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Christine Juliet Sohar

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The European Union's Legal Integration: A Case Study of Living up to the Denver Summit of Eight

Keywords

Economics, European Union, International Law: History, Trade Regulation, Environmental Law

LEONARD V.B. SUTTON AWARD PAPER

THE EUROPEAN UNION'S LEGAL INTEGRATION: A CASE STUDY OF LIVING UP TO THE DENVER SUMMIT OF EIGHT

CHRISTINE JULIET SOHAR*

I. INTRODUCTION

In Denver, Colorado the Twenty-Third Annual Summit of the Eight convened and hosted issues of global importance in 1997.¹ The seven leading industrial democracies plus Russia discussed international, regional, and domestic steps to promote economic, political, and global prosperity and integration and environmental reforms to foster a healthy global ecosystem.² The national delegates determined:

[t]he process of globalization [is] a major factor underlying the growth of world prosperity. . . . The increasing openness and interdependence of our economies means that problems in one country can spill over more easily to affect the rest. We must cooperate to promote global growth and prosperity. . . .³ This is a pivotal year for efforts to promote sustainable development and protect the environment. We are determined to address the environmental challenges that will affect the quality of life of future generations. . . .⁴ We must all take advantage of the possibilities for growth to address. . . economic insecurity [and] sound economic policies and structural reforms necessary to allow markets to function properly. . . .⁵

The above statement begs the question, what has the world done to

* Joint Degree J.D. and M.B.A. Candidate, August 2000, University of Denver College of Law; B.A. , 1996 honors and *cum laude* Miami University. I thank my family and friends for their constant love, support, and encouragement. I especially thank my little sister, Brenda and my Oma for inspiring me to follow my dreams.

1. Final Communiqué of the Denver Summit of the Eight, June 23, 1997 (including the United States, England, Germany, France, Italy, Spain, Japan, and Russia) [hereinafter Final Communiqué].

2. *Id.* at Introduction.

3. *Id.* at Economic and Social Issues ¶ 3-4.

4. *Id.* at Global Issues para. 11 & Environment ¶ 12.

5. *Id.* at Economic and Social Issues ¶ 5.

implement the ideas of the 1997 Denver Summit of the Eight? Has any part of the world demonstrated that the idealistic language of the eighteen-page final communiqué is much more than a mere wish-list for the world? Perhaps one of the best examples of effectuating the ideals of the final communiqué of the Denver Summit of Eight is the legal development within the European Union. The European Union continues to modify its laws to ensure international, regional, and domestic integration and prosperity. In particular, within the civil legal system, the European Union has found a way to use laws to harmonize multinational legislation in order to reach the ideal ends. The European Union's legal reformation in the area of competition law, environmental regulations, and monetary union poignantly demonstrate the successful and persistent steps the European Union has taken toward the Denver Summit's objective of promoting global harmonization. Through these three areas of legal reform, the European Union has reached both a broader and deeper legal harmony within the European Union, the region, and the entire world. The European Union's broad interpretation of EU competition and environmental laws exemplify the flexibility of existing laws, which uniformly apply to the more diverse sovereign Member States. This broad interpretation of EU laws is especially important as additional Central and Eastern European nations transform their laws in harmony with EU laws in hopes of joining the Union. In comparison, however, the deepening of the European Union's legal integration demonstrates a different means to accomplish the Denver Summit's ends. The EU deepens this legal integration through such plans as the recent monetary union of eligible states, where the new laws are bringing the current EU members even closer.

It is in light of these two legal movements in the EU, the broadening and deepening of integrated laws, that the European Union epitomizes the successful reality of the Denver Summit of Eight ideals within its own region of the world.

II. BROADENING LEGAL INTEGRATION IN THE EU

The *Diego Cali & Figli Srl v. Servizi Econogici Porto di Genova SpA* decision, delivered in March, 1997, demonstrates the expansive new legal concept for the European Union (EU) was well underway even before the meeting of the Denver Summit.⁶ In this decision, the European Court of Justice (ECJ) broadened the flexibility of Union laws by declaring that competition rules do not apply to the private companies monitoring and executing the anti-pollution surveillance schemes hired

6. Case 343/95, *Diego Cali & Figli Srl v. Servizi Econogici Porto di Genova SpA*, 1997 E.C.R. I-1547.

by public authorities.⁷ In general, the court held that *Servici Economici Porto di Genova's* (SEPG's) environmental protections, which are public interest activities, do not present an economic impact warranting application of competition laws.⁸

Traditionally, the ECJ narrowly considered competition and environmental laws as distinctly separate areas of law. The *Cali* case, however, uniquely and broadly integrates both competition law, ensuring a free market economy, and environmental law, preventing marine pollution.⁹ The ECJ analyzed whether a private limited company, established and empowered by a national port authority, violated the competition rules of the Treaty of Rome of the European Communities (EC Treaty) by levying charges on behalf of Italy.¹⁰ The Court questioned SEPG's private business right to enforce national and regional anti-pollution standards.¹¹ However, pursuant to EU competition laws, Articles 86 and 90 of the EC Treaty, the ECJ ruled that SEPG did not abuse their dominant market power.¹² The ECJ further held that when a private company receives its authority from the state government, the environmental protection of a public interest does not violate EU competition laws.¹³ Therefore, the preventative anti-pollution services performed by SEPG in the oil port of Genova, as authorized by the Italian government, were not abusive anti-competitive acts according to EU competition law; and Cali, who violated the environmental standards, was required to pay the port fees.¹⁴

The result of the *Cali* decision exemplifies the broadening flexibility of EU legislation. The decision suggests that pollution prevention is not a strictly private industrial or commercial activity, even if monitored and enforced by a private business. SEPG was not simply a private business seeking a profit.¹⁵ Therefore, the private anti-pollution surveillance and prevention with the proper State or EU authorization is loosely interpreted as an essential function of the State.¹⁶ This dual

7. *Competition Rules Do Not Cover Pollution Surveillance Firms*, THE REUTER EUROPEAN COMMUNITY REPORT, Mar. 18, 1997, at 1, available in LEXIS, Current News Library, European Union File [hereinafter *Competition Rules*].

8. *EU: Anti-Pollution Monitoring in the Port of Genoa is a General Interest Service not Subject to Competition Rules*, THE REUTER EUR. COMMUNITY REP., Mar. 19, 1997, at 1, available in LEXIS, Current News Library, European Union File.

9. *Court Judgement on Anti-Pollution Services Payments*, THE REUTER EUR. COMMUNITY REP., Apr. 15, 1997, at 1, available in LEXIS, Current News Library, European Union File [hereinafter *Court Judgment*].

10. *Diego Cali*, 1997 E.C.R. ¶ 25.

11. *Id.* ¶¶ 19, 22.

12. *Id.* ¶ 25.

13. *Id.* ¶ 23; see also Case C-364/92 SAT Fluggesellschaft v. Europcontrol, 1994 E.C.R. I-43, ¶ 30.

14. *Id.* ¶ 25.

15. *Competition Rules*, *supra* note 7, at 1.

16. *Court Judgment*, *supra* note 9, at 2.

approach of classifying private and public activities when enforcing environmental standards according to competition law provides a general, definitional framework for applying the EU laws. It also allows Member States to place a high importance on public, environmental interests, even if the services are achieved through unfair competition by private businesses.¹⁷ In addition and of even greater importance, the broad interpretation of EU law by the ECJ allows more sovereign nations within Europe to enthusiastically, efficiently, and uniformly apply the flexible EU legislation. In contrast, the broad interpretation of EU law does present difficulties and uncertainties when specifically determining how or what EU regional law applies to private business activities for both the current members of the EU and aspiring future members.¹⁸

In recognition of this evolving problem and potentially confusing legal approach of the *Cali* case, the first part of this article analyzes the development and reasons for the legal evolution of integrating competition and environmental EU law as an example of broadening international legal integration. The expansive legal integration is examined in three distinct sections: EU Competition and Environmental Laws, Integration of EU Environmental and Competition Law, and Impact of Legal Integration on the EU Expansion.

Sections A and B of Part II explain the histories of EU competition and environmental laws, respectively. They present a brief foundation and developmental explanation of both EU laws. Historically, for example, when the European Community (EC) originated in 1957, under the EC Treaty of Rome, Europe's main legal concerns focused upon economic coordination and free market competition.¹⁹ Thus, the EC Treaty contains specific laws, such as Articles 85, 86, and 90, which ensure fair economic competition.²⁰ In comparison, however, the EC did not specifically regulate the environment until the early 1970s.²¹ In fact, the

17. *Competition Rules*, *supra* note 7, at 1.

18. *Diego Cali & Figli Srl v. Servizi Ecologici Porto Di Genova SpA (SEPG)*, in ENVTL L. REP. 31, 31-35 (Environmental Law Institute ed., 1998).

19. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, Mar. 25, 1957, art. 85(1), 298 U.N.T.S. 3 [hereinafter EC TREATY]. The EC Treaty, amended several times appears in its most current form as The Treaty Establishing the European Union, Feb. 7, 1992, 1 C.M.L.R. 573 (1992) [hereinafter MAASTRICHT TREATY]. Because the 1992 Maastricht Treaty is a revision of the original 1957 EC Treaty, it contains essentially all of the previous EC Treaty articles regarding competition law. Therefore, in the Competition Law section the EC and Maastricht Treaty will be used interchangeably. However, the Environmental provisions and Monetary Union provisions were first legally introduced to the EU through the Maastricht Treaty. Therefore, the two sections of this article will differentiate between the two distinct Treaties when appropriate.

20. *Id.* arts. 85, 86, and 90.

21. Marcel Brus, *Balancing National and European Competence in Environmental Law*, 9 CONN. J. INT'L L. 633, 634 (1994).

original EC Treaty never even mentioned the word "environment."²² Rather, EU environmental law evolved more slowly through several conventions, programs, directives, and eventually resulted in a revision of the EC Treaty, including Articles 100a and 130r-t.²³

Part II, Section C focuses on the current status of coordinating environmental and competition law. This section presents in detail the choice of law issues that challenge the environmental businesses in the EU when attempting to apply the proper environmental law. For instance, current environmental law applied by businesses integrates international, regional, and national regulations based on governmental authority.²⁴ This is especially true in the environmental area at issue in the *Cali* case, marine pollution prevention. However, as private companies continue to acquire the responsibility of enforcing government standards, they must simultaneously balance the natural, capitalistic objective of earning a competitive profit. Due to this conflicting balance of interests, the defining line of public and private activities as a legal basis becomes less distinct and more ambiguously integrated.²⁵

Finally, the unique issue presented by the *Cali* case of integrating EU competition and environmental laws affects not only the current Member States of the EU,²⁶ but also future members, and/or current associate members of the EU.²⁷ In order for the Central and Eastern European countries to earn membership to the EU, they must first harmonize their legal systems with the EU standards.²⁸ For this reason, Part II, Section D of this article discusses the effect of integrating competition and environmental laws on the prospect of eastward EU expansion.

The four Sections of Part II of this article regarding the *Cali* case present an opportunity to better understand the ramifications of the broadening EU laws and the relevant factors for determining the specific effects of integrating environmental and competition laws.

A. *European Union Competition and Environmental Law*

Economic integration and the creation of a common market established the goals of forming the European Economic Community in

22. See EC TREATY, *supra* note 19, art. 85(1).

23. Brus, *supra* note 21, at 634-71.

24. ALEXANDER KISS & DINAH SHELTON, MANUAL OF EUROPEAN ENVIRONMENTAL LAW 342 (1997).

25. Herbert Ungerer, *EC Competition Law in the Telecommunications, Media, and Information Technology Sectors*, 19 FORDHAM INT'L L.J. 1111, 1112 (1996).

26. John F. Casalino, *Shaping Environmental Law and Policy of Central and Eastern Europe: The European Union's Critical Role*, 14 TEMP. ENVTL. L. & TECH. J. 227 (1995).

27. *Id.*

28. *Id.* at 234-55.

1957.²⁹ The original economic integration incorporated four essential freedoms; the free movement of goods, persons, services, and capital between the Member States of the Community.³⁰ The EC Treaty created the institution and legal provisions to ensure free and fair competition in the common market by requiring the harmonization of Member States' laws.³¹ The Community, now known as the European Union (EU) continues the momentum of an ever expanding union as it coordinates not only transnational trade and commerce, but also as the EU harmonizes competition and environmental policies.³² Therefore, the importance of the EU legal development exists not only because the economic strength of the common market, but also because of the extensive regional integration of policies and laws extends well beyond the basics of market economics.³³

1. Development of EU Competition Law

As mentioned above, initially the EC Treaty established the basic legal framework for free, fair, and equal economic competition within the common market.³⁴ The Community's mainstream, neoclassical view of competition is founded on the economic notion that the equilibrium will encourage the optimal allocation of resources.³⁵ In ideal economic terms, this means that if people demanding a resource, such as a good or service, can freely pay a price equal to the fair market value, the resource supply will be used for its best value and most efficient purpose.³⁶ However, the EC Treaty also recognized the imperfections of free economic competition such as monopoly power, externalizes, and public goods.³⁷ Firms that possess an unequal and dominant degree of market power have the ability to unfairly influence the market price and distort the socially optimal allocation of resources.³⁸ Not surprisingly, the Community set forth provisions that monitor the Member

29. Rudiger Dohms, *The Development of a Competitive Internal Energy Market in the European Community*, 9 CONN. J. INT'L L. 805 (1994).

30. Dr. Klause Sommerlad & Peter Scherer, *The Provision of Utility Services in a Unified Europe*, 4 U. MIAMI Y. B. INT'L L. 73, 74 (1995).

31. See Dohms, *supra* note 29, at 805.

32. Alexander Black, *European Law and Public Utility Open Access*, 10 FLA. J. INT'L L. 117, 119 (1995).

33. Todd R. Overton, *Substantive Distinctions Between United States Antitrust Law and the Competition Policy of the European Community*, 13 HOUS. J. INT'L L. 315, 317 (1991).

34. See Black, *supra* note 32, at 119.

35. M.J. Arts & N. Lee, *Competition Policy, in THE ECONOMICS OF THE EUROPEAN UNION: POLICY AND ANALYSIS* 119, 123 (1994).

36. *Id.* at 120.

37. See EC TREATY, *supra* note 19, arts. 85, 86.

38. David Young & Stan Metcalfe, *Competition Policy, in THE ECONOMICS OF THE EUROPEAN UNION*, 119-38 (1994).

States' anti-competition behaviors.³⁹ The primary provisions of the EC Treaty that preserve fair competition are Articles 85, 86, and 90.⁴⁰ In general, Article 85 deals with restrictive agreements creating anti-competitive behavior; Article 86 deals with the abuse of dominant market power which effectively prevents competition; and finally, Article 90 deals with exceptions that allow monopoly conduct for efficient public enterprises.⁴¹

a. Article 85 of the EC Treaty

Article 85 focuses specifically on the prohibition of anti-competitive cooperation resulting from agreements or concerted practices between independent enterprises.⁴² The substantive test of anti-competitive activity from Article 85(1) is "the prevention, restriction, or distortion of competition within the common market."⁴³ The primary application of the article is concerned with the behavior and the coordination of commercial procedures, rather than the structural changes in the market place.⁴⁴ For example, a business agreement by a dominant corporation to purchase or privatize one of its less threatening competitors, suppliers, or customers, which would increase the privatized entity's market power, may violate Article 85 of the EC Treaty. The violation depends upon the "object or effect" of the agreement strengthening the entity's market power.⁴⁵ Namely, if the purchase agreement creates a "two-way" flow of information that generates advantages for the two entities of the agreement, while disadvantaging the non-integrated competition, the agreement is prohibited anti-competitive behavior pursuant Article 85(1).⁴⁶

On the other hand, the EU Commission may grant "negative clearance" in accordance with Article 85(3), which allows an exemption to the agreement's facial violation of Article 85(1).⁴⁷ For example, the EU applied negative clearance exceptions in the following two business mergers because each agreement provided superior consumer products at lower prices.⁴⁸ The EU allowed the anti-competitive merger of a German manufacturing firm, Hummel and its Belgium distributing

39. See Arts & Lee, *supra* note 35, at 119.

40. *Id.* See also, EC Treaty, *supra* note 19, arts. 85, 86, and 90.

41. PATIRZIO BIANCHI, INDUSTRIAL POLICIES AND ECONOMIC INTEGRATION 91-100 (1998).

42. Mario Siragusa, *Privatization and EC Competition Law*, 19 FORDHAM INT'L L. J. 999, 1027 (1996).

43. EC TREATY, *supra* note 19, art. 85(1).

44. See Siragusa, *supra* note 42, at 1044.

45. See BIANCHI, *supra* note 41, at 95-97.

46. Siragusa, *supra* note 42, at 1045.

47. *Id.* at 1045, 1060.

48. *Id.*

firm, Isbeque in 1965.⁴⁹ Again in 1988, the EU permitted a merger between AEI and its supplier, Reyroll Parsons.⁵⁰

b. Article 86 of the EC Treaty

Like Article 85, Article 86 specifically prohibits abusive conduct by dominant enterprises, such as direct, unilateral exploitation of market power that causes a substantial reduction of competition.⁵¹ Market dominance is not prohibited by Article 86 *per se*. Rather, Article 86 prohibits conduct that strengthens unequal market control by reducing efficient competition.⁵² In contrast with Article 85, however, Article 86 focuses more narrowly on the behavior of the entity and not on the concerted agreement forming the monopoly.⁵³ Furthermore, the application of Article 86 depends again, on the "object or effects" doctrine by "taking into account the nature of the reciprocal undertakings entered into and the competitive position of the various contracting parties on the market or markets in which they operated."⁵⁴ Article 86 does not prohibit *ex anti* the merger agreement between firms even if it is evident that monopoly power will result from the behavior. Rather, Article 86 frequently establishes a loophole for an Article 85 violation by, again, only enforcing anticompetition sanctions for exploitative economic behaviors by dominant market powers *ex post*.⁵⁵

Despite the same "object or effect" doctrine as Article 85, the EU Commission's application of Article 86 provides a much stricter enforcement of regulation against anti-competitive behavior. For example, the judgment in *Philip Morris Holland BV v. Commission of the European Communities* indicated that the acquisition of a minority interest by a dominant competitor that "results in effective control of the other company or at least in some influence on its commercial policy" may violate Article 86 as an abuse of a dominant position.⁵⁶ Later in

49. See BIANCHI, *supra* note 41, at 97.

50. *Id.*

51. See EC TREATY, *supra* note 19, art. 86.

52. See Case T-78/89, *Societa Italiana Vetro*, 1992 E.C.R. II-14033 ¶ 360; see also Case 6/72, *Europemballage and Continental Can v. Commission*, 1973 E.C.R. 245.

53. See BIANCHI, *supra* note 41, at 1048.

54. See Case 85/76, *Hoffmann-La Roche v. Commission*, 1979 E.C.R. 550 ¶ 116.

55. See Case 43/88, *Ahmed Saeed Flugreisen & Silver Line Reiseb Degreesuro v. Zentrale Zu Bek Degreesampfung Unlauteren Wettbewerb*, 1989 E.C.R. 803 ¶ 37. The Commission applied Article 86 of the EC Treaty and excused the behavior of the undertakings based on the oligopoly market exception, even as it found concerted action contrary to Article 85. *Id.*

56. See Case 730/79, *Philip Morris Holland BV v. Commission of the European Community*, 1980 E.C.R. 2671, 2 C.M.L.R. 321 (1981) ¶ 65. The European Court declined the application of Articles 85 and 86 to this acquisition because the transaction at issue did not enable Philip Morris to control or influence Rothmans' conduct nor did it grant the entities concerted or coordinated activities. *Id.*

1992, the Commission applied the *Philip Morris* doctrine to the *Gillette* case, in which it ruled Article 86 applied to a passive investment made by Gillette because the new entity earned new company rights and held a dominant position in the EU market.⁵⁷ The Commission simply determined the Gillette behavior weakened competition in the market and created new barriers to potential entry and therefore amounted to an abuse of dominant position within the EU.⁵⁸

In light of the EU Commission's evolving application of Article 85 and 86 of the EC Treaty, the following generalizations of EU competition law indicate when that law will be applied to regulate competitive behavior. First, the agreement or behavior must aim to acquire influence over an entity to syndicate a competitive, normally vertical relationship.⁵⁹ Second, the relationship must be likely to result in effective control over the target market, or at least significant commercial influence.⁶⁰ Finally, the arrangement should not merely constitute a passive investment conveying no rights or authoritative influence over the market power.⁶¹

c. Article 90 of the EC Treaty

In addition to Articles 85 and 86, which define EU competition law, Article 90 of the EC Treaty grants Member States the liberty to protect certain enterprises that provide goods and services for public consumers.⁶² As mentioned above, because the EU continues to develop environmental laws to serve and protect the general public, competition and environmental laws continue to merge in case law.⁶³

Article 90 establishes an exception to EU competition law by allowing Member States to develop monopolies or oligopolies.⁶⁴ The exclusive rights are conditioned on the necessity to preserve a general, public economic interest and must be entrusted to the State under Article 90(2) as established by the 1993 *Re Corbeau* judgment.⁶⁵ However,

57. Commission Decision No. 93/252/EEC, 1993 O.J. (L 116) 21 [hereinafter *Gillette*].

58. See Siragusa, *supra* note 42, at 1031.

59. See YOUNG & METCALFE, *supra* note 38, at 138. The EU Commission recognizes both horizontal, meaning two competitors in the same production position, i.e. manufacturer and manufacturer, as well as vertical cooperative relationships, meaning supplier and manufacturer. The EU case law is, however, much more prevalent for vertical anti-competition. *Id.*

60. *Id.*

61. *Id.* See also Siragusa, *supra* note 42, at 1035.

62. In correlation with Article 90, Article 222 further allows Member States to freely develop a sovereign system of property ownership, which may include state enterprises.

63. See, *Diego Cali*, 1997 E.C.R. ¶ 16.

64. See Dohms, *supra* note 29, at 814; see also Dana L. Romaniuk, *Regulating Public Monopolies in Furtherance of the EEC Free Competition Goal: Article 90 and the Two-Step Approach*, 69 CHI. KENT L. REV. 1025, 1026 (1994).

65. Case 320/91, *Re Carbeau*, 1993 ECR I-2533; see also Dohms, *supra* note 29, at

pursuant to 90(1), public enterprises may not grant exclusive rights that unnecessarily violate EU competition regulations.⁶⁶ Although Article 90 is commonly applied to public entities, it is neutral as to the ownership of the business and only distinguishes between public and private enterprises on a functional level.⁶⁷ This means the purpose of Article 90 is not to simply protect State-granted exclusive rights or authorized monopolies. Rather, it ensures that certain services of general economic interest for public consumers are protected from competition.⁶⁸ For example, one of the most often and closely examined applications of Article 90 is the public energy sector, whereby the neoclassical economic equilibrium is superseded by the efficiency of ensuring universal services.⁶⁹ The ECJ acknowledged this perspective of EU Competition laws in the 1994 *Almelo v. Energiebedrijf Ijsselmij* judgment.⁷⁰ In the *Almelo* case, the ECJ concluded that despite the Dutch electricity sector's violation of Article 85 and 86 by exploiting a dominant position, Article 90(2) allowed the restriction of competition because it was necessary to the particular mission of providing national electricity.⁷¹

In overview, the enforcement of Article 90 concerns three objectives. First, 90(1) legalizes state monopolies.⁷² Second, 90(2) focuses on the derivative application of Article 90 in relation to services in the public sector.⁷³ Third, the competence of the EU to enact decisions and directives is the concern of Article 90(3).⁷⁴

One of the first legal interpretations of Article 90's objectives occurred in the *Giuseppe Sacchi* case.⁷⁵ In *Sacchi*, the ECJ allowed Italy to grant special and exclusive rights to a television broadcasting enterprise because it provided public services, yet it did not specifically regard the market behavior as incompatible with Article 86 of the EC Treaty.⁷⁶ Furthermore, the ECJ expanded the *Sacchi* ruling in the *ERT*

821.

66. Romaniuk, *supra* note 64, at 1004.

67. See Case 41/90, *Hoefner v. Macrotron*, 1991 E.C.R. I-1979, 2016 ¶ 21 (citing previous decision where ECJ ruled that "in the context of competition law. . . the concept of an undertaking encompasses every entity engaged in an economic activity regardless of the legal status of the entity and the way in which it is financed.")

68. See Dohms, *supra* note 29, at 821.

69. For additional analysis of the EU Competition Law and the Energy sector see, Alexander J. Black, *European Law and Public Utility Open Access*, 10 FLA. J. INT'L L. 117 (1995). See also Sommerlad & Scherer, *supra* note 30.

70. Case 393/92, *Almelo v. Energiebedrijf Ijsselmij*, 1994 E.R.C. I-1477.

71. See Dohms, *supra* note 29, at 824-827.

72. WOLF SAUTER, *COMPETITION LAW AND INDUSTRIAL POLICY IN THE EU* 148 (1997).

73. *Id.*

74. *Id.*

75. Case 155/73, *Giuseppe Sacchi* (Preliminary ruling requested by the Tribunale di Biella), 1974 E.R.C. 409, 2 C.M.L.R. 177 (1974).

76. *Id.*

v. Dimotiki case⁷⁷ by prohibiting exclusive monopoly rights in situations where the behavior directly violated Article 86 of the EC Treaty.

The legal interpretation of upholding Article 86 relative to Article 90 is not, however, without legal contradiction. Although Article 86 trumps Article 90 in the majority of EU cases, occasionally, the ECJ rules in favor of permitting monopolistic dominant positions, even if the behavior itself infringes on the provisions of Article 86, as exemplified in the *Hoefner v. Macrotron* and *Regie des Telegraphes et des Telephones v. SA GB INNO-BM* cases.⁷⁸ Usually, the ECJ grants justification for preserving exclusive, monopoly rights when the enterprise protects a public interest and fulfills the proportionality test.⁷⁹ This two-pronged requirement is defined by Article 90(2) of the EC Treaty, providing that undertakings entrusted with the operation of services of general economic interest may be exempted from the application of competition rules contained in the Treaty. These rules apply in so far as is necessary to restrict competition, or even to exclude all competition, from other economic operators in order to ensure the performance of the particular tasks assigned to them.⁸⁰

The third issue concerning interpretation of Article 90 is the EU's right to enact directives and decisions under Article 90(3).⁸¹ This legislative power of the Commission has been contested because the directives are enforceable against the Member States without approval by the Council or European Parliament. This structure disrupts the EU institutional balance of power.⁸² Despite contradictory, unilateral Commission power, Article 90(3) has been further approved by the ECJ in the *Terminal Directive* and *Spain, Belgium & Italy v. E.C. Commission* cases.⁸³ The *Terminal Directive* decision defined the Commission's power to issue directives under Article 90(3) regarding legal monopolies, as well as the power to suppress them.⁸⁴ Furthermore, the cases reiterated the Commission's right to make general directives which specify the application of Article 90(3) and suggested the article's application could be enacted for the postal service, gas, electricity, insurance, and transport markets.⁸⁵ In summary, the EU regulates business competition behavior primarily through the provisions of Articles 85, 86,

77. Case 260/89, *ERT v. Dimotiki*, 1991 E.C.R. I-2925, 2962 ¶ 37.

78. See *Macrotron*, *supra* note 67, at ¶ 21; see also Case 18/88, *Regie des Telegraphes et des Telephones v. SA GB INNO-BM*, 1991 E.R.C. I-5951.

79. See EC TREATY, *supra* note 19, art. 90(2).

80. *Id.*

81. See *Siragusa*, *supra* note 42, at 1079.

82. See SAUTER, *supra* note 72, at 154-55.

83. Case 202/88, *French Republic v. Commission*, 1991 E.R.C. I-1223; *Joined Cases 271, 281 & 289/90, Spain, Belgium and Italy v. Commission*, 1992 E.C.R. I-5833.

84. See *French Republic*, 1991 E.R.C. 1233 at n. 162.

85. See *Joined Cases 271, 281 & 289/90, Spain, Belgium & Italy v. E.C. Commission* 1992 E.C.R. 5834.

and 90. Although the EC Treaty includes additional articles and regulations relating to competition, these three articles provide the most fundamental understanding of EU competition law.⁸⁶

B. Development of EU Environmental Law

As Europe integrates economically through trade and various business transactions, the competition laws are not the only broadening legal developments that affect transnational boundaries within the European Union.⁸⁷ The environmental policies of nations, regions, and the world as a whole are assuming integrated dimensions as well.⁸⁸ Several catastrophes in Europe exemplify the scope of the environmental crisis and the international need to coordinate laws to protect the environment. For example, in 1976, Seveson, Italy experienced a chemical explosion that forced food restrictions and evacuations in contaminated areas of Italy and Switzerland.⁸⁹ In 1986, Switzerland fought a chemical fire which resulted in the release of 824 tons of insecticide, seventy-one tons of herbicide, thirty-nine tons of fungicide, four tons of solvents, and twelve tons of organic compounds containing mercury that contaminated the Rhine river and devastated France, Germany, the Netherlands, and Switzerland.⁹⁰ Therefore, as environmental issues know no national boundaries, it is essential to better understand the expansive application of environmental law in the EU as a whole. The following analysis will briefly explain the primary environmental legal development within the Community.

1. EC Treaty and Community Legislation

As mentioned before, the original version of EC Treaty, which formed the original European Common Market, neglected to address the environment. The EC Treaty of 1957 neither expressly referred to environmental concerns nor even included the words "environment" or "pollution."⁹¹ However, in the 1960's when environmental issues began to earn importance in the world, the EC led the legal development by broadly defining its jurisdiction over regional environmental issues through Articles 36, 100, and 235.⁹² Specifically, Article 36 provides Member States the authority to limit imports and exports in order to

86. Jan H. Jans, *State Aid and Article 92 and 93 of the EC Treaty: Does the Polluter Really Pay*, 75 EUR. ENVTL L. REV. 108, 108-115 (1995).

87. Susan Polizzotto & Patricia L. LaTulippe, *The European Community in 1992: An Integrated Approach to Economy and Ecology*, 1990 B.Y.U. L. REV. 1759 (1990).

88. *Id.*

89. *Id.* at 1759-60.

90. *Id.*

91. *See generally* EC TREATY, *supra* note 19.

92. *Id.* arts. 36, 100, and 235.

protect the health and life of persons, animals, and plants.⁹³ Article 100 enables the Community to harmonize Member States' laws through various directives that uphold the functioning of the common market.⁹⁴ Article 235 grants the European Council the authority to take "appropriate measures" to "attain, in the course of the operation of the common market, one of the objectives of the Community" when the "[t]reaty has not provided the necessary powers" to do so.⁹⁵

Because the original EC Treaty provisions presented only generalized authority for the EC to regulate the environment, the individual Member States retained the primary responsibility for enacting environmental policy.⁹⁶ Thus, in addition to the EC Treaty provisions, the EC began to issue Community-wide environmental standards in the early 1970s, that harmonized Member States' responsibilities through three types of legislation: regulations, decisions, and directives. In the EC, and currently in the EU, a regulation assumes immediate effect in the Member States automatically, without national government approval. A decision also binds the Member States automatically, but usually addresses specific, non-common legislative or legal issues. In comparison, a directive instructs the Member States to adopt or amend particular legislation in conformity with the EU directive within a particular time period.⁹⁷ Due to the greater respect for the Member State's sovereignty, the EC mainly created environmental law in the 1970s through directives. For instance, the EC drafted directives regarding regulations against air pollution caused by motor vehicles,⁹⁸ biodegradability of detergents,⁹⁹ and the sulfur content of certain fuel oils.¹⁰⁰

Early in the development of EC environmental law, the desire to unify the economies in Europe through efficient harmonization of environmental standards was not the only catalyst for environmental policy. Additionally, and more sobering than the economic incentives, the occurrence of the devastating 1967 "Torrey Canyon" and 1978 "Amoco Cadiz" disasters also encouraged the EC to coordinate environmental laws.¹⁰¹ Both of these tanker accidents resulted in massive oil spills, which polluted long stretches of the beach and reduced biodiversity by killing many plants and animals of the regional ecosystem.¹⁰² These events forced Europe to realize that something more needed to be done

93. *Id.* art. 36.

94. *Id.* art. 100.

95. *Id.* art. 235.

96. See Polizzotto & LaTulippe, *supra* note 87, at 1763.

97. *Id.*

98. See, e.g., Council Directive 70/220, 1970 O.J. (L 76) 1.

99. See, e.g., Council Directive 73/404, 1973 O.J. (L 347) 51.

100. See, e.g., Council Directive 75/716, 1975 O.J. (L 307) 22.

101. Brus, *supra* note 21, at 634-671; see also KISS & SHELTON, *supra* note 24, at 342; see generally, EC TREATY, *supra* note 19.

102. Brus, *supra* note 21, at 636.

in order to coordinate the environmental policy of the Community.¹⁰³

2. Environmental Action Programmes I-V

In 1972, the Member States met in Paris to establish an environmental program that did not sacrifice economic harmonization. Rather, the Paris Summit Conference created the opportunity to diminish variances in living standards and improve the quality of life through EC environmental standards.¹⁰⁴ The First Environmental Action Programme (EAP) resulted from the Paris Summit in the form of a "Declaration of the Council and the Representatives of the Member States."¹⁰⁵

Four years later, the EC created the Second Environmental Action Programme of 1977 that focused on the reduction of regional pollution and rational, efficient resource management.¹⁰⁶ In 1983, the Third Environmental Action Programme added the prevention policies and declared that social and economic EC policies should not exacerbate environmental problems.¹⁰⁷ The Fourth Environmental Action Programme focused on the adoption of high protection and quality standards in 1987.¹⁰⁸ Most importantly, it coordinated environmental policy with all other EC policies.¹⁰⁹ Finally, the Fifth Environmental Action Programme covers 1992-2000.¹¹⁰ The fifth policy aims to sustain the status quo of the environment while maintaining economic and social development in the EU.¹¹¹

Although the EAP's established clear and novel institutional environmental standards, they are only declarations of harmonized policy. The EAP's neither provide an automatically binding legal basis for EU legislation nor attribute any legal power to the Community under Arti-

103. *Id.*

104. *Id.*

105. See Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States, 1973-1977 O.J. SPEC. ED. (C 112) 1. The legal effect of the EC declaration is similar to a regulation, in that the Member States' governments must approve and accept the official decision of the Community. In contrast, however, the declaration does not have to be accepted as a whole, rather the national governments may only conditionally adopt the EC legislation. *Id.* at 3 n.8.

106. Council Resolution on the Continuation and Implementation of a European Community Policy and Action Programme on the Environment, 1977 O.J. (C 139) 1.

107. See Council Resolution on the Continuation and Implementation of a European Community Policy and Action Programme on the Environment 1982-1986 SPEC. ED. O.J. (C 46) 1.

108. See *id.*

109. See Council Resolution on the Continuation and Implementation of a European Community Policy and Action Programme on the Environment, 1987-1992 SPEC. ED. O.J. (C 328) 1.

110. See Resolution of the Council and the Representatives of the Governments of the Member States, 1993 O.J. (C 138) 1.

111. *Id.*

cle 189 of the EC Treaty.¹¹² Again, the Community could only rely on the general EC Treaty provisions of Article 100 and 235 as the preliminary legal basis of the instituted environmental policy.¹¹³

Nonetheless, the first judicial recognition of the environmental policy occurred in 1985, when the ECJ acknowledged the environmental policy as an important Community objective.¹¹⁴ A year later in *Commission v. Denmark*, the Court ruled again, that EC environmental policy is an essential mission of the Community, based upon Articles 100 and 235.¹¹⁵ In this landmark case, the Commission changed Denmark's environmental restrictions because they unduly violated EC free trade provisions.¹¹⁶ The ECJ held that a Member State could enact and enforce economic restrictions based upon "necessary" national environmental standards only if they do not excessively restrict competing countries or infringe upon free trade.¹¹⁷ Therefore, to the extent Denmark's environmental regulations unduly restricted trade and did not exercise the least drastic enforcement measures, the Court did not uphold the national environmental policy.¹¹⁸ Nevertheless, the principle of environmental protection as a mandatory requirement of legal and economic consideration was finally recognized in the EC.¹¹⁹

3. Single European Act and Maastricht Treaty

Eventually, in 1987, the EC amended the original EC Treaty with the Single European Act (SEA), which dealt specifically with the environment.¹²⁰ The SEA introduced Title VII, explicitly granting the EC legal power to legislate environmental policy.¹²¹ The EC added Article 100a, enabling harmonization of environmental legislation.¹²² Additionally, new Articles 130r, 130s, and 130t presented the objectives of the EC environmental policy, standardized the procedure for implementing environmental policy, and provided the opportunity to create more strict national environmental measures.¹²³ Furthermore, the newly added provisions provided that environmental damage should be prevented at the source and reiterated the First EAP's principle, the pol-

112. See Brus, *supra* note 21, at 637.

113. See KISS & SHELTON, *supra* note 24, at 243-46.

114. Case 240/83, Procureur de la Republique v. Association de defense des bruleurs d'huiles usages (ADBHU), 1985 E.C.R. 5331 ¶ 549.

115. Case 302/86, Commission v. Denmark (*In re Disposable Beer Cans*), 1988 E.C.R. 4607 at 4630 [hereinafter *Disposable Beer Cans*].

116. *Id.*

117. See Polizzotto & LaTulippe, *supra* note 87, at 1773.

118. See *Disposable Beer Cans*, 1988 E.C.R. at 4627-30.

119. See Polizzotto & LaTulippe, *supra* note 87, at 1773-74.

120. Single European Act, 1987 O.J. (L 169) 1.

121. *Id.* at 3.

122. *Id.* at 4.

123. *Id.* at 5-6.

luter is responsible to pay damage costs.¹²⁴ Even though most of the previous environmental legislation was adopted through Articles 100 and 235, the new provisions allowed the EC to streamline and unionize the standards in order to more realistically and efficiently complete the EC goal of a Single Market by 1992.¹²⁵ The anticipated economic growth associated with the establishment of the Internal Market introduced fear of diverse environmental standards that would inhibit free and fair EC trade.¹²⁶

The Treaty on the European Union, also known as the Maastricht Treaty, enumerated a number of new environmental policies that became effective November 1, 1993.¹²⁷ The Maastricht Treaty retained the new SEA provisions, specifically Articles 100a, 130r, 130s, and 130t.¹²⁸ Additionally, one of the primary principles inserted in EU environmental law was the precautionary principle of Article 130r(2).¹²⁹ The principle idea originated in Germany and has grown in popularity within the EU because it grants Member States the ability to adopt national preventative environmental standards before harm occurs.¹³⁰ Furthermore, due to the ambiguous requirements of the precautionary environmental policy within the Maastricht Treaty, the EU adopted specific definitions of environmental law through agreements such as the United Nations Convention on the Protection and Use of Transboundary Watercourses and International Lakes that defines the precautionary principle as:

Action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the grounds that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand.¹³¹

The Maastricht Treaty further integrated the obligation of harmonizing environmental law with other EU legislation. For example, the revised Article 130r(2) states that "environmental protection requirements must be integrated into the definition and implementation of

124. See Polizzotto & LaTulippe, *supra* note 87, at 1766.

125. See Brus, *supra* note 21, at 640.

126. Isabelle Martin, *The Limitations of a Uniform Environmental Policy in the European Union*, 9 CONN. J. INT'L L. 675 (1994).

127. See generally MAASTRICHT TREATY, *supra* note 19.

128. See Brus, *supra* note 21, at 652-655 (citing a detailed analysis of the procedure, objectives, and principle provisions of the reiterated SEA Articles 100a, 130r, 130s, and 130t).

129. See MAASTRICHT TREATY, *supra* note 19, art. 130r(2).

130. B. VERHOEVE ET AL., INSTITUTE OF EUROPEAN ENVIRONMENTAL POLICY, MAASTRICHT AND THE ENVIRONMENT 12, 15 (1992).

131. Declaration on Environment and Development, Principle 15, U.N. Doc. A/CONF. 151/PC/W9.11/L.26 (Vol. I) (1992).

other Community policies.”¹³² Thus, the EU established that the new priority is avoiding environmental nuisances with preventative measures, while still upholding other EU economic policies, rather than responding to environmental damages that clash with other EU policies.¹³³

Another primary principle integrated in the Maastricht Treaty is the polluter pays principle. Although the EC previously established this legal responsibility in the First EAP, the EU ensured the principle as automatically binding EU law through the Maastricht Treaty by imposing the burden of the pollution costs on the emitter of the pollution, rather than on the general public.¹³⁴

In 1996, a number of EU studies and assessments evaluated the implementation of regional environmental regulations. The European Commission adopted a communication that proposed minimum regional standards for environmental inspections by Member States entitled “Implementing Community Environmental Law.”¹³⁵ Furthermore, Directive 96/61/EC created the Integrated Pollution Prevention and Control (IPPC) plan, which established a committee structure for Member States, the industry, and the European Commission together to define the pollution control standards.¹³⁶

The Member States are still challenged with the difficulty of interpreting community directives in accordance with national laws. For example, Finland struggled with this in 1996. Pursuant to Directive 67/548/EEC, as a new EU member, Finland was required to transpose all successive EC environmental regulations in accordance with national requirements. Recognizing this is a time consuming and difficult process for the new Member States, the Commission expanded the national freedom for implementing EU measures.¹³⁷ The EU also proposed uniform implementation and enforcement assistance through Implementation & Enforcement of EU Environmental Law (IMPEL).¹³⁸ IMPEL has become increasingly influential in the past few years, especially as the EU expands eastward with new members.¹³⁹

132. See Martin, *supra* note 126, at 690.

133. *Id.*

134. *Id.* at 650.

135. Fourteenth Annual Report on Monitoring the Application of Community law (1996), EUR. COM., 14th Sess., Doc. No. C 332 (May 29, 1997) 65.

136. *Id.* at 67.

137. *Id.* at 70 (citing the EU Directive 90/313/EEC as the legislative basis for the expanding national liberty with environmental regulations.)

138. *Id.* at 70-71.

139. *Id.*

C. *Integration of EU Competition and Environmental Law*

1. Choosing the Appropriate Legal Basis

After understanding the basic development of EU environmental law, it becomes clear that numerous legal approaches are possible in a particular anti-pollution situation.¹⁴⁰ Therefore, it is not always clear which legal basis is most appropriate, especially in situations of preventative protection of the marine environment such as at issue in the *Cali* case. However it is conceivable to organize the EU environmental law applicable to the *Cali* case into three levels of law: international, regional, and national.¹⁴¹

a. International EU Environmental Law

In the area of preventative marine environment protection, international law plays a very large part, primarily because many marine waters lie outside national jurisdiction.¹⁴² For instance, the territorial waters may be one nationality, the shipping vessel traveling the waters may be from another country, while the captain and crew may be a third nationality. In such an internationally diverse situation, numerous countries must coordinate their laws in order to achieve the ultimate goal of protecting the marine environment.¹⁴³

For this reason, the international community organized international principles governing the subject of international law of the sea in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹⁴⁴ The United Nations Environmental Program also elaborated international marine protection through a system of regulating "regional seas."¹⁴⁵ The Mediterranean Sea program established protocols against pollution by oil and other hazardous substances in 1976.¹⁴⁶ The Convention to protect the Black Sea against pollution caused by harmful dumping came into force in Bucharest on April 21, 1992.¹⁴⁷

Even more specific to the *Cali* case is the subject of shipping oil, which is addressed as international law monitoring vessel-source pollution pursuant to Articles 194(3)(b), 211, 217 through 221 of UNCLOS.¹⁴⁸ These provisions regulate the specifics of transport vessels

140. See Martin, *supra* note 126, at 695-97.

141. See KISS & SHELTON, *supra* note 24, at 470.

142. *Id.*

143. See VERHOEVE, *supra* note 130, at 15.

144. See KISS & SHELTON, *supra* note 24, at 471.

145. *Id.*

146. Mediterranean Sea Program, 1976 O.J. (L 129).

147. KISS & SHELTON, *supra* note 24, at 342.

148. *Id.* at 343.

and adopt norms to prevent, reduce, and control pollution. Essentially, the primary enforcement responsibilities for protecting the marine environment are allocated according to the 360 kilometer exclusive economic zone.¹⁴⁹

Another important body of international law preventing marine pollution is the Marine Pollution global conference (MARPOL) adopted on November 2, 1973.¹⁵⁰ Similar to the UNCLOS articles, MARPOL defined state obligations to regulate behaviors which may pollute the marine environment.

b. Regional EU Environmental Law

Continuing the standards set forth by MARPOL, the 1974 Baltic Sea Convention and revised Helsinki Convention of 1992 further refined the international marine regulations according to stricter European, regional specifications and control.¹⁵¹

Additionally, the EU marine environment law consists of approximately twenty directives.¹⁵² The most important is Directive 76/464 of May 4, 1976, which relates to harmful substances discharged into the waters of the Community.¹⁵³ Few laws relate specifically to the territorial marine waters and the precautionary protection of the marine environment as does Directive 79/923 on the quality of water.¹⁵⁴ Also, to preempt environmental damage from marine pollution, Regulation 2978/94 institutes community standards for the carrying allowances of the regional oil tankers.¹⁵⁵

c. National EU Environmental Law

Because the EU consists of sovereign countries, the enforcement responsibility of environmental standards is frequently deferred to the Member States.¹⁵⁶ Therefore, the national laws are much like regional or Community law. As the EU continues to integrate economically, socially, environmentally, and legally, the variances decrease between EU and Member State laws.¹⁵⁷ In fact, little national legislation exclusively deals with marine environment protection. Instead, most countries simply organize legislation which regulates the water-quality stan-

149. *Id.* at 344.

150. *Id.* at 344-45.

151. *Id.* at 345.

152. See Martin, *supra* note 126, at 658-66.

153. Council Directive 76/464, 1976 O.J. (112) 1.

154. Council Directive 78/176, 1984 O.J. (54) 1.

155. Council Regulation 2978/94, 1994 O.J. (319) 1.

156. *Id.*

157. *Id.*

dards, monitors the shipping standards within their EEZ,¹⁵⁸ or they simply enact EU Directives. The *Pretura Unificata di Torino v. Personas Unknown* case exemplified the EU's allowance of the national authority to enforce and even exceed the Community's water pollution standard.¹⁵⁹

Another example in which the ECJ ruled the national environmental enforcement is limited by the EU directives is *Commission v. Denmark*.¹⁶⁰ The ECJ decided that based on Directives 79/831 and 67/548, the Danish law did not sufficiently protect the marine environment from the risk of pollution from new substances.¹⁶¹ Thus, the holding established that although Member States assume the responsibility to enforce the EU legislation, the EU remains the superseding authority to ensure proper national enforcement.¹⁶²

The *Cali* case is a primary example where a national public authority, Consorzio Autonomo del Porto (CAP), monitors and manages the administrative and economic functions of the port of Genoa in accordance with the EU legislative expectations. Pursuant to EU maritime law, the national government conferred the regulating capacity and surveillance enforcement of the oil port of Genoa-Multedo to CAP in 1986, through Order Number Fourteen.¹⁶³

In sum, the most important formal procedure by the EU in relation to national environmental law functions is to ensure correct implementation of the provisions of Community environmental law.¹⁶⁴

2. Integration

a. Original Case Law

In lieu of recognizing the various levels of choosing which EU environmental law to apply to a case, the ECJ has specifically addressed this problem in several cases. For instance, in *Commission v. Council*¹⁶⁵ the ECJ stated that the legal basis for an environmental measure may not depend simply on an institution's objective. In contrast, the ECJ held that the measures appropriate for the case depended on the harmonization of both conditions to maintain competition and to reduce

158. See KISS & SHELTON, *supra* note 24, at 345-46.

159. Case 228/87, *Pretura Unificata di Torino v. Personas Unknown*, 1988 E.C.R. 5099.

160. Case 278/85, *Commission v. Denmark*, 1987 E.C.R. 4069.

161. *Id.*

162. See Brus, *supra* note 21, at 659.

163. See, *Diego Cali*, 1997 E.C.R. ¶¶ 3-6.

164. See Brus, *supra* note 21, at 659.

165. Case 300/89, *Commission v. Council*, 1987 E.C.R. 1493; Case 45/87, *Commission v. Council*, 1988 E.C.R. 5545.

environmental pollution.¹⁶⁶

In *Commission v. Italy*¹⁶⁷ the Court acknowledged that the differences in national environmental laws can create unequal competition. Furthermore, the ECJ defined the authority to harmonize the environmental standards based on Articles 100a and 130r.¹⁶⁸ Therefore, resulting from this case is the general EU standard that if the national environmental regulations unfairly affects free trade and competition, Article 100a entitles the EU to modify and harmonize the two essential objectives of fair competition and environmental preservation.¹⁶⁹ However, the ECJ clouded this decision with the 1993 case, *Commission v. Council*.¹⁷⁰ The ECJ held that if the objective of a directive is to protect the environment in accordance with Article 130s, the environmental measures may affect the EU conditions of competition.¹⁷¹

b. The *Cali* Case

Again turning to the recent *Cali* decision, the ECJ questioned the power of a national port authority to uphold preventative pollution standards for the marine environment of Genoa in light of allegations of anti-competitive acts per Article 86.¹⁷² The basic facts of the case concern Genoa, an Italian marine port that was managed by the CAP, a public administrative body established by the Italian legislature.¹⁷³ Pursuant to Decree No. 1186 of August 31, 1991, the President of CAP contracted the service of SEPG to protect the maritime environment against pollution and accidental spillage.¹⁷⁴ The private Italian oil shipper, Diego Cali refused to pay anti-pollution surveillance charges to SEPG.¹⁷⁵ Cali brought a case before the Italian court claiming SEPG abusively used its dominant market position, as a private environmental company, to charge the anti-pollution fees.¹⁷⁶

The ECJ addressed this question concerning market dominance by first considering whether SEPG's activity in this case is within the scope of Article 86 of the EC Treaty.¹⁷⁷ Again, an act that violates EU

166. See Brus, *supra* note 21, at 633-34.

167. Case 91/79, *Commission v. Italy*, 1980 E.C.R. 1099; Case 92/79, *Commission v. Italy*, 1980 E.C.R. 1115.

168. Case 91/79, *Commission v. Italy*, 1980 E.C.R. 1099

169. See Brus, *supra* note 21, at 658.

170. Case 155/91, *Commission v. Council*, 1993 E.C.R. I-939.

171. See Brus, *supra* note 21, at 658.

172. See, *Diego Cali*, 1997 E.C.R. I-1547.

173. *Court Judgment on Anti-Pollution Services Payments*, THE REUTER EUR. COMMUNITY REP., April 15, 1997, at 1.

174. See, *Diego Cali*, 1997 E.C.R. ¶¶ 1-10.

175. *Id.* ¶ 2.

176. *Id.* ¶¶ 13-14.

177. *Id.* ¶ 14.

competition laws is an act that is an economic activity of a legal person, individual or corporate, that is commercial in nature by offering goods or services. In contrast, if the act is a State exercising official authority for the public good, Article 86 does not apply to the activity. Here, SEPG's anti-pollution surveillance fees were charged directly under the direction and auspices of the Italian government for the purpose of protecting the marine environment, a public good. Therefore, the State was acting in accordance with its official authority, and EU competition law did not apply.¹⁷⁸ Specifically, the ECJ said, "such surveillance is connected by its nature, its aim and . . . the exercise of powers relating to the protection of the environment which are typically those of public authority. It is not of an economic nature justifying the application of the treaty rules on competition."¹⁷⁹ Furthermore, the Court held that a port company, which is entrusted by public authorities to protect the environment, "even where the port users must pay dues to finance that surveillance service. . . does not constitute an undertaking within the meaning of Articles 86 and 90 of the Treaty."¹⁸⁰ Thus, the Court held the application of the competition rules depended upon the classification of the activity as public or commercial.¹⁸¹

The ECJ ruling in the *Cali* case falls in line with previous application of EU competition laws.¹⁸² Although the act may be arguably classified as an economic private act under the definition of Article 86, Article 90 grants Member States the right to protect public interest, especially environmental interests, in line with the EU environmental policy. In the *Cali* case, the ECJ found that the surveillance protection of the marine environment under the auspices of a public administration is exempt from EU competition law, even if a private company is providing the protection service.¹⁸³ This case demonstrates how the EU relies on Article 90 to balance the obligation of preserving a free and competitive market economy with protecting exclusive, environmental rights for the public interest.¹⁸⁴ Thus, it seems that with such broad national government discretion under EU competition laws, the regional government is simultaneously building credibility for national protection of the environment, so long as the basic national principles of the laws are in harmony with the EU principles.

178. See *Competition Rules do not Cover Pollution Surveillance Firms*, THE REUTER EUR. COMMUNITY REP., Mar. 18, 1997, at 1.

179. See *Diego Cali*, 1997 E.C.R. ¶ 23.

180. See *id.* ¶¶ 24-25; see also *Competition Rules*, *supra* note 7, at 1.

181. See *Diego Cali*, 1997 E.C.R. ¶¶ 26-27.

182. See, e.g. *id.*

183. *Id.* ¶ 23; see also Case 346/92, SAT Fluggesellschaft v. Eurocontrol, 1994 E.C.R. I-43, ¶ 30.

184. See *Siragusa*, *supra* note 42, at 1068-79.

D. Impact of Legal Integration on the EU Expansion

As previously stated, the *Cali* case exemplifies the current development and merging of European law with respect to economic competition and preventative environmental law.¹⁸⁵ Yet the importance of understanding the historical development and the current coordination of these two areas of law is more than a mere current appreciation of European Union law. Since unification, the European Union created not only the second largest economic market in the world, but it is also a dynamically expanding community. In particular, since the fall of the Berlin Wall and the crumbling of Cold War communism over the Central and East European Countries (CEEC), the boundaries of the EU have continuously crept eastward.¹⁸⁶ In 1995, the EU formally accepted Austria, Sweden, and Finland as full Member States. Additionally, the Czech Republic, Hungary, Poland, Slovakia, and Slovenia signed preliminary agreements to become members of the EU.¹⁸⁷ However, with the institutional expansion of the EU, the new members bring different legal traditions, various stages of economic development, and unique values of environmental preservation.¹⁸⁸ Preparing for additional eastward integration of Central and East Europe will present new issues to the EU and future development of competition and environmental law.¹⁸⁹

1. Preparation for CEEC Integration

The European Community recognized the need for transitioning economic and political relations with CEEC in the late 1980s.¹⁹⁰ The eastward integration began with a multitude of agreements whereby the EC agreed to assist national development of a competitive market economy and align the legal policies with the west. For instance, in November, 1988, the EC and Hungary enacted a trade, economic, and commercial cooperation agreement to begin coordinating legal policies.¹⁹¹ The EC established a similar agreement between both Poland and Czechoslovakia in 1989.¹⁹² In 1991, the EC formally opened its market to imports from CEEC and organized institutional frameworks

185. See Casalino, *supra* note 26, at 228.

186. Colin Jones, *Knocking on the EU's Door: Members of East European Countries*, THE BANKER, May 1998, at 43.

187. *Id.* See also the specific EU Europe Agreements with the CEEC; Poland Europe Agreement, 1993 O.J. (L 3348), the Hungary Europe Agreement, 1993 O.J. (L 347), the Czech Republic Europe Agreement, 1994 O.J. (L 360), and the Slovak Republic Europe Agreement, 1994 O.J. (L 359).

188. *Id.*

189. See Casalino, *supra* note 26, at 229-30.

190. *Id.*

191. See 1988 O.J. (L 27) 1.

192. See 1989 O.J. (L 339) 1; 1989 O.J. (L 88).

to coordinate economic and social matters. This included Article 238 of the revised EC Treaty, which specifically authorizes the EU to create Association Agreements or "Europe" Agreements with other nations in order to develop future coordination of economics and environmental policies.¹⁹³ Therefore, in 1992, all previous EC agreements with CEEC were superseded by Interim "Europe" Association Agreements.¹⁹⁴ Furthermore, the EU also included chapter 12.2 in the Fifth EAP of 1992, which exclusively addresses CEEC environmental policy.¹⁹⁵ It established environmental strategies for these countries and names the Association and PHARE¹⁹⁶ programs as instruments for environmental policy and economic competition development. With specific focus on the environmental cooperation between Eastern and Western Europe, the foreign ministers of the respected countries met in Lucerne in April 1993, to approve the enactment and financing of the EAP for Central and Eastern Europe.¹⁹⁷ By February 1, 1994, the EU had accepted Poland and Hungary as complete Associated Members of the EU, followed by the Czech Republic in February, 1995, and Slovakia in June, 1995. The preparations for EU integration of the associated countries of CEEC became an obligation for the EU and was discussed on a ministerial level at several European Council meetings¹⁹⁸ and elaborated specifically in a White Paper.¹⁹⁹

a. European Agreements

The EU Europe Agreements with individual CEECs commits both parties to gradually harmonize environmental and competition laws over the next ten years.²⁰⁰ Title II of the Europe Agreement establishes specific principles and standards that must be achieved, such as privatization of state owned enterprises and creation of market economies. In particular, a primary precondition for economic integration into the EU is "the approximation of the country's existing and future legislation of that of the Community...in particular...the rules on competi-

193. EC TREATY, *supra* note 19, art. 238.

194. *See generally* Hungary Interim Agreement, 1992 O.J. (L 116); Poland Interim Agreement, 1992 O.J. (L 113) 1; Czech Republic Interim Agreement, 1992 O.J. (L 151); Slovakia Interim Agreement, 1992 O.J. (L 115).

195. A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Environment, 1993 O.J. (C 138) 1, 89.

196. PHARE is a French acronym for Poland and Hungary Aid for Economic Reconstruction. The program extended quickly to all central and east European countries to assist the economic transition to a free market system. *Id.*

197. *See* JULIAN WILSON, PHARE PROGRESS AND STRATEGY PAPER: ENVIRONMENT TO THE YEAR 2000 (1993).

198. *EU: Special Edition; Essen Summit, Euro-East*, Dec. 12, 1994, available in LEXIS, Nexis Library, Euro-East File.

199. *See* Casalino, *supra* note 26, at 243.

200. *Id.* at 241.

tion, . . . transport, and the environment.”²⁰¹

b. White Paper and Agenda 2000

The White Paper set forth the pre-accession strategy for the Associated EU Members.²⁰² The primary objective of the White Paper is the economic “alignment” of the CEECs with the EU Internal Market. Various legislative descriptions and business conditions in the main body of the Paper provide the specific strategy for the transition.²⁰³ The Annex addresses other legal sectors, including the environment, in which the future members will participate.²⁰⁴ In its evaluation of the White Paper, the Community praised the document because “it provides a guide to complexities of the Internal Market and suggests a logical sequence in which the associated countries should bring their legislation in line with that in the Union,”²⁰⁵ explained Commissioner Hans Van den Broek. On the other hand, some CEECs have criticized the impracticability of the strategies. For example, Poland’s Secretary of State for European Affairs, Jareck Saryusz-Wolksi, stated the Paper should be a guide rather than an obstacle requiring high demands for accession into the EU.²⁰⁶

The Agenda 2000 is the most recent EU expansion plan.²⁰⁷ The Agenda 2000 is a 1,300 page enlargement prospectus drafted by the European Commission to incorporate ten new CEECs into the EU.²⁰⁸ The negotiations for the first wave of broadening the EU member based on the Agenda 2000 began in early 1998, with five post-communist countries; Poland, Hungary, the Czech Republic, Slovenia, and Estonia.²⁰⁹ A second group identified for future negotiations include Romania, Bulgaria, Slovakia, Latvia, and Lithuania.²¹⁰ In total, the Agenda 2000 details the plan to increase the EU’s population to 500 million, yet its GDP would barely grow by 5%.²¹¹

In order for the CEECs to qualify for EU membership, the Agenda primarily requires that the post-communist country transition to a

201. *Id.*

202. *Id.* at 243.

203. *Id.* at 239.

204. *Id.*

205. Eva Munk, *Furthering Integration Goal of EU Assistance*, PRAGUE POST, July 12 1995, at A5.

206. *EU/East Europe: A White Paper Approved for Nine CEECs*, EUROPEAN INFORMATION SERVICES, June 23, 1995, at 1

207. Jones, *supra* note 186, at 43.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

functioning democracy and a well-operating competitive economy.²¹² The EU expansion requirements also include subscribing to the union's *acquis communautaire*, the body of EU law that all members must adopt.²¹³ Therefore, in some ways, each country's detailed obligations are unique. Some may include creating or strengthening competition laws. Others may deal with encouraging innovative, efficient economic growth through funding business. Yet still others may concern the environmental standards of operating businesses and the protection of the environment in general.²¹⁴ The five first-tier countries identified by the Agenda 2000 highlight the ever closer reality of the broadening of the EU and Brussels willingness to address the problem areas. But at the same time, even though each CEEC has accomplished tremendous legal and economic transformation, the prospective EU Member States must continue to alter their legal, regulatory, and institutional framework just as the EU does.

2. Example: Poland and the Integration

As a whole, the CEECs' transitions have been generally successful. Yet each experience is individually unique due to their diverse political, legal, and cultural backgrounds.²¹⁵ Initially, economic restructuring caused the most difficulty. In particular, each country approached the creation of a market economy with different strategies of privatization, business incentive programs, and employment training.²¹⁶ The economies struggled with growing pains, but recently the CEECs' inflation stabilized, interest rates rose, and privatized businesses compete more efficiently in the global market.²¹⁷ Despite the slowly stabilizing economy, the CEECs continue to confront challenges of insufficient financing, poor monitoring systems, institutional weaknesses, and poorly trained human resources²¹⁸ as they are still learning to adjust.

One of the most unique examples of a CEEC legal transition that demonstrates the effects of the *Cali* case issue is the privatization of the Polish shipping industry. After the fall of communism in 1989, Poland began to build a free market economy by selling several state-owned enterprises to private individuals. This change enabled Poland to create private businesses, which freely competed in a national market economy, and eventually in the EU. For example, in the early 1990s, Poland

212. *Id.* at 44-45.

213. *Id.*

214. *Id.* at 45-46.

215. *EU/East Europe: EU Focus on Role for Local Government in East Europe*, EUROPEAN INFORMATION SERVICES, Sept. 6, 1995, at 1.

216. *Id.*

217. *EU Enlargement*, Business Europe, ECONOMIST INTELLIGENCE UNIT, Oct. 19, 1998, at 22.

218. See Casalino, *supra* note 26, at 250-54.

initiated a privatization plan for its national sea ports, particularly Gdansk and Gdenia.²¹⁹ First, the state-owned shipping enterprises of Gdansk Commercial Sea Port, Gdenia Commercial Sea Port, and Szczecin-Swinoryscie Port Authority were sold to private shareholders as new joint stock enterprises by late 1991.²²⁰ Second, by October 1996, the joint stock companies structurally reorganized in accordance with EU competition laws.²²¹ Third, beginning in November 1996 to the present, the companies have operated according to national legislation that includes environmental standards established by the EU.²²² Simply by examining the general phases of the privatization plan for the Polish shipping industry, the impact of the *Cali* is obvious. The integration of the EU laws creates new standards by which Poland, and other Associated EU Members must adjust.²²³ Such alterations of EU law can be seen as both positive and negative. The integration is a positive benefit because the CEECs are being held to a higher standard of fair competition and environmental responsibility which is new to the region and beneficial to national consumers.²²⁴ In contrast, if the ECJ frequently interprets the laws in such an arbitrary and unreliable manner, it becomes very difficult for the CEECs to formulate laws in their transitioning system that model such legal inconsistencies.²²⁵ Although the integration provides benefits of enlightened EU legal transition, integration must occur in moderation due to the direct impact beyond its union members.²²⁶

III. DEEPENING LEGAL INTEGRATION IN THE EU

A. *European Monetary Union*

Competition and environmental laws are not the only issues of legal development exemplifying the EU's enactment of the 1997 Denver Summit. Although much of academia focuses primarily on the development of EU laws broadening the flexibility of the laws in order to accommodate the diverse Member States' legal cultures, the EU's legal and economic integration, as expressed by the Denver Summit, expands beyond general widening of the common market eastward. The EU continues to also deepen the legal integration of its Member States by uni-

219. LEOPOLD KUZMA, *Restructuring and Privatizing Poland's Seaports*, in SHIPPING IN THE BALTIC REGION, 89-96 (1997).

220. *Id.* at 90.

221. *Id.*

222. *Id.* at 91.

223. *Id.*

224. Roger Mastalir, *Regulation of Competition in the "New" Free Markets of Eastern Europe*, 19 N.C. J. INT'L L. & COM. REG. 61, 66 (1993).

225. *Id.*

226. *Id.*

formly pulling the nations ever closer through new economic laws.²²⁷ The most recent and most important example is the EU executing the ambitious means of economic integration and monetary reform in the modern age.²²⁸ On January 1, 1999, eleven Member States of the European Union legally merged their currencies, ceding control of their national monetary policy to the European Central Bank.²²⁹ The impact of the deepening regional integration could hardly be greater, as the EU leads the world by unifying economic law.²³⁰ The new single currency, the Euro, legally replaces the qualified EU national currencies throughout the world for business transactions, trading purposes, and currency reserves.²³¹

The primary success of the European Monetary Union (EMU) relies, therefore, on the organization of the legal framework. The effects of the Euro are new and many are still anticipating the full understanding and the practical implication of the legal economic framework.²³² However, the following is a preliminary analysis of the deepening regional legal integration through the EMU to demonstrate the alternative means by which the EU realizes the 1997 Denver Summit ideals. First the analysis will explain the basic background of legal reformation for the EMU. Second, the focus will be on the recent integration and the immediate effects. Finally, the analysis examines the immediate ramifications of the deepening legal integration beyond the EMU region itself.

1. Development of the European Monetary Union

Similar to the enumeration of the environmental laws, the Maastricht Treaty legislated the details of EU Member States forming the monetary union by the twenty-first century.²³³ In general, the Maastricht Treaty set forth certain economic standards of low inflation and sound national finances in order to efficiently form a full monetary union with a single regional monetary policy.²³⁴

227. Helen Hartnell, *Subregional Coalescence in European Regional Integration*, 16 WIS. INT'L L.J. 115, 120 (1997).

228. *Road to a Single Currency* (last modified January 19, 1999) <http://www.cliffordchance.com/library/publications/emu_legal/section.html>.

229. *Id.*

230. Jan Meyers & Damien Levie, *Legal Framework: The Introduction of the Euro*, 4 COLUM. J. EUR. L. 321 (1998).

231. *Id.* at 328.

232. *Id.*

233. Rebecca H. Marek, *Continuity of Transatlantic Commercial Contracts After the Introduction of the Euro*, 66 FORDHAM L. REV. 1985, 1990 (1998).

234. See EC TREATY, *supra* note 19, art. 235; Resolution of the European Council 97/C 236/03, 1997 O.J. (L-615).

a. Pre-Maastricht Plans

The history of the EMU began long before the Maastricht Treaty and evolved slowly over several decades. The first plan for the EMU occurred in the 1970 Werner Plan, proposing a single currency by 1980.²³⁵ This plan failed because of rapid inflation and turbulent economic conditions caused by the demise of the Bretton Woods system and the international oil crisis.²³⁶ The EC persisted with the monetary plans by creating the European Monetary System (EMS) in 1979.²³⁷ After a decade of successfully harmonizing the economic factors of the EC members to a narrowing margin under the EMS,²³⁸ another monetary plan surfaced. The Delors Report of 1989 proposed concrete stages to use in creating the monetary union.²³⁹

b. The Delors Report

The three stages in the Delors Report provided a detailed plan for the legal and time schedule for the monetary union. The EC eventually codified these plans in the Maastricht Treaty.²⁴⁰

Stage one was the preparation for the EMU. This occurred from January 1, 1990 to December 31, 1993,²⁴¹ and primarily focused on eliminating currency controls and dismantling regional restrictions on capital movements.²⁴² Pursuant to Council Directive 88/361 of June 24, 1988,²⁴³ the Exchange Rate Mechanism (ERM) provided the means of accomplishing this goal by stabilizing the exchange rate.²⁴⁴ The EMS created a system that the Member States' national currency could fluctuate 2.25% higher or lower than the central rate.²⁴⁵ The objective was to narrow the exchange rate margins of EU Member States and more closely harmonize their monetary legal systems. To oversee these ob-

235. KENNETH DYSON, *ELUSIVE UNION: THE PROCESS OF ECONOMIC AND MONETARY UNION IN EUROPE* 80-81 (1994).

236. Dyson, *supra* note 235, at 82-83, 89.

237. Marek, *supra* note 233, at 1990-91.

238. Patricia Pollard, *Economic and Business Decision: The Role of the Euro as an International Currency*, 4 *COLUM. J. EUR. L.* 395, 396 (1998) (citing the merging direction of the economic factors as the snake in a tunnel effect; the economic factors of inflation, deficit, interest rates, and GDP for example fluctuate from high to low in a narrowing effect as if in a funnel or a squeezing tunnel).

239. Marek, *supra* note 233, at 1990 (recognizing that Jacques Delors, then President of the European Commission, wrote the Delors Report).

240. See *MAASTRICHT TREATY*, *supra* note 19, art. 104(c).

241. Meyers & Levie, *supra* note 230, at 322.

242. Marek, *supra* note 233, at 1990.

243. Meyers & Levie, *supra* note 230, at 322.

244. Marek, *supra* note 233, at 1991.

245. Pollard, *supra* note 238, at 397-99 (discussing the detailed economic regulations for each economic factor the EU sought to harmonize as a solid foundation for the EMU during stage one).

jectives, the EMS also established the central bank governors, who formulated basic regional economic policy and a common centralized banking structure.

Stage two enacted the monetary convergence from January 1, 1994, to December 31, 1997. The second stage required more specific economic integration factors to be met by each prospective EMU State. Examples of these factors include the interest rate, price and currency stability, and size of the government deficit. The criteria ensured that the EMU Member States attained "sustainable financial positions" to create a solid foundation for stage three of the union. In addition, Article 109(e) of the Maastricht Treaty outlined the European Monetary Institution (EMI) in Frankfurt to replace the central bank governors of the previous stage. The EMI established the formal mechanism to coordinate the EU monetary policy. The policy includes the ECU, a regional basket of currencies to facilitate the currency merger. The ECU created a healthy means to stable economies and to unionize the currencies smoothly.

B. European Monetary Union Integration

Stage three of the Delors Report legally enacted the EMU. On January 1, 1999, eleven qualified countries irrevocably fixed their currencies to the Euro and volunteered their fiscal policy and national banks to the European Central Bank via the form of the European System of Central Banks (ESCB). This, however, was only one of three important events for stage three integration. Prior to the countries' fixing their respective currencies to the Euro, on May 3, 1998, the Council of Ministers formally selected the eligible EMU Member States based on the national financial status of each. The decision naming the Member States qualified for the single currency followed a Council vote, based on European Commission and EMI reports submitted in March 1998, and an opinion by the European Parliament. The Council decided that Austria, Belgium, Finland, France, Germany, Holland, Ireland, Italy, Luxembourg, Portugal, and Spain fulfilled the necessary economic conditions. Greece clearly did not satisfy the requirements; Sweden failed to meet the Exchange Rate Mechanism membership and still maintained an independent central bank; and Denmark and the United Kingdom both exercised the "opt-out" clause in the 1999 integration.²⁴⁶ Thus, on January 1, 1999, the currencies of the participating first wave Member States ceased to exist, and monetary history was made.²⁴⁷ Legally, the Euro replaces all "paperless" money forms of the participating

246. The initial choice of EU members to opt out does not prohibit them from joining the EMU at a later date. See MAASTRICHT Treaty, *supra* note 19, arts. 109(1)-(2), 109(4).

247. See generally *Road to a Single Currency*, *supra* note 228.

countries on a 1:1 basis.²⁴⁸ Finally, the third important date is January 1, 2002, when the Euro banknotes and coins will be tendered.²⁴⁹ This day is dubbed the E-day, when the Euro will be the only legal currency for the EMU.²⁵⁰ By the end of June, 2002, all national currencies will cease to be legal tender.²⁵¹

Timetable: Key Elements of the EMU Integration	
March 1998	Commission and EMI produced reports on Member State compliance with Maastricht criteria
May 1998	Participating Member States chosen Announcement of bilateral conversion rates between participating currencies Article 109l(4) Regulation adopted
June 1998	European Central Bank established
Dec. 31, 1998 to January 3, 1999	Conversion Weekend Re-denomination of domestic government debt of participating Member States Stock exchanges of participating Member States move to Euro ICSDs move to Euro operations
January 1, 1999	Launch of single currency and start of transitional period: Irrevocable locking of conversion rates Euro becomes currency of participating Member States National currency units become denominations of the Euro ECU obligations converted into Euro obligations at 1:1 conversion rate European Central Bank takes over control of monetary policy for Euro zone New issues of government debt issued in Euro

248. See Council Resolution 97/C 236/03-04 and 98/133/EC 1999 O.J. (L-615)

249. *Id.*

250. Meyers & Levie, *supra* note 230, at 327.

251. *Id.*

Dec. 31, 2001	End of transitional period Obligations denominated in national currency units re-denominated into Euro
January 1, 2002	Euro banknotes and coins introduced
June 30, 2002	Latest date on which national banknotes and coins cease to be legal tender

C. *Impact of the EMU on EU Expansion*

The European Monetary Union plan is a very ambitious and far-reaching legal reform for the EU's economy.²⁵² Europe has formed the world's largest trading block with a single currency since the collapse of the Roman Empire. In terms of sheer size, the EMU encompasses a population of 290 million people, a population greater than the United States.²⁵³ In terms of economic performance, the EMU only narrowly trails the first place gross domestic product of the United State.²⁵⁴ Based on these statistics and the anticipated impact of the new currency, central banks around the world have already switched large portions of their foreign exchange reserves from the US dollar to the Euro, completing the biggest financial asset movement in history.²⁵⁵ Furthermore, the introduction of the Euro impacts all aspects of the EMU Member States international interaction.

An example of this impact may be seen in the European Council's Regulation 1103/97.²⁵⁶ In preparation for the monetary conversion, the Regulation established the principle of continuity of contract. Specifically, this principle provides that the change of the European currencies will not invalidate any contractual obligation.²⁵⁷ It also defines the conversion procedures and rounding valuation rules. Although such regulations have direct force of law only in the EMU, the EU legislated laws

252. *Id.* at 323.

253. Anthony Browne, *Birth of the Euro: Dollar Trembles as a Giant Awakes*, THE OBSERVER, Jan. 3, 1999, at 6.

254. *Id.*

255. *Id.* (stating that the asset switch from dollar to Euro is estimated to reach \$1,000 billion worth of assets).

256. See Council Regulation 1103/97 of June 17, 1997 on Certain Provisions Relating to the Introduction of the Euro, 1997 O.J. (L162) 1. Additional legislation includes Regulation 1091(4) which states, "the introduction of the euro shall not have the effect of altering any term of a legal instrument or of discharging or excusing performance under any legal instrument, nor give a party the right unilaterally to alter or terminate such an instrument." Resolution of the European Council of July 7, 1997 on the Legal Framework for the Introduction of the Euro, 1997 O.J. (C 236) 7.

257. See generally Council Regulation 1103/97, *supra* note 256.

for the entire union to ensure credibility of the new currency.²⁵⁸ For example, Regulation 235, based upon Article 235 of the EC Treaty, applies to the entire EU regardless of the State's participation in stage three. Another unusual legal feature is that the national currencies involved will not disappear immediately.²⁵⁹ This allows society to progressively adjust to the new legal currency and familiarize itself with the novel market prices.²⁶⁰ Accounting, tax, and securities concerns have been additional areas of law that the EU has drafted new directives to harmonize.²⁶¹ Overall, while the legal infrastructure is in position, the long-term ramifications and application of the legal framework remains to be seen. In the short-term, however, the immediate economic and legal results appear to be positive for the EMU.²⁶²

In light of the new predominant currency in the world financial market, many EU banks, such as ABN AMRO Bank of Netherlands are merging and acquiring other financial institutions to expand their service networks across the world.²⁶³ Again, the EU legal integration affects nations beyond only the eligible EMU Member States, and even beyond the EU Member States. The Central and East European Countries have been the most directly affected by the deepening EU legal reform.²⁶⁴ For example ABN AMRO's most recent acquisition was the Magyar Hitel Bank in Hungary. This merger created the fourth largest bank in Europe and the eighth largest in the world.²⁶⁵

In general, Hungary, along with Poland and Slovenia were the first countries to publicly acknowledge their national enthusiasm for the Euro after its birth.²⁶⁶ For these CEECs, the post-Euro benefits include increased foreign investment and booming economies for emerging and converging markets.²⁶⁷ Within only a few weeks of life, the CEECs quickly realized that the Euro is more than simply a single legal cur-

258. Meyers & Levie, *supra* note 230, at 328 (describing a detailed analysis of the rule of Continuity of Contract and its purpose); see also Elke Theil, *Political Implications: The Euro: Should the US Worry?*, 4 COLUM. J. EUR. L. 447 (1998).

259. Regulation 109 (4), *supra* note 249, art. 6(1).

260. Meyers & Levie, *supra* note 230, at 335.

261. See Com (97) 491, II/503/97-EN-3, European Commission Directorate General XV, (last modified Jan. 3, 1997) <<http://europa.eu.int/en/comm/dg15/dg15home.html>>.

262. *ABN AMBRO Marches Ahead in New Euro-led Financial Environment*, THE KOREAN HERALD, Jan. 14, 1999, Asia Intelligence Wire, available in LEXIS, News library; David Kern, *International Outlook*, NAT'L WESTMINSTER BANK ECON. & FIN. OUTLOOK, January 1999, at 2.

263. See *ABN*, *supra* note 262.

264. Alan Beattie, *Calmer Markets Ponder Real's Future*, FIN. TIMES, Jan. 15, 1999, at 31.

265. See *ABN*, *supra* note 262.

266. *Budapest Tastes Sweet Success: Emerging Market Focus*, FINANCIAL TIMES, Jan. 12, 1999, at 42.

267. *Hungary Attracts Foreign Interests*, FIN. TIMES, Jan. 12, 1999, at 21; *Budapest*, *supra* note 266, at 42.

rency for eligible EMU States. Many CEECs have pegged their currencies to the Euro directly, due to the increase in international financial activity.²⁶⁸ In summary, the Euro presents an alternative way of thinking about regional economic legal integration.²⁶⁹

As several CEECs strive to join the EU, the EU has required its eastern neighbors to harmonize their legal system and legislation to be compatible with the EU. Countries such as Poland, Hungary, the Czech Republic, Slovenia and Estonia²⁷⁰ are now actively reforming laws such as banking structure and monetary laws.²⁷¹ Additionally, the CEECs are required to reach specific standards of economic performance as preconditions to their entry into the EU.²⁷² The economic factors that have proven to be the most troubling for the CEEC include low inflation rates and higher gross domestic products. Nonetheless, Associated EU Members continuously strive to mirror even the deepening integration of the EMU legal system and move ever closer to full EU membership.²⁷³

IV. CONCLUSION

The European Union poignantly demonstrates the reality of several successful and persistent steps towards the 1997 Denver Summit of Eight's objective to promote global integration. Just as the leaders of the Twenty-Third Annual Summit discussed, the European Union continues to enact the necessary steps, both domestically and internationally "to shape the forces of integration to ensure prosperity and peace for our citizens and the entire world as we approach the twenty-first century."²⁷⁴ The European Union has taken bold steps to both broaden and deepen its legal system to accomplish the ideal international integration. Competition and environmental laws reflect the EU's willingness to expand the application of its laws in order to more flexibly and realistically accommodate the diverse sovereign Member States. The

268. Pollard, *supra* note 238, at 449.

269. Hartnell, *supra* note 227, at 120.

270. Agenda 2000 identified these five CEECs as the first tier of potential EU members. The EU selected these countries because of their relatively strong market economies and rapid legal transformation. The EU also identified a second and third tiers that include Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Dazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and the Federal Republic of Yugoslavia (containing Serbia and Montenegro).

271. Hartnell, *supra* note 227, at 126-27.

272. See Jones, *supra* note 207, at 45.

273. See *The EU Budget: Just Small Change?*, THE ECONOMIST, Jan. 19, 1999, at 21; see also *Unfinished Business: Poland Prepares for Europe*, THE ECONOMIST, January 19, 1999, at 37.

274. Final Communiqué, *supra* note 1, at Introduction.

European Monetary Union exemplifies important steps for the EU to integrate its economy more extensively in order to strengthen the prosperity of the Member States. However, both the broadening and deepening legal integration create implications expanding well beyond the EU itself. The case study of the EU legal modifications offers an opportunity to thoroughly understand and appreciate the dynamic importance of EU law in the world. The dual style EU integration demonstrates the logical evolution of law as the EU strives to effectuate the ideals of global harmony as presented in the 1997 Denver Summit of Eight.

