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** I

REPORTS

of the Committee on Legal Affairs and Citizens' Rights

on the proposal from the Commission to the Council for a Regulation on the Statute for a European Company
(COM(89) 268 final - C3-0142/89 - SYN 218)
and
on the proposal from the Commission to the Council for a Directive complementing the Statute for the European Company with regard to the involvement of employees in the European Company
(COM(89) 268 final - C3-0143/89 - SYN 219)

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EXPLANATORY STATEMENT

I. Background to the proposal

1. The Commission's proposal is the third attempt in 25 years to formulate a statute for European companies.

After the French Government had suggested in 1965 that there should be a uniform law on a 'commercial company of a European type' in 1965, Professor Pieter Sanders submitted in 1966 the preliminary draft of the statute which he had drawn up on instructions from the Commission, but on his own responsibility, with the help of experts from the Member States. The preliminary draft described a form of company which was to be based directly on European law and not on uniform national laws - a 'supranational company' rather than 'loi uniforme'. In 1967 the Council called a halt to consideration of this preliminary draft after a working party which it had set up had failed to obtain agreement on various basic questions.

In June 1970 the Commission then submitted its proposal for a regulation on the statute for a European company (OJ No. C 124, 10.10.1970) which in many points developed the draft drawn up by Professor Sanders and with its 284 articles represented a comprehensive compendium of rules.

Following the opinion of the European Parliament in 1974 (OJ No. C 93, 7.8.1974, p. 22) the Commission amended its proposal in 1975 (EC Bulletin, supplement 4/75). An ad hoc working party of the Council held negotiations on this amended proposal until 1982. These negotiations were however restricted to purely company-law questions apart from the law concerning accounting and the law concerning groups of companies. The rules contained in the proposal about employee participation in the bodies of the SE and employee participation in the context of labour-management relations (the European works council and the group works council) were not discussed.

2. The Commission included the adoption of a statute on the SE in its white paper on completing the internal market in 1985 (COM(85) 310 final, point 137). However, it did not submit an amended proposal but a memorandum (COM(88) 320 final, 15.7.1988) in which it defined its view of the need for an SE statute: 'The traditional approach of coordination of company law ... is a long-term affair ... it scarcely seems to play a decisive part in the definition of large firms' international strategies ... the creation of a European industrial base means making available to industrial groups a type of transnational company, independent of national laws, which makes it possible to concentrate substantial assets and compete with American and Japanese businesses ...' (page 11).

To be attractive to firms, the Statute 'will have to overcome the current legal difficulties which are inherent in associations or mergers between companies ...', regulate the tax status of a European company 'to be consistent with the logic whilch underlies it' (taking into account foreign losses) and 'be sufficiently simple to use'.

The following 'specific issues' were to be dealt with in such a statute:

(a) Coexistence with national systems of company law;
(b) worker participation;
(c) information and consultation of workers;
(d) the problem of groups;
(e) tax treatment.

In conclusion the Commission calls on the Council, Parliament and both sides of industry to express their views on three key questions in participation:

- the principle of an optional Statute,
- the independence of such a Statute vis-à-vis national laws and
- the inclusion of the three schemes for worker participation.

3. On 18 November 1988 the Council approved in principle the Commission's proposal; in November 1988 the Economic and Social Committee also delivered a fundamentally positive opinion in which it approved the Commission's intention of including several models for worker participation in the SE Statute.

In its resolution of 16 March 1989 (OJ C 96, p. 163) the European Parliament described the SE as a valuable mechanism for restructuring the European undertaking, but listed a whole range of requirements especially regarding the ...ape to be taken by worker participation within the SE and ...served the right, in view of the 'lack of precision in part of the data provided by the Commission', only to give its final opinion when the actual proposal was submitted.

On the basis of this preliminary work the Commission adopted the present proposal in July 1989.

II. Assessment of the proposal

4. The present proposal differs from its predecessor, the amended proposal of 1975, in that it is in two parts. The provisions required for the founding and activity of the SE are comprised in a regulation based on Article 100a of the EEC Treaty; the position of workers in the SE is governed by a directive based on Article 54 of the EEC Treaty. The rapporteurs have thus drawn up two reports of which one is devoted exclusively to the directive on the position of employees.

The splitting-up of the subject matter and the choice of legal bases follow a suggestion contained in the report which formed the basis of this committee's deliberations on the Memorandum (Doc. A 2-405/88, paragraph 13). Reference is made to the above. Unfortunately in its explanatory memorandum the Commission does not discuss the choice of legal bases. It only states that 'the latter rules (on the involvement of employees in the SE) form the subject of a complementary Directive, in view of the diversity of national rules and practices on that subject.' This tells us something about the form of the legal act but nothing about its basis.

This statement is correct inasfar as the choice of the form of the legal act may depend on other considerations than the choice of the legal basis. The essential consideration for the form is the intended 'density' of regulation: the Regulation will apply directly in its entirety, whereas it is only the objective of the directive which is binding (Article 189). So it can be quite justified to split a subject into two parts; one for which more or less complete regulation is required, here the 'company law' part, and one for which no such complete regulation is intended since the Member States are offered options to be fleshed out on the basis of the legal context in each case, as here in the 'employee involvement' part. This split is not arbitrary or an abuse of the law.

To overthrow the choice of Article 100a as the basis for the regulation on the basis that the latter creates new 'supranational' legislation and not an approximation of national law, would encourage too narrow a conception of the approximation of legislation. The standardization of law by means of a directly applicable regulation is only the most pronounced form of approximation of legislation; this applies to the present case; the regulation would introduce a legal form into the company law of the Member States which would then be common to all and would bring them much closer together. It should be noted in this connection that reference is made in Article 100a to 'measures for the approximation of the provisions laid down by law, regulation or administrative action', which includes the regulation, and not to 'directives for the approximation' as in Article 100. Whereas previously Article 235 had to be used rather than Article 100 because the objective was a regulation and Article 100 only allows for the promulgation of a directive, this no longer applies since the introduction of Article 100a under the Single Act.

The existence of the further basic requirement for the application of Article 100a, namely the connection between the SE Statute and the 'establishment and functioning of the internal market' should not be open to any doubt at all.

The question of the appropriateness of Article 54 as the legal basis for the directive is dealt with in the abovementioned separate report.

5. Since 1 July 1989 there has been a regulation on the creation of a European Economic Interest Grouping (EEIG) (OJ L 199, 31.7.85, p. 1); this represents the first legal form based directly on Community law for transfrontier cooperation between European businesses. The objective of such groupings, however, is restricted to supporting the economic activity of their members; it is not to obtain profits for itself. The EEIG may not manage or supervise the activities of its members or those of other undertakings and may not employ more than 500 employees. Its members may be legal bodies or natural persons; any profits resulting from a grouping's activities shall be deemed to be the profits of the members; no grouping may invite investment by the public. These features show that the EEIG is simply a restricted form of cooperation between undertakings but not a way of restructuring business Community-wide; it therefore has a different function from the SE and neither makes the SE superfluous nor becomes superfluous itself by virtue of the existence of the SE.

6. A similar assessment could be made of the relationship between the SE Statute and the Commission's proposal for a fifth directive on the structure of public limited companies (amended proposal OJ C 240, 9.9.83, p. 2). This amended proposal is intended to provide equal protection for shareholders and third parties and equivalent legal conditions for competing limited companies. The SE fails to make coordination of national company law superfluous.

7. The rapporteur does however believe that the proposal for a tenth directive on cross-border mergers of public limited companies (OJ No. C 23, 25.1.85, p. 11) is now superfluous. According to the present proposal the SE may be founded either as a holding company or as a subsidiary but also by way of a merger. To this extent it fulfils the function of a merger directive; the Commission also correspondingly refers back to the substance of the above proposal.

On the other hand a general merger directive would have had one large drawback: it would lead to a situation in which, in each Member State, parts of companies which had merged would possibly be subject to the company law of another Member State and this would greatly confuse the legal situation.

8. It is a welcome fact that the present proposal now provides for a standard minimum capital of 100 000 ECU for all types of company foundation: this makes access to the legal form of the SE easier. Your rapporteur however believes that access could be further eased and limited liability 'Kommanditgesellschaften auf Aktien' (companies and companies limited by shares but having one or more general partners) could be allowed the possibility of founding an SE by merging or setting up a holding company (see amendment to Article 2). Enterprises from non-member countries have access to the SE as a legal form to the extent that they have subsidiaries in the Community, which is bound to be the case for those companies who are interested. A direct participation by companies from non-Member States in new SEs could, on account of the occasional references to the law of the state of the founding companies, lead to legal uncertainty.

9. The proposal is examined below in the light of the questions which the Commission highlighted in its memorandum:

The coexistence with national systems of company law could theoretically be solved in two ways: by independent standard regulation or by referring to national law. This alternative does however point up the dilemma of the legislator in this case. The more standard regulations there are, the more comprehensive the statute will be and the greater the possibility of differences from the law applying to competing companies (differences which may or may not add to the attractiveness of the SE). The more references there are, the less the SE will deserve to be called European and the less easy it will be to have a clear legal picture. The approach of this proposal - regulation of major questions in the statute itself and reference to national law wherever it has been harmonized by Community directives - therefore seems in principle appropriate. The problems are to be found in detailed points (see the amendments). Difficulties could be caused particularly by the question of what legal norm is to apply to any particular issue (amendment to Article 7).

Another positive point is that the proposal gives companies the choice between a single-tier and a dual-tier structure even

where this juxtaposition is not familiar so far to the Member States. For smaller and medium-sized enterprises in particular the greater clarity of the one-tier system may be an advantage. Furthermore the options which the proposal for the SE allows in the sphere of accounting increase its flexibility and attractiveness as a legal form. The 'competition between legal systems' triggered off by these options should exert salutary pressure towards further harmonization in the sphere of accounting and company taxation. There is no less comparability of annual accounts with these options than there is at present between companies in different Member States - a problem that will have to be solved in any case by the forces participating in the internal market.

10. In its memorandum the Commission mentions the 'Group problem' as one of the questions to be dealt with in the Statute and then goes on to ask whether 'the European company statute is the proper place to create a body of rules governing groups'. The contradictory nature of this statement is increased by the reference to the fact that the SE was originally conceived as a legal form tailored to the group which would make its conduct as an economic unit easier and at the same time guarantee proper protection for third parties (minority shareholders and creditors). In its new proposal the Commission, diverging from its 1975 proposal, omits any such regulation, giving as its reason the fact that it does not wish to preempt the proposal announced in the White Paper on the completion of the internal market for 1988(!) on the coordination of the law concerning groups or to jeopardize rapid adoption of the Statute. The Commission thus concedes that it is not yet in a position to submit such a proposal. The lack of a set of rules for groups in the Statute, in particular the absence of any recognition of the legality of the power to manage a concern on the part of the SE, is regrettable and the SE thus loses one of the attributes which would have made it seem particularly appropriate for the role of controlling undertaking of a European group. Nor does the Commission's explanation carry any conviction, as the SE statute could quite easily have served as a forerunner or test case for the general coordination of legislation on groups, such legislation only as yet existing in Germany and Portugal.

The new proposal contains only the following regulations of importance for groups:

- The definition of 'controlled and controlling undertakings' (Article 6).
- The prohibition of acquisition of the company's own shares by the company itself or by undertakings controlled by it (Article 48 in conjunction with Article 6).
- The applicability of international civil law provisions to relations between a controlled SE and its controlling undertaking (Article 114 in conjunction with Article 6)
- The obligation for parent companies to draw up a consolidated annual statement of accounts within the meaning of Directive 83/349/EEC (7th Directive on consolidated accounts).

The function of the definition of control or the dependency relationship in Article 6 is, as can be seen, quite restricted. At the same time it is striking that it does not embrace the exertion of dominating influence on the basis of a contract with the dependent undertaking, in contrast to the definition given in Article 1 of the 7th Directive, to which the provision on the annual statement of accounts refers. This does not however mean that the conclusion of such contracts is excluded for an SE. Nor does the definition, as it stands, include indirect dependency relations (see the appropriate amendments below).

This is of importance if, as proposed in the separate report on the directive, the right to vote and stand for office in the context of the provisions on employee participation is extended to the employees of controlled undertakings.

11. As far as taxation is concerned it is striking that the new proposal, in contrast to what the memorandum would have led one to expect, no longer provides for the second tax concession for SEs under the 1975 proposal, namely the possibility of taking into account losses made by the subsidiaries of the SE. No reasons are given for this by the Commission; one reason may be that it is counting on progress with the tax directive package (directive on parent companies and subsidiaries, merger directive, arbitration agreement) so that the question would in any case be settled in the foreseeable future. There is agreement that the principle of the same taxation system for all legal forms of companies should also apply to the SE. The exception proposed by the Commission for the setting-off of losses by permanent establishments against the profits of the SE can be seen as a temporary anticipation of the general solution which was in any case due and is now in place with the adoption of three acts on 23 July 1990, as the Commission proposal was under consideration, viz.: Directive 90/434/EEC on the common system of taxation applicable to mergers, etc, Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, and the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (all OJ No. L 225, 20.8.1990).

12. The situation of employees in the SE (information, consultation, participation) is the subject of the directive and is dealt with in the separate report. There are however points at which the regulation and directive meet and overlap and these have to be dealt with in this report.

Article 136 of the Regulation provides that an SE can be founded in any Member State which has transposed the directive into national law. Article 3(2) of the Directive states that the SE can only be founded when one of the models for participation has been selected.

Your rapporteur considers that the idea underlying these provisions is very important and has tried to make it more prominent by suggesting that the registration of the SE should have a constitutive effect and registration should be made dependent, inter alia, on the prior selection of the model of participation (see below amendments to Articles 8 and 5).

13. In connection with the provisions on the foundation of the SE, it had to be made clear that all the provisions which the Member States had passed for the implementation of Directive 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ No. L 61, 5.3.77, p. 26) also apply to actions of this kind which take place in connection with the foundation of an SE and in each case these would be the

provisions of the Member States in which the undertaking concerned or the business concerned is situated (see below amendments to Articles 17, 35a and 37a and the amendments to Article 12). Your rapporteur is however aware that such a blanket reference to provisions passed for domestic activities will not solve all the problems in respect of labour law occasioned by the cross-border activity of founding an SE. This applies in particular to the change of employer brought about by formation through a merger. Should provision not be made here, for instance, for the SE to be a party to collective bargaining also in those states in which it has permanent establishments? Your rapporteur is not certain whether these questions were analyzed carefully enough in the preparation of the proposal.

14. One feature of employee rights in the SE which has been completely forgotten is the 'group law aspect' i.e. the fact that the company law construct does not correspond to the real-life power structure in a group of connected undertakings. In the report on the directive, reference is made to the definition of the controlled undertaking to support a correction to the regulation whereby employees in controlled undertakings are deemed to be part of the SE for the purposes of participation. If this were not so, the way would be open to types of circumvention, for instance the foundation of a holding without employees.

15. A final word on labour-management relations: regarding the position and duties of the representatives of employees in the establishments of the SE the directive refers to the laws or practices of the Member States (Article 10). In addition to this the 1975 proposal had provided for the formation of a European works council in SEs which consisted of at least two establishments with at least fifty employees each situated in different Member States (Articles 100 ff.). The same applies to an SE which is a dominant undertaking in a group (the group works council under Articles 130 ff. of the 1975 proposal). These provisions are not present in the new proposal. If one considers however the duties and powers which should be those of such a body, it can be seen that they partly correspond to the duties and powers of the 'separate body' referred to in the participation model described in Article 5 of the Directive.

They only correspond, however, to the extent that it is the economic and entrepreneurial interest of the SE that is concerned (compare in this regard Articles 122 and 125 of the 1975 proposal on the one hand and Articles 5 and 6 of the Directive and 72 of the Regulation on the other).

The involvement in management at SE level, i.e. the real shape of labour relations in the SE, is not covered by the directive. This cannot however be accepted as many questions concerning the staff of SE establishments in the Member States will have an importance going beyond the individual establishment and require consideration in a corresponding body at SE level. In the separate report on the directive it is therefore proposed that employee representation be extended in the establishments of the SE by 'employee representation at a higher level' (i.e. at SE level).

III. Commentary on the individual amendments

Amendment No. 7: Article 2(1)

If the aim is to make it possible for small businesses, too, to reorganize to form an SE, provision should be made for companies other than public limited companies, in particular private limited companies, to be able to form an SE by merging or by setting up a holding company. The types of company listed correspond to those laid down in other Directives harmonizing company law, e.g. Article 4 of Directive 83/349/EEC on consolidated accounts.

The economic significance of extending arrangements for the incorporation of SEs can be illustrated by the fact that, in the Federal Republic of Germany alone, there are 390 000 private limited companies but only 2300 public limited companies.

Amendment No. 8: Article 2(2)

The version in the proposal would appear too limiting: enterprises which do not have their central administration in different Member States may also require an appropriate legal structure for their Community-wide activities.

Amendment No. 12: Article 4(1)

This makes it clear that the required minimum capital is the capital which the founders have undertaken to put up; this in turn makes clear the distinction between that and a company's assets, which are subject to constant fluctuation.

Amendment No. 13: Article 5(2) (new)

Because of the significance of the location of the registered office as regards the law to be applied and the types of employee participation, we welcome the fact that, unlike in the 1975 amended proposal for a regulation on the Statute for European companies (hereinafter referred to as the '1975 proposal'), the location of the registered office must be the same as that for the central administration. Likewise, we also welcome the fact that an SE would no longer be able to have more than one registered office.

The question as to whether an SE may freely relocate its registered office within the Community and at the same time retain legal personality is referred to in the explanatory memorandum but has not been expressly regulated. Since Article 14 of Regulation No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (OJ No. L 199, p.1) makes provision for a registered office to be transferred in respect of what are the first enterprises to have a European legal structure, and the relevant agreement provided for in Article 220 of the EEC Treaty has not yet been concluded, it would appear advisable for this matter to be expressly regulated in the case of the SE too.

Amendment No. 14: Article 5(3)(new)

This amendment should be seen in conjunction with the proposed changes to Article 8 and Article 16: registration

should have a constitutive effect both as regards the foundation of the SE and the transfer of the registered office. Registration should only be allowed when a choice has been made as to the participation model to be applied to the SE and this should be so both in the case of a first registration and in the case of a relocation of a registered office where this requires a change in the participation model because of the law applying in the state where the new registered office is situated. Only this solution will make it possible to exclude from the start any attempt to get round participation regulations by relocating the registered office.

Amendments Nos. 15, 16 and 17: Article 6

Unlike the 1975 proposal (Title VII: Groups of companies), this proposal contains no specific provisions relating to groups of companies. Until such time as Member State law is appropriately coordinated, this area would be governed by the law applicable to public limited companies in the Member State in which the registered office of the SE was located. Instances where an SE is controlled by a group of companies are expressly regulated in Article 114(1), while instances where the SE controls a group of companies are governed as a result of the general reference in Article 7(4). The Commission has nevertheless considered it necessary to include matters relating to groups of companies in the general provisions contained in Title I. For the purposes of the definition - taken from Article 8 of Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of - it is assumed, however, that the controlling undertaking itself also has a direct holding in the controlled undertaking. The aim of new paragraph 3 is to extend this to indirect control too, the same objective being served in Directive 88/627/EEC and in the Seventh Directive by Article 7, second indent, and by Article 3(2) respectively.

Amendment No. 16 corrects a drafting omission (in German).

Amendment No. 18: Article 7

The proposed new version contains no substantive changes to the Commission proposal. In view of the proposal's complex scheme of legislative references, however, a more detailed order of precedence of the provisions applicable to the SE appeared appropriate.

Contrary to the criticism which has been levelled in this respect, it would also appear appropriate that, as in the 1975 proposal, those applying the law should be urged to settle matters at issue initially by reference to the Statute itself and only subsequently to the company law of the Member State concerned (Article 7(3)) - a principle which meets the objective of making the Statute for a European company independent of national law. The extent to which this would prove effective would have to be a matter for the courts to determine.

Amendment 19: Article 8(3)(new)

If as suggested here the creation of an SE is linked to its registration (see amendment to Article 16) it must be ensured that the legal verification of the foundation and of the participation model have been carried out previously. The second sentence of this paragraph should be read in conjunction with Article 5(3)(new); reference is made to the notes on the latter.

Amendment No. 20: Article 11(c)

In many areas, the SE would be subject to harmonized or non-harmonized national provisions. For that reason, it would appear advisable to include an appropriate reference for the benefit of the public.

Amendment No. 21: Article 11e

The inclusion of the VAT number on business letters seems to be an exaggerated bureaucratic requirement which is not necessary for the protection of the public.

Amendment No. 23: Article 15

Efforts must be made to ensure that Article 3(2) of the Directive - 'An SE may not be formed unless one of the models referred to in Articles 4, 5 and 6 has been chosen.' - is complied with when the pre-formation checks are carried out.

Amendment No. 24: Article 15a (new)

The proposal contains no general provisions regulating liability in connection with formation which would apply whatever the form of incorporation opted for. The amendment corresponds to Article 20 of the 1975 amended proposal for a regulation on the Statute for European companies (1975 proposal).

Amendment No. 25: Article 15b (new)

As regards the scheme of legislative references, the proposal that provisions tailored to public limited companies should apply mutatis mutandis (to other companies) is not the ideal solution; it is essential, however, in order to obviate the need for complex special arrangements.

Amendment No. 26: Article 16

In the interests of legal certainty, the Regulation itself should lay down the precise date on which an SE acquires legal personality, thus regulating the matter on a uniform basis for application throughout the Community. The fact that the arrangements for forming an SE would proceed to a large extent by reference to national law is not an obstacle to this, since the legal existence of an SE, removed from the sphere of national law, would only begin when it became a legal person.

Amendment No. 27: Article 17(1)

In respect of the SE, no provision is made under Articles 38

and 39 for shares with no par value. Moreover, such shares are permissible in law in one Member State only - Belgium - where they are termed 'fictitious shares with no par value'.

Amendment No. 28: Article 17(3)

Article 17(3) could be taken to refer only to Section II of Directive 77/187/EEC (safeguarding of employees' rights) rather than to all provisions giving effect to this Directive. The amendment clarifies what is an important point. The main features of that Directive are as follows:

- rights and obligations arising from employment contracts in force are transferred to the SE;
- an SE would be bound by collective agreements in force, until they are terminated or expire, for a period of not less than one year;
- a merger does not constitute grounds for dismissal;
- the status and function of the representatives of the employees of the business or businesses affected are maintained;
- before a merger, employee representatives must be informed of the reasons for the transfer, the legal, economic and social implications of the transfer for the employees and the measures envisaged in relation to the employees;
- employee representatives must be consulted on such measures.

Amendment No. 29: Article 17(3), second sentence (new)

Article 17(3), which corresponds to Article 12 of Directive 78/855/EEC on mergers of public limited liability companies, does not lay down which provisions shall prevail in connection with a cross-frontier merger. The new provision seeks to safeguard established rights and is consonant with principles of private international law.

Amendment No. 31: Article 19(1)

Under Article 18, the draft terms of merger do not include the statutes of the SE to be incorporated. Since the general meeting must consent to a merger (Article 22), however, it is essential that these terms are brought to the notice of the shareholders. This is not regulated by Article 22(2) either.

Amendment No. 32: Article 19(2)(c)

Article 25 itself, as amended, lays down the date concerned.

Amendment No. 35: Article 22(2)

Article 11 of Directive 78/855/EEC does not cover the provision of information; rather, it relates to the possibility of inspecting documents.

Amendment No. 36: Article 25

By contrast with Article 16, Article 25 regulates the special circumstances obtaining where an SE is formed by merger. Readers should refer to the relevant commentary.

It is only appropriate that reference should be made in Article 11 of the proposal for a tenth directive on cross-border mergers of public limited companies - Article 25 corresponds to that Article - to the law of the Member State governing the acquiring company: such mergers cannot but produce a public limited company set up in accordance with the law of a Member State. As set forth in Article 16, this does not hold true for the SE to the same extent.

In this instance, the pre-registration verification measures also include the checks, laid down in Article 24, as to the legality of the merger, i.e. to ensure that the founder companies have complied with requirements.

Article 24, which corresponds to Article 10 of the proposal for a tenth directive, does not make it entirely clear what the scope and purpose of such checks is; and this is why redrafting and more detail would appear called for. The starting point for this should be the fact that, under Article 16 of the Third Directive (78/855/EEC) on mergers of public limited liability companies, the Member States have three options as regards verification of the legality of mergers: judicial or administrative preventive supervision, and official certification of documents (for the last-named measure, the certifying office must be required to check on the substantive issues involved). No distinction is made in the Directive between these three types of check as to precedence. Checks on a merger process can only be conducted on a sensible and consistent basis in accordance with the rules and regulations of one Member State, i.e., in the case of an SE to be formed by merger, in accordance with the rules and regulations of the State in which it will be registered and its registered office will be located. To that extent, then, the principle enshrined in Article 15 is maintained. Accordingly, only those legal acts required to be carried out by the founder companies with a view to the merger, in particular approval by the general meeting, should be verified in accordance with the rules and regulations of the particular Member State concerned.

Amendments Nos. 37 and 38: Article 26

Mandatory disclosure in respect of an SE derives from Article 25(1) in conjunction with Article 8.

To dispel any doubts that the process whereby the founder companies become an SE will not be a smooth one, the founder companies should not disclose the merger - as it is, disclosure is for the record only - until after the SE has been registered, this being the act formally establishing the SE.

Amendment No. 39: Article 29

In terms of content, Article 29 corresponds to Article 15 of the Commission proposal for a tenth directive on cross-border mergers of public limited companies (OJ No. C 23, 25.1.1985, p.11 ff).

The Committee on Legal Affairs and Citizens' Rights rejected that proposal, and it was referred back to committee by plenary.

What Article 29 does is to limit the scope for having a merger declared null and void: the declaration of nullity provided for under Article 22 of the Third Directive on (non-cross-frontier) mergers of public limited liability companies (78/855/EEC) - 'if it is shown that the decision of the general meeting is void or voidable under national law' - has not been included; nor, furthermore, according to the second sentence of Article 29, may a merger be declared null and void where there has been no preventive verification of the legality of the merger, or where there is no certified documentation, if the law of the Member State in which the SE has its registered office does not provide for a merger to be annulled on such grounds (whether or not the law governing a founder company does provide for nullity on such grounds).

As argued in the report drawn up by Mrs Fontaine on behalf of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-186/87, points 26-30), to limit the grounds for nullity to such a large extent would not appear to be warranted in the interests of legal certainty either. This might produce a situation in which a successful challenge could be mounted to the approval given by the general meeting of one of the founder companies, though an action against the SE for declaration of nullity would be ruled out from the outset. As regards the scope for adducing grounds for nullity, it is not clear why the shareholders of companies entering into a cross-frontier merger to form an SE should be placed at a disadvantage by comparison with the shareholders of companies entering into a domestic merger. The mere wish to deflect difficulties away from an SE does not constitute sufficient grounds for this.

The proposed amendment is modelled on Article 22 of the Third Directive, which lays down a six-month deadline for proceedings to be brought and provides for the defect in question to be remedied (if possible). The risk that a merger will be declared null and void in spite of the checks laid down in Articles 15 and 24 is, moreover, negligible. Accordingly, under the additional applicable provisions of the national law of the State in which the SE's registered office would be located, the judge responsible for the register could be required, for example, to conduct a check, before the SE is registered, on whether or not actions have been brought against the founder companies to contest their resolutions giving approval.

Amendment No 22: Article 12

Employees' rights in connection with the formation of an SE must be regulated in greater detail, since Directive 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is not applicable in all instances.

The proposed arrangements are modelled on Article 23(c) of the 1975 proposal.

Amendments Nos. 45 and 47: Article 35a (new) and Article 37a (new) respectively

The amendments make up for lacunae in the Commission proposal.

Amendment No. 50: Article 39(1)

The Member States' provisions vary widely in this respect. A minimum nominal value would make it easier to compare shares and to trade in them.

Amendment No. 54: Article 44(2), third sentence

The deadline has been extended to take account of postal delivery times in the Community.

Amendment No. 55: Article 45(3), first sentence

Provision should be made for a reduction of capital by share amalgamation so that all the customary methods of reducing capital are open to the SE.

Amendment No. 58: Article 49(5)

In the normal course of business, banks accept entire portfolios as security which may include their own shares. Member States are allowed to grant exemptions to this pursuant to Article 24(2) of the Second Directive.

Amendment No. 62: Article 49(12) (new)

The exemptions from the debarment of a company from acquiring its own shares correspond to the options given to the Member States under the Second Directive (77/91/EEC), though with one exception: under Article 19 of that Directive, the Member States may allow a company to acquire its own shares in order to prevent imminent harm to that company and the Member States have made much use of this power in the provisions implementing the Second Directive. To meet businesses' needs in practice and ensure that SEs are treated no differently from public limited companies in the Member States, provision should be made for this exemption in the Statute for a European company too.

Amendment No. 64: Article 50

This is a correction which clarifies what the Commission actually intended. The provision itself would appear unnecessary, since, in the light of Article 7, it cannot be seriously doubted that the SE is a company which, at the very least within the meaning of Article 1 of Directive 88/627/EEC too, is incorporated under national law.

An SE would be required to disclose its holdings in other companies because it would have legal personality.

Amendment No. 65: Article 53(2), second sentence

Usually, under company law, only shareholders enjoy a general right to inspect the register of shareholders. This would be without prejudice to other provisions entitling third parties with a legitimate interest, e.g. pledges, to inspect the register.

Amendment No. 66: Article 60, second sentence (new)

With regard to permissible financial instruments, it is not clear why public limited companies in the Member States should enjoy an unfair advantage over an SE.

Amendment No. 67: Article 62(2)

The members of the management board cannot enjoy the independence they must have if they can be dismissed in the absence of proper grounds.

Amendment No. 79: Article 67(5)(new)

The proposed individual right to information for non-executive members of the management body is based on the right to information of the members of the supervisory body under Article 64(5) as there is a similarity between their functions.

Amendments Nos. 81 and 82: Article 72

The Commission's proposed text corresponds to a large extent to Article 12 of the amended proposal for a fifth directive and to Article 66 of the 1975 proposal, which also extend to decisions affecting controlled undertakings; this is not the case in the new proposal, however.

The provision would indirectly determine the scope of the rights of employees' representatives to be consulted, too, since reference would be made in Articles 5 and 6 of the Directive (complementing the Statute for a European company) to Article 72 of the Regulation.

The provision has come in for severe criticism: from some quarters on the grounds that it does not go far enough to benefit employees; from others on the grounds that it is too rigid and overconstricts the latitude available to the management board.

What constitutes an operation requiring approval has indeed been broadly interpreted: an 'establishment' (subparagraph (a)) may simply be an office with few employees, for example, while subsidiaries (subparagraph (e)) are continually being formed and wound up by large enterprises.

Lastly, the term 'substantial' is used to clarify the instances where approval would be required for a measure, which, in the very nature of things, would cause friction between the supervisory board and the management board.

We therefore propose that the list of measures requiring approval be shortened so that it contains only key decisions defined in a manner easy to verify.

Genuinely important measures included in the original list (subparagraphs (a), (c) and (e)) are subsumed in subparagraph (a) of the amendment. Subparagraphs (a), (c) and (d) of the amendment are new; however, individual measures may correspond to operations included in the original list. The figure of 2% of equity capital that has been opted for is relatively low; for large concerns such as Volkswagen and Siemens, this would represent DM 100 m.

Paragraph 3 extends the list to include measures affecting controlled undertakings; this is in line with the 1975 proposal and settles a controversial point.

Amendments Nos. 85 and 87: Article 75(2) and Article 78(3) respectively

The capital may also include non-voting shares. It is therefore more appropriate to base this on the proportion of voting rights held.

Amendment No. 88: Article 78(4)

New Article 80a - see Amendment No. 87 - lays down that board members shall be directly liable to third parties. Consequently, provision for a third party to assert a claim on behalf of the company against a board member, which raises problems in connection with procedural law, would appear unnecessary.

Amendment No. 89: Article 80

The amendment takes account of the fact that, in many instances, actions constituting grounds for proceedings to establish liability are concealed.

Amendment No. 90: Article 80a (new)

The provision concerns an area which has not yet been harmonized. It was contained in Article 72a of the 1975 proposal, and has been incorporated in Article 20 of the amended proposal for a fifth directive. It is a necessary provision, since actions by members of the bodies referred to may make it impossible for shareholders to enforce claims against the SE.

Amendment No. 94: Article 81(2) (new)

The amendment makes it possible to adapt to the apportioning of responsibilities to the bodies under the two-tier system as laid down in German company law, for example, and reflects the fact that the management board and supervisory board are in a better position than the general meeting to assess the need to build up reserves to safeguard the existence of the enterprise and its market position. Were decision-taking power to be vested in the general meeting alone, the shareholders, whose primary concern is that there should be a high dividend, would be liable not to resolve to establish an adequate level of reserves.

Amendment No. 95: Article 82(1)

The financial year, which is the period that matters, need not coincide with the calendar year.

Amendment No. 96: Article 82(2)

The supervisory body, too, must be in a position, where necessary, to call a general meeting.

Amendment No. 97: Article 83(1), second sentence (new)

The amendment seeks to make misuse more difficult and to facilitate any court ruling required.

Amendment No. 98: Article 84(2)(c)

It is not clear what is meant by 'special general meeting'.

Amendment No. 100: Article 86

The provision deleted is not justified.

Amendment No. 101: Article 86, second sentence (new)

The right of management board members to attend the general meeting is derived from the fact that they are required to provide information; however, this right should also be conferred upon the supervisory board members and upon the auditors.

Amendment No. 102: Article 87(2)

It is not clear on what grounds curbs on shareholder representation might be justified.

Amendment No. 103: Article 89

This amendment takes into account the amendment to Article 81(2) (new), according to which the statutes of an SE may provide that the management board and the supervisory board should take a decision on approval of the annual accounts. In addition, the annual accounts - to which the Commission makes no reference, no doubt unintentionally, in its text - have been added to the list of documents which must be available to each shareholder.

Amendment No. 105: Article 90(1)

The amendment brings the Commission text into line with Article 31(1) of the amended proposal for a fifth directive and with Article 90 of the 1975 proposal. Clarification of a shareholder's right to information would also appear appropriate in view of possible disagreements as to the scope thereof.

Amendment No. 107: Article 94(1)

Normally, a simple majority should suffice for general-meeting resolutions. In the Commission's version, abstentions would always count as votes against; consequently, in the final analysis, the shareholder would be deprived of the opportunity not to take part in a vote on a particular item.

Amendment No. 108: Article 94(2)

Under Article 62(2) the members of the management board would be appointed by the supervisory board. It is therefore not correct that they should be referred to in Article 94(2).

Amendment No. 109: Article 95(2)

It is not clear why the board needs to be authorized to amend the statutes in order to implement a general-meeting resolution. The instances referred to in the commentary on Article 95, concerning issued capital and convertible debentures, are already covered by special provisions (cf. Article 43(2) and Article 58(4)); in all other instances, the principle that the statutes can be amended only by the general meeting should continue to apply.

Amendment No. 110: Article 97(2)

Under Article 97 of the Commission's version, the statutes could be amended by an extremely small minority, since no quorum for passing a resolution has been laid down. What this amendment means, taken together with the amendment to Article 97(1), is that the votes attached to 38% of the subscribed capital would normally be required in order to amend the statutes.

Amendment No. 111: Article 99(4)

In view, in particular, of the fact that the liability of officers of the company is prescribed by lapse of time (Article 80 and Article 80a (new)), it would appear necessary to extend to five years the period for which the relevant records would be kept. Since, in many instances, the minutes and the documents annexed thereto would be several hundred pages in length, it would appear sufficient to grant each individual shareholder the right to inspect these records at the appropriate registry.

Amendment No. 112: Article 100(2)

In its proposal, the Commission is too indiscriminate in its choice of categories of person entitled to appeal against a general-meeting resolution; this could increase the tendency, observable in a number of Member States, for such actions to be brought improperly so as to exert undue pressure on the company concerned. For this reason, only those persons upon whom rights are conferred under the company's 'constitution' should be empowered to bring such an action; this must include the representatives of the SE's employees, however, given the rights to be conferred upon them under the directive complementing the Statute for a European company. In the company's interest, however, it would

appear advisable to allow an appeal only if notification thereof is given promptly (our proposed time limit would be one week).

Amendment No. 113: Article 100(3)

Furthermore, so as to establish legal certainty as soon as possible, the time limit for submitting an appeal should be cut from three months to one month.

Amendment No. 114: Article 102(3) (new)

Article 46 of the Fourth Directive on annual accounts, to which reference is made in Article 102 of the Statute as regards the mandatory information to be provided in the annual report, makes no reference to employment policy or employee participation. The SE should be required to include in its annual report an account of its actions in this regard, since it is to be a socially progressive type of company.

Amendment No. 122: Article 112

Article 112 is typical of the extremely complicated and occasionally all but unfathomable method used by the Commission in its proposal to refer to other legislation: Article 112 makes a substantive reference to Article 38 of Directive 83/349/EEC (Seventh Directive on consolidated accounts), which in turn refers to Directive 68/151/EEC (First Directive on the coordination of company law) and to Directive 78/660/EEC (Fourth Directive on the annual accounts of certain types of companies).

To clarify matters somewhat, there should, in the first instance, be a general reference to Article 38 of Directive 83/349/EEC. Furthermore, it is not clear why paragraphs 3 and 6 of that Article should not apply: under paragraph 3, copies of the consolidated annual report can only be obtained, upon request, for appropriate consideration and not completely free of charge, while, under paragraph 6, the Member States are required to take appropriate sanctions where the accounts are not published as stipulated. If paragraph 6 were retained, Article 112(3) of the proposal would be redundant.

Amendment No. 123: Article 115(3)

The amendment takes account of the fact that a court order for the winding-up of a company is not required in every Member State.

B.

Explanatory Statement

Introduction

The European Community has hitherto significantly failed to adopt adequate legal instruments on worker information and consultation and on the general participation of the workforce in the life of the undertaking, as witnessed by the running into the sand of the draft 5th Directive on the structure of limited liability companies (cf. 1983 OJ C 240) and the draft "Vredeling" directive (cf. 1983 OJ C 217). The obvious reason for this is the very differing national attitudes to this question, resulting in wide divergences in the labour laws of the Member States.

It should be recognised that the European Community is committed to a progressive improvement in the standard of living of workers (Article 2 EEC Treaty). It must be emphasized that the average worker in the Community is dependent on his or her salary as his or her sole source of financial income. Therefore it must be noted that workers in the Community make a considerable investment in their employment and are more financially dependent than the average shareholder on the success of the company. Recognizing the financially precarious nature of the worker and that the failure of the company would result in loss of income for the worker, it is important to ensure that the worker is entitled to participate in the future and development of the company to the same extent as the shareholders. As the Bullock Committee noted "We spend a large part of our lives at work and invest our skills and energy in industry. There is growing recognition that those of us who do so should be able to participate in decisions which can vitally affect our working lives and our jobs."

It should also be noted that there is a wide discrepancy between the various rights of workers in the different Member States. The German and Dutch models perhaps represent the most developed form of worker participation model by legislation. By contrast, the Common Law system has preferred to follow a voluntary system based on collective bargaining and industrial strength. Whilst this system works well where there is a good employer, who will respect the right of the workforce to be consulted as a matter of course, this system is not observed with uniform consistency. Indeed, it should be noted that this system has been considerably undermined by British Government legislation introduced since 1979, which has eroded important worker rights and indeed in some cases renounced standards set by the International Labour Organization.

The interested reader is referred to a Working Document (PE 136.297) which gives a comparative assessment of the laws of the Member States and information on Community labour law, annexed hereto.

The amendments proposed seek:
(i) to render equivalent the three models of worker participation in the SE (the proposal of the Commission fails to present three equivalent models - there exist significant

differences between them; for example, in Model I the worker representatives on the supervisory or administrative boards are consulted before strategic decisions are taken, while in Models 2 and 3 the worker representatives are consulted after the strategic decision is taken but before implementation), and (ii) to clear up ambiguities.

The detailed justifications for each amendment are given below, article by article.

By way of reminder:
- Model 1 provides for worker representation on the administrative board (one-tier system) or the supervisory board (two-tier system);
- Model 2 provides for a separate body in which the worker representatives sit;
- Model 3 provides for a collective agreement between management and workforce.

Articles 1 and 2

It is important that workers of companies controlled by a SE be represented in the SE, especially workers of the founder companies which set up a SE holding company; for the SE holding company in that event could employ as little as 5 to 10 persons, while the two founder companies may number 5000 workers.

Article 3(1)

The Commission's proposal that any dispute between management and the workforce on the choice of Model would result in the management imposing a model on the workforce is unknown in the labour laws of the Member States. The rules for worker participation are fixed either by collective bargaining or by the legislator. Consequently any dispute on the choice of Model should be referred to arbitration (cf. new Article 11b below).

Article 3(3)

Any agreement altering the model of worker representation should not be submitted for approval to the shareholders, as foreseen by the Commission.
Furthermore if Member States retain the right to limit the choice of models for a SE whose registered office is within its territory, then the transfer of a registered office from one Member State to another may have very significant results for the workforce. Hence the amendment proposed aims to prevent any unilateral decision to transfer the registered office having unfair consequences for the workforce.

Article 4

This amendment is a logical consequence to the amendments to Articles 1 and 2.

Article 5(1)

As with Article 3(3) above, the rules on worker participation under Model 2 do not have their place in the statutes of the SE. Such rules should be negotiated and, failing successful negotiations, should be settled at arbitration.

Articles 5(2) and Articles 6(1) and (2)

This amendment seeks merely to render equivalent Models 2 and 3 to Model 1.

Article 7

This amendment seeks to fill a number of lacunae in the Commission's rather weak text.

Article 8

The Commission text omits to introduce worker representatives in a SE which has selected Model 3. The amendment corrects this omission.

Article 9(1) and (2)

The amendment presented seeks to remove any ambiguities.

Article 9(3)

One potential weakness in Model 1 is the fact that proper use of the competence of the worker representatives on the supervisory or management board may be inhibited owing to the proximity of those representatives to the general meeting of shareholders and owing to the competences of the shareholders impinging on those of the supervisory board or the management board. For these reasons it is important to clarify that worker representation in Model 1 is not limited to worker representatives on the supervisory board or the management board.

Article 10

The amendment to paragraph (1) tries to clarify the intention of the Commission that national legislation, e.g. on health and safety at work and on works councils, shall be applicable in the different establishments and plants of the SE.

The proposed new paragraphs (2) to (4) provide for the establishment of a European Work Council (hereafter EWC) where a SE or a group of undertakings controlled by a SE has at least two establishments in different Member States, each with at least 100 workers.

Although the Commission's legislative proposal of 1970 on the Statute for a European Company amended in 1975 (cf. Supplement 4/75 to the Bulletin of the European Communities) contained provisions governing the EWC, the present proposals contain no such provisions, in spite of Parliament's calling on the Commission "to include provisions for the representation of employees in the European Company, as previously advocated under Title V, section 1, 'The European Works Council', of the Commission's 1975 amended proposal" (paragraph 20 of EP Resolution of 16 March 1989 - 1989 OJ N° C 96, p. 163).

Why is the EWC important? Article 2 of the present draft Directive speaks of workers within the SE participating "in the supervision and strategic development of the SE". However, the draft Directive is silent as to guarantees as to worker involvement in the actual implmentation at plant level of strategic decisions taken. The existence of the EWC would provide a coordinated approach for such implementation and would promote common solutions throughout the SE or the

group controlled by the SE for problems and difficulties that might arise. Coordination on a European inter-plant basis would be extremely difficult without the EWC. There are linguistic, organizational, logistic and financial difficulties in workers' representatives coordinating their activities across national frontiers. The EWC seeks to eliminate these problems so far as is practicable and will ensure effective worker participation at a European level.

New Articles 10a to 10d

These new articles as well as the new paragraphs 2 to 4 of Article 10 draw on the Commission's 1975 amended legislative proposal with one notable exception:
while the Commmission in 1975 provided for elected representatives, the new provisions proposed by the Committee on Legal Affairs and Citizens' Rights provide for national workers' representatives to delegate from amongst themselves members to the EWC in order to achieve closer cooperation and coordination between workers' representatives in plants or establishments situated in different Member States. The competences to be attributed to the EWC are those common in analogous national legislation on works councils, comprising the right to receive information, the right to request information and the right of consultation.

Article 11

This amendment seeks to clarify that, whatever the model chosen for the framework in which relations between management and worker representatives are to be conducted, collective bargaining shall remain a key instrument in the conduct of those relations.

Article 11a

While the management of the SE is bound, under the terms of the amendments proposed to this draft directive, to inform and consult the workforce of the SE and any controlled undertaking, this new article seeks to ensure the right of the workforce to be informed and consulted by the management of a company controlling in its turn a SE. It should be remembered that a SE subsidiary may be formed by two founding companies in different Member States.

Article 11b

This amendment is very important. Disagreements between management and worker representatives, each party likely to be represented by persons from different Member States, which cannot be settled by negotiation, should be resolved by means other than recourse to the general meeting of shareholders or management prerogative, if distrust is to be avoided. Thus it is proposed that there should be recourse to arbitration to settle disputes in the workplace. In this event, the commission services should be invited to draw up a report on the application of this article as a means of achieving homogeneity.

This amendment also foresees recourse to arbitration in the event of management and worker representatives failing to agree on the terms of the collective agreement provided for in Model 3. Consequently, it is proposed to delete Article 6(8), which provides for a national standard model agreement to be applied for Model 3 in the event of non-agreement between management and workforce on the terms of the collective agreement. Furthermore, 12 standard model agreements would contain such divergences that the claim of the SE achieving a certain supra-national and common character would sound very hollow.

Choice of Legal Basis

The legal basis of Article 54 EEC Treaty proposed by the Commission for the draft directive is to be supported.

As the draft directive forms a composite whole with the draft Regulation on the Statute for a European Company (which latter Regulation is based on Article 100a), the said draft is primarily concerned with forging a role for the workforce within the structure of the SE; the draft directive thereby has a direct impact on the functioning of the different organs making up the SE. Consequently, the aim of the draft directive is similar to that of the draft 5th Company Law Directive, which has, as its legal basis, Article 54(3)(g) EEC Treaty.

Furthermore, in making for three equivalent models of worker participation, the draft directive serves to ensure that competition in the common market is not distorted (cf. Article 3(f) EEC Treaty in Part One of the Treaty, headed "Principles") and thereby contributes to the establishment of the internal market referred to in Article 8a EEC Treaty.

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Karl von WOGAU

On 27 September 1989, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Karl von WOGAU draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 18-20 December 1989, 20-22 February 1990, 19-21 March 1990, 26-27 April 1990, 22-23 May 1990, 26-28 June 1990. At the latter meeting it adopted the amendments and the conclusions with 25 votes in favour, 2 against and 1 abstention.

The following took part in the vote: BEUMER (chairman), DESMOND (vice-chairman), von WOGAU (draftsman), BARTON, BERNARD-REYMOND, BOFILL ABEILHE, CASSIDY, CAUDRON, CHRISTIANSEN, CRAVINHO, DE PICCOLI, DOMINGO SEGARRA (for PAPAYANNAKIS), de DONNEA, ERNST de la GRAETE, FALCONER (for DONNELLY), HERMAN, HOFF, MATTINA, MERZ, METTEN, PATTERSON, READ, ROUMELIOTIS, SARIDAKIS (for GALLENZI), SISO CRUELLAS, SPECIALE, van der WAAL (for LATAILLADE).

The concept of the European Company Statute hardly needs any introduction. The proposal has been on the table from 1970; the proposal which was amended in 1975 has not been discussed by the Council since 1982. To get the ball rolling again the Commission presented a memorandum on the European Company Statute in July 1988. The memorandum pointed out that industrial restructuring usually involved take-over bids; the formation of a European Company is an attractive alternative. The memorandum was basically favourably received by Parliament and the other institutions, and the Commission was thus encouraged to put forward the present formal proposals.

The basic principle in the proposal is freedom from legal and practical constraints on firms inherent in the existence of 12 separate sets of rules. The European Company will be based on an independent legal order, separate from national systems, referring to company law as already harmonized within the European Community. The European Company Statute will exist alongside other types of companies set up under national laws; it will thus constitute an alternative for firms. The idea is to make it easier to establish international cooperation between limited companies, and consequently help to prevent the dividing up of the large market into national markets.

The 1992 objective to complete the internal market has given a new impetus to these proposals. It is argued by some parts of industry, however, that the European Company Statute is not indispensable for the completion of the internal market; but it is generally seen as a potentially useful instrument for business. It is important that the legal setting up of the European Company is sufficiently strict and detailed to create confidence within business. As the European Company provisions will apply in parallel to the national harmonized company laws in Member States it is most likely that the provisions of the European Company Statute could serve as a vehicle for the adoption of proposed company law directives dealing with the same subject matter and on which agreement has not yet been found.

The Communities competition policy's dilemma is that dominant mergers have had to be controlled and that the Community has had to create an environment in which European industry can be competitive. It is important in this context that the proposal on merger controls has found agreement. The Statute for the European Company is drawn up to ensure international competitivity of European companies.

Fiscal considerations are beyond any doubt important for companies who wish to set up business or cooporate with other companies in different Member States. It is important, therefore, to remove such fiscal obstacles that prevent companies from internationalizing their activites. In order to make the European Company Statute attractive to companies in this field certain advantageous fiscal provisions could be incorporated in the Statute. The only provision in this respect in the proposal for a Regulation is the possibility of the European Company with permanent establishments in another Member State to set any losses incurred by those establishments against the profits of the European Company. Such tax incentives should not distort competition between companies under European Statute and companies established under harmonized national legislation. To avoid such discrimination the Commission will put forward shortly proposals applying the same tax rules for all other types of firms. Since the European Company will be subject to the tax laws of the State in which it is domiciled it is important that the efforts for harmonization succeed.

As far as the legal basis is concerned the Commission has chosen Article 100A of the EEC-Treaty for the Regulation on the Statute and Article 54 for the Directive on workers' participation; the former proposal was based on Article 235 of the EEC-Treaty. Obviously, the choice of Article 100A brings the proposal clearly in the context of the completion of the internal market. The choice of these two legal bases imply also that Council can take decision with qualified majority. Some parts of industry and some governments have argued that firstly the splitting up of the proposal into a Regulation and a Directive is regrettable because the Regulation is directly applicable in Member States immediately at its adoption whereas a Directive has to be transposed into national law and therefore the special character of the Statute as being genuine European law has gone. Furthermore, it is argued that Article 100A (1) is not applicable to the Regulation because it deals with fiscal provisions and the rights and interests of employed persons (see paragraph 2 of that Article); also it is argued that Article 54 is not applicable to the Directive because this provision only concerns companies established under national legislation of a Member State and not supra-national companies like the European Company.

Your rapporteur would agree that the dividing up of the proposal in a Regulation and a Directive is unlucky but considering the history and the background of the proposals it seems to be the only practical solution. Your rapporteur agrees to the choice of the legal basis as it gives the Parliament the possibility of two readings.

In the new proposal the minimum capital of a European Company shall amount to not less than 100,000 ECU; the former proposal operated with an amount of 250,000 ECU. This decrease must be welcomed as it gives further opportunities for small and medium-sized undertakings to form a European Company. A minor question in this context is whether the obligation to calculate the minimum capital in ECU also implies that accounts etc. must be calculated in ECU.

In order to further facilitate the access of small and medium-sized enterprises to the formation of a European Company it should be considered to introduce a threshold for workers' participation. In many cases it would be an economic and administrative burden for small and medium-sized undertakings to introduce a model for workers' participation as provided for in the regulation.

The basic principle of involvement of employees in the European Company could be summarized by saying that some form of participation is an essential feature of every European Company with a regular supply of information to the employees and consultation before the application of decisions in certain specific cases.

In practice this means that staff might be consulted about the company's major strategic decisions, which are listed in the Regulation text. The day-to-day management of the European Company will be the job of the directors. The Commission's proposal involves a system based on a choice between three models for employee participation and Member States will be able to limit the choice of models for European Companies registered in their territories. Where a choice between models is available the managers of the founder companies must choose on the basis of an agreement with employee representatives. Where no agreement can be reached it is up to the management of the firm to choose what it considers the most suitable model for employee participation. A veto from employees must not prevent the setting up of a European Company.

It appears from the above that the tripartite model suggested by Parliament in earlier discussions has not been retained by the Commission. The reason being that this model does not exist in any Member State and would therefore not be likely to be approved by anyone.

PROBLEMS TO BE COPED WITH

It is beyond any doubt that a European Company Statute will only stand its chance to be accepted by industry if it is workable. Admittedly, the present proposals have been improved compared to the previous proposal on a number of points. Especially must be welcomed the improved (easier) possibilities of forming the European Company in the areas of capital and establishment. Also the significant cut in the Regulation itself should be welcomed. These improvements could to a great extend only be reached through the reference to already harmonized provisions and to national law in Member States.

The reasonable and useful character of the Statute is put into question insofar as the uniformity of the Statute is given up. A piece of legislation the European character of which is lost through a number of differing national provisions is very difficult for industry to cope with in practice. In the areas of structure and workers' participation this problem is becoming more evident. The problems of having a Regulation and a Directive has been mentioned above. Also the problems of the minimum capital and the use of ECU and the tax incentives has been mentioned already. The European Company as a European form of organization can only reach its aim when companies from the different Member States are able to use the Statute without any tax obstacles.

AMENDMENTS AND CONCLUSIONS

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS PROPOSED BY THE ECONOMIC AFFAIRS COMMITTEE
COUNCIL REGULATION	
Preambel and recital 1 unchanged	
	AMENDMENT 1
Recital 2	Recital 2
Whereas such reorganization presupposes that existing companies from different Member States have the option of combining their potential by means of mergers; whereas such operations can be carried out only with due regard to the competition rules of the Treaty;	Whereas such reorganization presupposes that existing companies from (delete one word) Member States have the option of combining their potential by means of mergers; whereas such operations can be carried out only with due regard to the competition rules of the Treaty;
recitals 3 - 9 unchanged	

	AMENDMENT 2
Recital 10	Recital 10
Whereas, without prejudice to any economic needs that may arise in the future, if the essential objective of the legal rules governing a European company is to be attained, it must be possible at least to create such a company as a means of enabling companies from different Member States to merge or to create a holding company, and of enabling companies and other legal bodies carrying on an economic activity, and governed by the laws of different Member States, to form a joint subsidiary;	Whereas, without prejudice to any economic needs that may arise in the future, if the essential objective of the legal rules governing a European company is to be attained, it must be possible at least to create such a company as a means of enabling companies (delete four words) to merge or to create a holding company, and of enabling companies and other legal bodies carrying on an economic activity (delete nine words) to form a joint subsidiary;

Recitals 11 - 21 unchanged

AMENDMENT 3

Recital 21 (a) (new)

Whereas the European Community needs new sources of income in the context of EMU, and whereas a European Company Tax may provide a suitable and appropriate source;

AMENDMENT 4

Recital 21 (b) (new)

Whereas a European Company Tax should preferably be applied to sources of profit which are boosted by th process of European integration;

AMENDMENT 5

Recital 21 (c) (new)

Whereas SEs are, pre-eminently, undertakings which should be subject to European Company Tax; whereas this should be taken into account immediately, although it should have no financial implications for the Member States for the time being;

Article 1 unchanged

Article 2 (1) and (2) unchanged

AMENDMENT 6

Article 2 (3) (new)

An SE may be formed by the transformation of a national company which has its registered office in a Member State and carries out its business through the intermediary of a subsidiary or branch office.

Article 3 (1) and (2) unchanged

AMENDMENT 7

Article 3 (3)	Article 3 (3)
An SE may itself form one or more subsidiaries in the form of an SE. Such a subsidiary may not, however, itself establish a subsidiary in the form of an SE.	An SE may itself form one or more subsidiaries in the form of an SE. (delete sixteen words)

Articles 4 - 6 unchanged

AMENDMENT 8

Article 7	Article 7
1. Matters covered by this Regulation, but not expressly mentioned herein, shall be governed:	1. Matters not expressly mentioned in this regulation shall be governed by the wishes of the members as expressed in the instrument of incorporation or statutes. Failing this, they shall be governed by the general principles upon which this regulation is based.
(a) by the general principles upon which this Regulation is based;	Delete
(b) if those general principles do not provide a solution to the problem, by the law applying to public limited companies in the State in which the SE has its registered office.	Delete
2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under paragraph 1 (b).	Delete

3. In matters which are not covered by this Regulation, Community law and the law of the Member States shall apply to the SE.	2. Text unchanged
4. In each Member State and subject to the express provisions of this Regulation, an SE shall have the same rights, powers and obligations as a public limited company incorporated under national law	3. Text unchanged
	4. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under paragraph 3.

Articles 8 - 17 unchanged

Article 18 (1) (a) - (g) unchanged

AMENDMENT 9

Article 18 (1) (h) (new)

the anticipated effects with regard to employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the newly established SE.

Article 18 (2) and (3) unchanged

Article 19 unchanged

AMENDMENT 10

Article 20	Article 20
The administrative or management board of each of the merging companies shall draw up a detailed written report explaining and justifying the draft terms of merger from the legal and economic point of view and, in particular, the share exchange ratio.	1. Text unchanged
The report shall also indicate any special valuation difficulties which have arisen.	Unchanged

	2. This report shall also be forwarded to the employees' representatives of the companies concerned or, in the absence of such representatives, to trade unions recognized in accordance with the law or custom of the Member States.
	AMENDMENT 11
Article 21 (1)	Article 21 (1)
One or more experts, acting on behalf of each founder company but independent of them, appointed or approved by a judicial or administrative authority in the Member State in which the company concerned has its registered office, shall examine the draft terms of merger and draw up a written report for the shareholders.	One or more experts, acting on behalf of each founder company but independent of them, appointed or approved by a judicial or administrative authority in the Member State in which the company concerned has its registered office, shall examine the draft terms of merger and draw up a written report for the shareholders and the employees' representatives of the companies concerned or, in the absence of such representatives, for unions recognized in accordance with the law or custom of the Member States.

Article 21 (2) - (4) unchanged

Article 22 (1) unchanged

	AMENDMENT 12
Article 22 (2)	Article 22 (2)
For each of the founder companies, the provisions of national law adopted in accordance with Article 11 of Directive 78/855/EEC shall apply to the information to be provided to shareholders before the date of the general meeting called to approve the merger.	For each of the founder companies, the provisions of national law adopted in accordance with Article 11 of Directive 78/855/EEC shall apply to the information to be provided to shareholders and employees' representatives of the companies concerned, or, in the absence of such representatives, to trade unions recognized in accordance with the law or custom of the Member States before the date of the general meeting called to approve the merger.

Articles 23 - 31 unchanged

AMENDMENT 13

Article 32 (1)	Article 32 (1)
The administrative or management board of the founder companies shall draw up draft terms for the formation of an SE holding company containing the particulars referred to in Article 18 (1) (a), (b) and (c) and Article 21 and shall prepare the report provided for in Article 20.	The administrative or management board of the founder companies shall draw up draft terms for the formation of an SE holding company containing the particulars referred to in Article 18 (1) (delete four words) and Article 21 and shall prepare the report provided for in Article 20.

Article 32 (2) -(6) unchanged

Article 33 unchanged

Article 34, first paragraph, subparagraphs (a) - (c) unchanged

AMENDMENT 14

Article 34, subparagraph (d) (new)

the likely consequences with regard to employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the subsidiaries.

Article 35 (1) and (2) unchanged

Article 35 (3) (a) and (b) unchanged

AMENDMENT 15

Article 35 (3) (c) (new)

the likely consequences with regard t employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the subsidiaries.

Article 36 - 37 unchanged

Article 38 (1) unchanged

AMENDMENT 16

Article 38 (2)	Article 38 (2)
The capital of the SE shall be divided into shares denominated in ecu. Shares issued for a consideration must be paid up at the time the company is registered in the Register referred to	The capital of the SE shall be divided into shares denominated in ecu. Shares issued for a consideration must be paid up at the time the company is registered in the Register referred to

in Article 8 (1) to the extent of not less than 25% of their nominal value. However, where shares are issued for a consideration other than cash at the time the company is registered, that consideration must be transferred to the company in full within five years of the date on which the company was incorporated or acquired legal personality.	in Article 8 (1) to the extent of not less than 25% of their nominal value, or in the absence of a nominal value, of their accountable par. However, where shares are issued for a consideration other than cash at the time the company is registered, that consideration must be transferred to the company in full within five years of the date on which the company was incorporated or acquired legal personality.

Article 38 (3) unchanged

Articles 39 - 41 unchanged

AMENDMENT 17

Article 42 (1)	Article 42 (1)
The capital of the SE may be increased by the subscription of new capital. An increase in capital shall require amendment of the statutes. Shares issued for a consideration in the course of an increase in subscribed capital must be paid up to not less than 25% of their nominal value. Where provision is made for an issue premium, it must be paid in full.	The capital of the SE may be increased by the subscription of new capital. An increase in capital shall require amendment of the statutes. Shares issued for a consideration in the course of an increase in subscribed capital must be paid up to not less than 25% of their nominal value. Where provision is made for an issue premium, it must be paid in full. However, where the increase in capital is reserved for the employees of the SE, payment of the issue premium may be spread over five years.

Article 42 (2) - (5) unchanged

AMENDMENT 18

Article 43 (1)	Article 43 (1)
The statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with Article 9, may authorize an increase in the subscribed capital, provided that such increase shall not exceed one-half of the capital already subscribed.	The memorandum or the articles of association or the general meeting, the decision of which must be published in accordance with Article 9, may authorize an increase in the subscribed capital (delete thirteen words).

AMENDMENT 19

Article 43 (2)	Article 43 (2)
Where appropriate, the increase in the subscribed capital up to the maximum authorized under paragraph 1 shall be decided by the administrative or the management board. The power of such body in this respect shall be for a maximum period of five years, and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.	Where appropriate, the increase in the subscribed capital (~~delete eight~~ words) shall be decided by the administrative or the management board. The power of such body in this respect shall be for a maximum period of five years, and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.

Article 43 (3) - (5) unchanged

Articles 44 - 48 unchanged

Article 49 (1) unchanged

Article 49 (2) (a) - (h) unchanged

AMENDMENT 20

Article 49 (2) (i) (new)

fully paid-up shares, the nominal value or, in the absence thereof, the accountable par of the acquired shares do not exceed 10% of the subscribed capital and the general meeting has given the authorisation to acquire the shares. The duration of the period for which the authorisation is given may not exceed 18 months.

Article 49 (3) - (9) unchanged

AMENDMENT 21

Article 49 (10)	Article 49 (10)
Shares aquired by ther SE pursuant to paragraph 2 (a) shall, if they have not been distributed to the employees within 12 months of being acquired, be disposed or within the following six months.	Shares acquired by the SE pursuant to paragraph 2 (a) shall, if they have not been allocated or offered by way of option to the employees, be cancelled within eighteen months of their acquisition. Shares acquired in the cases indicated in paragraph 2 (c) to (i) may be allocated to the employees.

AMENDMENT 22

Article 50	Article 50
Holdings of the SE in other companies shall be disclosed in accordance with the provisions of national law giving effect to Directive 88/627/EEC.	All SEs, whether their shares are publicly quoted or not, shall disclose shareholdings in accordance with the the national provisions adopted under Directive 88/627/EEC.

Articles 51 - 63 unchanged

Article 64 (1) unchanged

AMENDMENT 23

Article 64 (2)	Article 64 (2)
The management board shall inform the chairman of the supervisory board without delay of all matters of importance, including any event occuring in the company or in undertakings controlled by it which may have an appreciable effect on the SE.	The management board shall inform the chairman of the supervisory board without delay of events of particular importance concerning the company including any event occuring (delete four words) in undertakings controlled by it which may have an appreciable effect on the SE.

Article 64 (3) - (6) unchanged

AMENDMENT 24

Article 64 (7) (new)

The supervisory board shall also be kept regularly informed of:
(a) the personnel policy of the company,
(b) the economic and financial position,
(c) future developments concerning general production and marketing conditions,
(d) production and investment programmes,
(e) rationalization plans,
(f) the introduction of new manufacturing and working techniques.

Articles 65 - 132 unchanged

AMENDMENT 25

Article 133 (0) (new)

An SE shall pay company tax direct to the European Community in the Member

	State where it is resident for tax purposes, at the rates current in that Member State. Until such time as SEs are taxed at a uniform European rate in all Member States, the payments made by an SE to the Community shall be set against the compulsory payments made by the Member State in question to the Community. The payment made by an SE to the Community shall be known as Provisional European Company Tax.

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COUNCIL DIRECTIVE

Preambel unchanged

Recitals 1 - 6 unchanged

AMENDMENT 26

Recital 7 (new)

Whereas it is essential, for the internal market to operate properly and unfair competition to be prevented, that the various models of participation make provision for an equivalent level of participation;

Articles 1 - 2 unchanged

AMENDMENT 27

Article 3 (1)	Article 3 (1)
Subject to the application of paragraph 5, the participation of SE employees prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the representatives of the employees of those companies provided for by the laws and practices of the Member States. Where no agreement can be reached the management and administrative boards shall choose the model applicable to the SE.	Subject to the application of paragraph 5, the participation of SE employees prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the representatives of the employees of those companies provided for by the laws and practices of the Member States. Where no agreement can be reached, an impartial conciliator (arbitration body) appointed by the Member States shall choose the model applicable to the SE.

Article 3 (2) - (5) unchanged

Article 4 unchanged

AMENDMENT 28

Article 4 (2) (new)

Where an SE is the parent company in a group, the employees of the subsidiary companies in the Member States shall be entitled to elect representatives to the board of the parent company.

Article 5 (1) unchanged

Article 5 (2) (a) unchanged

AMENDMENT 29

Article 5 (2) (b)	Article 5 (2) (b)
where it is necessary for the performance of its duties, to require from the management board or the administrative board a report concerning certain of the company's business or any information or documents;	where it is necessary for the performance of its duties, to obtain from the management board or the administrative board a report concerning (delete two words) the companys business and any information or documents, before a decision is taken by the appropriate bodies of the SE;

Article 5 (2) (c) unchanged

Article 5 (3) unchanged

AMENDMENT 30

Article 6 (1)	Article 6 (1)
Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees or their representatives in those companies.	Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees or their representatives, elected in accordance with the law or custom of the Member States, in those companies.

AMENDMENT 31

Article 6 (2) (a)	Article 6 (2) (a)
once every three months, to be informed of the progress of the	once every three months, to be informed of the progress of the

company's business, including that of undertakings controlled by it, and of its prospects;	company's business, including that of undertakings controlled by it, and of its prospects, before the appropriate bodies take a decision;
	AMENDMENT 32
Article 6 (2) (b) bis	Article 6 (2) (b) bis (new) (existing (b) thus becomes (c))
	where necessary for the performance of their tasks, to request the management board or the administrative board to report on certain aspects of the business of the SE or to provide any information or submit any documentation relating thereto;

Article 6 (3) - (4), subparagraph 1 unchanged

	AMENDMENT 33
	Article 6 (4), subparagraph 2 (new)
	The employees' representatives in the supervisory or management board may provide the employees they represent with information on all matters which affect employees. Such employees' representatives may not be disciplined or dismissed by the SE for anything they say, do or write as part of their representative function.
	AMENDMENT 34
Article 6 (5)	Article 6 (5)
If the law of the State where the SE has its registered office so permits, the agreement may permit the management board or the administrative board of the SE to withhold from the employees or their representatives any information the disclosure of which might seriously jeopardize the interests of the SE or disrupt its projects.	Delete

Article 6 (6) - (8) unchanged

AMENDMENT 35

Article 6 (a) (new)

The board of the parent company shall seek to provide the employees of the SE with effective information. Such information shall be provided at all levels and the group management shall be required to inform employee representatives throughout the group of overall developments. This should take the form of an information and hearing procedure embracing the whole group which entitles representatives of all places of work to participate in the provision of such information.

Articles 7 - 10 unchanged

AMENDMENT 36

Article 10 (a) (new)

The administrative or management bodies of the founder companies shall, together with employees' representatives, or, in the absence of such representatives, with trade unions recognized in accordance with the law or custom of the Member States, investigate the legal, economic and social implications for employees of the establishment of the SE and any measures taken in their regard.

Article 11 unchanged

AMENDMENT 37

Article 11 (a) (new)
(existing Title 3 thus becomes Title 4)

Title 3: Organization of matters covered by employment legislation

1. In countries where the SE has a permanent operating base, a person shall be appointed who is authorized to conduct collective bargaining negotiations with the relevant employees' organization.

2. Agreements concerning the place of jurisdiction for disputes under employment legislation may be concluded only after the dispute has arisen unless the agreement is part of a collective agreement or the agreement concerning the place of jurisdiction entitles the employee also to institute proceedings in other courts than those that are the place of jurisdiction in the absence of an agreement concerning the place of jurisdiction.

3. The individual employee may not conclude agreements concerning the choice of legislation in employment contracts that place him in a worse position than in the case where no agreement concerning the choice of legislation has been concluded.

4. Pay and working conditions under employment contracts concluded with a branch office of an SE which has its head office in another Member State may not be inferior to the conditions that otherwise obtain for work of the same nature within the same trade.

Articles 12 - 13 unchanged

Annex unchanged

1. The concept of the European Company is certainly useful. The Statute for the Company should be uniform and as independent of national law as possible. The foundation of a European Company is a possibility which must exist parallel to the options under harmonized company law. The idea would be a uniform common legislation under Community law which would be interpreted on the basis of that law. However, in view of the difficulties in reaching such an agreement reference to national law could be made in any area which is governed by sufficiently harmonized legislation. Only in exceptional cases and for limited periods of time reference to non-harmonized legislation should be allowed (scope, tax and workers' participation provisions).

2. The legal basis chosen by the Commission for the Regulation and the Directive should be approved. Apart from being appropriate in its own right it implies a two-reading procedure with Parliament and the possibility of a qualified majority decision in Council.

3. The minimum capital of 100,000 ECU is welcomed in that it facilitates the access of small and medium-sized enterprises to form a European Company.

4. The tax incentives provided for in Article 133 (the losses in one Member State set against profits of the European Company in its state of residence) is also a positive feature of the proposal. The efforts to harmonize legislation in the tax field must be speeded up, so that all companies in the EC can profit from the same tax incentives in an environment of equal competition.

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Social Affairs, Employment and the Working Environment
for the Committee on Legal Affairs and Citizens' Rights
Draftsman: Mr Fernando SUAREZ GONZALEZ

At its meeting of 19 December 1989, the Committee on Social Affairs, Employment and the Working Environment appointed Mr SUAREZ GONZALEZ draftsman.

At its meetings of 19 December 1989, 21 February 1990 and 22 March 1990, it considered the draft opinion. On 28 September 1990, it adopted the conclusions unopposed with 2 abstentions.

The following took part in the vote: van Velzen, chairman; Suarez Gonzalez, draftsman; Brok, Buron, Catasta, Chanterie, Glinne, Hughes, Menrad, Nielsen, Oddy (for McMahon), Onur (for Salisch), Peter, Pronk.

I. Introduction

The lack of a Community legal framework to facilitate cross-border transactions and cooperation between undertakings in different Member States has been one of the main problems facing the completion of the internal market.

The present proposal for a regulation on the Statute for a European company will help eliminate these problems and there is no doubt that the Commission is thereby providing undertakings with a useful and important mechanism.

It is significant that this is the first Community law enabling a legal person to be created independently of Member States' laws.

In spite of the indisputable importance of such regulations from the point of view of business, the social aspects must not be forgotten.

The primary aim of the proposed amendments to the regulation is therefore to incorporate to a greater extent the accompanying directive on the involvement of employees.

Secondly, it is proposed that the Commission should include 'socially oriented' undertakings (cooperatives, mutual companies, self-managing undertakings, etc.) to which an instrument of this kind would also be of great benefit.

Finally, it is proposed that the level of employee participation should be increased, not only in management but also in the actual process of setting up a European company

II. Conclusions

The Committee on Social Affairs, Employment and the Working Environment calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate in its report the following amendments:

Commission text	Amendments
(Amendment No. 1) Before the fifteenth recital, insert a new recital	
	Whereas, having regard to the approximation effected by Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the provisions of that directive can be made applicable to European companies;
(Amendment No. 2) Article 1, paragraph 1	
1. Companies may be formed throughout the Community in the form of a European public limited company (Societas Europaea, 'SE') on the conditions and in the manner set out in this regulation.	1. Companies may be formed throughout the Community in the form of a European company (Societas Europaea, 'SE').
(Amendment No. 3) Article 1, paragraph 2	
2. The capital of the SE shall be divided into shares. The liability of the shareholders for the debts and obligations of the company shall be limited to the amount subscribed by them.	2. An SE may be formed in the form of a European public limited company, a European cooperative society, a European mutual society or a European cooperating company.
(Amendment No. 4) Article 1, paragraph 3	
3. The SE shall be a commercial company whatever the object of its undertaking.	Delete

Commission text	Amendments
	(Amendment No. 5) Article 2, heading (new)
Formation	Form and formation of the European public limited company
	(Amendment No. 6) Article 2, before paragraph 1, insert the following new paragraph
	01. The capital of the European public limited company, hereinafter called 'SE', shall be divided into shares. The liability of the shareholders for the debts and obligations of the company shall be limited to the amount subscribed by them.
	(Amendment No. 7) Article 2, before paragraph 1, insert the following new paragraph
	02. The European public limited company shall be a commercial company whatever the object of its undertaking.
	(Amendment No. 8) Before Article 13, Article 12a (new)
	(Organization of matters covered by employment legislation including the conclusion of collective agreements and rules governing jurisdictions and the choice of legislation)
	1. In countries where the SE has a permanent operating base, a person shall be appointed who is authorized to conduct collective bargaining negotiations with the relevant employees' organization.
	(Amendment No. 8) (continued) Before Article 13, Article 12a (new)
	2. Agreements concerning the place of jurisdiction for disputes under employment legislation may be concluded only after the dispute has arisen unless the agreement is part of a collective agreement or the agreement concerning the place of jurisdiction entitles the employee also to institute proceedings in other courts than those that are the place of jurisdiction in the absence of an agreement concerning the place of jurisdiction.
	3. The individual employee may not conclude agreements concerning the choice of legislation in employment contracts that place him in a worse position than in the case where no agreement concerning the choice of legislation has been concluded.
	4. Pay and working conditions under employment contracts concluded with a branch office of an SE which has its head office in another Member State may not be inferior to the conditions that otherwise obtain for work of the same nature within the same trade.

Commission text	Amendments (Amendment No. 9)
Article 15, paragraph 2 (new)	
	2. Before taking the decision to form an SE, the administrative or management boards of the founder company or companies shall provide the representatives of the employees with written information concerning the legal, economic, financial and social aspects of the formation of the SE. Both parties shall consider these aspects and shall select, pursuant to Article 3 of the Directive, the model of employee participation to be applied to the SE.
(Amendment No. 10) Article 15, paragraph 3 (new)	
	3. The relevant employee representatives and the trade unions may invoke these rights in a court in the country where the registered office of the founder company or companies is located or in the Court of Justice of the European Communities.
(Amendment No. 11) Article 17, before paragraph 3, paragraph 2a (new)	
	2a. Employees shall be covered by the collective agreements in force in their respective places of work until such time as cross-border collective agreements have been negotiated.
(Amendment No. 12) Article 18, paragraph 1(h) (new)	
	(h) the anticipated effects with regard to employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the newly established SE.
(Amendment No. 13) Article 19, before paragraph 2, insert paragraph 1a (new)	
	1a. The employees' representatives of the undertakings in question shall be notified of such plans in each case.
(Amendment No. 14) Article 20, first paragraph	
The administrative or management board of each of the merging companies shall draw up a detailed written report explaining and justifying the draft terms of merger from the legal and economic point of view and, in particular, the share exchange ratio.	The administrative or management board of each of the merging companies shall draw up a detailed written report explaining and justifying the draft terms of merger from the legal, economic and social point of view, including the share exchange ratio.

Commission text	Amendments
	(Amendment No. 15) Article 21, paragraph 1
1. One or more experts, acting on behalf of each founder company but independent of them, appointed or approved by a judicial or administrative authority in the Member State in which the company concerned has its registered office, shall examine the draft terms of merger and draw up a written report for the shareholders.	1. One or more experts, acting on behalf of each founder company but independent of them, appointed or approved by a judicial or administrative authority in the Member State in which the company concerned has its registered office, shall examine the draft terms of merger; they shall draw up a written report for the shareholders and the employees' representatives of all the companies concerned or, in the absence of such representatives, to trade unions recognized in accordance with the law or custom of the Member States.
	(Amendment No. 16) Article 32, paragraph 1
1. The administrative or management board of the founder companies shall draw up draft terms for the formation of an SE holding company containing the particulars referred to in Article 18(1)(a), (b) and (c) and Article 21 and shall prepare the report provided for in Article 20.	... containing the particulars referred to in Article 18(1) and Article 21 and shall prepare the report provided for in Article 20.
	(Amendment No. 17) Article 33, paragraph 1b (new)
	1b. Employees' representatives shall be deemed to be the representatives of the employees in the undertakings incorporated into the holding company, in accordance with the laws or legal practice of the Member States.
	(Amendment No. 18) Article 34(d) (new)
	(d) the likely consequences with regard to employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the 'Community subsidiary'.
	(Amendment No. 19) Article 35a (new)
	The participation scheme provided for in Article 33 shall also apply where a joint subsidiary is formed.
	(Amendment No. 20) Article 36(c) (new)
	(c) the likely consequences with regard to employment, terms of employment and pay, both in the founder companies and the undertakings controlled by them, and in the subsidiary.
	(Amendment No. 21) Article 37
The instrument of incorporation of the subsidiary or its statutes, if the statutes are a separate instrument, shall be approved in accordance with Article 35(3).	The instrument of incorporation of the subsidiary or its statutes, if the statutes are a separate instrument, shall be approved in accordance with Article 35(3), and the provisions adopted in the framework of Directive 77/187.

Commission text	Amendments
	(Amendment No. 22) Article 38, paragraph 1
1. The capital of the SE shall be denominated in ECU.	1. The capital of the SE shall be denominated in ECU. The currency of the country in which the registered office is located may optionally be recognized as an additional unit of account.
	(Amendment No. 23) Article 49, paragraph 11
11. No rights may be exercised in respect of the shares referred to in paragraphs 8, 9 and 10 until they have been disposed of or distributed to the employees.	11. No rights may be exercised in respect of the shares owned by the SE itself and of the shares referred to in paragraphs 8, 9 and 10 until they have been cancelled, disposed of or allocated to the employees.
	(Amendment No. 24) Article 50
50. Holdings of the SE in other companies shall be disclosed in accordance with the provisions of national law giving effect to Directive 88/627/EEC[1].	50. All SEs, whether their shares are publicly quoted or not, shall disclose shareholdings in accordance with the national provisions adopted under Directive 88/627/EEC.
	(Amendment No. 25) Article 63, before paragraph 2, paragraph 1a (new)
	1a Without prejudice to the election of employees' representatives in accordance with Article 4 of Directive ... (EEC), the representatives of the employer on the supervisory board shall be appointed by the general meeting.
	(Amendment No. 26) Article 68, paragraph 1, second subparagraph
However, the first members of the supervisory board or of the administrative board, who are to be appointed by the shareholders shall be appointed by the instrument of incorporation of the SE for a period not exceeding three years.	However, the first members of the supervisory and administrative boards or of the separate body who are to be appointed by the shareholders or employees shall be appointed by the instrument of incorporation of the SE for a period not exceeding three years.

[1] OJ No. L 348, 17.12.1988, p. 62

Commission text	Amendments
	(Amendment No. 27) Article 72, paragraph 1
(a) the closure or transfer of establishments or of substantial parts thereof,	(a) the closure or transfer of the registered office or of establishments or of substantial parts thereof,
(b) ... the activities of the SE;	(b) ... the activities of the SE; inter alia in the event of liquidation, winding up, insolvency or cessation of payments,
	(ba) increases or reductions in subscribed or authorized capital,
(c) substantial organizational changes within the SE	(c) amendments to the statutes, winding up of the company, conversion or merger,
	(ca) company strategy and organizational changes within the SE, in particular changes in manufacturing activity,
(d) the establishment of cooperation with other undertakings which is both long-term and of importance to the activities of the SE, or the termination thereof.	
(e) the setting up of a subsidiary or of a holding company.	
	(f) changing the registered office of the SE,
	(g) adoption of the annual accounts, allocation of profit or treatment of loss for the accounting year, appointment and dismissal of auditors of the annual accounts
may be effected by the management board only following prior authorization of the supervisory board or by the administrative board as a whole.	
Implementation may not be delegated to the executive members of the administrative board.	
	(Amendment No. 27) (continued) Article 72, paragraph 1
	The above decisions may not be implemented without the prior agreement of the representatives of the employees.
Acts done in breach of the above provisions may not be relied upon against third parties, unless the SE can prove that the third party was aware of the breach.	
	The elected representatives of the employees must be consulted before a decision is taken by the administrative or management board.
	(Amendment No. 28) Article 72, paragraph 2
2. The statutes of the SE may provide that paragraph 1 shall also apply to other types of decisions.	2. The management of the SE may provide for other types of decisions to which paragraph 1 would apply. This must not be to the detriment of employees' rights.

Commission text	Amendments
(Amendment No. 29) Article 72, paragraph 3 (new)	
	The supervisory board shall also be kept regularly informed of: (a)the personnel policy of the company, (b)the economic and financial position, (c)future developments concerning general production and marketing conditions, (d)production and investment programmes, (e)rationalization plans, (f)the introduction of new manufacturing and working techniques.
(Amendment No. 30) Article 81, after (l) (new)	
	(m) granting of a discharge to the boards, (n) additional matters may be laid down in the statutes.
(Amendment No. 31) Article 86	
Every shareholder who has complied with the formalities prescribed by the statutes shall be entitled to attend the general meeting. However, the statutes may prohibit shareholders having no voting rights from attending the meeting.	Every shareholder who has complied with the formalities prescribed by the statutes shall be entitled to attend the general meeting.
(Amendment No. 32) Article 101a (new)	
	The management and supervisory boards shall as a rule be responsible for adopting the annual accounts.
(Amendment No. 33) Article 104, paragraphs 2 and 3	
2. The SE may avail itself of the options provided for in Article 47 of Directive 78/660/EEC.	2. The disclosure of the accounts of the SE shall be governed by the legislation of the Member State where the registered office is located.
3. Articles 48, 49 and 50 of Directive 78/660/EEC shall apply to the SE.	3. Deleted
(Amendment No. 34) Article 106, paragraph 3	
3. The SE may avail itself of the options provided for in Articles 1, 6, 12 and 15 of Directive 83/349/EEC.	3. The drawing up of the consolidated accounts of the SE shall be governed by the legislation of the Member State where the SE has its registered office.
(Amendment No. 34) Article 136	
after it has been verified whether the contents of the directive have been complied with by the Member States on its transposition into national law.	... after it has been verified whether the contents of the directive (.../.../EEC) have been complied with by the Member States on its transposition into national law.

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Social Affairs, Employment and the Working Environment
for the Committee on Legal Affairs and Citizens' Rights
Draftsman Mr E. BROK

At its meeting of 27 November 1989 the Committee on Social Affairs Employment and the Working Environment appointed Mr BROK as draftsman of its opinion.

The Committee considered the draft opinion at its meetings of 27 November and 19 December 1989, and 21 February and 18 September 1990, and adopted it at the last meeting unanimously with four abstentions.

The following took part in the vote: Van Velzen, Chairman; Barros Moura, Vice-Chairman; Brok, draftsman; von Alemann, Amaral (for Marques Mendes), Bontempi (for Catasta), Deprez, Hadjigeorgiou, McMahon, Menrad, Nielsen, Onur (for Megahy), Peter, Peters, Pronk, Rønn, Sandbæk, Van Outrive (for Salisch), and Zeller.

EXPLANATORY STATEMENT

The involvement of employees in their undertaking's decision-making process and their right to information and consultation have often been discussed in EC Institutions.

It is well known that considerable resistance is always encountered whenever institutional arrangements are used to enable employees to share in decision making. Although the reasons for this resistance tend to be mainly traditional, they have nevertheless caused the situation where neither the Vredeling Directive nor the 5th nor the 10th Company Law Directives have as yet entered into force.

With the completion of the European internal market there will be growing pressure and demand for economic and social cohesiveness, and for a social dimension to the internal market that will include provision for employee participation in decision making by their undertaking. If the economic advantages of the European internal market are to be used to the full in order to stay ahead in conditions of stiffening competition, employers must adapt to the ever-quickening pace of change resulting from a constantly changing economic environment and technological development. Without acceptance by the employees that will not be possible. Participation at the level of the undertaking can thus be viewed as a factor making for peaceful settlement at a time of growing uncertainties on national and international markets.

In drawing up the present proposal for a Directive on the involvement of employees in the European Company the Commission of the EC has however submitted proposals on employee participation that cannot be accepted as they now stand.

It would of course be highly satisfactory if a single employee participation model could be developed for all the Member States. But given the existing differences in legislation relating to employee participation within the Community, which are characterized on the one hand by the absence of a minimum level of participation in some countries, and on the other by laws providing for varying degrees of employee participation under existing systems, which are themselves the product of a long drawn out process of divergent historical development, it hardly seems realistic to hope to produce a single employee participation scheme acceptable to all the Member Countries. The Commission's proposal for making employee participation more flexible by offering a choice of different models consequently increases the acceptability and thus the chances of political implementation, assuming that the establishment of a European Company takes place on a voluntary basis. But whenever a European Company is established, the employers' side also have to accept one of the employee participation models:

a. Model A (internal participation model)

   At least one third, and not more than one half of the members of the supervisory board or administrative board (dualistic or monistic system) are to be appointed by election or co-option, with provision for the general meeting of shareholders or the representatives of the employees to object to a specific appointment (Article 4).

b. Model B (external participation model)

   Participation by employees through their own separate body, representing the employees of the SE. The number of members of that body and the detailed rules governing their election or appointment are to be laid down in the Company Statutes in consultation with the representatives of the employees of the founder companies (Article 5).

c. Model C (negotiated participation model)

   By agreement between the management and administrative boards of the founder companies and the employees or their representatives in those companies on the nature of employee participation.

It is at all events essential to guarantee that these models will have a fundamentally equivalent effect. Equivalent effect as an operating concept does not require the same procedures and forms of participation to be used. It does mean however that the effects of the participation model on what happens within the undertaking must be comparable. The present proposal for a directive does not comply with this requirement. The proposed models B and C violate the principle of minimum equivalence in relation to A, and result in the situation not only that employee participation models with varying intensity of impact could emerge within a single country but also that existing employee rights under the European Limited Company could be reduced by a permitted switch from one model of participation to another within the SE.

To ensure that representatives of the employees can enjoy approximately equivalent powers under all model configurations, and will have at their disposal the equivalent means of action, to secure approximately equivalent levels of employee participation, and to guarantee the rights of employees, the Committee on Social Affairs submits the following amendments to the Commission's proposal for a Directive:

Commission text	Amendments
	(Amendment No 1) Second recital
whereas, in order to promote the economic and social objectives of the Community, arrangements should be made for employees to participate in the supervision and strategic development of the SE;	whereas, in order to promote the economic and social objectives of the Community, arrangements should be made for employees to participate in the supervision, strategic development and decision making of the SE;
	(Amendment No 2) Recital 5a - (new)
	whereas, in view of the approximation of laws brought about by Directive 77/187 (EEC) on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the provisions of that Directive can be made applicable to the SE;
	(Amendment No 3) Recital 5b - (new)
	whereas the various models of participation proposed must be equivalent in terms of employees' rights to information, consultation and participation in the management of an SE, the aim of the differentiation being to enable the forms of participation to reflect national practice;
	(Amendment No 4) Recital 5c - (new)
	The model of participation selected shall not prejudice the established rights of employees or the most favourable national practices in the Member States;
	(Amendment No 5) Article 1a - (new)
	1a. In addition to the employees' rights to participation laid down in Article 2 et seq. the company Statute shall also guarantee all employees or employees' representatives minimum rights to information and to be consulted at company level on strategic decisions taken by the firm (e.g. through a company or group works council).
	(Amendment No 6) Article 2
Member States shall take the necessary measures to enable employees of the SE to participate in the supervision, strategic development of the SE in accordance with the provisions of this Directive.	Member States shall take the necessary measures to enable employees of the SE and of companies controlled by it to participate in the supervision, strategic development and decision-making of the SE in accordance with the provisions of this Directive.

Commission text	Amendments
	(Amendment No 7) Article 3(1)
1. Subject to the application of paragraph 5, the participation of SE employees prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the representatives of the employees of those companies provided for by the laws or practices of the Member States. Where no agreement can be reached the management and administrative boards shall choose the model applicable to the SE.	1. Subject to the application of paragraph 5, the participation of the employees of an SE and companies controlled by it prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the representatives of the employees of those companies provided for by the laws and practices of the Member States. Where no agreement can be reached, each side may appeal to a mediation committee made up of the original negotiating partners and an independent public figure acceptable to both sides. Where the mediation committee is also unable to reach agreement, the latter shall choose the model applicable to the SE. The models set out in Articles 4, 5 and 6 must be equivalent in terms of employees' rights to information, consultation and participation and thus include the rights set out in Articles 64 and 67 of the Regulation on the Statute for a European company.
	(Amendment No 8) Article 3(3)
3. Subject to the application of paragraph 5, the chosen model may be replaced by another model in Articles 4, 5 and 6 by an agreement concluded between the management or the administrative board and the representatives of the employees of the SE. This agreement must be submitted for the approval of the general meeting.	3. Subject to the application of paragraph 5, the chosen model may be replaced by another model in Articles 4, 5 and 6 by an agreement concluded between the management or the administrative board and the representatives of the employees of the SE and of companies controlled by it.
	(Amendment No 9) Article 3(5)
5. A Member State may restrict the choice of the models referred to in Articles 4, 5 and 6 or make only one of those models compulsory for SEs having their registered office in its territory.	5. A Member State may restrict the choice of the models referred to in Articles 4, 5 and 6 or make only one of those models compulsory for SEs having their registered office in its territory, after consulting the social partners, and provided that the models chosen do not prejudice the established rights of employees.

Commission text	Amendments
	(Amendment No 10) Article 4
The appointment of members of the supervisory board or the administrative board, as the case may be, shall be governed by the following rules:	The appointment of members of the supervisory board shall be governed by the following rules:
(i) at least one third and not more than one half of them shall be appointed by the employees of the SE or their representatives in that company ; or	- a number of members equal to the number of shareholders' representatives on the supervisory board shall be appointed by the employees of the SE or their representatives in that company;
(ii) they shall be co-opted by the board. However, the general meeting of shareholders or the representatives of the employees may, on specific grounds, object to the appointment of a particular candidate. In such cases the appointment may not be made until an independent body established under law has declared the objection inadmissible.	- by the co-opting by the board of an odd number of members which is equal to or smaller than the number of shareholders' representatives. The following may not become members - persons who: (i) by virtue of the legislation to which they are subject, or (ii) pursuant to a judicial or administrative decision taken or recognized in one of the Member States, are prohibited from membership of the administrative or supervisory boards of companies.
	In the event of a tie, the casting vote shall be that of the chairman, who shall be appointed by the general meeting.
	(Amendment No 11) Article 4(1)a) - (new)
	Where a European company is the parent company in a concern, the employees of its subsidiaries in the Member States shall be able to elect representatives to the board of the parent company.
	(Amendment No 12) Article 5 (1)
1. A separate body shall represent the employees of the SE. The number of members of that body and the detailed rules governing their election or appointment shall be laid down in the statutes in consultation with the representatives of the employees of the founder companies in accordance with the laws or practices of the Member States.	1. A separate body shall represent all employees whose services are retained by the SE or by an undertaking controlled by it under a contract of employment of fixed or indefinite duration or an atypical contract of employment. It shall be representative of the staff structure of the SE. The number of members of that body and the detailed rules governing their election shall be laid down in the statutes in consultation with the representatives of the employees of the founder companies in accordance with the laws and practices in the Member States The representatives of the employees shall be appointed in accordance with established practice and legal provisions in the Member States and in all cases shall be directly elected by secret ballot by the employees affected by the foundation. The number of these representatives shall be in proportion to the number of employees represented by them. They shall remain in office until the conditions for the agreed model have been fulfilled.

Commission text	Amendments
	(Amendment No 13) Article 5(2)(a)
(a) At least once every three months, to be informed by the management board or the administrative board of the progress of the company's business, including that of undertakings controlled by it, and of its prospects;	(a) At least once every three months, to be informed by the management board or administrative board of the management and the progress of the business of the company and of the undertakings controlled by it, and of their position and prospects; in certain cases information must, pursuant to Articles 64 and 67 of the Regulation, be volunteered forthwith;
	(Amendment No 14) Article 5(2)(b)
(b) where it is necessary for the performance of its duties, to require from the management board or the administrative board a report concerning certain of the Company's business or any information or documents;	(b) at any time to require from the management board or the administrative board information concerning the company or matters relating to undertakings controlled by it, and to have access to reports, documents and conclusions relating thereto, and to enlist the support of experts in this connection;
	(Amendment No 15) Article 5(2)(b)a) - (new)
	(b)a) to be informed by the management board or the administrative board forthwith of all important matters, including events which have occurred in the company and in the undertakings controlled by it and which may have a significant impact on the position of the SE;
	(Amendment No 16) Article 5(2)(b)b) - (new)
	(b)b) to ask the management board or administrative board at any time for information or even for a special report on certain of the company's business or the business of undertakings controlled by it;
	(Amendment No 17) Article 5(2)(b)c) - (new)
	(b)c. to carry out any checks necessary for the performance of its duties; to delegate such tasks to one or more of its members and to enlist the support of experts;
	(Amendment No 18) Article 5(2)(b)d) - (new)
	(b)d. to decide autonomously when to convene its meetings;

Commission text	Amendments
	(Amendment No 19) Article 5 (2)(c)
(c) to be informed and consulted by the management board or the administrative board before any decision referred to in Article 72 of Regulation ... is implemented.	(c) to be informed and consulted by the management board or the administrative board before any decision referred to in Article 72 of Regulation ... is taken. In transposing the directive into national law steps shall be taken to ensure that the information is provided at a sufficiently early stage so that any objections raised by the workers' representatives can be taken into account by the management in reaching its decision.
	(Amendment No 20) Article 5(3a) - (new)
	3a. The body representing the employees of the SE and of the companies controlled by it may enlist the support of experts of its choice at the expense of the founder company in well-founded cases;
	(Amendment No 21) Article 5(3)b) - (new)
	3b. The Member States shall impose appropriate sanctions in the event of failure to comply with the obligations set out in this article. In particular, they shall give the employees' representatives the right to request the courts or other competent national authorities to take interim protective measures to safeguard their interests.
	(Amendment No 22) Article 6(1)
Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees or their representatives in those companies.	Models other than those referred to in Article 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees and their representatives in those companies. The employees concerned shall have to approve the agreed model. The representatives of the employees shall be appointed in accordance with established practice and legal provisions in the Member States and in all cases shall be directly elected by secret ballot. The number of these representatives shall be in proportion to the number of employees represented by them. They shall remain in office until the conditions for the agreed model have been fulfilled.
	(Amendment No 23) Article 6(2), first sentence
The agreement reached shall provide at least for the employees of the SE or their representatives:	The agreement reached shall provide for the employees of the SE and of undertakings controlled by it and their representatives:

Commission text	Amendments
	(Amendment No 24) Article 6(2)(a)
(a) once every three months, to be informed of the progress of the company's business, including that of undertakings controlled by it, and of its prospects;	(a) At least once every three months, to be informed by the management board or administrative board of the management and the progress of the business of the company and of the undertakings controlled by it, and of their position and prospects; in certain cases information must, pursuant to Articles 64 and 67 of the Regulation, be volunteered forthwith;
	(Amendment No 25) Article 6(2)(a)a) - (new)
	(a)a. to be informed by the management board or administrative board forthwith of all important matters, including events which have occurred in the company and in the undertakings controlled by it and which may have a significant impact on the position of the SE;
	(Amendment No 26) Article 6(2)(a)b) - (new)
	(a)b. to ask the management board or the administrative board at any time for information or even for a specific report on the company's business or the business of the undertakings controlled by it;
	(Amendment No 27) Article 6(2)(a)c) - (new)
	(a)c. to carry out any checks necessary for the performance of its duties; to delegate such tasks to one or more of its members and to enlist the support of experts.
	(Amendment No 28) Article 6(2)(a)d) - (new)
	(a)d. to decide autonomously when to convene its meetings.
	(Amendment No 29) Article 6(2)(b)
(b) to be informed and consulted before any decision referred to in Article 72 of Regulation ... is implemented.	(b) to be informed and consulted before any decision referred to in Article 72 of Regulation... is taken. In transposing the directive into national law, steps must be taken to ensure that information is provided at a sufficiently early stage so that any objections raised by the employees or their representatives can be taken into account by the management in reaching its decision. Decisions listed in Article 72 of the Regulation may not to be implemented without the prior approval of the body representing the employees.

Commission text	Amendments
	(Amendment No 30) Article 6(2)(c) - (new)
	(c) the elected representatives of the employees to have the right at any time to receive information about matters stipulated by them and concerning the company or the undertakings controlled by it, and to have access to reports, documents and conclusions.
	(Amendment No 31) Article 6(2)(c)a) - (new)
	(c)a. The Member State shall impose appropriate sanctions in the event of failure to comply with the obligations set out in this article. In particular, they shall give the employees' representatives the right to request the courts or other competent national authorities to take interim protective measures to safeguard their interests.
	(Amendment No 32) Article 6(3)
3. Where the agreement provides for a collegiate body representing the employees, that body may require the management board or the administrative board to provide the information necessary for the performance of its duties.	3. Where the agreement provides for a collegiate body representing the employees, that body may require the management board or the administrative board to provide the information necessary for the performance of its duties in accordance with paragraph 2.
	(Amendment No 33) Article 6(4)
4. The agreement shall provide that the employees' representatives must observe the necessary secrecy in relation to any confidential information they hold on the SE. They shall be bound by this obligation even after their duties have ceased.	4. The agreement shall provide that the employees' representatives must observe the necessary discretion in relation to any confidential information they hold on the SE. They shall be bound by this obligation even after their duties have ceased. The employees' representatives may provide the employees they represent with information on all matters concerning them. The employees representatives may not be penalized or dismissed by the SE for anything they say, write or do in the performance of their duties.
	(Amendment No 34) Article 6(5)
5. If the law of the State where the SE has its registered office so permits, the agreement may permit the management board or the administrative board of the SE to withhold from the employees or their representatives any information the disclosure of which might seriously jeopardize the interests of the SE or disrupt its projects.	Delete

Commission text	Amendments
	(Amendment No 35) Article 6(8)
8. Where the two parties to the negotiations so decide, or where no agreement such as is mentioned in paragraph 1 can be reached, a standard model, provided by the law of the State where the SE has its registered office, shall apply to the SE. This model shall be in conformity with the most advanced national practices and shall ensure for the employees at least the rights of information and consultation provided for by this article.	Delete
	(Amendment No 36) Article 7
The representatives of the employees of the SE shall be elected in accordance with systems which take into account, in an appropriate manner, the number of staff they represent.	The representatives of the employees of the SE and of the undertakings controlled by it shall be elected directly by secret ballot and by a system of proportional representation.
All employees must be able to participate in the vote.	All employees of the SE and of the undertakings controlled by it must be able to participate in the vote.
The election shall be conducted in accordance with the laws or practices of the member States.	The election shall be conducted in accordance with the legislation or practices of the Member States. The number of seats in the bodies of the SE shall be allocated on the basis of the number of employees in the parent company and its branches. The employees' representatives shall carry out their duties at the workplace and during working hours and may not be subject to disciplinary measures or dismissed during their term of office.
	(Amendment No 37) Article 8
The first members of the supervisory board or the administrative board to be appointed by the employees and the first members of the separate body representing the employees shall be appointed by the representatives of the employees of the founder companies in proportion to the number of employees they represent and in accordance with the laws or practices of the Member States. Those first members shall remain in office until such time as the requirements for electing the representatives of the employees of the SE are satisfied.	The first members of the supervisory board or the administrative board to be appointed by the employees and the first members of the separate bodies representing the employees shall be appointed by the representatives of the employees of the founder company in accordance with the laws or practices of the Member States, or in the absence thereof by the relevant trade unions in the Member States.
	(Amendment No 38) Article 9(3) - (new)
	3. The costs of the election and of facilities to enable the representatives of the employees to exercise their mandates shall be borne by the SE.

Commission text	Amendments
	(Amendment No 39) Article 10
Save as otherwise provided in this Directive, the status and duties of the representatives of the employees or of the body which represents them, for which provision is made in the establishments of the SE, shall be determined by the laws or practices of the Member States.	Save as otherwise provided in this Directive, the status and duties of the representatives of the employees or of the body which represents them, for which provision is made in the establishments of the SE and in the companies controlled by it, shall be determined by the laws and practices of the Member States.
	(Amendment No 40) Article 11
Employee participation in the capital or in the profits or losses of the SE may be organized by means of a collective agreement negotiated and concluded by the management boards and the administrative boards of the founder companies, or of the SE when constituted, and the employees or their representatives who are duly authorized to negotiate in those companies.	Employee participation in the capital or in the profits or losses may be organized by means of a collective agreement or an internal company arrangement negotiated and concluded by the management boards and the administrative boards of the founder companies, or of the SE when constituted, and the employees or their representatives who are duly authorized to negotiate in those companies.