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EUROPEAN POLITICAL TRANSFORMATION AND THE FUTURE OF EUROPE: IMPLICATIONS OF INTEGRATION FOR THE INDIVIDUAL

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ABSTRACT

In June 1985, the EC Commission issued its White Paper on "Completing the Internal Market," and set out the agenda to achieve a unified internal market by 31 December 1992. In brief, the White Paper called for the eventual abolition of all physical, technical, legal, fiscal, and social obstacles-barriers to full free trade and movement of people, goods, services, information, and capital. The achievement of this internal market, however, is not without some problems and unforeseen consequences. This paper dicusses some of the implications of completing the unified internal market in four areas: (A) freedom of movement; (B) freedom to work; (C) freedom to purchase certain goods; and (D) freedom to receive information.

EUROPEAN POLITICAL TRANSFORMATION AND THE FUTURE OF EUROPE:

IMPLICATIONS OF INTEGRATION FOR THE INDIVIDUAL

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I. THE NECESSITY OF CHANGE

On 14 June 1985, the Commission of the European Communities transmitted to the European Council its now-famous White Paper titled "Completing the Internal Market."[1] This document envisaged the completion of the internal market by 31 December 1992 and outlined approximately 300-plus directives that had to be passed by Brussels before the single market could be achieved. In brief, the White Paper called for the eventual abolition of all physical, technical, legal, fiscal, and social obstacles or barriers to full free trade and movement of people, goods, services, and capital. The existing physical controls at the EC's internal borders are to be progressively eased and then eliminated altogether; these controls would then be shifted to the Community's external frontiers. Parallel developments include the adoption of EC-wide harmonized public policies in certain areas and the increased reliance on the full faith and credit-mutual recognition clauses of the various EC treaties. The 1985 White Paper resulted in the signing, on 26 February 1986, of the European Single Act (ESA) and the ESA entered into force on 1 July 1987.

The European Single Act is a frontal assault on the remaining

areas of fragmentation and non-transnational cooperation within the European Community, and is especially directed at the elimination of barriers to the totally free movement of people, goods, services, and capital. Although the EC has made tremendous strides in supranational integration since the European Coal and Steel Community began operations in 1952, the Community has still not yet made effective and efficient use of its collective resources. The costs of this "non-Europe" -- both financial and psychological costs -- are staggering.

A Commission-sponsored study, led by Paolo Cecchini,[2] has concluded that the total potential gain to the Community as a whole from the completion of the single unified market would be approximately ECU 200 billion (expressed in 1988 prices). This ECU 200 billion would add approximately 5 percent to the Community's gross domestic product. Cecchini's calculations include not only the savings due to the removal of the barriers which directly impinge on intra-EC trade (especially the technical formalities at the internal borders and the related delays), but also the real benefits to be gained from removing the obstacles which hinder entry to different national markets and the free play of competition within the Community.

Cecchini's study also predicts that the total integration of the EC market will deflate real consumer prices by an average of 6 percent while, concurrently, it will increase output and living standards. Depending upon the specific macro-economic policies adopted, it is estimated that a minimum of two million -- and a possible five million -- new jobs will be created over the medium-term. The single market will also produce economies in

public sector costs equivalent to 2.2 percent of the gross domestic product and increase the EC's trade with other countries by approximately 1 percent of the GDP.

The direct costs of border formalities, including the related administrative costs for both the private and public sectors, are estimated to be 1.8 percent of the total value of goods traded within the entire Community. This 1.8 percent is increased by adding the costs to industry of other identifiable barriers to a complete unified internal market, including the differing national technical regulations governing the manufacture and marketing of products. This latter figure is estimated to average approximately 1.7 percent of companies' total costs. The combined total of these savings thus represents an estimated 3.5 percent of industrial value-added amounts.

Finally, the Cecchini study identifies substantial unexploited economies of scale in European industry within a unified market of some 320 million consumers. It is estimated that about one-third of the EC's industrial sector could profit from cost reductions ranging from 1 percent to 7 percent, depending upon the specific sector concerned. The aggregate cost savings from improved economies of scale is estimated to be around 2 percent of gross domestic product across the European Community.

The above-cited estimated financial costs and savings are, however, only part of the story -- there are psychological costs as well resulting from this fragmented "non-Europe." These "costs" are related to the ever-present physical barriers across

the European Community. As the White Paper states, the most obvious example of these physical barriers are the border-crossing posts -- the customs and immigration controls, passport and identity verifications and the not unheard of time-consuming and demeaning search of personal belongings and body. Although the vast majority of these border controls, especially on the roads but less so if one crosses a border by train or arrives at an airport, are perfunctory spot checks, they nonetheless still represent an arbitrary administrative power over individuals and they are most definitely inconsistent with the principle of free movement within a single Community. To the ordinary European citizen, these controls remain as an obvious manifestation of the continued divisions within the European Community.[3]

The achievemnt of this unified internal market is not, however, without some problems and unforeseen consequences. This paper discusses some of the implications of completing the internal market in four areas: (A) freedom of movement; (B) freedom to work; (C) freedom to purchase certain goods; and (D) freedom to receive imformation.

II. FREEDOM OF MOVEMENT AND ITS IMPLICATIONS

The 1992 objective is the removal of all controls over individuals at the internal borders of the Community with a concurrent transfer of these controls to the external borders and ports of entry. The logic of the unified internal market and 1992 calls for the "abolition of all police and customs formalities for people crossing intra-Community borders." The police controls relate to the identity of the individual(s) concerned and the

legality of personal effects being transported. Although the idea of the abolition of all police controls/checks at internal EC borders has received support throughout the Community, there exists also a great deal of concern and hesitation among the Member-States. If people and their possessions receive the ability to freely cross the internal frontiers without any controls, its follows logically that criminals and potential criminals would do likewise. The real question for the Community in this problem area is how can the EC protect itself against transnational crime -- a most legitimate objective -- but at the same time give real meaning to Community integration? Problems such as the movement of arms, illegal immigrants, drugs, terrorism, and transnational financial fraud and money laundering have been mentioned the most.

The Commission's White Paper recognized these legitimate concerns. National legislation and policies dealing with arms need to be harmonized in order to prevent the buying of arms in countries with less stringent regulations and then bringing them into another Member-State. Very few people in the Community would accept a totally free movement and the abolition of border controls if this meant that members of the IRA or ETA had free access throughout the EC. An EC-wide harmonized policy regarding visas for non-Community nationals will have to be developed, along with policies regarding the right of asylum and the ability of refugees also to claim free movement throughout the Community. Greater coordination will be needed to deal with transnational financial fraud and money laundering.

It is perhaps with drugs -- drug trafficking and the vast

sums of cash that accompanies the trade -- that has given the most concern to EC law enforcement officials. The abolition of intra-border controls would obviously mean that drug traffickers would be able to move their cash and contraband throughout the entire Community with little fear of being caught. One example of this resistance can be seen in the recent remarks of Wolfgang Schäuble, the Federal Republic's Interior Minister. Schäuble linked the eventual abolition of border controls with new measures to compensate for possible loss of effectiveness in crime-fighting and searching for criminals who are at large. Schäuble commented that the wide differences between West German and Dutch drug laws had to be resolved before the Federal Republic would agree to abolish police controls at its borders.[4]

As serious as the problems of terrorism and drug dealing may be, they are not, as Siegfried Magiera writes,[5] sufficient to justify the retention of the existing controls:

> These dangers must be combatted in other ways, for example, by coordinated checks at the external borders and an increased cooperation among the Member-States within the framework of a mutually-organized 'Community Police Authority.' Otherwise, one would make tangible progress on the way to a Europe of Citizens for the great majority of law-abiding citizens dependent on the misconduct of a small, criminal minority. However, the EC countries cannot substitute stricter surveillance inside the country in order to compensate for the loss of their own border controls. To balance the opening of the borders with increased internal police controls would undermine the very purpose of 1992.

Assuming that 1992 actually brings to reality the internal market and the abolition of internal border controls -- the

checks would be shifted to the EC's external frontiers -- there is most definitely a need for some sort of Community-wide law enforcement agency.[6] This organization would have to be a multi-lingual and multi-national specialized agency which would go far beyond the already existing INTERPOL. This agency must have the ability to engage in transnational investigations and be able to obtain search and arrest warrants and the power to execute these warrants on an extra-territorial basis. In theory, this may appear relatively straight-forward but there are several real life obstacles to overcome before such extra-territoriality can exist across the Community.

The functional areas of criminal law, criminal and investigatory procedures, and the rights of individual citizens would first need to be harmonized across all 12 EC Member-States. Extra-territoriality rests upon standardized norms and behaviors regarding, for example: the degree to which data and information banks (both governmental and private banks) are open to examination; the laws governing search and seizure; the content of "warnings" given to individuals under interrogation and/or arrest (e.g., the American "Miranda" rule); the rights of an individual to remain silent and to have legal counsel; the admissibility of evidence (e.g., the American "exclusionary rule"); the parameters to electronic eavesdropping-wiretaps; pre-trial detention and the posting of bond; sentencing criteria; and the standards for parole. An EC-wide "police authority" -- seen to be a necessity with the abolition of the internal border controls -- would find it impossible to carry out its management task objectives if there were 12 different (and thereby

conflicting) standards for the above variables. It appears equally impossible for the EC to arrive at such harmonization by 1 January 1993.

The outlook for totally open borders on 1 January 1993 is less optimistic, especially given the experience of the Schengen Agreement. Negotiated in June 1985 in the Luxembourgeois town of Schengen, hard-by the German and French borders, by Belgium, the Federal Republic, France, Luxembourg, and The Netherlands, the accord was to lead towards the abolition of the border controls among the five signatory states. The agreement would have eased personal travel across the frontiers and reduced the checks on commercial travel to a minimum. It also established some common rules for visa and asylum policies and reinforced cooperation on issues such as drugs, arms, terrorism, fiscal fraud, illegal immigrants, and the right of hot-pursuit by police across the national frontiers. The agreement was scheduled to be signed on 15 December 1989 and enter into force on 1 January 1990 -- a full three years before the principle of open borders would theoretically be applied across the entire Community.

However, on 14 December 1989, the Federal Republic called off the signing ceremonies, saying it wanted more time to study how the agreement would affect the rights of East Germans wanting to travel in the other four countries.[7] It appears that West German government only stated in public what the other Member-States had privately sought -- the countries were not yet quite ready to do away with the border controls. The concerns expressed relating to Schengen calls into question the entire viability of the 1992

open border objective.

The Netherlands, for example, stated that it could not accept the Grand Duchy's insistence to exclude matters of fiscal fraud from the police cooperation scheme. The Dutch argued that Luxembourg was attempting to protect its offshore banking activities. Belgium expressed dissatisfaction with the envisaged police computer network, fearing that it would violate individual rights of privacy. The French were not satisfied with the clauses concerning the freedom of movement of migrant workers: as East Germans migrate to West Germany, they may begin to displace the Turkish immigrants who, in turn, in the absence of border controls, could freely enter France. The three Benelux countries were wary that open borders between the Germanies, coupled with the Schengen Agreement, would mean that other nationalities in East Germany (especially Poles) would then be able to move freely to the West.

The proposed Schengen Agreement was seen for a long time as the prototype for increased integration, the ending of border controls, and the free movement of persons across intra-Community frontiers. Although the five countries reiterated their commitment to the principle, it has not yet come into force and there is very little likelihood that, given the fact that the five countries (including Benelux, a group who have had a long history of coordination and coordination) could not agree, the entire European Community will reach an agreement in the near future. The European Community has not yet thought-out all the ramifications of abolishing all the internal borders and there is <u>not</u> a very high probabilty that open borders will be in place on

1 January 1993.[8]

III. FREEDOM TO WORK AND ITS IMPLICATIONS

The second area discussed involves the mutual recognition of diplomas (MRD) and professional qualifications, leading to the right of free movement, establishment and practice throughout the Community for the liberal professions (e.g., physicians, dentists, veterinarians, architects, etc.). This free circulation, establishment and practice is not dependent on the removal of the actual physical controls at the internal borders -- even after an individual has crossed the frontier into another EC Member-State, this Community citizen may still be restricted, or even prohibited, in practicing his or her profession in the host-country.

For a long time, the Commission opted for the same ill-conceived harmonization approach that failed (as is explained below in Part IV) in relation to products and foodstuffs. It should not be surprising that severe problems arose due to the differences in educational philosophies among the Member-States and the governments always maintained that education must remain a matter of national policy and frequently resisted the harmonization proposals from Brussels. Lately, the Commission has approached this problem through the full faith and credit clauses and mutual recognition: the Commission has applied the Cassis de Dijon principle[9] so that, if an individual is legally authorized to practice a certain profession in one Member-State he should, in principle, be legally authorized to practice the same profession in any other Member-State.[10] However, the current

situation, except for certain professions specified below, is that due to the different national approaches to education and licensing standards, the diplomas and certificates from one Member-State are not always recognized in other Member-States.

Some professions, especially those in the health sector (physicians, dentists, nurses, veterinarians, midwives, and pharmacists, but architects also), have had their basic training generally harmonized (in terms of the lowest common denominator) across the Community. But even with these "successes," the progress has been very slow, laborious and difficult. The Community harmonizing directives enabling architects to practice throughout the EC took 17(!) years to be achieved; it took 16 years for the pharmacist directives. Most remaining liberal professions are still mired in the mutual (non-)recognition/full faith and credit process: national pride, traditions and institutions make the acceptance of different but equally meritorious systems all but impossible to achieve. Similar to the Italian claim that pasta made from soft wheat simply could not be real pasta, there exists in several EC countries the belief that a surgeon trained in Italy simply could not be a real surgeon.[11]

The objective of having a totally free process of circulation, establishment and practice for all the liberal professions in the future single unified market will be very difficult, if not impossible, to achieve if the experience of the free circulation/mutual recognition of diplomas of physicians is any guide for other professional groups within the European Community.[12]

In June 1975, the EC Council of Ministers passed several directives which granted "European" status to EC physicians.[13] Entering into force on 20 December 1976, these directives dealt with: (A) the mutual recognition of diplomas, degrees, certificates, and other medical titles; (B) measures aimed at facilitating the right to establish a medical practice in the host-country; and (C) the regulatory and administrative oversight of the physicians' professional activities. The various directives were the result of the EC's inability to achieve any real harmonization (beyond the lowest common denominator) of the content of medical training, especially for specialists. Some attempts were made to standardize the medical school curriculum but one common agreed-upon standard could not be attained. The EC then opted for MRD/full faith and credit: the standards and requirements of each EC Member-State would be recognized and accepted in the other Member-States. Following the Cassis de Dijon case, if an individual is legally qualified to practice a certain profession in one EC country he should, in principle, be legally qualified to practice the same profession in any other Member-State.

The free movement, establishment and practice of EC physicians became a de jure reality in December 1976 but, even after more than 14 years later and with 1 January 1993 fast approaching, a totally open de facto reality has not yet been attained. The on the ground political facts of the implementation process show that there are several real institutional and psychological barriers or obstacles still preventing a totally free process for the European liberal professions.

The technical requirements of the mutual recognition of medical diplomas and certificates have frequently been used by the local-regional-national medical associations and licensing authorities to slow down, if not prevent outright, the authorization of non-national but EC physicians who attempted to take advantage of the 1975 directives. In many cases, the authorities charged with implementing the directives passed in Brussels (and accepted by the national governments) have, in a sense, attempted to sabotage the EC decision by specifying a series of additional requirements and conditions that a prospective migrant physician had to satisfy before receiving authorization to practice in the host-country.

These additional requirements have included formal language competence examinations (even for native speakers of the host-country's language); knowledge of the laws and medical ethics of the host-country; standards of professional discipline and personal morality and repute; restrictions on fees, advertising and access to insured patients within the host-country's national health insurance programs; the very question of the equivalency of diplomas; the refusal to permit a specialist to call himself such in the host-country (e.g., plastic surgery does not legally "exist" in Luxembourg and endocrinology does not legally "exist" in Belgium); and the actual verification of the credentials produced in the authorization process. In certain cases, the implementation agencies have purposely delayed granting the right to practice in the hope that the applicant will tire and go some place else.

This free circulation, establishment and practice is not limited, however, to the liberal professions/self-employed -- it theoretically applies to just about every conceivable trade or occupation (including court musicians, cathedral stone cutters, and professional athletes). The 1992 objective has presented some severe problems for professional sports in the EC, especially the professional soccer leagues.[14] The EC Commission has taken the position that the free circulation clauses apply to professional athletes as well and thus they are entitled to cross the borders in order to seek employment (e.g., the American "free agent"); conversely, given the specific terms of the contract, a team would be entitled to trade a player to another team in a different EC Member-State. The Commission has called on the European sports federations to fully apply these provisions by 1 January 1993.

The Commission's interpretion of these provisions, however, runs directly counter to a long-standing agreement among the members of the Union of European Football Associations (UEFA) that restricts the number of non-nationals (the quota is currently set at two non-nationals) that can be on the major league teams. The UEFA argues -- supported by the players' representatives in Italy, Spain, France, West Germany, Belgium, and the United Kingdom -- that this quota system, by preventing the unrestricted movement of players from country to country, avoids bidding wars for foreign stars and ensures that national players will not be shut out by imports. The UEFA recognizes that its quota system violates the letter of the EC regulations but it also argues that professional sports, and especially soccer, is

different from other trades and occupations and that it should receive an exemption from the free circulation directives. The Association offered to raise the limit of non-nationals to four but refuses to drop the quota. The EC Commission continues to press for full compliance. The EC has the ability to file charges against the relevant Member-States' governments for non-application of the provisions and/or file suit against the soccer federations for attempting to restrict or eliminate competition among the Member-States.

The question of non-EC nationals on sports teams is also a difficult problem. The EC and the UEFA have agreed to limit the number of such individuals on the major league teams but the legality of this is open to question. Both the European Community and the European Convention on Human Rights prohibit discrimination on grounds of citizenship: the current practice of the professional European basketball teams to place a quota on the number of non-nationals (read "American") players on each team would appear to be a violation of the ECHR. These problems may not be as significant as other variables within the overall 1992 plan for a unified internal market but they nonetheless need to be resolved. It does not appear that they will be resolved by 1 January 1993.

IV. FREEDOM TO PURCHASE GOODS AND ITS IMPLICATIONS

Article 8 A of the Rome Treaty, revised by the Single European Act, confirms that the free movement of goods is one of the cornerstones of the internal market. Articles 30 et seq. of the Treaty note that free trade is based on the absence of

quantitative restrictions (quotas) on imports or exports of of any measures having equivalent effect. These Articles apply both to goods originating in a Member-State and to goods previously imported from non-EC countries.

The European Court of Justice has defined the term "measure having an equivalent effect to a quantitative restriction" as "any measure, whether a law or regulation, an administrative practice, or an act of, or attributable to a public authority that is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade."[15] Such measures may discriminate between domestic and imported or exported products (open discrimination) or they may apply to domestic and imported products alike (disguised discrimination).

Regarding the first category of measures (open discrimination), Member-States are only entitled to maintain in force or to introduce prohibitions or restrictions on imports, exports, or goods in transit, on grounds of public morality, public policy or public security, protection of the health and life of humans, animals or plants, the protection of national treasures having artistic, historic or archeological value, or the protection of industrial and commercial property, provided that the prohibitions or restrictions do not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Member-States. The European Court of Justice has consistently held that these restrictions to the free movement of goods should be construed very strictly.

Regarding the second category of measures, equally applicable

to domestic and imported products (disguised discrimination), the Court has held that such exceptions to the free movement of goods can be justified only if they are shown to safeguard an essential requirement of public interest, such as consumer protection or the protection of the environment. Such measures may encompass regulations presenting technical requirements, quality standards, or testing and type-approval procedures that have to be satisfied by any product, domestic or imported, offered for sale in the domestic market. The Court has also maintained that these restrictions to the free movement of goods be construed very strictly.

Various Member-States, under the guise of "health" or "safety," have effectively prevented the sale of certain products in the domestic market that were produced according to the legal requirements existing in the exporting country. Illustrations of this use of "technical" barriers to trade are numerous; a few examples will suffice at this point: German law for years prohibited the sale within the territory of the Federal Republic of beers brewed in other Member-States if they contained any additives (the German national "purity laws" simply prohibited any additives in beer);[16] Italian law used to prohibit the sale in Italy of any pasta not made from durum wheat;[17] the Federal Republic attempted to prohibit the sale of French and Belgian meat products containing vegetable proteins;[18] some Member-States prohibited the sale of yogurt if it contained any added fruit; French-manufactured cassis was categorized as contraband in the Federal Republic. Such examples stretch on and on.

Such regulations not only add extra costs -- separate

research, development and marketing costs -- but they also distort production patterns. Unit costs and stockpiling costs are increased and business cooperation is discouraged. Also, even where such technical regulations do not actually forbid the sale of a certain product in the domestic market, they most definitely discourage and penalize attempts to operate on a European-wide scale. Different national production standards and regulations (e.g., basic ingredients, chemical additives, artifical flavorings and colorings) mean that many products are separately manufactured according to the separate standards required for each individual country. In itself, the development of national standards and regulations generally has been constructive and helpful in guaranteeing that the products provide a minimum level of health and safety for the consumer and that they protect the environment. The facts on the ground, however, are quite different: such technical regulations often act as a thinly-disguised form of (illegal) national protection against similar goods imported from other Member-States where different -- not necessarily better or worse, but different -- national production standards are in force.

For many years, the Community attempted to deal with these problems and eliminate these barriers through the harmonization process: the adjustment of national regulations to conform to an agreed-upon Community-wide single standard. Unfortunately, the proposals drawn up by the Commission were, in the Commission's own description, "often unnecessarily over-ambitious and correspondingly slow." The process of elaborating and adopting

harmonization directives proved difficult and complex and years were spent trying to reach agreement on the technical minutia of a single product or group of products. In the interim, manufacturers were unsure what standards they ought to comply with and, all too frequently, by the time a very rare agreement was actually attained, either the product or the standard had become obsolete, an epitaph to a bygone technology, or a barrier to further technical innovation.

Those administrative difficulties represented only half the problem; the European public perception of the harmonization efforts countered whatever progress that might have been achieved. Public opinion saw efforts at harmonization as bureaucratic interference from Brussels and many people were convinced that the Community's real objective was to submerge their national differences in tastes and preferences into "Europroducts" -- identical products with identical ingredients with identical tastes in identical packages -- and these clones would be the only products allowed to be sold throughout the Community.

The Commission seemed to be heading down this dead-end and one-way route until the European Court of Justice issued, in 1979, its landmark ruling in the Cassis de Dijon case.[19] This case concerned the long-standing refusal of the Federal Republic to permit the sale of French-made cassis within the Federal Republic. The Court confirmed the basic right of free movement of goods and held that, in principle, any product or good legally manufactured and marketed in one EC Member-State must be free to be offered for sale in any other Member-State. A ban on the sale

of a particular product can be applied only if it is seen necessary to protect a very limited range of public interest objectives (e.g., consumer safety). Such a ban has to comply with Community law and is subject to review by the European Court of Justice.

With the Cassis de Dijon ruling, a Member-State could no longer keep out competing products from another Member-State because they might be slighly different -- not better or worse, but different -- from the domestic version of the product. Pasta made from soft wheat is now marketed in Italy alongside the durum wheat variety and beer containing additives is now marketed in the Federal Republic; it is totally irrelevant whether or not the Italian consumer buys the soft wheat pasta or the German consumer buys what is still considered to be "unnatural" or "impure" beer.

The Commission has slowly renounced its long-standing insistence on complete harmonization and, taking its cue from the Cassis de Dijon case, it is now supporting the increased reliance on the full faith and credit/mutual recognition of each Member-States' technical standards. The Commission's current position is that, except in the few isolated instances of where consumer health and safety is documented to be jeopardized (an obvious example of this would occur if drugs were legalized in one EC country), anything which can be legally marketed in one Member-State should therefore be free to be marketed in any other Member-State. The Commission hopes that this new approach will avoid unnecessary harmonization as well as freeing the Community's decision-making processes from the very elaborate and

time-consuming (and mostly unsuccessful) work of agreeing to detailed standards covering a wide range of very technical material.

But these areas are the furthest behind the White Paper's timetable and these proposals for full faith and credit/mutual recognition have fallen far short of the progress required in the light of the overall objectives and the time left to achieve them. National governments do not readily volunteer to accept these "alien" products and cultural sensitivities are very difficult to overcome. The Germans still believe that beer with additives is an abomination that represents a frontal assault on the German cultural tradition and the Italians still believe that soft wheat pasta is an oxymoron. There is not a very high probability that controls on certain animal and plant products and foodstuffs will disappear on 1 January 1993.

V. FREEDOM TO RECEIVE INFORMATION AND ITS IMPLICATIONS

The completion of the unified internal market has ramifications and implications that extend beyond beer and pasta, however; the free flow of information is also affected. Examples of this can be seen in two recent controversies -- one concerned Belgian supermarket ads in Luxembourg and the other concerns the availability of information on abortion in the Irish Republic.

A Belgian supermarket distibuted leaflets in Belgium and Luxembourg advertising sales at reduced prices. The Confédération du Commerce Luxembourgeois (CCL) sought an injunction from a Luxembourgeois court to stop the distribution of the leaflets in Luxembourg on the ground that the printed information violated a

Grand Ducal Regulation on unfair competition. The Regulation provided that offers for sale at reduced prices may neither specify the duration of the offer or refer to previous prices.

The Belgian company argued that the ad complied with Belgian law relating to unfair competition, and that it would be contrary to Article 30 of the EEC Treaty to apply the Regulation to the advertisement. CCL, joined by the Governments of Luxembourg and the Federal Republic of Germany, argued that the free movement of goods provisions in the Treaty had no application to commercial advertising, and that in any event the Belgian company sold its goods only in Belgium.

The Luxembourg court requested the EC's Court of Justice to rule.[20] The Court of Justice rejected CCL's arguments, stating that consumers residing in one Member-State must be able to enter freely into another Member-State and make purchases under the same conditions as the local population. The Court emphasized that this right was curtailed when consumers were denied access to advertising material available in the country of purchase. The Court stated also that the Regulation could not be justified on the ground of consumer protection, stressing that consumer protection required accurate consumer information.

The second example concerns the availability of abortion information in the Irish Republic.[21] A 1983 referendum in Ireland added to the Irish Constitution a clause that affirmed the "right to life of the unborn" (i.e., abortion was made illegal). The Irish courts have interpreted this prohibition to include even the dissemination of information about the availability of legal abortions in other EC Member-States,

particularly Great Britain.

Two women's counseling centers in Dublin continued to advise their clients on how they could obtain an abortion in Great Britain (some 4,000 Irish women obtain an abortion in Great Britain each year) and a group of students at Dublin's Trinity College also provided this information in a student publication. None of these groups advocated the setting up of abortion clinics in the Republic; they only provided information that abortions were available in another EC country. The Irish courts, however, ruled that the Constitutional prohibition against abortion included dissemination of information about abortion and issued injunctions against the groups in an attempt to stop the flow of information.

Both groups appealed the rulings. The women's counseling center appealed to the European Court of Human Rights in Strasbourg, claiming the injunction violated the provision in the European Convention on Human Rights that guaranteed freedom of information. The students appealed to the EC's Court of Justice in Luxembourg, claiming that the injunction violated the EC's right to free movement of services (people have the right to disseminate information about services legally available in another Member-State).

These cases are still pending. The issue places the Cassis de Dijon principle in direct opposition to the leeway given to EC states to derogate from the free movement of goods and services (and, by extension, information about these goods or services) if the specific Member-State feels that such free "movement" is

against public policy in terms of health, safety or morality. The issue is compounded, however, because it involves not the actual service but the questions of the unhindered flow of information, the rights of the press, the ability of physicians to impart medical advice to their patients, and intellectual freedom.[22]

VI. CONCLUSIONS

The areas of concern discussed in this paper -- the implications of the unified internal market relating to the abolition of border controls and the freedom of movement, the freedom to work in any of the 12 Member-States, the freedom to purchase certain products that are legally produced and sold in another Member-State, and the freedom to receive information -- are such that there is very little likelihood that all the problems will be solved by 31 December 1992. Member-States will still be prohibiting certain imports under the guise of public safety or health; institutional barriers will remain to the really free process of circulation, establishment and practice for the liberal professions; the red border gates will not be completely torn down; and there still will be restrictions on the free flow of information.

The 1992 Program for a single unified internal market is an ambitious scheme although it appears to be overly-optimistic given the stated timetable. The European Community ought to step back a bit and re-evaluate the entire process. The problems of the single unified market discussed in this paper will eventually be solved but it now appears that 1 January 1993 will be identical to 31 December 1992.

NOTES

1. Commission of the European Communities, "Completing the Internal Market," White Paper from the Commission to the European Council, Document No. CB-43-85-894-EN-C (Luxembourg Ville: Office of Official Publications of the European Communities, June 1985), 37pp.

2. Paolo Cecchini et al., Research on the Cost of Non-Europe, English edition by John Robinson (Aldershot, Hants., UK: EC Commission/Vildwood House, 1988).

3. Commission of the European Communities, "Europe Without Frontiers: A Review Half-Way to 1992," Document No. CC-AD-89-010-EN-C (Luxembourg Ville: Office of Official Publications of the European Communities, June-July 1989), 11pp.; Commission of the European Communities, "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)," Document No. COM (89) 311 FINAL (Brussels: Commission of the EC, 20 June 1989), 87pp.

4. As reported in This Week in Germany (New York: German Information Center, 30 June 1989), p. 2.

5. Siegfried Magiera, The Emergence of a "Europe of Citizens" in a Community Without Frontiers (Speyer, West Germany: Forschungsinstitut für Öffentliche Verwaltung bei der Hochschule für Verwaltungswissenschaften Speyer, No. 78, 1989), p. 8.

6. See Leon Hurwitz, "Das amerikanische FBI als Vorbild einer 'europäischen Bundespolizei'?," in Proceedings of the Conference "Das Europa der Bürger in einer Gemeinschaft ohne Binnengrenzen;" edited by Siegfried Magiera, Speyer, West Germany: Forschungsinstitut für Öffentliche Verwaltung bei der Hochschule für Verwaltungswissenschaten Speyer (Baden-Baden: Nomos Verlagsgesellschaft, 1990), pp. 213-228.

7. Alan Riding, "West Germany Postpones an Agreement on Open Borders With 4 Neighbors," The New York Times (15 December 1989), p. 8.

8. Everyone in the European Community is not anxious, however, to see the internal border controls disappear. Modane (France), a small town on the Italian border, owes its economic existence to the proximity of the border. Approximately 1,000 people have jobs directly tied to the border (border police, customs officials, freight forwarders) and it is feared that approximately 25 percent of the town's workforce (800) people would lose their job if the border were to disappear. See New York Times (September 11, 1989).

9. Cassis de Dijon, case 120/78 (1979), ECR 649; 3 CMLR 494 (1979).

10. J.-P. de Crayencour, The Professions in the European Community: Towards Freedom of Movement and Mutual Recognition of Qualifications (Luxembourg Ville: Office of Official Publications of the European Communities, 1982). See also Jean-Claude Seche, Freedom of Movement of Persons Within the Community (Luxembourg Ville: Office of Official Publications of the European Communities, 1989).

11. One example of this perception that the quality of training and education for certain professions within certain EC Member-States can be seen in relation to surgeons trained in Italy. The number of surgeons in training within Italy is such that questions have been raised concerning their level of competence. All too many of them do not have adequate opportunity for actual "hands on" training in the operating room; rather, they only observe what the senior surgeon is doing. This situation is seen as adequate training by the Italian medical profession but it is not seen as such in several other EC countries. See "European Workshop on the Harmonization of University Training of Surgeons in Europe," Council of Europe, Division of Higher Education and Research and Division of Health (Strasbourg: 10-11 December 1987). Document No. DECS/ESR (86) 31 rev. Or. Engl.: "Analysis of the Replies to the Questionnaire" (Strasbourg: 2 October 1987), 10pp.

12. For a full discussion of the free circulation of physicians within the European Community, see the following: Leon Hurwitz, The Free Circulation of Physicians Within the European Community (Aldershot, Hants., UK: Avebury-Gower, 1989). See also Leon Hurwitz, "Het vrye verkeer van geneesheren in de Europese Gemeenschap," Médisearch (Brussels), in press; "La Libre circulation des médecins à l'intérieur de la Communauté économique européenne: Le cas de la France," Revue Française des Affaires Sociales (Paris), XLII, 3 (July-September 1988), 15-25; "The Migrant Physician and European Integration," Cahiers de Sociologie et de Démographie Médicales (Paris), No. 3 (1989; and "The Role of National and Regional Interest Groups in the Implementation of IGO Decisions: The Medical Associations and the Free Circulation of Physicians Within the European Community," paper presented at the Roundtable on Intergovernmental Organizations, "Institutional Features and Management Tools in IGOs: A Need for Comparative Analysis," Werner J. Feld, Chair. International Studies Association Meeting, London, UK (29 March-1 April 1989), 32 ms. pp.

13. EC Council of Ministers Directives 75-361, 75-362, 75-363, 75-364, and 75-365 of 16 June 1975. Official Journal of the European Communities (30 June 1975).

14. Donald Dewey, "Playing Ball the European Way," Europe, No. 291 (November 1989), pp. 28-29.

15. Judgment of the Court in Case 8/74, Procureur du Roi v. Dessonville, ECR (1974), p. 852.

16. For centuries, Germany enforced its "purity law" for beer -- to be sold in Germany, beer could not contain any product other than grain and water. The French brought suit when the Federal Republic prohibited the sale in the Federal Republic of French produced beer that contained artificial ingredients. The German government argued that such a regulation was permitted under the "health" escape clause of Article 30; the Court of Justice applied the Cassis de Dijon principle and ruled that the Federal Republic had violated the Treaty.

17. There was a short-lived (1985-88) "pasta war" between Italy and the Federal Republic of Germany. A West German company attempted to export some egg noodles into Italy but ran afoul of Italian Regulation Number 580 of 1967 (the "pasta purity" law). This regulation declared that the only pasta that could be sold in Italy had to be made only from hard wheat and water. The German exporter brought suit and, in 1988, the European Court of Justice ruled that the Italian Regulation was an illegal restrain of trade and violated the EC's policy on the free movement of goods. International Herald Tribune (July 15, 1988).

18. Similar to its "beer purity" law, the Federal Republic also had a "meat purity" law: the law prohibited the sale of meat products containing ingredients such as milk, eggs, starches, and vegetable proteins. Several French and Belgian sausage exporters brought suit, arguing that the regulation was an inadmissible trade barrier. The Federal Republic based its defense on health grounds, arguing the law insured "that the population is provided with a sufficient amount of ... protein." The Week in Germany, German Information Center, New York (November 18, 1988). On February 2, 1989, the EC's Court of Justice ruled against the Federal Republic.

19. Cassis de Dijon, case 120/78 (1979), ECR, p. 649; 3 CMLR (1979), p. 494.

20. GB-INNO-BM v. Confédération du Commerce Luxembourgeois (CCL), case C-362/88 (March 7, 1990), Sixth Chamber.

21. As reported by Joe Carroll, "Dublin: Legal Minefields," Europe, No. 292 (December 1989), pp. 10-11.

22. These pending cases are identical to the American case Bigelow v. Virginia, 421 U.S. 809 (1975). Bigelow was convicted by a Virginia court for publishing an advertisement of how Virginia residents could obtain a legal abortion in New York (abortions -- as well as disseminating information about abortions -- was illegal in Virginia in 1975). The Supreme Court ruled that the relevant statute violated the First Amendment. The Court ruled that a state could not prevent the dissemination within the state of information about an activity that was legal in another state. The opinion concluded with the remark that

Virginia's interest in regulating what Virginians may hear or read about what goes on in other states or in shielding its citizens from information about activities outside its borders was not entitled to any weight.