38. SEA, *supra* note 1, at 16.

39. *Id.* at 29.

40. *Id.*

41. The amendments of the Community treaties are governed by Title II of the SEA, *id.* at 4, while political cooperation is governed by Title III. *Id.* at 13. Title I specifies the separate nature of these organizations. *Id.* at 4. Title IV deals with ratification and entry into force. *Id.* at 14.

amendments of the EEC Treaty are in turn subdivided into a modification of the *institutional* provisions<sup>42</sup> and changes relating to the foundations and the policy of the Community.<sup>43</sup> The institutional reforms are best understood by throwing a preliminary glance at the *substantive* reforms. These comprise six separate themes:

- 1) completion of the internal market without internal frontiers by the end of 1992;<sup>44</sup>
- 2) strengthening of the Community's monetary capacity with the perspective of the ultimate achievement of economic and monetary union;<sup>45</sup>
- 3) increased focus on social improvements;<sup>46</sup>
- 4) strengthening economic and social cohesion;<sup>47</sup>
- 5) encouragement of research and technological development;<sup>48</sup> and
- 6) elevation of the protection of the environment to a specific community power.<sup>49</sup>

### A. The New Procedure

In order to achieve the policies set forth in title II, chapter II, section II (the amendments relating to the foundations and policy of the EEC), the SEA in title II, chapter II, section I introduced a new legislative procedure, called the *cooperation procedure*. It strengthens the participation of the Parliament in the Community legislative process and permits the Council to act with a qualified majority, rather than by unanimity. Technically these changes were accomplished by specifying the articles which form the basis of the Community acts to which the new procedure applies<sup>50</sup> and by setting forth the steps of the new procedure.<sup>51</sup> It evidences two separate goals: increase of democratic legitimacy of Community legislation and widening of lawmaking by qualified majority vote (as governed by article 149(2)).

Without dwelling excessively on controversial details, it should be noted that even prior to the SEA the Treaty specified subjects in which

42. *Id.* tit. II, ch. II, § I, at 5.

43. *Id.* § II, at 7.

44. *Id.* § II(I).

45. *Id.* § II(II), at 8.

46. *Id.* § II(III), at 9.

47. *Id.* § II(IV).

48. *Id.* § II(V), at 10.

49. *Id.* § II(VI), at 11.

50. Article 6, designates "acts based on Articles 7, 49, 54(2), 56(2), second sentence, 57 with the exception of the second sentence of paragraph 2 thereof, 100a, 100b, 118a, 130e, and 130(q)2 of the [Treaty of Rome]" as acts subject to the cooperation procedure. *Id.* at 5.

51. Article 7, adding article 149(2) to the original text. *Id.* at 5-6.

consultation of the Parliament was mandatory, for instance in the field of common agricultural policy, pursuant to article 43(2), last paragraph. Unless the Council amended the Commission proposal, it could act by qualified majority after attainment of the second stage, even if it disregarded the opinion of Parliament.<sup>52</sup> This is still the law since the cooperation procedure does not apply in the field of the agricultural policy.<sup>53</sup>

In the cases in which the cooperation procedure applies and in particular in the case of article 100a, the Council is more closely tied to the views of the European Parliament. The procedure involves consecutive phases. Upon proposal of a regulation or directive by the Commission, the Council must obtain the opinion of the European Parliament. Upon obtaining the opinion of the Parliament, the Council, if it disagrees with the views of the Parliament, must adopt a common position, acting with qualified majority (as defined in article 148),<sup>54</sup> and communicate the same with its reasons to the Parliament. If the Parliament expressly or implicitly approves the common position, the Council must adopt the act in accordance with its position. If the Parliament, acting with absolute majority, proposes amendments to or rejects the common position, further action depends on the position of the Council and the Commission. If both are willing to abide by amendments proposed by Parliament, Council may enact a measure by a qualified majority; otherwise Council

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52. See the Treaty of Rome, article 43(2), *supra* note 2, at 95-96, in conjunction with article 149. *Id.* at 130.

53. Since the legislative procedures vary according to the Treaty articles upon which they are based and directives based on articles 100 or 100a prescribe different legislative procedures, directives as well as regulations in implementation of the common agricultural policy must be based solely on article 43. See *United Kingdom v. EEC Council*, 1988-2 *Recueil* 905, 2 *Comm. Mkt. L.R.* 364 (1988) (Case 131/86, Judgment of Feb. 23, 1988) (The Battery Hens Case); *United Kingdom v. EEC Council*, 1988 *Recueil* 855, 2 *Comm. Mkt. L.R.* 543 (1988) (Case 68/86, Judgment of Feb. 23, 1988) (The Agricultural Hormone Case); *accord EEC Commission v. EEC Council*, 32 *O.J. EUR. COMM.* (No. C 313) 9 (1989) (Case C-11/88, Judgment of Nov. 16, 1989). Similarly, articles 110 and 113 are not a proper basis for directives on intra-community trade in cattle, pigs or fresh meat. *EEC Commission v. EEC Council* (Case 131/87, Judgment of Nov. 16, 1989) (LEXIS, Eurcom Library, Cases file). Accordingly, *Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to completion of the internal market*, 32 *O.J. EUR. COMM.* (No. L 395) 13 (1989) [hereinafter *Council Directive 89/662*], was based solely on article 43 and not on article 101. See also *Hellenic Republic v. EEC Council* (Case C-62/88, Judgment of Mar. 29, 1990), holding that article 113 and not article 103S is the proper basis for the Regulation governing the importation of agricultural products from abroad after the Chernobyl disaster.

54. It has been suggested that this applies only if Council and Commission agree. Bieber, *Legislative Procedures for the Establishment of a Single Market*, 25 *COMMON MKT. L. REV.* 711, 719 (1988); see also Lew, *The EEC Legislative Process: An Evolving Balance*, 27 *COLUM. J. TRANSNAT'L L.* 679 (1989).

must act by unanimous vote.<sup>55</sup>

A good example of the cooperation procedure is furnished by the legislative history of Council Directive 89/622, November 13, 1989, on the Approximation of the Laws, Regulations, and Administrative Provisions of the Member States Concerning the Labelling of Tobacco Products.<sup>56</sup> The directive was proposed by the Commission on February 4, 1988, in a text based on article 100a of the Treaty.<sup>57</sup> It was submitted to Parliament pursuant to article 149 and approved by Parliament on December 14, 1989, subject to certain amendments, with the request to the Commission to amend its proposal accordingly and to the Council to incorporate them in its common position.<sup>58</sup> Thereupon the Commission submitted an amended proposal which, however, did not incorporate the amendments proposed by Parliament.<sup>59</sup> Council adopted the Commission's amended proposal as its common position<sup>60</sup> and transmitted it to the Parliament. The Parliament accepted it subject to some amendments.<sup>61</sup> The Council finally adopted the directive on November 13, 1989, adding some minor additions to the revised Commission proposal, but not incorporating the Parliamentary amendments.<sup>62</sup>

As an interesting sideline, I would like to mention that Philip Morris and six other cigarette manufacturers claimed that the proposed directive violated constitutional guarantees of the Bonn Basic Law and asked the Federal Constitutional Court to prohibit the Federal Government to vote for the measure. The second chamber of the second Senate of the Court by order of May 12, 1989, denied relief, on the ground that basic rights guaranteed by Community law were protected by the ECJ and that resort to the Federal Constitutional Court was, if at all, only the ultimate remedy.<sup>63</sup>

## B. Completion of the Internal Market

As mentioned before, the Commission in its White Paper of 1985 proposed the completion of the Internal Market Without Boundaries before the end of the year 1992. The White Paper listed a number of areas in which action, especially by way of directives, was necessary,

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55. Treaty of Rome, *supra* note 2, arts. 149(2)(c), (d), (e), at 130.

56. 32 O.J. EUR. COMM. (No. L 359) 1 (1989).

57. 31 O.J. EUR. COMM. (No. C 48) 8 (1988) (COM(84) 719 final).

58. 32 O.J. EUR. COMM. (No. C 12) 106 (1989).

59. 32 O.J. EUR. COMM. (No. C 62) 12 (1989).

60. 32 O.J. EUR. COMM. (No. C 192) 1, item 12, at 1, 2 (1989).

61. 32 O.J. EUR. COMM. (No. C 291) 99 (1989).

62. 32 O.J. EUR. COMM. (No. L 359) 1 (1989).

63. The order is reproduced in German in 24 EUROPARECHT 270 (1989).

ranging from boundary controls to legal barriers of various types.<sup>64</sup> In particular unification of markets for financial services of various types was contemplated.

In its program of 1985 the Commission prepared a catalogue of 286 measures which would be required to be taken in order to remove the principal obstacles to the attainment of a single market without boundaries. Subsequently the number decreased slightly. A great number consisted of directives. Meanwhile, partly due to the speed-up facilitated by the cooperation procedure, ninety percent of the necessary acts have been proposed and as of June 20, 1989, 127 Directives have definitely been adopted.<sup>65</sup>

Of course, the effect as well as the content of these measures has been discussed in numerous studies both in Europe and in the United States. Moreover, the Commission itself has endeavored to publicize the need for, and the benefits to be derived from, a single frontier-free market for goods, services, capital and persons. For instance, *Droit et pratique du commerce international*<sup>66</sup> devoted three issues to a symposium entitled 1993—*L'Annee Terrible(?)* containing ten essays by various authors on different aspects of the single market. The United States Department of Commerce has published, and is in the course of publishing, an exhaustive analysis of the European Community directives for the creation of the single internal market and their impact on American business.<sup>67</sup> Most of all, the Commission itself, in its series on European Documentation, has published a discussion of one of the cornerstones of a single market, the European financial common market.<sup>68</sup>

Without discussing all aspects in depth, it should be mentioned that the single market will not only dismantle physical and technical barriers,

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64. Although often the form of a directive is chosen, see *Council Directive 89/662, supra* note 53, in other cases the measure is in the form of a regulation. See, e.g., *Council Regulation (EEC) No. 4283/88 of 21 December 1988 on the abolition of certain exit formalities at internal Community frontiers—introduction of common border posts*, 31 O.J. EUR. COMM. (No. L 382) 1 (1988).

65. *Fourth Progress Report of the Commission to the Council and the European Parliament, Concerning the Implementation of the Commission's White Paper on the Completion of the Internal Market*, COM(89) 311 final, at 4-6 (June 20, 1989); see also Hauschka, *Der Stand der gemeinschaftsrechtlichen Rechtsangleichung im Recht der privaten Wirtschaft drei Jahre vor Vollendung des Binnenmarktes 1992*, 42 NJW 3048 (1989).

66. [14 No. 4] *DROIT ET PRATIQUE DU COMMERCE INT'L* (1988); [15 Nos. 1 & 2] *DROIT ET PRATIQUE DU COMMERCE INT'L* (1989).

67. 162 U.S. DEP'T OF COMMERCE, INTERNATIONAL TRADE ADMINISTRATION, *EC 1992: A COMMERCE DEPARTMENT ANALYSIS OF EUROPEAN COMMUNITY DIRECTIVES* (1989).

68. *The European Financial Common Market*, 4 EUROPEAN DOCUMENTATION (1989).

but also will result in unification or harmonization of important areas of economic law, such as patents,<sup>69</sup> trademarks<sup>70</sup> and corporation law,<sup>71</sup> including the law of economic groups.<sup>72</sup>

Despite the enormity of the task the progress on the Community level with respect to most types of barriers has been excellent. The most unsatisfactory status exists with respect to the removal of fiscal barriers, especially the approximation of the rates of the VAT. The European Parliament reviewing the situation at its session on October 12, 1989, on the basis of information from the Commission, deplored the slow progress in the areas where unanimity is required, notably tax harmonization, plant and animal health controls and the free movement of people and referred to the approximation of indirect taxation as a particularly pressing problem.<sup>73</sup>

### C. Towards Economic and Monetary Union

In Part I, it was recalled that the Single European Act is the compromise which was the product of the original ideas of a European Economic and Monetary Union contemplated by the Werner and Tindemans reports. It has been reduced to a subtitle of the new Chapter 1 to be inserted in part III, title II of the EEC Treaty bearing the caption Cooperation in Economic and Monetary Policy (Economic and Monetary Union). It envisages further institutional changes effectuated pursuant to article 236, if necessary.

At present, as was mentioned before, the Communities operate under the *European Monetary System* (EMS), centered around the European Currency Unit (ECU) and an Exchange Rate Mechanism (ERM). At its meeting in Hanover on June 27 and 28, 1988, the European Council reaffirmed the objective of a progressive realization of economic and monetary union and appointed a committee under the chairmanship of

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69. *White Paper*, *supra* note 31, para. 148 (referring to the Luxembourg patent convention).

70. *Id.* para. 146 (implemented by *First Council Directive 89/104 of Dec. 21, 1988 to approximate the law of Member States relating to trademarks*, 31 O.J. EUR. COMM. (No. L 40) 1 (1988)).

71. *Id.* para. 136-44; see Löy, *Le marché unique et les sociétés*, 15 DROIT ET PRATIQUE DU COMMERCE INT'L 249 (1989).

72. Economic groups are legally separate but associated enterprises. *White Paper*, *supra* note 31, para. 144; see Löy, *supra* note 71, at 261, 269 (referring to *Seventh Council Directive of 13 June 1983*, 26 O.J. EUR. COMM. (No. L 193) 1 (1983), and *Council Regulation (EEC) No. 2137/85 of 25 July 1985*, 28 O.J. EUR. COMM. (No. L 199) 1 (1985)).

73. *Resolution of 12 October 1989*, 32 O.J. EUR. COMM. (No. L 291) 99 (1989); see Berlin, *L'élimination des frontières fiscales dans la CEE*, 15 DROIT ET PRATIQUE DU COMMERCE INT'L 35 (1989).

President Delors with "the task of studying and proposing concrete stages leading toward this union." The committee submitted its report on April 12, 1989.<sup>74</sup> The report identified the essential elements of monetary union, which included fixed exchange rate parties and irrevocable convertibility.<sup>75</sup> The union would require a common monetary policy, decided upon by a federal institution,<sup>76</sup> consisting of the National Central Banks, the European System of Central Banks,<sup>77</sup> which could include central institutions, i.e., the European Central Banks.<sup>78</sup> Parliament came to similar conclusions, but proposed the statute of a European Central Bank and a single currency.<sup>79</sup>

#### D. Social Dimension and Protection of the Environment

As has been pointed out before, the SEA devotes four subsections of the amended EEC Treaty to Social Policy, Economic and Social Cohesion, Research and Technological Development, and Protection of the Environment. While the topics are not considered to be aspects of the completion of the internal market, but subjects of separate policies, the Community institutions have not neglected them and progress is to be recorded also in these fields. This Article therefore will not neglect them.<sup>80</sup> A general survey of the SEA must be satisfied with mentioning the important community concerns articulated in the SEA intent covering the new measures taken or proposed thereunder.

### III. THE EUROPEAN POLITICAL COOPERATION

The European Political Cooperation is technically an organization of the Member States of the European Communities which is separate

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74. COMMITTEE FOR THE STUDY OF ECONOMIC & MONETARY UNION, REPORT ON ECONOMIC AND MONETARY UNION IN THE EUROPEAN COMMUNITY (Apr. 12, 1989) [hereinafter *Report*]; see also *The European Financial Common Market*, *supra* note 68, at 46-51. The European Council at its Madrid meeting on June 26-27, 1989, approved the commencement of the process of monetary union on July 1, 1990. 21 EUR. COMM. NEWS (1989).

75. *Report*, *supra* note 74, at 10.

76. *Id.* at 11.

77. *Id.* at 18.

78. *Id.*

79. *The European Financial Common Market*, *supra* note 68, at 51; see also J.V. Louis, *A Monetary Union for Tomorrow*, 26 COMMON MKT. L. REV. 301 (1989); J.V. Louis, "Monetary Capacity" in *the Single European Act*, 25 COMMON MKT. L. REV. 9 (1988); H. Hahn & J. Siebelt, *Zur Autonomie einer künftigen Europäischen Zentralbank*, 42 DOV 233 (1989). The European Council, at its Madrid summit, on June 26-27, 1989, agreed to begin the process of European Monetary Union on July 1, 1990. 21 EUR. COMM. NEWS, 1, 8 (1989).

80. The European Council, at its meeting in Madrid on June 26-27, 1989, approved further consideration of the proposal of a Charter of Fundamental Social Rights that was submitted by the Commission to the Council. 21 EUR. COMM. NEWS 1, 8 (1989).

from the three and is not governed by the EC treaties but solely by the SEA.<sup>81</sup> Nevertheless the Community institutions cooperate in the decision-making of that organization. Moreover there must be no conflict between the exercise of the foreign relations power of the Communities as such and the policies agreed to in the European Political Cooperation.

#### IV. CONCLUSION

The SEA is a milestone both in European economic and monetary integration and European unity even where technically no transfer of power has occurred. Certainly the United States government and private leadership cannot ignore the profound transformation of the political structures in Europe.

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81. *C.f.* Lak, *Interaction between European Political Cooperation and the European Community (external): existing rules and challenges*, 26 COMMON MKT. L. REV. 281 (1990); Stein, *European Affairs System and the Single European Act of 1986*, 23 INT'L LAW. 977 (1989).