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# A View of the Single Market: Trade in Services in EC '92

Terry Smith Labat\*

## I. INTRODUCTION

The Treaty of Rome<sup>1</sup> ("Treaty of Rome" or "Treaty") establishing the European Economic Community ("EC") envisions free circulation for trade in services among the Member States.<sup>2</sup> Unlike goods, capital and persons involved in international trade services, as a component of trade, have historically lacked a definition.<sup>3</sup> The Treaty of Rome also lacks a definition of services.

After establishing the means for providing free circulation of goods,<sup>4</sup> capital,<sup>5</sup> and persons,<sup>6</sup> the Treaty sets out the means for accomplishing such liberalization for services in articles fifty-nine through sixty-six. Those provisions address the cross-border provision of a service to the degree it is not covered as an element of a product (e.g., service contract for a good), movement of capital, or labor. Provision of a service through establishment is provided through measures regulating establishment in general.<sup>7</sup>

While articles fifty-nine through sixty-six set out the means for liberalizing all types of trade among the Member States for the formation of the EC, a single European market has not yet been completed. EC '92, the EC's program to achieve such a single market of its twelve Member States by 1992, is an important development not only for the EC, but also for U.S. business, including U.S. service industries. EC '92 is setting the parameters for and eliminating barriers to trade in services, whether through cross-border provision or by establishment, as well as through

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<sup>1</sup> Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter Treaty of Rome].

<sup>2</sup> *Id.* art. 59, at 40.

<sup>3</sup> In addition to merely lacking a definition, the exercise of providing one is often consciously abandoned in many for attempting to deal with trade in services, e.g. OECD and GATT Uruguay Round negotiations on services.

<sup>4</sup> Treaty of Rome, *supra* note 1, arts. 9-37, at 18-30.

<sup>5</sup> *Id.* arts. 67-73, at 42-44.

<sup>6</sup> *Id.* arts. 48-51 at 36-37.

<sup>7</sup> *Id.* arts. 48-51, at 36-37.

trade in goods. In addition, EC '92 will allow European companies to become more competitive in world markets due to opportunities of EC '92 for strengthening and expanding their structures, economies of scale, and operations. U.S. businessmen need to be aware of the opportunities and pitfalls EC '92 presents to them as market participants in the EC and as competitors of EC companies.

The Single European Act ("SEA")<sup>8</sup> set the legal foundation for achieving the goal of a single, integrated market. It builds on the Treaty of Rome in particular by streamlining procedures for adopting directives and regulations.<sup>9</sup> A program of such measures to achieve the goal was established in the 1985 Commission White Paper.<sup>10</sup> Currently, the EC has adopted many of those directives and regulations, but others remain under consideration.<sup>11</sup> The process of implementation and enforcement also remains largely untested at this time. Attempts to analyze the benefits and disadvantages of the measures must be tempered with those considerations in mind. In sum, 1992 is not an ultimate deadline or watershed, but a "frame of mind" and a program of action which does not end on December 31, 1992.

This Article will examine, from a U.S. point of view rather than a European one, several directives and regulations affecting trade in specific services. In most cases, particularly where a U.S. company is incorporated and has its principle place of business in a Member State, there are few distinctions between a U.S. and a European provider of services. The U.S. provider will then benefit from these liberalization efforts where it is informed of them and has entered the EC market.

First, this Article will address the "broadcast" directive,<sup>12</sup> which restricts in part the broadcasting of TV programs to those of European origin and therefore is one of the more controversial measures from the U.S. perspective.<sup>13</sup> Second, two tourism measures will be examined: 1) a code of conduct for computer reservation systems ("CRS"); and 2) consumer protection for purchasers of packaged tours. Third, this Article will discuss professional degrees and their mutual recognition in the Member States. Fourth, a directive involving the critical issue of cabotage in trucking will be addressed as its development offers a look at the

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<sup>8</sup> The Single European Act, June 29, 1987, 30 O.J. EUR. COMM. (No. L 169) 1 (1987); 19 BULL. EUR. COMM., at Supp. 2/86 (1986). The Act entered into force on July 7, 1987.

<sup>9</sup> *Id.* arts. 6-12, at 5-7.

<sup>10</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, COMPLETING THE INTERNAL MARKET: WHITE PAPER FROM THE COMMISSION TO THE EUROPEAN COUNCIL 19-20 (1985).

<sup>11</sup> Treaty of Rome, *supra* note 1, art. 58, at 40.

<sup>12</sup> Council Directive No. 89/552/EEC, Oct. 23, 1989, 32 O.J. EUR. COMM. (No. L 298) 23 (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) [hereinafter Broadcast Directive].

<sup>13</sup> Treaty of Rome, *supra* note 1, art. 58, at 40.

requirement for ownership based on nationality, fortunately deleted from the adopted directive. Fifth, the Article will address the life insurance directive. Finally, the Article will conclude with some thoughts on three legal issues raised by these measures which cut across several sectors.

## II. BROADCAST DIRECTIVE

The broadcast directive reserves a majority of transmission time for European works "where practicable and by appropriate means."<sup>14</sup> In determining this limitation, the directive excludes broadcast time for news, sports events, game shows, advertising, and teletext services. This goal is to be achieved progressively.<sup>15</sup> The Europeans base this quota system on the argument that such restrictions are necessary to protect and promote European and Member State culture.

In addition, under the term "[w]here practicable and by appropriate means," broadcasters must reserve at least 10% of a transmission time or at least 10% of programming budget for European works created by producers who are independent of broadcasters.<sup>16</sup> This quota is also based on the cultural argument. There must also be an adequate proportion of recent works presented, that is, productions not over five years old.

The directive defines "European works" as

1. works originating from Member States;
2. works originating from European third states party to the European Convention on Transfrontier Television of the Council of Europe (hereinafter *European Convention*); and
3. works originating from other European third countries.<sup>17</sup>

Works originating from Member States or from a European third states party to the European Convention are works made mainly with the authors and workers residing in one or more of those States, provided that they comply with one of the following conditions:

1. they are made by one or more producers established in one or more of those States;
2. production of the work is supervised and actually controlled by one or more producers established in one or more of those States; or
3. the contribution of co-producers of those States to the total co-production cost is preponderant, and the co-production is not controlled by one or more producers established outside those States.<sup>18</sup>

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<sup>14</sup> Broadcast Directive, *supra* note 12, art. 4(1), at 26.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* art. 5, at 27.

<sup>17</sup> *Id.* art. 6(1), at 27.

<sup>18</sup> *Id.* art. 6(2), at 27.

Works originating from third European countries not a party to the European Convention are works made exclusively, or in co-production with producers established in one or more Member States, by producers established in one or more European third countries with which the Community will conclude agreements in accordance with the procedures of the Treaty of Rome, if those works are mainly made with authors and workers residing in one or more European States.<sup>19</sup>

Where European works are made mainly with authors and workers residing in one or more Member States, those works are to be considered European works to the extent that the Community co-producers contributed to the total production costs.<sup>20</sup> These rules do not apply to local TV broadcasts which are not part of a national network.

The directive also sets up various rules on advertising and sponsorship. These include the prohibition of ads for cigarettes and other tobacco products as well as for medicinal products which are available only by prescription. There are also rules applicable to advertising to children and for alcoholic beverages.

This directive is to be implemented by the Member States by October 3, 1991.<sup>21</sup>

The United States is opposed to the provision for European works which would decrease market opportunities for U.S. programs. The United States has begun consultations with the EC in the General Agreement on Tariffs and Trade ("GATT") under Article XXII<sup>22</sup> regarding this.

### III. COMPUTER RESERVATION SYSTEM

The purpose of the Computer Reservation System ("CRS") directive<sup>23</sup> is to create a code of conduct applicable to computerized reservation systems and distribution facilities to ensure that CRSs are used in a non-discriminatory and transparent manner and to discourage the misuse of such systems.<sup>24</sup>

The regulation applies to CRSs offered for use and/or used in the

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<sup>19</sup> *Id.* art. 6(3), at 27.

<sup>20</sup> *Id.* art. 6(4), at 27.

<sup>21</sup> *Id.* art. 25(1), at 30.

<sup>22</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

<sup>23</sup> Council Regulation (EEC) No. 2299/89 July 24, 1989, 32 O.J. Eur. Comm. (No. L 220) 1 (1989) (On a Code of Conduct For Computerized Reservation Systems). A CRS is a computer system offered by a vendor to a subscriber, most often a travel agent, that contains information about availability of transportation, hotel rooms, and other tourism services as well as schedules, fares, and applicable rules. The system also provides subscribers with the ability to make reservations and to issue tickets.

<sup>24</sup> *Id.*

EC for the distribution and sale of air transport products regardless of the nationality of the system vendor, the source of the information used, or the location of the relevant central data processing unit or the air transport service.<sup>25</sup> This measure is binding in its entirety on all Member States. Under the regulation, all air carriers must be given the opportunity to participate when a system vendor offers distribution facilities within its capacity and technical limits. This would allow air carriers to contribute their schedules, availability, fares, and related services to the system.

Fees charged by the system vendors must be non-discriminatory and reasonably related to the cost of the service provided.<sup>26</sup> Service enhancement and distribution facilities of a CRS also must be made available on a non-discriminatory basis; subscribers could not be required to sign exclusive contracts that would prevent them from using other systems.

In addition, the system vendor would have to make sure that the data was displayed accurately and that it was comprehensive and transparent.<sup>27</sup> Linking use of a specific CRS with the receipt of a commission or other incentive for the sale of tickets of a participating carrier would also be prohibited.

Even more importantly, system vendors would have to provide a clear principal display without discrimination or bias, particularly with respect to the order in which the information is presented.<sup>28</sup> The criteria used for ranking information is to be related to carrier identity and must be applied in a non-discriminatory manner to all participating carriers.<sup>29</sup>

The Commission's procedures for processing complaints regarding violations of the Code are also set forth in the regulation.<sup>30</sup> Complaints may be submitted by individuals or Member States and relevant documents regarding complaints will be forwarded to the appropriate Member State. The Commission may undertake investigations and gather related information.<sup>31</sup> The Commission may impose fines between 1,000 and 50,000 ECUs for the supply of incorrect or incomplete information.<sup>32</sup> Fines may also be imposed on system vendors, subscribers, and others for infringements of this regulation up to a maximum of 10% of the annual turnover for the relevant activity.<sup>33</sup> The European Court of Justice has unlimited jurisdiction to review penalty decisions made by the

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<sup>25</sup> *Id.* art. 1, at 1.

<sup>26</sup> *Id.* art. 10(1), at 4.

<sup>27</sup> *Id.* art. 4(1), at 3.

<sup>28</sup> *Id.* art. 5(1), at 3.

<sup>29</sup> *Id.* art. 5 (2), at 3.

<sup>30</sup> *Id.* art. 11, at 4.

<sup>31</sup> *Id.* art. 13, at 4.

<sup>32</sup> *Id.* art. 16(1), at 5.

<sup>33</sup> *Id.* art. 16(2), at 5.

Commission and can cancel, reduce, or increase the fines.<sup>34</sup>

#### IV. CONSUMER PROTECTION FOR PURCHASERS OF PACKAGE TRAVEL

This directive<sup>35</sup> would approximate, but not harmonize, the laws, regulations, and administrative provisions of the Member States relating to package holidays and package tours, known as package travel.<sup>36</sup> Organizers and retailers of these packages would have certain responsibilities and potential liability.

This directive would require the Member States to adapt their national laws, regulations, and administrative provisions to provide certain consumer protection to persons buying package travel.<sup>37</sup> The purpose of such approximation is threefold: 1) to help achieve a common market in services, 2) to help stimulate growth in the tourism industry; and 3) to provide improved predictability and more significant uniform consumer protection than is currently available.<sup>38</sup>

The provisions of the directive would apply to any EC or U.S. owned company as long as it was established and operating in the Community.<sup>39</sup> There is no express requirement that the travel be solely or even partially in the Community. U.S. companies should benefit from a predicted increase in consumer or traveler confidence in package travel.

This measure is addressed to the Member States which must adopt provisions internally that will establish a common floor of consumer protection.<sup>40</sup> The laws, regulations, or administrative provisions of Member States will apply to organizers and retailers of any pre-arranged combination of transport, accommodations, or other services and will benefit the person who agrees to take such a package.

Some of the more important requirements organizers and retailers of Member States must follow include:

1. All advertising or descriptive material used to market a tourism package must be legible, understandable, and accurate. Brochures must include payment terms and schedule and must state that the information contained is binding on the organizer or retailer.
2. The contract for a package must contain in writing all essential terms, such as travel destination, type of transportation and ac-

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<sup>34</sup> *Id.* art. 17, at 5.

<sup>35</sup> Council Directive No. 90/314/EEC, June 13, 1990, 33 O.J. EUR. COMM. (No. L 158) 59 (1990) (On Package Travel, Package Holidays and Package Tours) [hereinafter Package Travel Directive].

<sup>36</sup> *Id.* art. 1, at 60.

<sup>37</sup> *Id.* preamble, at 59-60.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; *Id.* art. 2(2,3), at 60.

<sup>40</sup> *Id.* arts. 8-10, at 13.

- commodations, and price and payment schedule. (The Annex to the proposal lists terms which can be considered essential.)
3. The contract must be transferable to another consumer where the original purchaser cannot travel due to circumstances generally beyond his control.
  4. The consumer may withdraw from the contract without penalty where the essential terms are altered in more than a minor fashion.
  5. A consumer must be protected against price increases; in particular, prices cannot be revised except where the contract expressly provides for such and solely to allow for changes in the cost of transportation, dues, and taxes.
  6. The organizer must make alternative arrangements without cost to the consumer where services contracted for cannot be provided.<sup>41</sup>

The Member States must have implementing measures in place to ensure that services contracted for are provided and the organizer or retailer has the burden of proof to show liability does not lie against the organizer or retailer.<sup>42</sup> Compensation for injury other than personal injury can be limited under the contract.<sup>43</sup>

Perhaps most importantly, the directive in article 7 requires Member States to make certain that the retailer and organizer provide sufficient evidence of ability to refund money in case of insolvency and to compensate for losses of the consumer due to breach of contract. A prior proposal for this directive required that the organizer and retailer be insured against liability and that each Member State have a guarantee fund to benefit consumers for claims not paid from other sources.<sup>44</sup>

The current directive deleted a provision of the earlier proposal that required Member States to ensure that there be a workable system for investigating and resolving consumer complaints.<sup>45</sup>

The directive does not stipulate that any distinction is to be made between an organizer or retailer established in the EC or one established outside the EC but operating within its boundaries. Thus, there does not appear to be any discrimination between companies from the United States or the EC.

Since this directive will not harmonize rules in this service industry, Member States are free to adopt or retain rules which are more stringent than the proposed directive.<sup>46</sup> For this reason, it is advisable for a U.S. organizer or retailer of package tours contracting for services within the

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<sup>41</sup> *Id.* arts. 3, 4, at 60-62.

<sup>42</sup> *Id.* art. 5(1-2), at 62.

<sup>43</sup> *Id.* art. 5(2), at 62.

<sup>44</sup> COM (88), Apr. 12, 1988, 31 O.J. EUR. COMM. (No. C 96) 5 (1988) (Proposal for Council Directive On Package Travel Including Holidays and Package Tours).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* art. 8, at 63.

Community to be aware of all relevant laws within the appropriate Member States.

## V. PROFESSIONAL SERVICES

Articles 3(c) and 57(1) of the Treaty of Rome set out the objective and means of abolishing obstacles to the freedom of movement for persons and services. It is under this authority that the Council adopted a directive to establish a general system for the mutual recognition of higher-education diplomas, or their equivalents, awarded for the completion of professional education and training of at least three years.<sup>47</sup>

This system of mutual recognition will allow nationals of Member States holding professional diplomas from universities of Member States to provide their professional services in a Member State other than the one in which they received the diploma. A professional will be able to practice his profession in a Member State other than his home Member State on the same basis as nationals of the host Member State whether he is self-employed or employed by someone.

The Council, through a non-binding recommendation, encouraged the Member States to allow nationals of Member States holding such diplomas from non-EC countries to pursue their professions within the Community by recognizing such diplomas and formal qualifications.<sup>48</sup> Only EC nationals wishing to practice such professions would benefit from these measures. U.S. companies operating in the Community would, however, have a broader pool of professional talent from which to hire.

The system of mutual recognition applies to educational and training requirements in regulated professions, such as law, accounting, and engineering. The directive does not apply to professions already covered by other directives or proposals relating to regulated professions such as dentistry,<sup>49</sup> pharmacy,<sup>50</sup> and the practice of medicine by doctors.<sup>51</sup>

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<sup>47</sup> Council Directive No. 89/48/EEC, Dec. 21, 1988, 32 O.J. EUR. COMM. (No. L 19) 16 (1989) (On a General System for the Recognition of Higher Education Diplomas Awarded on the Completion of Professional Education and Training of at Least Three Years Duration) [hereinafter Higher-education Directive]. The Greek delegation has reserved on this proposed date of implementation.

<sup>48</sup> Council Recommendation No. 89/49/EEC, Dec. 21, 1988, 32 O.J. EUR. COMM. (No. L 19) 24 (1989) (Concerning Nationals of Member States Who Hold a Diploma Conferred in a Third State) [hereinafter Higher-education Recommendation].

<sup>49</sup> Council Directive No. 78/686/EEC, Jul. 25, 1978, 21 O.J. EUR. COMM. (No. L 233) 1 (1978) (Concerning the Mutual Recognition of Diplomas, Certificates and Other Evidence of the Formal Qualifications of Practitioners of Dentistry, Including Measures to Facilitate the Effective Exercise of the Right of Establishment and Freedom to Provide Services).

<sup>50</sup> Council Directive No. 85/432/EEC, Sept. 16, 1985, 28 O.J. EUR. COMM. (No. L 253) 34 (1985) (Concerning the Coordination of Provisions Laid Down By Law, Regulation or Administrative Action in Respect of Certain Activities in the Field of Pharmacy).

The directive sets out rules and procedures that Member States are to follow in granting recognition. First, the competent authority in a Member State must accept

- (a) a diploma which another Member State requires for a profession and has awarded,
- (b) 2 years of full-time practice during the previous ten years in a Member State that does not regulate the profession, and formal qualifications such as successful completion of a three year, post-secondary course at a university and further professional training, or
- (c) formal qualifications awarded by a Member State that views them as equivalent and has notified the Commission and other Member States of such.<sup>52</sup>

Second, where education is not of an equivalent level, a Member State may require evidence of professional experience of either the completion of an adaptation period or the taking of an aptitude test.<sup>53</sup> In professions, such as the practice of law, where precise knowledge of national law is required and is essential to the practice of the profession, the Member State, not the applicant, decides whether the adaptation period or the aptitude test is appropriate.

Third, the Member State may require the applicant to show proof of good character as well as a certificate of physical or mental health. Documents proving such from the applicant's Member State are to be accepted.<sup>54</sup> Fourth, professional and academic titles of the host Member State and the applicant's Member State may be used by the applicant.<sup>55</sup>

As a means of ensuring effective implementation of the directive, the directive sets out two coordinating functions. First, each Member State is to appoint a person to coordinate its competent authorities which review and act on applications for recognition of diplomas and experience in order to promote uniform application of the directive among the various professions. Second, a coordinating group is to be established under the EC Commission in order to facilitate the implementation of the di-

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<sup>51</sup> Council Directive No. 75/363/EEC, June 16, 1975, 18 O.J. EUR. COMM. (No. L 167) 14 (1975) (Concerning the Coordination of Provisions Laid Down By Law, Regulation or Administrative Action in Respect of Certain Activities By Doctors); amended by Council Directive No. 82/76/EEC, Jan. 26, 1982, 25 O.J. EUR. COMM. (No. L 43) 21 (1982) (Amending Directive 75/362/EEC Concerning the Mutual Recognition of Diplomas, Certificates and Other Evidence of Formal Qualifications in Medicine, Including Measures to Facilitate Effective Exercise of the Right of Establishment and Freedom to Provide Services and Directive 75/363/EEC Concerning the Coordination of Provisions Laid down by the Law, Regulation or Administrative Action in Respect of Activities of Doctors.

<sup>52</sup> Higher-education Directive, *supra* note 47, art. 3, at 19.

<sup>53</sup> *Id.* art. 4(1), at 19.

<sup>54</sup> *Id.* art. 6, at 20.

<sup>55</sup> *Id.* art. 7(1), at 20.

rective and to collect information on its application.<sup>56</sup>

The directive is to be implemented in the Member States by January 4, 1991.<sup>57</sup>

## VI. LIFE INSURANCE

The purpose of this proposed directive is to establish rules for the cross-border provision of life insurance, while taking into account the need to protect consumers.<sup>58</sup> The directive also requires reciprocal treatment by third countries of EC insurers in order for third country insurers to have the freedom in the EC to supply such services.<sup>59</sup> It does not propose to establish a single license to insurers which would authorize an insurer to offer insurance in all Member States after being licensed in one Member State.<sup>60</sup>

Several Member States currently prohibit individuals from purchasing life insurance outside their own country. This proposed directive would allow life insurance to be sold across borders when the contract is initiated with the insurer in one Member State by the policy holder in another Member State.<sup>61</sup>

This directive would apply only to individual contracts, not to contracts related to business activity.<sup>62</sup> It would not cover group insurance or certain pension plans, nor would it apply to non-EC based insurers doing business in the Community through an agency or branch.<sup>63</sup>

A person entering a contract on his own initiative has at least thirty days in which to cancel the contract.<sup>64</sup> He may also purchase the contract from an insurer of another Member State even though that insurer may have an establishment in the Member State in which the policy holder resides. A contract concluded across borders is subject only to

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<sup>56</sup> *Id.* art. 9(2), at 21.

<sup>57</sup> *Id.* art. 12, at 21.

<sup>58</sup> Council Notice No. 89/C38/08, Dec. 23, 1989, 32 O.J. EUR. COMM (No. C 38) 7 (1989) (Proposal for a Second Council Directive on the Coordination of Laws, Regulations and Administrative Provisions Relating to Direct Life Assurance, Laying Down Provisions to Facilitate the Effective Exercise of Freedom to Provide Services and Amending Directive 79/267/EEC) [hereinafter Proposed Life Insurance Directive].

<sup>59</sup> *Id.* art. 9, at 11.

<sup>60</sup> A single license is reportedly to be proposed in the near future. See Common Mkt. Rep., No. 646, Dec. 14, 1989, at 2. The Second Banking Directive does provide for a single license for banks; it is anticipated such system will help achieve a single market in banking.

<sup>61</sup> This directive would differ from the First Council Directive dealing with life insurance, No. 79/267/EEC, which provided for the right of establishment in one Member State for an undertaking incorporated in another Member State for an undertaking incorporated in another Member State. The first directive did not deal with freedom to supply life insurance on a cross-border basis.

<sup>62</sup> Proposed Life Insurance Directive, *supra* note 58, art. 10(3), at 11.

<sup>63</sup> *Id.* art. 10, at 11.

<sup>64</sup> *Id.* art. 15, at 13.

indirect taxes on premiums applicable to the Member State of the commitment.<sup>65</sup>

Member States may continue to limit cross-border contracts for purposes of protecting the consumer.<sup>66</sup> For example, such commitments are covered by the supervisory law of the Member State of commitment, as opposed to the Member State of establishment, concerning such matters as authorization and technical reserves. In general, the law governing the contract will be the law of the Member State of commitment.

Where an insurer from a third country wishes to acquire an insurance subsidiary within the Community, that foreign insurer must notify the concerned Member State authorities who shall notify other Member States and the EC Commission.<sup>67</sup> The Commission would then examine whether insurance undertakings of the Community enjoy reciprocal treatment in that third country, especially as regards the establishment of subsidiaries in that third country.<sup>68</sup> As the directive is currently proposed, the Commission may suspend the transaction after consulting with the supervisory authorities of the Member States if the Commission finds that reciprocity does not exist.<sup>69</sup> This type of reciprocity has been opposed by the United States. The United States prefers that the principle of national treatment be applied.<sup>70</sup>

## VII. TRUCKING

This regulation provides cabotage rights to trucking interests within

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<sup>65</sup> *Id.* art. 24, at 15.

<sup>66</sup> *Id.* art. 25, at 15.

<sup>67</sup> *Id.* art. 9, at 11.

<sup>68</sup> *Id.* art. 9(5), at 11.

<sup>69</sup> *Id.* art. 9(6), at 11.

<sup>70</sup> Language similar to that of the Second Banking Directive may be added to this proposed life insurance directive which would help to lessen U.S. opposition even though language in the Second Banking Directive is not an unqualified national treatment standard. The relevant language in Article 9, para. 4 of the Second Banking Directive states in part that "[w]henver it appears to the Commission, . . . that Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the [sic] conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation." Council Directive No. 89/646/EEC, Dec. 30, 1989, 32 O.J. EUR. COMM. (No. L 386) 5 (1989) (Second Banking Directive on the Laws, Regulations and Administrative Provisions Relating to the Taking-Up and Pursuing of the Business of Credit Institutions and Amending Directive 77/780/EEC, Dec. 15, 1989). The paragraph further provides that the competent authorities of the Member States must limit or suspend their decisions regarding requests for authorization to do business and for acquiring holdings by parent companies in the third country in question. These limitations or suspensions may apply up to three months unless the Council, by a qualified majority, determines that measures shall continue. These limitations or suspensions are not to be applied to the establishment of subsidiaries or to acquisitions by credit institutions duly authorized in the Community.

the EC.<sup>71</sup> Trucking companies established under applicable laws of one Member State and authorized to operate international road haulage services may obtain authorizations to offer their haulage services between two or more points in another Member State.<sup>72</sup> The regulation becomes effective on July 1, 1990 and establishes a temporary quota system for issuing such licenses until December 31, 1992.<sup>73</sup>

Truckers can obtain a license under this temporary quota system which would allow them to offer their services freely in another Member State subject to that country's quota.<sup>74</sup> The license would not be transferrable to another trucker.<sup>75</sup> A trucker can provide these services without having a registered office or other establishment in the other Member State.<sup>76</sup>

The laws, regulations, and administrative provisions of the host Member State concerning rates, contractual terms, weights and dimensions for vehicles, requirements for carriage of certain goods (such as hazardous materials), and value-added taxes must be applied to non-resident truckers on a national treatment basis.<sup>77</sup> The purpose is to prevent any discrimination on the basis of nationality or place of establishment.

In the event there is a serious disturbance of the internal transport market in a particular area of a Member State due to increased cabotage rights, the Member State can ask the Commission permission to adopt safeguard measures, which can include temporary exclusion of that affected area from the requirements of this regulation.<sup>78</sup>

The Member States are to assist each other in the administration of this regulation.<sup>79</sup> Where there are infringements of its provisions, such as falsification of an authorization, penalties may be assessed by the Member State of establishment.<sup>80</sup>

Prior to the adoption of this regulation, the Council had considered a proposal that would have allowed cabotage in any other Member State

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<sup>71</sup> Council Regulation (EEC) No.4059/89, Dec. 21, 1989, 32 O.J. EUR. COMM. (No. L 390) 3 (1989) (Laying Down the Conditions Under Which Non-Resident Carriers May Operate National Road Haulage Services Within a Member State [hereinafter Cabotage Directive].

<sup>72</sup> *Id.* art. 1, at 3.

<sup>73</sup> *Id.* art. 9, at 5. Article 9 of the regulation requires the Commission to submit to the Council by December 31, 1991 a proposal for a regulation to establish a permanent cabotage system which would enter into force on January 1, 1993.

<sup>74</sup> *Id.* art. 2, at 3-4. Article 2 of the regulation sets out quota allocations by Member States. These levels would be increased annually beginning July 1, 1991.

<sup>75</sup> *Id.* art. 3(4), at 4.

<sup>76</sup> *Id.* art. 1, at 3.

<sup>77</sup> *Id.* art. 5(2), at 5.

<sup>78</sup> *Id.* art. 2(5), at 4.

<sup>79</sup> *Id.* art. 6(1), at 5.

<sup>80</sup> *Id.* art. 6(2), at 5.

as long as there was a genuine link, or real link, to that other State.<sup>81</sup> The proposal would have required that the transport company be continuously and effectively managed by nationals of Member States or that a majority of its voting shares or rights be held by nationals of Member States.<sup>82</sup> This requirement was problematic for the United States, as it would not have permitted U.S. trucking operations cabotage within a Member State where they were not based. For these reasons, the United States opposed that requirement.

### VIII. CONCLUSION

The single market is, of course, intended to facilitate trade among the businesses of the Member States. But what effects will the single market have on the markets of third countries, such as the United States? Requirements of reciprocal treatment, provisions requiring nationality of a Member State in order for benefits to apply, and transparent rules are three issues of importance to U.S. businesses because of their impact on commercial opportunities and business planning.

The proposed life insurance directive currently contains a reciprocity requirement which conditions the entry of third country insurers on the Commission determining that EC insurers enjoy reciprocal treatment in that third country.<sup>83</sup> Although the insurance market in the United States is open, generally subject only to requirements imposed for prudential reasons, entry to the markets is controlled by the individual states rather than at the federal level. If the Commission does provide for a single license for insurers, where an insurer need only establish in the market of one Member State and can then do business in any other Member State, the argument might be made that reciprocal treatment is not available for EC insurers. Even if the Community amends the proposed life insurance directive with the language of the Second Banking Directive,<sup>84</sup> the possibility of restricted entry remains. As long as the standard of national treatment is conditioned, and particularly on the availability of identical competitive opportunities for EC insurers and effective market access, sectoral reciprocity can still exist. It will depend on the interpretation and application of the language of an adopted directive.

The services analogy to a restriction based on origin or a local con-

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<sup>81</sup> COM(85) 611 final, Dec. 5, 1985, 28 O.J. EUR. COMM (No. C 349) 26 (1985) (Proposal for a Council Regulation Laying Down the Conditions Under Which Non-resident Carriers May Operate National Road Haulage Services Within a Member State).

<sup>82</sup> *Id.* at 26, art. 2(1).

<sup>83</sup> Proposed Life Insurance Directive, *supra* note 58, art. 9, at 11.

<sup>84</sup> COM(87) 715 final, Feb. 23, 1988, 31 O.J. EUR. COMM. (No. C 84) 1 (1988) (Proposal For a Second Council 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).

stant requirement is the requirement that the service be provided from a specific country or countries, or that the service provider be of a certain nationality. Requirements such as these, which can affect U.S. competitive opportunities, appear in the broadcast directive and the mutual recognition directive;<sup>85</sup> they have appeared as the "genuine link" clause in the cabotage regulation.<sup>86</sup>

The quota for transmission of television programs which are European works does place a quantitative limit on the available time EC broadcasters can devote to non-European works. Whether this limit is merely a suggested level or a legal requirement may be immaterial as it is likely to be politically compelling, and therefore, have the practical effect of limiting the market opportunities for non-European works.

The mutual recognition directive, which establishes a system to recognize professional degrees awarded by universities of the individual Member States, only benefits nationals of the Member States.<sup>87</sup> The accompanying recommendation suggests a further liberalization by advocating recognition of the degrees obtained by nationals of Member States in third countries.<sup>88</sup> While this liberalization process is a major step forward and the system is not more onerous for nationals of third countries than before the directive, the benefits accrue only to professionals who are nationals of Member States, thus liberalizing the professional services markets for EC professionals but not for third country professionals.

Since the recommendation encourages recognition of degrees and credentials awarded by third country institutions to nationals of the Member States, the next logical step would be to recognize nationals of third countries holding the same degrees and credentials. This further step toward liberalization of professional services markets is more likely to be explored in a bilateral or multilateral forum, such as the GATT, particularly if a services agreement emerges from the Uruguay Round, rather than from the formation of the single market.

The deletion of the "genuine link" requirement in the cabotage regulation is a welcomed step for U.S. trucking operators. More importantly for the Community, a broader pool of service providers should provide heightened competition. The presence of the requirement had seemed incompatible with the goal of improving transportation links and reducing costs in the movement of goods among the Member States. While the quota system is in effect, U.S. trucking operators will necessarily be interested in the systems used in the Member States to award the allocated authorizations.

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<sup>85</sup> See Broadcast Directive *supra* note 12, art. 2, at 26;

<sup>86</sup> See Cabotage Directive *supra* note 71, art. 1, at 3.

<sup>87</sup> Higher-education Directive, *supra* note 47, art. 1, at 17-18.

<sup>88</sup> Higher-education Recommendation *supra* note 48, at 24.

Transparency is generally a welcomed step in liberalizing trade, whether domestically or internationally. The establishment of specific rules by the Community, through a code of conduct for computer reservation systems or the expressly stated rules to protect consumers of package tours, should help U.S. providers of these services. These rules will provide predictability. As the individual Member States implement the provisions of the package tour directive in their domestic legal systems, attention should be focused on the degrees of transparency in implementation of the obligations for retailers and organizers of package travel and the benefits for consumers.

EC '92 has, in the past, been tentatively referred to as "Fortress Europe," mainly because of the fear in the United States that the Community would erect barriers to trade of third countries in order to ensure that the integrated market would succeed. Although it lingers, this fear seems to have abated, while the remaining proposals await action and the program results are being implemented by the Member States.

The fear has lessened in part due to the reaction of the Community to complaints hurled its way, sometimes through paranoia and sometimes with reason. The fear has also lessened as U.S. companies become more familiar with the contents and implications, both good and bad, of the measures and how to make use of their benefits and avoid, where possible, the disadvantages.

These are encouraging signs in an important trading relationship which will only grow more complicated as trade increases and as relations with the East European countries and a reunified Germany develop.

