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The "1992 Project": Stages, Structures, Results and Prospects

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THE "1992 PROJECT": STAGES, STRUCTURES, RESULTS AND PROSPECTS*

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I. INTRODUCTION

The "1992 project" has radically changed the European Community. It has given the "common market" new impetus and has lifted the Community out of the deep crisis in which it was bogged down in the first half of the 1980s. The consensus which has been re-established amongst all the Member States through the "internal market" exercise was enshrined in the Single European Act and the acceptance of the Delors package in February 1988. The financial underpinning of the "1992 project," through the reform of the structural funds and the Community's finance system, has given the "internal market" exercise such credibility in the eyes of the public that it has increasingly taken on a life of its own: since the first half of 1988, 1992 has become a strategic date for business and industry both inside and outside the Community.

Governments have geared themselves to the "1992 project" in the same way as have companies and trade unions. In the Community, the main concern is to become or remain competitive with other Member States. Outside the Community, there is growing concern over missing out on the internal market. As a result, a fundamental debate on accession or association with the Community has arisen in the European Free Trade Association and other European non-Community countries. These concerns have spawned the efforts to enhance substantially the preferential relations enjoyed by the Mediterranean and African, Pacific and Caribbean countries and have increased the importance of a successful conclusion to the GATT Uruguay round in 1990.

The internal market project has already opened up the future path beyond the magic date of December 31, 1992. It is the economic and political basis for the plan on economic and monetary union, which, though it has met with considerable resistance, has been endorsed by

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one European Council after another. The joint work on achieving the internal market and the efforts towards economic and monetary union have clearly brought out what was evident from the very outset to the initiators of the "1992 project": namely, that the endeavor would involve decisive steps along the road to European Union. This was expressly stated as being an objective of the Single European Act.[1]

The historic changes taking place in Central and Eastern Europe are no doubt primarily due to their peoples and to Gorbachev. However, as the European Council meeting in December 1989 pointed out, "the success of a strong and dynamic European Community"[2] contributed to the process, as did the "attraction which the political and economic model of Community Europe holds for many countries."[3] This attraction is also recognized by the U.S. administration, which sees the European Community as having a central role in the future architecture of Europe.[4] The "1992 project" is at the core of the Community's "magnetism"[5] and therefore has a paramount role in the future of the European Community, the economic and political development of Europe as a whole and, indeed, the growth and peace of the world.

II. GENESIS OF THE "1992 PROJECT" AND MAIN STAGES IN ITS DEVELOPMENT

A. *The White Paper*

The "1992 project" lies at the heart of the strategy adopted by the Commission which took up office in January 1985 under the Presidency of Jacques Delors. It was first mentioned in the new President's speech to the European Parliament on the Commission's program for 1985.[6] At the request of the European Council held in March 1985,[7] the Commission presented a white paper a few weeks later in which the concept of the large internal market and the methods to achieve it

1. Single European Act, art. 1, 30 O.J. EUR. COMM. (No. L 169) 1 (1987), BULL. EC, Supp. 2/86, at 7 (1986).

2. *Conclusions of the European Council in Strasbourg*, 22 BULL. EC, No. 12 (1989) (not yet published).

3. *Id.*

4. *Excerpts from Baker's Speech on Berlin and U.S. Role in Europe's Future*, N.Y. Times, Dec. 13, 1989, at A18, col. 1.

5. President's News Conference in Brussels, Belgium, 25 WEEKLY COMP. PRES. DOC. 1891 (Dec. 11, 1989).

6. *Programme of the Commission for 1985: Statement by Jacques Delors, President of the Commission, to the European Parliament And His Reply to the Ensuing Debate*, BULL. EC, Supp. 4/85, at 11 (1985).

7. *European Council in Brussels*, 18 BULL. EC (No. 3) 13 (1985).

were set out.[8] The White Paper was endorsed in principle by the European Council at its meeting in Milan in June 1985.[9] At the same time, the European Council held in Milan opened the door to the second stage of the "1992 project" by deciding to convene a governmental conference on the amendment of the EEC Treaty.[10] This led to the Single European Act a few months later.

The White Paper is certainly the most ambitious and successful legislative program ever adopted by the Community. It is ambitious in the new concept it puts forward, going beyond all previous legal and political obligations relating to the establishment of the "common market" or of an "internal market." The radicalness of its approach is evident not so much in the objective of "welding together individual markets of the Member States into one single market of 320 million people,"[11] but rather in the way in which this welding process is defined in detail.

The White Paper distinguishes between three distinct types of barriers which must be removed in order to achieve the internal market:

> (a) Material barriers which lead to controls at internal frontiers. The reasons underlying such barriers have to do primarily with trade, economic, health, statistical and security considerations.
>
> (b) Tax barriers, which are a particular kind of material barrier. These are due to differences in turnover taxes and excise duties, which give rise to checks when goods are imported and exported.
>
> (c) Technical barriers, which are all other obstacles standing in the way of the free movement of personal goods, services and capital, not based on frontier controls. Examples include differences in norms and standards, obstacles impeding participation in public invitations to tender and the non-recognition of degrees and diplomas.

The conceptual innovation in the White Paper lies in the way it deals with material and tax barriers. The objective of the White Paper is not to make the frontiers between Member States easier to pass through by simplifying controls at internal frontiers. The aim instead is to eliminate internal frontier controls "in their entirety"[12] by the end of 1992. The White Paper thus requires more than the Member States had previously ever been ready to concede to the Community. It also goes beyond what could be deduced from the previous case law of the Court of Justice on the concept of the common market and the

8. COMMISSION OF THE EUROPEAN COMMUNITIES, COMPLETING THE INTERNAL MARKET: WHITE PAPER FROM THE COMMISSION TO THE EUROPEAN COUNCIL (1985)[hereinafter WHITE PAPER]

9. *European Council in Milan*, BULL. EC (No. 6) 14-15 (1985).

10. *Id.* at 14.

11. WHITE PAPER, *supra* note 8, at 5.

12. *Id.* at 9.

four basic freedoms.[13]

The White Paper is ambitious not only in its concept, but also in its methodology. Once again, the key innovation lies not in the requirement that the objective be achieved by the end of 1992. The Community, applying Jean Monnet's well-established method, has set such deadlines many times in its history, with mixed success. What is unique here is the scope and volume of the legislative program laid down in the White Paper. Never before had a Commission found the courage to draw up a complete list of all the legal instruments whose adoption seemed necessary for the establishment of the "common market" and to commit itself to presenting such legal instruments according to a precise timetable.

The comprehensive and supposedly definitive nature of the famous list of "300 Directives,"[14] which has subsequently shrunk to first 279, and lately to 282,[15] is probably one of the main keys to the outstanding success of the White Paper. Because of this comprehensive but brief list, an operation which by its nature was immensely complex was simplified to such an extent that it became politically acceptable, immediately transparent and capable of being constantly monitored. The list provides a criterion against which successes and setbacks achieved or suffered by the Community on the road to achieving the large internal market can be measured on a daily basis. It is the spur which drives the Commission, the European Parliament, the Council and, above all, the country which holds the current presidency of the Council.[16]

The comprehensive nature of the list is, moreover, a key factor in ensuring that one of the basic preconditions for the success of the "1992 project" is met. It prevents individual components of the internal market program from being separated from the whole. Any such separation would jeopardize the edifice as a whole. For example, the

13. Cowan v. Trésor Public, Case 186/87 (E. Comm. Ct. J., Feb. 2, 1989).

14. Some were actually regulations.

15. The decrease is due to the withdrawal and combining of a number of proposals. *Completing the Internal Market: Progress Report Required by Article 8B of the Treaty*, E.C. COMM'N DOC., COM (88) 650 final, at 4 [hereinafter *Completing the Internal Market*]; *see also Fifth Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market*, E.C. COMM'N DOC., COM (90) 90 final, at 6.

16. Since 1986, the Commission has been publishing at even shorter intervals annual reports which provide information on the Community institutions' work on the internal market program and which are the focus of increasing attention (see the latest report, *Fourth Progress Report of the Commission to the Council and the European Parliament*, E.C. COMM'N DOC., COM (89) 311 final and COM (89) 311/2 final).

In 1989, the Commission also reported for the first time on the implementation in the Member States of the legal acts adopted by the Community. *See Communication on Implementation of the Legal Acts Required to Build the Single Market*, E.C. COMM'N DOC., COM (89) 422 final.

retention of any one type of border control (e.g., indirect taxes) would provide a pretext for other controls. The economic and political benefit of the "1992 project" would then be largely destroyed.

The decision to simplify the operation did have its price: the White Paper and the list it contains are actually not complete. This can be demonstrated convincingly from just one example. The White Paper does not make any mention of the barriers standing in the way of an internal energy market. These were first listed in a report published on May 2, 1988.[17] However, such gaps have never detracted from the persuasive power of the White Paper.

The outstanding success of the White Paper is due not only to the concept and structure of the legislative program. It is also based on the systematic use of new principles in the legal harmonization process which reduce the burden on the Community. The new approach relies on the principle of mutual recognition and the use of European standards.

The Community owes the principle of mutual recognition primarily to the European Court of Justice and its case law on article 30 of the EEC Treaty.[18] The principle can be used in two ways for the purposes of harmonization of laws. First, it makes legal harmonization wholly superfluous in cases where mutual recognition is alone sufficient to remove material, technical and tax barriers.[19] An example of this may be seen in the case law of the Court of Justice on the legislative provisions governing foodstuffs (e.g., beer, pasta, sausages, etc.) and the Commission's refusal to correct the consequences of such case law through harmonization proposals.

Second, the principle of mutual recognition can be used as part of the legal harmonization process in cases where the prohibitions laid down in the EEC Treaty are not alone sufficient to bring about freedom of movement for persons, goods, services and capital. Instead of introducing regulations to cover all aspects of a given area in detail, as was done in the past, the Community now confines itself to laying down only the essential principles, leaving the rest to the principle of mutual recognition. This is well illustrated by the examples of the directives on mutual recognition of degrees and diplomas[20] and on the

17. *The Internal Energy Market (Commission Working Document)*, E.C. COMM'N DOC., COM (88) 238 final.

18. Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein, 1979 E.C.R. 649.

19. WHITE PAPER, *supra* note 8, at 19, 22.

20. WHITE PAPER, *supra* note 8, at 25-26; *Council Directive 89/48/EEC of 21 December 1988 Relating to a General System for the Recognition of Higher-Education Diplomas Awarded on Completion of Professional Education and Training of at Least Three Years' Duration*, 32 O.J.

freedom of credit institutions to provide services.[21]

Even where use is made of European standards, Community legislation does no more than establish essential principles. However, compliance with such principles is not left to the various rules and regulations applicable in the Member States or the Member States' recognition of their equivalency. Instead, the European standards institutes such as CEN and CENELEC are given the task of working out European standards which manufacturers can work from and which can guarantee the free movement of goods and services.[22]

Reliance on the principle of mutual recognition and use of European standards reduce the need for central Community legislation. They are an expression of the principle of subsidiarity, which is daily becoming more important for the work of the Community's institutions and to which the Commission is firmly wedded.[23] The frequency with which the Council, acting on Commission proposals, actually makes use of the principle of mutual recognition points to the growing trust among the Member States. However, the move away from uniform detailed Community legislation is probably also a reflection of a different attitude toward the setting of standards in the Member States compared with previous decades. State (and hence also Community) regulation of the economy is increasingly viewed critically. The slashing and pruning of State rules and regulations to reduce structural obstacles are widespread preoccupations in the Member States which benefit the achievement of the internal market program. The crucial contribution of the "1992 project" to bringing about changes in the economic structures in the Member States is thus also reflected in the methods and techniques applied in Community legislation.

B. *The Single European Act*

The ambition and imagination of the White Paper's authors would not in themselves have been sufficient to make it the most successful legislative program in the history of the Community. Despite the political and economic need to create a large economic area without

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EUR. COMM. (No. L 19) 16 (1989)[hereinafter *Council Directive on a General System for Recognition of Diplomas*].

21. WHITE PAPER, *supra* note 8, at 28; *Second Directive on the Coordination of Laws, Regulations, and Administrative Provisions Relating to the Taking up and Pursuit of the Business of Credit Institutions and Amending Directive 77/780/EEC*, 32 O.J. EUR. COMM. (No. L 386) 1 (1989)[hereinafter *Second Directive on Banking*].

22. WHITE PAPER, *supra* note 8, at 19-20; *Council Directive 89/392/EEC of 14 June 1989 on the Approximation of the Laws of the Member States Relating to Machinery*, 32 O.J. EUR. COMM. (No L 183) 9 (1989) [hereinafter *Council Directive 89/392/EEC*].

23. See, e.g., the speech given by the President of the Commission. *Jacques Delors at the College of Europe in Bruges*, Agence Europe Documents, No. 1576, at 1 (Oct. 21, 1989).

internal frontiers to compete with the United States and Japan, despite the appeal of the new concept of the elimination of all internal frontier controls "in their entirety"[24] and despite the originality of the methods used to achieve these goals, the White Paper would certainly have shared the same fate as previous action plans if the "1992 project" had not entailed amendment of the EEC Treaty.

The historical roots of the Single European Act are deeper than the internal market initiative instigated by the first Delors Commission. The decision adopted by the European Council in Milan at the end of June 1985 to convene an intergovernmental conference on the amendment of the EEC Treaty[25] would in all probability not have come about without the momentum for institutional change generated by the European Parliament. Altiero Spinelli, the promoter of the European Parliament's draft Treaty on Political Union,[26] must therefore be regarded as one of the progenitors of the Single European Act, even if his original initiative was scarcely recognizable in the text formulated by the inter-governmental conference.

The Single European Act, negotiated in the record time of only three months,[27] represents the most comprehensive and most important amendment to the EEC Treaty to date. With its provisions on cooperation in economic and monetary policy, social policy, economic and social cohesion, research and the environment, the Single European Act goes well beyond the "1992 project." However, the core and the "*raison d'être*" of the amendments are the provisions on the internal market. However important the political pressure exerted by the European Parliament may have been, without the basic political consensus on the "1992 project," the Single European Act would not have been negotiated, signed and ratified by all the Member States.

The Single European Act was intended primarily to make two contributions to the achievement of the internal market program. First, its aim was to clarify the powers of the Community in areas where they had been disputed. Hence, the paramount importance of the definition of the internal market in the newly added article 8A of the EEC Treaty. However, even greater importance was attached to the simplification of the decision-making process within the Council. For this purpose, the prime need was to replace the unanimity requirement as much as possible by the majority voting system. In addition, the Council was to be relieved of some of its tasks by transferring a greater

24. WHITE PAPER, *supra* note 8, at 9.

25. *European Council in Milan*, *supra* note 9, at 14-15.

26. European Parliament, draft Treaty establishing European Union, February 1984.

27. *See* J. DE RUYT, L'ACTE UNIQUE EUROPÉEN (1989), for a description of its genesis.

number of implementing powers to the Commission. Finally, the European Parliament was to be brought more into the Community legislative process without detracting from the necessary flexibility newly conferred on the decision-making process.

Two to three years after its entry into force, it is clear that, in the crucial area of simplifying the decision-making process within the Council, the Single European Act has been startlingly successful. The Single European Act has, in most areas relating to the internal market, replaced the unanimity requirement with the possibility of majority voting. Substantial use has been made of this possibility, and was indeed exercised it even before the Single European Act entered into force.[28]

Even if the Single European Act has not resulted in a spectacular increase in the number of majority votes,[29] a look at the statistics shows just how much the Council's internal decision-making process has quickened. The acceleration is well illustrated by the following diagrams, in which the duration of discussions within the Council on comparable Directives before and after the entry into force of the Single European Act is compared.

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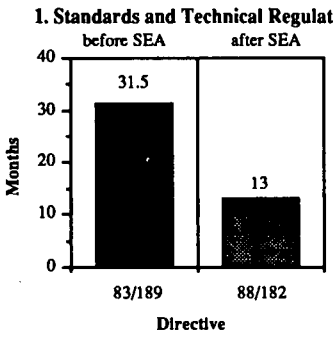
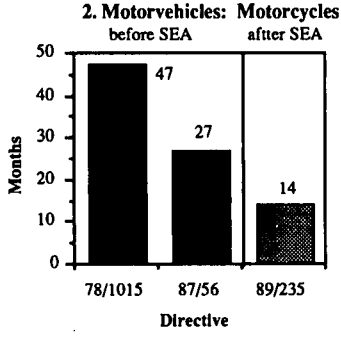
28. The first important majority vote, breaking what had been the political practice for decades, took place at the end of the intergovernmental conference in December 1985. Though the United Kingdom and Denmark voted against it, the Council decided by a majority, on the basis of article 43, to prohibit the use of hormones in meat production. The vote was the first sign that the negotiations on the Single European Act had removed the taboo surrounding the voting problem. See also the decision by the European Court of Justice rejecting the Directive, though it did so on formal grounds and not because of the choice of the legal basis. United Kingdom v. Council, Case 68/86 (E. Comm. Ct. J., Feb. 23, 1988).

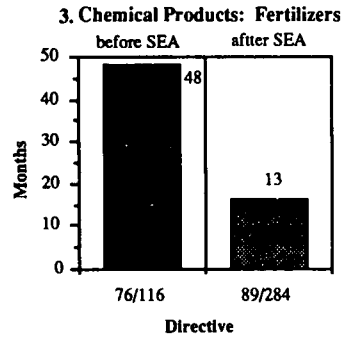
29. As of November 10, 1989, the picture was as follows:

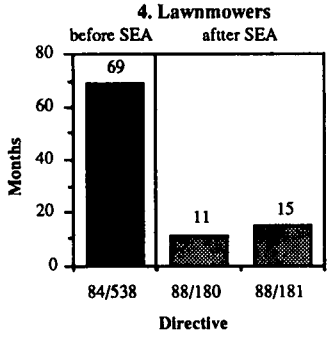
	Joint Position		*Final Decision*	
	QM	Unan.	QM	Unan.
2nd half 1987	6	17	2	4
1st half 1988	13	16	5	20
2nd half 1988	5	17	4	17
1st half 1989	10	22	4	24
2nd half 1989	1	11	1	2
TOTAL	35	83	16	67

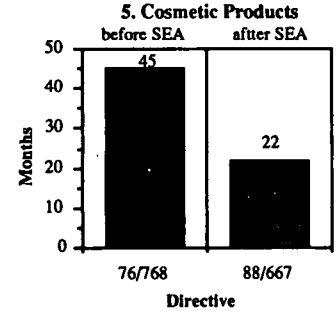
TIME ELAPSED BETWEEN THE TRANSMISSION TO THE COUNCIL OF A DIRECTIVE AND ITS ADOPTION -- BEFORE AND AFTER THE SINGLE EUROPEAN ACT.

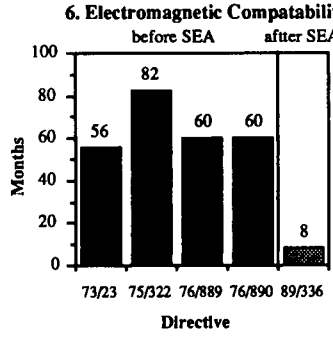


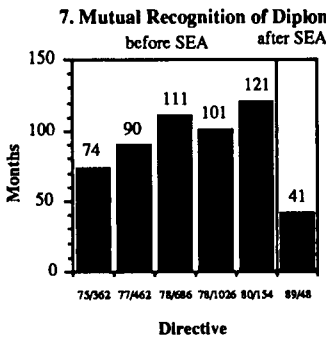


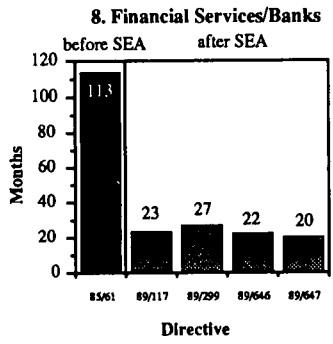












The reasons for the quickening of the decision-making process are obvious: the possibility of majority voting prompts all the delegations to show greater flexibility in negotiations, so that the presidency can frequently establish a consensus where disagreement would have persisted under the unanimity requirement. The new methods adopted in the legal harmonization process referred to earlier also help to facilitate decision-making within the Council.

The Single European Act did not, of course, address the Luxembourg compromise.[30] Its critics saw this as one of the factors which would make the reform process ineffective.[31] Experience has proved them wrong: so far, no majority decision under the Single European Act has been blocked under a "vital interest" pretext.

The Single European Act does, however, provide for the possibility of allowing individual Member States temporary derogations;[32] it even, under certain conditions, allows Member States not to apply measures adopted by a qualified majority.[33] Critics of the Single European Act have seen these provisions as posing great dangers.[34] But actual events have refuted such claims. Derogations agreed within the

30. The Luxembourg compromise of January 1966, which in effect amounts to an agreement to disagree, put an end to a deep constitutional crisis between France and its Community partners over the use of majority voting. While all agreed that Member States should try to reach a consensus, five of the original six accepted that in the end it might be necessary to vote while France maintained its objections to majority voting when "very important interests" were at stake. This essentially transformed a great deal of decisions to implement the treaty into measures requiring unanimous consent. For a discussion of the Luxembourg compromise, see E. STEIN, P. HAY & M. WAELBROECK, EUROPEAN COMMUNITY LAW INSTITUTIONS IN PERSPECTIVE 63 (1976).

31. J. PESCATORE, DIE "EINHEITLICHE EUROPÄISCHE AKTE" — EINE ERNSTE GEFAHR FÜR DEN GEMEINSAMEN MARKT, 153 (1986). *See also* Pescatore, *Some Critical Remarks on the "Single European Act,"* 24 COMMON MKT. L. REV. 9, 13 (1987).

32. Single European Act, *supra* note 1, art. 8C.

33. Single European Act, *supra* note 1, art. 100A.

34. *See* J. PESCATORE, *supra* note 31, at 158.

Council have so far been surprisingly few. No use whatsoever has so far been made of the possibility of opting out.

While the situation concerning decisions taken by majority voting has been gratifying, the situation regarding unanimity has been disappointing. One sector of the internal market program in particular has been left subject to the unanimity requirement — taxation. Not a single important Commission proposal in this area has as yet been accepted by the Council. The alignment of tax legislation is therefore one of the three weak points in the record so far in implementing the "1992 project."

Another unsatisfactory aspect is the situation concerning the transfer of implementing powers to the Commission. The basic decision adopted in July 1987 rationalized procedures.[35] However, it has not resulted in any significant transfer of powers from the Council. Nor has it done a great deal to alter the mistrust involved in the assignment of implementing tasks to the Commission. Consequently, disputes between the Commission and the Council over the extent and procedures for transferral of implementing powers frequently stand in the way of rapid decision-making and force the Council to take decisions unanimously even in cases where the Treaty normally allows them to be taken by a qualified majority.[36]

In order to ensure greater participation of the European Parliament in the legislative process, the Single European Act made provision for the application of the cooperation procedure in all instances in which the Council can act by a qualified majority in the internal market area.[37] Contrary to widespread fears, this procedure has resulted neither in the blocking nor in the delaying of the Community decision-

35. *Council Decision of 13 July 1987 Laying Down the Procedures for the Exercise of Implementing Powers Conferred on the Commission*, 30 O.J. EUR. COMM. (No. L 197) 33 (1987); *see also Delegation of Executive Powers to the Commission, Report from the Commission to the European Parliament*, EUR. COMM'N DOC., SEC (89) 1591 final.

The Council decision of July 13, 1987, has reduced the number of procedures under which the Commission exercises implementing powers to seven. In assigning implementing powers to the Commission, the Council must choose from among only these seven procedures.

The procedures are different in detail, but all pursue the same objective. They determine under what circumstances the Commission alone is entitled to exercise the implementing powers and to what extent it shares these powers with the Council.

36. Where the Council wishes to amend a Commission proposal, it must of course act unanimously, pursuant to article 149(1) of the EEC Treaty. Treaty Establishing the European Community, *opened for signature* Mar. 25, 1957, art. 149(1), 298 U.N.T.S. 11.

37. Before the entry into force of the Single European Act, the European Parliament had to be consulted by the Council, but Parliament's opinion had no binding effect. The new cooperation procedure refines the traditional consultation process in two ways. The European Parliament has to be reconsulted (second reading) if it does not agree with the Council's position. In addition, if in its second reading the European Parliament rejects this position, voting requirements in the Council change; the Council can eliminate the European Parliament's veto only by a unanimous vote.

making process. At the same time, however, it has given the European Parliament much more influence than might have been expected from a purely legal point of view. The European Parliament has thus in the last few years become an increasingly important partner in the carrying out of the internal market program.

While the Single European Act has made an extraordinarily positive contribution to speeding up the decision-making process, the clarification which it was hoped it would achieve regarding the controversial question of the Community's powers to implement the internal market program has not so far been achieved. Specifically, in the negotiations on the Single European Act, the aim was to give the Community the power to lay down rules on the free movement of persons, including cases concerning aspects of free movement not involving economic concerns. For example, the abolition of personal checks at internal frontiers requires the alignment of Member States' rules and regulations relating to the granting of asylum, the issuing of visas, the combating of the drug trade, terrorism, etc.[38] Although the new article 8A, in conjunction with articles 100 and 235, must ultimately be interpreted to mean that the Community actually holds such powers,[39] they nevertheless continue to be disputed. The Member States are accordingly endeavoring to abolish personal checks within the framework of the Schengen agreement[40] and in the group of responsible persons set up by the European Council in Rhodes in December 1988.[41] It is not surprising, given the complexity and political sensitivity of the subject matter, that such purely intergovernmental cooperation is difficult and is making extremely slow headway.[42] Accordingly, after the alignment of tax legislation, the abolition of personal checks is the second of the three areas in which the implementation of the internal market program has so far fallen short.

Despite these shortcomings, the Single European Act is rightly regarded as being equivalent, in the institutional sphere, to what the "1992 project" represents in the economic and political sphere. The Single European Act has become an institutional symbol of the economic and political success of the internal market program. Probably none of the participants at the intergovernmental conference in the autumn of 1985 foresaw such a development. The authors of the Sin-

38. WHITE PAPER, *supra* note 8, at 14-16.

39. *See* Ehlermann, *The Internal Market Following the Single European Act*, 24 COMMON MKT. L. REV. 361 (1987).

40. GEMEINSAMES MINISTERIALBLATT 79 (1986).

41. *Rhodes European Council*, 21 BULL EC (No. 12) 8 (1988).

42. *European Council in Strasbourg*, 22 BULL. EC (No. 12) 10 (1989) (not yet published).

gle European Act thus find themselves in a comparable position to the authors of the White Paper, whose boldest hopes were exceeded by the impact which the "1992 project" actually made worldwide.

C. *Reform of the Community's Finances: The Delors Plan*

The Single European Act laid the constitutional and institutional basis for achieving the "1992 project." However, it would not have been sufficient on its own to ensure that the white paper was successful in meeting its objectives. The negotiations on the Single European Act had made it plain that there was an inextricable political link between the internal market program and concerns of domination of the poorer Member States by the richer Member States. Accordingly, the new provisions on "economic and social cohesion" introduced by the Single European Act had to be given life as quickly and as convincingly as possible. This was the aim of the Delors plan, which was tabled in February 1987 and adopted by the European Council in Brussels a year later.

In June 1984, the European Council temporarily ended the long-standing dispute on the British budgetary problem and provided the Community with financial resources of its own.[43] However, the Council allocated only meager resources to it because of the Member States' consternation over the slow pace of reform in the common agricultural policy. This insufficient funding was soon consumed by the accession of Spain and Portugal, thus causing a financial shortfall.[44] The Community lacked the money to step up the assistance it provided to the poorer Member States. However, a further increase in its own resources was politically feasible only if the financing of the common agricultural policy could be overhauled, i.e., in particular, if the management mechanisms of the common agricultural market were reformed.

The Delors plan is accordingly based essentially on three main planks:

> a reform of the common agricultural policy which would prevent the build-up of new surpluses, speed up the reduction of existing stocks and give farmers some prospects for the future;
>
> a reform of the Community's finances that would give it sufficient

43. *Fontainebleau European Council*, 17 BULL EC (No. 6) 7 (1984).

44. *See The Single Act: A New Frontier*, BULL. EC, Supp. 1/87, at 5, 16 (1987); *also published as Making a Success of the Single Act: A New Frontier for Europe*, E.C. COMM'N DOC., COM (87) 100 final. *See also Report from the Commission to the Council and Parliament on the Financing of the Community Budget*, E.C. COMM'N DOC., COM (87) 101 final.

resources of its own by the end of 1992, which would be raised from the Member States, in a more equitable fashion than previously and which would be used on the basis of multiannual financial planning endorsed by the European Parliament;

a reform of the Community's structural Funds, leading to greater efficiency in their use through rationalization, concentration, and improved coordination, and entailing a doubling of financial resources available to them by the end of 1992.[45]

III. DEVELOPMENTS SINCE THE ADOPTION OF THE DELORS PLAN

The adoption of the Delors plan by the European Council in February 1988, after only one year of discussion,[46] further consolidated the consensus between the Member States on the strategy of implementing the "1992 project." As in the case of the Single European Act, the agreement of the national parliaments had to be obtained, since the reform of the Community's financial system is equivalent to an amendment to the EEC Treaty. For the first time, the general public began to realize that the "1992 project" had to be taken seriously.

The adoption of the Delors plan thus marks a turning point on the road to 1992 that was politically even more profound and significant than the approval of the Single European Act. It allowed the Community to concentrate all its resources on achieving the internal market program and it made the "1992 project" credible in many quarters. In the spring of 1988, the rising tide of media reporting on "1992," which took all observers by surprise, gradually swept over the whole of Western Europe and by the summer of the same year had spilled over to Japan and the United States, from where it washed back to the Community under the headline "Fortress Europe."

In the spring of 1988, it also became clear for the first time that politicians, businessmen and trade unionists were beginning to gear themselves to the prospect of the large internal market. Everywhere, people began to discuss their own country's competitiveness in relation to that of other Member States. A good example of this can be found in the debate within Germany on the advantages and disadvantages of the Federal Republic as a location for business and industry.

Legislative changes began for the first time, or at any rate to a much greater extent than before, to take account of the effects they might have on competition within the common market. Amendments were spontaneously made to national law to improve national compet-

45. *The Commission's Programme for 1987*, BULL. EC, Supp. 1/87, at 35 (1987).

46. *Brussels European Council*, 21 BULL. EC (No. 5) 8 (1988).

itiveness, with future Community rules being frequently anticipated. Indeed, national law was in some cases actually aligned even in cases where there were as yet no Community directives requiring such alignment (e.g., the lowering of excise duty and value added tax rates in Denmark, France, Ireland and the Netherlands).

In the countries adjoining the Community, concern began to grow that they might miss out on the developments taking place within the Community. Discussions on the advantages and disadvantages of membership, especially among the EFTA countries, grew increasingly intense. This concern was not allayed by the Commission's decision in principle, in May 1988, to give the "1992 project" priority over any new accession negotiations[47] or by the suggestion of the Commission President, Jacques Delors, to seek a third way between a free trade agreement and accession to govern relationships between the European Community and EFTA.[48] The suggestion was welcomed by the EFTA heads of government at their summit meeting in Oslo in March 1989[49] and led to a joint conference of Foreign Ministers[50] the same month in Brussels to discuss the possibility of exploratory talks between the Commission and the EFTA governments.[51] However, at the beginning of July 1989, Austria decided to submit its application for accession to the Community.[52] A few weeks later, the application was passed to the Commission for examination in accordance with article 237 of the EEC Treaty.[53]

In the Eastern European countries adjoining the Community, Gorbachev's *perestroika* and the success of the "1992 project" led to a desire to normalize relations with the European Community. For this purpose, at the end of June 1988, a joint declaration by the EEC and COMECON was assigned in Luxembourg under which the members of COMECON ended a thirty-year policy of hostility, rejection and non-recognition.[54] Immediately thereafter, all the Central and East-

47. *External Relations*, 21 BULL. EC (No. 5) 61, 66 (1988).

48. *Inauguration of the New Commission*, 22 BULL. EC (No. 1) 8-9 (1989).

49. Meeting of the EFTA heads of government, Oslo, Mar. 14-15, 1989, Statement, EFTA Doc. 6/89/Sp., Mar. 15, 1989.

50. *See* Council of the European Communities, *The Joint Statement Issued by the Conference on 20 March 1989*, 45 PRESS RELEASE, Mar. 30, 1989.

51. The results of these exploratory talks are incorporated in Council of the European Communities, *The Joint Statement Issued by the Joint Foreign Ministers' Conference of European Community and EFTA Countries in Brussels on 19 December 1989*, 252 PRESS RELEASE, Dec. 19, 1989.

52. 22 BULL. EC (No. 7/8) 70 (1989).

53. *Written Question No. 353/89 by Mr. Dalsass to the Council*, 32 O.J. EUR. COMM. (No. C 305) 24 (1989).

54. *Joint Declaration on the Establishment of Official Relations Between the European Eco-*

ern European COMECON countries established diplomatic relations with the Community.[55] Shortly thereafter, negotiations began on trade and cooperation agreements, which were subsequently signed with Hungary (September 1988), Czechoslovakia (December 1988), Poland (September 1989) the USSR (December 1989) and the German Democratic Republic (May 1990).[56]

Across the Atlantic, following a period of deep skepticism about the Community's future, there was a sudden outburst of interest in the "1992 project." From mid-1988, all the earlier talk of "Eurosclerosis" died away. Instead, as in Japan, concern was increasingly expressed that the Community could develop into an economic "fortress." However, the campaign against "Fortress Europe" began to ease early in 1989. The newly-appointed Commission managed, in a series of meetings, to refute American charges and dissipate exaggerated fears. A particularly helpful aspect of this was the clearer understanding achieved of the reciprocity provisions in the proposal for a second banking directive, thus removing a major stumbling block.[57] A further factor was the strikingly positive attitude adopted by the new U.S. President, George Bush, to the Community, first expressed in his Boston speech of May 21, 1989.[58]

Just how seriously the "1992 project" has been taken since early 1988 is reflected particularly clearly in the attitude of businessmen. The prospect of a large internal market became part of the strategic planning of trade and industry inside and outside the Community. It began to have a key influence on investment decisions by businesses,

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nomic Community and the Council for Mutual Economic Assistance, 31 O.J. EUR. COMM. (No. L 157) 35 (1988).

55.

USSR	August 10, 1988
GDR	August 10, 1988
Bulgaria	August 10, 1988
Hungary	August 10, 1988
Czechoslovakia	August 10, 1988
Poland	September 16, 1988
Cuba	September 28, 1988

56. The negotiations with Bulgaria are currently still continuing, while those with Romania were frozen while Ceausescu ruled the country.

57. *Second Directive on Banking*, *supra* note 21. Contrary to what many think, this means that the Community's financial services market will be open to the world and the Community hopes its approach will be followed by other countries. The so-called "reciprocity" clause in the *Second Banking Directive* provides for negotiations with third countries which do not grant the EC banks competitive opportunities comparable to those granted by the EC to non-EC banks. Consideration to limit or suspend new authorizations would only be considered in cases where EC banks do not enjoy national treatment and the same competitive conditions as that country's own banks and where effective market access for EC banks is impossible.

58. Remarks at the Boston University Commencement Ceremony in Boston, Massachusetts, 25 WEEKLY COMP. PRES. DOC. 747 (May 29, 1989); Remarks to the Residents of Leiden, the Netherlands, 25 WEEKLY COMP. PRES. DOC. 1116 (July 24, 1989).

making an important contribution to growth in the Community. The following table, which is taken from the Commission's latest annual economic report, and updated June 14, 1990,[59] shows this clearly:

Annual % change	1980-82	1983-85	1986-88	1989-91*
GNP Growth	+0.8	+2.1	+3.1	+3.2
Investment	−1.7	+1.2	+5.8	+5.1
Employment	−0.6	0	+1.3	+1.3
Inflation	12.1	7.2	3.6	4.6

* Forecasts for 1990-91

The extraordinarily positive trend in growth, investment and employment since 1988 indicates, moreover, that the much-criticized estimates in the famous Cecchini Report[60] were not significant overstatements.

While most businessmen and industrialists in the Community view the "1992 project" favorably,[61] employees, particularly in the more prosperous Member States, fear a drop in their social welfare rights and benefits. Their fear is understandable, but unfounded. To counter it, the Community has, since the European Council meeting in Hanover in June 1988, given greater emphasis to the social dimension of the internal market.[62] This culminated in the approval of the social charter[63] by the heads of state and government of eleven Member States at the European Council meeting in Strasbourg in December 1989. This charter reflects what the Member States described as their deep attachment to a model of social relationships based on joint traditions and customs.[64]

However, the social charter is not a legally binding instrument, but merely a solemn declaration. To give it practical effect, further legal

59. COMMISSION OF THE EUROPEAN COMMUNITIES, FACING THE CHALLENGES OF THE EARLY 1990S: ANNUAL ECONOMIC REPORT 1989-90 (1990); *The Community Economy at the Turn of the Decade, Analytical Studies*, 42 EUROPEAN ECONOMY 12 (1989).

60. The Cecchini Report is the result of the most comprehensive study ever made of the macroeconomic effects of the "1992 project." The study estimates that the implementation of the internal market program (1) can increase the Community's prosperity by DM 400,000 million; (2) will boost the growth of GNP of the "Twelve" to 4.5%; (3) will cut consumer prices in the Community by 6.1% and (4) will create a net growth in employment of 1.8 million or, given dynamic economic policy, by as much as 5 million. The results of the study are set out in a readily accessible presentation in CECCHINI, THE EUROPEAN CHALLENGE 1992: THE BENEFITS OF THE SINGLE MARKET (1988).

61. COMMISSION OF THE EUROPEAN COMMUNITIES, 30 EUROBAROMETER (1988); 31, 32 EUROBAROMETER (1989).

62. *Hanover European Council*, 21 BULL. EC (No. 6) 164, 165 (1988); *Rhodes European Council*, 21 BULL. EC (No. 12) 8, 9 (1988); *Madrid European Council*, 21 BULL EC (No. 6) 10 (1989).

63. COMMISSION OF THE EUROPEAN COMMUNITIES, COMMUNITY CHARTER OF BASIC SOCIAL RIGHTS FOR WORKERS (1990).

64. *Id.*

instruments must be adopted. The measures which, in the Commission's view, have to be enacted by the Community were set out in an action program which the Commission adopted at the end of November 1988[65] and which the European Council took note of in Strasbourg.

IV. Successes and Difficulties in Giving Effect to the White Paper

The above remarks have highlighted the institutional and political preconditions that had to be met if the "1992 project" was to be successful. They have also outlined some of the far-reaching changes which the internal market program has brought about inside and outside the Community. Let us now take stock of the work which has already been successfully completed on the basis of the White Paper.

As mentioned earlier, the original 300 legal instruments listed in the White Paper were reduced to 282.[66] The Commission has in the meantime presented the necessary proposals on all of them. Of the 282 proposals referred to in the White Paper, a total of 149 have so far been finally adopted by the Council. In addition, there are seven proposals which the Council has adopted only in part. A further six proposals have been agreed to by the Council after a first reading; however, the second reading has not yet been completed. Accordingly, up to May 31, 1990, the Council has adopted almost 60% of the legal instruments provided for in the White Paper.

A critical assessment of what has been achieved is of course more difficult. However, all observers will probably agree that the greatest success so far has been in the creation of a common financial market. The total liberalization of capital movements,[67] the second Banking Directive[68] and a directive on solvency,[69] and directives on life assurance[70] and the insurance of large industrial risks[71] are the key deci-

65. *Communication from the Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers*, E.C. COMM'N DOC., COM (89) 568 final.

66. *Completing the Internal Market*, *supra* note 15.

67. *Council Directive 88/361/EEC of 24 June 1988 for the Implementation of Article 67 of the Treaty*, 31 O.J. EUR. COMM. (No. L 178) 5 (1988).

68. *See Second Directive on Banking*, *supra* note 21.

69. *Council Directive 89/647/EEC of 18 December 1989 on a Solvency Ratio for Credit Institutions*, 32 O.J. EUR. COMM. (No. L 386) 14 (1989).

70. *Second Directive on Life Assurance* (not yet published).

71. *Second Council Directive 88/357/EEC of 22 June 1988 on the Coordination of Laws, Regulations and Administrative Provisions Relating to Direct Insurance Other than Life Assurance and Laying down Provisions to Facilitate the Effective Exercise of Freedom to Provide Services and Amending Directive 73/239/EEC*, 31 O.J. EUR. COMM. (No. L 172) 1 (1988).

sions adopted by the Council in this area.

Another area in which the Council has so far been particularly successful is that of the alignment of technical standards and norms. One example is the Directive on machinery,[72] which is based on the new concept of approximation of laws referred to earlier. Other noteworthy decisions taken by the Council include the liberalization of public procurement,[73] the liberalization of the transport of goods by road,[74] the mutual recognition of all higher-education diplomas,[75] the "television without frontiers" directive, adopted with enormous difficulty,[76] and merger control.[77]

However, the successes so far in giving effect to the White Paper contrast with areas in which there have been substantial difficulties. The program had, as already mentioned, fallen behind schedule in the removal of personal checks at frontiers. The main work is being carried out outside the community institutions. The greatest advances so far have been made among the five Member States which concluded the Schengen agreement amongst themselves.[78] Such cooperation in smaller groupings does, of course, act as a precursor for cooperation amongst the Twelve. Consequently, any delay within the group of five countries concerned threatens to have a negative impact on efforts within the so-called Rhodes group.[79] For this reason, the postponement of the signing of an additional agreement to the Schengen agreement which was to take place in December 1989 has been generally regretted.[80]

The program has also fallen behind schedule, as mentioned previously, in the approximation of tax legislation. This, together with the abolition of personal checks at frontiers, is certainly economically and politically the most difficult part of the internal market program. Progress is hampered by the unanimity requirement, which continues to

72. *Directive 89/392/EEC, supra* note 22.

73. *Council Directive 89/440/EEC of 18 July 1989 Amending Directive 71/305/EEC Concerning Coordination of Procedures for the Award of Public Works Contracts*, 32 O.J. EUR. COMM. (No. L 210) 1 (1989).

74. *Council Regulation (EEC) No. 4059/89 of 21 December 1989 Laying Down Conditions Under Which Non-Resident Carriers May Operate National Road Haulage Services Within a Member State*, 32 O.J. EUR. COMM. (No. L 390) 3 (1989).

75. *Council Directive on a General System of Recognition of Diplomas, supra* note 20.

76. *Council Directive 89/552/EEC of 8 October 1989 on the Coordination of Certain Provisions Laid Down by Law, Regulation, or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities*, 32 O.J. EUR. COMM. (No. L 298) 23 (1989).

77. *Council Regulation (EEC) No. 4064/89 of 21 December 1989 on the Control of Concentration Between Undertakings*, 32 O.J. EUR. COMM. (No. L 395) 1 (1989).

78. GEMEINSAMES MINISTERIALBLATT, *supra* note 40, at 79.

79. *Rhodes European Council, supra* note 41.

80. Frankfurter Allgemeine Zeitung, Dec. 16, 1989, at 2.

apply in this area. Although the Council did, in November and December 1989,[81] agree in principle to remove all tax controls at the Community's internal frontiers as of January 1, 1993, the decision was subject to a reservation by Denmark, which has not yet withdrawn its objection to the removal of all exemption limits for private travel. Furthermore, the Council has so far managed to agree on guidelines only for value added tax alignment; similar guidelines for excise duty harmonization have not yet been agreed on. Finally, the Council will have to incorporate its political decisions of principle into legally binding instruments, which will have to be given effect in national law by the Member States. In the area of tax law alignment, therefore, the progress made towards creating an area without internal frontiers has been minimal.

Lastly, the program has fallen behind schedule in the harmonization of veterinary and plant health legislation. The difficulties are not due to the requirements of the EEC Treaty, since it is clear from the case law of the Court of Justice in recent years that the Council can adopt decisions by a qualified majority.[82] However, the legal standards that have to be harmonized are of such technical complexity that the Council is scarcely able to engage in genuine discussion on them. Reaching decisions is made all the more difficult by the differences of opinion that exist on the scope and procedures for allocating implementing powers to the Commission, and to overcome these difficulties the Council is forced into unanimous voting.[83]

V. OUTLOOK

Despite the difficulties and risks described above, it is entirely feasible to meet the December 31, 1992, deadline for abolishing all controls at the Community's internal frontiers. However, this can be done only if the political will to achieve the "1992 project" does not weaken. On the contrary, all the Member States should realize that the greater demands being placed on the community by events outside call for an acceleration and reinforcement of the integration process.[84]

81. Removal of Tax Frontiers, 22 BULL. EC (No. 11) 17 (1989); Abolition of Tax Frontiers, 22 BULL. EC (No. 12) 32 (1989) (not yet published).

82. United Kingdom v. Council, Case 68/86 (E. Comm. Ct. J., Feb. 23, 1988); United Kingdom v. Council, Case 131/86 (E. Comm. Ct. J., Feb. 23, 1988); Commission v. Council, Case 131/87 (E. Comm. Ct. J., Nov. 16, 1989); United Kingdom v. Council, Case 11/88 (E. Comm. Ct. J., Nov. 16, 1989).

83. Treaty Establishing the European Community, *supra* note 36, art. 149(1).

84. *Jacques Delors at the College of Europe in Bruges, supra* note 23. *See also Conclusions of the European Council in Strasbourg, supra* note 2: "It is in the interest of all European States that the Community should become stronger and accelerate its progress towards European Union."

The "1992 project" will, in the months and years ahead, remain at the center of the Community's strategy. Neither the project on economic and monetary union (EMU) nor new steps on the road to political union will displace it from this central position.

The EMU project is of course not new; we have only to think of the Werner plan, the creation of the European monetary system (EMS) and the adoption of the European currency unit (ECU) to see its progenitors.[85]

However, the initiative taken by the European Council in Hanover in June 1988 to revive EMU is not conceivable without the success of the "1992 project." The same is true of other advances which have since been made, such as the unanimous adoption of the Delors report,[86] the decision taken by the European Council in Madrid in June 1989 to introduce the first stage of EMU on July 1, 1990,[87] and the decision taken by the European Council in Strasbourg in December 1989 to convene the inter-governmental conference on the drafting of the EMU Treaty before the end of 1990.[88]

With the opening of the inter-governmental conference by the end of 1990, the EMU exercise will increasingly occupy the Community institutions. Progress on the road to EMU will have positive repercussions on the "1992 project," just as success in creating the large internal market will stimulate and give impetus to the work on EMU. However, the order of priorities must not be forgotten in the process: the completion of EMU is not a precondition for achieving the "1992 project."[89] By contrast, the completion of the internal market is an essential component of the first stage in the process of creating EMU.[90]

EMU will probably not be the only subject of the inter-governmental conference in opening in December, for which the Community has been preparing. Certainly since the Commission President's recent speech to the European Parliament on January 17, 1990, setting out the Commission's program for 1990, it is becoming increasingly clear

85. COMMITTEE FOR THE STUDY OF THE ECONOMIC AND MONETARY UNION, ECONOMIC AND MONETARY UNION IN THE EUROPEAN COMMUNITY (1989)[hereinafter DELORS REPORT].

86. *European Council*, 22 BULL. EC (No. 4) 8 (1989).

87. *European Council*, 22 BULL. EC No. 6) 8, 11 (1989).

88. *Strasbourg European Council*, 22 BULL. EC (No. 12) 8 (1989) (not yet published).

89. "Although in many respects a natural consequence of the commitment to create a market without internal frontiers, the move towards economic and monetary union represents a quantum jump which could secure a significant increase in economic welfare in the Community. Indeed, *economic and monetary union implies far more than the single market programme* and will require further major steps in all areas of economic policy-making." DELORS REPORT, *supra* note 85, at 16.

90. *Id.* at 34.

that the urging of Jacques Delors and the European Parliament for new institutional reforms (going beyond the changes required by EMU) has the backing of a growing number of Member States. The Italian Presidency, which will begin its work on July 1, 1990, will take up this latest initiative with passion, energy and resolution. In so doing, it will be able to draw on its experience in June 1985 when, against the resistance of three Member States, particularly the United Kingdom, it got the European Council meeting over which it was presiding in Milan to convene the inter-governmental conference which six months later led to the Single European Act.

The "1992 project" can only benefit from a new constitutional reform. Because of the next elections to the European Parliament in the summer of 1994, the reform will have to lead to a strengthening of the rights of the European Parliament. However, such strengthening of its rights is conceivable only if, at the same time, the last remaining bastions of unanimous voting in the Council are removed. It is less certain whether the European Parliament will also gain greater influence over the composition of the Commission, particularly the appointment of its President, although this would be extremely desirable in order to increase the efficiency, cohesion and authority of the executive. This would probably also make an important contribution to greater transfer of implementing powers from the Council to the Commission.

There remains the question of whether the *de facto* accession of the German Democratic Republic possibly taking place at the end of this year will not, in practice, slow down the "1992 project." I am convinced that this will not be the case. Even if the attention of the German public is dominated almost exclusively by the events in the German Democratic Republic, the political leaders in the Federal Republic of Germany have not so far weakened in their European commitment. On the contrary, the upheavals in Central and Eastern Europe have led to a quickening of the integration process.

The astonishing progress on the road to EMU and the most recent discussions on new institutional reform are the clearest proof of the acceleration of this process. This makes achievement of the "1992 project" easier. For only a Community which is seriously resolved to achieve political union will be ready to overcome the obstacles still looming on the final, steepest stretch of the road leading to the achievement of an internal market wholly free of internal frontiers.