



# European Company Law


































Legislation

Riga 2008

## Directives and other official acts

- [Transposition of company law and anti-money laundering directives](#)
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### Transposition of company law and anti-money laundering directives

Date	Transposition of Directives		
	State of play	View per Member State	View per Directive
20.11.2008	 en	 en	 en
20.10.2008	 en	 en	 en
18.09.2008	 en	 en	 en
25.08.2008	 en	 en	 en
18.07.2008	 en	 en	 en
20.06.2008	 en	 en	 en
22.05.2008	 en	 en	 en
21.04.2008	 en	 en	 en
25.03.2008	 en	 en	 en
20.02.2008	 en	 en	 en
21.01.2008	 en	 en	 en

### High level group reports for the Commission

- Issues related to [takeover bids](#)

### Directives



- ~~[Directive 2007/63/EC](#) of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies~~



- [Directive 2007/36/EC](#) of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (14.7.2007)

- ~~[Directive 2006/68/EC](#) of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital~~

- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies

 [cs](#) [da](#) [de](#) [et](#) [el](#) [en](#) [es](#) [fr](#) [it](#) [lv](#) [lt](#) [hu](#) [mt](#) [nl](#) [pl](#) [pt](#) [sk](#) [sl](#) [fi](#) [sv](#)

- [Directive 2004/25/EC](#) of 21.04.2004 on takeover bids (Text with EEA relevance)

- ~~[Directive 2003/58/EC](#) of 15.7.2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies~~

- [Directive 2001/86/EC](#) of 8.10.2001 supplementing the Statute for a European company with regard to the involvement of employees

- [Twelfth Council Company Law Directive 89/667/EEC](#) of 21 December 1989 on single-member private limited-liability companies



- [Eleventh Council Directive 89/666/EEC](#) of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State
- [Eighth Council Directive 84/253/EEC](#) of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents
- [Seventh Council Directive 83/349/EEC](#) of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts
- [Sixth Council Directive 82/891/EEC](#) of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies
- [Fourth Council Directive 78/660/EEC](#) of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies
- [Third Council Directive 78/855/EEC](#) of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies
- [Second Council Directive 77/91/EEC](#) of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent
- [First Council Directive 68/151/EEC](#) of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community

## Regulations

- [Regulation \(EC\) 2001/2157](#) of 8.10.2001 on the Statute for a European company (SE)
- [Council regulation \(EEC\) 2137/85](#) of 25 July 1985 on the European Economic Interest Grouping (EEIG)
- See also: [Social economy](#) (co-operatives, mutuals, associations, foundations, ...)

## Recommendations

- Recommendations by the Company Law Slim Working Group on the simplification of the first and second Company Law Directives

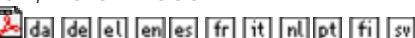
Full text 

## Communications - Proposals

- Proposal for a Directive on [cross border mergers of companies with share capital](#) (18.11.2003)
- Communication from the Commission to the Council and the European Parliament Modernising Company Law and Enhancing Corporate Governance in the European - A Plan to Move Forward (21.05.2003)

[Full text](#)

- Communication pursuant to the second subparagraph of Article 251(2) of the EC Treaty concerning the Common position of the Council on the adoption of a European Parliament and Council Directive on company law concerning takeover bids, European Commission, 26.07.2000

Full text 

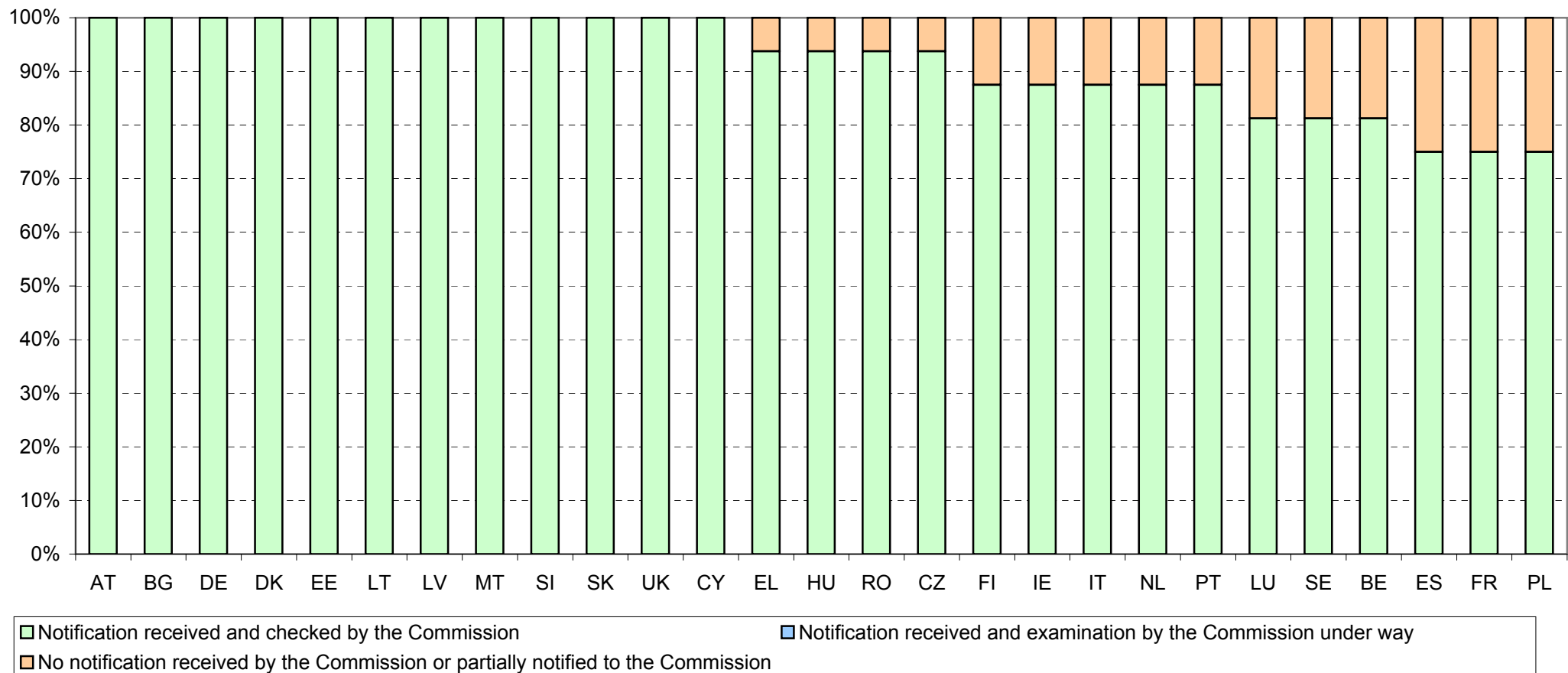
Transposition of Company Law and Anti-Money Laundering Directives - State of play as at 20/11/2008

CP = partially notified to the Commission    NC = no notification received by the Commission    EX = notification received and under examination by the Commission    OK = notification received and checked by the Commission or no notification required = ok  
 NA = not applicable = ok    D = derogation = ok

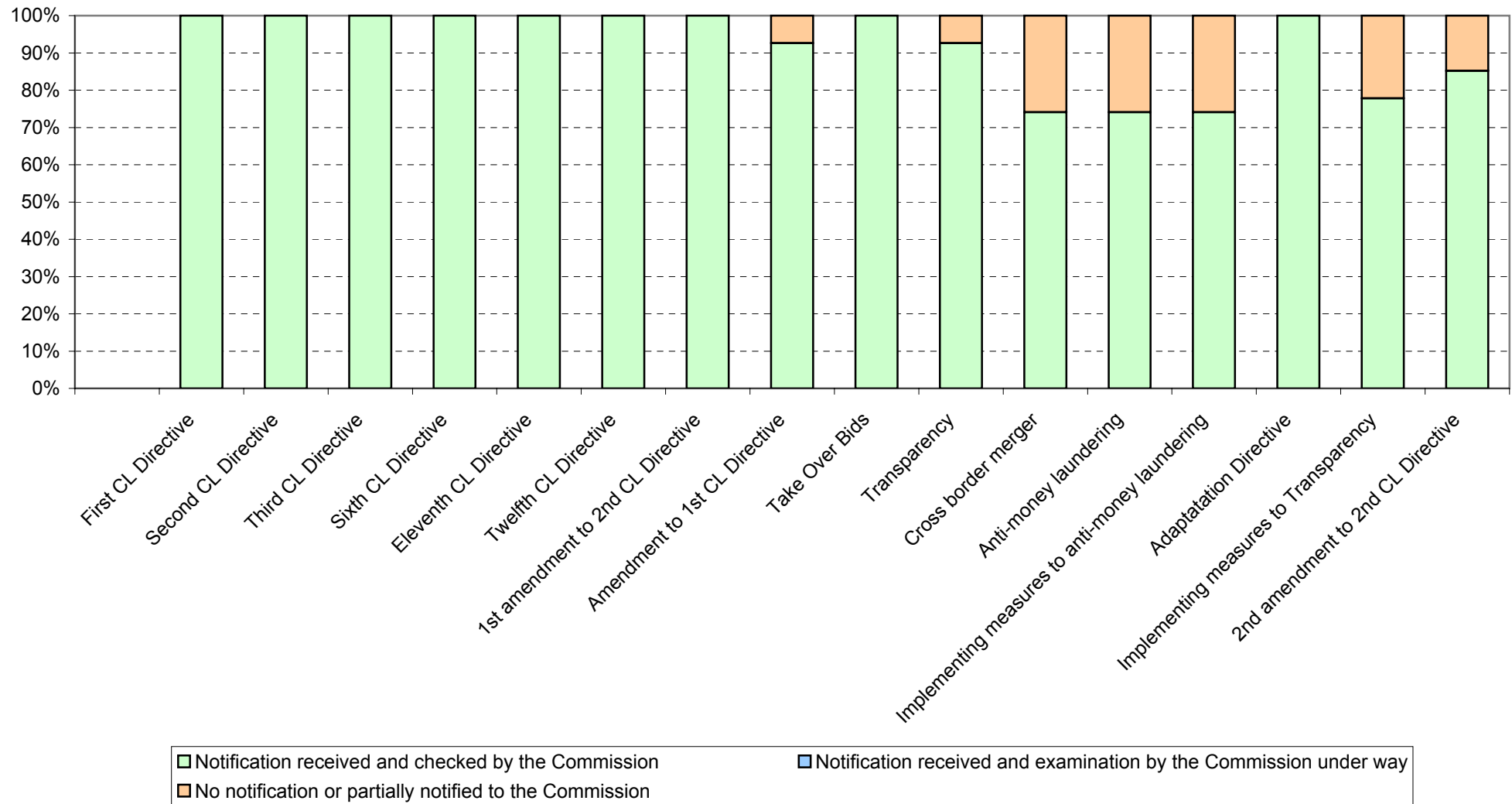
Action	Measure taken	Transposition deadline	Member States																										
			Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Germany	Denmark	Estonia	Greece	Spain	Finland	France	Hungary	Ireland	Italy	Lithuania	Luxembourg	Latvia	Malta	Netherlands	Poland	Portugal	Romania	Sweden	Slovenia	Slovakia	United Kingdom
First Council Directive	Directive 68/151/EEC	11/09/1969	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Second Council Directive on the formation of public limited liability companies and the maintenance and alteration of their capital	Directive 77/91/EEC	17/12/78	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Third Council Directive on mergers of public limited liability companies	Directive 78/855/EEC	13/10/81	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Sixth Council Directive on division of public limited liability companies	Directive 82/891/EEC	1/01/86	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Eleventh Council Directive on disclosure requirements in respect	Directive 89/666/EEC	1/01/92	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Twelfth Council Law Directive on single-member private limited-liability companies	Directive 89/667/EEC	1/01/92	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
1st Council Directive amending 2nd Company Law Directive	Directive 92/101/EEC	1/01/94	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Directive amending 1st Company Law Directive, as regards disclosure requirements in respect	Directive 2003/58/EC	30/12/06	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	CP	OK	CP	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Directive on Take Over Bids	Directive 2004/25/EC	20/05/06	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Transparency directive	Directive 2004/109/EC	20/01/07	OK	OK	OK	OK	CP	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	CP	OK	OK	OK	OK	OK	OK
Directive on cross-border mergers of limited liability companies	Directive 2005/56/EC	15/12/07	OK	CP	OK	OK	OK	OK	OK	NC	NC	OK	CP	OK	OK	OK	OK	CP	OK	OK	OK	OK	NC	OK	CP	OK	OK	OK	OK
Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing	Directive 2005/60/EC	15/12/07	OK	NC	OK	OK	OK	OK	OK	OK	NC	CP	CP	OK	NC	OK	OK	OK	OK	OK	OK	CP	OK	OK	NC	OK	OK	OK	OK
Commission Directive implementing Anti-money laundering Directive	Directive 2006/70/EC	15/12/07	OK	NC	OK	OK	OK	OK	OK	OK	NC	CP	CP	OK	NC	OK	OK	OK	OK	OK	OK	NC	OK	OK	NC	OK	OK	OK	OK
Council Directive adapting certain Directives by reason of the accession of BG and RO	Directive 2006/99/EC	1/01/07	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK	OK
Commission Directive implementing Transparency Directive	Directive 2007/14/EC	8/03/08	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	CP	NC	OK	CP	OK	OK	OK	OK	NC	NC	OK	OK	OK	OK	OK	OK	OK
2nd Directive amending 2nd Company Law	Directive 2006/68/EC	15/04/08	OK	OK	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	OK	OK	NC	OK	OK	OK	OK	NC	NC	OK	OK	OK	OK	OK
Directive on the exercise of certain rights of shareholders in listed companies	Directive 2007/36/EC	3/08/09	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
Directive amending 3rd and 6th Company Law Directives	Directive 2007/63/EC	31/12/08	OK	NC	NC	NC	OK	OK	NC	OK	NC	NC	NC	NC	NC	NC	NC	NC	OK	OK	NC	NC	NC	OK	NC	NC	OK	OK	

\*) The Commission can always initiate infringement proceedings under Article 226 of the Treaty on the basis of non-compliance of national implementing measures or incorrect application of Directives

Transposition of Company Law and Anti-Money Laundering Directives - State of play as at 20/11/2008 - View per Member State



Transposition of Company Law and Anti-Money Laundering Directives - State of play as at 20/11/2008 - View per Directive





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.5.2003  
COM (2003) 284 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**Modernising Company Law and Enhancing Corporate Governance in the European  
Union - A Plan to Move Forward**

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## INTRODUCTION

A dynamic and flexible company law and corporate governance framework is essential for a modern, dynamic, interconnected industrialised society. Essential for millions of investors. Essential for deepening the internal market and building an integrated European capital market. Essential for maximising the benefits of enlargement for all the Member States, new and existing.

Good company law, good corporate governance practices throughout the EU will enhance the real economy:

- An effective approach will foster the global **efficiency and competitiveness of businesses** in the EU. Well managed companies, with strong corporate governance records and sensitive social and environmental performance, outperform their competitors. Europe needs more of them to generate employment and higher long term sustainable growth.
- An effective approach will help to strengthen shareholders rights and third parties protection. In particular, it will contribute to rebuilding European investor confidence in the wake of a wave of recent corporate governance scandals. The livelihood of millions of Europeans, their pensions, their investments are tied up in the proper, responsible performance and governance of listed companies in which they invest.

### Scope

This Communication outlines the approach that the Commission intends to follow specifically in the area of **company law and corporate governance**.

Achieving the objectives pursued (fostering efficiency and competitiveness of business, and strengthening shareholders rights and third parties protection) requires a **fully integrated approach**.

Related initiatives, forming part of this integrated approach but not part of this Action Plan, include:

- **The Financial Services Action Plan<sup>1</sup> of 1999**, which confirmed the overall objectives which should guide the financial services policy at EU level and set out a framework for an integrated capital market by 2005;
- **The Financial Reporting Strategy<sup>2</sup> of 2000**, which seeks to achieve high quality financial reporting through the adoption of a common set of accounting standards and the development of a proper enforcement system, which led to the adoption in 2002 of the Regulation on the application of the international accounting standards;
- **The Communication on Corporate Social Responsibility<sup>3</sup> of 2002**, which addresses the social and environmental dimension of business in a global economy and led to the setting

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<sup>1</sup> Financial Services: Implementing the Framework for financial markets - Action Plan, Communication of the Commission, COM (1999) 232, 11.05.99.

<sup>2</sup> EU Financial Reporting Strategy: the way forward, Communication of the Commission, COM (2000) 359, 13.06.00.

<sup>3</sup> Corporate Social Responsibility: A business contribution to Sustainable Development, Communication of the Commission, COM (2002) 347, 02.07.02. The European Multi-Stakeholder Forum on CSR brings

up of a European Multi-Stakeholder Forum with a view to promoting voluntary social and environmental practices of business, linked to their core activities, which go beyond their existing legal obligations;

- The **Communication on Industrial Policy in an Enlarged Europe**<sup>4</sup> of 2002, which addresses the need for EU industry to achieve a more sustainable production structure as a driver of growth and productivity.
- **The Communication on the priorities for the statutory audit in the EU**, which is published together with the present Communication and which covers an EU policy approach aimed at ensuring audit quality and public confidence in the audit profession. It covers issues like the use of ISA's (International Standards on Auditing), public oversight of auditors, and the modernisation of the Eighth Company Law Directive into a comprehensive principles-based approach.

### **Responding to the High Level Group's report**

On 4 November 2002, a **High Level Group of Company Law Experts** appointed by Commissioner Bolkestein in September 2001 and chaired by Jaap Winter presented its Final Report on "A modern regulatory framework for company law in Europe". This report focused on corporate governance in the EU and the modernisation of European Company Law. **The Competitiveness Council** (30 September 2002) invited the Commission to organise an in-depth discussion on the forthcoming report and to develop – in co-ordination with Member States – an Action Plan for Company Law, including Corporate Governance, as soon as is feasible, declaring its intention to deal with the Action Plan as a matter of priority. The Ecofin Council has also shown a major interest in this work.

This Communication is the **Commission's response**. It explains why the European regulatory framework for company law and corporate governance needs to be modernised. It defines the key policy objectives which should inspire any future action to be taken at EU level in these areas. It includes an action plan, prioritised, over the short, medium and long term. It indicates which type of regulatory instrument should be used<sup>5</sup>, and by when.

### **Guiding political criteria**

In developing this Action Plan, the Commission has paid particular attention to the need for any regulatory response at European level to respect a number of guiding criteria:

- It should fully respect the **subsidiarity and proportionality** principles of the Treaty and the diversity of many different approaches to the same questions in the Member States, while at the same time pursuing clear ambitions (strengthening the single market and enhancing the rights of shareholders and third parties);
- It should be **flexible in application, but firm in the principles**. It should concentrate on priorities; be transparent; and subject to proper due process and consultation;

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together representative organisations of business, trade-unions and civil society. It will present in 2004 a report about its works to the Commission, which should then make an evaluation of its results, decide on its future and consider any other appropriate initiative.

<sup>4</sup> Industrial Policy in an Enlarged Europe, Communication of the Commission, COM (2002) 714, 11.12.02.

<sup>5</sup> When a legislative instrument is considered, this means that the action envisaged requires either the adoption of a new legislative proposal or the modification of one or several existing legislative instruments.

- It should help **shape international regulatory developments**. The EU must define its own European corporate governance approach, tailored to its own cultural and business traditions. Indeed, this is an opportunity for the Union to strengthen its influence in the world with good, sensible corporate governance rules. Corporate governance is indeed an area where standards are increasingly being set at international level, as evidenced by the recent developments observed in the United States. **The Sarbanes-Oxley Act**, adopted on 30 July 2002 in the wave of a series of scandals, delivered a rapid response. The Act unfortunately creates a series of problems due to its outreach effects on European companies and auditors, and the Commission is engaged in an intense regulatory dialogue with a view to negotiating acceptable solutions with the US authorities (in particular the Securities and Exchange Commission). In many areas, the EU shares the same broad objectives and principles of the Sarbanes-Oxley Act and in some areas robust, equivalent regulatory approaches already exist in the EU. In some other areas, new initiatives are necessary. Earning the right to be recognised as at least "equivalent" alongside other national and international rules is a legitimate and useful end in itself.

# 1. MODERNISING COMPANY LAW AND ENHANCING CORPORATE GOVERNANCE: THE EU ACQUIS AND THE NEED FOR NEW INITIATIVES

## 1.1. The EU Company Law Acquis

Historically, most of the initiatives taken at EU level in the area of company law have been based on **Article 44 (2) g (ex 54) of the Treaty** establishing the European Community. This Article, which appears in the Chapter devoted to the right of establishment, requires the European institutions to attain freedom of establishment, *“by co-ordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 48 (ex 58), with a view to making such safeguards equivalent throughout the Community”*.

This Article has been interpreted to include two important grounds for the adoption of EU initiatives in the area of company law:

- a) **facilitating freedom of establishment of companies**: the harmonisation of a number of minimum requirements makes it easier for companies to establish themselves in other Member States where the regulatory framework is similar;
- b) **guaranteeing legal certainty in intra-Community operations**, where the presence of a number of common safeguards is key for the creation of trust in cross-border economic relationships.

Over the years, the EU institutions have taken a number of initiatives in the area of company law, many leading to **impressive achievements**<sup>6</sup>. Between 1968 (adoption of the First Company Law Directive) and 1989 (adoption of the Twelfth Company Law Directive), nine Directives and one Regulation were adopted. Although the exact situation may differ from one Member State to the other, these European measures have had an **important impact** on national company law. Moreover, their influence was not limited to the types of companies expressly covered in the Directives, because many Member States decided to extend their provisions to other legal forms.

**Over the last ten years**, the EU company law legislative process has been characterised, in the wake of the Maastricht Treaty of 1992, by more political deference to national law (with a higher number of references to national rules in the legislative proposals). This **more flexible approach** to harmonisation made possible, in particular, the adoption of the European Company Statute (*Societas Europaea*), in October 2001.

## 1.2. Reasons for new initiatives at EU level

Now is the right time to give a fresh and ambitious impetus to the EU company law harmonisation process. New initiatives, aiming either at modernising the existing EU company law instruments or at completing the EU framework with a limited number of new, tailored instruments, are needed for the following reasons:

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<sup>6</sup> See in Annex 2 the table of existing and proposed European legal instruments in the area of company law.

- **Making the most of the Internal Market:** the growing trend of European companies to operate cross-border in the Internal Market calls for common European company law mechanisms, inter alia, to facilitate freedom of establishment and cross-border restructuring.
- **Integration of capital markets:** dynamic securities markets are vital to Europe's economic future<sup>7</sup>. This requires giving both issuers and investors the opportunity to be far more active on other EU capital markets and to have confidence that the companies they invest in have equivalent corporate governance frameworks. Listed companies want a more coherent, dynamic and responsive European legislative framework.
- **To maximise the benefits of modern technologies :** the rapid development of new information and communication technology (video conferencing, electronic mail and above all the Internet) is affecting the way company information is stored and disseminated<sup>8</sup>, as well as the way corporate life is conducted (e.g. virtual general meetings, video-link board meetings, exercise of cross-border voting rights).
- **Enlargement:** the forthcoming enlargement of the EU to 10 new Member States is another gilt-edged reason to revisit the scope of EU company law. The new member countries will increase the diversity of the national regulatory frameworks in the EU, underlying further the importance of a principles-based approach able to maintain a high level of legal certainty in intra-Community operations. In addition to that, initiatives to modernise the EU Acquis will become more urgent than ever to ease the rapid and full transition of these countries to becoming fully competitive modern market economies.
- **Addressing the challenges raised by recent events:** Recent financial scandals have prompted a new, active debate on corporate governance, and the necessary restoration of confidence is one more reason for new initiatives at EU level. Investors, large and small, are demanding more transparency and better information on companies, and are seeking to gain more influence on the way the public companies they own operate. Shareholders own companies, not management - yet far too frequently their rights have been trampled on by shoddy, greedy and occasionally fraudulent corporate behaviour. A new sense of proportion and fairness is necessary.

## 2. KEY POLICY OBJECTIVES

The Commission considers that future actions at EU level in the area of company law should seek as much as possible to meet the following two policy objectives.

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<sup>7</sup> See “Quantification of the Macro-Economic Impact of Integration of EU Financial Markets”, Final Report to the European Commission – Directorate-General for the Internal Market by London Economics (in association with PricewaterhouseCoopers and Oxford Economic Forecasting), 12 November 2002, [http://europa.eu.int/comm/internal\\_market/en/finances/mobil/overview.htm](http://europa.eu.int/comm/internal_market/en/finances/mobil/overview.htm)

<sup>8</sup> See in this respect the Proposal of June 2002 for a Directive amending the First Company Law Directive, as regards disclosure requirements in respect of certain types of companies, which introduces modern technologies in trade registers. The proposed modifications would allow full advantage to be taken of modern technologies: companies would be able to file their documents and particulars either by paper means or by electronic means, and interested parties would be able to obtain copies by either means.

## 2.1.Strengthening shareholders rights and third parties protection

Ensuring effective and proportionate protection of shareholders and third parties must be **at the core of any company law policy**. A sound framework for protection of members and third parties, which properly achieves a **high degree of confidence** in business relationships, is a fundamental condition for business efficiency and competitiveness. In particular, an effective regime for the protection of shareholders and their rights, protecting the savings and pensions of millions of people and strengthening the foundations of capital markets for the long term in a context of diversified shareholding within the EU, is essential if companies are to raise capital at the lowest cost.

Maintaining efficient protection of members and third parties will be even more important in the future, in view of the **increasing mobility of companies** within the EU.

To allow European companies to reap the benefits of the unified Internal Market and of the integrating European capital market, ensuring adequate protection of members and third parties should be organised along the following lines:

- The Commission considers firstly that some new tailored initiatives should be taken with a view to enhancing **shareholder rights** and clarifying management responsibilities; and secondly the provisions related to the **protection of creditors** should be modernised with a view to maintaining a high quality framework (e.g. with respect to capital maintenance and alteration).
- A proper **distinction should be made between categories of companies**. A more stringent framework is desirable for listed companies<sup>9</sup> and companies which have publicly raised capital. They should be subject to a certain number of appropriate detailed rules, in particular in the area of disclosure. With respect to other companies, regulatory initiatives should take full account of both their form and size, allowing a more flexible framework for SME's (in the same way as tailored deregulation initiatives have been taken at national level).
- **Modern technologies** can significantly help members and third parties to exercise their rights effectively. At a minimum, company law should enable and encourage as much as possible the use of up-to-date information and communication technologies by companies in their various relationships with members and third parties. The Commission furthermore considers that proper attention must be paid to specific areas where the protection of shareholders and third parties may make it necessary to compel companies to use modern technologies. However, the time has not come yet where the use of modern technologies should be imposed by

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<sup>9</sup> The words "listed companies" used in the present Communication cover the companies whose securities are admitted to trading on a regulated market within the meaning of Council Directive 93/22/EEC (OJ L 41, 11.06.1993, p. 27, as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27)) in one or more Member States. The present Action Plan provides where necessary explicit information on the scope of the various actions proposed. In short, the actions presented in the Corporate Governance Section in principle cover listed companies, although some of them are considered to be usefully applicable also to non listed companies. The actions presented in the other sections are generally applicable to all companies, except for the section on pyramids which by nature covers listed companies only.

companies systematically on all members and third parties systematically without the necessary safeguards

- The development of a sound economy requires a high degree of confidence in the relationships between the various actors involved, so that the protection of members and third parties will be ensured by a limited number of measures aimed at **combating fraud and abuse** of legal forms. Such measures should be carefully designed, with a view to avoiding that they unduly hinder the development and use of efficient company law structures and systems, which the promotion of efficient and competitive business requires.

## 2.2.Fostering efficiency and competitiveness of business

**Business efficiency and competitiveness**, which are crucial components of economic growth and job creation, depend on many factors, one of which is a sound framework of company law. Key to the achievement of this objective is the setting up of a proper balance between actions at EU level and actions at national level. Some company law rules are likely to be best dealt with, and updated, more efficiently at national level, and some competition between national rules may actually be healthy for the efficiency of the single market.

With due respect of the subsidiarity and proportionality principles, business efficiency and competitiveness should be promoted along the following lines:

- EU initiatives in the area of company law should certainly address a number of specific **cross-border issues** (e.g. cross-border merger or transfer of seat, cross-border impediments to the exercise of shareholders rights...), where Community action may be the only way to achieve the pursued objectives.
- In addition to these specific cross-border issues, the necessary attention should be paid to the other initiatives which the promotion of business efficiency and competitiveness requires. As stated above, a certain degree of harmonisation of **defined national issues** reduces legal uncertainties and can thereby significantly enhance business efficiency and competitiveness.
- **Flexibility** should be available to companies as much as possible: where systems are deemed to be equivalent, maximum room should be left open to the freedom of the parties involved.

### 3. AN EU ACTION PLAN

Achieving the above policy objectives requires a number of initiatives to be taken at EU level in the coming years. The following approach is proposed:

- **Distinguishing the actions in three phases** (short term, medium term, long term), based on clear priorities.
- **Expert consultation** should be an integral part of the preparation of initiatives at EU level in the area of company law and corporate governance. The Commission therefore will regularly seek advice from representatives of Member States, as is the case of the current Group of Company Law National Experts, but also from representatives of the business and the academic sectors, to provide the necessary external input.
- This Communication will be open for public consultation until 31 August 2003. An **open, public consultation** will also be organised where appropriate in the future on the major initiatives following from the Action Plan.
- With respect specifically to corporate governance, a European Corporate Governance Forum will be convened once or twice a year to contribute to co-ordinating the corporate governance efforts of Member States, as is explained in Section 3.1.4. below.

The present Action Plan identifies the nature and the scope of the actions which appear necessary, proposes the type of regulatory instrument which should be used, and establishes clear priorities for the short, medium and long term.

#### 3.1. Corporate Governance

**Corporate Governance**, which can be defined in many ways, is usually understood as **the system by which companies are directed and controlled**<sup>10</sup>. It is, in the light of the recent corporate scandals, now a major issue globally. Poor corporate governance performance, by some companies, has greatly undermined confidence in capital markets.

Within the EU, Member States have different systems of corporate governance, which reflect their different cultures and the various views about the roles of corporations and the way in which their industry should be financed. Over the last years, corporate governance has been the subject of an increasingly intense debate. **Forty or so corporate governance codes relevant to the European Union have been adopted over the last decade**, at national or international level, with the aim of better protecting the interests of shareholders and/or stakeholders.

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<sup>10</sup> Cadbury Report, December 1992. For a more comprehensive definition, see for example the OECD Principles of 1999: “Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.” Corporate governance essentially focuses on the problems that result from the separation of ownership and control, and addresses in particular the principal-agent relationship between shareholders and directors.



Differences in national corporate governance arrangements may create uncertainty and costs for both issuers and investors, which need to be addressed to promote an efficient integration of EU capital markets. As announced in its 1999 Financial Services Action Plan, the Commission launched in 2001 a review of the main corporate governance codes relevant to the EU. The **full comparative study**, prepared for the Commission by Weil, Gotshal & Manges LLP, was finalised in March 2002<sup>11</sup> and concluded **that the EU should not devote time and effort to the development of a European corporate governance code**: the study identified as a more valuable area for the European Commission to focus its efforts on the reduction of legal and regulatory barriers to shareholder engagement in cross-border voting (“participation barriers”) as well as the reduction of barriers to shareholders ability to evaluate the governance of companies (“information barriers”).

The need for a European code and for additional disclosure of corporate governance practices, as well as a series of additional issues raised by the **Oviedo Council in April 2002** in the wake of the US scandals (the role of non-executive directors and of supervisory boards, management remuneration, management responsibility for financial statements, and auditing practices), were also considered by the **High Level Group of Company Law Experts**. In its Final Report, it confirmed that there is no need for an EU corporate governance code.

In this line of thinking, the Commission observes, firstly, that the main differences between Member States are found in differing company law and securities regulation, as opposed to the corporate governance codes which, according to the March 2002 study, show a remarkable degree of convergence, and, secondly, that the existence of many codes in the EU is not generally perceived as a difficulty by issuers (many issuers continue to be active primarily on their domestic market; when they are active on other markets, they are faced with codes that are pretty similar; and in the rare instances where codes provisions are divergent, the "comply or explain" principle offers a satisfactory solution).

Moreover the Commission considers that:

a) the adoption of a European code would not achieve full information for investors about the key corporate governance rules applicable to companies across Europe, as these rules would still be based on - and part of - national company laws that are in certain respects widely divergent;

b) the adoption of such a code would not contribute significantly to the improvement of corporate governance in the EU, as this code would have either to allow for many different options or confine itself to abstract principles. Trying to harmonise all the elements of a European code would take years and would not be achievable in a reasonable timeframe.

There is nevertheless an active role for the EU to play in corporate governance, because some specific rules and principles need to be agreed at EU level in Directives or Recommendations and a certain co-ordination of corporate governance

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<sup>11</sup> Comparative Study of the Corporate Governance Codes relevant to the European Union and its Member States  
: [http://europa.eu.int/comm/internal\\_market/en/company/company/news/corp-gov-codes-rpt\\_en.htm](http://europa.eu.int/comm/internal_market/en/company/company/news/corp-gov-codes-rpt_en.htm)

codes in the EU should be organised to encourage further convergence and the exchange of best practice.

Therefore at this stage the Commission considers that:

-There is little indication that the development of a European corporate governance code as an additional layer between principles developed at the international level and codes adopted at national level would offer significant added value. In that respect, the Commission notes that corporate governance is now at the forefront of the activities of the OECD, which recently decided to revise its corporate governance principles of 1999 with the aim of adopting a modernised version of these principles in 2004. The Commission is taking an active part in this exercise.

-A self-regulatory market approach, based solely on non-binding recommendations, is clearly not always sufficient to guarantee the adoption of sound corporate governance practices. Only in the presence of a certain number of made-to-measure rules, markets are able to play their disciplining role in an efficient way. In view of the growing integration of European capital markets, **a common approach should be adopted at EU level with respect to a few essential rules and adequate co-ordination of corporate governance codes should be ensured.**

More specifically, the Commission, largely in line with the High Level Group's suggestions, intends to proceed along the following lines<sup>12</sup>.

### 3.1.1. Enhancing Corporate Governance disclosure

#### *Annual Corporate Governance Statement*

Listed companies should be required to include in their annual report and accounts a coherent and descriptive statement covering the key elements of their corporate governance structure and practices, which should at least include the following items:

- a) the operation of the shareholder meeting and its key powers, and the description of shareholder rights and how they can be exercised;
- b) the composition and operation of the board and its committees<sup>13</sup>;
- c) the shareholders holding major holdings, and their voting and control rights as well as key agreements;
- d) the other direct and indirect relationships between these major shareholders and the company;
- e) any material transactions with other related parties;

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<sup>12</sup> In developing its approach, the Commission has paid particular attention to the following needs: considering where possible a) the use of alternatives to legislation, and b) the preference to be given to disclosure requirements (because they are less intrusive in corporate life, and they can prove to be a highly effective market-led way of rapidly achieving results).

<sup>13</sup> In this respect, it is considered essential for the restoration of public confidence that proper information is given on the way in which the company has organised itself at the highest level to establish and maintain an effective internal control system.

f) the existence and nature of a risk management system;

g) and a reference to a code on corporate governance, designated for use at national level, with which the company complies or in relation to which it explains deviations.

A proposal for a Directive containing the principles applicable to such an annual corporate governance statement, which should appear prominently in the annual documents published by listed companies, is regarded by the Commission as a priority for the short term, so as to rapidly allow market pressures to be better exerted. The definition of these principles will properly take into account the related requirements present in existing (e.g. major holdings<sup>14</sup>) or proposed (e.g. take-over bids) instruments.

### ***Information about the role played by institutional investors***

Institutional investors should be obliged:

a) to disclose their investment policy and their policy with respect to the exercise of voting rights in companies in which they invest;

b) to disclose to their beneficial holders at their request how these rights have been used in a particular case.

Such requirements would not only improve the internal governance of institutional investors themselves, but would also enhance participation by institutional investors in the affairs of the companies in which they invest. A requirement for institutional investors to systematically exercise their voting rights is not considered desirable, in view of its potential counterproductive effects (due to a lack of time or resources, institutional investors might simply vote in favour of any proposed resolution to fulfil the requirement).

Institutional investors have an important role to play in the governance of companies in which they invest. Fostering this role will require amendments to a series of existing legal texts (relating to insurance companies, pension funds, mutual and other investment funds, ...), and even more importantly the introduction of such a requirement would deliver its full effects only once the problems related to cross-border voting will have been solved. The Commission therefore intends to take the necessary steps in the medium term.

## **3.1.2. Strengthening shareholders' rights**

### ***Access to information***

Shareholders of listed companies should be provided with electronic facilities to access the relevant information in advance of General Meetings. This issue is currently addressed by the Proposal for a Transparency Directive, which essentially

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<sup>14</sup> See Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on securities (Title IV – Chapter III "Obligations relating to the information to be published when a major holding in a listed company is acquired or disposed of").

enables listed companies to use electronic means to inform their shareholders<sup>15</sup> and contains specific provisions guaranteeing a timely access to regulated information when securities are listed in another Member State than the home Member State<sup>16</sup>. The Commission considers this solution as a significant and proportionate first step, which does not preclude the adoption of further measures (which would generally require listed companies to use electronic means to inform their shareholders) in the medium term, if this looks desirable in the light of the implementation of the Transparency Directive (which itself contains a revision clause).

### ***Other shareholders' rights***

There is a need for enhancing the exercise of a series of shareholders' rights in listed companies (right to ask questions, to table resolutions, to vote in absentia, to participate in general meetings via electronic means). These facilities should be offered to shareholders across the EU, and specific problems relating to cross-border voting should be solved urgently. The Commission considers that the necessary framework should be developed in a Directive, since an effective exercise of these rights requires a number of legal difficulties to be solved. In view of the important benefits expected from such a framework, the Commission regards the relevant proposal as a priority for the short term.

### ***Shareholder democracy***

Strengthening shareholders' rights should be based essentially on a) the provision of comprehensive information on what the various existing rights are and how they can be exercised and b) the development of the facilities necessary to make sure that these existing rights can be effectively exercised. This approach is fully consistent with the OECD Principles of Corporate Governance<sup>17</sup>.

The Commission considers that there is a strong medium to long term case for aiming to establish a real shareholder democracy in the EU. The Comparative Study of Corporate Governance Codes relevant to the EU evidenced that corporate governance codes tend to support the one share / one vote principle, although many codes favour some flexibility in this respect. The hardest line is taken by the codes issued by bodies affiliated with investors, which clearly do not support the issuance of shares with reduced or no voting rights. The Commission nevertheless observes that any initiative in this direction, which would give further effect to the principle of proportionality between capital and control advocated by the High Level Group in its First Report on issues related to take-over bids, requires prior study. The Commission therefore intends to undertake a study, in the short to medium term, on the consequences which such an approach would entail.

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<sup>15</sup> The home Member State shall allow issuers the use of electronic means for the purposes of conveying information to shareholders, provided such a decision is taken in a general meeting and meets a series of conditions, including the individual consent of the shareholder concerned (See Article 13).

<sup>16</sup> A host Member State may require issuers: a) to publish regulated information on their Internet sites, and b) to alert any interested person, without delay and free of charge, to any new disclosure or any change to regulated information which has already been published (See Article 17).

<sup>17</sup> See the relevant statements, about disclosure (Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed) and about exercise of rights (shareholders should have the opportunity to participate effectively and vote in general shareholder meetings).

### 3.1.3. Modernising the board of directors

#### *Board composition*

In key areas where executive directors clearly have **conflicts of interests** (i.e. remuneration of directors, and supervision of the audit of the company's accounts), decisions in listed companies should be made exclusively by **non-executive or supervisory directors** who are in the majority independent. With respect to the nomination of directors for appointment by the body competent under national company law, the responsibility for identifying candidates to fill board vacancies should in principle be entrusted to a group composed mainly of executive directors, since executive directors can usefully bring their deep knowledge of the challenges facing the company and of the skills and experience of the human resources grown up within the company. Non-executive directors should, nonetheless, also be included and specific safeguards should be put in place to deal with conflicts of interests when they arise, for example when a decision has to be made on the reappointment of a director.

These requirements should be enforced by Member States at least on a "comply or explain" basis. Certain minimum standards of what cannot be considered to be independent should be established at EU level. With a view to fostering a concrete and active role for non executive or supervisory directors, particular attention will be paid to the issue of the number of mandates that may be held concurrently. Moreover, the impact of interlocking directorships on the independence of directors should be properly addressed in the minimum standards to be established.

The Commission regards these measures as key to the restoration of confidence in the markets, and therefore intends to adopt a Commission Recommendation to this effect in the short term.

Such a Recommendation will define minimum standards applicable to the creation, composition and role of the **nomination, remuneration and audit committees**. In view of the recent accounting scandals, special emphasis will be placed on the audit committee (or equivalent body), with a view to fostering the key role it should play in supervising the audit function, both in its external aspects (selecting the external auditor for appointment by shareholders, monitoring the relationship with the external auditor including non-audit fees if any) and its internal aspects (reviewing the accounting policies, and monitoring the internal audit procedures and the company's risk management system)<sup>18</sup>.

The High Level Group further recommended that at least listed companies in the EU should generally have the option between a **one-tier board structure** (with executive and non-executive directors) **and a two-tier board structure** (with managing directors and supervisory directors). The Commission welcomes the idea to offer additional organisational freedom to listed companies, but recognises that the implications of such a proposal should be carefully studied. Much has to be learned in this respect from the adaptation of national law to the Regulation and the Directive

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<sup>18</sup> In developing the minimum standards applicable to the audit committee, appropriate attention will be paid to a) the access it must have to the relevant information (there might be a scope for specific consideration of the need for greater legal protection for whistleblowers) and b) the extent to which transparency on its activities is desirable.

on the European Company Statute. The Commission therefore proposes that this recommendation from the High Level Group should be followed up in the medium term.

### ***Directors' remuneration***

Shareholders should be able to appreciate fully the relation between the performance of the company and the level of remuneration of directors, both ex ante and ex post, and they should be able to make decisions on the remuneration items linked to the share price. Agreeing with the High Level Group, the Commission considers that an appropriate regulatory regime should be composed of **four key items** (disclosure of remuneration policy in the annual accounts, disclosure of details of remuneration of individual directors in the annual accounts, prior approval by the shareholder meeting of share and share option schemes in which directors participate, proper recognition in the annual accounts of the costs of such schemes for the company).

In order to promote a swift application of such a regime, a Commission Recommendation should be adopted to this effect. The Commission regards this action as key to the restoration of confidence, and intends to adopt such a Recommendation in the short term and to closely monitor its application with a view to identifying whether any further additional rulemaking may be desirable in the medium term.

### ***Directors' responsibilities***

With a view to enhancing directors' responsibilities, the **collective responsibility** of all board members for financial and key non financial statements (including the annual corporate governance statement mentioned above in Section 3.1.1.) should be confirmed as a matter of EU law. The Commission considers that such a confirmation in framework provisions constitutes a first step which may be achieved rapidly, and intends to take the necessary initiatives in the short term.

The High Level Group made several other recommendations designed to enhance directors responsibilities : a) introduction of a **special investigation right**, whereby shareholders holding a certain percentage of the share capital should have the right to ask a court or administrative authority to authorise a special investigation into the affairs of the company; b) development of a **wrongful trading rule**, whereby directors would be held personally accountable for the consequences of the company's failure, if it is foreseeable that the company cannot continue to pay its debts and they don't decide either to rescue the company and ensure payment or to put it into liquidation; c) imposition of **directors' disqualification** across the EU as a sanction for misleading financial and non-financial statements and other forms of misconduct by directors. The Commission supports these ideas, whose implementation requires further analysis, and therefore intends to present the relevant proposal for a Directive in the medium term.

#### **3.1.4. Co-ordinating corporate governance efforts of Member States**

The Commission shares the view of the High Level Group that **the EU should actively co-ordinate the corporate governance efforts of Member States** through their company laws, securities laws, listing rules, codes, or otherwise. In particular, each Member State should progress towards designating a code of corporate

governance, designated for use at national level, as the code with which listed companies subject to their jurisdiction are to comply or in relation to which they are to explain deviations. Co-ordination should not only extend to the making of these national codes, but also to the procedures Member States have in place to monitor and enforce compliance and disclosure. Member States should participate in the co-ordination process set by the EU, but the process itself should be voluntary and non-binding with a strong involvement of market participants.

The comparative study of codes relevant to the EU concluded one year ago that **these codes show a remarkable degree of convergence**. The Commission nevertheless observes that such a situation may change rapidly: several Member States are currently engaged in important policy initiatives, and the EU will soon be enlarged by 10 new Member States. In addition, standards are increasingly set at the international level and they should be implemented in Member States in a consistent way.

For these reasons, the Commission regards it important to encourage the co-ordination and convergence of national codes through regular high level meetings of the European Corporate Governance Forum. Participants to such a Forum, which could meet once or twice a year, will comprise representatives from Member States, European regulators (including CESR), issuers and investors, other market participants and academics. Interested MEP's will also be invited to present their views. The Forum will be chaired by the Commission.

### 3.2. Capital Maintenance and Alteration

**The Second Company Law Directive** adopted by the Council on 13 December 1976 in respect of the formation of public limited liability companies and the maintenance and alteration of their capital is one of the cornerstones of European company law. It imposes a minimum legal capital to public limited liability companies, and contains a number of detailed provisions aiming at protecting shareholders and creditors, which apply inter alia to the formation stage, to distributions to shareholders, to acquisitions of own shares, to increases in capital and to reductions in capital.

In 1999, a **Report by the Company Law SLIM Group** concluded that the capital maintenance regime organised by the Second Directive could be simplified on a limited number of points, and presented several proposals to this end<sup>19</sup>. From the discussions that followed the presentation of this SLIM Report, it appeared that the implementation of many of these recommendations required further examination.

The High Level Group of Company Law Experts confirmed that most of the SLIM Group proposals were indeed worth implementing and gave some guidance in this respect. In addition, the High Level Group formulated a few additional suggestions aiming at modernising the Second Directive. The Commission considers that a **simplification of the Second Directive** on the basis of these proposals and

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<sup>19</sup> The topics covered by the SLIM Report were as follows: removal of the requirement for an expert opinion on contributions in kind in defined circumstances, introduction of no par value shares, simplification of the rules applicable to withdrawal of shares, simplification of the rules applicable to acquisition of own shares, reduction of the scope of the prohibition of financial assistance, simplification of the rules applicable to pre-emptive rights.

recommendations would significantly contribute to the promotion of business efficiency and competitiveness without reducing the protection offered to shareholders and creditors. A proposal to amend the Second Directive along these lines is therefore regarded as a priority for the short term.

The High Level Group further suggested that adequate protection of shareholders and creditors might be achieved, possibly even more effectively, with the introduction at a later stage of an **alternative regime** which would not be based on the concept of legal capital. This alternative regime, whose main lines are briefly outlined by the Group<sup>20</sup>, could be offered as an option to Member States who should be able to freely decide to change to the new regime or to retain the Second Directive rules amended as suggested above.

The Commission considers that, before deciding to introduce an alternative regime which would fundamentally depart from the capital maintenance regime currently organised by the Second Directive, further work is needed as to both the exact characteristics of a possible alternative regime and its ability to achieve an effective protection of shareholders and third parties. **A study into the feasibility of an alternative to the capital maintenance regime** will be launched by the Commission in the medium term. The study will have to identify in particular the exact benefits that an alternative regime would offer in comparison with the Second Directive rules amended in the short term.

### 3.3.Groups & Pyramids

The High Level Group of Company Law Experts pointed out that groups of companies, which today are frequent in most, if not all, Member States, are to be seen as a legitimate way of doing business, but that they may present specific risks for shareholders and creditors in various ways. The Commission, following the Group's recommendation, takes the view that there is no need to revive the draft Ninth Directive on group relations<sup>21</sup>, since the enactment of an autonomous body of

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<sup>20</sup> Such an alternative regime would notably be based on the requirement for a solvency test before any payment of dividend or other distribution can be made.

<sup>21</sup> A draft "Ninth Company Law Directive on the Conduct of Groups containing a Public Limited Company as a Subsidiary" was circulated by the Commission in December 1984 for consultation. According to its Explanatory Memorandum, the Directive was intended to provide a framework in which groups can be managed on a sound basis whilst ensuring that interests affected by group operations are adequately protected. Such a legal framework, adapted to the special circumstances of groups, was considered to be lacking in the legal system of most Member States.

Apart from its provisions dealing with the notification and disclosure of shareholdings in PLCs, which covered all PLCs, the Directive otherwise applied only when a PLC was the subsidiary of another undertaking (which could itself be a PLC, but could also be a natural person or a legal person).

The main features of the proposal were : a) a definition of a "subsidiary undertaking" which would oblige Member States to provide for "control contracts", b) rules about the disclosure of shareholdings in PLCs, c) detailed rules (Section 4) as to the conduct of a "parent undertaking" towards a PLC subsidiary (including the liability of the parent undertaking for damage to the PLC subsidiary and for its debts), d) detailed rules applicable when the parent undertaking had entered into a "control contract" with a PLC (Section 5), or when it had made a "unilateral declaration instituting a vertical group" (Section 6), which would contain similar safeguards to those prescribed in Section 4 but with important additions (including a rights for the employee representatives on the subsidiary PLC's supervisory body to veto instructions from the parent undertaking).

The consultation on the draft Directive showed that there was very little support for such a comprehensive framework on group law: such an approach was largely unfamiliar to most Member



law specifically dealing with groups does not appear necessary, but that particular problems should be addressed through specific provisions in three areas.

### ***Financial and non financial information***

Complete information and disclosure with regard to the group's structure and intra-group relations are a crucial pre-requisite to ensure that the functioning of groups remains compatible with the interests of shareholders and creditors at the different levels. The actual provisions of the Seventh Company Law Directive on consolidated accounts do not sufficiently address these concerns, in that consolidated figures do not reflect the financial situation of the various parts of the group and the degree of dependence of the subsidiaries on the parent company.

The need for better financial and non financial information about groups of companies is already addressed partly by a series of EU measures, whether adopted (application of IAS to consolidated accounts), pending (information to be provided under the proposed Thirteenth Directive), or envisaged (information to be provided in the annual corporate governance statement). The Commission nevertheless observes that the scope of these measures is limited to listed companies. The Commission therefore considers that additional initiatives aiming at improving to the extent necessary the financial and non financial information disclosed by groups are desirable when the parent company is not listed. Since transparency is felt as the most important area of intervention with regard to groups, whether they are listed or not, the Commission regards these additional initiatives as priorities for the short term.

### ***Implementation of a group policy***

Member States should be required to provide for a framework rule for groups that allows those concerned with the management of a company belonging to a group to adopt and implement a co-ordinated group policy, provided that the interests of that company's creditors are effectively protected and that there is a fair balance of burdens and advantages over time for that company's shareholders. The Commission sees the introduction of such a rule as an important step towards improved business efficiency and competitiveness, but stresses that appropriate safeguards have to be carefully designed. A proposal for a framework Directive to this effect will therefore be presented in the medium term.

### ***Pyramids***

Pyramids, defined by the High Level Group as chains of holding companies with the ultimate control based on a small total investment thanks to the extensive use of minority shareholders, raise a number of problems stemming from their lack of transparency. The Commission notes that the introduction of a requirement to publish an annual corporate governance statement (as suggested in Section 3.1.1. above) would, together with the adoption of the proposed Thirteenth Directive, constitute a first significant improvement in this respect.

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States, and the business sector viewed it as too cumbersome and too inflexible. As a consequence, the decision was made not to issue an official proposal.

The Group stressed that pyramidal groups that include listed companies raise particular concerns. It recommended that national authorities should be required not to admit to listing companies belonging to abusive pyramids. The Group defined them as holding companies whose sole or main assets are their shareholding in another listed company, but made an exception for cases where the economic value of such admission is clearly demonstrated, thereby recognising that the definition of what constitutes an abusive pyramid required further consideration. It also suggested that operators of stock indices should properly take into account the free float in determining the respective weight of each company.

The Commission considers it necessary to give further examination to the risk inherent in abusive pyramids. In so doing, the Commission will take account of the need to avoid undue restrictions of companies' freedom to choose their appropriate organisation. The Commission therefore intends to obtain on this issue the expert opinion of the Committee of European Securities Regulators (CESR).

### 3.4. Corporate restructuring and mobility

The growing integration of the single market leads companies increasingly to do **business across national borders** within the Union. In order to be able to align their structure on their activities, European companies have repeatedly called for the adoption of legal instruments capable of meeting their needs for mergers between companies from different Member States and for transfer of their seat from one Member State to another.

The Commission intends to present in the short term a new proposal for a **Tenth Company Law Directive** on cross-border-mergers<sup>22</sup> as well as a proposal for a **Fourteenth Company Law Directive** on the transfer of the seat from one Member State to another<sup>23</sup>. Both proposals are faced with the task of solving difficulties relating to board structure and employee participation. In this respect, the Commission welcomes the approval in October 2001 of the European Company Statute, which opens up promising prospects for the solution of comparable issues in the Tenth and Fourteenth Directives. In addition to these company law implications of corporate restructuring and mobility, which are covered by the present Communication, attention is paid to their social implications in other Commission initiatives (these social implications are addressed in the Multi-Annual Work Programme of the Social Partners 2003-2005).

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<sup>22</sup> Although the laws of some Member States do not prohibit a company from one of those States from absorbing a company from another Member State or from taking part in the formation of a new company by merger with a company registered in another Member State, such an operation may be carried out only with companies from Member States where it is likewise not prohibited by law. The adoption of the European Company Statute offers one solution to these problems (a European Company may be created inter alia by merger of two or more public limited liability companies from different Member States). A proposal for a Tenth Company Law Directive is nevertheless desirable, since a) companies may wish to enter into a cross-border merger without creating a European Company, and b) other types of companies may wish to enter into a cross-border merger.

<sup>23</sup> In the absence of legislation governing the cross-border transfer of seat, such an operation is currently impossible or at least contingent on complicated legal arrangements. This is because Member States laws do not provide the necessary means and, when a transfer is possible by virtue of simultaneously applying national laws, there are frequent conflicts between those laws because of the different connecting criteria applied in the Member States. A legislative effort is needed in this field in order to implement the freedom of establishment in the manner intended by the Treaty.

The High Level Group made **other recommendations** relating to restructuring transactions, along the following lines : a) some of the requirements currently foreseen by the Third Company Law Directive (mergers of public limited liability companies) and by the Sixth Company Law Directive (division of such companies) should be relaxed in specific cases which make them superfluous; b) Member States should be required to create squeeze-out rights (for majority shareholders) and sell-out rights (for minority shareholders), at least in listed companies, subject to certain thresholds being reached. The introduction of such rights would complement the comparable provisions already contained in the current proposal for a Thirteenth Company Law Directive on take-over bids.

The Commission considers that the simplification of restructuring transactions pursued by the proposed relaxation of some of the requirements currently foreseen by the **Third Directive** and the **Sixth Directive** is desirable in so far as the necessary safeguards are ensured. The Commission notes that this simplification is not perceived by the Group as an immediate priority, and therefore intends to take the necessary initiatives in the medium term.

With respect to the introduction of **squeeze-out rights and sell-out rights**, proposed by the High Level Group in its Restructuring Chapter, the Commission observes that the same objectives are pursued by one of the recommendations made by the SLIM Group about the simplification of the Second Directive, which the High Level Group has endorsed. The Commission therefore intends to consider such an introduction as part of the modernisation of the Second Directive, which the Commission regards as a priority for the short term.

### **3.5. The European Private Company**

The High Level Group noted that the Societas Europaea (SE), adopted in October 2001, may not meet all expectations of the business community, in particular SMEs, and referred to the development, from a private initiative, of a "European Private Company" (EPC) which, as a **new legal form at EU level**, would primarily serve the needs of SMEs which are active in more than one Member State. This concept has received **widespread interest and support** not only from the private sector, but also from the European Economic and Social Committee, and the introduction of such a form is regarded by many as easier to achieve than the European Company Statute.

The Group nevertheless observed that the first priority should be to adopt the **Tenth Directive** on cross-border mergers, which is expected to meet one of the purposes advocated for the EPC. Therefore, and in view of a number of issues which need to be solved (e.g. tax or co-determination issues), the Group recommended that before deciding to submit a formal proposal, the Commission should launch a **feasibility study** in order to clearly identify the practical benefits of – and problems related to – the introduction of an EPC statute.

The Group suggested that such a feasibility study should be launched in the medium term, i.e. after the adoption of the Tenth Directive. The Commission considers that the identification of most of the practical benefits of – and problems related to – the introduction of an EPC statute can be achieved independently from the progress hoped on the Tenth Directive. The Commission will therefore launch a feasibility study **in the short term**, with a view to presenting a proposal for an EPC statute (if the feasibility study confirms the need for such an initiative) in the medium term.

The aim of this feasibility study is to evaluate the advantages and the problems generated by a possible European legal statute for small and medium enterprises in order to facilitate their internationalisation. To this end, the study should conduct an in-depth analysis of the legal, tax and social policy regimes relevant to SMEs in the 25 Member States of the enlarged Union.

### **3.6. The European Co-operative Society and other EU legal forms of enterprises**

The European Council adopted last year a general orientation on the proposal for a Regulation on the **Societas Cooperativa Europaea** (SCE) and proposals of statutes for a **European Association** and a **European Mutual Society** are now examined by the European Parliament and the Council. The Commission observes that a majority of the responses received in the consultation organised by the High Level Group expressed positive views on the usefulness of these statutes.

The Commission intends to **actively support the ongoing legislative process engaged** on these statutes, in response to the explicit desire expressed by the European Parliament for giving significant attention to the development of new European legal forms of enterprises. Adoption by the Council of the Regulation on a European Co-operative Society is hoped for in the near future, while the discussion within the Council of the proposal for a European Association is actively going on. As soon as agreement on this proposal will have been reached, the necessary attention will be devoted to the proposal for a European Mutual Society.

With respect to the possible development of a proposal for a Regulation on a **European Foundation**, before deciding to submit a proposal, the Commission intends to launch a study aiming at assessing in depth the feasibility of such a statute. Such an assessment will have to take account of the lessons to be drawn from the adoption and use of the other European statutes, so that it should best take place in the medium term.

### **3.7. Enhancing the transparency of national legal forms of enterprises**

**Increased disclosure requirements for all legal entities with limited liability**, are a need which stems from the necessity a) to preserve fair competition<sup>24</sup> and b) to prevent company law from being abused for fraud, terrorism or other criminal activity<sup>25</sup>. The Commission is committed to respond to this need, but the scope and nature of this recommendation need to be further examined. In view of the numerous other priorities, the necessary actions will be taken in the medium term.

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<sup>24</sup> The First Company Law Directive, which contains essential disclosure requirements (companies must file a series of documents and particulars with a register, and interested parties can obtain a copy thereof), applies only to limited liability companies, and not to a series of alternative forms of enterprise. The creation of a framework for disclosure of basic data on certain other legal entities engaged in economic activities is therefore perceived as a useful tool for trade and competition within the Internal Market.

<sup>25</sup> See in this respect the study "Transparency and Money Laundering: A study of the regulation and its implementation, in the EU Member States, that obstruct anti-money laundering international co-operation (banking/financial and corporate/company regulative fields)", submitted to the Commission in October 2001 by the Transcrime Institute (University of Trento, Italy). This study, commissioned pursuant to conclusion n°58 of the Tampere Special European Council of 1999 and the joint ECOFIN/JAI Council of October 2000, presents recommendations to increase the transparency of limited liability companies as well as other vehicles (as trusts).

#### 4. CONCLUSION

The present Communication explains why the European regulatory framework for company law and corporate governance needs to be modernised. It defines the key policy objectives which should inspire any future action to be taken at EU level in these areas. It includes an action plan, prioritised, to plan the various actions which appear necessary over the short, medium and long term. It determines which type of regulatory instrument should be used, and approximately by when.

Further to the conclusions adopted by the Brussels European Council of 20 and 21 March 2003, which requested the adoption of an Action Plan on Company Law and Corporate Governance, the Commission addresses this Communication to the European Parliament and the Council, and transmits it also to the European Economic and Social Committee and the Committee of the Regions.

Comments from all interested parties are invited by 31 August 2003. Comments should be sent to DG MARKET G3, European Commission, B-1049 Brussels (e-mail address: [Markt-COMPLAW@cec.eu.int](mailto:Markt-COMPLAW@cec.eu.int)).

The Commission will publish a synthesis of the comments received, and they will be given adequate consideration when implementing the present Action Plan.

## ANNEX 1

<b>Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward</b>		
<i>List of Actions</i>		
<b><u>SHORT TERM (2003-2005)</u></b>		
<b><u>Description of action</u></b>	<b><u>Preferred type of initiative<sup>26</sup></u></b>	
<b>Corporate Governance</b>	Enhanced corporate governance disclosure requirements (including confirmation of collective responsibility of board members for key non financial statements)	Legislative (Directive amending existing legislation)
	Integrated legal framework to facilitate efficient shareholder communication and decision-making (participation to meetings, exercise of voting rights, cross-border voting)	Legislative (Directive)
	Strengthening the role of independent non-executive and supervisory directors	Non legislative (Recommendation)
	Fostering an appropriate regime for directors remuneration	Non legislative (Recommendation)
	Confirming at EU level the collective responsibility of board members for financial statements	Legislative (Directive amending existing legislation)
	Convening a European Corporate Governance Forum to co-ordinate corporate governance efforts of Member States	Non legislative (Commission initiative)
<b>Capital Maintenance</b>	Simplification of the Second Directive, on the basis of the SLIM recommendations as supplemented in the HLG Report (SLIM-Plus)	Legislative (Directive amending existing legislation)

<sup>26</sup> This column gives information about the type of regulatory instrument which should be used:  
 - When « Directive » is mentioned, this means that the action envisaged requires either the adoption of a new Directive or the modification of one or several existing Directives (in the areas of company law, securities law, financial reporting law...), in accordance with the regulatory powers of the various relevant bodies existing at EU level;  
 - To the extent possible, the necessary initiatives will be grouped with a view to avoiding a multiplication of legislative initiatives.

<b>Groups of companies</b>	Increased disclosure of group structure and relations, both financial and non financial	Legislative (Directive amending existing legislation)
<b>Restructuring</b>	Proposal for a Tenth Directive on cross-border mergers	Legislative (Directive)
	Proposal for a Fourteenth Directive on cross-border transfer of the seat	Legislative (Directive)
<b>European Private Company</b>	Feasibility study in order to assess the practical needs for – and problems of – a European Private Company	Non legislative (Study)
<b>EU legal forms</b>	Active progress on current proposals (European Association, European Mutual Society)	Legislative (existing proposals)
<b><u>MEDIUM TERM (2006-2008)</u></b>		
	<b><u>Description of action</u></b>	<b><u>Preferred type of initiative</u></b>
<b>Corporate Governance</b>	Enhanced disclosure by institutional investors of their investment and voting policies	Legislative (Directive)
	Choice for all listed companies between the two types (monistic/dualistic) of board structures	Legislative (Directive)
	Enhancing the responsibilities of board members (special investigation right, wrongful trading rule, director's disqualification)	Legislative (Directive or Directive amending existing legislation)
	Examination of the consequences of an approach aiming at achieving a full shareholder democracy (one share / one vote), at least for listed companies	Non legislative (Study)
<b>Capital Maintenance</b>	Review of the feasibility of an alternative to the capital maintenance regime	Non legislative (Study)
<b>Groups of companies</b>	Framework rule for groups, allowing the adoption at subsidiary level of a co-ordinated group policy	Legislative (Directive)
<b>Pyramids</b>	Prohibition of stock exchange listing for abusive pyramids, if appropriate, following further examination and expert input	Legislative (possible Directive amending existing legislation)

<b>Restructuring</b>	Simplification of the Third Directive (legal mergers) and Sixth Directive (legal divisions)	Legislative (Directive amending existing legislation)
<b>European Private Company</b>	Possible proposal for a Statute for a European Private Company (depending on the outcome of the feasibility study)	Legislative
<b>EU legal forms</b>	Assess the need for the creation of other EU legal forms (e.g. European Foundation)	Non legislative (Study)
<b>Transparency of national legal forms</b>	Introduce basic disclosure rules for all legal entities with limited liability, subject to further examination	Legislative (Directive or Directive amending existing legislation)
<b><u>LONG TERM (2009 onwards)</u></b>		
	<b><u>Description of action</u></b>	<b><u>Preferred type of initiative</u></b>
<b>Capital Maintenance</b>	Possible introduction in the Second Company Law Directive of an alternative regime (depending on the outcome of the feasibility study)	Legislative (Directive amending existing legislation)



**ANNEX 2**  
**LIST OF EXISTING AND PROPOSED EUROPEAN COMPANY LAW INSTRUMENTS**

<b>Existing European Company Law Instruments</b>	
<b>REGULATIONS</b>	
<b>Title of Act</b>	<b>Publication Reference</b>
Council Regulation (EEC) 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)	[1985] OJ L 199/1
Council Regulation (2001/2157/EC) of 8 October 2001 on the Statute for a European Company SE <i>supplemented by</i> Council Directive (2001/86/EC) of 8 October 2001 supplementing the Statute for a European Company with regard to the involvement of employees	[2001] OJ L 294/1 [2001] OJ L 294/22
Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards	[2002] OJ L 243/1
<b>DIRECTIVES</b>	
<b>Title of Act</b>	<b>Publication Reference</b>
<b>First Council Directive</b> (EEC) 68/151 of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community	[1968] OJ L 65/8
<b>Second Council Directive</b> (EEC) 77/91 of 13 December 1976 on co-ordination of safeguards, which for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent throughout the Community	[1977] OJ L 26/1
<b>Third Council Directive</b> (EEC) 78/855 of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited liability companies	[1977] OJ L 295/36

<b>Fourth Council Directive</b> (EEC) 78/660 of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies	[1978] OJ L 222/11
<b>Sixth Council Directive</b> (EEC) 82/891 of 17 December 1982 based on Article 54(3)(g) of the Treaty concerning the division of public limited liability companies	[1982] OJ L 378/47
<b>Seventh Council Directive</b> (EEC) 83/349 of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts	[1983] OJ L 193/1
<b>Eighth Council Directive</b> (EEC) 84/253 of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents	[1984] OJ L 126/20
<b>Eleventh Council Directive</b> (EEC) 89/666 of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State	[1989] OJ L 395/96
<b>Twelfth Council Directive</b> (EEC) 89/667 of 21 December 1989 on single-member private limited liability companies	[1989] OJ L 395/40
<b>RECOMMENDATIONS</b>	
<b>Title of Act</b>	<b>Publication Reference</b>
Commission Recommendation (2001/256/EC) of 15 November 2000 on quality assurance for the statutory audit in the European Union: minimum requirements	[2001] OJ L 91/91
Commission Recommendation (2001/453/EC) of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies	[2001] OJ L 156/33
Commission Recommendation (2002/590/EC) of 16 May 2002 on “Statutory Auditors’ Independence in the EU : A Set of Fundamental Principles”	[2002] OJ L 191/22

<b>Proposed European Company Law Instruments</b>	
<b>REGULATIONS</b>	
<b>Title of Act</b>	<b>Publication Reference</b>
Amended Proposal for a Council Regulation (EEC) on a statute for a European Association	[1993] OJ C 236/1
Amended Proposal for a Council Regulation (EEC) on a statute for a European Co-operative Society	[1993] OJ C 236/17
Amended Proposal for a Council Regulation (EEC) on a statute for a European Mutual Society	[1993] OJ C 236/40
<b>DIRECTIVES</b>	
<b>Title of Act</b>	<b>Publication Reference</b>
Proposal for a Directive of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies : COM (2002) 279	[2002] OJ C 227/377
Proposal for a Directive of the European Parliament and of the Council on take-over bids : COM (2002) 534 final	[2003] OJ C 45 E/1

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► B**FIRST COUNCIL DIRECTIVE**

**of 9 March 1968**

**on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community**

(68/151/EEC)

(OJ L 65, 14.3.1968, p. 8)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003	L 221	13	4.9.2003
► <u>M2</u>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <u>A1</u>	Act of Accession of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (adapted by Council Decision of 1 January 1973)	L 73 L 2	14 1	27.3.1972 1.1.1973
► <u>A2</u>	Act of Accession of Greece	L 291	17	19.11.1979
► <u>A3</u>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <u>A4</u>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <u>A5</u>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003



**FIRST COUNCIL DIRECTIVE**

**of 9 March 1968**

**on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community**

(68/151/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the General Programme for the abolition of restrictions on freedom of establishment <sup>(1)</sup>, and in particular Title VI thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the co-ordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment is a matter of urgency, especially in regard to companies limited by shares or otherwise having limited liability, since the activities of such companies often extend beyond the frontiers of national territories;

Whereas the co-ordination of national provisions concerning disclosure, the validity of obligations entered into by, and the nullity of, such companies is of special importance, particularly for the purpose of protecting the interests of third parties;

Whereas in these matters Community provisions must be adopted in respect of such companies simultaneously, since the only safeguards they offer to third parties are their assets;

Whereas the basic documents of the company should be disclosed in order that third parties may be able to ascertain their contents and other information concerning the company, especially particulars of the persons who are authorised to bind the company;

Whereas the protection of third parties must be ensured by provisions which restrict to the greatest possible extent the grounds on which obligations entered into in the name of the company are not valid;

Whereas it is necessary, in order to ensure certainty in the law as regards relations between the company and third parties, and also between members, to limit the cases in which nullity can arise and the retroactive effect of a declaration of nullity, and to fix a short time limit within which third parties may enter objection to any such declaration,

<sup>(1)</sup> OJ No 2, 15. 1. 1962, p. 36/62.

<sup>(2)</sup> OJ No 96, 28. 5. 1966, p. 1519/66.

<sup>(3)</sup> OJ No 194, 27. 11. 1964, p. 3248/64.

**▼B**

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The co-ordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

— *In Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— *In Belgium:*

de naamloze vennootschap, la société anonyme,  
de commanditaire vennootschap op aandelen, la société en commandite par actions,  
de personenvennootschap met beperkte aansprakelijkheid; met la société de personnes à responsabilité limitée;

**▼M1**

— *In France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée, la société par actions simplifiée;

**▼B**

— *In Italy:*

società per azioni, società in accomandita per azioni, società a responsabilità limitata;

— *In Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

**▼M1**

— *In the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

**▼A1**

— *In the United Kingdom:*

Companies incorporated with limited liability;

— *In Ireland:*

Companies incorporated with limited liability;

**▼M1**

— *In Denmark:*

aktieselskab, kommanditaktieselskab, anpartsselskab;

**▼A2**

— *In Greece:*

ανώνυμη εταιρία, εταιρία περιορισμένης ευθύνης, ετερόρρυθμη κατά μετοχές εταιρία;

**▼A3**

— *In Spain:*

la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;

— *In Portugal:*

a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acções, a sociedade por quotas de responsabilidade limitada;

**▼A4**

— *In Austria:*

die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

▼ M1

— *In Finland:*

yksityinen osakeyhtiöprivat aktiebolag, julkinen osakeyhtiöpublikt aktiebolag;

▼ A4

— *In Sweden:*

aktiebolag;

▼ A5

— *In the Czech Republic:*

*společnost s ručením omezeným, akciová společnost;*

— *In Estonia:*

*aktsiaselts, osaühing;*

— *In Cyprus:*

*Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;*

— *In Latvia:*

*akciju sabiedrība, sabiedrība ar ierobežotu atbildību, komanditsabiedrība;*

— *In Lithuania:*

*akcinė bendrovė, uždaroji akcinė bendrovė;*

— *In Hungary:*

*részvénytársaság, korlátolt felelősségű társaság;*

— *In Malta:*

kumpanija pubblika/public limited liability company, kumpanija privata/private limited liability company;

— *In Poland:*

*spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna, spółka akcyjna;*

— *In Slovenia:*

*delniška družba, družba z omejeno odgovornostjo, komaditna delniška družba;*

— *In Slovakia:*

*akciová spoločnosť, spoločnosť s ručením obmedzeným;*

▼ M2

— *In Bulgaria:*

*акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;*

— *In Romania:*

*societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.*

**▼B**

## SECTION I

**Disclosure***Article 2*

1. Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars:

- (a) The instrument of constitution, and the statutes if they are contained in a separate instrument;
- (b) Any amendments to the instruments mentioned in (a), including any extension of the duration of the company;
- (c) After every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date;
- (d) The appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:
  - (i) are authorised to represent the company in dealings with third parties and in legal proceedings;
  - (ii) take part in the administration, supervision or control of the company.

It must appear from the disclosure whether the persons authorised to represent the company may do so alone or must act jointly;

- (e) At least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes;

**▼M1**

- (f) The accounting documents for each financial year, which are required to be published in accordance with Council Directives 78/660/EEC <sup>(1)</sup>, 83/349/EEC <sup>(2)</sup>, 86/635/EEC <sup>(3)</sup> and 91/674/EEC <sup>(4)</sup>;

**▼B**

- (g) Any transfer of the seat of the company;
- (h) The winding up of the company;
- (i) Any declaration of nullity of the company by the courts;
- (j) The appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;
- (k) The termination of the liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

**▼M1**

<sup>(1)</sup> OJ L 222, 14.8.1978, p. 11. Directive as last amended by Council Directive 2003/38/EC (OJ L 120, 15.5.2003, p. 22).

<sup>(2)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC (OJ L 178, 17.7.2003, p. 16).

<sup>(3)</sup> OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2003/51/EC.

<sup>(4)</sup> OJ L 374, 31.12.1991, p. 7.



▼ M1*Article 3*

1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed pursuant to Article 2 shall be kept in the file, or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

Member States shall ensure that, by 1 January 2007, the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which must be disclosed pursuant to Article 2 will be possible by electronic means. In addition, Member States may require all, or certain categories of, companies to file all, or certain types of, such documents and particulars by electronic means.

All documents and particulars referred to in Article 2 which are filed as from 1 January 2007 at the latest, whether by paper means or by electronic means, must be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means as from 1 January 2007 at the latest are converted by the register to electronic form.

The documents and particulars referred to in Article 2 that have been filed by paper means up to 31 December 2006 shall not be required to be converted automatically into electronic form by the register. Member States shall nevertheless ensure that they are converted into electronic form by the register upon receipt of an application for disclosure by electronic means submitted in accordance with the rules adopted to give effect to paragraph 3.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable on application. As from 1 January 2007 at the latest, applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

As from a date to be chosen by each Member State, which shall be no later than 1 January 2007, copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses. This shall apply in the case of all documents and particulars, irrespective of whether they were filed before or after the chosen date. However, Member States may decide that all, or certain types of, documents and particulars filed by paper means on or before a date which may not be later than 31 December 2006 shall not be obtainable from the register by electronic means if a specified period has elapsed between the date of filing and the date of the application submitted to the register. Such specified period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied shall be certified as 'true copies', unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as 'true copies', unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council

▼ M1

of 13 December 1999 on a Community framework for electronic signatures <sup>(1)</sup>.

4. Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full text or of a partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette appointed for that purpose may be kept in electronic form.

Member States may decide to replace publication in the national gazette with equally effective means, which shall entail at least the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform.

5. The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the 16th day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

6. Member States shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 4 and what appears in the register or file.

However, in cases of discrepancy, the text disclosed in accordance with paragraph 4 may not be relied on as against third parties; such third parties may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

7. Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

8. For the purposes of this Article, 'by electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.

*Article 3a*

1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up and filed in one of the languages permitted by the language rules applicable in the Member State in which the file referred to in Article 3(1) is opened.

2. In addition to the mandatory disclosure referred to in Article 3, Member States shall allow documents and particulars referred to in Article 2 to be disclosed voluntarily in accordance with Article 3 in any official language(s) of the Community.

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to facilitate access by third parties to the translations voluntarily disclosed.

3. In addition to the mandatory disclosure referred to in Article 3, and to the voluntary disclosure provided for under paragraph 2 of this

<sup>(1)</sup> OJ L 13, 19.1.2000, p. 12.

**▼ M1**

Article, Member States may allow the documents and particulars concerned to be disclosed, in accordance with Article 3, in any other language(s).

Member States may stipulate that the translation of such documents and particulars be certified.

4. In cases of discrepancy between the documents and particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the mandatory disclosure.

*Article 4*

Member States shall stipulate that letters and order forms, whether they are in paper form or use any other medium, shall state the following particulars:

- (a) the information necessary to identify the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register;
- (b) the legal form of the company, the location of its registered office and, where appropriate, the fact that the company is being wound up.

Where, in these documents, mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Member States shall prescribe that company websites shall contain at least the particulars mentioned in the first paragraph and, if applicable, the reference to the capital subscribed and paid up.

**▼ B***Article 5*

Each Member State shall determine by which persons the disclosure formalities are to be carried out.

**▼ M1***Article 6*

Member States shall provide for appropriate penalties at least in the case of:

- (a) failure to disclose accounting documents as required by Article 2(1)(f);
- (b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 4.

**▼ B**

## SECTION II

**Validity of obligations entered into by a company***Article 7*

If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.

**▼B***Article 8*

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorised to represent it shall constitute a bar to any irregularity in their appointment being relied upon as against third parties unless the company proves that such third parties had knowledge thereof.

*Article 9*

1. Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

2. The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

3. If the national law provides that authority to represent a company may, in derogation from the legal rules governing the subject, be conferred by the statutes on a single person or on several persons acting jointly, that law may provide that such a provision in the statutes may be relied on as against third parties on condition that it relates to the general power of representation; the question whether such a provision in the statutes can be relied on as against third parties shall be governed by Article 3.

## SECTION III

**Nullity of the company***Article 10*

In all Member States whose laws do not provide for preventive control, administrative or judicial, at the time of formation of a company, the instrument of constitution, the company statutes and any amendments to those documents shall be drawn up and certified in due legal form.

*Article 11*

The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:

1. Nullity must be ordered by decision of a court of law;
2. Nullity may be ordered only on the following grounds:
  - (a) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;
  - (b) that the objects of the company are unlawful or contrary to public policy;
  - (c) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;

**▼B**

- (d) failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;
- (e) the incapacity of all the founder members;
- (f) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of nonexistence, nullity absolute, nullity relative or declaration of nullity.

*Article 12*

1. The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 3. Where the national law entitles a third party to challenge the decision, he may do so only within six months of public notice of the decision of the court being given.
2. Nullity shall entail the winding up of the company, as may dissolution.
3. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.
4. The laws of each Member State may make provision for the consequences of nullity as between members of the company.
5. Holders of shares in the capital shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.

## SECTION IV

**General provisions***Article 13*

Member States shall put into force, within eighteen months following notification of this Directive, all amendments to their laws, regulations or administrative provisions required in order to comply with provisions of this Directive and shall forthwith inform the Commission thereof.

The obligation of disclosure provided for in Article 2 (1) (f) shall not enter into force until thirty months after notification of this Directive in respect of *naamloze vennootschappen* under Netherlands law other than those referred to in the present Article 42 (c) of the Netherlands Commercial Code.

Member States may provide that initial disclosure of the full text of the statutes as amended since the formation of the company shall not be required until the statutes are next amended or until 31 December 1970, whichever shall be the earlier.

Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 14*

This Directive is addressed to the Member States.

## 31968L0151

### Title and reference

First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community

*OJ L 65, 14.3.1968, p. 8–12 (DE, FR, IT, NL)*  
 Finnish special edition: Chapter 17 Volume 1 P. 0003  
 Danish special edition: Series I Chapter 1968(I) P. 0041  
 Swedish special edition: Chapter 17 Volume 1 P. 0003  
 English special edition: Series I Chapter 1968(I) P. 0041  
 Greek special edition: Chapter 06 Volume 1 P. 0080  
 Spanish special edition: Chapter 17 Volume 1 P. 0003  
 Portuguese special edition Chapter 17 Volume 1 P. 0003  
 Special edition in Czech Chapter 17 Volume 01 P. 3 - 7  
 Special edition in Estonian Chapter 17 Volume 01 P. 3 - 7  
 Special edition in Hungarian Chapter 17 Volume 01 P. 3 - 7  
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 Special edition in Latvian Chapter 17 Volume 01 P. 3 - 7  
 Special edition in Maltese Chapter 17 Volume 01 P. 3 - 7  
 Special edition in Polish Chapter 17 Volume 01 P. 3 - 7  
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 Special edition in Slovenian Chapter 17 Volume 01 P. 3 - 7

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### Text

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pdf		pdf			pdf						pdf	pdf	pdf	pdf		pdf		pc
				tiff				tiff		tiff					tiff			

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- **Select all documents based on this document**
- **Amended by:**  
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 Corrected by 31968L0151R(02)  
 Completed by 11972BN01/3/H/1 Completion Article 1  
 Amended by 11972BN01/3/H/1 Replacement Article 2.1F  
 Amended by 11972BN02/3 Amendment Article 2.1.F  
 Application extended by 11972BN11/3/PT1A24 JQ1/7/73  
 Amended by 31973D0101(01) Amendment Article 1 from 01/01/1973  
 Amended by 11979HN01/03/C Completion Article 1 from 01/01/1981  
 Amended by 11979HN01/03/C Replacement Article 2.1.F from 01/01/1981  
 Completed by 11985IN01/02/D Completion Article 1 from 01/01/1986  
 Amended by 11985IN01/02/D Replacement Article 2.1.F from 01/01/1986  
 Amended by 11994NN01/11/A Completion Article 1 from 01/01/1995  
 Incorporated by 21994A0103(72)  
 Amended by 12003TN02/04/A Completion Article 1 from 01/05/2004  
 Amended by 32003L0058 Replacement Article 1.14 from 04/09/2003

Amended by [32003L0058](#) Replacement Article 1.3 from 04/09/2003  
 Amended by [32003L0058](#) Replacement Article 1.6 from 04/09/2003  
 Amended by [32003L0058](#) Replacement Article 1.9 from 04/09/2003  
 Amended by [32003L0058](#) Amendment Article 2.1 from 04/09/2003  
 Amended by [32003L0058](#) abolition Article 2.2 from 04/09/2003  
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 Amended by [32003L0058](#) Replacement Article 4 from 04/09/2003  
 Amended by [32003L0058](#) Replacement Article 6 from 04/09/2003  
 Amended by [32006L0099](#) Completion Article 1 from 01/01/2007

► **Consolidated versions**

[1995-01-01](#)  
[2003-09-04](#)  
[2004-05-01](#)  
[2007-01-01](#)

► **Subsequent related instruments:**

Amendment proposed by [52002PC0279](#)  
 Amendment proposed by [52008PC0039](#) Repeal  
 Amendment proposed by [52008PC0194](#)

► **Affected by case:**

A02P1LD Interpreted by [61974J0032](#)  
 S3 Interpreted by [61987J0136](#)  
 A11 Interpreted by [61989J0106](#)  
 A02P1LF Proceedings concerning failure by Member States [61995J0191](#)  
 A03 Proceedings concerning failure by Member States [61995J0191](#)  
 A06 Proceedings concerning failure by Member States [61995J0191](#)  
 A06 Interpreted by [61996J0097](#)  
 Interpreted by [61996J0104](#)  
 A02P1LF Declared valid incidentally [62002A0047](#)  
 Interpreted by [62003O0023](#)

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[11957E058](#)

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FIRST COUNCIL DIRECTIVE of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom of establishment<sup>1</sup>, and in particular Title VI thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>2</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>3</sup>;

Whereas the co-ordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment is a matter of urgency, especially in regard to companies limited by shares or otherwise having limited liability, since the activities of such companies often extend beyond the frontiers of national territories;

Whereas the co-ordination of national provisions concerning disclosure, the validity of obligations entered into by, and the nullity of, such companies is of special importance, particularly for the purpose of protecting the interests of third parties;

Whereas in these matters Community provisions must be adopted in respect of such companies simultaneously, since the only safeguards they offer to third parties are their assets;

Whereas the basic documents of the company should be disclosed in order that third parties may be able to ascertain their contents and other information concerning the company, especially particulars of the persons who are authorised to bind the company;

Whereas the protection of third parties must be ensured by provisions which restrict to the greatest possible extent the grounds on which obligations entered into in the name of the company are not valid;

Whereas it is necessary, in order to ensure certainty in the law as regards relations between the company and third parties, and also between members, to limit the cases in which nullity can arise and the retroactive effect of a declaration of nullity, and to fix a short time limit within which third parties may enter objection to any such declaration;

HAS ADOPTED THIS DIRECTIVE:

Article 1

The co-ordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company: - In Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

- In Belgium:

de naamloze vennootschap, la société anonyme, >PIC FILE= "T0050832"> 1 OJ No 2, 15.1.1962, p. 36/62.

2 OJ No 96, 28.5.1966, p. 1519/66.

3 OJ No 194, 27.11.1964, p. 3248/64.

- In France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

- In Italy:

società per azioni, società in accomandita per azioni, società a responsabilità limitata;

- In Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

- In the Netherlands:

de naamloze vennootschap, de commanditaire vennootschap op aandelen.

#### SECTION I Disclosure

##### Article 2

1. Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars: (a) The instrument of constitution, and the statutes if they are contained in a separate instrument;

(b) Any amendments to the instruments mentioned in (a), including any extension of the duration of the company;

(c) After every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date;

(d) The appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body: (i) are authorised to represent the company in dealings with third parties and in legal proceedings;

(ii) take part in the administration, supervision or control of the company.

It must appear from the disclosure whether the persons authorised to represent the company may do so alone or must act jointly:

(e) At least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes;

(f) The balance sheet and the profit and loss account for each financial year. The document containing the balance sheet shall give particulars of the persons who are required by law to certify it.

However, in respect of the Gesellschaft mit beschränkter Haftung, société de personnes à responsabilité limitée, personenvennootschap met beperkte aansprakelijkheid, société à responsabilité limitée and società a responsabilità limitata under German, Belgian, French, Italian or Luxembourg law, referred to in Article 1, and the besloten naamloze vennootschap under Netherlands law, the compulsory application of this provision shall be postponed until the date of implementation of a Directive concerning co-ordination of the contents of balance sheets and of profit and loss accounts and concerning exemption of such of those companies whose balance sheet total is less than specified in the Directive from the obligation to make disclosure, in full or in part, of the said documents. The Council will adopt such a Directive within two years following the adoption of the present Directive:

(g) Any transfer of the seat of the company;

(h) The winding up of the company;

(i) Any declaration of nullity of the company by the courts;

(j) The appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;

(k) The termination of the liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

2. For purposes of paragraph 1 (f), companies which fulfil the following conditions shall be considered as besloten naamloze vennootschappen: (a) They cannot issue bearer shares:

(b) No bearer certificate of registered shares within the meaning of Article 42 (c) of the Netherlands Commercial Code can be issued by any person whatsoever;

(c) Their shares cannot be quoted on a stock exchange;

(d) Their statutes contain a clause requiring approval by the company before the transfer of shares to third parties, except in the case of transfer in the event of death and, if the statutes so provide, in the case of transfer to a spouse, forebears or issue; transfers shall not be in blank, but otherwise each transfer shall be in writing under hand, signed by the transferor and transferee or by notarial act;

(e) Their statutes specify that the company is a besloten naamloze vennootschap; the name of the company includes the words "Besloten Naamloze Vennootschap" or the initials "BNV".

##### Article 3

1. In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

2. All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

3. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof.

Copies supplied shall be certified as "true copies", unless the applicant dispenses with such certification.

4. Disclosure of the documents and particulars referred to in paragraph 2 shall be effected by publication in the national gazette appointed for that purpose by the Member State, either of the full or partial text, or by means of a reference to the document which has been deposited in the file or entered in the register.

5. The documents and particulars may be relied on by the company as against third parties only after they have been published in accordance with paragraph 4, unless the company proves that the third parties had knowledge thereof. However, with regard to transactions taking place before the sixteenth day following the publication, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

6. Member States shall take the necessary measures to avoid any discrepancy between what is disclosed by publication in the press and what appears in the register or file.

However, in cases of discrepancy, the text published in the press may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

7. Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

##### Article 4

Member States shall prescribe that letters and order forms shall state the following particulars: - the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register;

- the legal form of the company, the location of its seat and, where appropriate, the fact that the company is being wound up.

Where in these documents mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

##### Article 5

Each Member State shall determine by which persons the disclosure formalities are to be carried out.

##### Article 6

Member States shall provide for appropriate penalties in case of: - failure to disclose the balance sheet and profit and loss account as required by Article 2 (1) (f);

- omission from commercial documents of the compulsory particulars provided for in Article 4.

#### SECTION II Validity of obligations entered into by a company

##### Article 7

If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.



## Article 8

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorised to represent it shall constitute a bar to any irregularity in their appointment being relied upon as against third parties unless the company proves that such third parties had knowledge thereof.

## Article 9

1. Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

2. The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

3. If the national law provides that authority to represent a company may, in derogation from the legal rules governing the subject, be conferred by the statutes on a single person or on several persons acting jointly, that law may provide that such a provision in the statutes may be relied on as against third parties on condition that it relates to the general power of representation; the question whether such a provision in the statutes can be relied on as against third parties shall be governed by Article 3.

## SECTION III Nullity of the company

## Article 10

In all Member States whose laws do not provide for preventive control, administrative or judicial, at the time of formation of a company, the instrument of constitution, the company statutes and any amendments to those documents shall be drawn up and certified in due legal form.

## Article 11

The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions: 1. Nullity must be ordered by decision of a court of law;

2. Nullity may be ordered only on the following grounds: (a) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;

(b) that the objects of the company are unlawful or contrary to public policy;

(c) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;

(d) failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;

(e) the incapacity of all the founder members;

(f) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, nullity absolute, nullity relative or declaration of nullity.

## Article 12

1. The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 3. Where the national law entitles a third party to challenge the decision, he may do so only within six months of public notice of the decision of the court being given.

2. Nullity shall entail the winding up of the company, as may dissolution.

3. Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.

4. The laws of each Member State may make provision for the consequences of nullity as between members of the company.

5. Holders of shares in the capital shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.

## SECTION IV General provisions

## Article 13

Member States shall put into force, within eighteen months following notification of this Directive, all amendments to their laws, regulations or administrative provisions required in order to comply with provisions of this Directive and shall forthwith inform the Commission thereof.

The obligation of disclosure provided for in Article 2 (1) (f) shall not enter into force until thirty months after notification of this Directive in respect of naamloze vennootschappen under Netherlands law other than those referred to in the present Article 42 (c) of the Netherlands Commercial Code.

Member States may provide that initial disclosure of the full text of the statutes as amended since the formation of the company shall not be required until the statutes are next amended or until 31 December 1970, whichever shall be the earlier.

Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 14

This Directive is addressed to the Member States.

Done at Brussels, 9 March 1968.

For the Council

The President

M. COUVE de MURVILLE

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► **B****SECOND COUNCIL DIRECTIVE**

**of 13 December 1976**

**on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent**

(77/91/EEC)

(OJ L 26, 31.1.1977, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Council Directive 92/101/EEC of 23 November 1992	L 347	64	28.11.1992
► <b><u>M2</u></b>	Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006	L 264	32	25.9.2006
► <b><u>M3</u></b>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <b><u>A1</u></b>	Act of Accession of Greece	L 291	17	19.11.1979
► <b><u>A2</u></b>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b><u>A3</u></b>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <b><u>A4</u></b>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

**▼B****SECOND COUNCIL DIRECTIVE****of 13 December 1976**

**on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent**

(77/91/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas the coordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment, which was begun by Directive 68/151/EEC <sup>(3)</sup>, is especially important in relation to public limited liability companies, because their activities predominate in the economy of the Member States and frequently extend beyond their national boundaries;

Whereas in order to ensure minimum equivalent protection for both shareholders and creditors of public limited liability companies, the coordination of national provisions relating to their formation and to the maintenance, increase or reduction of their capital is particularly important;

Whereas in the territory of the Community, the statutes or instrument of incorporation of a public limited liability company must make it possible for any interested person to acquaint himself with the basic particulars of the company, including the exact composition of its capital;

Whereas Community provisions should be adopted for maintaining the capital, which constitutes the creditors' security, in particular by prohibiting any reduction thereof by distribution to shareholders where the latter are not entitled to it and by imposing limits on the company's right to acquire its own shares;

Whereas it is necessary, having regard to the objectives of Article 54 (3) (g), that the Member States' laws relating to the increase or reduction of capital ensure that the principles of equal treatment of shareholders in the same position and of protection of creditors whose claims exist prior to the decision on reduction are observed and harmonized,

<sup>(1)</sup> OJ No C 114, 11. 11. 1971, p. 18.

<sup>(2)</sup> OJ No C 88, 6. 9. 1971, p. 1.

<sup>(3)</sup> OJ No L 65, 14. 3. 1968, p. 8.

**▼B**

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. The coordination measures prescribed by this Directive shall apply to the provisions laid down by law, regulation or administrative action in Member States relating to the following types of company:

— *in Belgium:*

la société anonyme de droit belge;

— *in Denmark:*

aktieselskabet;

— *in France:*

la société anonyme;

— *in Germany:*

die Aktiengesellschaft;

— *in Ireland:*

the public company limited by shares,

the public company limited by guarantee and having a share capital;

— *in Italy:*

la società per azioni;

— *in Luxembourg:*

la société anonyme;

— *in the Netherlands:*

de naamloze vennootschap;

— *in the United Kingdom:*

the public company limited by shares,

the public company limited by guarantee and having a share capital;

**▼A1**

— *in Greece*

η ανώνυμη εταιρία;

**▼A2**

— *in Spain:*

la sociedad anónima;

— *in Portugal:*

a sociedade anonima de responsabilidade limitada;

**▼A3**

— *in Austria*

die Aktiengesellschaft;

— *in Finland:*

osakeyhtiöaktiebolag;

— *in Sverige:*

aktiebolag;

**▼A4**

— *in the Czech Republic:*

akciová společnost;

— *in Estonia:*

aktsiaselts;

**▼ A4**

— *in Cyprus:*

Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές, δημόσιες εταιρείες περιορισμένης ευθύνης με εγγύηση που διαθέτουν μετοχικό κεφάλαιο;

— *in Latvia:*

akciju sabiedrība;

— *in Lithuania:*

akcinė bendrovė;

**▼ M2**

— *in Hungary:*

nyilvánosan működő részvénytársaság;

**▼ A4**

— *in Malta:*

kumpanija pubblika/public limited liability company;

— *in Poland:*

spółka akcyjna;

— *in Slovenia:*

delniška družba;

— *in Slovakia:*

akciová spoločnosť;

**▼ M3**

— *in Bulgaria:*

акционерно дружество;

— *in Romania:*

societate pe acțiuni.

**▼ B**

The name for any company of the above types shall comprise or be accompanied by a description which is distinct from the description required of other types of companies.

2. The Member States may decide not to apply this Directive to investment companies with variable capital and to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the words 'investment company with variable capital' or 'cooperative' in all documents indicated in Article 4 of Directive 68/151/EEC.

The expression 'investment company with variable capital', within the meaning of this Directive, means only those companies:

- the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets,
- which offer their own shares for subscription by the public, and
- the statutes of which provide that, within the limits of a minimum and maximum capital, they may at any time issue, redeem or resell their shares.

*Article 2*

The statutes or the instrument of incorporation of the company shall always give at least the following information:

**▼B**

- (a) the type and name of the company;
- (b) the objects of the company;
- (c) — when the company has no authorized capital, the amount of the subscribed capital,  
— when the company has an authorized capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorized to commence business, and at the time of any change in the authorized capital, without prejudice to Article 2 (1) (e) of Directive 68/151/EEC;
- (d) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;
- (e) the duration of the company, except where this is indefinite.

*Article 3*

The following information at least must appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC:

- (a) the registered office;
- (b) the nominal value of the shares subscribed and, at least once a year, the number thereof;
- (c) the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;
- (d) the special conditions if any limiting the transfer of shares;
- (e) where there are several classes of shares, the information under (b), (c) and (d) for each class and the rights attaching to the shares of each class;
- (f) whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;
- (g) the amount of the subscribed capital paid up at the time the company is incorporated or is authorized to commence business;
- (h) the nominal value of the shares or, where there is not nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing this consideration;
- (i) the identity of the natural or legal persons or companies or firms by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of these documents, have been signed;
- (j) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorized to commence business;
- (k) any special advantage granted, at the time the company is formed or up to the time it receives authorization to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorization.

**▼B***Article 4*

1. Where the laws of a Member State prescribe that a company may not commence business without authorization, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorization is granted or refused.
2. Paragraph 1 shall not apply to liabilities under contracts concluded by the company conditionally upon its being granted authorization to commence business.

*Article 5*

1. Where the laws of a Member State require a company to be formed by more than one member, the fact that all the shares are held by one person or that the number of members has fallen below the legal minimum after incorporation of the company shall not lead to the automatic dissolution of the company.
2. If in the cases referred to in paragraph 1, the laws of a Member State permit the company to be wound up by order of the court, the judge having jurisdiction must be able to give the company sufficient time to regularize its position.
3. Where such a winding up order is made the company shall enter into liquidation.

*Article 6*

1. The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorization to commence business, a minimum capital shall be subscribed the amount of which shall be not less than 25 000 ►**A3** ecus ◀.

The ►**A3** ecus ◀ shall be that defined by Commission Decision No 3289/75/ECSC <sup>(1)</sup>. The equivalent in national currency shall be calculated initially at the rate applicable on the date of adoption of this Directive.

2. If the equivalent of the ►**A3** ecus ◀ in national currency is altered so that the value of the minimum capital in national currency remains less than 22 500 ►**A3** ecus ◀ for a period of one year, the Commission shall inform the Member State concerned that it must amend its legislation to comply with paragraph 1 within 12 months following the expiry of that period. However, the Member State may provide that the amended legislation shall not apply to companies already in existence until 18 months after its entry into force.
3. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in this Article in ►**A3** ecus ◀ in the light of economic and monetary trends in the Community and of the tendency towards allowing only large and medium-sized undertakings to opt for the types of company listed in Article 1 <sup>(1)</sup>.

*Article 7*

The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of these assets.

<sup>(1)</sup> OJ No L 327, 19. 12. 1975, p. 4.

**▼B***Article 8*

1. Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.
2. However, Member States may allow those who undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of this transaction.

*Article 9*

1. Shares issued for a consideration must be paid up at the time the company is incorporated or is authorized to commence business at not less than 25 % of their nominal value or, in the absence of a nominal value, their accountable par.
2. However, where shares are issued for a consideration other than in cash at the time the company is incorporated or is authorized to commence business, the consideration must be transferred in full within five years of that time.

*Article 10*

1. A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorized to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.
2. The experts' report shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.
3. The expert's (SIC! experts') report shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.
4. Member States may decide not to apply this Article where 90 % of the nominal value, or where there is no nominal value, of the accountable par, of all the shares is issued to one or more companies for a consideration other than in cash, and where the following requirements are met:
  - (a) with regard to the company in receipt of such consideration, the persons referred to in Article 3 (i) have agreed to dispense with the expert's (SIC! experts') report;
  - (b) such agreement has been published as provided for in paragraph 3;
  - (c) the companies furnishing such consideration have reserves which may not be distributed under the law or the statutes and which are at least equal to the nominal value or, where there is no nominal value, the accountable par of the shares issued for consideration other than in cash;
  - (d) the companies furnishing such consideration guarantee, up to an amount equal to that indicated in paragraph (c), the debts of the recipient company arising between the time the shares are issued for a consideration other than in cash and one year after the publication of that company's annual accounts for the financial year during which such consideration was furnished. Any transfer of these shares is prohibited within this period;



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- (e) the guarantee referred to in (d) has been published as provided for in paragraph 3;
- (f) the companies furnishing such consideration shall place a sum equal to that indicated in (c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which such consideration was furnished or, if necessary, until such later date as all claims relating to the guarantee referred to in (d) which are submitted during this period have been settled.

**▼M2***Article 10a*

1. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(1)</sup> or money-market instruments as defined in point 19 of Article 4(1) of that Directive are contributed as consideration other than in cash, and those securities or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated market(s) as defined in point 14 of Article 4(1) of that Directive during a sufficient period, to be determined by national law, preceding the effective date of the contribution of the respective consideration other than in cash.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body. For the purposes of the aforementioned revaluation, Article 10(1), (2) and (3) shall apply.

2. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1, are contributed as consideration other than in cash which have already been subject to a fair value opinion by a recognised independent expert and where the following conditions are fulfilled:

- (a) the fair value is determined for a date not more than six months before the effective date of the asset contribution;
- (b) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State, which are applicable to the kind of assets to be contributed.

In the case of new qualifying circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body. For the purposes of the aforementioned revaluation, Article 10(1), (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5 % of the company's subscribed capital on the day the decision on the increase in the capital is taken may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply. Such shareholder(s) may submit a demand up until the effective date of the asset contribution, provided that, at the date of the demand, the shareholder(s) in question still hold

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

▼ M2

(s) an aggregate percentage of at least 5 % of the company's subscribed capital, as it was on the day the decision on the increase in the capital was taken.

3. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1, are contributed as consideration other than in cash whose fair value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts <sup>(1)</sup>.

The second and third subparagraphs of paragraph 2 shall apply *mutatis mutandis*.

*Article 10b*

1. Where consideration other than in cash as referred to in Article 10a occurs without an expert's report as referred to in Article 10(1), (2) and (3), in addition to the requirements set out in point (h) of Article 3 and within one month after the effective date of the asset contribution, a declaration containing the following shall be published:

- (a) a description of the consideration other than in cash at issue;
- (b) its value, the source of this valuation and, where appropriate, the method of valuation;
- (c) a statement whether the value arrived at corresponds at least to the number, to the nominal value or, where there is no nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration;
- (d) a statement that no new qualifying circumstances with regard to the original valuation have occurred.

That publication shall be effected in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

2. Where consideration other than in cash is proposed to be made without an expert's report as referred to in Article 10(1), (2) and (3) in relation to an increase in the capital proposed to be made under Article 25(2), an announcement containing the date when the decision on the increase was taken and the information listed in paragraph 1 shall be published, in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, before the contribution of the asset as consideration other than in cash is to become effective. In that event, the declaration pursuant to paragraph 1 shall be limited to the statement that no new qualifying circumstances have occurred since the aforementioned announcement was published.

3. Each Member State shall provide for adequate safeguards ensuring compliance with the procedure set out in Article 10a and in this Article where a contribution for a consideration other than in cash is made without an expert's report as referred to in Article 10(1), (2) and (3).

<sup>(1)</sup> OJ L 157, 9.6.2006, p. 87;

**▼B***Article 11*

1. If, before the expiry of a time limit laid down by national law of at least two years from the time the company is incorporated or is authorized to commence business, the company acquires any asset belonging to a person or company or firm referred to in Article 3 (i) for a consideration of not less than one-tenth of the subscribed capital, the acquisition shall be examined and details of it published in the manner provided for in ►**M2** Article 10(1), (2) and (3) ◀ and it shall be submitted for the approval of the general meeting. ►**M2** Articles 10a and 10b shall apply *mutatis mutandis*. ◀

Member States may also require these provisions to be applied when the assets belong to a shareholder or to any other person.

2. Paragraph 1 shall not apply to acquisitions effected in the normal course of the company's business, to acquisitions effected at the instance or under the supervision of an administrative or judicial authority, or to stock exchange acquisitions.

*Article 12*

Subject to the provisions relating to the reduction of subscribed capital, the shareholders may not be released from the obligation to pay up their contributions.

*Article 13*

Pending coordination of national laws at a subsequent date, Member States shall adopt the measures necessary to require provision of at least the same safeguards as are laid down in Articles 2 to 12 in the event of the conversion of another type of company into a public limited liability company.

*Article 14*

Articles 2 to 13 shall not prejudice the provisions of Member States on competence and procedure relating to the modification of the statutes or of the instrument of incorporation.

*Article 15*

1. (a) Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes.
- (b) Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital referred to in paragraph (a).
- (c) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.

**▼B**

(d) The expression ‘distribution’ used in subparagraphs (a) and (c) includes in particular the payment of dividends and of interest relating to shares.

2. When the laws of a Member State allow the payment of interim dividends, the following conditions at least shall apply:

- (a) interim accounts shall be drawn up showing that the funds available for distribution are sufficient,
- (b) the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.

3. Paragraphs 1 and 2 shall not affect the provisions of the Member States as regards increases in subscribed capital by capitalization of reserves.

4. The laws of a Member State may provide for derogations from paragraph 1 (a) in the case of investment companies with fixed capital.

The expression ‘investment company with fixed capital’, within the meaning of this paragraph (SIC! paragraph,) means only those companies:

- the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets, and
- which offer their own shares for subscription by the public.

In so far as the laws of Member States make use of this option they shall:

- (a) require such companies to include the expression ‘investment company’ in all documents indicated in Article 4 of Directive 68/151/EEC;
- (b) not permit any such company whose net assets fall below the amount specified in paragraph 1 (a) to make a distribution to shareholders when on the closing date of the last financial year the company's total assets as set out in the annual accounts are, or following such distribution would become, less than one-and-a-half times the amount of the company's total liabilities to creditors as set out in the annual accounts;
- (c) require any such company which makes a distribution when its net assets fall below the amount specified in paragraph 1 (a) to include in its annual accounts a note to that effect.

#### *Article 16*

Any distribution made contrary to Article 15 must be returned by shareholders who have received it if the company proves that these shareholders knew of the irregularity of the distributions made to them, or could not in view of the circumstances have been unaware of it.

#### *Article 17*

1. In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken.

**▼B**

2. The amount of a loss deemed to be serious within the meaning of paragraph 1 may not be set by the laws of Member States at a figure higher than half the subscribed capital.

*Article 18*

1. The shares of a company may not be subscribed for by the company itself.

2. If the shares of a company have been subscribed for by a person acting in his own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.

3. The persons or companies or firms referred to in Article 3 (i) or, in cases of an increase in subscribed capital, the members of the administrative or management body shall be liable to pay for shares subscribed in contravention of this Article.

However, the laws of a Member State may provide that any such person may be released from his obligation if he proves that no fault is attributable to him personally.

*Article 19***▼M2**

1. Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(1)</sup>, Member States may permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf. To the extent that the acquisitions are permitted, Member States shall make such acquisitions subject to the following conditions:

- (a) authorisation shall be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and, in particular, the maximum number of shares to be acquired, the duration of the period for which the authorisation is given, the maximum length of which shall be determined by national law without, however, exceeding five years, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body shall satisfy themselves that, at the time when each authorised acquisition is effected, the conditions referred to in points (b) and (c) are respected;
- (b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in points (a) and (b) of Article 15(1);
- (c) only fully paid-up shares may be included in the transaction.

Furthermore, Member States may subject acquisitions within the meaning of the first subparagraph to any of the following conditions:

- (i) that the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed a limit to be determined by Member States. This limit may not be lower than 10 % of the subscribed capital;

<sup>(1)</sup> OJ L 96, 12.4.2003, p. 16.;

**▼M2**

- (ii) that the power of the company to acquire its own shares within the meaning of the first subparagraph, the maximum number of shares to be acquired, the duration of the period for which the power is given and the maximum or minimum consideration are laid down in the statutes or in the instrument of incorporation of the company;
- (iii) that the company complies with appropriate reporting and notification requirements;
- (iv) that certain companies, as determined by Member States, may be required to cancel the acquired shares provided that an amount equal to the nominal value of the shares cancelled must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital. This reserve may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves;
- (v) that the acquisition shall not prejudice the satisfaction of creditors' claims.

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2. The laws of a Member State may provide for derogations from the first sentence of paragraph 1 (a) where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company. In such a case, the next general meeting must be informed by the administrative or management body of the reasons for and nature of the acquisitions effected, of the number and nominal value or, in the absence of a nominal value, the accountable par, of the shares acquired, of the proportion of the subscribed capital which they represent, and of the consideration for these shares.

3. Member States may decide not to apply the first sentence of paragraph 1 (a) to shares acquired by either the company itself or by a person acting in his own name but on the company's behalf, for distribution to that company's employees or to the employees of an associate company. Such shares must be distributed within 12 months of their acquisition.

*Article 20*

1. Member States may decide not to apply Article 19 to:
- (a) shares acquired in carrying out a decision to reduce capital, or in the circumstances referred to in Article 39;
  - (b) shares acquired as a result of a universal transfer of assets;
  - (c) fully paid-up shares acquired free of charge or by banks and other financial institutions as purchasing commission;
  - (d) shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company's object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;
  - (e) shares acquired from a shareholder in the event of failure to pay them up;
  - (f) shares acquired in order to indemnify minority shareholders in associated companies;
  - (g) fully paid-up shares acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares;
  - (h) fully paid-up shares issued by an investment company with fixed capital, as defined in the second subparagraph of Article 15 (4), and acquired at the investor's request by that company or by an associate company. Article 15 (4) (a) shall apply. These acquisitions may not

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have the effect of reducing the net assets below the amount of the subscribed capital plus any reserves the distribution of which is forbidden by law.

2. Shares acquired in the cases listed in paragraph 1 (b) to (g) above must, however, be disposed of within not more than three years of their acquisition unless the nominal value or, in the absence of a nominal value, the accountable par of the shares acquired, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10 % of the subscribed capital.

3. If the shares are not disposed of within the period laid down in paragraph 2, they must be cancelled. The laws of a Member State may make this cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction must be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in ►**M2** points (a) and (b) of Article 15(1). ◀

*Article 21*

Shares acquired in contravention of Articles 19 and 20 shall be disposed of within one year of their acquisition. Should they not be disposed of within that period, Article 20 (3) shall apply.

*Article 22*

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make the holding of these shares at all times subject to at least the following conditions:

- (a) among the rights attaching to the shares, the right to vote attaching to the company's own shares shall in any event be suspended;
- (b) if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall require the annual report to state at least:

- (a) the reasons for acquisitions made during the financial year;
- (b) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
- (c) in the case of acquisition or disposal for a value, the consideration for the shares;
- (d) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

*Article 23***▼M2**

1. Where Member States permit a company to, either directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party, they shall make

**▼ M2**

such transactions subject to the conditions set out in the second, third, fourth and fifth subparagraphs.

The transactions shall take place under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans and advances referred to in the first subparagraph. The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

The transactions shall be submitted by the administrative or management body to the general meeting for prior approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. The administrative or management body shall present a written report to the general meeting, indicating the reasons for the transaction, the interest of the company in entering into such a transaction, the conditions on which the transaction is entered into, the risks involved in the transaction for the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report shall be submitted to the register for publication in accordance with Article 3 of Directive 68/151/EEC.

The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in points (a) and (b) of Article 15(1), taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares in accordance with Article 19(1). The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.

Where a third party by means of financial assistance from a company acquires that company's own shares within the meaning of Article 19(1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.

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2. Paragraph 1 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company. However, these transactions may not have the effect of reducing the net assets below the amount specified in Article 15 (1) (a).

3. Paragraph 1 shall not apply to transactions effected with a view to acquisition of shares as described in Article 20 (1) (h).

**▼ M2***Article 23a*

In cases where individual members of the administrative or management body of the company being party to a transaction referred to in Article 23(1), or of the administrative or management body of a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(1)</sup> or such parent undertaking itself, or individuals acting in their own name, but on behalf of the members of such bodies or on behalf of such undertaking, are counterparties to such a transaction, Member States shall ensure through adequate safeguards that such transaction does not conflict with the company's best interests.

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/43/EC.;



**▼B***Article 24*

1. The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Articles 19, 20 (1), 22 and 23.
2. The Member States may decide not to apply paragraph 1 to transactions concluded by banks and other financial institutions in the normal course of business.

**▼M1***Article 24a*

1. (a) The subscription, acquisition or holding of shares in a public limited-liability company by another company within the meaning of Article 1 of Directive 68/151/EEC in which the public limited-liability company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the public limited-liability company itself;
- (b) subparagraph (a) shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in Article 1 of Directive 68/151/EEC.
2. However, where the public limited-liability company holds a majority of the voting rights indirectly or can exercise a dominant influence indirectly, Member States need not apply paragraph 1 if they provide for the suspension of the voting rights attached to the shares in the public limited-liability company held by the other company.
3. In the absence of coordination of national legislation on groups of companies, Member States may:
  - (a) define the cases in which a public limited-liability company shall be regarded as being able to exercise a dominant influence on another company; if a Member State exercises this option, its national law must in any event provide that a dominant influence can be exercised if a public limited-liability company:
    - has the right to appoint or dismiss a majority of the members of the administrative organ, of the management organ or of the supervisory organ, and is at the same time a shareholder or member of the other company or
    - is a shareholder or member of the other company and has sole control of a majority of the voting rights of its shareholders or members under an agreement concluded with other shareholders or members of that company.

Member States shall not be obliged to make provision for any cases other than those referred to in the first and second indents;
  - (b) define the cases in which a public limited-liability company shall be regarded as indirectly holding voting rights or as able indirectly to exercise a dominant influence;
  - (c) specify the circumstances in which a public limited-liability company shall be regarded as holding voting rights.
4. (a) Member States need not apply paragraph 1 where the subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares, who is neither the public limited-liability company referred to in paragraph 1 nor another company in which the public limited-liability company

**▼ M1**

directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence.

- (b) Member States need not apply paragraph 1 where the subscription, acquisition or holding is effected by the other company in its capacity and in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within a Member State, or is approved or supervised by an authority of a Member State competent to supervise professional dealers in securities which, within the meaning of this Directive, may include credit institutions.

5. Member States need not apply paragraph 1 where shares in a public limited-liability company held by another company were acquired before the relationship between the two companies corresponded to the criteria laid down in paragraph 1.

However, the voting rights attached to those shares shall be suspended and the shares shall be taken into account when it is determined whether the condition laid down in Article 19 (1) (b) is fulfilled.

6. Member States need not apply Article 20 (2) or (3) or Article 21 where shares in a public limited-liability company are acquired by another company on condition that they provide for:

- (a) the suspension of the voting rights attached to the shares in the public limited-liability company held by the other company, and
- (b) the members of the administrative or the management organ of the public limited-liability company to be obliged to buy back from the other company the shares referred to in Article 20 (2) and (3) and Article 21 at the price at which the other company acquired them; this sanction shall be inapplicable only where the members of the administrative or the management organ of the public limited-liability company prove that that company played no part whatsoever in the subscription for or acquisition of the shares in question.

**▼ B***Article 25*

1. Any increase in capital must be decided upon by the general meeting. Both this decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

2. Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with the rules referred to in paragraph 1, may authorize an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed, (SIC! fixed) by the company body empowered to do so. 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.

3. Where there are several classes of shares, the decision by the general meeting concerning the increase in capital referred to in paragraph 1 or the authorization to increase the capital referred to in paragraph 2, shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction.

4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares,

**▼B**

but not to the conversion of such securities, nor to the exercise of the right to subscribe.

*Article 26*

Shares issued for a consideration, in the course of an increase in subscribed capital, must be paid up to at least 25 % of their nominal value or, in the absence of a nominal value, of their accountable par. Where provision is made for an issue premium, it must be paid in full.

*Article 27*

1. Where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital the consideration must be transferred in full within a period of five years from the decision to increase the subscribed capital.

2. The consideration referred to in paragraph 1 shall be the subject of a report drawn up before the increase in capital is made by one or more experts who are independent of the company and appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies and firms under the laws of each Member State.

**▼M2**

Article 10(2) and (3) and Articles 10a and 10b shall apply.

**▼B**

3. Member States may decide not to apply paragraph 2 in the event of an increase in subscribed capital made in order to give effect to a merger or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or which is the object of the public offer for the purchase or exchange of shares.

4. Member States may decide not to apply paragraph 2 if all the shares issued in the course of an increase in subscribed capital are issued for a consideration other than in cash to one or more companies, on condition that all the shareholders in the company which receive the consideration have agreed not to have an experts' report drawn up and that the requirements of Article 10 (4) (b) to (f) are met.

*Article 28*

Where an increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide.

*Article 29*

1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.

2. The laws of a Member State:

- (a) need not apply paragraph 1 above to shares which carry a limited right to participate in distributions within the meaning of Article 15 and/or in the company's assets in the event of liquidation; or
- (b) may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 15 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-

**▼B**

emption of shareholders of the other classes to be exercised only after the exercise of this right by the shareholders of the class in which the new shares are being issued.

3. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in the national gazette appointed in accordance with Directive 68/151/EEC. However, the laws of a Member State need not provide for such publication where all a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.

4. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

5. The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limit of the authorized capital. This power may not be granted for a longer period than the power for which provision is made in Article 25 (2).

6. Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

7. The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.

#### *Article 30*

Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 40 without prejudice to Articles 36 and 37. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The notice convening the meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.

#### *Article 31*

Where there are several classes of shares, the decision by the general meeting concerning a reduction in the subscribed capital shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

**▼B***Article 32***▼M2**

1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision on the reduction shall at least have the right to obtain security for claims which have not fallen due by the date of that publication. Member States may not set aside such a right unless the creditor has adequate safeguards, or unless such safeguards are not necessary having regard to the assets of the company.

Member States shall lay down the conditions for the exercise of the right provided for in the first subparagraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the reduction in the subscribed capital the satisfaction of their claims is at stake, and that no adequate safeguards have been obtained from the company.

**▼B**

2. The laws of the Member States shall also stipulate at least that the reduction shall be void or that no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

3. This Article shall apply where the reduction in the subscribed capital is brought about by the total or partial waiving of the payment of the balance of the shareholders' contributions.

*Article 33*

1. Member States need not apply Article 32 to a reduction in the subscribed capital whose purpose is to offset losses incurred or to include sums of money in a reserve provided that, following this operation, the amount of such reserve is not more than 10 % of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders; it may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

2. In the cases referred to in paragraph 1 the laws of the Member States must at least provide for the measures necessary to ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders or discharging shareholders from the obligation to make their contributions.

*Article 34*

The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 6. However, Member States may permit such a reduction if they also provide that the decision to reduce the subscribed capital may take effect only when the subscribed capital is increased to an amount at least equal to the prescribed minimum.

*Article 35*

Where the laws of a Member State authorize total or partial redemption of the subscribed capital without reduction of the latter, they shall at least require that the following conditions are observed:

- (a) where the statutes or instrument of incorporation provide for redemption, the latter shall be decided on by the general meeting

**▼B**

voting at least under the usual conditions of quorum and majority. Where the statutes or instrument of incorporation do not provide for redemption, the latter shall be decided upon by the general meeting acting at least under the conditions of quorum and majority laid down in Article 40. The decision must be published in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC;

- (b) only sums which are available for distribution within the meaning of Article 15 (1) may be used for redemption purposes;
- (c) shareholders whose shares are redeemed shall retain their rights in the company, with the exception of their rights to the repayment of their investment and participation in the distribution of an initial dividend on unredeemed shares.

*Article 36*

1. Where the laws of a Member State may allow companies to reduce their subscribed capital by compulsory withdrawal of shares, they shall require that at least the following conditions are observed:

- (a) compulsory withdrawal must be prescribed or authorized by the statutes or instrument of incorporation before subscription of the shares which are to be withdrawn are subscribed for;
- (b) where the compulsory withdrawal is merely authorized by the statutes or instrument of incorporation, it shall be decided upon by the general meeting unless it has been unanimously approved by the shareholders concerned;
- (c) the company body deciding on the compulsory withdrawal shall fix the terms and manner thereof, where they have not already been fixed by the statutes or instrument of incorporation;
- (d) Article 32 shall apply except in the case of fully paid-up shares which are made available to the company free of charge or are withdrawn using sums available for distribution in accordance with Article 15 (1); in these cases, an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the withdrawn shares must be included in a reserve. Except in the event of a reduction in the subscribed capital this reserve may not be distributed to shareholders. It can be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as Member States permit such an operation;
- (e) the decision on compulsory withdrawal shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

2. Articles 30 (1), 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

*Article 37*

1. In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in his own name but on behalf of the company, the withdrawal must always be decided on by the general meeting.

2. Article 32 shall apply unless the shares are fully paid up and are acquired free of charge or using sums available for distribution in accordance with Article 15 (1); in these cases an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the shares withdrawn must be included in a reserve. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders. It may be used only for offsetting losses

**▼B**

incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

3. Articles 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

*Article 38*

In the cases covered by Articles 35, 36 (1) (b) and 37 (1), when there are several classes of shares, the decision by the general meeting concerning redemption of the subscribed capital or its reduction by withdrawal of shares shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

*Article 39*

Where the laws of a Member State authorize companies to issue redeemable shares, they shall require that the following conditions, at least, are complied with for the redemption of such shares:

- (a) redemption must be authorized by the company's statutes or instrument of incorporation before the redeemable shares are subscribed for;
- (b) the shares must be fully paid up;
- (c) the terms and the manner of redemption must be laid down in the company's statutes or instrument of incorporation;
- (d) redemption can be only effected by using sums available for distribution in accordance with Article 15 (1) or the proceeds of a new issue made with a view to effecting such redemption;
- (e) an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the redeemed shares must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; it may be used only for the purpose of increasing the subscribed capital by the capitalization of reserves;
- (f) subparagraph (e) shall not apply to redemption using the proceeds of a new issue made with a view to effecting such redemption;
- (g) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums available for distribution in accordance with Article 15 (1), or from a reserve other than that referred to in (e) which may not be distributed to shareholders except in the event of a reduction in the subscribed capital; this reserve may be used only for the purposes of increasing the subscribed capital by the capitalization of reserves or for covering the costs referred to in Article 3 (j) or the cost of issuing shares or debentures or for the payment of a premium to holders of redeemable shares or debentures;
- (h) notification of redemption shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

*Article 40*

1. The laws of the Member States shall provide that the decisions referred to in Articles 29 (4) and (5), 30, 31, 35 and 38 must be taken at least by a majority of not less than two-thirds of the votes attaching to the securities or the subscribed capital represented.

**▼B**

2. The laws of the Member States may, however, lay down that a simple majority of the votes specified in paragraph 1 is sufficient when at least half the subscribed capital is represented.

*Article 41***▼M2**

1. Member States may derogate from Article 9(1), the first sentence of point (a) of Article 19(1), and Articles 25, 26 and 29 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.

**▼B**

2. Member States may decide not to apply Article 19 (1) (a), first sentence, and Articles 30, 31, 36, 37, 38 and 39 to companies incorporated under a special law which issue both capital shares and workers' shares, the latter being issued to the company's employees as a body, who are represented at general meetings of shareholders by delegates having the right to vote.

*Article 42*

For the purposes of the implementation of this Directive, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position.

*Article 43*

1. Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States may decide not to apply Article 3 (g), (i), (j) and (k) to companies already in existence at the date of entry into force of the provisions referred to in paragraph 1.

They may provide that the other provisions of this Directive shall not apply to such companies until 18 months after that date.

However, this time limit may be three years in the case of Articles 6 and 9 and five years in the case of unregistered companies in the United Kingdom and Ireland.

3. Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 44*

This Directive is addressed to the Member States.



## 31977L0091

### Title and reference

**Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent**

*OJ L 26, 31.1.1977, p. 1–13 (DA, DE, EN, FR, IT, NL)  
 Finnish special edition: Chapter 17 Volume 1 P. 0007  
 Greek special edition: Chapter 06 Volume 1 P. 0230  
 Swedish special edition: Chapter 17 Volume 1 P. 0007  
 Spanish special edition: Chapter 17 Volume 1 P. 0044  
 Portuguese special edition Chapter 17 Volume 1 P. 0044  
 Special edition in Czech Chapter 17 Volume 01 P. 8 - 20  
 Special edition in Estonian Chapter 17 Volume 01 P. 8 - 20  
 Special edition in Hungarian Chapter 17 Volume 01 P. 8 - 20  
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 Special edition in Maltese Chapter 17 Volume 01 P. 8 - 20  
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- **EUROVOC descriptor:**  
[share capital](#)  
[public limited company](#)  
[right of establishment](#)  
[legal status](#)  
[company law](#)  
[protection of shareholders](#)
- **Directory code:**  
[17.10.00.00 Law relating to undertakings / Company law](#)
- **Subject matter:**  
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### Miscellaneous information

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- **Addressee:**  
 The Member States
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### Relationship between documents

- **Treaty:**  
 European Economic Community
- **Legal basis:**  
[11957E054 -P3G](#)
- **Select all documents based on this document**
- **Amended by:**  
 Amended by [11979HN01/03/C](#) Completion Article 1 from 01/01/1981  
 Completed by [11985IN01/02/D](#) Completion Article 1.1 from 01/01/1986  
 Amended by [31992L0101](#) Addition Article 24BIS  
 Amended by [11994NN01/11/A](#) Completion Article 1.1 from 01/01/1995  
 Amended by [11994NN01/11/A](#) Amendment Article 6 from 01/01/1995  
 Amended by [12003TN02/04/A](#) Completion Article 1.1 from 01/05/2004  
 Amended by [32006L0068](#) Amendment Article 1.1 from 15/10/2006  
 Amended by [32006L0068](#) Addition Article 10BIS from 15/10/2006  
 Amended by [32006L0068](#) Addition Article 10TER from 15/10/2006  
 Amended by [32006L0068](#) Amendment Article 11.1 from 15/10/2006  
 Amended by [32006L0068](#) Replacement Article 19.1 from 15/10/2006  
 Amended by [32006L0068](#) Amendment Article 20.3 from 15/10/2006  
 Amended by [32006L0068](#) Replacement Article 23.1 from 15/10/2006  
 Amended by [32006L0068](#) Addition Article 23BIS from 15/10/2006

Amended by [32006L0068](#) Replacement Article 27.2 from 15/10/2006  
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 Amended by [32006L0068](#) Replacement Article 41.1 from 15/10/2006  
 Amended by [32006L0099](#) Completion Article 1.1 from 01/01/2007

► **Consolidated versions**

[1995-01-01](#)  
[2004-05-01](#)  
[2007-01-01](#)

► **Subsequent related instruments:**

Relation [51977FC0091](#)  
 Amendment proposed by [51990PC0631](#)  
 Amendment proposed by [52004PC0730](#)  
 Amendment proposed by [52008PC0544](#) Repeal

► **Affected by case:**

Proceedings concerning failure by Member States [61981J0136](#)  
 Proceedings concerning failure by Member States [61981J0148](#)  
 Proceedings concerning failure by Member States [61981J0149](#)  
 Proceedings concerning failure by Member States [61981J0151](#)  
 A25P1 Interpreted by [61989J0381](#)  
 A29P1 Interpreted by [61989J0381](#)  
 A25 Interpreted by [61990J0019](#)  
 A25P1 Interpreted by [61990J0019](#)  
 A41P1 Interpreted by [61990J0019](#)  
 A25P1 Interpreted by [61991J0134](#)  
 A41P1 Interpreted by [61991J0134](#)  
 A25 Interpreted by [61993J0441](#)  
 A29P3 Interpreted by [61993J0441](#)  
 A29P1 Interpreted by [61995J0042](#)  
 A29P4 Interpreted by [61995J0042](#)  
 A25P1 Interpreted by [61996J0367](#)  
 A29P1 Interpreted by [61996J0367](#)  
 A25P1 Interpreted by [61997J0373](#)  
 A25P1 Interpreted by [61997J0373](#)

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► **Instruments cited:**

[11957E058](#)  
  
[31968L0151](#)  
  
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SECOND COUNCIL DIRECTIVE of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (77/91/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the coordination provided for in Article 54 (3) (g) and in the General Programme for the abolition of restrictions on freedom of establishment, which was begun by Directive 68/151/EEC (3), is especially important in relation to public limited liability companies, because their activities predominate in the economy of the Member States and frequently extend beyond their national boundaries;

Whereas in order to ensure minimum equivalent protection for both shareholders and creditors of public limited liability companies, the coordination of national provisions relating to their formation and to the maintenance, increase or reduction of their capital is particularly important;

Whereas in the territory of the Community, the statutes or instrument of incorporation of a public limited liability company must make it possible for any interested person to acquaint himself with the basic particulars of the company, including the exact composition of its capital;

Whereas Community provisions should be adopted for maintaining the capital, which constitutes the creditors' security, in particular by prohibiting any reduction thereof by distribution to shareholders where the latter are not entitled to it and by imposing limits on the company's right to acquire its own shares;

Whereas it is necessary, having regard to the objectives of Article 54 (3) (g), that the Member States' laws relating to the increase or reduction of capital ensure that the principles of equal treatment of shareholders in the same position and of protection of creditors whose claims exist prior to the decision on reduction are observed and harmonized, (1)OJ No C 114, 11.11.1971, p. 18. (2)OJ No C 88, 6.9.1971, p. 1. (3)OJ No L 65, 14.3.1968, p. 8.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the provisions laid down by law, regulation or administrative action in Member States relating to the following types of company: - in Belgium : la société anonyme / de naamloze vennootschap;

- in Denmark : aktieselskabet;

- in France : la société anonyme;

- in Germany : die Aktiengesellschaft;

- in Ireland : the public company limited by shares, the public company limited by guarantee and having a share capital;

- in Italy : la società per azioni;

- in Luxembourg : la société anonyme;

- in the Netherlands : de naamloze vennootschap;

- in the United Kingdom : the public company limited by shares,

the public company limited by guarantee and having a share capital.

The name for any company of the above types shall comprise or be accompanied by a description which is distinct from the description required of other types of companies.

2. The Member States may decide not to apply this Directive to investment companies with variable capital and to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the words "investment company with variable capital" or "cooperative" in all documents indicated in Article 4 of Directive 68/151/EEC.

The expression "investment company with variable capital", within the meaning of this Directive, means only those companies: - the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets,

- which offer their own shares for subscription by the public, and

- the statutes of which provide that, within the limits of a minimum and maximum capital, they may at any time issue, redeem or resell their shares.

#### Article 2

The statutes or the instrument of incorporation of the company shall always give at least the following information: (a) the type and name of the company;

(b) the objects of the company;

(c) - when the company has no authorized capital, the amount of the subscribed capital,

- when the company has an authorized capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorized to commence business, and at the time of any change in the authorized capital, without prejudice to Article 2 (1) (e) of Directive 68/151/EEC;

(d) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;

(e) the duration of the company, except where this is indefinite.

#### Article 3

The following information at least must appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC: (a) the registered office;

(b) the nominal value of the shares subscribed and, at least once a year, the number thereof;

(c) the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;

(d) the special conditions if any limiting the transfer of shares;

(e) where there are several classes of shares, the information under (b), (c) and (d) for each class and the rights attaching to the shares of each class;

(f) whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;

(g) the amount of the subscribed capital paid up at the time the company is incorporated or is authorized to commence business;

(h) the nominal value of the shares or, where there is not nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing this consideration;

(i) the identity of the natural or legal persons or companies or firms by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of these documents, have been signed;

(j) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorized to commence business;

(k) any special advantage granted, at the time the company is formed or up to the time it receives authorization to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorization.

#### Article 4

1. Where the laws of a Member State prescribe that a company may not commence business without authorization, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorization is granted or refused.

2. Paragraph 1 shall not apply to liabilities under contracts concluded by the company conditionally upon its being granted authorization to commence business.

#### Article 5

1. Where the laws of a Member State require a company to be formed by more than one member, the fact that all the shares are held by one person or that the number of members has fallen below the legal minimum after incorporation of the company shall not lead to the automatic dissolution of the company.

2. If in the cases referred to in paragraph 1, the laws of a Member State permit the company to be wound up by order of the court, the judge having jurisdiction must be able to give the company sufficient time to regularize its position.

3. Where such a winding up order is made the company shall enter into liquidation.

#### Article 6

1. The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorization to commence business, a minimum capital shall be subscribed the amount of which shall be not less than 25 000 European units of account.

The European unit of account shall be that defined by Commission Decision No 3289/75/ECSC (1). The equivalent in national currency shall be calculated initially at the rate applicable on the date of adoption of this Directive.

2. If the equivalent of the European unit of account in national currency is altered so that the value of the minimum capital in national currency remains less than 22 500 European units of account for a period of one year, the Commission shall inform the Member State concerned that it must amend its legislation to comply with paragraph 1 (1) OJ No L 327, 19.12.1975, p. 4.

within 12 months following the expiry of that period. However, the Member State may provide that the amended legislation shall not apply to companies already in existence until 18 months after its entry into force.

3. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in this Article in European units of account in the light of economic and monetary trends in the Community and of the tendency towards allowing only large and medium-sized undertakings to opt for the types of company listed in Article 1 (1).

#### Article 7

The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of these assets.

#### Article 8

1. Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.

2. However, Member States may allow those who undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of this transaction.

#### Article 9

1. Shares issued for a consideration must be paid up at the time the company is incorporated or is authorized to commence business at not less than 25 % of their nominal value or, in the absence of a nominal value, their accountable par.

2. However, where shares are issued for a consideration other than in cash at the time the company is incorporated or is authorized to commence

business, the consideration must be transferred in full within five years of that time.

#### Article 10

1. A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorized to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.
2. The experts' report shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of these methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.
3. The expert's report shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.
4. Member States may decide not to apply this Article where 90 % of the nominal value, or where there is no nominal value, of the accountable par, of all the shares is issued to one or more companies for a consideration other than in cash, and where the following requirements are met: (a) with regard to the company in receipt of such consideration, the persons referred to in Article 3 (i) have agreed to dispense with the expert's report:
  - (b) such agreement has been published as provided for in paragraph 3;
  - (c) the companies furnishing such consideration have reserves which may not be distributed under the law or the statutes and which are at least equal to the nominal value or, where there is no nominal value, the accountable par of the shares issued for consideration other than in cash;
  - (d) the companies furnishing such consideration guarantee, up to an amount equal to that indicated in paragraph (c), the debts of the recipient company arising between the time the shares are issued for a consideration other than in cash and one year after the publication of that company's annual accounts for the financial year during which such consideration was furnished. Any transfer of these shares is prohibited within this period;
  - (e) the guarantee referred to in (d) has been published as provided for in paragraph 3;
  - (f) the companies furnishing such consideration shall place a sum equal to that indicated in (c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which such consideration was furnished or, if necessary, until such later date as all claims relating to the guarantee referred to in (d) which are submitted during this period have been settled.

#### Article 11

1. If, before the expiry of a time limit laid down by national law of at least two years from the time the company is incorporated or is authorized to commence business, the company acquires any asset belonging to a person or company or firm referred to in Article 3 (i) for a consideration of not less than one-tenth of the subscribed capital, the acquisition shall be examined and details of it published in the manner provided for in Article 10 and it shall be submitted for the approval of the general meeting.

Member States may also require these provisions to be applied when the assets belong to a shareholder or to any other person.

2. Paragraph 1 shall not apply to acquisitions effected in the normal course of the company's business, to acquisitions effected at the instance or under the supervision of an administrative or judicial authority, or to stock exchange acquisitions.

#### Article 12

Subject to the provisions relating to the reduction of subscribed capital, the shareholders may not be released from the obligation to pay up their contributions.

#### Article 13

Pending coordination of national laws at a subsequent date, Member States shall adopt the measures necessary to require provision of at least the same safeguards as are laid down in Articles 2 to 12 in the event of the conversion of another type of company into a public limited liability company.

#### Article 14

Articles 2 to 13 shall not prejudice the provisions of Member States on competence and procedure relating to the modification of the statutes or of the instrument of incorporation.

#### Article 15

1. (a) Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes.
  - (b) Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital referred to in paragraph (a).
  - (c) The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.
  - (d) The expression "distribution" used in subparagraphs (a) and (c) includes in particular the payment of dividends and of interest relating to shares.
2. When the laws of a Member State allow the payment of interim dividends, the following conditions at least shall apply: (a) interim accounts shall be drawn up showing that the funds available for distribution are sufficient,
  - (b) the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.
3. Paragraphs 1 and 2 shall not affect the provisions of the Member States as regards increases in subscribed capital by capitalization of reserves.
4. The laws of a Member State may provide for derogations from paragraph 1 (a) in the case of investment companies with fixed capital.

The expression "investment company with fixed capital", within the meaning of this paragraph means only those companies: - the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets, and

- which offer their own shares for subscription by the public.

In so far as the laws of Member States make use of this option they shall: (a) require such companies to include the expression "investment company" in all documents indicated in Article 4 of Directive 68/151/EEC;

- (b) not permit any such company whose net assets fall below the amount specified in paragraph 1 (a) to make a distribution to shareholders when on the closing date of the last financial year the company's total assets as set out in the annual accounts are, or following such distribution would become, less than one-and-a-half times the amount of the company's total liabilities to creditors as set out in the annual accounts;
- (c) require any such company which makes a distribution when its net assets fall below the amount specified in paragraph 1 (a) to include in its annual accounts a note to that effect.

#### Article 16

Any distribution made contrary to Article 15 must be returned by shareholders who have received it if the company proves that these shareholders knew of the irregularity of the distributions made to them, or could not in view of the circumstances have been unaware of it.

#### Article 17

1. In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken.
2. The amount of a loss deemed to be serious within the meaning of paragraph 1 may not be set by the laws of Member States at a figure higher than half the subscribed capital.

#### Article 18

1. The shares of a company may not be subscribed for by the company itself.

2. If the shares of a company have been subscribed for by a person acting in his own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his own account.

3. The persons or companies or firms referred to in Article 3 (i) or, in cases of an increase in subscribed capital, the members of the administrative or management body shall be liable to pay for shares subscribed in contravention of this Article.

However, the laws of a Member State may provide that any such person may be released from his obligation if he proves that no fault is attributable to him personally.

#### Article 19

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make such acquisitions subject to at least the following conditions: (a) authorization shall be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and in particular the maximum number of shares to be acquired, the duration of the period for which the authorization is given and which may not exceed 18 months, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body shall be required to satisfy themselves that at the time when each authorized acquisition is effected the conditions referred to in subparagraphs (b), (c) and (d) are respected;

(b) the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed 10 % of the subscribed capital;

(c) the acquisitions may not have the effect of reducing the net assets below the amount mentioned in Article 15 (1) (a);

(d) only fully paid-up shares may be included in the transaction.

2. The laws of a Member State may provide for derogations from the first sentence of paragraph 1 (a) where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company. In such a case, the next general meeting must be informed by the administrative or management body of the reasons for and nature of the acquisitions effected, of the number and nominal value or, in the absence of a nominal value, the accountable par, of the shares acquired, of the proportion of the subscribed capital which they represent, and of the consideration for these shares.

3. Member States may decide not to apply the first sentence of paragraph 1 (a) to shares acquired by either the company itself or by a person acting in his own name but on the company's behalf, for distribution to that company's employees or to the employees of an associate company. Such shares must be distributed within 12 months of their acquisition.

#### Article 20

1. Member States may decide not to apply Article 19 to: (a) shares acquired in carrying out a decision to reduce capital, or in the circumstances referred to in Article 39;

(b) shares acquired as a result of a universal transfer of assets;

(c) fully paid-up shares acquired free of charge or by banks and other financial institutions as purchasing commission;

(d) shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company's object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;

(e) shares acquired from a shareholder in the event of failure to pay them up;

(f) shares acquired in order to indemnify minority shareholders in associated companies;

(g) fully paid-up shares acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares;

(h) fully paid-up shares issued by an investment company with fixed capital, as defined in the second subparagraph of Article 15 (4), and acquired at the investor's request by that company or by an associate company. Article 15 (4) (a) shall apply. These acquisitions may not have the effect of reducing the net assets below the amount of the subscribed capital plus any reserves the distribution of which is forbidden by law.

2. Shares acquired in the cases listed in paragraph 1 (b) to (g) above must, however, be disposed of within not more than three years of their acquisition unless the nominal value or, in the absence of a nominal value, the accountable par of the shares acquired, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10 % of the subscribed capital.

3. If the shares are not disposed of within the period laid down in paragraph 2, they must be cancelled. The laws of a Member State may make this cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction must be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in Article 15 (1) (a).

#### Article 21

Shares acquired in contravention of Articles 19 and 20 shall be disposed of within one year of their acquisition. Should they not be disposed of within that period, Article 20 (3) shall apply.

#### Article 22

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make the holding of these shares at all times subject to at least the following conditions: (a) among the rights attaching to the shares, the right to vote attaching to the company's own shares shall in any event be suspended;

(b) if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall require the annual report to state at least: (a) the reasons for acquisitions made during the financial year;

(b) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

(c) in the case of acquisition or disposal for a value, the consideration for the shares;

(d) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

#### Article 23

1. A company may not advance funds, nor make loans, nor provide security, with a view to the acquisition of its shares by a third party.

2. Paragraph 1 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company. However, these transactions may not have the effect of reducing the net assets below the amount specified in Article 15 (1) (a).

3. Paragraph 1 shall not apply to transactions effected with a view to acquisition of shares as described in Article 20 (1) (h).

#### Article 24

1. The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Articles 19, 20 (1), 22 and 23.

2. The Member States may decide not to apply paragraph 1 to transactions concluded by banks and other financial institutions in the normal course of business.

#### Article 25

1. Any increase in capital must be decided upon by the general meeting. Both this decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

2. Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with the rules referred to in paragraph 1, may authorize an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed, by the company body empowered to do so. 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.

3. Where there are several classes of shares, the decision by the general meeting concerning the increase in capital referred to in paragraph 1 or the authorization to increase the capital referred to in paragraph 2, shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction.

4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

#### Article 26

Shares issued for a consideration, in the course of an increase in subscribed capital, must be paid up to at least 25 % of their nominal value or, in the absence of a nominal value, of their accountable par. Where provision is made for an issue premium, it must be paid in full.

#### Article 27

1. Where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital the consideration must be transferred in full within a period of five years from the decision to increase the subscribed capital.

2. The consideration referred to in paragraph 1 shall be the subject of a report drawn up before the increase in capital is made by one or more experts who are independent of the company and appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies and firms under the laws of each Member State.

Article 10 (2) and (3) shall apply.

3. Member States may decide not to apply paragraph 2 in the event of an increase in subscribed capital made in order to give effect to a merger or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or which is the object of the public offer for the purchase or exchange of shares.

4. Member States may decide not to apply paragraph 2 if all the shares issued in the course of an increase in subscribed capital are issued for a consideration other than in cash to one or more companies, on condition that all the shareholders in the company which receive the consideration have agreed not to have an experts' report drawn up and that the requirements of Article 10 (4) (b) to (f) are met.

#### Article 28

Where an increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide.

#### Article 29

1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.

2. The laws of a Member State: (a) need not apply paragraph 1 above to shares which carry a limited right to participate in distributions within the meaning of Article 15 and/or in the company's assets in the event of liquidation ; or

(b) may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 15 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of shareholders of the other classes to be exercised only after the exercise of this right by the shareholders of the class in which the new shares are being issued.

3. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in the national gazette appointed in accordance with Directive 68/151/EEC. However, the laws of a Member State need not provide for such publication where all a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.

4. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC.

5. The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limits of the authorized capital. This power may not be granted for a longer period than the power for which provision is made in Article 25 (2).

6. Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

7. The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.

#### Article 30

Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 40 without prejudice to Articles 36 and 37. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The notice convening the meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.

#### Article 31

Where there are several classes of shares, the decision by the general meeting concerning a reduction in the subscribed capital shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

#### Article 32

1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision to make the reduction shall be entitled at least to have the right to obtain security for claims which have not fallen due by the date of that publication. The laws of a Member State shall lay down the conditions for the exercise of this right. They may not set aside such right unless the creditor has adequate safeguards, or unless the latter are not necessary in view of the assets of the company.

2. The laws of the Member States shall also stipulate at least that the reduction shall be void or that no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

3. This Article shall apply where the reduction in the subscribed capital is brought about by the total or partial waiving of the payment of the balance of the shareholders' contributions.

#### Article 33

1. Member States need not apply Article 32 to a reduction in the subscribed capital whose purpose is to offset losses incurred or to include sums of money in a reserve provided that, following this operation, the amount of such reserve is not more than 10 % of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders ; it may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

2. In the cases referred to in paragraph 1 the laws of the Member States must at least provide for the measures necessary to ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders or discharging shareholders from the obligation to make their contributions.

#### Article 34

The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 6. However, Member States may permit such a reduction if they also provide that the decision to reduce the subscribed capital may take effect only when the subscribed capital is increased to an amount at least equal to the prescribed minimum.

#### Article 35

Where the laws of a Member State authorize total or partial redemption of the subscribed capital without reduction of the latter, they shall at least require that the following conditions are observed: (a) where the statutes or instrument of incorporation provide for redemption, the latter shall be decided on by the general meeting voting at least under the usual conditions of quorum and majority. Where the statutes or instrument of incorporation do not provide for redemption, the latter shall be decided upon by the general meeting acting at least under the conditions of quorum and majority laid down in Article 40. The decision must be published in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC;

(b) only sums which are available for distribution within the meaning of Article 15 (1) may be used for redemption purposes;

(c) shareholders whose shares are redeemed shall retain their rights in the company, with the exception of their rights to the repayment of their investment and participation in the distribution of an initial dividend on unredeemed shares.

#### Article 36

1. Where the laws of a Member State may allow companies to reduce their subscribed capital by compulsory withdrawal of shares, they shall require that at least the following conditions are observed: (a) compulsory withdrawal must be prescribed or authorized by the statutes or instrument of incorporation before subscription of the shares which are to be withdrawn are subscribed for;

(b) where the compulsory withdrawal is merely authorized by the statutes or instrument of incorporation, it shall be decided upon by the general meeting unless it has been unanimously approved by the shareholders concerned;

(c) the company body deciding on the compulsory withdrawal shall fix the terms and manner thereof, where they have not already been fixed by the statutes or instrument of incorporation;

(d) Article 32 shall apply except in the case of fully paid-up shares which are made available to the company free of charge or are withdrawn using sums available for distribution in accordance with Article 15 (1) ; in these cases, an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the withdrawn shares must be included in a reserve. Except in the event of a reduction in the subscribed capital this reserve may not be distributed to shareholders. It can be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as Member States permit such an operation;

(e) the decision on compulsory withdrawal shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

2. Articles 30 (1), 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

#### Article 37

1. In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in his own name but on behalf of the company, the withdrawal must always be decided on by the general meeting.

2. Article 32 shall apply unless the shares are fully paid up and are acquired free of charge or using sums available for distribution in accordance with Article 15 (1) ; in these cases an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the shares withdrawn must be included in a reserve. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders. It may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalization of such reserve, in so far as the Member States permit such an operation.

3. Articles 31, 33 and 40 shall not apply to the cases to which paragraph 1 refers.

#### Article 38

In the cases covered by Articles 35, 36 (1) (b) and 37 (1), when there are several classes of shares, the decision by the general meeting concerning redemption of the subscribed capital or its reduction by withdrawal of shares shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

#### Article 39

Where the laws of a Member State authorize companies to issue redeemable shares, they shall require that the following conditions, at least, are complied with for the redemption of such shares: (a) redemption must be authorized by the company's statutes or instrument of incorporation before the redeemable shares are subscribed for;

(b) the shares must be fully paid up;

(c) the terms and the manner of redemption must be laid down in the company's statutes or instrument of incorporation;

(d) redemption can be only effected by using sums available for distribution in accordance with Article 15 (1) or the proceeds of a new issue made with a view to effecting such redemption;

(e) an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the redeemed shares must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital ; it may be used only for the purpose of increasing the subscribed capital by the capitalization of reserves;

(f) subparagraph (e) shall not apply to redemption using the proceeds of a new issue made with a view to effecting such redemption;

(g) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums available for distribution in accordance with Article 15 (1), or from a reserve other than that referred to in (e) which may not be distributed to shareholders except in the event of a reduction in the subscribed capital ; this reserve may be used only for the purposes of increasing the subscribed capital by the capitalization of reserves or for covering the costs referred to in Article 3 (j) or the cost of issuing shares or debentures or for the payment of a premium to holders of redeemable shares or debentures;

(h) notification of redemption shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

#### Article 40

1. The laws of the Member States shall provide that the decisions referred to in Articles 29 (4) and (5), 30, 31, 35 and 38 must be taken at least by a majority of not less than two-thirds of the votes attaching to the securities or the subscribed capital represented.

2. The laws of the Member States may, however, lay down that a simple majority of the votes specified in paragraph 1 is sufficient when at least half the subscribed capital is represented.

#### Article 41

1. Member States may derogate from Article 9 (1), Article 19 (1) (a), first sentence, and (b) and from Articles 25, 26 and 29 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.

2. Member States may decide not to apply Article 19 (1) (a), first sentence, and Articles 30, 31, 36, 37, 38 and 39 to companies incorporated under a special law which issue both capital shares and workers' shares, the latter being issued to the company's employees as a body, who are represented at general meetings of shareholders by delegates having the right to vote.

#### Article 42

For the purposes of the implementation of this Directive, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position.

#### Article 43

1. Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States may decide not to apply Article 3 (g), (i), (j) and (k) to companies already in existence at the date of entry into force of the provisions referred to in paragraph 1.

They may provide that the other provisions of this Directive shall not apply to such companies until 18 months after that date.

However, this time limit may be three years in the case of Articles 6 and 9 and five years in the case of unregistered companies in the United Kingdom and Ireland.

3. Member States shall ensure that they communicate to the Commission the text of the main provisions of national law which they adopt in the field

covered by this Directive.

Article 44

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1976.

For the Council

The President

M. van der STOEL

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► **B****THIRD COUNCIL DIRECTIVE**

**of 9 October 1978**

**based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies**

(78/855/EEC)

(OJ L 295, 20.10.1978, p. 36)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006
► <b><u>M2</u></b>	Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007	L 300	47	17.11.2007

Amended by:

► <b><u>A1</u></b>	Act of Accession of Greece	L 291	17	19.11.1979
► <b><u>A2</u></b>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b><u>A3</u></b>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <b><u>A4</u></b>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

▼B**THIRD COUNCIL DIRECTIVE****of 9 October 1978****based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies**

(78/855/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment <sup>(4)</sup> was begun with Directive 68/151/EEC <sup>(5)</sup>;

Whereas this coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC <sup>(6)</sup>, and as regards the annual accounts of certain types of companies with Directive 78/660/EEC <sup>(7)</sup>;

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to mergers of public limited liability companies be coordinated and that provision for mergers should be made in the laws of all the Member States;

Whereas in the context of such coordination it is particularly important that the shareholders of merging companies be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC <sup>(8)</sup>;

Whereas creditors, including debenture holders, and persons having other claims on the merging companies must be protected so that the merger does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include mergers so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with mergers must be extended to cover certain legal practices which in important respects are similar to merger, so that the obligation to provide such protection cannot be evaded;

Whereas to ensure certainty in the law as regards relations between the companies concerned, between them and third parties, and between the

<sup>(1)</sup> OJ No C 89, 14. 7. 1970, p. 20.

<sup>(2)</sup> OJ No C 129, 11. 12. 1972, p. 50;  
OJ No C 95, 28. 4. 1975, p. 12.

<sup>(3)</sup> OJ No C 88, 6. 9. 1971, p. 18.

<sup>(4)</sup> OJ No 2, 15. 1. 1962, p. 36/62.

<sup>(5)</sup> OJ No L 65, 14. 3. 1968, p. 8.

<sup>(6)</sup> OJ No L 26, 31. 1. 1977, p. 1.

<sup>(7)</sup> OJ No L 222, 14. 8. 1978, p. 11.

<sup>(8)</sup> OJ No L 61, 5. 3. 1977, p. 26.

**▼B**

members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

*Article 1***Scope**

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

— Germany:

die Aktiengesellschaft,

— Belgium:

la société anonymede naamloze vennootschap,

— Denmark:

aktieselskaber,

— France:

la société anonyme,

— Ireland:

public companies limited by shares, and public companies limited by guarantee having a share capital,

— Italy:

la società per azioni,

— Luxembourg:

la société anonyme,

— the Netherlands:

de naamloze vennootschap,

— the United Kingdom:

public companies limited by shares, and public companies limited by guarantee having a share capital.

**▼A1**

— Greece:

η ανώνυμη εταιρία,

**▼A2**

— Spain:

la sociedad anónima,

— Portugal:

a sociedade anónima de responsabilidade limitada.

**▼A3**

— Austria:

die Aktiengesellschaft;

— Finland:

osakeyhtiöaktiebolag;

**▼ A3**

— Sweden:

*aktiebolag,*

**▼ A4**

— the Czech Republic:

*akciová společnost,*

— Estonia:

*aktsiaselts,*

— Cyprus:

*Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές, δημόσιες εταιρείες περιορισμένης ευθύνης με εγγύηση που διαθέτουν μετοχικό κεφάλαιο,*

— Latvia:

*akciju sabiedrība,*

— Lithuania:

*akcinė bendrovė,*

— Hungary:

*részvénytársaság,*

— Malta:

*kumpanija pubblika/public limited liability company, kumpanija privata/private limited liability company,*

— Poland:

*spółka akcyjna,*

— Slovenia:

*delniška družba,*

— Slovakia:

*akciová spoločnosť,*

**▼ M1**

— Bulgaria:

*акционерно дружество,*

— Romania:

*societate pe acțiuni.*

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2. The Member States need not apply this Directive to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the word ‘cooperative’ in all the documents referred to in Article 4 of Directive 68/151/EEC.

3. The Member States need not apply this Directive in cases where the company or companies which are being acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings.

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## CHAPTER I

**Regulation of merger by the acquisition of one or more companies by another and of merger by the formation of a new company***Article 2*

The Member States shall, as regards companies governed by their national laws, make provision for rules governing merger by the acquisition of one or more companies by another and merger by the formation of a new company.

*Article 3*

1. For the purposes of this Directive, ‘merger by acquisition’ shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

*Article 4*

1. For the purposes of this Directive, ‘merger by the formation of a new company’ shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

## CHAPTER II

**Merger by acquisition***Article 5*

1. The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.

2. Draft terms of merger shall specify at least:

- (a) the type, name and registered office of each of the merging companies;
- (b) the share exchange ratio and the amount of any cash payment;
- (c) the terms relating to the allotment of shares in the acquiring company;

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- (d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;
- (f) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
- (g) any special advantage granted to the experts referred to in Article 10 (1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

*Article 6*

Draft terms of merger must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

*Article 7*

1. A merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this decision shall require a majority of not less than two thirds of the votes attaching either to the shares or to the subscribed capital represented.

The laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented. Moreover, where appropriate, the rules governing alterations to the memorandum and articles of association shall apply.

2. Where there is more than one class of shares, the decision concerning a merger shall be subject to a separate vote by at least each class of shareholders whose rights are affected by the transaction.

3. The decision shall cover both the approval of the draft terms of merger and any alterations to the memorandum and articles of association necessitated by the merger.

*Article 8*

The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the following conditions are fulfilled:

- (a) the publication provided for in Article 6 must be effected, for the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which are to decide on the draft terms of merger;
- (b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) at the registered office of the acquiring company;
- (c) one or more shareholders of the acquiring company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger. This minimum percentage may not be fixed at more than 5 %. The Member States may,

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however, provide for the exclusion of non-voting shares from this calculation.

*Article 9*

The administration or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

The report shall also describe any special valuation difficulties which have arisen.

*Article 10*

1. One or more experts, acting on behalf of each of the merging companies but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. In the report mentioned in paragraph 1 the experts must in any case state whether in their opinion the share exchange ratio is fair and reasonable. Their statement must at least:

- (a) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (b) state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such method and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also describe any special valuation difficulties which have arisen.

3. Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.

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4. Neither an examination of the draft terms of merger nor an expert report shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the merger have so agreed.

**▼B***Article 11*

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger:

- (a) the draft terms of merger;
- (b) the annual accounts and annual reports of the merging companies for the preceding three financial years;
- (c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the

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draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date;

- (d) the reports of the administrative or management bodies of the merging companies provided for in Article 9;

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- (e) where applicable, the reports provided for in Article 10.

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2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

- (a) it shall not be necessary to take a fresh physical inventory;
- (b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:
- interim depreciation and provisions,
  - material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

*Article 12*

Protection of the rights of the employees of each of the merging companies shall be regulated in accordance with Directive 77/187/EEC.

*Article 13*

1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2. To this end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

*Article 14*

Without prejudice to the rules governing the collective exercise of their rights, Article 13 shall apply to the debenture holders of the merging companies, except where the merger has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

*Article 15*

Holders of securities, other than shares, to which special rights are attached, must be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under



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national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased by the acquiring company.

*Article 16*

1. Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the minutes of the general meetings which decide on the merger and, where appropriate, the merger contract subsequent to such general meetings shall be drawn up and certified in due legal form. In cases where the merger need not be approved by the general meetings of all the merging companies, the draft terms of merger must be drawn up and certified in due legal form.

2. The notary or the authority competent to draw up and certify the document in due legal form must check and certify the existence and validity of the legal acts and formalities required of the company for which he or it is acting and of the draft terms of merger.

*Article 17*

The laws of the Member States shall determine the date on which a merger takes effect.

*Article 18*

1. A merger must be publicized in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC, in respect of each of the merging companies.

2. The acquiring company may itself carry out the publication formalities relating to the company or companies being acquired.

*Article 19*

1. A merger shall have the following consequences *ipso jure* and simultaneously:

- (a) the transfer, both as between the company being acquired and the acquiring company and as regards third parties, to the acquiring company of all the assets and liabilities of the company being acquired;
- (b) the shareholders of the company being acquired become shareholders of the acquiring company;
- (c) the company being acquired ceases to exist.

2. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

- (a) by the acquiring company itself or through a person acting in his own name but on its behalf;

or

- (b) by the company being acquired itself or through a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by the acquired company to be effective as against third parties. The acquiring company may carry out these formalities itself; however, the laws of the Member States may permit the

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company being acquired to continue to carry out these formalities for a limited period which cannot, save in exceptional cases, be fixed at more than six months from the date on which the merger takes effect.

*Article 20*

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.

*Article 21*

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the experts responsible for drawing up on behalf of that company the report referred to in Article 10 (1) in respect of misconduct on the part of those experts in the performance of their duties.

*Article 22*

1. The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only:

- (a) nullity must be ordered in a court judgment;
- (b) mergers which have taken effect pursuant to Article 17 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;
- (c) nullification proceedings may not be initiated more than six months after the date on which the merger becomes effective as against the person alleging nullity or if the situation has been rectified;
- (d) where it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation;
- (e) a judgment declaring a merger void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;
- (f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;
- (g) a judgment declaring a merger void shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date referred to in Article 17;
- (h) companies which have been parties to a merger shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in (g).

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a merger to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g) and (h) shall apply by analogy to the administrative authority. Such nullification, proceedings may not be initiated more than six months after the date referred to in Article 17.

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3. The foregoing shall not affect the laws of the Member States on the nullity of a merger pronounced following any supervision other than judicial or administrative preventive supervision of legality.

## CHAPTER III

**Merger by formation of a new company***Article 23*

1. Articles 5, 6, 7 and 9 to 22 shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to merger by formation of a new company. For this purpose, 'merging companies' and 'company being acquired' shall mean the companies which will cease to exist, and 'acquiring company' shall mean the new company.

2. Article 5 (2) (a) shall also apply to the new company.

3. The draft terms of merger and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

4. The Member States need not apply to the formation of a new company the rules governing the verification of any consideration other than cash which are laid down in Article 10 of Directive 77/91/EEC.

## CHAPTER IV

**Acquisition of one company by another which holds 90 % or more of its shares***Article 24*

The Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Chapter II, with the exception of Articles 5 (2) (b), (c) and (d), 9, 10, 11 (1) (d) and (e), 19 (1) (b), 20 and 21.

*Article 25*

The Member States need not apply Article 7 to the operations specified in Article 24 if the following conditions at least are fulfilled:

- (a) the publication provided for in Article 6 must be effected, as regards each company involved in the operation, at least one month before the operation takes effect;
- (b) at least one month before the operation takes effect, all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;
- (c) Article 8 (c) must apply.

**▼B***Article 26*

The Member States may apply Articles 24 and 25 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

*Article 27*

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States need not require approval of the merger by the general meeting of the acquiring company, provided that the following conditions at least are fulfilled:

- (a) the publication provided for in Article 6 must be effected, as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;
- (b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;
- (c) Article 8 (c) must apply.

*Article 28*

The Member States need not apply Articles 9 to 11 to a merger within the meaning of Article 27 if the following conditions at least are fulfilled:

- (a) the minority shareholders of the company being acquired must be entitled to have their shares acquired by the acquiring company;
- (b) if they exercise that right, they must be entitled to receive consideration corresponding to the value of their shares;
- (c) in the event of disagreement regarding such consideration, it must be possible for the value of the consideration to be determined by a court.

*Article 29*

The Member States may apply Articles 27 and 28 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company if 90 % or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.



## CHAPTER V

### Other operations treated as mergers

#### *Article 30*

Where in the case of one of the operations referred to in Article 2 the laws of a Member State permit a cash payment to exceed 10 %, Chapters II and III and Articles 27, 28 and 29 shall apply.

#### *Article 31*

Where the laws of a Member State permit one of the operations referred to in Articles 2, 24 and 30, without all of the transferring companies thereby ceasing to exist, Chapter II, except for Article 19 (1) (c), Chapter III or Chapter IV shall apply as appropriate.

## CHAPTER VI

### Final provisions

#### *Article 32*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within three years of its notification. They shall forthwith inform the Commission thereof.
2. However, provision may be made for a delay of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.
3. The Member States need not apply Articles 13, 14 and 15 as regards the holders of convertible debentures and other convertible securities if, at the time when the laws, regulations and administrative provisions referred to in paragraph 1 come into force, the position of these holders in the event of a merger has previously been determined by the conditions of issue.
4. The Member States need not apply this Directive to mergers or to operations treated as mergers for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 enter into force.

#### *Article 33*

This Directive is addressed to the Member States.

## 31978L0855

### Title and reference

**Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies**

*OJ L 295, 20.10.1978, p. 36–43 (DA, DE, EN, FR, IT, NL)  
 Finnish special edition: Chapter 17 Volume 1 P. 0034  
 Greek special edition: Chapter 06 Volume 2 P. 0038  
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 Portuguese special edition Chapter 17 Volume 1 P. 0076  
 Special edition in Czech Chapter 17 Volume 01 P. 42 - 49  
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### Text

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[public limited company](#)  
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 Amended by [11985IN01/02/D](#) Completion Article 1.1 from 01/01/1986  
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 Incorporated by [21994A0103\(72\)](#)  
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 Amended by [32006L0099](#) Completion Article 1.1 from 01/01/2007  
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- **Consolidated versions**  
[1995-01-01](#)  
[2004-05-01](#)  
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[2007-12-07](#)
- **Subsequent related instruments:**  
 Relation [51978FC0855](#)  
 Amendment proposed by [52007PC0091](#)  
 Amendment proposed by [52008PC0026](#) Repeal
- **Affected by case:**

Proceedings concerning failure by Member States [61988J0046](#)

► **Display the national execution measures**  
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[31968L0151](#)

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## Text

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THIRD COUNCIL DIRECTIVE of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies (78/855/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment (4) was begun with Directive 68/151/EEC (5);

Whereas this coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC (6), and as regards the annual accounts of certain types of companies with Directive 78/660/EEC (7);

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to mergers of public limited liability companies be coordinated and that provision for mergers should be made in the laws of all the Member States;

Whereas in the context of such coordination it is particularly important that the shareholders of merging companies be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC (8);

Whereas creditors, including debenture holders, and persons having other claims on the merging companies must be protected so that the merger does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include mergers so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with mergers must be extended to cover certain legal practices which in important respects are similar to merger, so that the obligation to provide such protection cannot be evaded: (1)OJ No C 89, 14.7.1970, p. 20. (2)OJ No C 129, 11.12.1972, p. 50 ; OJ No C 95, 28.4. 1975, p. 12. (3)OJ No C 88, 6.9.1971, p. 18. (4)OJ No 2, 15.1.1962, p. 36/62. (5)OJ No L 65, 14.3.1968, p. 8. (6)OJ No L 26, 31.1.1977, p. 1. (7)OJ No L 222, 14.8.1978, p. 11. (8)OJ No L 61, 5.3.1977, p. 26.

Whereas to ensure certainty in the law as regards relations between the companies concerned, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. The coordination measures laid down by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company: - Germany : die Aktiengesellschaft,

- Belgium : la société anonyme / de naamloze vennootschap,

- Denmark : aktieselskaber,

- France : la société anonyme,

- Ireland : public companies limited by shares, and public companies limited by guarantee having a share capital,

- Italy : la società per azioni,

- Luxembourg : la société anonyme,

- the Netherlands : de naamloze vennootschap,

- the United Kingdom : public companies limited by shares, and public companies limited by guarantee having a share capital.

2. The Member States need not apply this Directive to cooperatives incorporated as one of the types of company listed in paragraph 1. In so far as the laws of the Member States make use of this option, they shall require such companies to include the word "cooperative" in all the documents referred to in Article 4 of Directive 68/151/EEC.

3. The Member States need not apply this Directive in cases where the company or companies which are being acquired or will cease to exist are the subject of bankruptcy proceedings, proceedings relating to the winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings.

CHAPTER I Regulation of merger by the acquisition of one or more companies by another and of merger by the formation of a new company

Article 2

The Member States shall, as regards companies governed by their national laws, make provision for rules governing merger by the acquisition of one or more companies by another and merger by the formation of a new company.

Article 3

1. For the purposes of this Directive, "merger by acquisition" shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

Article 4

1. For the purposes of this Directive, "merger by the formation of a new company" shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.

2. A Member State's laws may provide that merger by the formation of a new company may also be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

#### CHAPTER II Merger by acquisition

##### Article 5

1. The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.
2. Draft terms of merger shall specify at least: (a) the type, name and registered office of each of the merging companies;
- (b) the share exchange ratio and the amount of any cash payment;
- (c) the terms relating to the allotment of shares in the acquiring company;
- (d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;
- (f) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
- (g) any special advantage granted to the experts referred to in Article 10 (1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

##### Article 6

Draft terms of merger must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

##### Article 7

1. A merger shall require at least the approval of the general meeting of each of the merging companies. The laws of the Member States shall provide that this decision shall require a majority of not less than two thirds of the votes attaching either to the shares or to the subscribed capital represented. The laws of a Member State may, however, provide that a simple majority of the votes specified in the first subparagraph shall be sufficient when at least half of the subscribed capital is represented. Moreover, where appropriate, the rules governing alterations to the memorandum and articles of association shall apply.
2. Where there is more than one class of shares, the decision concerning a merger shall be subject to a separate vote by at least each class of shareholders whose rights are affected by the transaction.
3. The decision shall cover both the approval of the draft terms of merger and any alterations to the memorandum and articles of association necessitated by the merger.

##### Article 8

The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the following conditions are fulfilled: (a) the publication provided for in Article 6 must be effected, for the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which are to decide on the draft terms of merger;

- (b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) at the registered office of the acquiring company;
- (c) one or more shareholders of the acquiring company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the acquiring company be called to decide whether to approve the merger. This minimum percentage may not be fixed at more than 5 %. The Member States may, however, provide for the exclusion of non-voting shares from this calculation.

##### Article 9

The administration or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

The report shall also describe any special valuation difficulties which have arisen.

##### Article 10

1. One or more experts, acting on behalf of each of the merging companies but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of merger and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all the merging companies, if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. In the report mentioned in paragraph 1 the experts must in any case state whether in their opinion the share exchange ratio is fair and reasonable. Their statement must at least: (a) indicate the method or methods used to arrive at the share exchange ratio proposed;

(b) state whether such method or methods are adequate in the case in question, indicate the values arrived at using each such method and give an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also describe any special valuation difficulties which have arisen.

3. Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry out all necessary investigations.

##### Article 11

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger: (a) the draft terms of merger;

(b) the annual accounts and annual reports of the merging companies for the preceding three financial years;

(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than six months before that date;

(d) the reports of the administrative or management bodies of the merging companies provided for in Article 9;

(e) the reports provided for in Article 10.

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that: (a) it shall not be necessary to take a fresh physical inventory;

(b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account ; the following shall nevertheless be taken into account: - interim depreciation and provisions,

- material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

##### Article 12



Protection of the rights of the employees of each of the merging companies shall be regulated in accordance with Directive 77/187/EEC.

#### Article 13

1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2. To this end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

#### Article 14

Without prejudice to the rules governing the collective exercise of their rights, Article 13 shall apply to the debenture holders of the merging companies, except where the merger has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

#### Article 15

Holders of securities, other than shares, to which special rights are attached, must be given rights in the acquiring company at least equivalent to those they possessed in the company being acquired, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased by the acquiring company.

#### Article 16

1. Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the minutes of the general meetings which decide on the merger and, where appropriate, the merger contract subsequent to such general meetings shall be drawn up and certified in due legal form. In cases where the merger need not be approved by the general meetings of all the merging companies, the draft terms of merger must be drawn up and certified in due legal form.

2. The notary or the authority competent to draw up and certify the document in due legal form must check and certify the existence and validity of the legal acts and formalities required of the company for which he or it is acting and of the draft terms of merger.

#### Article 17

The laws of the Member States shall determine the date on which a merger takes effect.

#### Article 18

1. A merger must be publicized in the manner prescribed by the laws of each Member State, in accordance with Article 3 of Directive 68/151/EEC, in respect of each of the merging companies.

2. The acquiring company may itself carry out the publication formalities relating to the company or companies being acquired.

#### Article 19

1. A merger shall have the following consequences ipso jure and simultaneously: (a) the transfer, both as between the company being acquired and the acquiring company and as regards third parties, to the acquiring company of all the assets and liabilities of the company being acquired;

(b) the shareholders of the company being acquired become shareholders of the acquiring company;

(c) the company being acquired ceases to exist.

2. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either: (a) by the acquiring company itself or through a person acting in his own name but on its behalf;

or

(b) by the company being acquired itself or through a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by the acquired company to be effective as against third parties. The acquiring company may carry out these formalities itself; however, the laws of the Member States may permit the company being acquired to continue to carry out these formalities for a limited period which cannot, save in exceptional cases, be fixed at more than six months from the date on which the merger takes effect.

#### Article 20

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.

#### Article 21

The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the experts responsible for drawing up on behalf of that company the report referred to in Article 10 (1) in respect of misconduct on the part of those experts in the performance of their duties.

#### Article 22

1. The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only: (a) nullity must be ordered in a court judgment;

(b) mergers which have taken effect pursuant to Article 17 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

(c) nullification proceedings may not be initiated more than six months after the date on which the merger becomes effective as against the person alleging nullity or if the situation has been rectified;

(d) where it is possible to remedy a defect liable to render a merger void, the competent court shall grant the companies involved a period of time within which to rectify the situation;

(e) a judgment declaring a merger void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;

(f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;

(g) a judgment declaring a merger void shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date referred to in Article 17;

(h) companies which have been parties to a merger shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in (g).

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a merger to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g) and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 17.

3. The foregoing shall not affect the laws of the Member States on the nullity of a merger pronounced following any supervision other than judicial or administrative preventive supervision of legality.

### CHAPTER III Merger by formation of a new company

#### Article 23

1. Articles 5, 6, 7 and 9 to 22 shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to merger by formation of a new company. For this purpose, "merging companies" and "company being acquired" shall mean the companies which will cease to exist, and "acquiring company" shall

mean the new company.

2. Article 5 (2) (a) shall also apply to the new company.

3. The draft terms of merger and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

4. The Member States need not apply to the formation of a new company the rules governing the verification of any consideration other than cash which are laid down in Article 10 of Directive 77/91/EEC.

#### CHAPTER IV Acquisition of one company by another which holds 90 % or more of its shares

##### Article 24

The Member States shall make provision, in respect of companies governed by their laws, for the operation whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company which is the holder of all their shares and other securities conferring the right to vote at general meetings. Such operations shall be regulated by the provisions of Chapter II, with the exception of Articles 5 (2) (b), (c) and (d), 9, 10, 11 (1) (d) and (e), 19 (1) (b), 20 and 21.

##### Article 25

The Member States need not apply Article 7 to the operations specified in Article 24 if the following conditions at least are fulfilled: (a) the publication provided for in Article 6 must be effected, as regards each company involved in the operation, at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;

(c) Article 8 (c) must apply.

##### Article 26

The Member States may apply Articles 24 and 25 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company, if all the shares and other securities specified in Article 24 of the company or companies being acquired are held by the acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

##### Article 27

In cases of merger where one or more companies are acquired by another company which holds 90 % or more, but not all, of the shares and other securities of each of those companies the holding of which confers the right to vote at general meetings, the Member States need not require approval of the merger by the general meeting of the acquiring company, provided that the following conditions at least are fulfilled: (a) the publication provided for in Article 6 must be effected, as regards the acquiring company, at least one month before the date fixed for the general meeting of the company or companies being acquired which is to decide on the draft terms of merger;

(b) at least one month before the date specified in (a), all shareholders of the acquiring company must be entitled to inspect the documents specified in Article 11 (1) (a), (b) and (c) at the company's registered office. Article 11 (2) and (3) must apply;

(c) Article 8 (c) must apply.

##### Article 28

The Member States need not apply Articles 9 to 11 to a merger within the meaning of Article 27 if the following conditions at least are fulfilled: (a) the minority shareholders of the company being acquired must be entitled to have their shares acquired by the acquiring company;

(b) if they exercise that right, they must be entitled to receive consideration corresponding to the value of their shares;

(c) in the event of disagreement regarding such consideration, it must be possible for the value of the consideration to be determined by a court.

##### Article 29

The Member States may apply Articles 27 and 28 to operations whereby one or more companies are wound up without going into liquidation and transfer all their assets and liabilities to another company if 90 % or more, but not all, of the shares and other securities referred to in Article 27 of the company or companies being acquired are held by that acquiring company and/or by persons holding those shares and securities in their own names but on behalf of that company.

#### CHAPTER V Other operations treated as mergers

##### Article 30

Where in the case of one of the operations referred to in Article 2 the laws of a Member State permit a cash payment to exceed 10 %, Chapters II and III and Articles 27, 28 and 29 shall apply.

##### Article 31

Where the laws of a Member State permit one of the operations referred to in Articles 2, 24 and 30, without all of the transferring companies thereby ceasing to exist, Chapter II, except for Article 19 (1) (c), Chapter III or Chapter IV shall apply as appropriate.

#### CHAPTER VI Final provisions

##### Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within three years of its notification. They shall forthwith inform the Commission thereof.

2. However, provision may be made for a delay of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

3. The Member States need not apply Articles 13, 14 and 15 as regards the holders of convertible debentures and other convertible securities if, at the time when the laws, regulations and administrative provisions referred to in paragraph 1 come into force, the position of these holders in the event of a merger has previously been determined by the conditions of issue.

4. The Member States need not apply this Directive to mergers or to operations treated as mergers for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 enter into force.

##### Article 33

This Directive is addressed to the Member States.

Done at Luxembourg, 9 October 1978.

For the Council

The President

H.-J. VOGEL

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► **B****FOURTH COUNCIL DIRECTIVE**

**of 25 July 1978**

**based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies**

(78/660/EEC)

(OJ L 222, 14.8.1978, p. 11)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Seventh Council Directive 83/349/EEC, of 13 June 1983	L 193	1	18.7.1983
► <b><u>M2</u></b>	Council Directive 84/569/EEC, of 27 November 1984	L 314	28	4.12.1984
► <b><u>M3</u></b>	Eleventh Council Directive 89/666/EEC, of 21 December 1989	L 395	36	30.12.1989
► <b><u>M4</u></b>	Council Directive 90/604/EEC, of 8 November 1990	L 317	57	16.11.1990
► <b><u>M5</u></b>	Council Directive 90/605/EEC, of 8 November 1990	L 317	60	16.11.1990
► <b><u>M6</u></b>	Council Directive 94/8/EC of 21 March 1994	L 82	33	25.3.1994
► <b><u>M7</u></b>	Council Directive 1999/60/EC of 17 June 1999	L 162	65	26.6.1999
► <b><u>M8</u></b>	Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001	L 283	28	27.10.2001
► <b><u>M9</u></b>	Council Directive 2003/38/EC of 13 May 2003	L 120	22	15.5.2003
► <b><u>M10</u></b>	Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003	L 178	16	17.7.2003
► <b><u>M11</u></b>	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006	L 157	87	9.6.2006
► <b><u>M12</u></b>	Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006	L 224	1	16.8.2006
► <b><u>M13</u></b>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <b><u>A1</u></b>	Act of Accession of Greece	L 291	17	19.11.1979
► <b><u>A2</u></b>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b><u>A3</u></b>	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995
► <b><u>A4</u></b>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



**FOURTH COUNCIL DIRECTIVE**

**of 25 July 1978**

**based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies**

(78/660/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Whereas the coordination of national provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods, used therein and their publication in respect of certain companies with limited liability is of special importance for the protection of members and third parties;

Whereas simultaneous coordination is necessary in these fields for these forms of company because, on the one hand, these companies' activities frequently extend beyond the frontiers of their national territories and, on the other, they offer no safeguards to third parties beyond the amounts of their net assets; whereas, moreover, the necessity for and the urgency of such coordination have been recognized and confirmed by Article 2 (1) (f) of Directive 68/151/EEC <sup>(3)</sup>;

Whereas it is necessary, moreover, to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another;

Whereas annual accounts must give a true and fair view of a company's assets and liabilities, financial position and profit or loss; whereas to this end a mandatory layout must be prescribed for the balance sheet and the profit and loss account and whereas the minimum content of the notes on the accounts and the annual report must be laid down; whereas, however, derogations may be granted for certain companies of minor economic or social importance;

Whereas the different methods for the valuation of assets and liabilities must be coordinated to the extent necessary to ensure that annual accounts disclose comparable and equivalent information;

Whereas the annual accounts of all companies to which this Directive applies must be published in accordance with Directive 68/151/EEC; whereas, however, certain derogations may likewise be granted in this area for small and medium-sized companies;

Whereas annual accounts must be audited by authorized persons whose minimum qualifications will be the subject of subsequent coordination; whereas only small companies may be relieved of this audit obligation;

Whereas, when a company belongs to a group, it is desirable that group accounts giving a true and fair view of the activities of the group as a whole be published; whereas, however, pending the entry into force of a

<sup>(1)</sup> OJ No C 129, 11. 12. 1972, p. 38.

<sup>(2)</sup> OJ No C 39, 7. 6 1973, p. 31.

<sup>(3)</sup> OJ No L 65, 14. 3. 1968, p. 8.

**▼B**

Council Directive on consolidated accounts, derogations from certain provisions of this Directive are necessary;

Whereas, in order to meet the difficulties arising from the present position regarding legislation in certain Member States, the period allowed for the implementation of certain provisions of this Directive must be longer than the period generally laid down in such cases,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of companies:

— in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

— in Belgium:

la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;

— in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

— in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

— in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

— in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

— in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

— in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

**▼A1**

— in Greece:

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

**▼A2**

— in Spain:

la sociedad anónima, la sociedad comanditara por acciones, la sociedad de responsabilidad limitada;

— in Portugal:

**▼ A2**

a sociedade anónima, de responsabilidade limitada, a sociedade em comandita por ações, a sociedade por quotas de responsabilidade limitada;

**▼ A3**

— in Austria:

die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;

— in Finland:

osakeyhtiö/aktiebolag;

— in Sweden:

aktiebolag;

**▼ A4**

— in the Czech Republic:

společnost s ručením omezeným, akciová společnost;

— in Estonia:

aktsiaselts, osaühing;

— in Cyprus:

Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;

— in Latvia:

akciju sabiedrība, sabiedrība ar ierobežotu atbildību;

— in Lithuania:

akcinės bendrovės, uždariosios akcinės bendrovės;

— in Hungary:

részvénytársaság, korlátolt felelősségű társaság;

— in Malta:

kumpanija pubblika —public limited liability company, kumpanija privata —private limited liability company,

soċjeta in akkomandita bil-kapital maqsum f'azzjonijiet —partnership en commandite with the capital divided into shares;

— in Poland:

spółka akcyjna, spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna;

— in Slovenia:

delniška družba, družba z omejeno odgovornostjo, komanditna delniška družba;

— in Slovakia:

akciová spoločnosť, spoločnosť s ručením obmedzeným;

**▼ M13**

— in Bulgaria:

акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;

— in Romania:

societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.

**▼ M5**

The coordination measures prescribed by this Directive shall also apply to the Member States' laws, regulations and administrative provisions relating to the following types of company:

**▼ M5**

- (a) in Germany:  
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- (b) in Belgium:  
la société en nom collectif/de vennootschap onder firma, la société en commandité (SIC! commandite) simple/de gewone commanditaire vennootschap;
- (c) in Denmark:  
interessentskaber, kommanditselskaber;
- (d) in France:  
la société en nom collectif, la société en commandite simple;
- (e) in Greece:  
η ομόρρυθμος εταιρία, η ετερόρρυθμος εταιρία;
- (f) in Spain:  
sociedad colectiva, sociedad en comandita simple;
- (g) in Ireland:  
partnerships, limited partnerships, unlimited companies;
- (h) in Italy:  
la società in nome collettivo, la società in accomandita semplice;
- (i) in Luxembourg:  
la société en nom collectif, la société en commandite simple;
- (j) in the Netherlands:  
de vennootschap onder firma, de commanditaire vennootschap;
- (k) in Portugal:  
sociedade em nome colectivo, sociedade em comandita simples;
- (l) in the United Kingdom:  
partnerships, limited partnerships, unlimited companies;

**▼ A3**

- (m) in Austria:  
die offene Handelsgesellschaft, die Kommanditgesellschaft;
- (n) in Finland:  
avoin yhtiö/ öppet bolag, kommandiittiyhtiö/kommanditbolag;
- (o) in Sweden:  
handelsbolag, kommanditbolag;

**▼ A4**

- (p) in the Czech Republic:  
veřejná obchodní společnost, komanditní společnost, družstvo;
- (q) in Estonia:  
täisühing, usaldusühing;
- (r) in Cyprus:  
Ομόρρυθμες και ετερόρρυθμες εταιρείες (συνεταιρισμοί);
- (s) in Latvia:  
pilnsabiedrība, komanditsabiedrība;
- (t) in Lithuania:  
tikrosios ūkinės bendrijos, komandinės ūkinės bendrijos;

**▼ A4**

(u) in Hungary:

közkereseti társaság, betéti társaság, közös vállalat, egyesülés;

(v) in Malta:

Soċjeta fisem kollettiv jew soċjeta in akkomandita, bil-kapital li mhux maqsum f'azzjonijiet meta s-soċji kollha li għandhom responsabbilita' llimitata huma soċjetajiet tat-tip deskritt f'sub paragrafu 1 —Partnership *en nom collectif* or partnership *en commandite* with capital that is not divided into shares, when all the partners with unlimited liability are partnerships as described in sub-paragraph 1;

(w) in Poland:

spółka jawna, spółka komandytowa;

(x) in Slovenia:

družba z neomejeno odgovornostjo, komanditna družba;

(y) in Slovakia:

verejná obchodná spoločnosť, komanditná spoločnosť;

**▼ M13**

(z) in Bulgaria:

събирателно дружество, командитно дружество;

(aa) in Romania:

asocietate în nume colectiv, societate în comandită simplă

**▼ M5**

where all members having unlimited liability are companies of the types set out in the first subparagraph or companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

This Directive shall also apply to the types of companies or firms referred to in the second subparagraph where all members having unlimited liability are themselves companies of the types set out in that or the first subparagraph.

**▼ B**

2. Pending subsequent coordination, the Member States need not apply the provisions of this Directive to banks and other financial institutions or to insurance companies.

## SECTION 1

**General provisions***Article 2*

1. The annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.

**▼ M10**

Member States may permit or require the inclusion of other statements in the annual accounts in addition to the documents referred to in the first subparagraph.

**▼ B**

2. They shall be drawn up clearly and in accordance with the provisions of this Directive.

3. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.



**▼B**

4. Where the application of the provision of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3, additional information must be given.

5. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.

6. The Member States may authorize or require the disclosure in the annual accounts of other information as well as that which must be disclosed in accordance with this Directive.

## SECTION 2

**General provisions concerning the balance sheet and the profit and loss account***Article 3*

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons therefor.

*Article 4*

1. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 10 and 23 to 26 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. Such subdivision or new items may be required by the Member States.

2. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals must be adapted where the special nature of an undertaking so requires. Such adaptations may be required by the Member States of undertakings forming part of a particular economic sector.

3. The balance sheet and profit and loss account items that are preceded by Arabic numerals may be, combined where:

- (a) they are immaterial in amount for the purposes of Article 2 (3); or
- (b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.

4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. The Member States may provide that, where these figures are not comparable, the figure for the preceding financial year must be adjusted. In any case, non-comparability and any adjustment of the figures must be disclosed in the notes on the accounts, with relevant comments.

5. Save where there is a corresponding item for the preceding financial year within the meaning of paragraph 4, a balance sheet or

**▼B**

profit and loss account item for which there is no amount shall not be shown.

**▼M10**

6. Member States may permit or require the presentation of amounts within items in the profit and loss account and balance sheet to have regard to the substance of the reported transaction or arrangement. Such permission or requirement may be restricted to certain classes of company and/or to consolidated accounts as defined in the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts <sup>(1)</sup>.

**▼B***Article 5*

1. By way of derogation from Article 4 (1) and (2), the Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that these layouts give a view of these companies equivalent to that provided for in Article 2 (3).

2. For the purposes of this Directive, 'investment companies' shall mean only:

- (a) those companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets;
- (b) those companies associated with investment companies with fixed capital if the sole object of the companies so associated is to acquire fully paid shares issued by those investment companies without prejudice to the provisions of Article 20 (1) (h) of Directive 77/91/EEC <sup>(2)</sup>.

3. For the purposes of this Directive, 'financial holding companies' shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the foregoing without prejudice to their rights as shareholders. The limitations imposed on the activities of these companies must be such that compliance with them can be supervised by an administrative or judicial authority.

*Article 6*

The Member States may authorize or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

*Article 7*

Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

<sup>(1)</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

<sup>(2)</sup> OJ No L 26, 31. 1. 1977, p. 1

**▼B**

SECTION 3  
**Layout of the balance sheet**

*Article 8*

For the presentation of the balance sheet, the Member States shall prescribe one or both of the layouts prescribed by Articles 9 and 10. If a Member State prescribes both, it may allow companies to choose between them.

**▼M10**

Member States may permit or require companies to adopt the presentation of the balance sheet set out in Article 10a as an alternative to the layouts otherwise prescribed or permitted.

**▼B**

*Article 9*

**Assets**

**A. Subscribed capital unpaid**

of which there has been called

(unless national law provides that called-up capital be shown under 'Liabilities'. In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D (II) (5)).

**B. Formation expenses**

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

**C. Fixed assets***I. Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
  - (a) acquired for valuable consideration and need not be shown under C (I) (3); or
  - (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

*II. Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

*III. Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.

**▼B**

3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

**D. Current assets****I. Stocks**

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

**II. Debtors**

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under E).

**III. Investments**

1. Shares in affiliated undertakings.
2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
3. Other investments.

**IV. Cash at bank and in hand****E. Prepayments and accrued income**

(unless national law provides for such items to be shown as an asset under D (II) (6)).

**F. Loss for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

**Liabilities****A. Capital and reserves****I. Subscribed capital**

**▼B**

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

II. *Share premium account*III. *Revaluation reserve*IV. *Reserves*

1. Legal reserve, in so far as national law requires such a reserve.
2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.
3. Reserves provided for by the articles of association.
4. Other reserves.

V. *Profit or loss brought forward*VI. *Profit or loss for the financial year*

(unless national law requires that this item be shown under F under 'Assets' or under E under 'Liabilities').

**B. ►M10 Provisions ◀**

1. Provisions for pensions and similar obligations.
2. Provisions for taxation.
3. Other provisions.

**C. Creditors**

(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year must be shown separately for each item and for the aggregate of these items.)

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
8. Other creditors including tax and social security.
9. Accruals and deferred income (unless national law provides for such items to be shown under D under 'Liabilities').

**D. Accruals and deferred income**

(unless national law provides for such items to be shown under C (9) under 'Liabilities').

**E. Profit for the financial year**

(unless national law provides for it to be shown under A (VI) under 'Liabilities').

*Article 10***A. Subscribed capital unpaid**

**▼B**

of which there has been called

(unless national law provides that called-up capital be shown under L. In that case, the part of the capital called but not yet paid must appear either under A or under D (11) (5)).

**B. Formation expenses**

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under 'Intangible assets'.

**C. Fixed assets***I. Intangible assets*

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were:
  - (a) acquired for valuable consideration and need not be shown under C (I) (3); or
  - (b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.
4. Payments on account.

*II. Tangible assets*

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

*III. Financial assets*

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

**D. Current assets***I. Stocks*

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

*II. Debtors*

**▼B**

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).
6. Prepayments and accrued income (unless national law provides that such items be shown under E).

III. *Investments*

1. Shares in affiliated undertakings.
2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
3. Other investments.

IV. *Cash at bank and in hand.*

**E. Prepayments and accrued income**

(unless national law provides for such items to be shown under D (II) (6)).

**F. Creditors: amounts be coming due and payable within one year**

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
8. Other creditors including tax and social security.
9. Accruals and deferred income (unless national law provides for such items to be shown under K).

**G. Net current assets/liabilities** (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).

**H. Total assets less current liabilities**

**I. Creditors: amounts becoming due and payable after more than one year**

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.

**▼B**

6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
8. Other creditors including tax and social security.
9. Accruals and deferred income (unless national law provides for such items to be shown under K).

**J. ►M10 Provisions ◀**

1. Provisions for pensions and similar obligations.
2. Provisions for taxation.
3. Other provisions.

**K. Accruals and deferred income**

(unless national law provides for such items to be shown under F (9) or I (9) or both).

**L. Capital and reserves****I. *Subscribed capital***

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

**II. *Share premium account*****III. *Revaluation reserve*****IV. *Reserves***

1. Legal reserve, in so far as national law requires such a reserve.
2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.
3. Reserves provided for by the articles of association.
4. Other reserves.

**V. *Profit or loss brought forward*****VI. *Profit or loss for the financial year*****▼M10***Article 10a*

Instead of the presentation of balance sheet items in accordance with Articles 9 and 10, Member States may permit or require companies, or certain classes of company, to present those items on the basis of a distinction between current and non-current items provided that the information given is at least equivalent to that otherwise required by Articles 9 and 10.

**▼B***Article 11*

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

- ►M12 balance sheet total: EUR 4 400 000 ◀,
- ►M12 net turnover: EUR 8 800 000 ◀,
- average number of employees during the financial year: 50



**▼B**

to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (II) in Article 10, but in total for each.

**▼M4**

Member States may waive the application of Article 15 (3) (a) and (4) to the abridged balance sheet.

**▼M9**

In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts specified in the first paragraph shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of ► **M12** any Directive setting those amounts. ◀

**▼B***Article 12*

1. Where on its balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 11, that fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.
2. For the purposes of translation into national currencies, the amounts in European units of account specified in Article 11 may be increased by not more than 10 %.
3. The balance sheet total referred to in Article 11 shall consist of the assets in A to E under 'Assets' in the layout prescribed in Article 9 or those in A to E in the layout prescribed in Article 10.

*Article 13*

1. Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts, if such disclosure is essential to the comprehension of the annual accounts.
2. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

*Article 14*

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee which national law recognizes; specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

## SECTION 4

**Special provisions relating to certain balance sheet items***Article 15*

1. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.
2. Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities.

**▼B**

3. (a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes on the accounts.
- (b) If, when annual accounts are drawn up in accordance with this Directive for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this provision must be disclosed in the notes on the accounts.
- (c) Where Article 33 is applied, the movements in the various fixed asset items referred to in subparagraph (a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.
4. Paragraph 3 (a) and (b) shall apply to the presentation of 'Formation expenses'.

*Article 16*

Rights to immovables and other similar rights as defined by national law must be shown under 'Land and buildings'.

*Article 17*

For the purposes of this Directive, *participating interest* shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which may not exceed 20 %.

*Article 18*

Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under 'Prepayments and accrued income'. The Member States may, however, provide that such income shall be included in 'Debtors'. Where such income is material, it must be disclosed in the notes on the accounts.

*Article 19*

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.

**▼B***Article 20***▼M10**

1. Provisions are intended to cover liabilities the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

**▼B**

2. The Member States may also authorize the creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.

**▼M10**

3. Provisions may not be used to adjust the values of assets.

**▼B***Article 21*

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under 'Accruals and deferred income'. The Member States may, however, provide that such charges shall be included in 'Creditors'. Where such charges are material, they must be disclosed in the notes on the accounts.

## SECTION 5

**Layout of the profit and loss account***Article 22*

For the presentation of the profit and loss account, the Member States shall prescribe one or more of the layouts provided for in Articles 23 to 26. If a Member State prescribes more than one layout, it may allow companies to choose from among them.

**▼M10**

By way of derogation from Article 2(1), Member States may permit or require all companies, or any classes of company, to present a statement of their performance instead of the presentation of profit and loss items in accordance with Articles 23 to 26, provided that the information given is at least equivalent to that otherwise required by those Articles.

**▼B***Article 23*

1. Net turnover.
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. (a) Raw materials and consumables.  
(b) Other external charges.
6. Staff costs:

**▼B**

- (a) wages and salaries;
  - (b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
  - (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
  8. Other operating charges.
  9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
  10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
  11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
  12. Value adjustments in respect of financial assets and of investments held as current assets.
  13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
  14. Tax on profit or loss on ordinary activities.
  15. Profit or loss on ordinary activities after taxation.
  16. Extraordinary income.
  17. Extraordinary charges.
  18. Extraordinary profit or loss.
  19. Tax on extraordinary profit or loss.
  20. Other taxes not shown under the above items.
  21. Profit or loss for the financial year.

*Article 24***A. Charges**

1. Reduction in stocks of finished goods and in work in progress:
2. (a) raw materials and consumables;
- (b) other external charges.
3. Staff costs:
  - (a) wages and salaries;
  - (b) social security costs, with a separate indication of those relating to pensions.
4. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.
- (b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
5. Other operating charges.
6. Value adjustments in respect of financial assets and of investments held as current assets.

**▼B**

7. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.
10. Extraordinary charges.
11. Tax on extraordinary profit or loss.
12. Other taxes not shown under the above items.
13. Profit or loss for the financial year.

**B. Income**

1. Net turnover.
2. Increase in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
6. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
7. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
8. Profit or loss on ordinary activities after taxation.
9. Extraordinary income.
10. Profit or loss for the financial year.

*Article 25*

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
12. Tax on profit or loss on ordinary activities.
13. Profit or loss on ordinary activities after taxation.
14. Extraordinary income.

**▼B**

15. Extraordinary charges.
16. Extraordinary profit or loss.
17. Tax on extraordinary profit or loss.
18. Other taxes not shown under the above items.
19. Profit or loss for the financial year.

*Article 26***A. Charges**

1. Cost of sales (including value adjustments).
2. Distribution costs (including value adjustments).
3. Administrative expenses (including value adjustments).
4. Value adjustments in respect of financial assets and of investments held as current assets.
5. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

**B. Income**

1. Net turnover.
2. Other operating income.
3. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
4. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
5. Other interest receivable and similar income with a separate indication of that derived from affiliated undertakings.
6. Profit or loss on ordinary activities after taxation.
7. Extraordinary income.
8. Profit or loss for the financial year.

*Article 27*

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria:

- ► **M12** balance sheet total: EUR 17 500 000 ◄,
- ► **M12** net turnover: EUR 35 000 000 ◄,
- average number of employees during the financial year: 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits:

- (a) in Article 23: 1 to 5 inclusive may be combined under one item called 'Gross profit or loss';

**▼B**

- (b) in Article 24: A (1), A (2) and B (1) to B (4) inclusive may be combined under one item called 'Gross profit or loss';
- (c) in Article 25: (1), (2), (3) and (6) may be combined under one item called 'Gross profit or loss';
- (d) in Article 26, A (1), B (1) and B (2) may be combined under one item called 'Gross profit or loss'.

Article 12 shall apply.

**▼M9**

In the case of those Member States which have not adopted the euro, the amount in national currency equivalent to the amounts specified in the first paragraph shall be that obtained by applying the exchange rate published in the *Official Journal of the European Union* on the date of the entry into force of ►**M12** any Directive setting those amounts. ◀

**▼B**

## SECTION 6

**Special provisions relating to certain items in the profit and loss account***Article 28*

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover.

*Article 29*

1. Income and charges that arise otherwise than in the course of the company's ordinary activities must be shown under 'Extraordinary income and extraordinary charges'.
2. Unless the income and charges referred to in paragraph 1 are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes on the accounts. The same shall apply to income and charges relating to another financial year.

*Article 30*

The Member States may permit taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss to be shown in total as one item in the profit and loss account before 'Other taxes not shown under the above items'. In that case, 'Profit or loss on ordinary activities after taxation' shall be omitted from the layouts prescribed in Articles 23 to 26.

Where this derogation is applied, companies must disclose in the notes on the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the 'Extraordinary profit or loss'.

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## SECTION 7

**Valuation rules***Article 31*

1. The Member States shall ensure that the items shown in the annual accounts are valued in accordance with the following general principles:

- (a) the company must be presumed to be carrying on its business as a going concern;
- (b) the methods of valuation must be applied consistently from one financial year to another;
- (c) valuation must be made on a prudent basis, and in particular:
  - (aa) only profits made at the balance sheet date may be included,

**▼M10**

- (bb) account must be taken of all liabilities arising in the course of the financial year concerned or of a previous one, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up,

**▼B**

- (cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;
- (d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;
- (e) the components of asset and liability items must be valued separately;
- (f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

**▼M10**

1a. In addition to those amounts recorded pursuant to paragraph (1) (c)(bb), Member States may permit or require account to be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up.

**▼B**

2. Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

*Article 32*

The items shown in the annual accounts shall be valued in accordance with Articles 34 to 42, which are based on the principle of purchase price or production cost.

*Article 33*

1. The Member States may declare to the Commission that they reserve the power, by way of derogation from Article 32 and pending subsequent coordination, to permit or require in respect of all companies or any classes of companies:



**▼B**

- (a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;
- (b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including capital and reserves;

**▼M10**

- (c) revaluation of fixed assets.

**▼B**

Where national law provides for valuation methods as indicated in (a), (b) and (c), it must define their content and limits and the rules for their application.

The application of any such method, the balance sheet and profit and loss account items concerned and the method by which the values shown are calculated shall be disclosed in the notes on the accounts.

2. (a) Where paragraph 1 is applied, the amount of the difference between valuation by the method used and valuation in accordance with the general rule laid down in Article 32 must be entered in the revaluation reserve under 'Liabilities'. The treatment of this item for taxation purposes must be explained either in the balance sheet or in the notes on the accounts.

For purposes of the application of the last subparagraph of paragraph 1, companies shall, whenever the amount of the reserve has been changed in the course of the financial year, publish in the notes on the accounts **inter alia** a table showing:

- the amount of the revaluation reserve at the beginning of the financial year,
- the revaluation differences transferred to the revaluation reserve during the financial year,
- the amounts capitalized or otherwise transferred from the revaluation reserve during the financial year, the nature of any such transfer being disclosed,
- the amount of the revaluation reserve at the end of the financial year.

- (b) The revaluation reserve may be capitalized in whole or in part at any time.
- (c) The revaluation reserve must be reduced to the extent that the amounts transferred thereto are no longer necessary for the implementation of the valuation method used and the achievement of its purpose.

The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only to the extent that the amounts transferred have been entered as charges in the profit and loss account or reflect increases in value which have been actually realized. These amounts must be disclosed separately in the profit and loss account. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents gains actually realized.

- (d) Save as provided under (b) and (c) the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the value adopted for the financial year in question, save that by way of derogation from Articles 4 and 22, the Member States may permit or require that only the amount of the value adjustments arising as a result of the application of the general rule laid down in Article 32 be shown

**▼B**

under the relevant items in the layouts prescribed in Articles 23 to 26 and that the difference arising as a result of the valuation method adopted under this Article be shown separately in the layouts. Furthermore, Articles 34 to 42 shall apply *mutatis mutandis*.

4. Where paragraph 1 is applied, the following must be disclosed, either in the balance sheet or in the notes on the accounts, separately for each balance sheet item as provided for in the layouts prescribed in Articles 9 and 10, except for stocks, either:

- (a) the amount at the balance sheet date of the valuation made in accordance with the general rule laid down in Article 32 and the amount of the cumulative value adjustments; or
- (b) the amount at the balance sheet date of the difference between the valuation made in accordance with this Article and that resulting from the application of Article 32 and, where appropriate, the cumulative amount of the additional value adjustments.

5. Without prejudice to Article 52 the Council shall, on a proposal from the Commission and within seven years of the notification of this Directive, examine and, where necessary, amend this Article in the light of economic and monetary trends in the Community.

*Article 34*

- 1. (a) Where national law authorizes the inclusion of formation expenses under 'Assets', they must be written off within a maximum period of five years.
  - (b) In so far as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.
2. The amounts entered under 'Formation expenses' must be explained in the notes on the accounts.

*Article 35*

- 1. (a) Fixed assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.
- (b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.
- (c) (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.
- (bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.
- (cc) The value adjustments referred to in (aa) and (bb) must be charged to the profit and loss account and disclosed separately in the notes on the accounts if they have not been shown separately in the profit and loss account.
- (dd) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.

**▼B**

- (d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes on the accounts.
2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.
3. (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.
- (b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.
4. Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under 'Assets' must be disclosed in the notes on the accounts.

*Article 36*

By way of derogation from Article 35 (1) (c) (cc), the Member States may allow investment companies within the meaning of Article 5 (2) to set off value adjustments to investments directly against 'Capital and reserves'. The amounts in question must be shown separately under 'Liabilities' in the balance sheet.

*Article 37*

1. Article 34 shall apply to costs of research and development. In exceptional cases, however, the Member States may permit derogations from Article 34 (1) (a). In that case, they may also provide for derogations from Article 34 (1) (b). Such derogations and the reasons for them must be disclosed in the notes on the accounts.
2. Article 34 (1) (a) shall apply to goodwill. The Member States may, however, permit companies to write goodwill off systematically over a limited period exceeding five years provided that this period does not exceed the useful economic life of the asset and is disclosed in the notes on the accounts together with the supporting reasons therefore.

*Article 38*

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall value of which is of secondary importance to the undertaking may be shown under 'Assets' at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

*Article 39*

1. (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.
- (b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.
- (c) The Member States may permit exceptional value adjustments where, on the basis of a reasonable commercial assessment,

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these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes on the accounts.

- (d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.
- (e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes on the accounts.

2. The definitions of purchase price and of production cost given in Article 35 (2) and (3) shall apply. The Member States may also apply Article 35 (4). Distribution costs may not be included in production costs.

*Article 40*

1. The Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or by the 'first in, first out' (FIFO) method, the 'last in, first out' (LIFO) method, or some similar method.

2. Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph 1, differs materially, at the balance sheet date, from the value on the basis of the last known market value prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes on the accounts.

*Article 41*

1. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes on the accounts.

2. The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

*Article 42***▼M10**

Provisions may not exceed in amount the sums which are necessary.

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The provisions shown in the balance sheet under 'Other provisions' must be disclosed in the notes on the accounts if they are material.

**▼M8**

## SECTION 7a

**Valuation at fair value***Article 42a*

1. By way of derogation from Article 32 and subject to the conditions set out in paragraphs 2 to 4 of this Article, Member States shall permit or require in respect of all companies or any classes of

**▼M8**

companies valuation at fair value of financial instruments, including derivatives.

Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.

2. For the purpose of this Directive commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument shall be considered to be derivative financial instruments, except when:

- (a) they were entered into and continue to meet the company's expected purchase, sale or usage requirements;
- (b) they were designated for such purpose at their inception; and
- (c) they are expected to be settled by delivery of the commodity.

3. Paragraph 1 shall apply only to liabilities that are:

- (a) held as part of a trading portfolio; or
- (b) derivative financial instruments.

4. Valuation according to paragraph 1 shall not apply to:

- (a) to non-derivative financial instruments held to maturity;
- (b) to loans and receivables originated by the company and not held for trading purposes; and
- (c) to interests in subsidiaries, associated undertakings and joint ventures, equity instruments issued by the company, contracts for contingent consideration in a business combination as well as other financial instruments with such special characteristics that the instruments, according to what is generally accepted, should be accounted for differently from other financial instruments.

5. By way of derogation from Article 32, Member States may in respect of any assets and liabilities which qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, permit valuation at the specific amount required under that system.

**▼M12**

5a. By way of derogation from the provisions of paragraphs 3 and 4, Member States may, in accordance with international accounting standards as adopted by Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council<sup>(1)</sup>, as amended until 5 September 2006, permit or require valuation of financial instruments, together with the associated disclosure requirements which are provided for in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>(2)</sup>.

**▼M8***Article 42b*

1. The fair value referred to in Article 42a shall be determined by reference to:

- (a) a market value, for those financial instruments for which a reliable market can readily be identified. Where a market value is not readily identifiable for an instrument but can be identified for its

<sup>(1)</sup> OJ L 261, 13.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 108/2006 (OJ L 24, 27.1.2006, p. 1).

<sup>(2)</sup> OJ L 243, 11.9.2002, p. 1.

**▼M8**

components or for a similar instrument, the market value may be derived from that of its components or of the similar instrument; or

- (b) a value resulting from generally accepted valuation models and techniques, for those instruments for which a reliable market cannot be readily identified. Such valuation models and techniques shall ensure a reasonable approximation of the market value.

2. Those financial instruments that cannot be measured reliably by any of the methods described in paragraph 1, shall be measured in accordance with Articles 34 to 42.

*Article 42c*

1. Notwithstanding Article 31(1)(c), where a financial instrument is valued in accordance with Article 42b, a change in the value shall be included in the profit and loss account. However, such a change shall be included directly in equity, in a fair value reserve, where:

- (a) the instrument accounted for is a hedging instrument under a system of hedge accounting that allows some or all of the change in value not to be shown in the profit and loss account; or
- (b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity.

2. Member States may permit or require a change in the value on an available for sale financial asset, other than a derivative financial instrument, to be included directly in equity, in the fair value reserve.

3. The fair value reserve shall be adjusted when amounts shown therein are no longer necessary for the implementation of paragraphs 1 and 2.

*Article 42d*

Where valuation at fair value of financial instruments has been applied, the notes on the accounts shall disclose:

- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 42b(1)(b);
- (b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as changes included in the fair value reserve;
- (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
- (d) a table showing movements in the fair value reserve during the financial year.

**▼M10***Article 42e*

By way of derogation from Article 32, Member States may permit or require in respect of all companies or any classes of company the valuation of specified categories of assets other than financial instruments at amounts determined by reference to fair value.

Such permission or requirement may be restricted to consolidated accounts as defined in Directive 83/349/EEC.

**▼M10***Article 42f*

Notwithstanding Article 31(1)(c), Member States may permit or require in respect of all companies or any classes of company that, where an asset is valued in accordance with Article 42e, a change in the value is included in the profit and loss account.

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## SECTION 8

**Contents of the notes on the accounts***Article 43*

1. In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

- (1) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;
- (2) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50 % of its capital is held (directly or indirectly) by the company;

**▼M5**

the name, the head or registered office and the legal form of each of the undertakings of which the company or firm is a member having unlimited liability. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only;

**▼B**

- (3) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of this capital is concerned to Article 2 (1) (e) of Directive 68/151/EEC or to Article 2 (c) of Directive 77/91/EEC;
- (4) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;
- (5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;
- (6) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in ►**M10** Articles 9, 10 and 10a ◀;

**▼B**

- (7) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;

**▼M12**

- (7a) the nature and business purpose of the company's arrangements that are not included in the balance sheet and the financial impact on the company of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the company.

Member States may permit the companies referred to in Article 27 to limit the information required to be disclosed by this point to the nature and business purpose of such arrangements;

- (7b) transactions which have been entered into with related parties by the company, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the company, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the company.

Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed in this point unless those companies are of a type referred to in Article 1(1) of Directive 77/91/EEC, in which case Member States may limit disclosure to, as a minimum, transactions entered into directly or indirectly between:

- (i) the company and its major shareholders,
- and
- (ii) the company and the members of the administrative, management and supervisory bodies.

Member States may exempt transactions entered into between two or more members of a group provided that subsidiaries which are party to the transaction are wholly owned by such a member.

‘Related party’ has the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002;

**▼B**

- (8) the net turnover within the meaning of Article 28, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;
- (9) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in Article 23 (6);
- (10) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in ►M8 Articles 31 and 34 to 42c ◄, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;



**▼B**

- (11) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;
- (12) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category;
- (13) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category;

**▼M8**

- 14. where valuation at fair value of financial instruments has not been applied in accordance with Section 7a:
  - (a) for each class of derivative financial instruments:
    - (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1);
    - (ii) information about the extent and the nature of the instruments; and
  - (b) for financial fixed assets covered by Article 42a, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa):
    - (i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
    - (ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered;

**▼M11**

- (15) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

Member States may provide that this requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 1 of Directive 83/349/EEC, provided that such information is given in the notes to the consolidated accounts.

**▼B**

- 2. Pending subsequent coordination, the Member States need not apply paragraph 1 (2) to financial holding companies within the meaning of Article 5 (3).

**▼M4**

- 3. Member States may waive the requirement to provide the information referred to in paragraph 1 point 12 where such information makes it possible to identify the position of a specific member of such a body.

**▼M4***Article 44***▼M11**

1. Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43(1)(5) to (12), (14)(a) and (15). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned.

**▼M4**

2. Member States may also permit the companies referred to in paragraph 1 to be exempted from the obligation to disclose in the notes on their accounts the information prescribed in Article 15 (3) (a) and (4), Articles 18, 21 and 29 (2), the second subparagraph of Article 30, Article 34 (2), Article 40 (2) and the second subparagraph of Article 42.

3. Article 12 shall apply.

**▼B***Article 45*

1. The Member States may allow the disclosures prescribed in Article 43 (1) (2):

- (a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;
- (b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 43 (1) (2) relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

**▼M11**

2. Paragraph 1(b) shall also apply to the information specified in Article 43(1)(8).

The Member States may permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(8). The Member States may also permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(15), provided that such information is delivered to the public oversight system referred to in Article 32 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts <sup>(1)</sup> when requested by such a public oversight system.

**▼B**

## SECTION 9

**Contents of the annual report***Article 46***▼M10**

1. (a) The annual report shall include at least a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.

The review shall be a balanced and comprehensive analysis of the development and performance of the company's business

<sup>(1)</sup> OJ L 157, 9.6.2006, p. 87.

**▼M10**

and of its position, consistent with the size and complexity of the business;

- (b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters;
- (c) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.

**▼B**

2. The report shall also give an indication of:
- (a) any important events that have occurred since the end of the financial year;
  - (b) the company's likely future development;
  - (c) activities in the field of research and development;
  - (d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

**▼M3**

- (e) the existence of branches of the company;

**▼M8**

- (f) in relation to the company's use of financial instruments and where material for the assessment of its assets, liabilities, financial position and profit or loss,
  - the company's financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
  - the company's exposure to price risk, credit risk, liquidity risk and cash flow risk.

**▼M4**

3. Member States may waive the obligation on companies covered by Article 11 to prepare annual reports, provided that the information referred to in Article 22 (2) of Directive 77/91/EEC concerning the acquisition by a company of its own shares is given in the notes to their accounts.

**▼M10**

4. Member States may choose to exempt companies covered by Article 27 from the obligation in paragraph 1(b) above in so far as it relates to non-financial information.

**▼M12***Article 46a*

1. A company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(1)</sup> shall include a corporate governance statement in its annual report. That statement shall be included as a specific section of the annual report and shall contain at least the following information:

- (a) a reference to:
  - (i) the corporate governance code to which the company is subject,
  - and/or
  - (ii) the corporate governance code which the company may have voluntarily decided to apply,

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

**▼M12**

and/or

- (iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

Where points (i) and (ii) apply, the company shall also indicate where the relevant texts are publicly available; where point (iii) applies, the company shall make its corporate governance practices publicly available;

- (b) to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so;
- (c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
- (d) the information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids<sup>(1)</sup>, where the company is subject to that Directive;
- (e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;
- (f) the composition and operation of the administrative, management and supervisory bodies and their committees.

2. Member States may permit the information required by this Article to be set out in a separate report published together with the annual report in the manner set out in Article 47 or by means of a reference in the annual report where such document is publicly available on the company's website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in paragraph 1, point (d) is made available. Article 51(1), second subparagraph shall apply to the provisions of paragraph 1, points (c) and (d) of this Article. For the remaining information, the statutory auditor shall check that the corporate governance statement has been produced.

3. Member States may exempt companies which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of Article 4(1), point (14) of Directive 2004/39/EC, from the application of the provisions of paragraph 1, points (a), (b), (e) and (f), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point (15) of Directive 2004/39/EC.

**▼B**

## SECTION 10

**Publication***Article 47*

1. The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of

<sup>(1)</sup> OJ L 142, 30.4.2004, p. 12.

**▼B**

each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. ►**M1** It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost. ◀

**▼M5**

1a. The Member State of a company or firm referred to in Article 1 (1), second and third subparagraphs (entity concerned) may exempt that entity from publishing its accounts in accordance with Article 3 of Directive 68/151/EEC, provided that those accounts are available to the public at its head office, where:

- (a) all the members having unlimited liability of the entity concerned are the companies referred to in the first subparagraph of Article 1 (1) governed by the laws of Member States other than the Member State whose law governs that entity and none of those companies publishes the accounts of the entity concerned with its own accounts; or
- (b) all the members having unlimited liability are companies which are not governed by the laws of a Member State but which have a legal form comparable to those referred to in Directive 68/151/EEC.

Copies of the accounts must be obtainable upon request. The price of such a copy may not exceed its administrative cost. Appropriate sanctions must be provided for failure to comply with the publication obligation imposed in this paragraph.

**▼B**

2. By way of derogation from paragraph 1, the Member States may permit the companies referred to in Article 11 to publish:

- (a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9 and in D (11) in Article 10, but in total for all the items concerned; and

**▼M4**

- (b) abridged notes on their accounts in accordance with Article 44.

**▼B**

Article 12 shall apply.

In addition, the Member States may relieve such companies from the obligation to publish their profit and loss accounts and annual reports and the opinions of the persons responsible for auditing the accounts.

3. The Member States may permit the companies mentioned in Article 27 to publish:

- (a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10 disclosing separately, either in the balance sheet or in the notes on the accounts:
  - C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6) and D (III) (1) and (2) under 'Assets' and C, (1), (2), (6), (7) and (9) under 'Liabilities' in Article 9,
  - C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 10,
  - the information required in brackets in D (II) under 'Assets' and C under 'Liabilities' in Article 9, in total for all the items concerned and separately for D (II) (2) and (3) under 'Assets' and C (1), (2), (6), (7) and (9) under 'Liabilities',

**▼B**

- the information required in brackets in D (11) in Article 10, in total for all the items concerned, and separately for D (II) (2) and (3);
- (b) abridged notes on their accounts without the information required in Article 43 (1) (5), (6), (8), (10) and (11). However, the notes on the accounts must give the information specified in Article 43 (1) (6) in total for all the items concerned.

This paragraph shall be without prejudice to paragraph 1 in so far as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts.

Article 12 shall apply.

*Article 48*

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report.

► **M10** ————— ◀

*Article 49*

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. ► **M10** The report of the person or persons responsible for auditing the annual accounts (hereinafter: the statutory auditors) shall not accompany this publication, but it shall be disclosed whether an unqualified, qualified or adverse audit opinion was expressed, or whether the statutory auditors were unable to express an audit opinion. It shall also be disclosed whether the report of the statutory auditors included a reference to any matters to which the statutory auditors drew attention by way of emphasis without qualifying the audit opinion. ◀

*Article 50*

The following must be published together with the annual accounts, and in like manner:

- the proposed appropriation of the profit or treatment of the loss,
- the appropriation of the profit or treatment of the loss,

where these items do not appear in the annual accounts.

**▼M4***Article 50a*

Annual accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the

**▼M4**

balance sheet date. That rate shall be disclosed in the notes on the accounts.

**▼M12**

## SECTION 10A

**Duty and liability for drawing up and publishing the annual accounts and the annual report***Article 50b*

Member States shall ensure that the members of the administrative, management and supervisory bodies of the company have collectively the duty to ensure that the annual accounts, the annual report and, when provided separately, the corporate governance statement to be provided pursuant to Article 46a are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002. Such bodies shall act within the competences assigned to them by national law.

*Article 50c*

Member States shall ensure that their laws, regulations and administrative provisions on liability apply to the members of the administrative, management and supervisory bodies referred to in Article 50b, at least towards the company, for breach of the duty referred to in Article 50b.

**▼B**

## SECTION 11

**Auditing***Article 51***▼M10**

1. The annual accounts of companies shall be audited by one or more persons approved by Member States to carry out statutory audits on the basis of the Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents <sup>(1)</sup>.

The statutory auditors shall also express an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.

**▼B**

2. The Member States may relieve the companies referred to in Article 11 from the obligation imposed by paragraph 1.

Article 12 shall apply.

3. Where the exemption provided for in paragraph 2 is granted the Member States shall introduce appropriate sanctions into their laws for cases in which the annual accounts or the annual reports of such companies are not drawn up in accordance with the requirements of this Directive.

**▼M10***Article 51a*

1. The report of the statutory auditors shall include:

<sup>(1)</sup> OJ L 126, 12.5.1984, p. 20.

**▼M10**

- (a) an introduction which shall at least identify the annual accounts that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
  - (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
  - (c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the annual accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
  - (d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
  - (e) an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.
2. The report shall be signed and dated by the statutory auditors.

**▼B**

## SECTION 12

**Final provisions***Article 52*

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be:
  - (a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;
  - (b) to advise the Commission, if necessary, on additions or amendments to this Directive.
2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.
3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

*Article 53***▼M10****▼B**

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in European units of account in this Directive, in the light of economic and monetary trends in the Community.

**▼M12***Article 53a*

Member States shall not make available the exemptions set out in Articles 11, 27, 43(1), points (7a) and (7b), 46, 47 and 51 in the case



**▼M12**

of companies whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC.

**▼M3****▼B***Article 55*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. The Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 18 months after the end of the period provided for in that paragraph.

That period of 18 months may, however, be five years:

- (a) in the case of unregistered companies in the United Kingdom and Ireland;
- (b) for purposes of the application of Articles 9 and 10 and Articles 23 to 26 concerning the layouts for the balance sheet and the profit and loss account, where a Member State has brought other layouts for these documents into force not more than three years before the notification of this Directive;
- (c) for purposes of the application of this Directive as regards the calculation and disclosure in balance sheets of depreciation relating to assets covered by the asset items mentioned in Article 9, C (II) (2) and (3), and Article 10, C (II) (2) and (3);
- (d) for purposes of the application of Article 47 (1) of this Directive except as regards companies already under an obligation of publication under Article 2 (1) (f) of Directive 68/151/EEC. In this case the second subparagraph of Article 47 (1) of this Directive shall apply to the annual account and to the opinion drawn up by the person responsible for auditing the accounts;
- (e) for purposes of the application of Article 51 (1) of this Directive.

Furthermore, this period of 18 months may be extended to eight years for companies the principal object of which is shipping and which are already in existence on the entry into force of the provisions referred to in paragraph 1.

3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

**▼M1***Article 56*

1. The obligation to show in annual accounts the items prescribed by ►M10 Articles 9, 10, 10a ◀ and 23 to 26 which relate to affiliated undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

2. The notes on the accounts must also disclose:

- (a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;

▼ M1

- (b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;
- (c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.

*Article 57*

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

- (a) the parent undertaking must be subject to the laws of a Member State;
- (b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;
- (c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;
- (d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;
- (e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;
- (f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.

▼ M5*Article 57a*

1. Member States may require the companies referred to in the first subparagraph of Article 1 (1) governed by their law, which are members having unlimited liability of any of the companies and firms listed in Article 1 (1), second and third subparagraphs (entity concerned), to draw up, have audited and publish, with their own accounts, the accounts of the entity concerned in conformity with the provisions of this Directive.

In this case, the requirements of this Directive do not apply to the entity concerned.

2. Member States need not apply the requirements of this Directive to the entity concerned where:

- (a) the accounts of this entity are drawn up, audited and published in conformity with the provisions of this Directive by a company which is a member having unlimited liability of the entity and is governed by the law of another Member State;
- (b) the entity concerned is included in consolidated accounts drawn up, audited and published in accordance with Directive 83/349/EEC by

**▼M5**

a member having unlimited liability or where the entity concerned is included in the consolidated accounts of a larger body of undertakings drawn up, audited and published in conformity with Council Directive 83/349/EEC by a parent undertaking governed by the law of a Member State. The exemption must be disclosed in the notes on the consolidated accounts.

3. In these cases, the entity concerned must reveal to whomsoever so requests the name of the entity publishing the accounts.

**▼M1***Article 58*

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

- (a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;
- (b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;
- (c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.

*Article 59*

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items 'shares in affiliated undertakings' or 'participating interests', as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the 'shareholders' or 'members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

- (a) at its book value calculated in accordance with ►M8 Section 7 or 7a ◀. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or
- (b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with ►M8 Section 7 or 7a ◀ shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.
- (c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the account must indicate whether (a) or (b) above has been used.

**▼M1**

- (d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.
3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.
4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.
5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item 'goodwill'.
6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.
- (b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.
- (c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.
7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.
8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.
9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).

**▼B***Article 60*

Pending subsequent coordination, the Member States may prescribe that investments in which investment companies within the meaning of Article 5 (2) have invested their funds shall be valued ►**M10** on the basis of their fair value ◀.

In that case, the Member States may also waive the obligation on investment companies with variable capital to show separately the value adjustments referred to in Article 36.

**▼M12***Article 60a*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

**▼M1***Article 61*

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

- (a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or
- (b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.

**▼M12***Article 61a*

Not later than 1 July 2007, the Commission shall review the provisions in Articles 42a to 42f, Article 43(1)(10) and (14), Article 44(1), Article 46(2)(f) and Article 59(2)(a) and (b) in the light of the experience acquired in applying provisions on fair value accounting, with particular regard to IAS 39 as endorsed in accordance with Regulation (EC) No 1606/2002, and taking account of international developments in the field of accounting and, if appropriate, submit a proposal to the European Parliament and the Council with a view to amending the abovementioned Articles.

**▼B***Article 62*

This Directive is addressed to the Member States.

## 31978L0660

### Title and reference

**Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies**

*OJ L 222, 14.8.1978, p. 11–31 (DA, DE, EN, FR, IT, NL)  
 Finnish special edition: Chapter 17 Volume 1 P. 0017  
 Greek special edition: Chapter 06 Volume 2 P. 0017  
 Swedish special edition: Chapter 17 Volume 1 P. 0017  
 Spanish special edition: Chapter 17 Volume 1 P. 0055  
 Portuguese special edition Chapter 17 Volume 1 P. 0055  
 Special edition in Czech Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Estonian Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Hungarian Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Lithuanian Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Latvian Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Maltese Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Polish Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Slovakian Chapter 17 Volume 01 P. 21 - 41  
 Special edition in Slovenian Chapter 17 Volume 01 P. 21 - 41*

DA DE EN FR IT NL

### Text

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV	LT	HU	MT	NL	PL	PT	RO
<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>		<a href="#">html</a>	<a href="#">html</a>		<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	
<a href="#">pdf</a>		<a href="#">pdf</a>			<a href="#">pdf</a>						<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>		<a href="#">pdf</a>		<a href="#">pdf</a>
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 of transposition: 30/01/1982; See Art 55  
 of transposition: 31/07/1985; See Art 55  
 of transposition: 31/01/1982; See Art 55

### Classifications

- **EUROVOC descriptor:**  
[publication of accounts](#)  
[account](#)  
[balance sheet](#)  
[capital market](#)  
[capital movement](#)  
[organisation](#)
- **Directory code:**  
[17.10.00.00 Law relating to undertakings / Company law](#)
- **Subject matter:**  
[Approximation of laws, Internal market, Freedom of establishment and services](#)

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[Council](#)
- **Form:**  
[Directive](#)
- **Addressee:**  
[The Member States](#)
- **Additional information:**  
[Extended to the EEA by 21994A0103\(01\)](#)

### Relationship between documents

- **Treaty:**  
[European Economic Community](#)
- **Legal basis:**  
[11957E054 -P3G](#)
- **Select all documents based on this document**
- **Amended by:**  
[Amended by 11979HN01/03/C Completion Article 1 from 01/01/1981](#)  
[Amended by 31983L0349 Amendment Article 47.1 from 29/06/1983](#)  
[Amended by 31983L0349 Replacement Article 56 from 29/06/1983](#)  
[Amended by 31983L0349 Replacement Article 57 from 29/06/1983](#)  
[Amended by 31983L0349 Replacement Article 58 from 29/06/1983](#)  
[Amended by 31983L0349 Replacement Article 59 from 29/06/1983](#)  
[Amended by 31983L0349 Replacement Article 61 from 29/06/1983](#)  
[Amended by 31984L0569 Amendment Article 11](#)  
[Amended by 31984L0569 Amendment Article 27](#)  
[Amended by 31984L0569 Replacement Article 53.1](#)  
[Amended by 31984L0569 Replacement NOTE](#)  
[Completed by 11985IN01/02/D Completion Article 1.1 from 01/01/1986](#)  
[Amended by 31989L0666 Completion Article 46.2 from 03/01/1990](#)

Amended by [31989L0666](#) abolition Article 54 from 03/01/1990  
 Amended by [31990L0604](#) Completion Article 11 from 19/11/1990  
 Amended by [31990L0604](#) Addition Article 43.3 from 19/11/1990  
 Amended by [31990L0604](#) Replacement Article 44 from 19/11/1990  
 Amended by [31990L0604](#) Addition Article 46.3 from 19/11/1990  
 Amended by [31990L0604](#) Amendment Article 47.2 from 19/11/1990  
 Amended by [31990L0604](#) Addition Article 50BIS from 19/11/1990  
 Amended by [31990L0604](#) Replacement Article 53.1 from 19/11/1990  
 Amended by [31990L0605](#) Completion Article 1.1 from 20/11/1990  
 Amended by [31990L0605](#) Completion Article 43.1 from 20/11/1990  
 Amended by [31990L0605](#) Addition Article 47.1BIS from 20/11/1990  
 Amended by [31990L0605](#) Addition Article 57BIS from 20/11/1990  
 Amended by [11994NN01/11/A](#) Completion Article 1.1 from 01/01/1995  
 Incorporated by [21994A0103\(72\)](#)  
 Amended by [31994L0008](#) Amendment Article 11 from 25/03/1994  
 Amended by [31994L0008](#) Amendment Article 27 from 25/03/1994  
 Implemented by [31994L0008](#) Implementation Article 53.2 from 25/03/1994  
 Amended by [31999L0060](#) Amendment Article 11 from 26/06/1999  
 Amended by [31999L0060](#) Amendment Article 27 from 26/06/1999  
 Completed by [32001L0065](#) from 17/10/2001  
 Amended by [32001L0065](#) Addition Article 42 BI from 17/10/2001  
 Amended by [32001L0065](#) Addition Article 42 OQ from 17/10/2001  
 Amended by [32001L0065](#) Addition Article 42 OT from 17/10/2001  
 Amended by [32001L0065](#) Addition Article 42 TR from 17/10/2001  
 Amended by [32001L0065](#) Amendment Article 43.1 from 17/10/2001  
 Amended by [32001L0065](#) Completion Article 43.1 from 17/10/2001  
 Amended by [32001L0065](#) Replacement Article 44.1 from 17/10/2001  
 Amended by [32001L0065](#) Completion Article 46.2 from 17/10/2001  
 Amended by [32001L0065](#) Amendment Article 59.2 from 17/10/2001  
 Amended by [32001L0065](#) Addition Article 61 BI from 17/10/2001  
 Amended by [12003TN02/04/B](#) Completion Article 1.1 from 01/05/2004  
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 Amended by [32003L0038](#) Amendment Article 11.1 from 15/05/2003  
 Amended by [32003L0038](#) Completion Article 27 from 15/05/2003  
 Amended by [32003L0038](#) Amendment Article 27.1 from 15/05/2003  
 Amended by [32003L0051](#) Addition Article 10 BI from 17/07/2003  
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 Amended by [32003L0051](#) Addition Article 31.1 BI from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 33.1 from 17/07/2003  
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 Amended by [32003L0051](#) Replacement Article 42.1 from 17/07/2003  
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 Amended by [32003L0051](#) Addition Article 42 SX from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 43.1 from 17/07/2003  
 Amended by [32003L0051](#) Replacement Article 46.1 from 17/07/2003  
 Amended by [32003L0051](#) Addition Article 46.4 from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 48 from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 49 from 17/07/2003  
 Amended by [32003L0051](#) Replacement Article 51.1 from 17/07/2003  
 Amended by [32003L0051](#) Addition Article 51 BI from 17/07/2003  
 Amended by [32003L0051](#) abolition Article 53.1 from 17/07/2003  
 Amended by [32003L0051](#) Addition Article 53 BI from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 56.1 from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 60.1 from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 61 BI from 17/07/2003  
 Amended by [32003L0051](#) Completion Article 8 from 17/07/2003  
 Amended by [32003L0051](#) Amendment Article 9 from 17/07/2003  
 Amended by [32003L0051](#) Replacement TIT Article 10.J. from 17/07/2003  
 Amended by [32006L0043](#) Amendment Article 43.1 from 29/06/2006  
 Amended by [32006L0043](#) Replacement Article 44.1 from 29/06/2006  
 Amended by [32006L0046](#) Amendment Article 11 from /T/DATN  
 Amended by [32006L0046](#) Amendment Article 27 from /T/DATN  
 Amended by [32006L0046](#) Addition Article 42BIS.5BIS from /T/DATN  
 Amended by [32006L0046](#) Amendment Article 43.1 from /T/DATN  
 Amended by [32006L0046](#) Addition Article 46BIS from /T/DATN  
 Amended by [32006L0046](#) Replacement Article 53BIS from /T/DATN  
 Amended by [32006L0046](#) Addition Article 60BIS from /T/DATN  
 Amended by [32006L0046](#) Replacement Article 61.BIS from /T/DATN  
 Amended by [32006L0046](#) Addition SECTION 10BIS from /T/DATN

► **Consolidated versions**

[1995-01-01](#)  
[2001-11-16](#)  
[2003-05-15](#)  
[2003-07-17](#)  
[2004-05-01](#)  
[2006-06-29](#)  
[2007-01-01](#)

► **Subsequent related instruments:**

Amendment proposed by [51984PC0361](#)  
 Amendment proposed by [51986PC0238](#)  
 Amendment proposed by [51988PC0292](#)  
 Amendment proposed by [51993PC0390](#)  
 Amendment proposed by [51998PC0724](#)  
 Amendment proposed by [52000PC0080](#)  
 Amendment proposed by [52002PC0259](#)  
 Amendment proposed by [52003PC0029](#)  
 Amendment proposed by [52004PC0177](#)  
 Amendment proposed by [52004PC0725](#)  
 Amendment proposed by [52008PC0195](#)

► **Affected by case:**

Proceedings concerning failure by Member States [61985J0017](#)  
 Interpreted by [61989J0038](#)  
 A31P1LCLAA Interpreted by [61994J0234](#)  
 A47P1 Proceedings concerning failure by Member States [61995J0191](#)  
 Interpreted by [61997J0275](#)  
 A14 Interpreted by [61999J0306](#)  
 A20P1 Interpreted by [61999J0306](#)  
 A31P1LE Interpreted by [61999J0306](#)  
 A47 Declared valid incidentally [62002A0047](#)

► **Display the national execution measures**  
MNE

► **Instruments cited:**  
11957E169

11957E170

31968L0151

31975L3289

31977L0091

► **Select all documents mentioning this document**

Consolidated versions

► **consolidation form:**  
01978L0660

**Text**

Bilingual display: BG CS DA DE EL EN ES ET FI FR HU IT LV MT NL PL PT RO SK SL SV

FOURTH COUNCIL DIRECTIVE of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the coordination of national provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used therein and their publication in respect of certain companies with limited liability is of special importance for the protection of members and third parties;

Whereas simultaneous coordination is necessary in these fields for these forms of company because, on the one hand, these companies' activities frequently extend beyond the frontiers of their national territories and, on the other, they offer no safeguards to third parties beyond the amounts of their net assets ; whereas, moreover, the necessity for and the urgency of such coordination have been recognized and confirmed by Article 2 (1) (f) of Directive 68/151/EEC (3);

Whereas it is necessary, moreover, to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another;

Whereas annual accounts must give a true and fair view of a company's assets and liabilities, financial position and profit or loss ; whereas to this end a mandatory layout must be prescribed for the balance sheet and the profit and loss account and whereas the minimum content of the notes on the accounts and the annual report must be laid down ; whereas, however, derogations may be granted for certain companies of minor economic or social importance;

Whereas the different methods for the valuation of assets and liabilities must be coordinated to the extent necessary to ensure that annual accounts disclose comparable and equivalent information;

Whereas the annual accounts of all companies to which this Directive applies must be published in accordance with Directive 68/151/EEC ; whereas, however, certain derogations may likewise be granted in this area for small and medium-sized companies;

Whereas annual accounts must be audited by authorized persons whose minimum qualifications will be the subject of subsequent coordination ; whereas only small companies may be relieved of this audit obligation;

Whereas, when a company belongs to a group, it is desirable that group accounts giving a true and fair view of the activities of the group as a whole be published ; whereas, however, pending the entry into force of a Council Directive on consolidated accounts, derogations from certain provisions of this Directive are necessary;

Whereas, in order to meet the difficulties arising from the present position regarding legislation in certain Member States, the period allowed for the implementation of certain provisions of this Directive must be longer than the period generally laid down in such cases,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The coordination measures prescribed by this Directive shall apply to the laws, regulations and (1)OJ No C 129, 11.12.1972, p. 38. (2)OJ No C 39, 7.6.1973, p. 31. (3)OJ No L 65, 14.3.1968, p. 8.

administrative provisions of the Member States relating to the following types of companies: - in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

- in Belgium:

la société anonyme/de naamloze vennootschap, la société en commandite par actions / de commanditaire vennootschap op aandelen, la société de personnes à responsabilité limitée/de personenvennootschap met beperkte aansprakelijkheid;

- in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

- in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

- in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

- in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

- in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

- in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

- in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. Pending subsequent coordination, the Member States need not apply the provisions of this Directive to banks and other financial institutions or to insurance companies.



## SECTION 1 General provisions

## Article 2

1. The annual accounts shall comprise the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.
2. They shall be drawn up clearly and in accordance with the provisions of this Directive.
3. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and profit or loss.
4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3, additional information must be given.
5. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.
6. The Member States may authorize or require the disclosure in the annual accounts of other information as well as that which must be disclosed in accordance with this Directive.

## SECTION 2 General provisions concerning the balance sheet and the profit and loss account

## Article 3

The layout of the balance sheet and of the profit and loss account, particularly as regards the form adopted for their presentation, may not be changed from one financial year to the next. Departures from this principle shall be permitted in exceptional cases. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons therefor.

## Article 4

1. In the balance sheet and in the profit and loss account the items prescribed in Articles 9, 10 and 23 to 26 must be shown separately in the order indicated. A more detailed subdivision of the items shall be authorized provided that the layouts are complied with. New items may be added provided that their contents are not covered by any of the items prescribed by the layouts. Such subdivision or new items may be required by the Member States.
2. The layout, nomenclature and terminology of items in the balance sheet and profit and loss account that are preceded by Arabic numerals must be adapted where the special nature of an undertaking so requires. Such adaptations may be required by the Member States of undertakings forming part of a particular economic sector.
3. The balance sheet and profit and loss account items that are preceded by Arabic numerals may be combined where: (a) they are immaterial in amount for the purposes of Article 2 (3) ; or  
(b) such combination makes for greater clarity, provided that the items so combined are dealt with separately in the notes on the accounts. Such combination may be required by the Member States.
4. In respect of each balance sheet and profit and loss account item the figure relating to the corresponding item for the preceding financial year must be shown. The Member States may provide that, where these figures are not comparable, the figure for the preceding financial year must be adjusted. In any case, non-comparability and any adjustment of the figures must be disclosed in the notes on the accounts, with relevant comments.
5. Save where there is a corresponding item for the preceding financial year within the meaning of paragraph 4, a balance sheet or profit and loss account item for which there is no amount shall not be shown.

## Article 5

1. By way of derogation from Article 4 (1) and (2), the Member States may prescribe special layouts for the annual accounts of investment companies and of financial holding companies provided that these layouts give a view of these companies equivalent to that provided for in Article 2 (3).
2. For the purposes of this Directive, "investment companies" shall mean only: (a) those companies the sole object of which is to invest their funds in various securities, real property and other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets;  
(b) those companies associated with investment companies with fixed capital if the sole object of the companies so associated is to acquire fully paid shares issued by those investment companies without prejudice to the provisions of Article 20 (1) (h) of Directive 77/91/EEC (1).
3. For the purposes of this Directive, "financial holding companies" shall mean only those companies the sole object of which is to acquire holdings in other undertakings, and to manage such holdings and turn them to profit, without involving themselves directly or indirectly in the management of those undertakings, the foregoing without prejudice to their rights as shareholders. The limitations imposed on the activities of these companies must be such that compliance with them can be supervised by an administrative or judicial authority.

## Article 6

The Member States may authorize or require adaptation of the layout of the balance sheet and profit and loss account in order to include the appropriation of profit or the treatment of loss.

## Article 7

Any set-off between asset and liability items, or between income and expenditure items, shall be prohibited.

## SECTION 3 Layout of the balance sheet

## Article 8

For the presentation of the balance sheet, the Member States shall prescribe one or both of the (1)OJ No L 26, 31.1.1977, p. 1. layouts prescribed by Articles 9 and 10. If a Member State prescribes both, it may allow companies to choose between them.

## Article 9

## Assets

- A. Subscribed capital unpaid  
of which there has been called

(unless national law provides that called-up capital be shown under "Liabilities". In that case, the part of the capital called but not yet paid must appear as an asset either under A or under D (II) (5)).

- B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under "Intangible assets".

- C. Fixed assets

## I. Intangible assets

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were: (a) acquired for valuable consideration and need not be shown under C (I) (3) ; or  
(b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.

4. Payments on account.

## II. Tangible assets

1. Land and buildings.

2. Plant and machinery.
  3. Other fixtures and fittings, tools and equipment.
  4. Payments on account and tangible assets in course of construction.
- III. Financial assets
1. Shares in affiliated undertakings.
  2. Loans to affiliated undertakings.
  3. Participating interests.
  4. Loans to undertakings with which the company is linked by virtue of participating interests.
  5. Investments held as fixed assets.
  6. Other loans.
  7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
- D. Current assets
- I. Stocks
1. Raw materials and consumables.
  2. Work in progress.
  3. Finished goods and goods for resale.
  4. Payments on account.
- II. Debtors (Amounts becoming due and payable after more than one year must be shown separately for each item.)
1. Trade debtors.
  2. Amounts owed by affiliated undertakings.
  3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
  4. Other debtors.
  5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown as an asset under A).
  6. Prepayments and accrued income (unless national law provides for such items to be shown as an asset under E).
- III. Investments
1. Shares in affiliated undertakings.
  2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
  3. Other investments.
- IV. Cash at bank and in hand
- E. Prepayments and accrued income  
(unless national law provides for such items to be shown as an asset under D (II) (6)).
- F. Loss for the financial year  
(unless national law provides for it to be shown under A (VI) under "Liabilities").
- Liabilities
- A. Capital and reserves I. Subscribed capital  
(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).
- II. Share premium account
- III. Revaluation reserve
- IV. Reserves
1. Legal reserve, in so far as national law requires such a reserve.
  2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.
  3. Reserves provided for by the articles of association.
  4. Other reserves.
- V. Profit or loss brought forward
- VI. Profit or loss for the financial year  
(unless national law requires that this item be shown under F under "Assets" or under E under "Liabilities").
- B. Provisions for liabilities and charges
1. Provisions for pensions and similar obligations.
  2. Provisions for taxation.
  3. Other provisions.
- C. Creditors  
(Amounts becoming due and payable within one year and amounts becoming due and payable after more than one year must be shown separately for each item and for the aggregate of these items.)
1. Debenture loans, showing convertible loans separately.
  2. Amounts owed to credit institutions.
  3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
  4. Trade creditors.
  5. Bills of exchange payable.
  6. Amounts owed to affiliated undertakings.
  7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
  8. Other creditors including tax and social security.
  9. Accruals and deferred income (unless national law provides for such items to be shown under D under "Liabilities").
- D. Accruals and deferred income  
(unless national law provides for such items to be shown under C (9) under "Liabilities").

## E. Profit for the financial year

(unless national law provides for it to be shown under A (VI) under "Liabilities").

## Article 10

## A. Subscribed capital unpaid

of which there has been called

(unless national law provides that called-up capital be shown under L. In that case, the part of the capital called but not yet paid must appear either under A or under D (II) (5)).

## B. Formation expenses

as defined by national law, and in so far as national law permits their being shown as an asset. National law may also provide for formation expenses to be shown as the first item under "Intangible assets".

## C. Fixed assets

## I. Intangible assets

1. Costs of research and development, in so far as national law permits their being shown as assets.
2. Concessions, patents, licences, trade marks and similar rights and assets, if they were: (a) acquired for valuable consideration and need not be shown under C (I) (3) ; or  
(b) created by the undertaking itself, in so far as national law permits their being shown as assets.
3. Goodwill, to the extent that it was acquired for valuable consideration.

## 4. Payments on account.

## II. Tangible assets

1. Land and buildings.
2. Plant and machinery.
3. Other fixtures and fittings, tools and equipment.
4. Payments on account and tangible assets in course of construction.

## III. Financial assets

1. Shares in affiliated undertakings.
2. Loans to affiliated undertakings.
3. Participating interests.
4. Loans to undertakings with which the company is linked by virtue of participating interests.
5. Investments held as fixed assets.
6. Other loans.
7. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.

## D. Current assets

## I. Stocks

1. Raw materials and consumables.
2. Work in progress.
3. Finished goods and goods for resale.
4. Payments on account.

## II. Debtors

(Amounts becoming due and payable after more than one year must be shown separately for each item.)

1. Trade debtors.
2. Amounts owed by affiliated undertakings.
3. Amounts owed by undertakings with which the company is linked by virtue of participating interests.
4. Other debtors.
5. Subscribed capital called but not paid (unless national law provides that called-up capital be shown under A).
6. Prepayments and accrued income (unless national law provides that such items be shown under E).

## III. Investments

1. Shares in affiliated undertakings.
2. Own shares (with an indication of their nominal value or, in the absence of a nominal value, their accounting par value) to the extent that national law permits their being shown in the balance sheet.
3. Other investments.

## IV. Cash at bank and in hand.

## E. Prepayments and accrued income

(unless national law provides for such items to be shown under D (II) (6)).

## F. Creditors : amounts becoming due and payable within one year

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
8. Other creditors including tax and social security.
9. Accruals and deferred income (unless national law provides for such items to be shown under K).

G. Net current assets/liabilities (taking into account prepayments and accrued income when shown under E and accruals and deferred income when shown under K).

## H. Total assets less current liabilities

## I. Creditors : amounts becoming due and payable after more than one year

1. Debenture loans, showing convertible loans separately.
2. Amounts owed to credit institutions.
3. Payments received on account of orders in so far as they are not shown separately as deductions from stocks.
4. Trade creditors.
5. Bills of exchange payable.
6. Amounts owed to affiliated undertakings.
7. Amounts owed to undertakings with which the company is linked by virtue of participating interests.
8. Other creditors including tax and social security.
9. Accruals and deferred income (unless national law provides for such items to be shown under K).

## J. Provisions for liabilities and charges

1. Provisions for pensions and similar obligations.
2. Provisions for taxation.
3. Other provisions.

## K. Accruals and deferred income

(unless national law provides for such items to be shown under F (9) or I (9) or both).

## L. Capital and reserves

## I. Subscribed capital

(unless national law provides for called-up capital to be shown under this item. In that case, the amounts of subscribed capital and paid-up capital must be shown separately).

## II. Share premium account

## III. Revaluation reserve

## IV. Reserves

1. Legal reserve, in so far as national law requires such a reserve.
2. Reserve for own shares, in so far as national law requires such a reserve, without prejudice to Article 22 (1) (b) of Directive 77/91/EEC.
3. Reserves provided for by the articles of association.
4. Other reserves.

## V. Profit or loss brought forward

## VI. Profit or loss for the financial year

## Article 11

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria: - balance sheet total : 1 000 000 EUA,

- net turnover : 2 000 000 EUA,

- average number of employees during the financial year : 50

to draw up abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under "Assets" and C under "Liabilities" in Article 9 and in D (II) in Article 10, but in total for each.

## Article 12

1. Where on its balance sheet date, a company exceeds or ceases to exceed the limits of two of the three criteria indicated in Article 11, that fact shall affect the application of the derogation provided for in that Article only if it occurs in two consecutive financial years.
2. For the purposes of translation into national currencies, the amounts in European units of account specified in Article 11 may be increased by not more than 10 %.
3. The balance sheet total referred to in Article 11 shall consist of the assets in A to E under "Assets" in the layout prescribed in Article 9 or those in A to E in the layout prescribed in Article 10.

## Article 13

1. Where an asset or liability relates to more than one layout item, its relationship to other items must be disclosed either under the item where it appears or in the notes on the accounts, if such disclosure is essential to the comprehension of the annual accounts.
2. Own shares and shares in affiliated undertakings may be shown only under the items prescribed for that purpose.

## Article 14

All commitments by way of guarantee of any kind must, if there is no obligation to show them as liabilities, be clearly set out at the foot of the balance sheet or in the notes on the accounts, and a distinction made between the various types of guarantee which national law recognizes ; specific disclosure must be made of any valuable security which has been provided. Commitments of this kind existing in respect of affiliated undertakings must be shown separately.

## SECTION 4 Special provisions relating to certain balance sheet items

## Article 15

1. Whether particular assets are to be shown as fixed assets or current assets shall depend upon the purpose for which they are intended.
2. Fixed assets shall comprise those assets which are intended for use on a continuing basis for the purposes of the undertaking's activities.
3. (a) Movements in the various fixed asset items shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown separately, starting with the purchase price or production cost, for each fixed asset item, on the one hand, the additions, disposals and transfers during the financial year and, on the other, the cumulative value adjustments at the balance sheet date and the rectifications made during the financial year to the value adjustments of previous financial years. Value adjustments shall be shown either in the balance sheet, as clear deductions from the relevant items, or in the notes on the accounts.  
(b) If, when annual accounts are drawn up in accordance with this Directive for the first time, the purchase price or production cost of a fixed asset cannot be determined without undue expense or delay, the residual value at the beginning of the financial year may be treated as the purchase price or production cost. Any application of this provision must be disclosed in the notes on the accounts.  
(c) Where Article 33 is applied, the movements in the various fixed asset items referred to in subparagraph (a) of this paragraph shall be shown starting with the purchase price or production cost resulting from revaluation.
4. Paragraph 3 (a) and (b) shall apply to the presentation of "Formation expenses".

## Article 16

Rights to immovables and other similar rights as defined by national law must be shown under "Land and buildings".

## Article 17

For the purposes of this Directive, "participating interest" shall mean rights in the capital of other undertakings, whether or not represented by certificates, which, by creating a durable link with those undertakings, are intended to contribute to the company's activities. The holding of part of the capital of another company shall be presumed to constitute a participating interest where it exceeds a percentage fixed by the Member States which may not exceed 20 %.

## Article 18

Expenditure incurred during the financial year but relating to a subsequent financial year, together with any income which, though relating to the financial year in question, is not due until after its expiry must be shown under "Prepayments and accrued income". The Member States may, however, provide that such income shall be included in "Debtors". Where such income is material, it must be disclosed in the notes on the accounts.

## Article 19

Value adjustments shall comprise all adjustments intended to take account of reductions in the values of individual assets established at the balance sheet date whether that reduction is final or not.

## Article 20

1. Provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.
2. The Member States may also authorize the creation of provisions intended to cover charges which have their origin in the financial year under review or in a previous financial year, the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise.
3. Provisions for liabilities and charges may not be used to adjust the values of assets.

## Article 21

Income receivable before the balance sheet date but relating to a subsequent financial year, together with any charges which, though relating to the financial year in question, will be paid only in the course of a subsequent financial year, must be shown under "Accruals and deferred income". The Member States may, however, provide that such charges shall be included in "Creditors". Where such charges are material, they must be disclosed in the notes on the accounts.

## SECTION 5 Layout of the profit and loss account

## Article 22

For the presentation of the profit and loss account, the Member States shall prescribe one or more of the layouts provided for in Articles 23 to 26. If a Member State prescribes more than one layout, it may allow companies to choose from among them.

## Article 23

1. Net turnover.
2. Variation in stocks of finished goods and in work in progress.
3. Work performed by the undertaking for its own purposes and capitalized.
4. Other operating income.
5. (a) Raw materials and consumables.  
(b) Other external charges.
6. Staff costs: (a) wages and salaries;  
(b) social security costs, with a separate indication of those relating to pensions.
7. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.  
(b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
8. Other operating charges.
9. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
10. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
11. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
12. Value adjustments in respect of financial assets and of investments held as current assets.
13. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
14. Tax on profit or loss on ordinary activities.
15. Profit or loss on ordinary activities after taxation.
16. Extraordinary income.
17. Extraordinary charges.
18. Extraordinary profit or loss.
19. Tax on extraordinary profit or loss.
20. Other taxes not shown under the above items.
21. Profit or loss for the financial year.

## Article 24

## A. Charges

1. Reduction in stocks of finished goods and in work in progress:
2. (a) raw materials and consumables;  
(b) other external charges.
3. Staff costs: (a) wages and salaries;  
(b) social security costs, with a separate indication of those relating to pensions.
4. (a) Value adjustments in respect of formation expenses and of tangible and intangible fixed assets.  
(b) Value adjustments in respect of current assets, to the extent that they exceed the amount of value adjustments which are normal in the undertaking concerned.
5. Other operating charges.
6. Value adjustments in respect of financial assets and of investments held as current assets.
7. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
8. Tax on profit or loss on ordinary activities.
9. Profit or loss on ordinary activities after taxation.

10. Extraordinary charges.
  11. Tax on extraordinary profit or loss.
  12. Other taxes not shown under the above items.
  13. Profit or loss for the financial year.
- B. Income
1. Net turnover.
  2. Increase in stocks of finished goods and in work in progress.
  3. Work performed by the undertaking for its own purposes and capitalized.
  4. Other operating income.
  5. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
  6. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
  7. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
  8. Profit or loss on ordinary activities after taxation.
  9. Extraordinary income.
  10. Profit or loss for the financial year.

#### Article 25

1. Net turnover.
2. Cost of sales (including value adjustments).
3. Gross profit or loss.
4. Distribution costs (including value adjustments).
5. Administrative expenses (including value adjustments).
6. Other operating income.
7. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
10. Value adjustments in respect of financial assets and of investments held as current assets.
11. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
12. Tax on profit or loss on ordinary activities.

Profit or loss on ordinary activities after taxation.

13. Profit or loss on ordinary activities after taxation.
14. Extraordinary income.
15. Extraordinary charges.
16. Extraordinary profit or loss.
17. Tax on extraordinary profit or loss.
18. Other taxes not shown under the above items.
19. Profit or loss for the financial year.

#### Article 26

##### A. Charges

1. Cost of sales (including value adjustments).
2. Distribution costs (including value adjustments).
3. Administrative expenses (including value adjustments).
4. Value adjustments in respect of financial assets and of investments held as current assets.
5. Interest payable and similar charges, with a separate indication of those concerning affiliated undertakings.
6. Tax on profit or loss on ordinary activities.
7. Profit or loss on ordinary activities after taxation.
8. Extraordinary charges.
9. Tax on extraordinary profit or loss.
10. Other taxes not shown under the above items.
11. Profit or loss for the financial year.

##### B. Income

1. Net turnover.
2. Other operating income.
3. Income from participating interests, with a separate indication of that derived from affiliated undertakings.
4. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings.
5. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings.
6. Profit or loss on ordinary activities after taxation.
7. Extraordinary income.
8. Profit or loss for the financial year.

#### Article 27

The Member States may permit companies which on their balance sheet dates do not exceed the limits of two of the three following criteria: - balance sheet total : 4 million EUA,

- net turnover : 8 million EUA,

- average number of employees during the financial year : 250

to adopt layouts different from those prescribed in Articles 23 to 26 within the following limits: (a) in Article 23 : 1 to 5 inclusive may be combined under one item called "Gross profit or loss";

(b) in Article 24 : A (1), A (2) and B (1) to B (4) inclusive may be combined under one item called "Gross profit or loss";

(c) in Article 25 : (1), (2), (3) and (6) may be combined under one item called "Gross profit or loss";

(d) in Article 26, A (1), B (1) and B (2) may be combined under one item called "Gross profit or loss".

Article 12 shall apply.

SECTION 6 Special provisions relating to certain items in the profit and loss account

Article 28

The net turnover shall comprise the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover.

Article 29

1. Income and charges that arise otherwise than in the course of the company's ordinary activities must be shown under "Extraordinary income and extraordinary charges".

2. Unless the income and charges referred to in paragraph 1 are immaterial for the assessment of the results, explanations of their amount and nature must be given in the notes on the accounts. The same shall apply to income and charges relating to another financial year.

Article 30

The Member States may permit taxes on the profit or loss on ordinary activities and taxes on the extraordinary profit or loss to be shown in total as one item in the profit and loss account before "Other taxes not shown under the above items". In that case, "Profit or loss on ordinary activities after taxation" shall be omitted from the layouts prescribed in Articles 23 to 26.

Where this derogation is applied, companies must disclose in the notes on the accounts the extent to which the taxes on the profit or loss affect the profit or loss on ordinary activities and the "Extraordinary profit or loss".

SECTION 7 Valuation rules

Article 31

1. The Member States shall ensure that the items shown in the annual accounts are valued in accordance with the following general principles: (a) the company must be presumed to be carrying on its business as a going concern;

(b) the methods of valuation must be applied consistently from one financial year to another;

(c) valuation must be made on a prudent basis, and in particular: (aa) only profits made at the balance sheet date may be included,

(bb) account must be taken of all foreseeable liabilities and potential losses arising in the course of the financial year concerned or of a previous one, even if such liabilities or losses become apparent only between the date of the balance sheet and the date on which it is drawn up,

(cc) account must be taken of all depreciation, whether the result of the financial year is a loss or a profit;

(d) account must be taken of income and charges relating to the financial year, irrespective of the date of receipt or payment of such income or charges;

(e) the components of asset and liability items must be valued separately;

(f) the opening balance sheet for each financial year must correspond to the closing balance sheet for the preceding financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Any such departures must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss.

Article 32

The items shown in the annual accounts shall be valued in accordance with Articles 34 to 42, which are based on the principle of purchase price or production cost.

Article 33

1. The Member States may declare to the Commission that they reserve the power, by way of derogation from Article 32 and pending subsequent coordination, to permit or require in respect of all companies or any classes of companies: (a) valuation by the replacement value method for tangible fixed assets with limited useful economic lives and for stocks;

(b) valuation by methods other than that provided for in (a) which are designed to take account of inflation for the items shown in annual accounts, including capital and reserves;

(c) revaluation of tangible fixed assets and financial fixed assets.

Where national law provides for valuation methods as indicated in (a), (b) and (c), it must define their content and limits and the rules for their application.

The application of any such method, the balance sheet and profit and loss account items concerned and the method by which the values shown are calculated shall be disclosed in the notes on the accounts.

2. (a) Where paragraph 1 is applied, the amount of the difference between valuation by the method used and valuation in accordance with the general rule laid down in Article 32 must be entered in the revaluation reserve under "Liabilities". The treatment of this item for taxation purposes must be explained either in the balance sheet or in the notes on the accounts.

For purposes of the application of the last subparagraph of paragraph 1, companies shall, whenever the amount of the reserve has been changed in the course of the financial year, publish in the notes on the accounts *inter alia* a table showing: - the amount of the revaluation reserve at the beginning of the financial year,

- the revaluation differences transferred to the revaluation reserve during the financial year,

- the amounts capitalized or otherwise transferred from the revaluation reserve during the financial year, the nature of any such transfer being disclosed,

- the amount of the revaluation reserve at the end of the financial year.

(b) The revaluation reserve may be capitalized in whole or in part at any time.

(c) The revaluation reserve must be reduced to the extent that the amounts transferred thereto are no longer necessary for the implementation of the valuation method used and the achievement of its purpose.

The Member States may lay down rules governing the application of the revaluation reserve, provided that transfers to the profit and loss account from the revaluation reserve may be made only to the extent that the amounts transferred have been entered as charges in the profit and loss account or reflect increases in value which have been actually realized. These amounts must be disclosed separately in the profit and loss account. No part of the revaluation reserve may be distributed, either directly or indirectly, unless it represents gains actually realized.

(d) Save as provided under (b) and (c) the revaluation reserve may not be reduced.

3. Value adjustments shall be calculated each year on the basis of the value adopted for the financial year in question, save that by way of derogation from Articles 4 and 22, the Member States may permit or require that only the amount of the value adjustments arising as a result of the application of the general rule laid down in Article 32 be shown under the relevant items in the layouts prescribed in Articles 23 to 26 and that the difference arising as a result of the valuation method adopted under this Article be shown separately in the layouts. Furthermore, Articles 34 to 42 shall apply *mutatis mutandis*.

4. Where paragraph 1 is applied, the following must be disclosed, either in the balance sheet or in the notes on the accounts, separately for each balance sheet item as provided for in the layouts prescribed in Articles 9 and 10, except for stocks, either: (a) the amount at the balance sheet date of the valuation made in accordance with the general rule laid down in Article 32 and the amount of the cumulative value adjustments; or

(b) the amount at the balance sheet date of the difference between the valuation made in accordance with this Article and that resulting from the application of Article 32 and, where appropriate, the cumulative amount of the additional value adjustments.

5. Without prejudice to Article 52 the Council shall, on a proposal from the Commission and within seven years of the notification of this Directive, examine and, where necessary, amend this Article in the light of economic and monetary trends in the Community.

## Article 34

1. (a) Where national law authorizes the inclusion of formation expenses under "Assets", they must be written off within a maximum period of five years.
- (b) In so far as formation expenses have not been completely written off, no distribution of profits shall take place unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the expenses not written off.
2. The amounts entered under "Formation expenses" must be explained in the notes on the accounts.

## Article 35

1. (a) Fixed assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.
- (b) The purchase price or production cost of fixed assets with limited useful economic lives must be reduced by value adjustments calculated to write off the value of such assets systematically over their useful economic lives.
- (c) (aa) Value adjustments may be made in respect of financial fixed assets, so that they are valued at the lower figure to be attributed to them at the balance sheet date.
- (bb) Value adjustments must be made in respect of fixed assets, whether their useful economic lives are limited or not, so that they are valued at the lower figure to be attributed to them at the balance sheet date if it is expected that the reduction in their value will be permanent.
- (cc) The value adjustments referred to in (aa) and (bb) must be charged to the profit and loss account and disclosed separately in the notes on the accounts if they have not been shown separately in the profit and loss account.
- (dd) Valuation at the lower of the values provided for in (aa) and (bb) may not be continued if the reasons for which the value adjustments were made have ceased to apply.
- (d) If fixed assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them shall be indicated in the notes on the accounts.
2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.
3. (a) The production cost shall be calculated by adding to the purchasing price of the raw materials and consumables the costs directly attributable to the product in question.
- (b) A reasonable proportion of the costs which are only indirectly attributable to the product in question may be added into the production costs to the extent that they relate to the period of production.
4. Interest on capital borrowed to finance the production of fixed assets may be included in the production costs to the extent that it relates to the period of production. In that event, the inclusion of such interest under "Assets" must be disclosed in the notes on the accounts.

## Article 36

By way of derogation from Article 35 (1) (c) (cc), the Member States may allow investment companies within the meaning of Article 5 (2) to set off value adjustments to investments directly against "Capital and reserves". The amounts in question must be shown separately under "Liabilities" in the balance sheet.

## Article 37

1. Article 34 shall apply to costs of research and development. In exceptional cases, however, the Member States may permit derogations from Article 34 (1) (a). In that case, they may also provide for derogations from Article 34 (1) (b). Such derogations and the reasons for them must be disclosed in the notes on the accounts.
2. Article 34 (1) (a) shall apply to goodwill. The Member States may, however, permit companies to write goodwill off systematically over a limited period exceeding five years provided that this period does not exceed the useful economic life of the asset and is disclosed in the notes on the accounts together with the supporting reasons therefore.

## Article 38

Tangible fixed assets, raw materials and consumables which are constantly being replaced and the overall value of which is of secondary importance to the undertaking may be shown under "Assets" at a fixed quantity and value, if the quantity, value and composition thereof do not vary materially.

## Article 39

1. (a) Current assets must be valued at purchase price or production cost, without prejudice to (b) and (c) below.
- (b) Value adjustments shall be made in respect of current assets with a view to showing them at the lower market value or, in particular circumstances, another lower value to be attributed to them at the balance sheet date.
- (c) The Member States may permit exceptional value adjustments where, on the basis of a reasonable commercial assessment, these are necessary if the valuation of these items is not to be modified in the near future because of fluctuations in value. The amount of these value adjustments must be disclosed separately in the profit and loss account or in the notes on the accounts.
- (d) Valuation at the lower value provided for in (b) and (c) may not be continued if the reasons for which the value adjustments were made have ceased to apply.
- (e) If current assets are the subject of exceptional value adjustments for taxation purposes alone, the amount of the adjustments and the reasons for making them must be disclosed in the notes on the accounts.
2. The definitions of purchase price and of production cost given in Article 35 (2) and (3) shall apply. The Member States may also apply Article 35 (4). Distribution costs may not be included in production costs.

## Article 40

1. The Member States may permit the purchase price or production cost of stocks of goods of the same category and all fungible items including investments to be calculated either on the basis of weighted average prices or by the "first in, first out" (FIFO) method, the "last in, first out" (LIFO) method, or some similar method.
2. Where the value shown in the balance sheet, following application of the methods of calculation specified in paragraph 1, differs materially, at the balance sheet date, from the value on the basis of the last known market value prior to the balance sheet date, the amount of that difference must be disclosed in total by category in the notes on the accounts.

## Article 41

1. Where the amount repayable on account of any debt is greater than the amount received, the difference may be shown as an asset. It must be shown separately in the balance sheet or in the notes on the accounts.
2. The amount of this difference must be written off by a reasonable amount each year and completely written off no later than the time of repayment of the debt.

## Article 42

Provisions for liabilities and charges may not exceed in amount the sums which are necessary.

The provisions shown in the balance sheet under "Other provisions" must be disclosed in the notes on the accounts if they are material.

## SECTION 8 Contents of the notes on the accounts

## Article 43

1. In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least: (1) the valuation methods applied to the various items in the annual accounts, and the methods employed in calculating the value adjustments. For items included in the annual accounts which are or were originally expressed in foreign currency, the bases of conversion used to express them in local currency must be disclosed;
- (2) the name and registered office of each of the undertakings in which the company, either itself or through a person acting in his own name but on the company's behalf, holds at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have



been adopted. This information may be omitted where for the purposes of Article 2 (3) it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and less than 50 % of its capital is held (directly or indirectly) by the company;

(3) the number and the nominal value or, in the absence of a nominal value, the accounting par value of the shares subscribed during the financial year within the limits of an authorized capital, without prejudice as far as the amount of this capital is concerned to Article 2 (1) (e) of Directive 68/151/EEC or to Article 2 (c) of Directive 77/91/EEC;

(4) where there is more than one class of shares, the number and the nominal value or, in the absence of a nominal value, the accounting par value for each class;

(5) the existence of any participation certificates, convertible debentures or similar securities or rights, with an indication of their number and the rights they confer;

(6) amounts owed by the company becoming due and payable after more than five years as well as the company's entire debts covered by valuable security furnished by the company with an indication of the nature and form of the security. This information must be disclosed separately for each creditors item, as provided for in the layouts prescribed in Articles 9 and 10;

(7) the total amount of any financial commitments that are not included in the balance sheet, in so far as this information is of assistance in assessing the financial position. Any commitments concerning pensions and affiliated undertakings must be disclosed separately;

(8) the net turnover within the meaning of Article 28, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the company's ordinary activities are organized, these categories and markets differ substantially from one another;

(9) the average number of persons employed during the financial year, broken down by categories and, if they are not disclosed separately in the profit and loss account, the staff costs relating to the financial year, broken down as provided for in Article 23 (6);

(10) the extent to which the calculation of the profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on future tax charges is material, details must be disclosed;

(11) the difference between the tax charged for the financial year and for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading;

(12) the amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies by reason of their responsibilities, and any commitments arising or entered into in respect of retirement pensions for former members of those bodies, with an indication of the total for each category;

(13) the amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantees of any kind, with an indication of the total for each category.

2. Pending subsequent coordination, the Member States need not apply paragraph 1 (2) to financial holding companies within the meaning of Article 5 (3).

#### Article 44

The Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

#### Article 45

1. The Member States may allow the disclosures prescribed in Article 43 (1) (2): (a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings to which Article 43 (1) (2) relates. The Member States may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed by Article 43 (1) (8).

The Member States may permit the companies referred to in Article 27 to omit the disclosures prescribed by Article 43 (1) (8). Article 12 shall apply.

### SECTION 9 Contents of the annual report

#### Article 46

1. The annual report must include at least a fair review of the development of the company's business and of its position.

2. The report shall also give an indication of: (a) any important events that have occurred since the end of the financial year;

(b) the company's likely future development;

(c) activities in the field of research and development;

(d) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC.

### SECTION 10 Publication

#### Article 47

1. The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report free of charge upon request.

2. By way of derogation from paragraph 1, the Member States may permit the companies referred to in Article 11 to publish: (a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10, disclosing separately the information required in brackets in D (II) under "Assets" and C under "Liabilities" in Article 9 and in D (II) in Article 10 but in total for all the items concerned; and

(b) abridged notes on their accounts without the explanations required in Article 43 (1) (5) to (12). However, the notes must disclose the information specified in Article 43 (1) (6) in total for all the items concerned.

Article 12 shall apply.

In addition, the Member States may relieve such companies from the obligation to publish their profit and loss accounts and annual reports and the opinions of the persons responsible for auditing the accounts.

3. The Member States may permit the companies mentioned in Article 27 to publish: (a) abridged balance sheets showing only those items preceded by letters and roman numerals in Articles 9 and 10 disclosing separately, either in the balance sheet or in the notes on the accounts: - C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6) and D (III) (1) and (2) under "Assets" and C (1), (2), (6), (7) and (9) under "Liabilities" in Article 9,

- C (I) (3), C (II) (1), (2), (3) and (4), C (III) (1), (2), (3), (4) and (7), D (II) (2), (3) and (6), D (III) (1) and (2), F (1), (2), (6), (7) and (9) and (I) (1), (2), (6), (7) and (9) in Article 10,

- the information required in brackets in D (II) under "Assets" and C under "Liabilities" in Article 9, in total for all the items concerned and separately for D (II) (2) and (3) under "Assets" and C (1), (2), (6), (7) and (9) under "Liabilities",

- the information required in brackets in D (II) in Article 10, in total for all the items concerned, and separately for D (II) (2) and (3);

(b) abridged notes on their accounts without the information required in Article 43 (1) (5), (6), (8), (10) and (11). However, the notes on the accounts must give the information specified in Article 43 (1) (6) in total for all the items concerned.

This paragraph shall be without prejudice to paragraph 1 in so far as it relates to the profit and loss account, the annual report and the opinion of the person responsible for auditing the accounts.

Article 12 shall apply.

Article 48

Whenever the annual accounts and the annual report are published in full, they must be reproduced in the form and text on the basis of which the person responsible for auditing the accounts has drawn up his opinion. They must be accompanied by the full text of his report. If the person responsible for auditing the accounts has made any qualifications or refused to report upon the accounts, that fact must be disclosed and the reasons given.

Article 49

If the annual accounts are not published in full, it must be indicated that the version published is abridged and reference must be made to the register in which the accounts have been filed in accordance with Article 47 (1). Where such filing has not yet been effected, the fact must be disclosed. The report issued by the person responsible for auditing the accounts may not accompany this publication, but it must be disclosed whether the report was issued with or without qualification, or was refused.

Article 50

The following must be published together with the annual accounts, and in like manner: - the proposed appropriation of the profit or treatment of the loss,

- the appropriation of the profit or treatment of the loss,

where these items do not appear in the annual accounts.

#### SECTION 11 Auditing

Article 51

1. (a) Companies must have their annual accounts audited by one or more persons authorized by national law to audit accounts.

(b) The person or persons responsible for auditing the accounts must also verify that the annual report is consistent with the annual accounts for the same financial year.

2. The Member States may relieve the companies referred to in Article 11 from the obligation imposed by paragraph 1.

Article 12 shall apply.

3. Where the exemption provided for in paragraph 2 is granted the Member States shall introduce appropriate sanctions into their laws for cases in which the annual accounts or the annual reports of such companies are not drawn up in accordance with the requirements of this Directive.

#### SECTION 12 Final provisions

Article 52

1. A Contact Committee shall be set up under the auspices of the Commission. Its function shall be: (a) to facilitate, without prejudice to the provisions of Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Committee shall be convened by the chairman either on his own initiative or at the request of one of its members.

Article 53

1. For the purposes of this Directive, the European unit of account shall be that defined by Commission Decision No 3289/75/ECSC of 18 December 1975 (1). The equivalent in national currency shall be calculated initially at the rate obtaining on the date of adoption of this Directive.

2. Every five years the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts expressed in European units of account in this Directive, in the light of economic and monetary trends in the Community.

Article 54

This Directive shall not affect laws in the Member States requiring that the annual accounts of companies not falling within their jurisdiction be filed in a register in which branches of such companies are listed.

Article 55

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. The Member States may stipulate that the provisions referred to in paragraph 1 shall not apply until 18 months after the end of the period provided for in that paragraph.

That period of 18 months may, however, be five years: (a) in the case of unregistered companies in the United Kingdom and Ireland;

(b) for purposes of the application of Articles 9 and 10 and Articles 23 to 26 concerning the layouts for the balance sheet and the profit and loss account, where a Member State has brought other layouts for these documents into force not more than three years before the notification of this Directive;

(c) for purposes of the application of this Directive as regards the calculation and disclosure in balance sheets of depreciation relating to assets covered by the asset items mentioned in Article 9, C (11) (2) and (3), and Article 10, C (11) (2) and (3);

(d) for purposes of the application of Article 47 (1) of this Directive except as regards companies already under an obligation of publication under Article 2 (1) (f) of Directive 68/151/EEC. In this case the second subparagraph of Article 47 (1) of this Directive shall apply to the annual accounts and to the opinion drawn up by the person responsible for auditing the accounts;

(e) for purposes of the application of Article 51 (1) of this Directive.

Furthermore, this period of 18 months may be extended to eight years for companies the principal object of which is shipping and which are already in existence on the entry into force of the provisions referred to in paragraph 1.

3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 56

The obligation to show in the annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, and the obligation to provide information concerning these undertakings in accordance with Article 13 (2), 14 or 43 (1) (7), shall enter into force at the same time as a Council Directive on consolidated accounts.

Article 57

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directives 68/151/EEC and 77/91/EEC, the Member States need not apply to the dependent companies of any group governed by their national laws the provisions of this Directive concerning the content, auditing and publication of the annual accounts of such dependent companies where the following conditions are fulfilled: (a) the dominant company must be subject to the laws of a Member State;

(b) all shareholders or members of the dependent company must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the dominant company must have declared that it guarantees the commitments entered into by the dependent company;

(d) the declarations referred to in (b) and (c) must be published by the dependent company in accordance with the first subparagraph of Article 47 (1);

(e) the annual accounts of the dependent company must be consolidated in the group's annual accounts: (1)OJ No L 327, 19.12.1975, p. 4.

(f) the exemption concerning the preparation, auditing and publication of the annual accounts of the dependent company must be disclosed in the notes on the group's annual accounts.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

#### Article 58

1. Until the entry into force of a Council Directive on consolidated accounts, and without prejudice to the provisions of Directive 77/91/EEC, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of this Directive concerning the auditing and publication of the profit and loss accounts of such dominant companies where the following conditions are fulfilled: (a) this exemption must be published by the dominant company in accordance with Article 47 (1);

(b) the annual accounts of the dominant company must be consolidated in the group's annual accounts;

(c) the exemption concerning the auditing and publication of the profit and loss account of the dominant company must be mentioned in the notes on the group's annual accounts;

(d) the profit or loss of the dominant company, determined in accordance with the principles of this Directive, must be shown in the balance sheet of the dominant company.

2. Articles 47 and 51 shall apply to the group's annual accounts.

3. Articles 2 to 46 shall apply as far as possible to the group's annual accounts.

#### Article 59

Pending subsequent coordination, the Member States may permit the valuation of holdings in affiliated undertakings by the equity method provided the following conditions are fulfilled: (a) the use of this method of valuation must be disclosed in the notes on the accounts of a company having such holdings;

(b) the amount of any differences existing when such holdings were acquired between their purchase price and the percentage of the capital which they represent, including the affiliated undertaking's reserves, profit and loss and profits and losses brought forward, must be shown separately in the balance sheet or in the notes on the accounts of a company having such holdings;

(c) the purchase price of these holdings shall be increased or reduced in the balance sheet of a company having such holdings by the profits or losses realized by the affiliated undertaking according to the percentage of capital held;

(d) the amounts specified in subparagraph (c) shall be shown each year in the profit and loss account of a company having such holdings as a separate item with an appropriate heading;

(e) when an affiliated undertaking distributes dividends to a company having such holdings, their book values shall be reduced accordingly;

(f) when the amounts shown in the profit and loss account in accordance with subparagraph (d) exceed the amounts of dividends already received or the payment of which can be claimed, the amount of the differences must be placed in a reserve which cannot be distributed to shareholders.

#### Article 60

Pending subsequent coordination, the Member States may prescribe that investments in which investment companies within the meaning of Article 5 (2) have invested their funds shall be valued on the basis of their market value.

In that case, the Member States may also waive the obligation on investment companies with variable capital to show separately the value adjustments referred to in Article 36.

#### Article 61

Until the entry into force of a Council Directive on consolidated accounts, the Member States need not apply to the dominant companies of groups governed by their national laws the provisions of Article 43 (1) (2) concerning the amount of capital and reserves and the profits and losses of the undertakings concerned if the annual accounts of such undertakings are consolidated into the group's annual accounts or if the holdings in those undertakings are valued by the equity method.

#### Article 62

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1978.

For the Council

The President

K. von DOHNANYI

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**SECOND AMENDMENT TO THE PROPOSAL FOR A [FIFTH COUNCIL DIRECTIVE](#) BASED  
ON ARTICLE 54 OF THE EEC TREATY CONCERNING THE STRUCTURE OF PUBLIC  
LIMITED COMPANIES AND THE POWERS AND OBLIGATIONS OF THEIR ORGANS**

**DOCNUM** 51990PC0629  
**AUTHOR** European Commission  
**FORM** Proposal for a directive  
**TREATY** European Economic Community  
**PUBREF** Official Journal C 007 , 11/01/1991 P. 0004  
**PUB** 1991/01/11  
**DOC** 1990/12/13  
**DESPATCH** 1990/12/21  
**ENDVAL** 2001/12/11  
**LEGBASE** [11957E149](#)  
**EARLACTS** [51983PC0185](#) Amendment  
**SUBSPREP** EP Opinion [51991AP0180](#) Amendment proposed  
**SUB** Internal market ; Freedom of establishment and services ; Free movement of capital  
**REGISTER** 17100000;13400000  
**MISCINF** SYN 3  
**DATES** of document: 13/12/1990  
of transmission: 21/12/1990; Forwarded to the Council  
end of validity: 11/12/2001; Withdrawn See 52001DC0763

**LEGISLATIVE RESOLUTION** embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a second amendment to the proposal for a **Fifth Council Directive** based on Article 54 of the EEC Treaty concerning the structure of public limited companies and the powers and obligations of their organs (Cooperation procedure: first reading)

**DOCNUM** 51991AP0180

**AUTHOR** European Parliament ; Comm. Legal Affairs and Citizens' Rights (89) ;  
PERREAU DE PINNINCK DOMENECH

**FORM** Opinion proposing amendment

**TYPDOC** 5 ; preparatory documents ; 1991 ; AP

**PUBREF** Official Journal C 240 , 16/09/1991 P. 0105

**DESCRIPT** free movement of capital ; public limited company ; company law ;  
shareholder ; share capital ; share ; shareholding

**PUB** 1991/09/16

**DOC** 1991/07/10

**VOTE** 1991/07/10

**DESPATCH** 1991/07/11

**DEBATE** 1991/07/10

**LEGBASE** **11957E054**.....

**EARLACTS** **51990PC0629**.....EP Opinion....Amendment proposed

**SUB** Internal market ; Freedom of establishment and services ; Free movement of  
capital

**ADDRESS** Council ; Commission

**MISCINF** Parliament consulted by document Nr. 077/91 120/91  
Obligatory consultation  
Cooperation procedure (first reading )  
SYN 3

**LEGISLA** Third legislature

**DATES** of document: 10/07/1991; Date of vote

of vote: 10/07/1991  
of transmission: 11/07/1991  
of debate: 10/07/1991

**OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE on the Second Amendment to the proposal for a [Fifth Council Directive](#) based on Article 54 of the EEC Treaty concerning the structure of public-limited companies and the powers and obligations of their organs**

**DOCNUM** 51991AC0874

**AUTHOR** Economic and Social Committee ; Section for Industry Commerce Crafts and Services (86) ; BELL

**FORM** Opinion

**TREATY** European Economic Community

**TYPDOC** 5 ; preparatory documents ; 1991 ; AC

**PUBREF** Official Journal C 269 , 14/10/1991 P. 0048

**DESCRIPT** public limited company ; shareholder ; right to vote ; takeover bid ; protection of shareholders

**PUB** 1991/10/14

**DOC** 1991/07/03

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**DESPATCH** 1991/07/11 ; 1991/07/11

**DEBATE** 1991/07/03=Session-288

**ENDVAL** 9999/99/99

**LEGBASE** [11957E054](#)..... Council

**SUB** Internal market ; Free movement of workers ; Free movement of capital

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**DATES** of document: 03/07/1991; Date of vote  
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of transmission: 11/07/1991; Forwarded to the Council  
of debate: 03/07/1991 ; Session 288  
end of validity: 99/99/9999; Linked to 51990PC0629



**Communication from the Commission - Withdrawal of Commission Proposals which are no longer topical**

COMMUNICATION FROM THE COMMISSION - WITHDRAWAL OF COMMISSION PROPOSALS which are no longer topical

In relation with its Communication on simplifying and improving the regulatory environment, the Commission is taking an initiative aimed at withdrawing pending Commission proposals which are no longer topical. Thus, the Commission intends to withdraw 108 pending proposals. The list of these proposals will be published in the Official Journal after the European Parliament and the Council of Ministers have been informed, in accordance with the framework agreement between the European Parliament and the Commission.

Dossier: COM/1993/638 0480/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS SUBSTANCES - CONSOLIDATED TEXT -

Dossier: SEC/1991/466 1991/0400/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO WHEELED AGRICULTURAL OR FORESTRY TRACTORS

Dossier: SEC/1991/1608 1991/0402/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO RESTRICTIONS ON THE MARKETING AND USE OF CERTAIN DANGEROUS SUBSTANCES AND PREPARATIONS

Dossier: SEC/1991/1858 1991/0403/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE RELATING TO FERTILIZERS

DG ENTR

Dossier: SEC/1995/87

RECOMMENDATION FOR A COUNCIL DECISION ON THE OPENING OF NEGOTIATIONS BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION WITH A VIEW TO THE CONCLUSION OF AN AGREEMENT ON THE EXCHANGE OF INFORMATION IN THE FIELD OF TECHNICAL REGULATIONS

DG EMPL

Dossier: COM/1987/494

PROPOSAL FOR A COUNCIL DIRECTIVE COMPLETING THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN STATUTORY AND OCCUPATIONAL SOCIAL SECURITY SCHEMES

Dossier: COM/1990/228/1

Proposal for a COUNCIL DIRECTIVE on certain employment relationships with regards to working conditions

Dossier: COM/1990/588 1990/0327/COD

PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM REQUIREMENTS TO IMPROVE THE MOBILITY AND THE SAFE TRANSPORT TO WORK OF WORKERS WITH REDUCED MOBILITY

Dossier: COM/1992/234 0420/COD

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR TRANSPORT ACTIVITIES AND WORKPLACES ON MEANS OF TRANSPORT (INDIVIDUAL DIRECTIVE WITHIN THE MEANING OF ARTICLE 16 OF DIRECTIVE 89/391/EEC)

Dossier: COM/1993/435/2

Proposal for a COUNCIL DECISION establishing a medium-term action programme to combat exclusion and promote solidarity: a new programme to support and stimulate innovation (1994- 1999)

Dossier: COM/1995/734 1996/0004/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF UNEMPLOYED PERSONS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC) NR 1408/71

Dossier: COM/1995/735 1996/0001/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF BENEFICIARIES OF PRE - RETIREMENT BENEFITS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC) NR 1408/71

Dossier: COM/1996/93 1996/0095/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 76/207/CEE ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS

DG AGRI

Dossier: COM/1988/159

RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO ENTER INTO NEGOTIATIONS WITH A VIEW TO CONCLUDING AN AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES OF AMERICA ON COOPERATION IN WINE SECTOR

Dossier: COM/1997/33 1997/0033/ACC

PROPOSAL FOR A COUNCIL DECISION APPROVING THE EXCHANGES OF LETTERS BETWEEN THE EUROPEAN COMMUNITY, OF THE ONE PART, AND BULGARIA, HUNGARY, POLAND, THE CZECH REPUBLIC, THE SLOVAK REPUBLIC, ROMANIA, ESTONIA, LATVIA AND LITHUANIA, OF THE OTHER PART, CONCERNING CERTAIN ARRANGEMENTS FOR LIVE BOVINE ANIMALS

Dossier: COM/1997/397 1997/0219/ACC

Proposal for a COUNCIL DECISION concerning the conclusion of an Interim Arrangement between the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, on the one side, and the European Communities on the other

Dossier: COM/1998/86 1998/0053/CNS

Proposal for a Council Regulation (EC) amending Regulation (EEC) No 823/87 laying down special provisions relating to quality wines produced in specified regions

Dossier: COM/1998/399 1998/0224/ACC

Proposal for a COUNCIL REGULATION (EC) concerning the tariff treatment applicable upon importation of certain types of food supplements originating in Switzerland

Dossier: SEC/1996/632

RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE ADAPTATIONS TO THE AGREEMENTS ON TRADE AND TRADE - RELATED MATTERS (FREE TRADE AGREEMENTS) WITH THE BALTIC STATES

DG TREN

Dossier: COM/1988/707 1988/0511/COD

PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE MAXIMUM PERMITTED BLOOD ALCOHOL CONCENTRATION FOR VEHICLE DRIVERS

Dossier: COM/1993/647 0491/COD

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE SETTING-UP OF A EUROPEAN VESSEL REPORTING SYSTEM IN THE MARITIME ZONES OF COMMUNITY MEMBER STATES

Dossier: COM/1995/337/2 1995/0205/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS

Dossier: COM/1995/369 1995/0208/COD

PROPOSAL FOR A COUNCIL DIRECTIVE TO INTRODUCE RATIONAL PLANNING TECHNIQUES IN THE ELECTRICITY AND GAS DISTRIBUTION SECTORS

Dossier: COM/1996/186 1996/0119/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING COUNCIL REGULATION (EEC) NO 3922/91, ON THE HARMONISATION OF TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES IN THE FIELD OF CIVIL AVIATION

Dossier: COM/1996/707/2 1997/0012/COD

PROPOSAL FOR A COUNCIL DECISION SETTING UP A CONSULTATION PROCEDURE ON RELATIONS BETWEEN MEMBER STATES AND THIRD COUNTRIES IN SHIPPING MATTERS AND ON ACTION RELATING TO SUCH MATTERS IN INTERNATIONAL ORGANIZATIONS AND AN AUTHORIZATION PROCEDURE FOR AGREEMENTS CONCERNING MARITIME TRANSPORT

Dossier: COM/1997/154 1997/0127/COD

Proposal for a COUNCIL DIRECTIVE on airport charges

Dossier: COM/1998/41 1998/0022/COD

Proposal for a COUNCIL REGULATION (EC) amending Regulation (EEC) nr 295/91 establishing common rules for a denied - boarding compensation system in scheduled air transport

Dossier: COM/1998/251/2 1998/0158/COD

Proposal for a Council Regulation (EC) amending Council Regulation (EEC) N. 3577/92 applying

the principle of freedom to provide services to maritime transport within the Member States (maritime cabotage)

Dossier: COM/1998/414/1 1998/0226/COD

Proposal for a Council Directive amending Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member states

Dossier: COM/1998/414/2 1998/0227/COD

Proposal for a Council Directive amending Council Directive 96/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

Dossier: SEC/1998/23

Recommendation for a Council Decision authorising the Commission to open negotiations for a European agreement concerning the international carriage of dangerous goods by inland waterway

Dossier: SEC/2001/453

Recommendation for a COUNCIL DECISION authorising the European Community to participate in the discussions and negotiations on aviation environmental issues to be addressed by the Council of the International Civil Aviation Organisation (ICAO) and the 33rd ICAO Assembly

DG ENV

Dossier: COM/1989/282 0217/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CIVIL LIABILITY FOR DAMAGE CAUSED BY WASTE

Dossier: COM/1996/315 1996/0181/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DECISION ON AN ACTION PROGRAMME FOR INTEGRATED GROUNDWATER PROTECTION AND MANAGEMENT

Dossier: COM/1999/128 1999/0077/CNS

Proposal for a COUNCIL DECISION concerning the approval, on behalf of the Community, of the amendments to the Annexes to the Convention on the protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention)

Dossier: COM/2000/146 2000/0063/ACC

Proposal for a COUNCIL DECISION on the Community position to be adopted on certain proposals submitted to the 11th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Gigiri, Kenya, 10 - 20 April 2000

DG FISH

Dossier: COM/1999/255

Proposal for a COUNCIL REGULATION (EC) amending for a second time Regulation (EC) No 66/98 laying down certain conservation and control measures applicable to fishing activities in the Antarctic

DG MARKT

Dossier: COM/1972/887 0003/COD

PROPOSAL FOR A FIFTH EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE COORDINATION OF SAFEGUARDS WHICH FOR THE PROTECTION OF THE INTERESTS OF MEMBERS AND OUTSIDERS, ARE REQUIRED BY MEMBER STATES OF COMPANIES WITHIN THE MEANING OF ARTICLE 58, SECOND PARAGRAPH, WITH RESPECT TO COMPANY STRUCTURE AND TO THE POWERS AND RESPONSIBILITIES OF COMPANY BOARDS

Dossier: COM/1984/727 0038/COD

PROPOSAL FOR A TENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL BASED ON ARTICLE 54(3)(G) OF THE TREATY CONCERNING CROSS-BORDER MERGERS OF PUBLIC LIMITED COMPANIES

DG TAXUD

Dossier: COM/1990/595

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING ARRANGEMENTS FOR THE TAKING INTO ACCOUNT BY ENTERPRISES OF THE LOSSES OF THEIR PERMANENT ESTABLISHMENT AND SUBSIDIARIES SITUATED IN OTHER MEMBER STATES

Dossier: COM/1992/226 1992/1019/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE INTRODUCING A TAX ON CARBON DIOXIDE EMISSIONS AND ENERGY

Dossier: COM/1994/232 1994/0140/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC) SETTING OUT THE CASES WHERE RELIEF FROM IMPORT DUTIES OR EXPORT DUTIES SHALL BE GRANTED

Dossier: COM/1994/370 1994/0197/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 77/388/EEC AND DETERMINING THE SCOPE OF ARTICLE 14(1) (D) AS REGARDS EXEMPTION FROM VALUE ADDED TAX ON THE FINAL IMPORTATION OF CERTAIN GOODS

Dossier: COM/1998/22/1 1998/0016/ACC

Proposal for a Council Regulation (EC) amending Regulation (EEC) N. 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

Dossier: COM/1998/626 1998/0302/ACC

Proposal for a COUNCIL DECISION laying down the procedure for adopting the Community position in the EC-Turkey Customs Cooperation Committee set up by Decision nr 2/69 of the EC-Turkey Association Council

Dossier: COM/1999/369

Proposal for a COUNCIL DECISION authorising Portugal to apply or to continue to apply reductions in, or exemptions from, excise duties on certain mineral oils used for specific purposes, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

Dossier: SEC/1999/501

Draft DECISION n° 1/99 of the EC-TURKEY Customs Cooperation Committee amending Decision N° 1/96 of 20 May 1996 laying down detailed rules for the application of Decision N° 1/95 of the EC-Turkey Association Council - Draft common position of the Community

DG SANCO

Dossier: COM/1981/495

PROPOSAL FOR A COUNCIL DECISION ON GENERAL CONDITIONS TO BE FOLLOWED FOR ESTABLISHING MICROBIOLOGICAL CRITERIA FOR FOODSTUFFS AND FEEDINGSTUFFS, INCLUDING THE CONDITIONS FOR THEIR PREPARATION, IN THE VETERINARY, FOODSTUFF AND ANIMAL NUTRITION SECTORS

Dossier: COM/1989/493 1989/1040/COD

Proposal for a Council Decision concerning safeguard measures in the veterinary field in the framework of the internal market

Dossier: COM/1994/394 1994/0208/COD

Proposal for a Council decision establishing rules for the recognition of Third Country health and veterinary inspection measures for fresh meat and meat products as equivalent to those applied to Community production, and for the conditions to be met for importation into the Community and amending Council Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat and meat products from Third Countries

Dossier: COM/1997/408 1997/0208/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council Directive 93/74/EEC on feedingstuffs intended for particular nutritional purposes and amending Directives 74/63/EEC, 79/373/EEC and 82/471/EEC

Dossier: COM/1997/409 1997/0213/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector

Dossier: COM/1999/388 1999/0168/CNS

Proposal for a COUNCIL DIRECTIVE amending Directive 70/524/EEC concerning additives in feedingstuffs

Dossier: SEC/1999/1902

Draft RECOMMENDATION NO 1/1999 OF THE JOINT COMMITTEE OF THE EUROPEAN COMMUNITY AND SWITZERLAND in respect of the simplification of certain veterinary checks on third country products of animal origin transiting the European Community to Switzerland - Draft common position of the Community -

DG JAI

Dossier: COM/1993/684/1

PROPOSAL FOR A DECISION, BASED ON ARTICLE K3 OF THE TREATY ON EUROPEAN UNION ESTABLISHING THE CONVENTION ON THE CROSSING OF THE EXTERNAL FRONTIERS OF THE MEMBER STATES

Dossier: COM/1995/346 1995/0199/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE RIGHT OF THIRD-COUNTRY NATIONALS TO TRAVEL IN THE COMMUNITY

Dossier: COM/1995/347 1995/0201/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ELIMINATION OF CONTROLS ON PERSONS CROSSING INTERNAL FRONTIERS

Dossier: COM/1995/348 1995/0202/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING DIRECTIVE 68/360/EEC ON THE ABOLITION OF RESTRICTIONS ON MOVEMENT AND RESIDENCE WITHIN THE COMMUNITY FOR WORKERS OF MEMBER STATES AND THEIR FAMILIES AND DIRECTIVE 73/148/EEC ON THE ABOLITION OF RESTRICTIONS ON MOVEMENT AND RESIDENCE WITHIN THE COMMUNITY FOR NATIONALS OF MEMBER STATES WITH REGARD TO ESTABLISHMENT AND THE PROVISION OF SERVICES

Dossier: COM/1997/387 1997/0227/CNS

Proposal for a COUNCIL ACT establishing the Convention on rules for the admission of third-country nationals to the Member States

DG RELEX

Dossier: COM/1980/616/2

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1980/616/3

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1980/616/4

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1980/616/5

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE ARAB REPUBLIC OF EGYPT, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1980/616/6

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1980/616/7

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE LEBANESE REPUBLIC, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1981/485/1

PROPOSAL FOR COUNCIL REGULATIONS CONCLUDING PROTOCOLS TO THE CO-OPERATION



AGREEMENTS BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND MOROCCO  
CONSEQUENT ON THE ACCESSION OF GREECE TO THE COMMUNITY

Dossier: COM/1982/665/1

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE  
COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE  
PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA TO TAKE ACCOUNT OF THE ACCESSION OF  
THE HELLENIC REPUBLIC TO THE COMMUNITY

Dossier: COM/1987/99/3

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A  
PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC  
COMMUNITY AND THE ARAB REPUBLIC OF EGYPT CONSEQUENT ON THE ACCESSION TO  
THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Dossier: COM/1987/99/4

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A  
PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC  
COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN CONSEQUENT ON THE  
ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE  
REPUBLIC

Dossier: COM/1987/99/5

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A  
PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC  
COMMUNITY AND THE LEBANESE REPUBLIC CONSEQUENT ON THE ACCESSION TO THE  
COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Dossier: COM/1987/172/1

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A  
PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC  
COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA CONSEQUENT ON  
THE ACCESSION OF SPAIN AND PORTUGAL TO THE COMMUNITY

Dossier: COM/1987/172/2

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE  
EUROPEAN COAL AND STEEL COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF  
ALGERIA CONSEQUENT ON THE ACCESSION OF SPAIN AND PORTUGAL TO THE  
COMMUNITY

Dossier: COM/1988/168/2

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A  
PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EEC AND THE KINGDOM OF  
MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE  
PORTUGUESE REPUBLIC TO THE COMMUNITY

Dossier: COM/1988/168/3

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE ECSC  
AND THE KINGDOM OF MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF  
SPAIN AND THE PORTUGUESE REPUBLIC TO THE COMMUNITY

Dossier: COM/1994/289 1994/0167/COD



PROPOSAL FOR A COUNCIL REGULATION (EC) IN THE FIELD OF EMPLOYMENT CREATION AND SUPPORT TO SMALL AND MICROENTERPRISES IN THE MAGHREB COUNTRIES

Dossier: COM/1995/745/2 1996/0010/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Dossier: COM/1995/745/3 1996/0011/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Dossier: COM/1995/745/4 1996/0012/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Dossier: COM/1995/745/6 1996/0014/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Dossier: COM/1996/150 1996/0106/AVC

PROPOSAL FOR A COUNCIL AND COMMISSION DECISION ON THE CONCLUSION OF A PROTOCOL TO THE PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES AND THE RUSSIAN FEDERATION (EC/EURATOM/ECSC)

Dossier: COM/1997/557/1 1997/0294/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part

Dossier: COM/1997/557/2 1997/0295/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part

Dossier: COM/1997/718/2

Draft COMMISSION REGULATION (EURATOM) concerning the accession by the European Atomic Energy Community to an Agreement having established in 1993 a Science and Technology Centre in Ukraine between Canada, Sweden, Ukraine and the United States of America

Dossier: COM/1998/28 1998/0021/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and Ukraine

Dossier: COM/1998/106

Proposal for a Council Decision on the Community position concerning the establishment of working parties to the Cooperation Council established by the Cooperation agreement between the European Community and the former Yugoslav Republic of Macedonia.

Dossier: COM/1998/307/1 1998/0185/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and the Republic of Moldova

Dossier: COM/1998/307/2 1998/0186/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part

Dossier: COM/1998/456

Proposal for a COUNCIL DECISION on a Common Position of the Community within the EC-Mexico Joint Council on the rules of procedure of the Joint Council and of the Joint Committee

Dossier: COM/1998/733 1998/0357/CNS

Amended proposal for a COUNCIL DECISION on a Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union establishing measures to provide practical support in relation to the reception and the voluntary repatriation of refugees, displaced persons and asylum applicants, including emergency assistance to persons who have fled as a result of recent events in Kosovo

Dossier: SEC/1991/2358

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE EXCHANGE OF LETTERS BETWEEN THE EEC AND THE GOVERNMENT OF THE REPUBLIC OF KOREA ON ISSUES OF COMMON INTEREST

Dossier: SEC/1992/1363

PROPOSAL FOR A COUNCIL DECISION AUTHORIZING THE MEMBER STATES TO NEGOTIATE AND CONCLUDE A CONVENTION CONCERNING MATTERS WHICH FALL WITHIN THE SPHERE OF COMPETENCE OF THE COMMUNITY

Dossier: SEC/1995/1682

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL - RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE AN ECONOMIC PARTNERSHIP AND POLITICAL CONSULTATION AGREEMENT WITH MEXICO

DG TRADE

Dossier: COM/1991/236

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEG) NO 2603/89 ESTABLISHING COMMON RULES FOR EXPORTS

Dossier: COM/1999/589 1999/0243/ACC

Proposal for a COUNCIL DECISION on the conclusion of a memorandum of understanding between the European community and the socialist republic of Vietnam on the prevention of fraud in trade of footwear products

Dossier: COM/1999/697

Proposal for a COUNCIL REGULATION repealing Council Regulation (EEC) No 3433/91 in as far as it imposes a definitive duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan

Dossier: SEC/1990/431

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEC) NO 428/89 CONCERNING THE EXPORT OF CERTAIN CHEMICAL PRODUCTS

DG DEV

Dossier: COM/1988/431/1

PROPOSAL FOR A COUNCIL REGULATION (EEC) ESTABLISHING A FINANCING FACILITY FOR IMPORTS OF FOOD PRODUCTS BY DEVELOPING COUNTRIES FROM THE EUROPEAN COMMUNITY

Dossier: COM/1988/487/1

PROPOSAL FOR A COUNCIL REGULATION(EEC)AMENDING THE LIST OF LLDC CONTAINED IN ANNEX 2 TO COUNCIL REGULATION(EEC)NO 429/87

DG ELARG

Dossier: COM/1997/292 1997/0163/ACC

Proposal for a COUNCIL DECISION on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, with regard to the extension for a further five years period in accordance with the provisions of article 62 , 4 (a) of the Europe Agreement

Dossier: COM/1997/426 1997/0216/ACC

Proposal for a COUNCIL DECISION concerning a Decision to be taken by the Association Council established by the Europe Agreement between the European Community and their Member States,of the one par,and the Czech Republic,of the other part

Dossier: COM/1997/452 1997/0236/ACC

Proposal for a Decision of the Council and the Commission on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States of the one part, and the Republic of Poland of the other part regarding the extension of the period during which Poland may grant public aid in the steel sector

Dossier: COM/1997/562 1997/0311/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of Hungary in a Community programme within the framework of Community audiovisual policy

Dossier: COM/1998/239/8 1998/0152/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of the Slovak Republic in the Community programmes in the field of culture

Dossier: SEC/1990/1017/2

Proposal for a Council Decision on the conclusion of the fourth financial Protocol

DG ADMIN

Dossier: COM/1993/105/2

PROPOSAL FOR A COUNCIL REGULATION (EEC, EURATOM, ECSC) AMENDING COUNCIL REGULATION (EEC, EURATOM, ECSC) NO 1860/76 OF 29 JUNE 1976 LAYING DOWN THE CONDITIONS OF EMPLOYMENT OF STAFF OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Dossier: COM/1996/451 1996/0232/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC, EURATOM, ECSC) ADJUSTING THE DAILY SUBSISTENCE ALLOWANCE RATES FOR OFFICIALS ON MISSION WITHIN THE EUROPEAN TERRITORY OF THE MEMBER STATES OF THE EUROPEAN UNION LAID DOWN IN ARTICLE 13 OF ANNEX VII TO THE STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN COMMUNITIES AND INTRODUCING AN ANNUAL ADJUSTMENT PROCEDURE

Dossier: SEC/1991/2120/4

PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING THE STAFF REGULATIONS OF OFFICIALS AND THE CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

Dossier: SEC/1991/2120/5

PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING VARIOUS COUNCIL REGULATIONS INTRODUCING SPECIAL AND TEMPORARY MEASURES TO TERMINATE THE SERVICE OF OFFICIALS AND TEMPORARY STAFF OF THE EUROPEAN COMMUNITIES

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**Communication from the Commission - Withdrawal of Commission Proposals which are no longer topical**

COMMUNICATION FROM THE COMMISSION - WITHDRAWAL OF COMMISSION PROPOSALS - which are no longer topical

Proposals for which the withdrawal is being asked by the Directorates general or responsible departments

Reasons are indicated as follows:

A : for objective reasons (change of de facto situation, objectives already achieved by other means, etc)

B : because the Commission has now adopted another approach

i : the proposal is replaced implicitly

ii: a new proposal is in preparation

iii : no planned replacement

Dossier: COM/1993/638 0480/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS SUBSTANCES - CONSOLIDATED TEXT -

Adoption by Commission 21/12/1993

COM/1993/638/FINAL of 21/12/1993

Bull. 12-1993/1.2.179

Legal Basis (Commission): Traité/CE/art 100a

EP opinion 1. rdg 09/02/1994

OJ C/1994/61 of 28/02/1994 p.102

Bull. 1/2-1994/1.2.162

ESC opinion 23/02/1994

OJ C/1994/133 of 16/05/1994 p.20

Bull. 1/2-1994/1.2.162

Adoption amended proposal 12/04/1994

COM/1994/103/FINAL of 12/04/1994

Bull. 4-1994/1.2.147

EP opinion 1. rdg 15/02/1995

OJ C/1995/56 of 06/03/1995 p.53

Bull. 1/2-1995/1.3.105

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

B2>[52001DC0763R\(01\)](#)

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Dossier: SEC/1991/466 1991/0400/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO WHEELED AGRICULTURAL OR FORESTRY TRACTORS

Adoption by Commission 20/06/1991

SEC/1991/466/FINAL of 20/06/1991

Legal Basis (Commission): *Traité/CE/art 100a*

EP opinion 1. rdg 12/02/1992

OJ C/1992/67 of 16/03/1992 p.66

ESC opinion 26/02/1992

OJ C/1992/98 of 21/04/1992 p.10

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 95*

EP opinion 1. rdg 27/10/1999

Dossier: SEC/1991/1608 1991/0402/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO RESTRICTIONS ON THE MARKETING AND USE OF CERTAIN DANGEROUS SUBSTANCES AND PREPARATIONS

Adoption by Commission 09/09/1991

SEC/1991/1608/FINAL of 09/09/1991

Legal Basis (Commission): *Traité/CE/art 100a*

ESC opinion 28/11/1991

OJ C/1992/40 of 17/02/1992 p.12

EP opinion 1. rdg 12/02/1992

OJ C/1992/67 of 16/03/1992 p.64

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 95*

EP opinion 1. rdg 27/10/1999

Dossier: SEC/1991/1858 1991/0403/COD

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PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE RELATING TO FERTILIZERS

Adoption by Commission 05/12/1991

SEC/1991/1858/FINAL of 05/12/1991

Legal Basis (Commission): Traité/CE/art 100a

EP opinion 1. rdg 08/04/1992

OJ C/1992/125 of 18/05/1992 p.171

ESC opinion 29/04/1992

OJ C/1992/169 of 06/07/1992 p.11

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

DG ENTR

Dossier: SEC/1995/87

RECOMMENDATION FOR A COUNCIL DECISION ON THE OPENING OF NEGOTIATIONS BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION WITH A VIEW TO THE CONCLUSION OF AN AGREEMENT ON THE EXCHANGE OF INFORMATION IN THE FIELD OF TECHNICAL REGULATIONS

Adoption by Commission 30/01/1995

SEC/1995/87/FINAL of 30/01/1995

DG EMPL

Dossier: COM/1987/494

PROPOSAL FOR A COUNCIL DIRECTIVE COMPLETING THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN STATUTORY AND OCCUPATIONAL SOCIAL SECURITY SCHEMES

Adoption by Commission 16/10/1987

OJ C/1987/309 of 19/11/1987 p.10

COM/1987/494/FINAL of 23/10/1987

Legal Basis (Commission): Traité/CEE/art 100; Traité/CEE/art 235

ESC opinion 25/02/1988

OJ C/1988/95 of 11/04/1988 p.4

EP opinion single rdg 16/09/1988

OJ C/1988/262 of 10/10/1988 p.179



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Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 141

EP resolution 16/09/1999

Bull. 9-1999/1.2.19

Dossier: COM/1990/228/1

Proposal for a COUNCIL DIRECTIVE on certain employment relationships with regards to working conditions

Adoption by Commission 13/06/1990

OJ C/1990/224 of 08/09/1990 p.4

COM/1990/228/FINAL of 13/08/1990

Legal Basis (Commission): Traité/CEE/art 100

ESC opinion 19/09/1990

OJ C/1990/332 of 31/12/1990 p.167

EP opinion single rdg 20/11/1990

OJ C/1990/324 of 24/12/1990 p.96

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 137 par 2

Dossier: COM/1990/588 1990/0327/COD

PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM REQUIREMENTS TO IMPROVE THE MOBILITY AND THE SAFE TRANSPORT TO WORK OF WORKERS WITH REDUCED MOBILITY

Adoption by Commission 05/12/1990

OJ C/1991/68 of 16/03/1991 p.7

COM/1990/588/FINAL of 28/02/1991

Bull. 1/2-1991/1.2.112

Legal Basis (Commission): Traité/CEE/art 118a

ESC opinion 29/05/1991

OJ C/1991/191 of 22/07/1991 p.2

Bull. 5-1991/1.2.88

EP opinion 1. rdg 20/11/1991

OJ C/1991/326 of 16/12/1991

Bull. 11-1991/1.2.94

Adoption amended proposal 19/12/1991

OJ C/1992/15 of 21/01/1992

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COM/1991/539/FINAL of 19/12/1991

Bull. 12-1991/1.2.167

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 137 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.12

Dossier: COM/1992/234 0420/COD

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR TRANSPORT ACTIVITIES AND WORKPLACES ON MEANS OF TRANSPORT (INDIVIDUAL DIRECTIVE WITHIN THE MEANING OF ARTICLE 16 OF DIRECTIVE 89/391/EEC)

Adoption by Commission 16/11/1992

OJ C/1993/25 of 28/01/1993 p.17

COM/1992/234/FINAL of 16/11/1992

Bull. 11-1992/1.3.192

Legal Basis (Commission): Traité/CEE/art 118a

ESC opinion 28/04/1993

OJ C/1993/161 of 14/06/1993 p.1

Bull. 4-1993/1.2.106

EP opinion 1. rdg 14/07/1993

OJ C/1993/255 of 20/09/1993 p.80

Bull. 7/8-1993/1.2.141

Adoption amended proposal 01/10/1993

OJ C/1993/294 of 30/10/1993 p.4

COM/1993/421/FINAL of 01/10/1993

Bull. 10-1993/1.2.114

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 137 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.13

Dossier: COM/1993/435/2

Proposal for a COUNCIL DECISION establishing a medium-term action programme to combat exclusion and promote solidarity: a new programme to support and stimulate innovation (1994- 1999)

Adoption by Commission 20/09/1993

B6>52001DC0763R(01)

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COM/1993/435/FINAL of 21/10/1993

Bull. 9-1993/1.2.99

Legal Basis (Commission): Traité/CEE/art 235

ESC opinion 21/12/1993

OJ C/1994/52 of 19/02/1994 p.4

Bull. 12-1993/1.2.179

EP opinion single rdg 24/02/1994

OJ C/1994/77 of 14/03/1994 p.43

Bull. 1/2-1994/1.2.179

EP resolution 27/10/1994

OJ C/1994/323 of 21/11/1994 p.188

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 137 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.16

Dossier: COM/1995/734 1996/0004/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF UNEMPLOYED PERSONS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC) NR 1408/71

Adoption by Commission 10/01/1996

OJ C/1996/68 of 06/03/1996 p.11

COM/1995/734/FINAL of 10/01/1996

Bull. 1/2-1996/1.3.196

Legal Basis (Commission): Traité/CE/art 51; Traité/CE/art 235

ESC opinion 10/07/1996

OJ C/1996/295 of 07/10/1996 p.41

Bull. 7/8-1996/1.3.232

EP opinion single rdg 18/02/1997

OJ C/1997/85 of 17/03/1997 p.26

Bull. 1/2-1997/1.2.210

Adoption amended proposal 18/04/1997

OJ C/1997/161 of 28/05/1997 p.5

B7>52001DC0763R(01)

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COM/1997/158/FINAL of 18/04/1997

Bull. 4-1997/1.3.209

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 42; Traité/CE/art 308

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.7

Dossier: COM/1995/735 1996/0001/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF BENEFICIARIES OF PRE - RETIREMENT BENEFITS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC) NR 1408/71

Adoption by Commission 10/01/1996

OJ C/1996/62 of 01/03/1996 p.14

COM/1995/735/FINAL of 10/01/1996

Bull. 1/2-1996/1.3.197

Legal Basis (Commission): Traité/CE/art 51; Traité/CE/art 235

ESC opinion 10/07/1996

OJ C/1996/295 of 07/10/1996 p.39

Bull. 7/8-1996/1.3.233

EP opinion single rdg 28/11/1996

OJ C/1996/380 of 16/12/1996 p.90

Bull. 11-1996/1.3.203

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 42; Traité/CE/art 308

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.8

Dossier: COM/1996/93 1996/0095/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 76/207/CEE ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS

Adoption by Commission 27/03/1996

OJ C/1996/179 of 22/06/1996 p.8

B8>[52001DC0763R\(01\)](#)

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COM/1996/93/FINAL of 27/03/1996

Bull. 3-1996/1.3.162

Legal Basis (Commission): *Traité/CE/art 235*

ESC opinion 25/09/1996

OJ C/1997/30 of 30/01/1997 p.57

Bull. 9-1996/1.3.157

EP opinion single rdg 09/03/1999

OJ C/1999/175 of 21/06/1999 p.67

Bull. 3-1999/1.3.152

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 141*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.18

DG AGRI

Dossier: COM/1988/159

RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO ENTER INTO NEGOTIATIONS WITH A VIEW TO CONCLUDING AN AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES OF AMERICA ON COOPERATION IN WINE SECTOR

Adoption by Commission 15/04/1988

COM/1988/159/FINAL of 18/04/1988

Legal Basis (Commission): *Traité/CEE/art 113*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 133*

Dossier: COM/1997/33 1997/0033/ACC

PROPOSAL FOR A COUNCIL DECISION APPROVING THE EXCHANGES OF LETTERS BETWEEN THE EUROPEAN COMMUNITY, OF THE ONE PART, AND BULGARIA, HUNGARY, POLAND, THE CZECH REPUBLIC, THE SLOVAK REPUBLIC, ROMANIA, ESTONIA, LATVIA AND LITHUANIA, OF THE OTHER PART, CONCERNING CERTAIN ARRANGEMENTS FOR LIVE BOVINE ANIMALS

Adoption by Commission 07/02/1997

COM/1997/33/FINAL of 07/02/1997

Legal Basis (Commission): *Traité/CE/art 113; Traité/CE/art 228 par 2phrase1*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

B9>[52001DC0763R\(01\)](#)

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Legal Basis (Commission): [Traité/CE/art 133](#); [Traité/CE/art 300 par 2ph1](#)

Dossier: [COM/1997/397 1997/0219/ACC](#)

Proposal for a COUNCIL DECISION concerning the conclusion of an Interim Arrangement between the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, on the one side, and the European Communities on the other

Adoption by Commission [25/07/1997](#)

[COM/1997/397/FINAL](#) of [25/07/1997](#)

Legal Basis (Commission): [Traité/CE/art 113](#); [Traité/CE/art 228 par 2phrase1](#)

Change of legal basis by Comm. [01/05/1999](#)

[SEC/1999/581/FINAL](#) of [01/05/1999](#)

Legal Basis (Commission): [Traité/CE/art 133](#); [Traité/CE/art 300 par 2ph1](#)

Dossier: [COM/1998/86 1998/0053/CNS](#)

Proposal for a Council Regulation (EC) amending Regulation (EEC) No 823/87 laying down special provisions relating to quality wines produced in specified regions

Adoption by Commission [20/02/1998](#)

[OJ C/1998/108](#) of [07/04/1998](#) p.138

[COM/1998/86/FINAL](#) of [20/02/1998](#)

[Bull. 1/2-1998/1.3.261](#)

Legal Basis (Commission): [Traité/CE/art 43](#)

[ESC opinion 29/04/1998](#)

[OJ C/1998/214](#) of [10/07/1998](#) p.71

[Bull. 4-1998/1.2.131](#)

Change of legal basis by Comm. [01/05/1999](#)

[SEC/1999/581/FINAL](#) of [01/05/1999](#)

Legal Basis (Commission): [Traité/CE/art 37](#)

Dossier: [COM/1998/399 1998/0224/ACC](#)

Proposal for a COUNCIL REGULATION (EC) concerning the tariff treatment applicable upon importation of certain types of food supplements originating in Switzerland

Adoption by Commission [30/06/1998](#)

[COM/1998/399/FINAL](#) of [30/06/1998](#)

Legal Basis (Commission): [Traité/CE/art 113](#)

Change of legal basis by Comm. [01/05/1999](#)

[SEC/1999/581/FINAL](#) of [01/05/1999](#)

Legal Basis (Commission): [Traité/CE/art 133](#)

Dossier: [SEC/1996/632](#)

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RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE ADAPTATIONS TO THE AGREEMENTS ON TRADE AND TRADE - RELATED MATTERS (FREE TRADE AGREEMENTS) WITH THE BALTIC STATES

Adoption by Commission 12/04/1996

SEC/1996/632/FINAL of 12/04/1996

DG TREN

Dossier: COM/1988/707 1988/0511/COD

PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE MAXIMUM PERMITTED BLOOD ALCOHOL CONCENTRATION FOR VEHICLE DRIVERS

Adoption by Commission 30/11/1988

OJ C/1989/25 of 31/01/1989 p.9

COM/1988/707/FINAL of 05/01/1989

Legal Basis (Commission): Traité/CE/art 189a2; Traité/CE/art 75

ESC opinion 27/04/1989

OJ C/1989/159 of 26/06/1989 p.54

EP opinion 1. rdg 23/05/1989

OJ C/1989/158 of 26/06/1989 p.54

Adoption amended proposal 07/12/1989

OJ C/1990/11 of 17/01/1990 p.18

COM/1989/640/FINAL of 07/12/1989

Legal Basis (Commission): Traité/CEE/art 149 par 3

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80

EP opinion 1. rdg 27/10/1999

Bull. 10-1999/1.3.81

Dossier: COM/1993/647 0491/COD

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE SETTING-UP OF A EUROPEAN VESSEL REPORTING SYSTEM IN THE MARITIME ZONES OF COMMUNITY MEMBER STATES

Adoption by Commission 17/12/1993

OJ C/1994/22 of 26/01/1994 p.7

COM/1993/647/FINAL of 17/12/1993

Bull. 12-1993/1.2.137

B11>[52001DC0763R\(01\)](#)

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Legal Basis (Commission): Traité/CE/art 84 par 2

EP opinion 1. rdg 20/04/1994

OJ C/1994/128 of 09/05/1994 p.139

Bull. 4-1994/1.2.92

ESC opinion 01/06/1994

OJ C/1994/295 of 22/10/1994 p.28

Bull. 6-1994/1.2.114

Adoption amended proposal 07/06/1994

OJ C/1994/193 of 16/07/1994 p.7

COM/1994/220/FINAL of 07/06/1994

Bull. 6-1994/1.2.114

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.88

Dossier: COM/1995/337/2 1995/0205/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS

Adoption by Commission 19/07/1995

OJ C/1995/321 of 01/12/1995 p.10

COM/1995/337/FINAL of 19/07/1995

Bull. 7/8-1995/1.3.112

Legal Basis (Commission): Traité/CE/art 75

ESC opinion 28/02/1996

OJ C/1996/153 of 28/05/1996 p.16

Bull. 1/2-1996/1.3.117

EP opinion 1. rdg 25/10/1996

OJ C/1996/347 of 18/11/1996 p.429

Bull. 10-1996/1.3.96

Adoption amended proposal 13/02/1997

OJ C/1997/124 of 21/04/1997 p.25

COM/1997/34/FINAL of 13/02/1997

Bull. 1/2-1997/1.2.131

Change of legal basis by Comm. 01/05/1999



B12>[52001DC0763R\(01\)](#)

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.80

Committee of Regions opinion 18/11/1999

OJ C/2000/57 of 29/02/2000 p.40

Bull. 11-1999/1.3.87

Dossier: COM/1995/369 1995/0208/COD

PROPOSAL FOR A COUNCIL DIRECTIVE TO INTRODUCE RATIONAL PLANNING TECHNIQUES  
IN THE ELECTRICITY AND GAS DISTRIBUTION SECTORS

Adoption by Commission 20/07/1995

OJ C/1996/1 of 04/01/1996 p.6

COM/1995/369/FINAL of 20/09/1995

Bull. 9-1995/1.3.66

Legal Basis (Commission): Traité/CE/art 130s1

ESC opinion 24/04/1996

OJ C/1996/204 of 15/07/1996 p.78

Bull. 4-1996/1.3.68

Committee of Regions opinion 13/06/1996

OJ C/1996/337 of 11/11/1996 p.41

Bull. 6-1996/1.3.98

EP opinion 1. rdg 12/11/1996

OJ C/1996/362 of 02/12/1996 p.69

Bull. 11-1996/1.3.110

Adoption amended proposal 24/03/1997

OJ C/1997/180 of 14/06/1997 p.37

COM/1997/69/FINAL of 24/03/1997

Bull. 3-1997/1.3.91

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 175 par 1

EP opinion 1. rdg 06/10/1999

OJ C/2000/107 of 13/04/2000 p.63

Bull. 10-1999/1.3.73

Dossier: COM/1996/186 1996/0119/COD

B13>52001DC0763R(01)

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PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING COUNCIL REGULATION (EEC) NO 3922/91, ON THE HARMONISATION OF TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES IN THE FIELD OF CIVIL AVIATION

Adoption by Commission 03/05/1996

OJ C/1996/179 of 22/06/1996 p.9

COM/1996/186/FINAL of 03/05/1996

Bull. 5-1996/1.3.93

Legal Basis (Commission): Traité/CE/art 84 par 2

EP opinion 1. rdg 18/09/1996

OJ C/1996/320 of 28/10/1996 p.73

Bull. 9-1996/1.3.88

ESC opinion 25/09/1996

OJ C/1997/30 of 30/01/1997 p.25

Bull. 9-1996/1.3.88

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.94

Dossier: COM/1996/707/2 1997/0012/COD

PROPOSAL FOR A COUNCIL DECISION SETTING UP A CONSULTATION PROCEDURE ON RELATIONS BETWEEN MEMBER STATES AND THIRD COUNTRIES IN SHIPPING MATTERS AND ON ACTION RELATING TO SUCH MATTERS IN INTERNATIONAL ORGANIZATIONS AND AN AUTHORIZATION PROCEDURE FOR AGREEMENTS CONCERNING MARITIME TRANSPORT

Adoption by Commission 14/03/1997

OJ C/1997/113 of 11/04/1997 p.11

COM/1996/707/FINAL/2 of 14/03/1997

Bull. 3-1997/1.3.98

Legal Basis (Commission): Traité/CE/art 84 par 2

ESC opinion 01/10/1997

OJ C/1997/335 of 06/11/1997 p.25

Bull. 10-1997/1.2.134

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

Dossier: COM/1997/154 1997/0127/COD

B14>[52001DC0763R\(01\)](#)

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Proposal for a COUNCIL DIRECTIVE on airport charges

Adoption by Commission 23/04/1997

OJ C/1997/257 of 22/08/1997 p.2

COM/1997/154/FINAL of 23/04/1997

Bull. 4-1997/1.3.158

Legal Basis (Commission): *Traité/CE/art 84 par 2*

Committee of Regions opinion 20/11/1997

OJ C/1998/64 of 27/02/1998 p.56

Bull. 11-1997/1.3.137

ESC opinion 10/12/1997

OJ C/1998/73 of 09/03/1998 p.38

Bull. 12-1997/1.2.157

EP opinion 1. rdg 31/03/1998

OJ C/1998/138 of 04/05/1998 p.36

Bull. 4-1998/1.2.96

Adoption amended proposal 14/09/1998

OJ C/1998/319 of 16/10/1998 p.4

COM/1998/509/FINAL of 14/09/1998

Bull. 9-1998/1.2.101

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 80 par 2*

Dossier: COM/1998/41 1998/0022/COD

Proposal for a COUNCIL REGULATION (EC) amending Regulation (EEC) nr 295/91 establishing common rules for a denied - boarding compensation system in scheduled air transport

Adoption by Commission 30/01/1998

OJ C/1998/120 of 18/04/1998 p.18

COM/1998/41/FINAL of 30/01/1998

Bull. 1/2-1998/1.3.186

Legal Basis (Commission): *Traité/CE/art 84 par 2*

ESC opinion 01/07/1998

OJ C/1998/284 of 14/09/1998 p.14

Bull. 7/8-1998/1.3.161

EP opinion 1. rdg 17/07/1998

OJ C/1998/292 of 21/09/1998 p.214

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Bull. 7/8-1998/1.3.161

Adoption amended proposal 19/10/1998

OJ C/1998/351 of 18/11/1998 p.7

COM/1998/580/FINAL of 19/10/1998

Bull. 10-1998/1.2.107

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.93

Dossier: COM/1998/251/2 1998/0158/COD

Proposal for a Council Regulation (EC) amending Council Regulation (EEC) N. 3577/92 applying the principle of freedom to provide services to maritime transport within the Member States (maritime cabotage)

Adoption by Commission 29/04/1998

OJ C/1998/213 of 09/07/1998 p.16

COM/1998/251/FINAL of 29/04/1998

Bull. 4-1998/1.2.94

Legal Basis (Commission): Traité/CE/art 84 par 2

ESC opinion 02/12/1998

OJ C/1999/40 of 15/02/1999 p.3

Bull. 12-1998/1.2.158

EP opinion 1. rdg 12/03/1999

OJ C/1999/175 of 21/06/1999 p.440

Bull. 3-1999/1.3.102

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.89

Dossier: COM/1998/414/1 1998/0226/COD

Proposal for a Council Directive amending Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member states

Adoption by Commission 10/07/1998

OJ C/1998/261 of 19/08/1998 p.10

B16>52001DC0763R(01)

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COM/1998/414/FINAL of 10/07/1998

Bull. 7/8-1998/1.3.164

Legal Basis (Commission): Traité/CE/art 75; Traité/CE/art 84 par 2

ESC opinion 15/10/1998

OJ C/1998/410 of 30/12/1998 p.16

Bull. 10-1998/1.2.109

EP opinion 1. rdg 12/02/1999

OJ C/1999/150 of 28/05/1999 p.614

Bull. 1/2-1999/1.3.185

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71; Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.97

Dossier: COM/1998/414/2 1998/0227/COD

Proposal for a Council Directive amending Council Directive 96/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

Adoption by Commission 10/07/1998

OJ C/1998/261 of 19/08/1998 p.13

COM/1998/414/FINAL of 10/07/1998

Bull. 7/8-1998/1.3.164

Legal Basis (Commission): Traité/CE/art 75

ESC opinion 15/10/1998

OJ C/1998/410 of 30/12/1998 p.16

Bull. 10-1998/1.2.109

EP opinion 1. rdg 15/04/1999

OJ C/1999/219 of 30/07/1999 p.414

Bull. 4-1999/1.3.113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.96

Committee of Regions opinion 16/09/1999

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OJ C/1999/374 of 23/12/1999 p.82

Bull. 9-1999/1.2.96

Dossier: SEC/1998/23

Recommendation for a Council Decision authorising the Commission to open negotiations for a European agreement concerning the international carriage of dangerous goods by inland waterway

Adoption by Commission 15/01/1998

SEC/1998/23/FINAL of 15/01/1998

Dossier: SEC/2001/453

Recommendation for a COUNCIL DECISION authorising the European Community to participate in the discussions and negotiations on aviation environmental issues to be addressed by the Council of the International Civil Aviation Organisation (ICAO) and the 33rd ICAO Assembly

Adoption by Commission 21/03/2001

SEC/2001/453/FINAL of 21/03/2001

DG ENV

Dossier: COM/1989/282 0217/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CIVIL LIABILITY FOR DAMAGE CAUSED BY WASTE

Adoption by Commission 02/08/1989

OJ C/1989/251 of 04/10/1989 p.3

COM/1989/282/FINAL of 15/09/1989

Legal Basis (Commission): Traité/CE/art 100a

ESC opinion 28/02/1990

OJ C/1990/112 of 07/05/1990 p.23

EP opinion 1. rdg 22/11/1990

OJ C/1990/324 of 24/12/1990 p.248

Adoption amended proposal 27/06/1991

OJ C/1991/192 of 23/07/1991 p.6

COM/1991/219/FINAL of 27/06/1991

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

EP resolution 20/04/1994

OJ C/1994/128 of 09/05/1994 p.165

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

Dossier: COM/1996/315 1996/0181/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DECISION ON AN ACTION PROGRAMME FOR INTEGRATED GROUNDWATER PROTECTION AND MANAGEMENT

Adoption by Commission 10/07/1996

OJ C/1996/355 of 25/11/1996 p.1

COM/1996/315/FINAL of 10/07/1996

Bull. 7/8-1996/1.3.172

Legal Basis (Commission): Traité/CE/art 130s3

ESC opinion 29/01/1997

OJ C/1997/89 of 19/03/1997 p.34

Bull. 1/2-1997/1.2.166

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 175 par 3

Dossier: COM/1999/128 1999/0077/CNS

Proposal for a COUNCIL DECISION concerning the approval, on behalf of the Community, of the amendments to the Annexes to the Convention on the protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention)

Adoption by Commission 17/03/1999

OJ C/1999/176 of 22/06/1999 p.15

COM/1999/128/FINAL of 18/03/1999

Bull. 3-1999/1.3.123

Legal Basis (Commission): Traité/CE/art 130r4; Traité/CE/art 228par2phrase1; Traité/CE/art 228 par 3a11

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 174 par 4; Traité/CE/art 300 par 2ph1; Traité/CE/art 300 par 3a11

EP opinion single rdg 02/12/1999

Bull. 12-1999/1.2.152

Dossier: COM/2000/146 2000/0063/ACC

Proposal for a COUNCIL DECISION on the Community position to be adopted on certain proposals submitted to the 11th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Gigiri, Kenya, 10 - 20 April 2000

Adoption by Commission 17/03/2000

B19>[52001DC0763R\(01\)](#)

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COM/2000/146/FINAL of 17/03/2000

Bull. 3-2000/1.4.28

Legal Basis (Commission): *Traité/CE/art 133*

DG FISH

Dossier: COM/1999/255

Proposal for a COUNCIL REGULATION (EC) amending for a second time Regulation (EC) No 66/98 laying down certain conservation and control measures applicable to fishing activities in the Antarctic

Adoption by Commission 27/05/1999

COM/1999/255/FINAL of 27/05/1999

Bull. 5-1999/1.2.155

Legal Basis (Commission): *Traité/CE; Règlement/CE/CS 66/98/art 121*

DG MARKET

Dossier: COM/1972/887 0003/COD

PROPOSAL FOR A FIFTH EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE COORDINATION OF SAFEGUARDS WHICH FOR THE PROTECTION OF THE INTERESTS OF MEMBERS AND OUTSIDERS, ARE REQUIRED BY MEMBER STATES OF COMPANIES WITHIN THE MEANING OF ARTICLE 58, SECOND PARAGRAPH, WITH RESPECT TO COMPANY STRUCTURE AND TO THE POWERS AND RESPONSIBILITIES OF COMPANY BOARDS

Adoption by Commission 27/09/1972

OJ C/1972/131 of 13/12/1972 p.49

COM/1972/887/FINAL of 27/09/1972

Legal Basis (Commission): *Traité/CE/art 189a2; Traité/CE/art 54 par 3g*

ESC opinion 29/05/1974

OJ C/1974/109 of 19/09/1974 p.9

EP opinion single rdg 11/05/1982

OJ C/1982/149 of 14/06/1982 p.20

Adoption amended proposal 28/07/1983

COM/1983/185/FINAL of 12/08/1983

Adoption amended proposal 13/12/1990

COM/1990/629/FINAL of 13/12/1990

Legal Basis (Commission): *Traité/CEE/art 54*

ESC opinion 03/07/1991

OJ C/1991/269 of 14/10/1991 p.48

EP opinion 1. rdg 10/07/1991

OJ C/1991/240 of 16/09/1991 p.48



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Adoption amended proposal 20/11/1991

COM/1991/372/FINAL of 10/11/1991

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Legal Basis (Commission): Traité/CE/art 54 par 3g

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 2g

EP opinion 1. rdg 27/10/1999

Dossier: COM/1984/727 0038/COD

PROPOSAL FOR A TENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL  
BASED ON ARTICLE 54(3)(G) OF THE TREATY CONCERNING CROSS-BORDER MERGERS OF  
PUBLIC LIMITED COMPANIES

Adoption by Commission 14/12/1984

OJ C/1985/23 of 25/01/1985 p.11

COM/1984/727/FINAL of 08/01/1985

Legal Basis (Commission): Traité/CE/art 54 par 3g

ESC opinion 26/09/1985

OJ C/1985/303 of 25/11/1985 p.27

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 2g

DG TAXUD

Dossier: COM/1990/595

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING ARRANGEMENTS FOR THE TAKING  
INTO ACCOUNT BY ENTERPRISES OF THE LOSSES OF THEIR PERMANENT ESTABLISHMENT  
AND SUBSIDIARIES SITUATED IN OTHER MEMBER STATES

Adoption by Commission 28/11/1990

OJ C/1991/53 of 28/02/1991 p.30

COM/1990/595/FINAL of 24/01/1991

Legal Basis (Commission): Traité/CEE/art 100

ESC opinion 20/03/1991

OJ C/1991/120 of 06/05/1991 p.41

B21>[52001DC0763R\(01\)](#)

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EP opinion single rdg 11/03/1992

OJ C/1992/94 of 13/04/1992 p.153

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 94*

Dossier: COM/1992/226 1992/1019/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE INTRODUCING A TAX ON CARBON DIOXIDE EMISSIONS AND ENERGY

Adoption by Commission 02/06/1992

OJ C/1992/196 of 03/08/1992 p.1

COM/1992/226/FINAL of 27/05/1992

Bull. 5-1992/1.1.114

Legal Basis (Commission): *Traité/CE/art 99; Traité/CE/art 130s2*

ESC opinion 24/02/1993

OJ C/1993/108 of 19/04/1993 p.20

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

EP resolution 02/03/1995

OJ C/1995/68 of 20/03/1995 p.47

Adoption amended proposal 10/05/1995

COM/1995/172/FINAL of 10/05/1995

Bull. 5-1995/1.3.85

ESC opinion 28/03/1996

OJ C/1996/174 of 17/06/1996 p.47

Bull. 3-1996/1.3.117

Change of legal basis by Comm. 01/02/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 93; Traité/CE/art 175 par 2*

Dossier: COM/1994/232 1994/0140/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC) SETTING OUT THE CASES WHERE RELIEF FROM IMPORT DUTIES OR EXPORT DUTIES SHALL BE GRANTED

Adoption by Commission 08/06/1994

OJ C/1994/197 of 19/07/1994 p.1

COM/1994/232/FINAL of 08/06/1994

Bull. 6-1994/1.3.71

B22>[52001DC0763R\(01\)](#)

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Legal Basis (Commission): Traité/CE/art 28

EP opinion single rdg 16/06/1995

OJ C/1995/166 of 03/07/1995 p.203

Bull. 6-1995/1.4.24

Adoption amended proposal 06/05/1996

OJ C/1996/184 of 25/06/1996 p.13

COM/1996/165/FINAL of 06/05/1996

Bull. 5-1996/1.4.17

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 26

Dossier: COM/1994/370 1994/0197/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 77/388/EEC AND DETERMINING THE SCOPE OF ARTICLE 14(1) (D) AS REGARDS EXEMPTION FROM VALUE ADDED TAX ON THE FINAL IMPORTATION OF CERTAIN GOODS

Adoption by Commission 15/09/1994

OJ C/1994/282 of 08/10/1994 p.3

COM/1994/370/FINAL of 15/09/1994

Bull. 9-1994/1.2.30

Legal Basis (Commission): Traité/CE/art 99

ESC opinion 21/12/1994

OJ C/1995/397 of 31/12/1995 p.50

Bull. 12-1994/1.2.35

EP opinion single rdg 16/06/1995

OJ C/1995/166 of 03/07/1995 p.203

Bull. 6-1995/1.3.40

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 93

Dossier: COM/1998/22/1 1998/0016/ACC

Proposal for a Council Regulation (EC) amending Regulation (EEC) N. 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

Adoption by Commission 23/01/1998

OJ C/1998/108 of 07/04/1998 p.39

COM/1998/22/FINAL of 23/01/1998

Bull. 1/2-1998/1.3.37

Legal Basis (Commission): Traité/CE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: COM/1998/626 1998/0302/ACC

Proposal for a COUNCIL DECISION laying down the procedure for adopting the Community position in the EC-Turkey Customs Cooperation Committee set up by Decision nr 2/69 of the EC-Turkey Association Council

Adoption by Commission 03/11/1998

COM/1998/626/FINAL of 03/11/1998

Legal Basis (Commission): Traité/CE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: COM/1999/369

Proposal for a COUNCIL DECISION authorising Portugal to apply or to continue to apply reductions in, or exemptions from, excise duties on certain mineral oils used for specific purposes, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

Adoption by Commission 16/07/1999

COM/1999/369/FINAL of 19/07/1999

Legal Basis (Commission): Traité/CE; Directive/CEE/CS 81/92/art 8 par 4; Directive/CEE/CS 81/92/art 8 par 5

Dossier: SEC/1999/501

Draft DECISION n° 1/99 of the EC-TURKEY Customs Cooperation Committee amending Decision N° 1/96 of 20 May 1996 laying down detailed rules for the application of Decision N° 1/95 of the EC-Turkey Association Council - Draft common position of the Community

Adoption by Commission 28/04/1999

SEC/1999/501/FINAL of 28/04/1999

Legal Basis (Commission): Accord/Association/CE-Turquie; Décision/Cs Association/CE-Turquie/ 1/95/art 3 par 6

DG SANCO

Dossier: COM/1981/495

PROPOSAL FOR A COUNCIL DECISION ON GENERAL CONDITIONS TO BE FOLLOWED FOR ESTABLISHING MICROBIOLOGICAL CRITERIA FOR FOODSTUFFS AND FEEDINGSTUFFS, INCLUDING THE CONDITIONS FOR THEIR PREPARATION, IN THE VETERINARY, FOODSTUFF AND ANIMAL NUTRITION SECTORS

B24>[52001DC0763R\(01\)](#)

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Adoption by Commission 14/09/1981

OJ C/1981/252 of 02/10/1981 p.7

COM/1981/495/FINAL of 14/09/1981

Legal Basis (Commission): *Traité/CEE/art 43*

EP opinion single rdg 23/04/1982

OJ C/1982/125 of 17/05/1982 p.160

ESC opinion 29/04/1982

OJ C/1982/178 of 15/07/1982 p.6

Committee of Regions opinion 10/10/1997

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

Dossier: COM/1989/493 1989/1040/COD

Proposal for a Council Decision concerning safeguard measures in the veterinary field in the framework of the internal market

Adoption by Commission 17/10/1989

OJ C/1989/327 of 30/12/1989 p.37

COM/1989/493/FINAL of 17/10/1989

Bull. 10-1989/2.1.154

Legal Basis (Commission): *Traité/CEE/art 43*

ESC opinion 28/02/1990

OJ C/1990/112 of 07/05/1990 p.30

Bull. 3-1990/1.1.152

EP opinion single rdg 18/05/1990

OJ C/1990/149 of 18/06/1990 p.283

Bull. 5-1990/1.2.176

Adoption amended proposal 08/10/1990

OJ C/1990/268 of 24/10/1990 p.13

COM/1990/479/FINAL of 08/10/1990

Bull. 10-1990/1.3.143

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.136

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Dossier: COM/1994/394 1994/0208/COD

Proposal for a Council decision establishing rules for the recognition of Third Country health and veterinary inspection measures for fresh meat and meat products as equivalent to those applied to Community production, and for the conditions to be met for importation into the Community and amending Council Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat and meat products from Third Countries

Adoption by Commission 20/09/1994

OJ C/1994/282 of 08/10/1994 p.11

COM/1994/394/FINAL of 20/09/1994

Legal Basis (Commission): Traité/CE/art 43

EP opinion single rdg 18/11/1994

OJ C/1994/341 of 05/12/1994 p.206

ESC opinion 23/11/1994

OJ C/1994/397 of 31/12/1994 p.37

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 152

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/0

Dossier: COM/1997/408 1997/0208/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council Directive 93/74/EEC on feedingstuffs intended for particular nutritional purposes and amending Directives 74/63/EEC, 79/373/EEC and 82/471/EEC

Adoption by Commission 25/07/1997

OJ C/1997/298 of 30/09/1997

COM/1997/408/FINAL of 25/07/1997

Bull. 7/8-1997/1.3.188

Legal Basis (Commission): Traité/CE/art 100a

EP opinion 1. rdg 19/02/1998

OJ C/1998/80 of 16/03/1998 p.220

Bull. 1/2-1998/1.3.248

ESC opinion 25/02/1998

OJ C/1998/129 of 27/04/1998 p.54

Bull. 1/2-1998/1.3.248

Adoption amended proposal 27/07/1998

OJ C/1998/273 of 02/09/1998 p.11

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COM/1998/484/FINAL of 27/07/1998

Bull. 7/8-1998/1.3.210

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 152

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.138

Dossier: COM/1997/409 1997/0213/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector

Adoption by Commission 25/07/1997

OJ C/1997/300 of 01/10/1997 p.10

COM/1997/409/FINAL of 25/07/1997

Bull. 7/8-1997/1.3.189

Legal Basis (Commission): Traité/CE/art 100a

EP opinion 1. rdg 19/02/1998

OJ C/1998/80 of 16/03/1998 p.221

Bull. 1/2-1998/1.3.249

ESC opinion 25/02/1998

OJ C/1998/129 of 27/04/1998 p.57

Bull. 1/2-1998/1.3.249

Adoption amended proposal 27/07/1998

OJ C/1998/270 of 29/08/1998 p.15

COM/1998/485/FINAL of 27/07/1998

Bull. 7/8-1998/1.3.211

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 152

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.139

Dossier: COM/1999/388 1999/0168/CNS

Proposal for a COUNCIL DIRECTIVE amending Directive 70/524/EEC concerning additives in feedingstuffs

Adoption by Commission 26/07/1999

B27>[52001DC0763R\(01\)](#)

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COM/1999/388/FINAL of 26/07/1999

Bull. 7/8-1999/1.3.150

Legal Basis (Commission): *Traité/CE/art 37*

ESC opinion 08/12/1999

OJ C/2000/51 of 23/02/2000 p.28

Bull. 12-1999/1.2.216

Dossier: SEC/1999/1902

Draft RECOMMENDATION NO 1/1999 OF THE JOINT COMMITTEE OF THE EUROPEAN COMMUNITY AND SWITZERLAND in respect of the simplification of certain veterinary checks on third country products of animal origin transiting the European Community to Switzerland - Draft common position of the Community -

Adoption by Commission 22/11/1999

SEC/1999/1902/FINAL of 22/11/1999

DG JAI

Dossier: COM/1993/684/1

PROPOSAL FOR A DECISION, BASED ON ARTICLE K3 OF THE TREATY ON EUROPEAN UNION ESTABLISHING THE CONVENTION ON THE CROSSING OF THE EXTERNAL FRONTIERS OF THE MEMBER STATES

Adoption by Commission 10/12/1993

OJ C/1994/11 of 15/01/1994 p.6

COM/1993/684/FINAL of 10/12/1993

Legal Basis (Commission): *Traité/Union/art K3 par 2*

EP opinion single rdg 21/04/1994

OJ C/1994/128 of 09/05/1994 p.358

Dossier: COM/1995/346 1995/0199/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE RIGHT OF THIRD-COUNTRY NATIONALS TO TRAVEL IN THE COMMUNITY

Adoption by Commission 12/07/1995

OJ C/1995/306 of 17/11/1995 p.5

COM/1995/346/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.3

Legal Basis (Commission): *Traité/CE/art 100*

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

Bull. 1/2-1996/1.1.1

ESC opinion 28/02/1996



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OJ C/1996/153 of 28/05/1996 p.38

EP opinion single rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.69

Bull. 10-1996/1.1.3

Adoption amended proposal 20/03/1997

COM/1997/106/FINAL of 20/03/1997

Bull. 3-1997/1.1.2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Dossier: COM/1995/347 1995/0201/CNS

**PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ELIMINATION OF CONTROLS ON PERSONS  
CROSSING INTERNAL FRONTIERS**

Adoption by Commission 12/07/1995

OJ C/1995/289 of 31/10/1995 p.16

COM/1995/347/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.2

Legal Basis (Commission): Traité/CE/art 100

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

Bull. 1/2-1996/1.1.2

ESC opinion 27/03/1996

OJ C/1996/174 of 17/06/1996 p.36

EP opinion single rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.62

Bull. 10-1996/1.1.1

Adoption amended proposal 20/03/1997

OJ C/1997/140 of 07/05/1997 p.21

COM/1997/106/FINAL of 20/03/1997

Bull. 3-1997/1.1.1

Dossier: COM/1995/348 1995/0202/COD

**PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING  
DIRECTIVE 68/360/EEC ON THE ABOLITION OF RESTRICTIONS ON MOVEMENT AND  
RESIDENCE WITHIN THE COMMUNITY FOR WORKERS OF MEMBER STATES AND THEIR  
FAMILIES AND DIRECTIVE 73/148/EEC ON THE ABOLITION OF RESTRICTIONS ON  
MOVEMENT AND RESIDENCE WITHIN THE COMMUNITY FOR NATIONALS OF MEMBER  
STATES WITH REGARD TO ESTABLISHMENT AND THE PROVISION OF SERVICES**

B29>[52001DC0763R\(01\)](#)

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Adoption by Commission 12/07/1995

OJ C/1995/307 of 18/11/1995 p.18

COM/1995/348/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.4

Legal Basis (Commission): Traité/CE/art 49; Traité/CE/art 63 par 2; Traité/CE/art 54 par 2

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

ESC opinion 27/03/1996

OJ C/1996/174 of 17/06/1996 p.40

Bull. 3-1996/1.1.2

EP opinion 1. rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.59

Bull. 10-1996/1.1.2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 40; Traité/CE/art 44 par 1; Traité/CE/art 52 par 1

EP opinion 1. rdg 27/10/1999

Dossier: COM/1997/387 1997/0227/CNS

Proposal for a COUNCIL ACT establishing the Convention on rules for the admission of third-country nationals to the Member States

Adoption by Commission 29/09/1997

OJ C/1997/337 of 07/11/1997 p.9

COM/1997/387/FINAL of 30/07/1997

Bull. 7/8-1997/1.5.2

EP opinion single rdg 13/07/1998

OJ C/1998/292 of 21/09/1998

EP opinion single rdg 10/02/1999

OJ C/1999/150 of 28/05/1999 p.196

Bull. 1/2-1999/1.5.5

DG RELEX

Dossier: COM/1980/616/2

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

B30>[52001DC0763R\(01\)](#)

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Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par 3a2*

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2*

Dossier: COM/1980/616/3

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 228 par 3a2; Traité/CE/art 238*

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 2a2*

Dossier: COM/1980/616/4

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par 3a2*

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1980/616/5

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE ARAB REPUBLIC OF EGYPT, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): ACCORD/EGYPTE-CECA

Dossier: COM/1980/616/6

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): ACCORD/JORDANIE-CECA

Dossier: COM/1980/616/7

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE LEBANESE REPUBLIC, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): ACCORD/LIBAN-CECA

Dossier: COM/1981/485/1

PROPOSAL FOR COUNCIL REGULATIONS CONCLUDING PROTOCOLS TO THE CO-OPERATION AGREEMENTS BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND MOROCCO CONSEQUENT ON THE ACCESSION OF GREECE TO THE COMMUNITY

Adoption by Commission 10/09/1981

OJ C/1981/336 of 23/12/1981 p.1

COM/1981/485/FINAL of 14/09/1981

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par

3a2

EP assent 09/07/1982

OJ C/1982/238 of 13/09/1982 p.91

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1982/665/1

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 19/10/1982

COM/1982/665/FINAL of 25/10/1982

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 228 par 3a2; Traité/CE/art 238

EP assent 17/02/1984

OJ C/1984/77 of 19/03/1984 p.107

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1987/99/3

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 228 par 2AL3; Traité/CE/art 238

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.92

B33>[52001DC0763R\(01\)](#)

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Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 310](#); [Traité/CE/art 300 par 2](#); [Traité/CE/art 300 par 3a2](#)

Dossier: COM/1987/99/4

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): [Traité/CE/art 228 par 2](#); [Traité/CE/art 238](#); [Traité/CE/art 228 par 3AL2](#)

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.93

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 310](#); [Traité/CE/art 300 par 2](#); [300,3a2](#)

Dossier: COM/1987/99/5

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): [Traité/CE/art 228 par 2](#); [Traité/CE/art 228 par 3AL2](#); [Traité/CE/art 238](#)

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.94

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

B34>52001DC0763R(01)

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1987/172/1

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA CONSEQUENT ON THE ACCESSION OF SPAIN AND PORTUGAL TO THE COMMUNITY

Adoption by Commission 13/04/1987

COM/1987/172/FINAL of 13/04/1987

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 228 par 3AL2; Traité/CE/art 238

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.92

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1987/172/2

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA CONSEQUENT ON THE ACCESSION OF SPAIN AND PORTUGAL TO THE COMMUNITY

Adoption by Commission 13/04/1987

COM/1987/172/FINAL of 13/04/1987

Legal Basis (Commission): ACCORD/ALGERIE-CECA;  
TRAITE/ADHESION/ESPAGNE-PORTUGAL-CEE

Dossier: COM/1988/168/2

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EEC AND THE KINGDOM OF MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC TO THE COMMUNITY

Adoption by Commission 22/03/1988

COM/1988/168/FINAL of 23/03/1988

Legal Basis (Commission): Traité/CE/art 228 par 3a2; Traité/CE/art 238; Traité/CE/art 228 par 2

EP assent 15/06/1988

OJ C/1988/187 of 18/07/1988 p.88

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

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Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2; Traité/CE/art 310

Dossier: COM/1988/168/3

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE ECSC AND THE KINGDOM OF MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC TO THE COMMUNITY

Adoption by Commission 22/03/1988

COM/1988/168/FINAL of 23/03/1988

Legal Basis (Commission): ACCORD/MAROC-CEE; TRAITE/ADHESION/ESPAGNE-PORTUGAL-CEE

Dossier: COM/1994/289 1994/0167/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) IN THE FIELD OF EMPLOYMENT CREATION AND SUPPORT TO SMALL AND MICROENTERPRISES IN THE MAGHREB COUNTRIES

Adoption by Commission 07/07/1994

OJ C/1994/214 of 04/08/1994 p.26

COM/1994/289/FINAL of 07/07/1994

Bull. 7/8-1994/1.3.49

Legal Basis (Commission): Traité/CE/art 130w

EP opinion 1. rdg 28/10/1994

OJ C/1994/323 of 21/11/1994 p.493

Bull. 10-1994/1.3.38

Adoption amended proposal 22/12/1994

OJ C/1994/389 of 31/12/1994 p.13

COM/1994/650/FINAL of 22/12/1994

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 179

EP opinion 1. rdg 15/12/1999

Dossier: COM/1995/745/2 1996/0010/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.4



COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): Traité/CE/art 238; Traité/CE/art 228 par 3a2; Traité/CE/art 228 par 2phrase2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2

Dossier: COM/1995/745/3 1996/0011/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.13

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): Traité/CE/art 238; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2

Dossier: COM/1995/745/4 1996/0012/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.22

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): Traité/CE/art 238; Traité/CE/art 228 par 3a2; Traité/CE/art 228 par 2phrase2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2

Dossier: COM/1995/745/6 1996/0014/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE

ARAB REPUBLIC OF EGYPT FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA,  
THE REPUBLIC OF FINLAND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.40

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): Traité/CE/art 238; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2

Dossier: COM/1996/150 1996/0106/AVC

PROPOSAL FOR A COUNCIL AND COMMISSION DECISION ON THE CONCLUSION OF A  
PROTOCOL TO THE PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE  
EUROPEAN COMMUNITIES AND THEIR MEMBER STATES AND THE RUSSIAN FEDERATION  
(EC/EURATOM/ECSC)

Adoption by Commission 23/05/1996

COM/1996/150/FINAL of 23/05/1996

Bull. 5-1996/1.4.73

Legal Basis (Commission): Traité/CECA; Traité/CE/art 54 par 2; Traité/CE/art 66; Traité/CE/art 57 par  
2dernière phrase; Traité/CE/art 228 par 3a2; Traité/CE/art 228 par 2phrase2; Traité/CE/art 235;  
Traité/CE/art 113; Traité/CE/art 100; Traité/CE/art 99; Traité/CE/art 84 par 2; Traité/CE/art 75;  
Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

EP assent 11/06/1997

OJ C/1997/200 of 30/06/1997 p.66

Bull. 6-1997/1.4.96

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 55; Traité/CE/art 47 par 2phrase1;  
Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 93; Traité/CE/art 94;  
Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2;  
Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

Dossier: COM/1997/557/1 1997/0294/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and  
Cooperation Agreement between the European Communities and their Member States, of the one part, and  
the Russian Federation, of the other part

Adoption by Commission 29/10/1997

COM/1997/557/FINAL of 29/10/1997

Legal Basis (Commission): Traité/CECA/art 95; Traité/CE/art 54 par 2; Traité/CE/art 57 par 2Dernière  
phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84

par 2; Traité/CE/art 99; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3al2; Traité/EURATOM/art 101al2; Traité/CE/art 100

Dossier: COM/1997/557/2 1997/0295/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part

Adoption by Commission 29/10/1997

COM/1997/557/FINAL of 29/10/1997

Legal Basis (Commission): Traité/CECA/art 95; Traité/CE/art 54 par 2; Traité/CE/art 57 par 2Dernière phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 99; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3al2; Traité/EURATOM/art 101al2; Traité/CE/art 100

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 55; Traité/CE/art 47 par 2phrase1; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 93; Traité/CE/art 94; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 3al2; Traité/CE/art 300 par 2phrase2; Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

Dossier: COM/1997/718/2

Draft COMMISSION REGULATION (EURATOM) concerning the accession by the European Atomic Energy Community to an Agreement having established in 1993 a Science and Technology Centre in Ukraine between Canada, Sweden, Ukraine and the United States of America

Adoption by Commission 19/01/1998

COM/1997/718/FINAL of 19/01/1998

Bull. 1/2-1998/1.3.150

Legal Basis (Commission): Traité/EURATOM/art 101 par 2

Dossier: COM/1998/28 1998/0021/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and Ukraine

Adoption by Commission 21/01/1998

COM/1998/28/FINAL of 21/01/1998

Bull. 1/2-1998/1.4.113

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2derniere phrase; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CECA/art 95; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3al1; Traité/EURATOM/art 101 par 2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

B39>[52001DC0763R\(01\)](#)

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 3a11; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/106

Proposal for a Council Decision on the Community position concerning the establishment of working parties to the Cooperation Council established by the Cooperation agreement between the European Community and the former Yugoslav Republic of Macedonia.

Adoption by Commission 27/02/1998

COM/1998/106/FINAL of 27/02/1998

Legal Basis (Commission): Traité/CE; Décision/CE/CS 831/97/art 3

Dossier: COM/1998/307/1 1998/0185/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and the Republic of Moldova

Adoption by Commission 18/05/1998

COM/1998/307/FINAL of 18/05/1998

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2dernière phrase; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a11; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95; Traité/CE/art 66; Traité/CE/art 99; Traité/CE/art 100

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 3a11; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/307/2 1998/0186/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part

Adoption by Commission 18/05/1998

COM/1998/307/FINAL of 18/05/1998

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2dernière phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 99; Traité/CE/art 100; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57

par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 3a2; Traité/CE/art 55; Traité/CE/art 93; Traité/CE/art 94; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/456

Proposal for a COUNCIL DECISION on a Common Position of the Community within the EC-Mexico Joint Council on the rules of procedure of the Joint Council and of the Joint Committee

Adoption by Commission 13/07/1998

COM/1998/456/FINAL of 13/07/1998

Legal Basis (Commission): Traité/CE

Dossier: COM/1998/733 1998/0357/CNS

Amended proposal for a COUNCIL DECISION on a Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union establishing measures to provide practical support in relation to the reception and the voluntary repatriation of refugees, displaced persons and asylum applicants, including emergency assistance to persons who have fled as a result of recent events in Kosovo

Adoption by Commission 16/12/1998

OJ C/1999/37 of 11/02/1999 p.4

COM/1998/733/FINAL of 16/12/1998

Bull. 12-1998/1.4.4

Legal Basis (Commission): Traité/Union/art K3 par 2b; Traité/Union/art K8 par 2

EP opinion single rdg 13/04/1999

OJ C/1999/219 of 30/07/1999 p.86

Bull. 4-1999/1.5.6

Adoption amended proposal 13/04/1999

COM/1999/181/FINAL of 13/04/1999

Bull. 4-1999/1.5.6

Dossier: SEC/1991/2358

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE EXCHANGE OF LETTERS BETWEEN THE EEC AND THE GOVERNMENT OF THE REPUBLIC OF KOREA ON ISSUES OF COMMON INTEREST

Adoption by Commission 06/12/1991

SEC/1991/2358/FINAL of 06/12/1991

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2; Traité/CE/art 228 par 3a1

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

B41>52001DC0763R(01)

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a11

Dossier: SEC/1992/1363

PROPOSAL FOR A COUNCIL DECISION AUTHORIZING THE MEMBER STATES TO NEGOTIATE AND CONCLUDE A CONVENTION CONCERNING MATTERS WHICH FALL WITHIN THE SPHERE OF COMPETENCE OF THE COMMUNITY

Adoption by Commission 14/07/1992

SEC/1992/1363/FINAL of 14/07/1992

Legal Basis (Commission): Traité/CEE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: SEC/1995/1682

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL - RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE AN ECONOMIC PARTNERSHIP AND POLITICAL CONSULTATION AGREEMENT WITH MEXICO

Adoption by Commission 23/10/1995

SEC/1995/1682/FINAL of 23/10/1995

DG TRADE

Dossier: COM/1991/236

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEG) NO 2603/89 ESTABLISHING COMMON RULES FOR EXPORTS

Adoption by Commission 21/06/1991

COM/1991/236/FINAL of 24/06/1991

Legal Basis (Commission): Traité/CEE/art 113; REGLEMENTATION AGRICOLE

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: COM/1999/589 1999/0243/ACC

Proposal for a COUNCIL DECISION on the conclusion of a memorandum of understanding between the European community and the socialist republic of Vietnam on the prevention of fraud in trade of footwear products

Adoption by Commission 16/11/1999

COM/1999/589/FINAL of 16/11/1999

Bull. 11-1999/1.5.36

Legal Basis (Commission): Traité/CEE/art 133

B42>52001DC0763R(01)

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Dossier: COM/1999/697

Proposal for a COUNCIL REGULATION repealing Council Regulation (EEC) No 3433/91 in as far as it imposes a definitive duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan

Adoption by Commission 15/12/1999

COM/1999/697/FINAL of 15/12/1999

Legal Basis (Commission): Traité/CE; Règlement/CE/CS 384/96/art 11 par 6

Dossier: SEC/1990/431

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEC) NO 428/89 CONCERNING THE EXPORT OF CERTAIN CHEMICAL PRODUCTS

Adoption by Commission 13/03/1990

SEC/1990/431/FINAL of 13/03/1990

Legal Basis (Commission): Traité/CEE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

DG DEV

Dossier: COM/1988/431/1

PROPOSAL FOR A COUNCIL REGULATION (EEC) ESTABLISHING A FINANCING FACILITY FOR IMPORTS OF FOOD PRODUCTS BY DEVELOPING COUNTRIES FROM THE EUROPEAN COMMUNITY

Adoption by Commission 19/07/1988

OJ C/1988/299 of 24/11/1988 p.8

COM/1988/431/FINAL of 26/07/1988

Legal Basis (Commission): Traité/CEE/art 43

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 37

Dossier: COM/1988/487/1

PROPOSAL FOR A COUNCIL REGULATION(EEC)AMENDING THE LIST OF LLDC CONTAINED IN ANNEX 2 TO COUNCIL REGULATION(EEC)NO 429/87

Adoption by Commission 26/07/1988

OJ C/1988/254 of 30/09/1988 p.5

COM/1988/487/FINAL of 12/09/1988

Legal Basis (Commission): Traité/CEE; Règlement/CEE/CS 428/87/art 9

EP opinion single rdg 20/01/1989

OJ C/1989/47 of 27/02/1989 p.161

DG ELARG

Dossier: COM/1997/292 1997/0163/ACC

Proposal for a COUNCIL DECISION on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, with regard to the extension for a further five years period in accordance with the provisions of article 62 , 4 (a) of the Europe Agreement

Adoption by Commission 03/09/1997

COM/1997/292/FINAL of 03/09/1997

Legal Basis (Commission): Traité/CE; Traité/CE/art 113; Traité/CE/art 228 par 2phrase1

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2phrase1

Dossier: COM/1997/426 1997/0216/ACC

Proposal for a COUNCIL DECISION concerning a Decision to be taken by the Association Council established by the Europe Agreement between the European Community and their Member States, of the one part, and the Czech Republic, of the other part

Adoption by Commission 23/07/1997

COM/1997/426/FINAL of 23/07/1997

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2; Accord/Association/Tchequie-CE; Décision/CS/CM Association/CE-Tchéquie/art 2 par 1

Dossier: COM/1997/452 1997/0236/ACC

Proposal for a Decision of the Council and the Commission on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States of the one part, and the Republic of Poland of the other part regarding the extension of the period during which Poland may grant public aid in the steel sector

Adoption by Commission 12/09/1997

COM/1997/452/FINAL of 12/09/1997

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2phrase1; Traité/CECA/art 95

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2a2; Traité/CECA/art 95

Dossier: COM/1997/562 1997/0311/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of Hungary in a Community programme within the framework of Community



audiovisual policy

Adoption by Commission 07/11/1997

OJ C/1997/368 of 05/12/1997 p.14

COM/1997/562/FINAL of 07/11/1997

Bull. 11-1997/1.4.55

Legal Basis (Commission): Traité/CE/art 228 par 3a11; Traité/CE/art 127 par 4; Traité/CE/art 130 par 3

EP opinion single rdg 18/12/1998

OJ C/1999/98 of 09/04/1999 p.509

Bull. 12-1998/1.3.69

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 150 par 4; Traité/CE/art 157; Traité/CE/art 300 par 3a2

Dossier: COM/1998/239/8 1998/0152/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of the Slovak Republic in the Community programmes in the field of culture

Adoption by Commission 27/04/1998

OJ C/1998/182 of 12/06/1998 p.36

COM/1998/239/FINAL of 27/04/1998

Bull. 4-1998/1.3.44

Legal Basis (Commission): Traité/CE/art 128 par 3; Traité/CE/art 228 par 3a1

EP opinion single rdg 16/09/1998

OJ C/1998/313 of 12/10/1998 p.87

Bull. 9-1998/1.2.68

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 151; Traité/CE/art 300 par 3a1

Dossier: SEC/1990/1017/2

Proposal for a Council Decision on the conclusion of the fourth financial Protocol

Adoption by Commission 06/06/1990

SEC/1990/1017/FINAL of 07/06/1990

Legal Basis (Commission): Traité/CEE/art 238

Change of legal basis by Comm. 01/05/1999

B45>52001DC0763R(01)

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 2a2  
DG ADMIN

Dossier: COM/1993/105/2

PROPOSAL FOR A COUNCIL REGULATION (EEC, EURATOM, ECSC) AMENDING COUNCIL REGULATION (EEC, EURATOM, ECSC) NO 1860/76 OF 29 JUNE 1976 LAYING DOWN THE CONDITIONS OF EMPLOYMENT OF STAFF OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Adoption by Commission 19/03/1993

COM/1993/105/FINAL of 19/03/1993

Legal Basis (Commission): Règlement/CEE/CS 1365/75/art 17; Règlement/CEE/CS 1860/76

EP opinion single rdg 29/10/1993

OJ C/1993/315 of 22/11/1993 p.627

Dossier: COM/1996/451 1996/0232/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC, EURATOM, ECSC) ADJUSTING THE DAILY SUBSISTENCE ALLOWANCE RATES FOR OFFICIALS ON MISSION WITHIN THE EUROPEAN TERRITORY OF THE MEMBER STATES OF THE EUROPEAN UNION LAID DOWN IN ARTICLE 13 OF ANNEX VII TO THE STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN COMMUNITIES AND INTRODUCING AN ANNUAL ADJUSTMENT PROCEDURE

Adoption by Commission 20/09/1996

OJ C/1996/349 of 20/11/1996 p.8

COM/1996/451/FINAL of 20/09/1996

Legal Basis (Commission): 24FUSION; STATUT/CE/partie2/art22; STATUT/CE/partie2/art67; STATUT/CE/partie1/annexe7/art13

EP opinion single rdg 12/03/1997

OJ C/1997/115 of 14/04/1997 p.78

Adoption amended proposal 31/07/1997

OJ C/1997/277 of 12/09/1997 p.4

COM/1997/429/FINAL of 31/07/1997

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 283; STATUT/CE/partie2/art22; STATUT/CE/partie2/art67; STATUT/CE/partie1/annexe7/art13

Dossier: SEC/1991/2120/4

PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING THE STAFF REGULATIONS OF OFFICIALS AND THE CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

B46>52001DC0763R(01)

Adoption by Commission 07/11/1991

OJ C/1991/307 of 27/11/1991 p.19

SEC/1991/2120/FINAL of 07/11/1991

Legal Basis (Commission): 24FUSION; STATUT/CEE

Court of Justice opinion 27/11/1991

EP opinion single rdg 12/12/1991

OJ C/1992/13 of 20/01/1992 p.138

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 283; STATUT/CEE

Dossier: SEC/1991/2120/5

PROPOSAL FOR A COUNCIL REGULATION(ECSC,EEC,EURATOM)AMENDING VARIOUS COUNCIL REGULATIONS INTRODUCING SPECIAL AND TEMPORARY MEASURES TO TERMINATE THE SERVICE OF OFFICIALS AND TEMPORARY STAFF OF THE EUROPEAN COMMUNITIES

Adoption by Commission 07/11/1991

OJ C/1991/307 of 27/11/1991 p.20

SEC/1991/2120/FINAL of 07/11/1991

Legal Basis (Commission): 24FUSION

Court of Justice opinion 27/11/1991

EP opinion single rdg 12/12/1991

OJ C/1992/13 of 20/01/1992 p.139

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 283

COMMUNICATION FROM THE COMMISSION - WITHDRAWAL OF COMMISSION PROPOSALS - which are no longer topical

Proposals for which the withdrawal is being asked by the Directorates general or responsible departments

Reasons are indicated as follows:

A : for objective reasons (change of de facto situation, objectives already achieved by other means, etc)

B : because the Commission has now adopted another approach

i : the proposal is replaced implicitly

ii: a new proposal is in preparation

iii : no planned replacement

Dossier: COM/1993/638 0480/COD

B47>[52001DC0763R\(01\)](#)

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PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS SUBSTANCES - CONSOLIDATED TEXT -

Adoption by Commission 21/12/1993

COM/1993/638/FINAL of 21/12/1993

Bull. 12-1993/1.2.179

Legal Basis (Commission): *Traité/CE/art 100a*

EP opinion 1. rdg 09/02/1994

OJ C/1994/61 of 28/02/1994 p.102

Bull. 1/2-1994/1.2.162

ESC opinion 23/02/1994

OJ C/1994/133 of 16/05/1994 p.20

Bull. 1/2-1994/1.2.162

Adoption amended proposal 12/04/1994

COM/1994/103/FINAL of 12/04/1994

Bull. 4-1994/1.2.147

EP opinion 1. rdg 15/02/1995

OJ C/1995/56 of 06/03/1995 p.53

Bull. 1/2-1995/1.3.105

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 95*

EP opinion 1. rdg 27/10/1999

Dossier: SEC/1991/466 1991/0400/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO WHEELED AGRICULTURAL OR FORESTRY TRACTORS

Adoption by Commission 20/06/1991

SEC/1991/466/FINAL of 20/06/1991

Legal Basis (Commission): *Traité/CE/art 100a*

EP opinion 1. rdg 12/02/1992

OJ C/1992/67 of 16/03/1992 p.66

ESC opinion 26/02/1992

OJ C/1992/98 of 21/04/1992 p.10

Change of legal basis by Comm. 10/11/1993

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COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

Dossier: SEC/1991/1608 1991/0402/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE ON THE APPROXIMATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES RELATING TO RESTRICTIONS ON THE MARKETING AND USE OF CERTAIN DANGEROUS SUBSTANCES AND PREPARATIONS

Adoption by Commission 09/09/1991

SEC/1991/1608/FINAL of 09/09/1991

Legal Basis (Commission): Traité/CE/art 100a

ESC opinion 28/11/1991

OJ C/1992/40 of 17/02/1992 p.12

EP opinion 1. rdg 12/02/1992

OJ C/1992/67 of 16/03/1992 p.64

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

Dossier: SEC/1991/1858 1991/0403/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND A COUNCIL DIRECTIVE RELATING TO FERTILIZERS

Adoption by Commission 05/12/1991

SEC/1991/1858/FINAL of 05/12/1991

Legal Basis (Commission): Traité/CE/art 100a

EP opinion 1. rdg 08/04/1992

OJ C/1992/125 of 18/05/1992 p.171

ESC opinion 29/04/1992

OJ C/1992/169 of 06/07/1992 p.11

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

B49>52001DC0763R(01)

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Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

DG ENTR

Dossier: SEC/1995/87

RECOMMENDATION FOR A COUNCIL DECISION ON THE OPENING OF NEGOTIATIONS BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION WITH A VIEW TO THE CONCLUSION OF AN AGREEMENT ON THE EXCHANGE OF INFORMATION IN THE FIELD OF TECHNICAL REGULATIONS

Adoption by Commission 30/01/1995

SEC/1995/87/FINAL of 30/01/1995

DG EMPL

Dossier: COM/1987/494

PROPOSAL FOR A COUNCIL DIRECTIVE COMPLETING THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN IN STATUTORY AND OCCUPATIONAL SOCIAL SECURITY SCHEMES

Adoption by Commission 16/10/1987

OJ C/1987/309 of 19/11/1987 p.10

COM/1987/494/FINAL of 23/10/1987

Legal Basis (Commission): Traité/CEE/art 100; Traité/CEE/art 235

ESC opinion 25/02/1988

OJ C/1988/95 of 11/04/1988 p.4

EP opinion single rdg 16/09/1988

OJ C/1988/262 of 10/10/1988 p.179

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 141

EP resolution 16/09/1999

Bull. 9-1999/1.2.19

Dossier: COM/1990/228/1

Proposal for a COUNCIL DIRECTIVE on certain employment relationships with regards to working conditions

Adoption by Commission 13/06/1990

OJ C/1990/224 of 08/09/1990 p.4

COM/1990/228/FINAL of 13/08/1990

B50>[52001DC0763R\(01\)](#)

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Legal Basis (Commission): *Traité/CEE/art 100*

ESC opinion 19/09/1990

OJ C/1990/332 of 31/12/1990 p.167

EP opinion single rdg 20/11/1990

OJ C/1990/324 of 24/12/1990 p.96

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 137 par 2*

Dossier: COM/1990/588 1990/0327/COD

**PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM REQUIREMENTS TO IMPROVE THE MOBILITY AND THE SAFE TRANSPORT TO WORK OF WORKERS WITH REDUCED MOBILITY**

Adoption by Commission 05/12/1990

OJ C/1991/68 of 16/03/1991 p.7

COM/1990/588/FINAL of 28/02/1991

Bull. 1/2-1991/1.2.112

Legal Basis (Commission): *Traité/CEE/art 118a*

ESC opinion 29/05/1991

OJ C/1991/191 of 22/07/1991 p.2

Bull. 5-1991/1.2.88

EP opinion 1. rdg 20/11/1991

OJ C/1991/326 of 16/12/1991

Bull. 11-1991/1.2.94

Adoption amended proposal 19/12/1991

OJ C/1992/15 of 21/01/1992

COM/1991/539/FINAL of 19/12/1991

Bull. 12-1991/1.2.167

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 137 par 2*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.12

Dossier: COM/1992/234 0420/COD

**PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE MINIMUM SAFETY AND HEALTH REQUIREMENTS FOR TRANSPORT ACTIVITIES AND WORKPLACES ON MEANS OF TRANSPORT (INDIVIDUAL DIRECTIVE WITHIN THE MEANING OF ARTICLE 16 OF DIRECTIVE 89/391/EEC)**

B51>[52001DC0763R\(01\)](#)

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Adoption by Commission 16/11/1992

OJ C/1993/25 of 28/01/1993 p.17

COM/1992/234/FINAL of 16/11/1992

Bull. 11-1992/1.3.192

Legal Basis (Commission): *Traité/CEE/art 118a*

ESC opinion 28/04/1993

OJ C/1993/161 of 14/06/1993 p.1

Bull. 4-1993/1.2.106

EP opinion 1. rdg 14/07/1993

OJ C/1993/255 of 20/09/1993 p.80

Bull. 7/8-1993/1.2.141

Adoption amended proposal 01/10/1993

OJ C/1993/294 of 30/10/1993 p.4

COM/1993/421/FINAL of 01/10/1993

Bull. 10-1993/1.2.114

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 137 par 2*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.13

Dossier: COM/1993/435/2

Proposal for a COUNCIL DECISION establishing a medium-term action programme to combat exclusion and promote solidarity: a new programme to support and stimulate innovation (1994- 1999)

Adoption by Commission 20/09/1993

COM/1993/435/FINAL of 21/10/1993

Bull. 9-1993/1.2.99

Legal Basis (Commission): *Traité/CEE/art 235*

ESC opinion 21/12/1993

OJ C/1994/52 of 19/02/1994 p.4

Bull. 12-1993/1.2.179

EP opinion single rdg 24/02/1994

OJ C/1994/77 of 14/03/1994 p.43

Bull. 1/2-1994/1.2.179

EP resolution 27/10/1994

OJ C/1994/323 of 21/11/1994 p.188



B52>52001DC0763R(01)

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Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 137 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.16

Dossier: COM/1995/734 1996/0004/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF UNEMPLOYED PERSONS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC) NR 1408/71

Adoption by Commission 10/01/1996

OJ C/1996/68 of 06/03/1996 p.11

COM/1995/734/FINAL of 10/01/1996

Bull. 1/2-1996/1.3.196

Legal Basis (Commission): Traité/CE/art 51; Traité/CE/art 235

ESC opinion 10/07/1996

OJ C/1996/295 of 07/10/1996 p.41

Bull. 7/8-1996/1.3.232

EP opinion single rdg 18/02/1997

OJ C/1997/85 of 17/03/1997 p.26

Bull. 1/2-1997/1.2.210

Adoption amended proposal 18/04/1997

OJ C/1997/161 of 28/05/1997 p.5

COM/1997/158/FINAL of 18/04/1997

Bull. 4-1997/1.3.209

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 42; Traité/CE/art 308

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.7

Dossier: COM/1995/735 1996/0001/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING, FOR THE BENEFIT OF BENEFICIARIES OF PRE - RETIREMENT BENEFITS, REGULATION (EEC) NR 1408/71 ON THE APPLICATION OF SOCIAL SECURITY SCHEMES TO EMPLOYED PERSONS, TO SELF - EMPLOYED PERSONS AND TO THE MEMBERS OF THEIR FAMILIES MOVING WITHIN THE COMMUNITY AND REGULATION (EEC) NR 574/72 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EEC)

NR 1408/71

Adoption by Commission 10/01/1996

OJ C/1996/62 of 01/03/1996 p.14

COM/1995/735/FINAL of 10/01/1996

Bull. 1/2-1996/1.3.197

Legal Basis (Commission): Traité/CE/art 51; Traité/CE/art 235

ESC opinion 10/07/1996

OJ C/1996/295 of 07/10/1996 p.39

Bull. 7/8-1996/1.3.233

EP opinion single rdg 28/11/1996

OJ C/1996/380 of 16/12/1996 p.90

Bull. 11-1996/1.3.203

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 42; Traité/CE/art 308

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.8

Dossier: COM/1996/93 1996/0095/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 76/207/CEE ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND PROMOTION, AND WORKING CONDITIONS

Adoption by Commission 27/03/1996

OJ C/1996/179 of 22/06/1996 p.8

COM/1996/93/FINAL of 27/03/1996

Bull. 3-1996/1.3.162

Legal Basis (Commission): Traité/CE/art 235

ESC opinion 25/09/1996

OJ C/1997/30 of 30/01/1997 p.57

Bull. 9-1996/1.3.157

EP opinion single rdg 09/03/1999

OJ C/1999/175 of 21/06/1999 p.67

Bull. 3-1999/1.3.152

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 141

B54>52001DC0763R(01)

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.18

DG AGRI

Dossier: COM/1988/159

RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO ENTER INTO NEGOTIATIONS WITH A VIEW TO CONCLUDING AN AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE UNITED STATES OF AMERICA ON COOPERATION IN WINE SECTOR

Adoption by Commission 15/04/1988

COM/1988/159/FINAL of 18/04/1988

Legal Basis (Commission): Traité/CEE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: COM/1997/33 1997/0033/ACC

PROPOSAL FOR A COUNCIL DECISION APPROVING THE EXCHANGES OF LETTERS BETWEEN THE EUROPEAN COMMUNITY, OF THE ONE PART, AND BULGARIA, HUNGARY, POLAND, THE CZECH REPUBLIC, THE SLOVAK REPUBLIC, ROMANIA, ESTONIA, LATVIA AND LITHUANIA, OF THE OTHER PART, CONCERNING CERTAIN ARRANGEMENTS FOR LIVE BOVINE ANIMALS

Adoption by Commission 07/02/1997

COM/1997/33/FINAL of 07/02/1997

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2phrase1

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2ph1

Dossier: COM/1997/397 1997/0219/ACC

Proposal for a COUNCIL DECISION concerning the conclusion of an Interim Arrangement between the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, on the one side, and the European Communities on the other

Adoption by Commission 25/07/1997

COM/1997/397/FINAL of 25/07/1997

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2phrase1

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2ph1

Dossier: COM/1998/86 1998/0053/CNS

Proposal for a Council Regulation (EC) amending Regulation (EEC) No 823/87 laying down special

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provisions relating to quality wines produced in specified regions

Adoption by Commission 20/02/1998

OJ C/1998/108 of 07/04/1998 p.138

COM/1998/86/FINAL of 20/02/1998

Bull. 1/2-1998/1.3.261

Legal Basis (Commission): Traité/CE/art 43

ESC opinion 29/04/1998

OJ C/1998/214 of 10/07/1998 p.71

Bull. 4-1998/1.2.131

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 37

Dossier: COM/1998/399 1998/0224/ACC

Proposal for a COUNCIL REGULATION (EC) concerning the tariff treatment applicable upon importation of certain types of food supplements originating in Switzerland

Adoption by Commission 30/06/1998

COM/1998/399/FINAL of 30/06/1998

Legal Basis (Commission): Traité/CE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: SEC/1996/632

RECOMMENDATION FOR A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE ADAPTATIONS TO THE AGREEMENTS ON TRADE AND TRADE - RELATED MATTERS (FREE TRADE AGREEMENTS) WITH THE BALTIC STATES

Adoption by Commission 12/04/1996

SEC/1996/632/FINAL of 12/04/1996

DG TREN

Dossier: COM/1988/707 1988/0511/COD

PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE MAXIMUM PERMITTED BLOOD ALCOHOL CONCENTRATION FOR VEHICLE DRIVERS

Adoption by Commission 30/11/1988

OJ C/1989/25 of 31/01/1989 p.9

COM/1988/707/FINAL of 05/01/1989

Legal Basis (Commission): Traité/CE/art 189a2; Traité/CE/art 75

ESC opinion 27/04/1989

OJ C/1989/159 of 26/06/1989 p.54

EP opinion 1. rdg 23/05/1989

OJ C/1989/158 of 26/06/1989 p.54

Adoption amended proposal 07/12/1989

OJ C/1990/11 of 17/01/1990 p.18

COM/1989/640/FINAL of 07/12/1989

Legal Basis (Commission): Traité/CEE/art 149 par 3

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80

EP opinion 1. rdg 27/10/1999

Bull. 10-1999/1.3.81

Dossier: COM/1993/647 0491/COD

**PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE SETTING-UP OF A EUROPEAN VESSEL REPORTING SYSTEM IN THE MARITIME ZONES OF COMMUNITY MEMBER STATES**

Adoption by Commission 17/12/1993

OJ C/1994/22 of 26/01/1994 p.7

COM/1993/647/FINAL of 17/12/1993

Bull. 12-1993/1.2.137

Legal Basis (Commission): Traité/CE/art 84 par 2

EP opinion 1. rdg 20/04/1994

OJ C/1994/128 of 09/05/1994 p.139

Bull. 4-1994/1.2.92

ESC opinion 01/06/1994

OJ C/1994/295 of 22/10/1994 p.28

Bull. 6-1994/1.2.114

Adoption amended proposal 07/06/1994

OJ C/1994/193 of 16/07/1994 p.7

COM/1994/220/FINAL of 07/06/1994

Bull. 6-1994/1.2.114

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

B57>[52001DC0763R\(01\)](#)

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Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.88

Dossier: COM/1995/337/2 1995/0205/COD

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS

Adoption by Commission 19/07/1995

OJ C/1995/321 of 01/12/1995 p.10

COM/1995/337/FINAL of 19/07/1995

Bull. 7/8-1995/1.3.112

Legal Basis (Commission): Traité/CE/art 75

ESC opinion 28/02/1996

OJ C/1996/153 of 28/05/1996 p.16

Bull. 1/2-1996/1.3.117

EP opinion 1. rdg 25/10/1996

OJ C/1996/347 of 18/11/1996 p.429

Bull. 10-1996/1.3.96

Adoption amended proposal 13/02/1997

OJ C/1997/124 of 21/04/1997 p.25

COM/1997/34/FINAL of 13/02/1997

Bull. 1/2-1997/1.2.131

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.80

Committee of Regions opinion 18/11/1999

OJ C/2000/57 of 29/02/2000 p.40

Bull. 11-1999/1.3.87

Dossier: COM/1995/369 1995/0208/COD

PROPOSAL FOR A COUNCIL DIRECTIVE TO INTRODUCE RATIONAL PLANNING TECHNIQUES IN THE ELECTRICITY AND GAS DISTRIBUTION SECTORS

Adoption by Commission 20/07/1995

OJ C/1996/1 of 04/01/1996 p.6

COM/1995/369/FINAL of 20/09/1995

B58>[52001DC0763R\(01\)](#)

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Bull. 9-1995/1.3.66

Legal Basis (Commission): Traité/CE/art 130s1

ESC opinion 24/04/1996

OJ C/1996/204 of 15/07/1996 p.78

Bull. 4-1996/1.3.68

Committee of Regions opinion 13/06/1996

OJ C/1996/337 of 11/11/1996 p.41

Bull. 6-1996/1.3.98

EP opinion 1. rdg 12/11/1996

OJ C/1996/362 of 02/12/1996 p.69

Bull. 11-1996/1.3.110

Adoption amended proposal 24/03/1997

OJ C/1997/180 of 14/06/1997 p.37

COM/1997/69/FINAL of 24/03/1997

Bull. 3-1997/1.3.91

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 175 par 1

EP opinion 1. rdg 06/10/1999

OJ C/2000/107 of 13/04/2000 p.63

Bull. 10-1999/1.3.73

Dossier: COM/1996/186 1996/0119/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) AMENDING COUNCIL REGULATION (EEC) NO 3922/91, ON THE HARMONISATION OF TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES IN THE FIELD OF CIVIL AVIATION

Adoption by Commission 03/05/1996

OJ C/1996/179 of 22/06/1996 p.9

COM/1996/186/FINAL of 03/05/1996

Bull. 5-1996/1.3.93

Legal Basis (Commission): Traité/CE/art 84 par 2

EP opinion 1. rdg 18/09/1996

OJ C/1996/320 of 28/10/1996 p.73

Bull. 9-1996/1.3.88

ESC opinion 25/09/1996

OJ C/1997/30 of 30/01/1997 p.25

Bull. 9-1996/1.3.88

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.94

Dossier: COM/1996/707/2 1997/0012/COD

PROPOSAL FOR A COUNCIL DECISION SETTING UP A CONSULTATION PROCEDURE ON RELATIONS BETWEEN MEMBER STATES AND THIRD COUNTRIES IN SHIPPING MATTERS AND ON ACTION RELATING TO SUCH MATTERS IN INTERNATIONAL ORGANIZATIONS AND AN AUTHORIZATION PROCEDURE FOR AGREEMENTS CONCERNING MARITIME TRANSPORT

Adoption by Commission 14/03/1997

OJ C/1997/113 of 11/04/1997 p.11

COM/1996/707/FINAL/2 of 14/03/1997

Bull. 3-1997/1.3.98

Legal Basis (Commission): Traité/CE/art 84 par 2

ESC opinion 01/10/1997

OJ C/1997/335 of 06/11/1997 p.25

Bull. 10-1997/1.2.134

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

Dossier: COM/1997/154 1997/0127/COD

Proposal for a COUNCIL DIRECTIVE on airport charges

Adoption by Commission 23/04/1997

OJ C/1997/257 of 22/08/1997 p.2

COM/1997/154/FINAL of 23/04/1997

Bull. 4-1997/1.3.158

Legal Basis (Commission): Traité/CE/art 84 par 2

Committee of Regions opinion 20/11/1997

OJ C/1998/64 of 27/02/1998 p.56

Bull. 11-1997/1.3.137

ESC opinion 10/12/1997

OJ C/1998/73 of 09/03/1998 p.38

Bull. 12-1997/1.2.157



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EP opinion 1. rdg 31/03/1998

OJ C/1998/138 of 04/05/1998 p.36

Bull. 4-1998/1.2.96

Adoption amended proposal 14/09/1998

OJ C/1998/319 of 16/10/1998 p.4

COM/1998/509/FINAL of 14/09/1998

Bull. 9-1998/1.2.101

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

Dossier: COM/1998/41 1998/0022/COD

Proposal for a COUNCIL REGULATION (EC) amending Regulation (EEC) nr 295/91 establishing common rules for a denied - boarding compensation system in scheduled air transport

Adoption by Commission 30/01/1998

OJ C/1998/120 of 18/04/1998 p.18

COM/1998/41/FINAL of 30/01/1998

Bull. 1/2-1998/1.3.186

Legal Basis (Commission): Traité/CE/art 84 par 2

ESC opinion 01/07/1998

OJ C/1998/284 of 14/09/1998 p.14

Bull. 7/8-1998/1.3.161

EP opinion 1. rdg 17/07/1998

OJ C/1998/292 of 21/09/1998 p.214

Bull. 7/8-1998/1.3.161

Adoption amended proposal 19/10/1998

OJ C/1998/351 of 18/11/1998 p.7

COM/1998/580/FINAL of 19/10/1998

Bull. 10-1998/1.2.107

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.93

Dossier: COM/1998/251/2 1998/0158/COD

Proposal for a Council Regulation (EC) amending Council Regulation (EEC) N. 3577/92 applying

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the principle of freedom to provide services to maritime transport within the Member States (maritime cabotage)

Adoption by Commission 29/04/1998

OJ C/1998/213 of 09/07/1998 p.16

COM/1998/251/FINAL of 29/04/1998

Bull. 4-1998/1.2.94

Legal Basis (Commission): Traité/CE/art 84 par 2

ESC opinion 02/12/1998

OJ C/1999/40 of 15/02/1999 p.3

Bull. 12-1998/1.2.158

EP opinion 1. rdg 12/03/1999

OJ C/1999/175 of 21/06/1999 p.440

Bull. 3-1999/1.3.102

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 80 par 2

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.89

Dossier: COM/1998/414/1 1998/0226/COD

Proposal for a Council Directive amending Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member states

Adoption by Commission 10/07/1998

OJ C/1998/261 of 19/08/1998 p.10

COM/1998/414/FINAL of 10/07/1998

Bull. 7/8-1998/1.3.164

Legal Basis (Commission): Traité/CE/art 75; Traité/CE/art 84 par 2

ESC opinion 15/10/1998

OJ C/1998/410 of 30/12/1998 p.16

Bull. 10-1998/1.2.109

EP opinion 1. rdg 12/02/1999

OJ C/1999/150 of 28/05/1999 p.614

Bull. 1/2-1999/1.3.185

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71; Traité/CE/art 80 par 2

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EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.97

Dossier: COM/1998/414/2 1998/0227/COD

Proposal for a Council Directive amending Council Directive 96/53/EC, laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

Adoption by Commission 10/07/1998

OJ C/1998/261 of 19/08/1998 p.13

COM/1998/414/FINAL of 10/07/1998

Bull. 7/8-1998/1.3.164

Legal Basis (Commission): Traité/CE/art 75

ESC opinion 15/10/1998

OJ C/1998/410 of 30/12/1998 p.16

Bull. 10-1998/1.2.109

EP opinion 1. rdg 15/04/1999

OJ C/1999/219 of 30/07/1999 p.414

Bull. 4-1999/1.3.113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 71

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.96

Committee of Regions opinion 16/09/1999

OJ C/1999/374 of 23/12/1999 p.82

Bull. 9-1999/1.2.96

Dossier: SEC/1998/23

Recommendation for a Council Decision authorising the Commission to open negotiations for a European agreement concerning the international carriage of dangerous goods by inland waterway

Adoption by Commission 15/01/1998

SEC/1998/23/FINAL of 15/01/1998

Dossier: SEC/2001/453

Recommendation for a COUNCIL DECISION authorising the European Community to participate in the discussions and negotiations on aviation environmental issues to be addressed by the Council of the International Civil Aviation Organisation (ICAO) and the 33rd ICAO Assembly

Adoption by Commission 21/03/2001

SEC/2001/453/FINAL of 21/03/2001

DG ENV

Dossier: COM/1989/282 0217/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON CIVIL LIABILITY FOR DAMAGE CAUSED BY WASTE

Adoption by Commission 02/08/1989

OJ C/1989/251 of 04/10/1989 p.3

COM/1989/282/FINAL of 15/09/1989

Legal Basis (Commission): Traité/CE/art 100a

ESC opinion 28/02/1990

OJ C/1990/112 of 07/05/1990 p.23

EP opinion 1. rdg 22/11/1990

OJ C/1990/324 of 24/12/1990 p.248

Adoption amended proposal 27/06/1991

OJ C/1991/192 of 23/07/1991 p.6

COM/1991/219/FINAL of 27/06/1991

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

EP resolution 20/04/1994

OJ C/1994/128 of 09/05/1994 p.165

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 95

EP opinion 1. rdg 27/10/1999

Dossier: COM/1996/315 1996/0181/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DECISION ON AN ACTION PROGRAMME FOR INTEGRATED GROUNDWATER PROTECTION AND MANAGEMENT

Adoption by Commission 10/07/1996

OJ C/1996/355 of 25/11/1996 p.1

COM/1996/315/FINAL of 10/07/1996

Bull. 7/8-1996/1.3.172

Legal Basis (Commission): Traité/CE/art 130s3

ESC opinion 29/01/1997

OJ C/1997/89 of 19/03/1997 p.34

Bull. 1/2-1997/1.2.166

Change of legal basis by Comm. 01/05/1999

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 175 par 3

Dossier: COM/1999/128 1999/0077/CNS

Proposal for a COUNCIL DECISION concerning the approval, on behalf of the Community, of the amendments to the Annexes to the Convention on the protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention)

Adoption by Commission 17/03/1999

OJ C/1999/176 of 22/06/1999 p.15

COM/1999/128/FINAL of 18/03/1999

Bull. 3-1999/1.3.123

Legal Basis (Commission): Traité/CE/art 130r4; Traité/CE/art 228par2phrase1; Traité/CE/art 228 par 3a1

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 174 par 4; Traité/CE/art 300 par 2ph1; Traité/CE/art 300 par 3a1

EP opinion single rdg 02/12/1999

Bull. 12-1999/1.2.152

Dossier: COM/2000/146 2000/0063/ACC

Proposal for a COUNCIL DECISION on the Community position to be adopted on certain proposals submitted to the 11th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Gigiri, Kenya, 10 - 20 April 2000

Adoption by Commission 17/03/2000

COM/2000/146/FINAL of 17/03/2000

Bull. 3-2000/1.4.28

Legal Basis (Commission): Traité/CE/art 133

DG FISH

Dossier: COM/1999/255

Proposal for a COUNCIL REGULATION (EC) amending for a second time Regulation (EC) No 66/98 laying down certain conservation and control measures applicable to fishing activities in the Antarctic

Adoption by Commission 27/05/1999

COM/1999/255/FINAL of 27/05/1999

Bull. 5-1999/1.2.155

Legal Basis (Commission): Traité/CE; Règlement/CE/CS 66/98/art 121

DG MARKT

Dossier: COM/1972/887 0003/COD

PROPOSAL FOR A FIFTH EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE COORDINATION OF SAFEGUARDS WHICH FOR THE PROTECTION OF THE INTERESTS OF MEMBERS AND OUTSIDERS,ARE REQUIRED BY MEMBER STATES OF COMPANIES WITHIN THE MEANING OF ARTICLE 58,SECOND PARAGRAPH,WITH RESPECT TO COMPANY STRUCTURE AND TO THE POWERS AND RESPONSIBILITIES OF COMPANY BOARDS

Adoption by Commission 27/09/1972

OJ C/1972/131 of 13/12/1972 p.49

COM/1972/887/FINAL of 27/09/1972

Legal Basis (Commission): Traité/CE/art 189a2; Traité/CE/art 54 par 3g

ESC opinion 29/05/1974

OJ C/1974/109 of 19/09/1974 p.9

EP opinion single rdg 11/05/1982

OJ C/1982/149 of 14/06/1982 p.20

Adoption amended proposal 28/07/1983

COM/1983/185/FINAL of 12/08/1983

Adoption amended proposal 13/12/1990

COM/1990/629/FINAL of 13/12/1990

Legal Basis (Commission): Traité/CEE/art 54

ESC opinion 03/07/1991

OJ C/1991/269 of 14/10/1991 p.48

EP opinion 1. rdg 10/07/1991

OJ C/1991/240 of 16/09/1991 p.48

Adoption amended proposal 20/11/1991

COM/1991/372/FINAL of 10/11/1991

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Legal Basis (Commission): Traité/CE/art 54 par 3g

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 2g

EP opinion 1. rdg 27/10/1999

Dossier: COM/1984/727 0038/COD

PROPOSAL FOR A TENTH DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL BASED ON ARTICLE 54(3)(G) OF THE TREATY CONCERNING CROSS-BORDER MERGERS OF PUBLIC LIMITED COMPANIES

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Adoption by Commission 14/12/1984

OJ C/1985/23 of 25/01/1985 p.11

COM/1984/727/FINAL of 08/01/1985

Legal Basis (Commission): Traité/CE/art 54 par 3g

ESC opinion 26/09/1985

OJ C/1985/303 of 25/11/1985 p.27

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 2g

DG TAXUD

Dossier: COM/1990/595

PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING ARRANGEMENTS FOR THE TAKING INTO ACCOUNT BY ENTERPRISES OF THE LOSSES OF THEIR PERMANENT ESTABLISHMENT AND SUBSIDIARIES SITUATED IN OTHER MEMBER STATES

Adoption by Commission 28/11/1990

OJ C/1991/53 of 28/02/1991 p.30

COM/1990/595/FINAL of 24/01/1991

Legal Basis (Commission): Traité/CEE/art 100

ESC opinion 20/03/1991

OJ C/1991/120 of 06/05/1991 p.41

EP opinion single rdg 11/03/1992

OJ C/1992/94 of 13/04/1992 p.153

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 94

Dossier: COM/1992/226 1992/1019/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE INTRODUCING A TAX ON CARBON DIOXIDE EMISSIONS AND ENERGY

Adoption by Commission 02/06/1992

OJ C/1992/196 of 03/08/1992 p.1

COM/1992/226/FINAL of 27/05/1992

Bull. 5-1992/1.1.114

Legal Basis (Commission): Traité/CE/art 99; Traité/CE/art 130s2

B67>[52001DC0763R\(01\)](#)

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ESC opinion 24/02/1993

OJ C/1993/108 of 19/04/1993 p.20

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

EP resolution 02/03/1995

OJ C/1995/68 of 20/03/1995 p.47

Adoption amended proposal 10/05/1995

COM/1995/172/FINAL of 10/05/1995

Bull. 5-1995/1.3.85

ESC opinion 28/03/1996

OJ C/1996/174 of 17/06/1996 p.47

Bull. 3-1996/1.3.117

Change of legal basis by Comm. 01/02/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 93; Traité/CE/art 175 par 2*

Dossier: COM/1994/232 1994/0140/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC) SETTING OUT THE CASES WHERE RELIEF FROM IMPORT DUTIES OR EXPORT DUTIES SHALL BE GRANTED

Adoption by Commission 08/06/1994

OJ C/1994/197 of 19/07/1994 p.1

COM/1994/232/FINAL of 08/06/1994

Bull. 6-1994/1.3.71

Legal Basis (Commission): *Traité/CE/art 28*

EP opinion single rdg 16/06/1995

OJ C/1995/166 of 03/07/1995 p.203

Bull. 6-1995/1.4.24

Adoption amended proposal 06/05/1996

OJ C/1996/184 of 25/06/1996 p.13

COM/1996/165/FINAL of 06/05/1996

Bull. 5-1996/1.4.17

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 26*

Dossier: COM/1994/370 1994/0197/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 77/388/EEC AND DETERMINING



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THE SCOPE OF ARTICLE 14(1) (D) AS REGARDS EXEMPTION FROM VALUE ADDED TAX ON THE FINAL IMPORTATION OF CERTAIN GOODS

Adoption by Commission 15/09/1994

OJ C/1994/282 of 08/10/1994 p.3

COM/1994/370/FINAL of 15/09/1994

Bull. 9-1994/1.2.30

Legal Basis (Commission): Traité/CE/art 99

ESC opinion 21/12/1994

OJ C/1995/397 of 31/12/1995 p.50

Bull. 12-1994/1.2.35

EP opinion single rdg 16/06/1995

OJ C/1995/166 of 03/07/1995 p.203

Bull. 6-1995/1.3.40

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 93

Dossier: COM/1998/22/1 1998/0016/ACC

Proposal for a Council Regulation (EC) amending Regulation (EEC) N. 3677/90 laying down measures to be taken to discourage the diversion of certain substances to the illicit manufacture of narcotic drugs and psychotropic substances.

Adoption by Commission 23/01/1998

OJ C/1998/108 of 07/04/1998 p.39

COM/1998/22/FINAL of 23/01/1998

Bull. 1/2-1998/1.3.37

Legal Basis (Commission): Traité/CE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: COM/1998/626 1998/0302/ACC

Proposal for a COUNCIL DECISION laying down the procedure for adopting the Community position in the EC-Turkey Customs Cooperation Committee set up by Decision nr 2/69 of the EC-Turkey Association Council

Adoption by Commission 03/11/1998

COM/1998/626/FINAL of 03/11/1998

Legal Basis (Commission): Traité/CE/art 113

Change of legal basis by Comm. 01/05/1999

B69>[52001DC0763R\(01\)](#)

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 133*

Dossier: COM/1999/369

Proposal for a COUNCIL DECISION authorising Portugal to apply or to continue to apply reductions in, or exemptions from, excise duties on certain mineral oils used for specific purposes, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

Adoption by Commission 16/07/1999

COM/1999/369/FINAL of 19/07/1999

Legal Basis (Commission): *Traité/CE; Directive/CEE/CS 81/92/art 8 par 4; Directive/CEE/CS 81/92/art 8 par 5*

Dossier: SEC/1999/501

Draft DECISION n° 1/99 of the EC-TURKEY Customs Cooperation Committee amending Decision N° 1/96 of 20 May 1996 laying down detailed rules for the application of Decision N° 1/95 of the EC-Turkey Association Council - Draft common position of the Community

Adoption by Commission 28/04/1999

SEC/1999/501/FINAL of 28/04/1999

Legal Basis (Commission): *Accord/Association/CE-Turquie; Décision/Cs Association/CE-Turquie/ 1/95/art 3 par 6*

DG SANCO

Dossier: COM/1981/495

PROPOSAL FOR A COUNCIL DECISION ON GENERAL CONDITIONS TO BE FOLLOWED FOR ESTABLISHING MICROBIOLOGICAL CRITERIA FOR FOODSTUFFS AND FEEDINGSTUFFS, INCLUDING THE CONDITIONS FOR THEIR PREPARATION, IN THE VETERINARY, FOODSTUFF AND ANIMAL NUTRITION SECTORS

Adoption by Commission 14/09/1981

OJ C/1981/252 of 02/10/1981 p.7

COM/1981/495/FINAL of 14/09/1981

Legal Basis (Commission): *Traité/CEE/art 43*

EP opinion single rdg 23/04/1982

OJ C/1982/125 of 17/05/1982 p.160

ESC opinion 29/04/1982

OJ C/1982/178 of 15/07/1982 p.6

Committee of Regions opinion 10/10/1997

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

Dossier: COM/1989/493 1989/1040/COD

B70>[52001DC0763R\(01\)](#)

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Proposal for a Council Decision concerning safeguard measures in the veterinary field in the framework of the internal market

Adoption by Commission 17/10/1989

OJ C/1989/327 of 30/12/1989 p.37

COM/1989/493/FINAL of 17/10/1989

Bull. 10-1989/2.1.154

Legal Basis (Commission): *Traité/CEE/art 43*

ESC opinion 28/02/1990

OJ C/1990/112 of 07/05/1990 p.30

Bull. 3-1990/1.1.152

EP opinion single rdg 18/05/1990

OJ C/1990/149 of 18/06/1990 p.283

Bull. 5-1990/1.2.176

Adoption amended proposal 08/10/1990

OJ C/1990/268 of 24/10/1990 p.13

COM/1990/479/FINAL of 08/10/1990

Bull. 10-1990/1.3.143

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.136

Dossier: COM/1994/394 1994/0208/COD

Proposal for a Council decision establishing rules for the recognition of Third Country health and veterinary inspection measures for fresh meat and meat products as equivalent to those applied to Community production, and for the conditions to be met for importation into the Community and amending Council Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat and meat products from Third Countries

Adoption by Commission 20/09/1994

OJ C/1994/282 of 08/10/1994 p.11

COM/1994/394/FINAL of 20/09/1994

Legal Basis (Commission): *Traité/CE/art 43*

EP opinion single rdg 18/11/1994

OJ C/1994/341 of 05/12/1994 p.206

ESC opinion 23/11/1994

OJ C/1994/397 of 31/12/1994 p.37

B71>[52001DC0763R\(01\)](#)

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Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/0

Dossier: COM/1997/408 1997/0208/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council Directive 93/74/EEC on feedingstuffs intended for particular nutritional purposes and amending Directives 74/63/EEC, 79/373/EEC and 82/471/EEC

Adoption by Commission 25/07/1997

OJ C/1997/298 of 30/09/1997

COM/1997/408/FINAL of 25/07/1997

Bull. 7/8-1997/1.3.188

Legal Basis (Commission): *Traité/CE/art 100a*

EP opinion 1. rdg 19/02/1998

OJ C/1998/80 of 16/03/1998 p.220

Bull. 1/2-1998/1.3.248

ESC opinion 25/02/1998

OJ C/1998/129 of 27/04/1998 p.54

Bull. 1/2-1998/1.3.248

Adoption amended proposal 27/07/1998

OJ C/1998/273 of 02/09/1998 p.11

COM/1998/484/FINAL of 27/07/1998

Bull. 7/8-1998/1.3.210

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.138

Dossier: COM/1997/409 1997/0213/COD

Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE amending Council directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector

Adoption by Commission 25/07/1997

OJ C/1997/300 of 01/10/1997 p.10

B72>[52001DC0763R\(01\)](#)

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COM/1997/409/FINAL of 25/07/1997

Bull. 7/8-1997/1.3.189

Legal Basis (Commission): *Traité/CE/art 100a*

EP opinion 1. rdg 19/02/1998

OJ C/1998/80 of 16/03/1998 p.221

Bull. 1/2-1998/1.3.249

ESC opinion 25/02/1998

OJ C/1998/129 of 27/04/1998 p.57

Bull. 1/2-1998/1.3.249

Adoption amended proposal 27/07/1998

OJ C/1998/270 of 29/08/1998 p.15

COM/1998/485/FINAL of 27/07/1998

Bull. 7/8-1998/1.3.211

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 152*

EP opinion 1. rdg 16/09/1999

Bull. 9-1999/1.2.139

Dossier: COM/1999/388 1999/0168/CNS

Proposal for a COUNCIL DIRECTIVE amending Directive 70/524/EEC concerning additives in feedingstuffs

Adoption by Commission 26/07/1999

COM/1999/388/FINAL of 26/07/1999

Bull. 7/8-1999/1.3.150

Legal Basis (Commission): *Traité/CE/art 37*

ESC opinion 08/12/1999

OJ C/2000/51 of 23/02/2000 p.28

Bull. 12-1999/1.2.216

Dossier: SEC/1999/1902

Draft RECOMMENDATION NO 1/1999 OF THE JOINT COMMITTEE OF THE EUROPEAN COMMUNITY AND SWITZERLAND in respect of the simplification of certain veterinary checks on third country products of animal origin transiting the European Community to Switzerland - Draft common position of the Community -

Adoption by Commission 22/11/1999

SEC/1999/1902/FINAL of 22/11/1999

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DG JAI

Dossier: COM/1993/684/1

PROPOSAL FOR A DECISION, BASED ON ARTICLE K3 OF THE TREATY ON EUROPEAN UNION ESTABLISHING THE CONVENTION ON THE CROSSING OF THE EXTERNAL FRONTIERS OF THE MEMBER STATES

Adoption by Commission 10/12/1993

OJ C/1994/11 of 15/01/1994 p.6

COM/1993/684/FINAL of 10/12/1993

Legal Basis (Commission): Traité/Union/art K3 par 2

EP opinion single rdg 21/04/1994

OJ C/1994/128 of 09/05/1994 p.358

Dossier: COM/1995/346 1995/0199/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE RIGHT OF THIRD-COUNTRY NATIONALS TO TRAVEL IN THE COMMUNITY

Adoption by Commission 12/07/1995

OJ C/1995/306 of 17/11/1995 p.5

COM/1995/346/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.3

Legal Basis (Commission): Traité/CE/art 100

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

Bull. 1/2-1996/1.1.1

ESC opinion 28/02/1996

OJ C/1996/153 of 28/05/1996 p.38

EP opinion single rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.69

Bull. 10-1996/1.1.3

Adoption amended proposal 20/03/1997

COM/1997/106/FINAL of 20/03/1997

Bull. 3-1997/1.1.2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Dossier: COM/1995/347 1995/0201/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ELIMINATION OF CONTROLS ON PERSONS CROSSING INTERNAL FRONTIERS

B74>[52001DC0763R\(01\)](#)

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Adoption by Commission 12/07/1995

OJ C/1995/289 of 31/10/1995 p.16

COM/1995/347/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.2

Legal Basis (Commission): *Traité/CE/art 100*

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

Bull. 1/2-1996/1.1.2

ESC opinion 27/03/1996

OJ C/1996/174 of 17/06/1996 p.36

EP opinion single rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.62

Bull. 10-1996/1.1.1

Adoption amended proposal 20/03/1997

OJ C/1997/140 of 07/05/1997 p.21

COM/1997/106/FINAL of 20/03/1997

Bull. 3-1997/1.1.1

Dossier: COM/1995/348 1995/0202/COD

PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE AMENDING DIRECTIVE 68/360/EEC ON THE ABOLITION OF RESTRICTIONS ON MOVEMENT AND RESIDENCE WITHIN THE COMMUNITY FOR WORKERS OF MEMBER STATES AND THEIR FAMILIES AND DIRECTIVE 73/148/EEC ON THE ABOLITION OF RESTRICTIONS ON MOVEMENT AND RESIDENCE WITHIN THE COMMUNITY FOR NATIONALS OF MEMBER STATES WITH REGARD TO ESTABLISHMENT AND THE PROVISION OF SERVICES

Adoption by Commission 12/07/1995

OJ C/1995/307 of 18/11/1995 p.18

COM/1995/348/FINAL of 12/07/1995

Bull. 7/8-1995/1.1.4

Legal Basis (Commission): *Traité/CE/art 49; Traité/CE/art 63 par 2; Traité/CE/art 54 par 2*

Committee of Regions opinion 18/01/1996

OJ C/1996/129 of 02/05/1996 p.46

ESC opinion 27/03/1996

OJ C/1996/174 of 17/06/1996 p.40

Bull. 3-1996/1.1.2

EP opinion 1. rdg 23/10/1996

OJ C/1996/347 of 18/11/1996 p.59

B75>[52001DC0763R\(01\)](#)

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Bull. 10-1996/1.1.2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 40; Traité/CE/art 44 par 1; Traité/CE/art 52 par 1*

EP opinion 1. rdg 27/10/1999

Dossier: COM/1997/387 1997/0227/CNS

Proposal for a COUNCIL ACT establishing the Convention on rules for the admission of third-country nationals to the Member States

Adoption by Commission 29/09/1997

OJ C/1997/337 of 07/11/1997 p.9

COM/1997/387/FINAL of 30/07/1997

Bull. 7/8-1997/1.5.2

EP opinion single rdg 13/07/1998

OJ C/1998/292 of 21/09/1998

EP opinion single rdg 10/02/1999

OJ C/1999/150 of 28/05/1999 p.196

Bull. 1/2-1999/1.5.5

DG RELEX

Dossier: COM/1980/616/2

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par 3a2*

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2*

Dossier: COM/1980/616/3



PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 228 par 3a2; Traité/CE/art 238

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 2a2

Dossier: COM/1980/616/4

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE CO-OPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par 3a2

EP assent 19/06/1981

OJ C/1981/172 of 13/07/1981 p.112

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1980/616/5

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE ARAB REPUBLIC OF EGYPT, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

B77>52001DC0763R(01)

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Legal Basis (Commission): ACCORD/EGYPTE-CECA

Dossier: COM/1980/616/6

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): ACCORD/JORDANIE-CECA

Dossier: COM/1980/616/7

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE LEBANESE REPUBLIC, CONSEQUENT ON THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 23/10/1980

COM/1980/616/FINAL of 27/10/1980

Legal Basis (Commission): ACCORD/LIBAN-CECA

Dossier: COM/1981/485/1

PROPOSAL FOR COUNCIL REGULATIONS CONCLUDING PROTOCOLS TO THE CO-OPERATION AGREEMENTS BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND MOROCCO CONSEQUENT ON THE ACCESSION OF GREECE TO THE COMMUNITY

Adoption by Commission 10/09/1981

OJ C/1981/336 of 23/12/1981 p.1

COM/1981/485/FINAL of 14/09/1981

Legal Basis (Commission): Traité/CE/art 228 par 2; Traité/CE/art 238; Traité/CE/art 228 par 3a2

EP assent 09/07/1982

OJ C/1982/238 of 13/09/1982 p.91

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1982/665/1

PROPOSAL FOR A COUNCIL REGULATION CONCLUDING A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA TO TAKE ACCOUNT OF THE ACCESSION OF THE HELLENIC REPUBLIC TO THE COMMUNITY

Adoption by Commission 19/10/1982

B78>[52001DC0763R\(01\)](#)

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COM/1982/665/FINAL of 25/10/1982

Legal Basis (Commission): [Traité/CE/art 228 par 2](#); [Traité/CE/art 228 par 3a2](#); [Traité/CE/art 238](#)

EP assent 17/02/1984

OJ C/1984/77 of 19/03/1984 p.107

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 310](#); [Traité/CE/art 300 par 2](#); [Traité/CE/art 300 par 3a2](#)

Dossier: COM/1987/99/3

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): [Traité/CE/art 228 par 2](#); [Traité/CE/art 228 par 2AL3](#); [Traité/CE/art 238](#)

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.92

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 310](#); [Traité/CE/art 300 par 2](#); [Traité/CE/art 300 par 3a2](#)

Dossier: COM/1987/99/4

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): [Traité/CE/art 228 par 2](#); [Traité/CE/art 238](#); [Traité/CE/art 228 par 3AL2](#)

EP assent 16/09/1987

B79>[52001DC0763R\(01\)](#)

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OJ C/1987/281 of 19/10/1987 p.93

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2; 300,3a2*

Dossier: COM/1987/99/5

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC CONSEQUENT ON THE ACCESSION TO THE COMMUNITY OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

Adoption by Commission 04/03/1987

COM/1987/99/FINAL of 10/03/1987

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 228 par 3AL2; Traité/CE/art 238*

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.94

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2*

Dossier: COM/1987/172/1

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA CONSEQUENT ON THE ACCESSION OF SPAIN AND PORTUGAL TO THE COMMUNITY

Adoption by Commission 13/04/1987

COM/1987/172/FINAL of 13/04/1987

Legal Basis (Commission): *Traité/CE/art 228 par 2; Traité/CE/art 228 par 3AL2; Traité/CE/art 238*

EP assent 16/09/1987

OJ C/1987/281 of 19/10/1987 p.92

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

B80>52001DC0763R(01)

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 310; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2

Dossier: COM/1987/172/2

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA CONSEQUENT ON THE ACCESSION OF SPAIN AND PORTUGAL TO THE COMMUNITY

Adoption by Commission 13/04/1987

COM/1987/172/FINAL of 13/04/1987

Legal Basis (Commission): ACCORD/ALGERIE-CECA;  
TRAITE/ADHESION/ESPAGNE-PORTUGAL-CEE

Dossier: COM/1988/168/2

RECOMMENDATION FOR A COUNCIL DECISION CONCERNING THE CONCLUSION OF A PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EEC AND THE KINGDOM OF MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC TO THE COMMUNITY

Adoption by Commission 22/03/1988

COM/1988/168/FINAL of 23/03/1988

Legal Basis (Commission): Traité/CE/art 228 par 3a2; Traité/CE/art 238; Traité/CE/art 228 par 2

EP assent 15/06/1988

OJ C/1988/187 of 18/07/1988 p.88

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a2; Traité/CE/art 310

Dossier: COM/1988/168/3

DRAFT PROTOCOL TO THE AGREEMENT BETWEEN THE MEMBER STATES OF THE ECSC AND THE KINGDOM OF MOROCCO CONSEQUENT ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC TO THE COMMUNITY

Adoption by Commission 22/03/1988

COM/1988/168/FINAL of 23/03/1988

Legal Basis (Commission): ACCORD/MAROC-CEE; TRAITE/ADHESION/ESPAGNE-PORTUGAL-CEE

Dossier: COM/1994/289 1994/0167/COD

PROPOSAL FOR A COUNCIL REGULATION (EC) IN THE FIELD OF EMPLOYMENT CREATION AND SUPPORT TO SMALL AND MICROENTERPRISES IN THE MAGHREB COUNTRIES

Adoption by Commission 07/07/1994

B81>[52001DC0763R\(01\)](#)

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OJ C/1994/214 of 04/08/1994 p.26

COM/1994/289/FINAL of 07/07/1994

Bull. 7/8-1994/1.3.49

Legal Basis (Commission): *Traité/CE/art 130w*

EP opinion 1. rdg 28/10/1994

OJ C/1994/323 of 21/11/1994 p.493

Bull. 10-1994/1.3.38

Adoption amended proposal 22/12/1994

OJ C/1994/389 of 31/12/1994 p.13

COM/1994/650/FINAL of 22/12/1994

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 179*

EP opinion 1. rdg 15/12/1999

Dossier: COM/1995/745/2 1996/0010/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.4

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): *Traité/CE/art 238; Traité/CE/art 228 par 3al2; Traité/CE/art 228 par 2phrase2*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 3al2; Traité/CE/art 300 par 2phrase2*

Dossier: COM/1995/745/3 1996/0011/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE HASHEMITE KINGDOM OF JORDAN FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.13

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COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): *Traité/CE/art 238; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a2*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2*

Dossier: COM/1995/745/4 1996/0012/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE LEBANESE REPUBLIC FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.22

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): *Traité/CE/art 238; Traité/CE/art 228 par 3a2; Traité/CE/art 228 par 2phrase2*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2*

Dossier: COM/1995/745/6 1996/0014/AVC

PROPOSAL FOR COUNCIL DECISION ON THE CONCLUSION OF THE PROTOCOL TO THE COOPERATION AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT FOLLOWING THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND THE KINGDOM OF SWEDEN TO THE EUROPEAN UNION

Adoption by Commission 12/01/1996

OJ C/1996/88 of 25/03/1996 p.40

COM/1995/745/FINAL of 12/01/1996

Legal Basis (Commission): *Traité/CE/art 238; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3a2*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2phrase2*

Dossier: COM/1996/150 1996/0106/AVC

PROPOSAL FOR A COUNCIL AND COMMISSION DECISION ON THE CONCLUSION OF A PROTOCOL TO THE PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES AND THE RUSSIAN FEDERATION (EC/EURATOM/ECSC)

Adoption by Commission 23/05/1996

COM/1996/150/FINAL of 23/05/1996

Bull. 5-1996/1.4.73

Legal Basis (Commission): Traité/CECA; Traité/CE/art 54 par 2; Traité/CE/art 66; Traité/CE/art 57 par 2 dernière phrase; Traité/CE/art 228 par 3a2; Traité/CE/art 228 par 2 phrase2; Traité/CE/art 235; Traité/CE/art 113; Traité/CE/art 100; Traité/CE/art 99; Traité/CE/art 84 par 2; Traité/CE/art 75; Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

EP assent 11/06/1997

OJ C/1997/200 of 30/06/1997 p.66

Bull. 6-1997/1.4.96

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 55; Traité/CE/art 47 par 2 phrase1; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 93; Traité/CE/art 94; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 3a2; Traité/CE/art 300 par 2 phrase2; Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

Dossier: COM/1997/557/1 1997/0294/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part

Adoption by Commission 29/10/1997

COM/1997/557/FINAL of 29/10/1997

Legal Basis (Commission): Traité/CECA/art 95; Traité/CE/art 54 par 2; Traité/CE/art 57 par 2 Dernière phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 99; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2 phrase2; Traité/CE/art 228 par 3a2; Traité/EURATOM/art 101a2; Traité/CE/art 100

Dossier: COM/1997/557/2 1997/0295/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part

Adoption by Commission 29/10/1997

COM/1997/557/FINAL of 29/10/1997

Legal Basis (Commission): Traité/CECA/art 95; Traité/CE/art 54 par 2; Traité/CE/art 57 par 2 Dernière phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 99; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2 phrase2; Traité/CE/art 228 par 3a2; Traité/EURATOM/art 101a2; Traité/CE/art 100

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 55; Traité/CE/art 47 par 2 phrase1; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 93; Traité/CE/art



94; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 3al2; Traité/CE/art 300 par 2phrase2; Traité/EURATOM/art 101 par 2; Traité/CE/art 73c2

Dossier: COM/1997/718/2

Draft COMMISSION REGULATION (EURATOM) concerning the accession by the European Atomic Energy Community to an Agreement having established in 1993 a Science and Technology Centre in Ukraine between Canada, Sweden, Ukraine and the United States of America

Adoption by Commission 19/01/1998

COM/1997/718/FINAL of 19/01/1998

Bull. 1/2-1998/1.3.150

Legal Basis (Commission): Traité/EURATOM/art 101 par 2

Dossier: COM/1998/28 1998/0021/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and Ukraine

Adoption by Commission 21/01/1998

COM/1998/28/FINAL of 21/01/1998

Bull. 1/2-1998/1.4.113

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2derniere phrase; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CECA/art 95; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2phrase2; Traité/CE/art 228 par 3al1; Traité/EURATOM/art 101 par 2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 3al1; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/106

Proposal for a Council Decision on the Community position concerning the establishment of working parties to the Cooperation Council established by the Cooperation agreement between the European Community and the former Yugoslav Republic of Macedonia.

Adoption by Commission 27/02/1998

COM/1998/106/FINAL of 27/02/1998

Legal Basis (Commission): Traité/CE; Décision/CE/CS 831/97/art 3

Dossier: COM/1998/307/1 1998/0185/CNS

Proposal for a COUNCIL AND COMMISSION DECISION on the provisional application of the Protocol to the Agreement on Partnership and Cooperation between the European Communities and their Member States and the Republic of Moldova

Adoption by Commission 18/05/1998

COM/1998/307/FINAL of 18/05/1998

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2 dernière phrase; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2 phrase 2; Traité/CE/art 228 par 3a1; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95; Traité/CE/art 66; Traité/CE/art 99; Traité/CE/art 100

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2 phrase 2; Traité/CE/art 300 par 3a1; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/307/2 1998/0186/AVC

Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part

Adoption by Commission 18/05/1998

COM/1998/307/FINAL of 18/05/1998

Legal Basis (Commission): Traité/CE/art 54 par 2; Traité/CE/art 57 par 2 dernière phrase; Traité/CE/art 66; Traité/CE/art 73c2; Traité/CE/art 75; Traité/CE/art 84 par 2; Traité/CE/art 99; Traité/CE/art 100; Traité/CE/art 113; Traité/CE/art 235; Traité/CE/art 228 par 2 phrase 2; Traité/CE/art 228 par 3a2

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL/2 of 09/09/1999

Legal Basis (Commission): Traité/CE/art 44 par 1; Traité/CE/art 47 par 2; Traité/CE/art 57 par 2; Traité/CE/art 71; Traité/CE/art 80 par 2; Traité/CE/art 133; Traité/CE/art 308; Traité/CE/art 300 par 2 phrase 2; Traité/CE/art 300 par 3a2; Traité/CE/art 55; Traité/CE/art 93; Traité/CE/art 94; Traité/EURATOM/art 101 par 2; Traité/CECA/art 95

Dossier: COM/1998/456

Proposal for a COUNCIL DECISION on a Common Position of the Community within the EC-Mexico Joint Council on the rules of procedure of the Joint Council and of the Joint Committee

Adoption by Commission 13/07/1998

COM/1998/456/FINAL of 13/07/1998

Legal Basis (Commission): Traité/CE

Dossier: COM/1998/733 1998/0357/CNS

Amended proposal for a COUNCIL DECISION on a Joint Action adopted by the Council on the basis of Article K.3 of the Treaty on European Union establishing measures to provide practical support in relation to the reception and the voluntary repatriation of refugees, displaced persons and asylum applicants, including emergency assistance to persons who have fled as a result of recent events in Kosovo

Adoption by Commission 16/12/1998

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OJ C/1999/37 of 11/02/1999 p.4

COM/1998/733/FINAL of 16/12/1998

Bull. 12-1998/1.4.4

Legal Basis (Commission): Traité/Union/art K3 par 2b; Traité/Union/art K8 par 2

EP opinion single rdg 13/04/1999

OJ C/1999/219 of 30/07/1999 p.86

Bull. 4-1999/1.5.6

Adoption amended proposal 13/04/1999

COM/1999/181/FINAL of 13/04/1999

Bull. 4-1999/1.5.6

Dossier: SEC/1991/2358

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE EXCHANGE OF LETTERS BETWEEN THE EEC AND THE GOVERNMENT OF THE REPUBLIC OF KOREA ON ISSUES OF COMMON INTEREST

Adoption by Commission 06/12/1991

SEC/1991/2358/FINAL of 06/12/1991

Legal Basis (Commission): Traité/CE/art 113; Traité/CE/art 228 par 2; Traité/CE/art 228 par 3a11

Change of legal basis by Comm. 10/11/1993

COM/1993/570/FINAL of 10/11/1993

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133; Traité/CE/art 300 par 2; Traité/CE/art 300 par 3a11

Dossier: SEC/1992/1363

PROPOSAL FOR A COUNCIL DECISION AUTHORIZING THE MEMBER STATES TO NEGOTIATE AND CONCLUDE A CONVENTION CONCERNING MATTERS WHICH FALL WITHIN THE SPHERE OF COMPETENCE OF THE COMMUNITY

Adoption by Commission 14/07/1992

SEC/1992/1363/FINAL of 14/07/1992

Legal Basis (Commission): Traité/CEE/art 113

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 133

Dossier: SEC/1995/1682

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL - RECOMMENDATION FOR

B87>[52001DC0763R\(01\)](#)

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A COUNCIL DECISION AUTHORIZING THE COMMISSION TO NEGOTIATE AN ECONOMIC PARTNERSHIP AND POLITICAL CONSULTATION AGREEMENT WITH MEXICO

Adoption by Commission 23/10/1995

SEC/1995/1682/FINAL of 23/10/1995

DG TRADE

Dossier: COM/1991/236

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEG) NO 2603/89 ESTABLISHING COMMON RULES FOR EXPORTS

Adoption by Commission 21/06/1991

COM/1991/236/FINAL of 24/06/1991

Legal Basis (Commission): *Traité/CEE/art 113*; REGLEMENTATION AGRICOLE

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 133*

Dossier: COM/1999/589 1999/0243/ACC

Proposal for a COUNCIL DECISION on the conclusion of a memorandum of understanding between the European community and the socialist republic of Vietnam on the prevention of fraud in trade of footwear products

Adoption by Commission 16/11/1999

COM/1999/589/FINAL of 16/11/1999

Bull. 11-1999/1.5.36

Legal Basis (Commission): *Traité/CEE/art 133*

Dossier: COM/1999/697

Proposal for a COUNCIL REGULATION repealing Council Regulation (EEC) No 3433/91 in as far as it imposes a definitive duty on imports of gas-fuelled, non-refillable pocket flint lighters originating in Japan

Adoption by Commission 15/12/1999

COM/1999/697/FINAL of 15/12/1999

Legal Basis (Commission): *Traité/CE; Règlement/CE/CS 384/96/art 11 par 6*

Dossier: SEC/1990/431

PROPOSAL FOR A COUNCIL REGULATION (EEC) AMENDING REGULATION (EEC) NO 428/89 CONCERNING THE EXPORT OF CERTAIN CHEMICAL PRODUCTS

Adoption by Commission 13/03/1990

SEC/1990/431/FINAL of 13/03/1990

Legal Basis (Commission): *Traité/CEE/art 113*

Change of legal basis by Comm. 01/05/1999

B88>[52001DC0763R\(01\)](#)

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SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 133*

DG DEV

Dossier: COM/1988/431/1

PROPOSAL FOR A COUNCIL REGULATION (EEC) ESTABLISHING A FINANCING FACILITY FOR IMPORTS OF FOOD PRODUCTS BY DEVELOPING COUNTRIES FROM THE EUROPEAN COMMUNITY

Adoption by Commission 19/07/1988

OJ C/1988/299 of 24/11/1988 p.8

COM/1988/431/FINAL of 26/07/1988

Legal Basis (Commission): *Traité/CEE/art 43*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 37*

Dossier: COM/1988/487/1

PROPOSAL FOR A COUNCIL REGULATION(EEC)AMENDING THE LIST OF LLDC CONTAINED IN ANNEX 2 TO COUNCIL REGULATION(EEC)NO 429/87

Adoption by Commission 26/07/1988

OJ C/1988/254 of 30/09/1988 p.5

COM/1988/487/FINAL of 12/09/1988

Legal Basis (Commission): *Traité/CEE; Règlement/CEE/CS 428/87/art 9*

EP opinion single rdg 20/01/1989

OJ C/1989/47 of 27/02/1989 p.161

DG ELARG

Dossier: COM/1997/292 1997/0163/ACC

Proposal for a COUNCIL DECISION on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, with regard to the extension for a further five years period in accordance with the provisions of article 62 , 4 (a) of the Europe Agreement

Adoption by Commission 03/09/1997

COM/1997/292/FINAL of 03/09/1997

Legal Basis (Commission): *Traité/CE; Traité/CE/art 113; Traité/CE/art 228 par 2phrase1*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 133; Traité/CE/art 300 par 2phrase1*

B89>[52001DC0763R\(01\)](#)

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Dossier: COM/1997/426 1997/0216/ACC

Proposal for a COUNCIL DECISION concerning a Decision to be taken by the Association Council established by the Europe Agreement between the European Community and their Member States, of the one part, and the Czech Republic, of the other part

Adoption by Commission 23/07/1997

COM/1997/426/FINAL of 23/07/1997

Legal Basis (Commission): [Traité/CE/art 113](#); [Traité/CE/art 228 par 2](#); [Accord/Association/Tchequie-CE; Décision/CS/CM Association/CE-Tchèquie/art 2 par 1](#)

Dossier: COM/1997/452 1997/0236/ACC

Proposal for a Decision of the Council and the Commission on the position to be taken by the Community within the Association Council established by the Europe Agreement signed on 16 December 1991 between the European Communities and their Member States of the one part, and the Republic of Poland of the other part regarding the extension of the period during which Poland may grant public aid in the steel sector

Adoption by Commission 12/09/1997

COM/1997/452/FINAL of 12/09/1997

Legal Basis (Commission): [Traité/CE/art 113](#); [Traité/CE/art 228 par 2 phrase 1](#); [Traité/CECA/art 95](#)

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 133](#); [Traité/CE/art 300 par 2 a 2](#); [Traité/CECA/art 95](#)

Dossier: COM/1997/562 1997/0311/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of Hungary in a Community programme within the framework of Community audiovisual policy

Adoption by Commission 07/11/1997

OJ C/1997/368 of 05/12/1997 p.14

COM/1997/562/FINAL of 07/11/1997

Bull. 11-1997/1.4.55

Legal Basis (Commission): [Traité/CE/art 228 par 3 a 1](#); [Traité/CE/art 127 par 4](#); [Traité/CE/art 130 par 3](#)

EP opinion single rdg 18/12/1998

OJ C/1999/98 of 09/04/1999 p.509

Bull. 12-1998/1.3.69

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): [Traité/CE/art 150 par 4](#); [Traité/CE/art 157](#); [Traité/CE/art 300 par](#)

B90>[52001DC0763R\(01\)](#)

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Dossier: COM/1998/239/8 1998/0152/CNS

Proposal for a COUNCIL DECISION concerning the Community position within the Association Council on the participation of the Slovak Republic in the Community programmes in the field of culture

Adoption by Commission 27/04/1998

OJ C/1998/182 of 12/06/1998 p.36

COM/1998/239/FINAL of 27/04/1998

Bull. 4-1998/1.3.44

Legal Basis (Commission): *Traité/CE/art 128 par 3; Traité/CE/art 228 par 3a1*

EP opinion single rdg 16/09/1998

OJ C/1998/313 of 12/10/1998 p.87

Bull. 9-1998/1.2.68

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 151; Traité/CE/art 300 par 3a1*

Dossier: SEC/1990/1017/2

Proposal for a Council Decision on the conclusion of the fourth financial Protocol

Adoption by Commission 06/06/1990

SEC/1990/1017/FINAL of 07/06/1990

Legal Basis (Commission): *Traité/CEE/art 238*

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 310; Traité/CE/art 300 par 2phrase2; Traité/CE/art 300 par 2a12*

DG ADMIN

Dossier: COM/1993/105/2

PROPOSAL FOR A COUNCIL REGULATION (EEC, EURATOM, ECSC) AMENDING COUNCIL REGULATION (EEC, EURATOM, ECSC) NO 1860/76 OF 29 JUNE 1976 LAYING DOWN THE CONDITIONS OF EMPLOYMENT OF STAFF OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS

Adoption by Commission 19/03/1993

COM/1993/105/FINAL of 19/03/1993

Legal Basis (Commission): *Règlement/CEE/CS 1365/75/art 17; Règlement/CEE/CS 1860/76*

EP opinion single rdg 29/10/1993

OJ C/1993/315 of 22/11/1993 p.627

B91>[52001DC0763R\(01\)](#)

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Dossier: COM/1996/451 1996/0232/CNS

PROPOSAL FOR A COUNCIL REGULATION (EC, EURATOM, ESCS) ADJUSTING THE DAILY SUBSISTENCE ALLOWANCE RATES FOR OFFICIALS ON MISSION WITHIN THE EUROPEAN TERRITORY OF THE MEMBER STATES OF THE EUROPEAN UNION LAID DOWN IN ARTICLE 13 OF ANNEX VII TO THE STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN COMMUNITIES AND INTRODUCING AN ANNUAL ADJUSTMENT PROCEDURE

Adoption by Commission 20/09/1996

OJ C/1996/349 of 20/11/1996 p.8

COM/1996/451/FINAL of 20/09/1996

Legal Basis (Commission): 24FUSION; STATUT/CE/partie2/art22; STATUT/CE/partie2/art67; STATUT/CE/partie1/annexe7/art13

EP opinion single rdg 12/03/1997

OJ C/1997/115 of 14/04/1997 p.78

Adoption amended proposal 31/07/1997

OJ C/1997/277 of 12/09/1997 p.4

COM/1997/429/FINAL of 31/07/1997

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 283; STATUT/CE/partie2/art22; STATUT/CE/partie2/art67; STATUT/CE/partie1/annexe7/art13

Dossier: SEC/1991/2120/4

PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING THE STAFF REGULATIONS OF OFFICIALS AND THE CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

Adoption by Commission 07/11/1991

OJ C/1991/307 of 27/11/1991 p.19

SEC/1991/2120/FINAL of 07/11/1991

Legal Basis (Commission): 24FUSION; STATUT/CEE

Court of Justice opinion 27/11/1991

EP opinion single rdg 12/12/1991

OJ C/1992/13 of 20/01/1992 p.138

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): Traité/CE/art 283; STATUT/CEE

Dossier: SEC/1991/2120/5

PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING VARIOUS COUNCIL REGULATIONS INTRODUCING SPECIAL AND TEMPORARY MEASURES TO TERMINATE



B92>[52001DC0763R\(01\)](#)

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THE SERVICE OF OFFICIALS AND TEMPORARY STAFF OF THE EUROPEAN COMMUNITIES

Adoption by Commission 07/11/1991

OJ C/1991/307 of 27/11/1991 p.20

SEC/1991/2120/FINAL of 07/11/1991

Legal Basis (Commission): 24FUSION

Court of Justice opinion 27/11/1991

EP opinion single rdg 12/12/1991

OJ C/1992/13 of 20/01/1992 p.139

Change of legal basis by Comm. 01/05/1999

SEC/1999/581/FINAL of 01/05/1999

Legal Basis (Commission): *Traité/CE/art 283*

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► B

**SIXTH COUNCIL DIRECTIVE**

**of 17 December 1982**

**based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies**

(82/891/EEC)

(OJ L 378, 31.12.1982, p. 47)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007	L 300	47	17.11.2007



**SIXTH COUNCIL DIRECTIVE**

**of 17 December 1982**

**based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies**

(82/891/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment <sup>(4)</sup> was begun with Directive 68/151/EEC <sup>(5)</sup>;

Whereas that coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC <sup>(6)</sup>, as regards the annual accounts of certain types of companies with Directive 78/660/EEC <sup>(7)</sup>, and as regards mergers of public limited liability companies with Directive 78/855/EEC <sup>(8)</sup>;

Whereas Directive 78/855/EEC dealt only with mergers of public limited liability companies and certain operations treated as mergers; whereas, however, the Commission proposal also covered division operations; whereas the opinions of the European Parliament and of the Economic and Social Committee were in favour of the regulation of such operation;

Whereas, because of the similarities which exist between merger and division operations, the risk of the guarantees given with regard to mergers by Directive 78/855/EEC being circumvented can be avoided only if provision is made for equivalent protection in the event of division;

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to divisions of public limited liability companies be coordinated where the Member States permit such operations;

Whereas, in the context of such coordination, it is particularly important that the shareholders of the companies involved in a division be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC <sup>(9)</sup>;

<sup>(1)</sup> OJ No C 89, 14.7.1970, p. 20.

<sup>(2)</sup> OJ No C 129, 11.12.1972, p. 50 and OJ No C 95, 28.4.1975, p. 12.

<sup>(3)</sup> OJ No C 88, 6.9.1971, p. 18.

<sup>(4)</sup> OJ No 2, 15.1.1962, p. 36/62.

<sup>(5)</sup> OJ No L 65, 14.3.1968, p. 8.

<sup>(6)</sup> OJ No L 26, 31.1.1977, p. 1.

<sup>(7)</sup> OJ No L 222, 14.8.1978, p. 11.

<sup>(8)</sup> OJ No L 295, 20.10.1978, p. 36.

<sup>(9)</sup> OJ No L 61, 5.3.1977, p. 26.

**▼B**

Whereas creditors, including debenture holders, and persons having other claims on the companies involved in a division, must be protected so that the division does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include divisions so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with divisions must be extended to cover certain legal practices which in important respects are similar to division, so that the obligation to provide such protection cannot be evaded;

Whereas to ensure certainty in the law as regards relations between the companies involved in the division, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. Where Member States permit the companies referred to in Article 1 (1) of Directive 78/855/EEC coming under their laws to carry out division operations by acquisition as defined in Article 2 of this Directive, they shall subject those operations to the provisions of Chapter I of this Directive.
2. Where Member States permit the companies referred to in paragraph 1 to carry out division operations by the formation of new companies as defined in Article 21, they shall subject those operations to the provisions of Chapter II of this Directive.
3. Where Member States permit the companies referred to in paragraph 1 to carry out operations, whereby a division by acquisition as defined in Article 2(1) is combined with a division by the formation of one or more new companies as defined in Article 21 (1), they shall subject operation to the provisions of Chapter I and Article 22.
4. Article 1 (2) and (3) of Directive 78/855/EEC shall apply.

CHAPTER I

**Division by acquisition**

*Article 2*

1. For the purposes of this Directive, 'division by acquisition' shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as 'recipient companies') and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 3 (2) of Directive 78/855/EEC shall apply.

3. In so far as this Directive refers to Directive 78/855/EEC, the expression 'merging companies' shall mean 'the companies involved in a division', the expression 'company being acquired' shall mean 'the company being divided', the expression 'acquiring company' shall mean 'each of the recipient companies' and the expression 'draft terms of merger' shall mean 'draft terms of division'.

**▼B***Article 3*

1. The administrative or management bodies of the companies involved in a division shall draw up draft terms of division in writing.
2. Draft terms of division shall specify at least:
  - (a) the type, name and registered office of each of the companies involved in the division;
  - (b) the share exchange ratio and the amount of any cash payment;
  - (c) the terms relating to the allotment of shares in the recipient companies;
  - (d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;
  - (e) the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies;
  - (f) the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
  - (g) any special advantage granted to the experts referred to in Article 8(1) and members of the administrative, management, supervisory or controlling bodies of the companies involved in the division;
  - (h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;
  - (i) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based.
3.
  - (a) Where an asset is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.
  - (b) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.

*Article 4*

Draft terms of division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC <sup>(1)</sup> for each of the companies involved in a division, at least one month before the date of the general meeting which is to decide thereon.

<sup>(1)</sup> OJ No L 65, 14.3.1968, p. 9.

**▼B***Article 5*

1. A division shall require at least the approval of a general meeting of each company involved in the division. Article 7 of Directive 78/855/EEC shall apply with regard to the majority required for such decisions, their scope and the need for separate votes.

2. Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased. In such case, they shall be entitled to receive consideration corresponding to the value of their shares. In the event of a dispute concerning such consideration, it must be possible for the consideration to be determined by a court.

*Article 6*

The laws of a Member State need not require approval of a division by a general meeting of a recipient company if the following conditions are fulfilled:

- (a) the publication provided for in Article 4 must be effected, for each recipient company, at least one month before the date fixed for the general meeting of the company being divided which is to decide on the draft terms of division;
- (b) at least one month before the date specified in point (a), all shareholders of each recipient company must be entitled to inspect the documents specified in Article 9 (1) at the registered office of that company;
- (c) one or more shareholders of any recipient company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of such recipient company be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of nonvoting shares from this calculation.

*Article 7*

1. This administration or management bodies of each of the companies involved in the division shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares.

2. The report shall also describe any special valuation difficulties which have arisen.

It shall disclose the preparation of the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC <sup>(1)</sup> for recipient companies and the register where that report must be lodged.

3. The administrative or management bodies of a company being divided must inform the general meeting of that company and the administrative or management bodies of the recipient companies so that they can inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company being divided which is to decide on the draft terms of division.

<sup>(1)</sup> OJ No L 26, 31.1.1977, p. 1.

**▼B***Article 8*

1. One or more experts acting on behalf of each of the companies involved in the division but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of division and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all of the companies involved in a division if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.
2. Article 10 (2) and (3) of Directive 78/855/EEC shall apply.
3. Member States may provide that the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC and the report on the draft terms of division drawn up in accordance with paragraph 1 shall be drawn up by the same expert or experts.

*Article 9*

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date of the general meeting which is to decide on the draft terms of division:
  - (a) the draft terms of division;
  - (b) the annual accounts and annual reports of the companies involved in the division for the preceding three financial years;
  - (c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division, if the latest annual accounts relate to a financial year which ended more than six months before that date;
  - (d) the reports of the administrative or management bodies of the companies involved in the division provided for in Article 7(1);

**▼M1**

- (e) where applicable, the reports provided for in Article 8.

**▼B**

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that:

- (a) it shall not be necessary to take a fresh physical inventory;
- (b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account; the following shall nevertheless be taken into account:
  - interim depreciation and provisions,
  - material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

**▼M1***Article 10*

1. Neither an examination of the draft terms of division nor an expert report as provided for in Article 8(1) shall be required if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

**▼M1**

2. Member States may permit the non-application of Article 7 and Article 9(1)(c) and (d) if all the shareholders and the holders of other securities conferring the right to vote of each of the companies involved in the division have so agreed.

**▼B***Article 11*

Protection of the rights of the employees of each of the companies involved in a division shall be regulated in accordance with Directive 77/187/EEC <sup>(1)</sup>.

*Article 12*

1. The laws of Member States must provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate publication of the draft terms of division and have not yet fallen due at the time of such publication.

2. To that end, the laws of Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided and that of the company to which the obligation will be transferred in accordance with the draft terms of division make such protection necessary and where those creditors do not already have such safeguards.

3. In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph where the division operation is subject to the supervision of a judicial authority in accordance with Article 23 and a majority in number representing three-fourths in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to Article 23 (l) (c).

4. Article 13 (3) of Directive 78/855/EEC shall apply.

5. Without prejudice to the rules governing the collective exercise of their rights, paragraphs 1 to 4 shall apply to the debenture holders of the companies involved in the division except where the division has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

6. Member States may provide that the recipient companies shall be jointly and severally liable for the obligations of the company being divided. In such case they need not apply the foregoing paragraphs.

7. Where a Member State combines the system of creditor protection set out in paragraph 1 to 5 with the joint and several liability of the recipient companies as referred to in paragraph 6, it may limit such joint and several liability to the net assets allocated to each of those companies.

*Article 13*

Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft

<sup>(1)</sup> OJ No L 61, 5.3.1977, p. 26.



**▼B**

terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.

*Article 14*

Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of divisions or where such supervision does not extend to all the legal acts required for a division, Article 16 of Directive 78/855/EEC shall apply.

*Article 15*

The laws of Member States shall determine the date on which a division takes effect.

*Article 16*

1. A division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC in respect of each of the companies involved in a division.
2. Any recipient company may itself carry out the publication formalities relating to the company being divided.

*Article 17*

1. A division shall have the following consequences *ipso jure* and simultaneously:
  - (a) the transfer, both as between the company being divided and the recipient companies and as regards third parties, to each of the recipient companies of all the assets and liabilities of the company being divided; such transfer shall take effect with the assets and liabilities being divided in accordance with the allocation laid down in the draft terms of division or in Article 3 (3);
  - (b) the shareholders of the company being divided become shareholders of one or more of the recipient companies in accordance with the allocation laid down in the draft terms of division;
  - (c) the company being divided ceases to exist.
2. No shares in a recipient company shall be exchanged for shares held in the company being divided either:
  - (a) by that recipient company itself or by a person acting in his own name but on its behalf; or
  - (b) by the company being divided itself or by a person acting in his own name but on its behalf.
3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by a company being divided to be effective as against third parties. The recipient company or companies to which such assets, rights or obligations are transferred in accordance with the draft terms of division or with Article 3 (3) may carry out these formalities themselves; however, the laws of Member States may permit a company being divided to continue to carry out these formalities for a limited period which may not, save in exceptional circumstances, be

**▼B**

fixed at more than six months from the date on which the division takes effect.

*Article 18*

The laws of Member States shall at least lay down rules governing the civil liability of members of the administrative or management bodies of a company being divided towards the shareholders of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division and the civil liability of the experts responsible for drawing up for that company the report provided for in Article 8 in respect of misconduct on the part of those experts in the performance of their duties.

*Article 19*

1. The laws of Member States may lay down nullity rules for divisions in accordance with the following conditions only:

- (a) nullity must be ordered in a court judgment;
- (b) divisions which have taken effect pursuant to Article 15 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;
- (c) nullification proceedings may not be initiated more than six months after the date on which the division becomes effective as against the person alleging nullity or if the situation has been rectified;
- (d) where it is possible to remedy a defect liable to render a division void, the competent court shall grant the companies involved a period of time within which to rectify the situation;
- (e) a judgment declaring a division void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;
- (f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;
- (g) a judgment declaring a division void shall not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was published and after the date referred to in Article 15;
- (h) each of the recipient companies shall be liable for its obligations arising after the date on which the division took effect and before the date on which the decision pronouncing the nullity of the division was published. The company being divided shall also be liable for such obligations; Member States may provide that this liability be limited to the share of net assets transferred to the recipient company on whose account such obligations arose.

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a division to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g), and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 15.

3. The foregoing shall not affect the laws of the Member States on the nullity of a division pronounced following any supervision of legality.

**▼B***Article 20*

Without prejudice to Article 6, Member States need not require the division to be approved by the general meeting of the company being divided where the recipient companies together hold all the shares of the company being divided and all other securities conferring the right to vote at general meetings of the company being divided, and the following conditions, at least, are fulfilled:

- (a) each of the companies involved in the operation must carry out the publication provided for in Article 4 at least one month before the operation takes effect;
- (b) at least one month before the operation takes effect, all shareholders of companies involved in the operation must be entitled to inspect the documents specified in Article 9 (1), at their company's registered office. Article 9 (2) and (3) shall also apply;
- (c) one or more shareholders of the company being divided holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the company being divided be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of nonvoting shares from this calculation;
- (d) where a general meeting of the company being divided, required for the approval of the division, is not summoned, the information provided for by Article 7 (3) covers any material change in the asset and liabilities after the date of preparation of the draft terms of division.

## CHAPTER II

**Division by the formation of new companies***Article 21*

1. For the purposes of this Directive, 'division by the formation of new companies' means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 4 (2) of Directive 78/855/EEC shall apply.

*Article 22*

1. Articles 3, 4, 5 and 7, 8 (1) and (2) and 9 to 19 of this Directive shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to division by the formation of new companies. For this purpose, the expression 'companies involved in a division' shall refer to the company being divided and the expression 'recipient companies' shall refer to each of the new companies.

2. In addition to the information specified in Article 3 (2), the draft terms of division shall indicate the form, name and registered office of each of the new companies.

3. The draft terms of division and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of each of the new companies shall be approved at a general meeting of the company being divided.

**▼B**

4. Member States may provide that the report on the consideration other than in cash as referred to in Article 10 of Directive 77/91/EEC and the report on the draft terms of division as referred to in Article 8(1) shall be drawn up by the same expert or experts.

5. Member States may provide that neither Article 8, nor Article 9 as regards the expert's report, shall apply where the shares in each of the new companies are allocated to the shareholders of the company being divided in proportion to their rights in the capital of that company.

## CHAPTER III

**Division under the supervision of a judicial authority***Article 23*

1. Member States may apply paragraph 2 where division operations are subject to the supervision of a judicial authority having the power:

- (a) to call a general meeting of the shareholders of the company being divided in order to decide upon the division;
- (b) to ensure that the shareholders of each of the companies involved in a division have received or can obtain at least the documents referred to in Article 9 in time to examine them before the date of the general meeting of their company called to decide upon the division. Where a Member State makes use of the option provided for in Article 6 the period must be long enough for the shareholders of the recipient companies to be able to exercise the rights conferred on them by that Article;
- (c) to call any meeting of creditors of each of the companies involved in a division in order to decide upon the division;
- (d) to ensure that the creditors of each of the companies involved in a division have received or can obtain at least the draft terms of division in time to examine them before the date referred to in (b);
- (e) to approve the draft terms of division.

2. Where the judicial authority establishes that the conditions referred to in paragraph 1 (b) and (d) have been fulfilled and that no prejudice would be caused to shareholders or creditors, it may relieve the companies involved in the division from applying:

- (a) Article 4, on condition that the adequate system of protection of the interest of the creditors referred to in Article 12 (1) covers all claims regardless of their date;
- (b) the conditions referred to in Article 6 (a) and (b) where a Member State makes use of the option provided for in Article 6;
- (c) Article 9, as regards the period and the manner prescribed for the inspection of the documents referred to therein.

## CHAPTER IV

**Other operations treated as divisions***Article 24*

Where, in the case of one of the operations specified in Article 1, the laws of a Member State permit the cash payment to exceed 10 %, Chapters I, II and III shall apply.

*Article 25*

Where the laws of a Member State permit one of the operations specified in Article 1 without the company being divided ceasing to exist, Chapters I, II and III shall apply, except for Article 17 (1) (c).

## CHAPTER V

**Final provisions***Article 26*

1. The Member States shall bring into force before 1 January 1986, the laws, regulations and administrative provisions necessary for them to comply with this Directive provided that on that date they permit the operations to which this Directive applies. They shall immediately inform the Commission thereof.

2. Where, after the date mentioned in paragraph 1, a Member State permits division operations, it shall bring into force the provisions mentioned in that paragraph on the date on which it permits such operations. It shall immediately inform the Commission thereof.

3. However, provision may be made for a period of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

4. Member States need not apply Articles 12 and 13 as regards the holders of convertible debentures and other securities convertible into shares if, at the time when the provisions referred to in paragraph 1 or 2 come into force, the position of these holders in the event of a division has previously been determined by the conditions of issue.

5. Member States need not apply this Directive to divisions or to operations treated as divisions for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 or 2 enter into force.

*Article 27*

This Directive is addressed to the Member States.

## 31982L0891

### Title and reference

**Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies**

*OJ L 378, 31.12.1982, p. 47–54 (DA, DE, EL, EN, FR, IT, NL)*

*Finnish special edition: Chapter 17 Volume 1 P. 0041*

*Spanish special edition: Chapter 17 Volume 1 P. 0111*

*Swedish special edition: Chapter 17 Volume 1 P. 0041*

*Portuguese special edition Chapter 17 Volume 1 P. 0111*

*Special edition in Czech Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Estonian Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Hungarian Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Lithuanian Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Latvian Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Maltese Chapter 17 Volume 01 P. 50 - 57*

*Special edition in Polish Chapter 17 Volume 01 P. 50 - 57*

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*Special edition in Slovenian Chapter 17 Volume 01 P. 50 - 57*

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### Text

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- ▶ [Select all documents based on this document](#)
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 Amended by [32007L0063](#) Replacement Article 10 from 07/12/2007  
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- ▶ **Consolidated versions**  
[2007-12-07](#)
- ▶ **Subsequent related instruments:**  
 Amendment proposed by [52007PC0091](#)
- ▶ **Affected by case:**  
 Proceedings concerning failure by Member States [61988J0046](#)
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- ▶ **Instruments cited:**  
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[31977L0091](#)  
  
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SIXTH COUNCIL DIRECTIVE of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the coordination provided for in Article 54 (3) (g) and in the general programme for the abolition of restrictions on freedom of establishment (4) was begun with Directive 68/151/EEC (5);

Whereas that coordination was continued as regards the formation of public limited liability companies and the maintenance and alteration of their capital with Directive 77/91/EEC (6), as regards the annual accounts of certain types of companies with Directive 78/660/EEC (7), and as regards mergers of public limited liability companies with Directive 78/855/EEC (8);

Whereas Directive 78/855/EEC dealt only with mergers of public limited liability companies and certain operations treated as mergers ; whereas, however, the Commission proposal also covered division operations ; whereas the opinions of the European Parliament and of the Economic and Social Committee were in favour of the regulation of such operation;

Whereas, because of the similarities which exist between merger and division operations, the risk of the guarantees given with regard to mergers by Directive 78/855/EEC being circumvented can be avoided only if provision is made for equivalent protection in the event of division;

Whereas the protection of the interests of members and third parties requires that the laws of the Member States relating to divisions of public limited liability companies be coordinated where the Member States permit such operations;

Whereas, in the context of such coordination, it is particularly important that the shareholders of the companies involved in a division be kept adequately informed in as objective a manner as possible and that their rights be suitably protected;

Whereas the protection of employees' rights in the event of transfers of undertakings, businesses or parts of businesses is at present regulated by Directive 77/187/EEC (9);

Whereas creditors, including debenture holders, and persons having other claims on the companies involved in a division, must be protected so that the division does not adversely affect their interests;

Whereas the disclosure requirements of Directive 68/151/EEC must be extended to include divisions so that third parties are kept adequately informed;

Whereas the safeguards afforded to members and third parties in connection with divisions must be extended to cover certain legal practices which in important respects are similar to division, so that the obligation to provide such protection cannot be evaded;

Whereas to ensure certainty in the law as regards relations between the companies involved in the division, between them and third parties, and between the members, the cases in which nullity can arise must be limited by providing that defects be (1) OJ No C 89, 14.7.1970, p. 20. (2) OJ No C 129, 11.12.1972, p. 50 and OJ No C 95, 28.4.1975, p. 12. (3) OJ No C 88, 6.9.1971, p. 18. (4) OJ No 2, 15.1.1962, p. 36/62. (5) OJ No L 65, 14.3.1968, p. 8. (6) OJ No L 26, 31.1.1977, p. 1. (7) OJ No L 222, 14.8.1978, p. 11. (8) OJ No L 295, 20.10.1978, p. 36. (9) OJ No L 61, 5.3.1977, p. 26. remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced,

HAS ADOPTED THIS DIRECTIVE:

### Article 1

1. Where Member States permit the companies referred to in Article 1 (1) of Directive 78/855/EEC coming under their laws to carry out division operations by acquisition as defined in Article 2 of this Directive, they shall subject those operations to the provisions of Chapter I of this Directive.
2. Where Member States permit the companies referred to in paragraph 1 to carry out division operations by the formation of new companies as defined in Article 21, they shall subject those operations to the provisions of Chapter II of this Directive.
3. Where Member States permit the companies referred to in paragraph 1 to carry out operations, whereby a division by acquisition as defined in Article 2 (1) is combined with a division by the formation of one or more new companies as defined in Article 21 (1), they shall subject operation to the provisions of Chapter I and Article 22.
4. Article 1 (2) and (3) of Directive 78/855/EEC shall apply.

### CHAPTER I Division by acquisition

#### Article 2

1. For the purposes of this Directive, "division by acquisition" shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as "recipient companies") and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 3 (2) of Directive 78/855/EEC shall apply.

3. In so far as this Directive refers to Directive 78/855/EEC, the expression "merging companies" shall mean "the companies involved in a division", the expression "company being acquired" shall mean "the company being divided", the expression "acquiring company" shall mean "each of the recipient companies" and the expression "draft terms of merger" shall mean "draft terms of division".

#### Article 3

1. The administrative or management bodies of the companies involved in a division shall draw up draft terms of division in writing.
2. Draft terms of division shall specify at least:
  - (a) the type, name and registered office of each of the companies involved in the division;
  - (b) the share exchange ratio and the amount of any cash payment;
  - (c) the terms relating to the allotment of shares in the recipient companies;
  - (d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;
  - (e) the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies;
  - (f) the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
  - (g) any special advantage granted to the experts referred to in Article 8 (1) and members of the administrative, management, supervisory or controlling bodies of the companies involved in the division;

- (h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies;
- (i) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based.

3. (a) Where an asset is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, the asset or the consideration therefor shall be allocated to all the recipient companies in proportion to the share of the net assets allocated to each of those companies under the draft terms of division.

(b) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.

#### Article 4

Draft terms of division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC (1) for each of the companies involved in a division, at least one month before the date of the general meeting which is to decide thereon.

#### Article 5

1. A division shall require at least the approval of a general meeting of each company involved in the division. Article 7 of Directive 78/855/EEC shall apply with regard to the majority required for such decisions, their scope and the need for separate votes.

2. Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased. In such case, they shall be entitled to receive consideration corresponding to the value of their shares. In the event of a dispute concerning such consideration, it must be possible for the consideration to be determined by a court.

#### Article 6

The laws of a Member State need not require approval of a division by a general meeting of a recipient company if the following conditions are fulfilled:

(a) the publication provided for in Article 4 must be effected, for each recipient company, at least one month before the date fixed for the general meeting of the company being divided which is to decide on the draft terms of division;

(b) at least one month before the date specified in point (a), all shareholders of each recipient company must be entitled to inspect the documents specified in Article 9 (1) at the registered office of that company;

(c) one or more shareholders of any recipient company holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of such recipient company be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of nonvoting shares from this calculation.

#### Article 7

1. This administration or management bodies of each of the companies involved in the division shall draw up a detailed written report explaining the draft terms of division and setting out the legal and economic grounds for them, in particular the share exchange ratio and the criterion determining the allocation of shares.

2. The report shall also describe any special valuation difficulties which have arisen.

It shall disclose the preparation of the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC (2) for recipient companies and the register where that report must be lodged.

3. The administrative or management bodies of a company being divided must inform the general meeting of that company and the administrative or management bodies of the recipient companies so that they can inform their respective general meetings of any material change in the assets and liabilities between the date of preparation of the draft terms of division and the date of the general meeting of the company being divided which is to decide on the draft terms of division. (1) OJ No L 65, 14.3.1968, p. 9. (2) OJ No L 26, 31.1.1977, p. 1.

#### Article 8

1. One or more experts acting on behalf of each of the companies involved in the division but independent of them, appointed or approved by a judicial or administrative authority, shall examine the draft terms of division and draw up a written report to the shareholders. However, the laws of a Member State may provide for the appointment of one or more independent experts for all of the companies involved in a division if such appointment is made by a judicial or administrative authority at the joint request of those companies. Such experts may, depending on the laws of each Member State, be natural or legal persons or companies or firms.

2. Article 10 (2) and (3) of Directive 78/855/EEC shall apply.

3. Member States may provide that the report on the consideration other than in cash referred to in Article 27 (2) of Directive 77/91/EEC and the report on the draft terms of division drawn up in accordance with paragraph 1 shall be drawn up by the same expert or experts.

#### Article 9

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least one month before the date of the general meeting which is to decide on the draft terms of division: (a) the draft terms of division;

(b) the annual accounts and annual reports of the companies involved in the division for the preceding three financial years;

(c) an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of division, if the latest annual accounts relate to a financial year which ended more than six months before that date;

(d) the reports of the administrative or management bodies of the companies involved in the division provided for in Article 7 (1);

(e) the reports provided for in Article 8.

2. The accounting statement provided for in paragraph 1 (c) shall be drawn up using the same methods and the same layout as the last annual balance sheet.

However, the laws of a Member State may provide that: (a) it shall not be necessary to take a fresh physical inventory;

(b) the valuations shown in the last balance sheet shall be altered only to reflect entries in the books of account ; the following shall nevertheless be taken into account: - interim depreciation and provisions,

- material changes in actual value not shown in the books.

3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1.

#### Article 10

Member States may permit the non-application of Articles 7 and 8 (1) and (2), and of Article 9 (1) (c), (d) and (e) if all the shareholders and the holders of other securities giving the right to vote of the companies involved in a division have so agreed.

#### Article 11

Protection of the rights of the employees of each of the companies involved in a division shall be regulated in accordance with Directive 77/187/EEC (1).

#### Article 12

1. The laws of Member States must provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate publication of the draft terms of division and have not yet fallen due at the time of such publication.

2. To that end, the laws of Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided and that of the company to which the obligation will be transferred in accordance with the draft terms of division make such protection necessary and where those creditors do not already have such safeguards. (1) OJ No L 61, 5.3.1977, p. 26.

3. In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph



where the division operation is subject to the supervision of a judicial authority in accordance with Article 23 and a majority in number representing three-fourths in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to Article 23 (1) (c).

4. Article 13 (3) of Directive 78/855/EEC shall apply.

5. Without prejudice to the rules governing the collective exercise of their rights, paragraphs 1 to 4 shall apply to the debenture holders of the companies involved in the division except where the division has been approved by a meeting of the debenture holders, if such a meeting is provided for under national laws, or by the debenture holders individually.

6. Member States may provide that the recipient companies shall be jointly and severally liable for the obligations of the company being divided. In such case they need not apply the foregoing paragraphs.

7. Where a Member State combines the system of creditor protection set out in paragraph 1 to 5 with the joint and several liability of the recipient companies as referred to in paragraph 6, it may limit such joint and several liability to the net assets allocated to each of those companies.

#### Article 13

Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.

#### Article 14

Where the laws of a Member State do not provide for judicial or administrative preventive supervision of the legality of divisions or where such supervision does not extend to all the legal acts required for a division, Article 16 of Directive 78/855/EEC shall apply.

#### Article 15

The laws of Member States shall determine the date on which a division takes effect.

#### Article 16

1. A division must be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC in respect of each of the companies involved in a division.

2. Any recipient company may itself carry out the publication formalities relating to the company being divided.

#### Article 17

1. A division shall have the following consequences ipso jure and simultaneously: (a) the transfer, both as between the company being divided and the recipient companies and as regards third parties, to each of the recipient companies of all the assets and liabilities of the company being divided ; such transfer shall take effect with the assets and liabilities being divided in accordance with the allocation laid down in the draft terms of division or in Article 3 (3);

(b) the shareholders of the company being divided become shareholders of one or more of the recipient companies in accordance with the allocation laid down in the draft terms of division;

(c) the company being divided ceases to exist.

2. No shares in a recipient company shall be exchanged for shares held in the company being divided either: (a) by that recipient company itself or by a person acting in his own name but on its behalf ; or

(b) by the company being divided itself or by a person acting in his own name but on its behalf.

3. The foregoing shall not affect the laws of Member States which require the completion of special formalities for the transfer of certain assets, rights and obligations by a company being divided to be effective as against third parties. The recipient company or companies to which such assets, rights or obligations are transferred in accordance with the draft terms of division or with Article 3 (3) may carry out these formalities themselves ; however, the laws of Member States may permit a company being divided to continue to carry out these formalities for a limited period which may not, save in exceptional circumstances, be fixed at more than six months from the date on which the division takes effect.

#### Article 18

The laws of Member States shall at least lay down rules governing the civil liability of members of the administrative or management bodies of a company being divided towards the shareholders of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division and the civil liability of the experts responsible for drawing up for that company the report provided for in Article 8 in respect of misconduct on the part of those experts in the performance of their duties.

#### Article 19

1. The laws of Member States may lay down nullity rules for divisions in accordance with the following conditions only: (a) nullity must be ordered in a court judgment;

(b) divisions which have taken effect pursuant to Article 15 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;

(c) nullification proceedings may not be initiated more than six months after the date on which the division becomes effective as against the person alleging nullity or if the situation has been rectified;

(d) where it is possible to remedy a defect liable to render a division void, the competent court shall grant the companies involved a period of time within which to rectify the situation;

(e) a judgment declaring a division void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC;

(f) where the laws of a Member State permit a third party to challenge such a judgment, he may do so only within six months of publication of the judgment in the manner prescribed by Directive 68/151/EEC;

(g) a judgment declaring a division void shall not of itself affect the validity of obligations owed by or in relation to the recipient companies which arose before the judgment was published and after the date referred to in Article 15;

(h) each of the recipient companies shall be liable for its obligations arising after the date on which the division took effect and before the date on which the decision pronouncing the nullity of the division was published. The company being divided shall also be liable for such obligations ; Member States may provide that this liability be limited to the share of net assets transferred to the recipient company on whose account such obligations arose.

2. By way of derogation from paragraph 1 (a), the laws of a Member State may also provide for the nullity of a division to be ordered by an administrative authority if an appeal against such a decision lies to a court. Subparagraphs (b), (d), (e), (f), (g), and (h) shall apply by analogy to the administrative authority. Such nullification proceedings may not be initiated more than six months after the date referred to in Article 15.

3. The foregoing shall not affect the laws of the Member States on the nullity of a division pronounced following any supervision of legality.

#### Article 20

Without prejudice to Article 6, Member States need not require the division to be approved by the general meeting of the company being divided where the recipient companies together hold all the shares of the company being divided and all other securities conferring the right to vote at general meetings of the company being divided, and the following conditions, at least, are fulfilled: (a) each of the companies involved in the operation must carry out the publication provided for in Article 4 at least one month before the operation takes effect;

(b) at least one month before the operation takes effect, all shareholders of companies involved in the operation must be entitled to inspect the documents specified in Article 9 (1), at their company's registered office. Article 9 (2) and (3) shall also apply;

(c) one or more shareholders of the company being divided holding a minimum percentage of the subscribed capital must be entitled to require that a general meeting of the company being divided be called to decide whether to approve the division. This minimum percentage may not be fixed at more than 5 %. Member States may, however, provide for the exclusion of nonvoting shares from this calculation;

(d) where a general meeting of the company being divided, required for the approval of the division, is not summoned, the information provided for by

Article 7 (3) covers any material change in the asset and liabilities after the date of preparation of the draft terms of division.

#### CHAPTER II Division by the formation of new companies

##### Article 21

1. For the purposes of this Directive, "division by the formation of new companies" means the operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10 % of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

2. Article 4 (2) of Directive 78/855/EEC shall apply.

##### Article 22

1. Articles 3, 4, 5 and 7, 8 (1) and (2) and 9 to 19 of this Directive shall apply, without prejudice to Articles 11 and 12 of Directive 68/151/EEC, to division by the formation of new companies. For this purpose, the expression "companies involved in a division" shall refer to the company being divided and the expression "recipient companies" shall refer to each of the new companies.

2. In addition to the information specified in Article 3 (2), the draft terms of division shall indicate the form, name and registered office of each of the new companies.

3. The draft terms of division and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of each of the new companies shall be approved at a general meeting of the company being divided.

4. Member States may provide that the report on the consideration other than in cash as referred to in Article 10 of Directive 77/91/EEC and the report on the draft terms of division as referred to in Article 8 (1) shall be drawn up by the same expert or experts.

5. Member States may provide that neither Article 8, nor Article 9 as regards the expert's report, shall apply where the shares in each of the new companies are allocated to the shareholders of the company being divided in proportion to their rights in the capital of that company.

#### CHAPTER III Division under the supervision of a judicial authority

##### Article 23

1. Member States may apply paragraph 2 where division operations are subject to the supervision of a judicial authority having the power: (a) to call a general meeting of the shareholders of the company being divided in order to decide upon the division;

(b) to ensure that the shareholders of each of the companies involved in a division have received or can obtain at least the documents referred to in Article 9 in time to examine them before the date of the general meeting of their company called to decide upon the division. Where a Member State makes use of the option provided for in Article 6 the period must be long enough for the shareholders of the recipient companies to be able to exercise the rights conferred on them by that Article;

(c) to call any meeting of creditors of each of the companies involved in a division in order to decide upon the division;

(d) to ensure that the creditors of each of the companies involved in a division have received or can obtain at least the draft terms of division in time to examine them before the date referred to in (b);

(e) to approve the draft terms of division.

2. Where the judicial authority establishes that the conditions referred to in paragraph 1 (b) and (d) have been fulfilled and that no prejudice would be caused to shareholders or creditors, it may relieve the companies involved in the division from applying: (a) Article 4, on condition that the adequate system of protection of the interest of the creditors referred to in Article 12 (1) covers all claims regardless of their date;

(b) the conditions referred to in Article 6 (a) and (b) where a Member State makes use of the option provided for in Article 6;

(c) Article 9, as regards the period and the manner prescribed for the inspection of the documents referred to therein.

#### CHAPTER IV Other operations treated as divisions

##### Article 24

Where, in the case of one of the operations specified in Article 1, the laws of a Member State permit the cash payment to exceed 10 %, Chapters I, II and III shall apply.

##### Article 25

Where the laws of a Member State permit one of the operations specified in Article 1 without the company being divided ceasing to exist, Chapters I, II and III shall apply, except for Article 17 (1) (c).

#### CHAPTER V Final provisions

##### Article 26

1. The Member States shall bring into force before 1 January 1986, the laws, regulations and administrative provisions necessary for them to comply with this Directive provided that on that date they permit the operations to which this Directive applies. They shall immediately inform the Commission thereof.

2. Where, after the date mentioned in paragraph 1, a Member State permits division operations, it shall bring into force the provisions mentioned in that paragraph on the date on which it permits such operations. It shall immediately inform the Commission thereof.

3. However, provision may be made for a period of five years from the entry into force of the provisions referred to in paragraph 1 for the application of those provisions to unregistered companies in the United Kingdom and Ireland.

4. Member States need not apply Articles 12 and 13 as regards the holders of convertible debentures and other securities convertible into shares if, at the time when the provisions referred to in paragraph 1 or 2 come into force, the position of these holders in the event of a division has previously been determined by the conditions of issue.

5. Member States need not apply this Directive to divisions or to operations treated as divisions for the preparation or execution of which an act or formality required by national law has already been completed when the provisions referred to in paragraph 1 or 2 enter into force.

##### Article 27

This Directive is addressed to the Member States.

Done at Brussels, 17 December 1982.

For the Council

The President

H. CHRISTOPHERSEN

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► **B****SEVENTH COUNCIL DIRECTIVE**

**of 13 June 1983**

**based on the Article 54 (3) (g) of the Treaty on consolidated accounts**

(83/349/EEC)

(OJ L 193, 18.7.1983, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Eleventh Council Directive 89/666/EEC of 21 December 1989	L 395	36	30.12.1989
► <b><u>M2</u></b>	Council Directive 90/604/EEC of 8 November 1990	L 317	57	16.11.1990
► <b><u>M3</u></b>	Council Directive 90/605/EEC of 8 November 1990	L 317	60	16.11.1990
► <b><u>M4</u></b>	Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001	L 283	28	27.10.2001
► <b><u>M5</u></b>	Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003	L 178	16	17.7.2003
► <b><u>M6</u></b>	Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006	L 157	87	9.6.2006
► <b><u>M7</u></b>	Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006	L 224	1	16.8.2006
► <b><u>M8</u></b>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <b><u>A1</u></b>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b><u>A2</u></b>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <b><u>A3</u></b>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

- **C1** Corrigendum, OJ L 211, 3.8.1983, p. 31 (83/349/EEC)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

▼B**SEVENTH COUNCIL DIRECTIVE****of 13 June 1983****based on the Article 54 (3) (g) of the Treaty on consolidated accounts****(83/349/EEC)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC <sup>(4)</sup> on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

►**C1** Whereas, in the determination of the conditions for consolidation, account must be taken not only of cases in ◀ which the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it is sufficient to exceed the limit of one only of

<sup>(1)</sup> OJ No C 121, 2. 6. 1976, p. 2.

<sup>(2)</sup> OJ No C 163, 10. 7. 1978, p. 60.

<sup>(3)</sup> OJ No C 75, 26. 3. 1977, p. 5.

<sup>(4)</sup> OJ No L 222, 14. 8. 1978, p. 11.

**▼B**

the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive;

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole; whereas, therefore consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

## SECTION 1

**Conditions for the preparation of consolidated accounts***Article 1*

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

- (a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or
- (c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for each contracts or clauses shall not be required to apply this provision; or
- (d) is a shareholder in or member of an undertaking, and:
  - (aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during

**▼B**

the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

- (bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

**▼M5**

2. Apart from the cases mentioned in paragraph 1 the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if:

- (a) that undertaking (a parent undertaking) has the power to exercise, or actually exercises, dominant influence or control over another undertaking (the subsidiary undertaking); or
- (b) that undertaking (a parent undertaking) and another undertaking (the subsidiary undertaking) are managed on a unified basis by the parent undertaking.

**▼B***Article 2*

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

- (a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or
- (b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (d), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

*Article 3*

1. Without prejudice to ►M5 Articles 13 and 15 ◄, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

**▼B**

2. For the purposes of paragraph 1 above any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertaking to be consolidated.

*Article 4*

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) *in Germany:*

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) *in Belgium:*

la société anonyme / de naamloze vennootschap — la société en commandite par actions / de commanditaire vennootschap op aandelen — la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) *in Denmark:*

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

(d) *in France:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(e) *in Greece:*

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) *in Ireland:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) *in Italy:*

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) *in Luxembourg:*

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(i) *in the Netherlands:*

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) *in the United Kingdom:*

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

**▼A1**

k) *in Spain:*

la sociedad anónima, la sociedad comanditaria por acciones, la sociedad de responsabilidad limitada;

l) *in Portugal:*

a sociedade anónima de responsabilidade limitada, a sociedade em comandita por acções, a sociedade por quotas de responsabilidade limitada;

▼ **A2**

- m) *in Austria:*  
die Aktiengesellschaft, die Gesellschaft mit beschränkter Haftung;
- n) *in Finland:*  
osakeyhtiö / aktiebolag;
- o) *in Sweden:*  
aktiebolag;;

▼ **A3**

- (p) *in the Czech Republic:*  
společnost s ručením omezeným, akciová společnost;
- (q) *in Estonia:*  
aktsiaselts, osäühing;
- (r) *in Cyprus:*  
Δημόσιες εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση, ιδιωτικές εταιρείες περιορισμένης ευθύνης με μετοχές ή με εγγύηση;
- (s) *in Latvia:*  
akciju sabiedrība, sabiedrība ar ierobežotu atbildību;
- (t) *in Lithuania:*  
akcinės bendrovės, uždarosios akcinės bendrovės;
- (u) *in Hungary:*  
résztvénytársaság, korlátolt felelősségű társaság;
- (v) *in Malta:*  
kumpanija pubblika —public limited liability company, kumpannija privata —private limited liability company,  
soċjeta in akkomandita bil-kapital maqsum fazzjonijiet —partnership *en commandite* with the capital divided into shares;
- (w) *in Poland:*  
spółka akcyjna, spółka z ograniczoną odpowiedzialnością, spółka komandytowo-akcyjna;
- (x) *in Slovenia:*  
delniška družba, družba z omejeno odgovornostjo, komanditna delniška družba;
- (y) *in Slovakia:*  
akciová spoločnosť, spoločnosť s ručením obmedzeným;

▼ **M8**

- (z) *in Bulgaria:*  
акционерно дружество, дружество с ограничена отговорност, командитно дружество с акции;
- (aa) *in Romania:*  
societate pe acțiuni, societate cu răspundere limitată, societate în comandită pe acțiuni.

▼ **M3**

The first subparagraph shall also apply where either the parent undertaking or one or more subsidiary undertakings is constituted as one of the types of company mentioned in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.

2. The Member States may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not constituted as one of the types of company mentioned in Article 4



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(1) of this Directive or in Article 1 (1), second or third subparagraph of Directive 78/660/EEC.

**▼B***Article 5*

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:

- (a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;
  - (b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;
  - (c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and
  - (d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.
2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).
- (b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

*Article 6*

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.

2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In

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that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.

3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

**▼ M5**

4. This Article shall not apply where one of the undertakings to be consolidated is a company whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1 (13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field <sup>(1)</sup>.

**▼ B***Article 7*

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

- (a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or
- (b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

**▼ M5****▼ B**

2. Exemption shall be conditional upon compliance with all of the following conditions:

- (a) the exempted undertaking and, without prejudice to ► **M5** Articles 13 and 15 ◀, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;
- (b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;
- (bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;
- (c) the notes on the annual accounts of the exempted undertaking must disclose:

<sup>(1)</sup> OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

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- (aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and
- (bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

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3. This Article shall not apply to companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.

**▼B***Article 8*

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10 % for public limited liability companies and for limited partnerships with share capital, and at not more than 20 % for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

*Article 9*

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

- the amount of the fixed assets,
- the net turnover,
- the profit or loss for the financial year and the amount of the capital and reserves,
- the average number of persons employed during the financial year.

**▼B***Article 10*

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

- for the information of employees of their representatives, or
- by an administrative or judicial authority for its own purposes.

*Article 11*

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

- (a) the exempted undertaking and, without prejudice to ►**M5** Articles 13 and 15 ◀, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;
  - (b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;
  - (c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.
2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

*Article 12*

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

- (a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or
- (b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items 'capital', 'share premium account', 'revaluation reserve', 'reserves', 'profit or loss brought forward', and 'profit or loss for the financial

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year' to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

*Article 13*

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).
2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 16 (3).
3. In addition, an undertaking need not be included in consolidated accounts where:
  - (a) severe long-term restrictions substantially hinder:
    - (aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or
    - (bb) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 12 (1); or
  - (b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or
  - (c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

**▼M5****▼B***Article 15*

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.
2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.
3. Where use is made of this derogation either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

## SECTION 2

**The preparation of consolidated accounts***Article 16*

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

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Member States may permit or require the inclusion of other statements in the consolidated accounts in addition to the documents referred to in the first subparagraph.

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2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.
3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.
4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.
5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.
6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

*Article 17*

1. ►**M5** Articles 3 to 10a ◀, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.
2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

*Article 18*

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

*Article 19*

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:
  - (a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.
  - (b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.
  - (c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the

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accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.

2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

*Article 20*

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:

- (a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91 EEC <sup>(1)</sup>;
- (b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and
- (c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of nominal value, of the accounting par value of the shares issued.

2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.

3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

*Article 21*

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

*Article 22*

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

*Article 23*

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

<sup>(1)</sup> OJ No L 26, 31. 1. 1977, p. 1.

**▼B***Article 24*

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

*Article 25*

1. The methods of consolidation must be applied consistently from one financial year to another.
2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

*Article 26*

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:
  - (a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.
2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.
3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

*Article 27*

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.
2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the note on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between



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that undertaking's balance sheet date and the consolidated balance sheet date.

3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

*Article 28*

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

*Article 29***▼M4**

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Sections 7 and 7a and Article 60 of Directive 78/660/EEC.

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2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.

(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given.

3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.

4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.

5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

**▼B***Article 30*

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item 'goodwill'.
2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

*Article 31*

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

- (a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or
- (b) in so far as such a difference corresponds to a realized gain.

*Article 32*

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.
2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.
3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

*Article 33*

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.
2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:
  - (a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or
  - (b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating

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interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.

- (c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.
  - (d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.
3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2), they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes on the accounts. A Member State may require such revaluation.
  4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to that participating interest.
  5. In so far as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).
  6. The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit-and-loss account as a separate item under an appropriate heading.
  7. The eliminations referred to in Article 26 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.
  8. Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such consolidated accounts.
  9. This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 16 (3).

*Article 34*

In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

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2. (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.
- (b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to ►M5 Article 13 and ◀ an explanation must be given for the exclusion of the undertakings referred to in Article 13.
3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
- (b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.
4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.
5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation ►M5 ——— ◀, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.
6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.
7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

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- (7a) The nature and business purpose of any arrangements that are not included in the consolidated balance sheet, and the financial

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impact of those arrangements, provided that the risks or benefits arising from such arrangements are material and in so far as the disclosure of such risks or benefits is necessary for assessing the financial position of the undertakings included in the consolidation taken as a whole.

- (7b) The transactions, save for intra-group transactions, entered into by the parent undertaking, or by other undertakings included in the consolidation, with related parties, including the amounts of such transactions, the nature of the related party relationship as well as other information about the transactions necessary for an understanding of the financial position of the undertakings included in the consolidation taken as a whole, if such transactions are material and have not been concluded under normal market conditions. Information about individual transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of the related party transactions on the financial position of the undertakings included in the consolidation taken as a whole.

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8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organized, these categories and markets differ substantially from one another.
9.
  - a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.
  - (b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.
10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in ►M4 Articles 31 and 34 to Article 42c ◀ of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.
11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.
12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

**▼B**

13. The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

**▼M4**

14. Where valuation at fair value of financial instruments has been applied in accordance with Section 7a of Directive 78/660/EEC:
- (a) the significant assumptions underlying the valuation models and techniques where fair values have been determined in accordance with Article 42b(1)(b) of that Directive;
  - (b) per category of financial instruments, the fair value, the changes in value included directly in the profit and loss account as well as, in accordance with Article 42c of that Directive, changes included in the fair value reserve;
  - (c) for each class of derivative financial instruments, information about the extent and the nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows; and
  - (d) a table showing movements in the fair value reserve during the financial year.
15. Where valuation at fair value of financial instruments has not been applied in accordance with Section 7a of Directive 78/660/EEC:
- (a) for each class of derivative instruments:
    - (i) the fair value of the instruments, if such a value can be determined by any of the methods prescribed in Article 42b(1) of that Directive;
    - (ii) information about the extent and the nature of the instruments; and
  - (b) for financial fixed assets covered by Article 42a of that Directive, carried at an amount in excess of their fair value and without use being made of the option to make a value adjustment in accordance with Article 35(1)(c)(aa) of that Directive:
    - (i) the book value and the fair value of either the individual assets or appropriate groupings of those individual assets;
    - (ii) the reasons for not reducing the book value, including the nature of the evidence that provides the basis for the belief that the book value will be recovered.

**▼M6**

16. Separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of the consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

**▼B***Article 35*

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):

**▼B**

- (a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;
  - (b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.
2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

## SECTION 3

**The consolidated annual report***Article 36***▼M5**

1. The consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

**▼B**

2. In respect of those undertakings, the report shall also give an indication of:
- (a) any important events that have occurred since the end of the financial year;
  - (b) the likely future development of those undertakings taken as a whole;
  - (c) the activities of those undertakings taken as whole in the field of research and development;
  - (d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts;

**▼M4**

- (e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss,
  - the financial risk management objectives and policies of the undertakings, including their policies for hedging each major

▼ M4

type of forecasted transaction for which hedge accounting is used, and

- the exposure to price risk, credit risk, liquidity risk and cash flow risk<sup>36</sup>;

▼ M7

- (f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>(1)</sup>. In the event that the consolidated annual report and the annual report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 46a of Directive 78/660/EEC.

If a Member State permits the information required by paragraph 1 of Article 46a of Directive 78/660/EEC to be set out in a separate report published together with the annual report in the manner prescribed by Article 47 of that Directive, the information provided under the first subparagraph shall also form part of that separate report. Article 37(1), second subparagraph of this Directive shall apply.

▼ M5

3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.

▼ M7

## SECTION 3A

**Duty and liability for drawing up and publishing the consolidated accounts and the consolidated annual report***Article 36a*

Member States shall ensure that the members of the administrative, management and supervisory bodies of undertakings drawing up the consolidated accounts and the consolidated annual report have collectively the duty to ensure that the consolidated accounts, the consolidated annual report and, when provided separately, the corporate governance statement to be provided pursuant to Article 46a of Directive 78/660/EEC are drawn up and published in accordance with the requirements of this Directive and, where applicable, in accordance with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>(2)</sup>. Such bodies shall act within the competences assigned to them by national law.

*Article 36b*

Member States shall ensure that their laws, regulations and administrative provisions on liability apply to the members of the administrative, management and supervisory bodies referred to in Article 36a, at least towards the undertaking drawing up the consolidated accounts, for breach of the duty referred to in Article 36a.

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 243, 11.9.2002, p. 1.



**▼B**

## SECTION 4

**The auditing of consolidated accounts****▼M5***Article 37*

1. The consolidated accounts of companies shall be audited by one or more persons approved by the Member State whose laws govern the parent undertaking to carry out statutory audits on the basis of the Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents <sup>(1)</sup>.

The person or persons responsible for auditing the consolidated accounts (hereinafter: the statutory auditors) shall also express an opinion concerning the consistency or otherwise of the consolidated annual report with the consolidated accounts for the same financial year.

2. The report of the statutory auditors shall include:

- (a) an introduction which shall at least identify the consolidated accounts which are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;
- (b) a description of the scope of the statutory audit which shall at least identify the auditing standards in accordance with which the statutory audit was conducted;
- (c) an audit opinion which shall state clearly the opinion of the statutory auditors as to whether the consolidated accounts give a true and fair view in accordance with the relevant financial reporting framework and, where appropriate, whether the consolidated accounts comply with statutory requirements; the audit opinion shall be either unqualified, qualified, an adverse opinion or, if the statutory auditors are unable to express an audit opinion, a disclaimer of opinion;
- (d) a reference to any matters to which the statutory auditors draw attention by way of emphasis without qualifying the audit opinion;
- (e) an opinion concerning the consistency or otherwise of the consolidated annual report with the consolidated accounts for the same financial year.

3. The report shall be signed and dated by the statutory auditors.

4. Where the annual accounts of the parent undertaking are attached to the consolidated accounts, the report of the statutory auditors required by this Article may be combined with any report of the statutory auditors on the annual accounts of the parent undertaking required by Article 51 of Directive 78/660/EEC.

**▼B**

## SECTION 5

**The publication of consolidated accounts***Article 38*

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the

<sup>(1)</sup> OJ L 126, 12.5.1984, p. 20.

**▼B**

laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.

2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.

3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: 'It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost.'

4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

5. Articles 48 and 49 of Directive 78/660/EEC shall apply.

6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

**▼M5**

7. Paragraphs 2 and 3 shall not be applied in respect of companies whose securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Directive 93/22/EEC.

**▼M2***Article 38a*

Consolidated accounts may be published in the currency in which they were drawn up and in ecus, translated at the exchange rate prevailing on the consolidated balance sheet date. That rate shall be disclosed in the notes on the accounts.

**▼B**

## SECTION 6

**Transitional and final provisions***Article 39*

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1) account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.

2. Paragraph 1 above shall apply *mutatis mutandis* to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.

3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:

**▼B**

- (a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and
- (b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

*Article 40*

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:

- (a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;
- (b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.

They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.

2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:

- (a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;
- (b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.

3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

*Article 41*

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.

**▼M7**

1a. 'Related party' has the same meaning as in international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.

**▼B**

2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.

3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.

4. Articles 2 and 3 (2) shall apply.

5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by that Member State to draw up consolidated accounts in accordance with the provisions of this Directive as well as parent undertakings with a similar legal form.

*Article 42*

The following shall be substituted for Article 56 of Directive 78/660/EEC:

*'Article 56*

1. The obligation to show in annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.

2. The notes on the accounts must also disclose:

- (a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the company forms part as a subsidiary undertaking;
- (b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;
- (c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available.'

*Article 43*

The following shall be substituted for Article 57 of Directive 78/660/EEC:

**▼B***Article 57*

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

- (a) the parent undertaking must be subject to the laws of a Member State;
- (b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;
- (c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;
- (d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;
- (e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;
- (f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC.'

*Article 44*

The following shall be substituted for Article 58 of Directive 78/660/EEC:

*Article 58*

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

- (a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;
- (b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;
- (c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;
- (d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company.'

**▼B***Article 45*

The following shall be substituted for Article 59 of Directive 78/660/EEC:

*'Article 59*

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.
2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:
  - (a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or
  - (b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.
  - (c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the account must indicate whether (a) or (b) above has been used.
  - (d) In addition, when applying (a) and (b) above, a Member State may require or permit calculation of the difference as at the date of acquisition of the participating interest referred to in paragraph 1 or, where the acquisition took place in two or more stages, as at the date as at which the holding became a participating interest within the meaning of paragraph 1 above.
3. Where the assets or liabilities of an undertaking in which a participating interest within the meaning of paragraph 1 above is held have been valued by methods other than those used by the company drawing up the annual accounts, they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used by the company drawing up the annual accounts. Disclosure must be made in the notes on the accounts where such revaluation has not been carried out. A Member State may require such revaluation.
4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of the variation which has taken place during the financial year in the proportion of capital and reserves represented by that participating interest; it shall be reduced by the amount of the dividends relating to the participating interest.

**▼B**

5. In so far as a positive difference covered by paragraph 2 (a) or (b) above cannot be related to any category of asset or liability, it shall be dealt with in accordance with the rules applicable to the item "goodwill".
6. (a) The proportion of the profit or loss attributable to participating interests within the meaning of paragraph 1 above shall be shown in the profit-and-loss account as a separate item with an appropriate heading.
- (b) Where that amount exceeds the amount of dividends already received or the payment of which can be claimed, the amount of the difference must be placed in a reserve which cannot be distributed to shareholders.
- (c) A Member State may require or permit that the proportion of the profit or loss attributable to the participating interests referred to in paragraph 1 above be shown in the profit-and-loss account only to the extent of the amount corresponding to dividends already received or the payment of which can be claimed.
7. The eliminations referred to in Article 26 (1) (c) of Directive 83/349/EEC shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) of that Directive shall apply.
8. Where an undertaking in which a participating interest within the meaning of paragraph 1 above is held draws up consolidated accounts, the foregoing paragraphs shall apply to the capital and reserves shown in such consolidated accounts.
9. This Article need not be applied where a participating interest as defined in paragraph 1 is not material for the purposes of Article 2 (3).'

*Article 46*

The following shall be substituted for Article 61 of Directive 78/660/EEC:

*'Article 61*

A Member State need not apply the provisions of point 2 of Article 43 (1) of this Directive concerning the amount of capital and reserves and profits and losses of the undertakings concerned to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC:

- (a) where the undertakings concerned are included in consolidated accounts drawn up by that parent undertaking, or in the consolidated accounts of a larger body of undertakings as referred to in Article 7 (2) of Directive 83/349/EEC; or
- (b) where the holdings in the undertakings concerned have been dealt with by the parent undertaking in its annual accounts in accordance with Article 59, or in the consolidated accounts drawn up by that parent undertaking in accordance with Article 33 of Directive 83/349/EEC.'

*Article 47*

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

- (a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings

**▼ B**

dealing, in particular, with practical problems arising in connection with its application;

- (b) advise the Commission, if necessary, on additions or amendments to this Directive.

**▼ M1****▼ M7***Article 48*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

**▼ B***Article 49*

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive before 1 January 1988. They shall forthwith inform the Commission thereof.
2. A Member State may provide that the provisions referred to in paragraph 1 above shall first apply to consolidated accounts for financial years beginning on 1 January 1990 or during the calendar year 1990.
3. The Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 50*

1. Five years after the date referred to in Article 49 (2), the Council, acting on a proposal from the Commission, shall examine and if need be revise Articles 1 (1) (d) (second subparagraph), 4 (2), 5, 6, 7 (1), 12, 43 and 44 in the light of the experience acquired in applying this Directive, the aims of this Directive and the economic and monetary situation at the time.
2. Paragraph 1 above shall not affect Article 53 (2) of Directive 78/660/EEC.

**▼ M4***Article 50a*

Not later than 1 January 2007, the Commission shall review the provisions in Article 29(1), Article 34(10), (14) and (15) and Article 36(2)(e) in the light of the experience acquired in applying provisions on fair value accounting and taking account of international developments in the field of accounting and, if appropriate, submit a proposal to the European Parliament and the Council with a view to amending the abovementioned Articles.

**▼ B***Article 51*

This Directive is addressed to the Member States.



## 31983L0349

### Title and reference

**Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts**

*OJ L 193, 18.7.1983, p. 1–17 (DA, DE, EL, EN, FR, IT, NL)*

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*Special edition in Lithuanian Chapter 17 Volume 01 P. 58 - 74*

*Special edition in Latvian Chapter 17 Volume 01 P. 58 - 74*

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### Text

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► **Directory code:**

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► **Form:**

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[31978L0660](#) Amendment Amendment Article 47.1 from 29/06/1983

[31978L0660](#) Amendment Replacement Article 56 from 29/06/1983

[31978L0660](#) Amendment Replacement Article 57 from 29/06/1983

[31978L0660](#) Amendment Replacement Article 58 from 29/06/1983

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Amended by [32001L0065](#) Amendment Article 34 from 17/10/2001  
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 Amended by [32001L0065](#) Addition Article 50 BI from 17/10/2001  
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 Amended by [32003L0051](#) Amendment Article 11.1 from 17/07/2003  
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 Amended by [32006L0046](#) Addition Article 41.1BIS from /T/DATN  
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 Amended by [32006L0046](#) Addition SECTION 3BIS from /T/DATN  
 Amended by [32006L0099](#) Completion Article 4.1 from 01/01/2007  
 Amendment proposed by [52008PC0195](#)

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Amendment proposed by [51986PC0238](#)  
 Amendment proposed by [51988PC0292](#)  
 Amendment proposed by [52000PC0080](#)  
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Seventh Council Directive

of 13 June 1983

based on the Article 54 (3) (g) of the Treaty on consolidated accounts  
 (83/349/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC [4] on the coordination of national legislation governing the annual accounts of certain types of companies; whereas many companies are members of bodies of undertakings; whereas consolidated accounts must be drawn up so that financial information concerning such bodies of undertakings may be conveyed to members and third parties; whereas national legislation governing consolidated accounts must therefore be coordinated in order to achieve the objectives of comparability and equivalence in the information which companies must publish within the Community;

Whereas on 25 July 1978 the Council adopted Directive 78/660/EEC [5] on the coordination of national which the power of control is based on a majority of voting rights but also of those in which it is based on agreements, where these are permitted; whereas, furthermore, Member States in which the possibility occurs must be permitted to cover cases in which in certain circumstances control has been effectively exercised on the basis of a minority holding; whereas the Member States must be permitted to cover the case of bodies of undertakings in which the undertakings exist on an equal footing with each other;

Whereas the aim of coordinating the legislation governing consolidated accounts is to protect the interests subsisting in companies with share capital; whereas such protection implies the principle of the preparation of consolidated accounts where such a company is a member of a body of undertakings, and that such accounts must be drawn up at least where such a company is a parent undertaking; whereas, furthermore, the cause of full information also requires that a subsidiary undertaking which is itself a parent undertaking draw up consolidated accounts; whereas, nevertheless, such a parent undertaking may, and, in certain circumstances, must be exempted from the obligation to draw up such consolidated accounts provided that its members and third parties are sufficiently protected;

Whereas, for bodies of undertakings not exceeding a certain size, exemption from the obligation to prepare consolidated accounts may be justified; whereas, accordingly, maximum limits must be set for such exemptions; whereas it follows therefrom that the Member States may either provide that it

is sufficient to exceed the limit of one only of the three criteria for the exemption not to apply or adopt limits lower than those prescribed in the Directive:

Whereas consolidated accounts must give a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole; whereas, therefore, consolidation should in principle include all of those undertakings; whereas such consolidation requires the full incorporation of the assets and liabilities and of the income and expenditure of those undertakings and the separate disclosure of the interests of persons outwith such bodies; whereas, however, the necessary corrections must be made to eliminate the effects of the financial relations between the undertakings consolidated;

Whereas a number of principles relating to the preparation of consolidated accounts and valuation in the context of such accounts must be laid down in order to ensure that items are disclosed consistently, and may readily be compared not only as regards the methods used in their valuation but also as regards the periods covered by the accounts;

Whereas participating interests in the capital of undertakings over which undertakings included in a consolidation exercise significant influence must be included in consolidated accounts by means of the equity method;

Whereas the notes on consolidated accounts must give details of the undertakings to be consolidated;

Whereas certain derogations originally provided for on a transitional basis in Directive 78/660/EEC may be continued subject to review at a later date,

HAS ADOPTED THIS DIRECTIVE:

## SECTION 1

Conditions for the preparation of consolidated accounts

### Article 1

1. A Member State shall require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking):

- (a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or
- (c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions. A Member State need not prescribe that a parent undertaking must be a shareholder in or member of its subsidiary undertaking. Those Member States the laws of which do not provide for such contracts or clauses shall not be required to apply this provision; or
- (d) is a shareholder in or member of an undertaking, and:
  - (aa) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights; or
  - (bb) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

The Member States shall prescribe at least the arrangements referred to in (bb) above.

They may make the application of (aa) above dependent upon the holding's representing 20 % or more of the shareholders' or members' voting rights.

However, (aa) above shall not apply where another undertaking has the rights referred to in subparagraphs (a), (b) or (c) above with regard to that subsidiary undertaking.

2. Apart from the cases mentioned in paragraph 1 above and pending subsequent coordination, the Member States may require any undertaking governed by their national law to draw up consolidated accounts and a consolidated annual report if that undertaking (a parent undertaking) holds a participating interest as defined in Article 17 of Directive 78/660/EEC in another undertaking (a subsidiary undertaking), and:

- (a) it actually exercises a dominant influence over it; or
- (b) it and the subsidiary undertaking are managed on a unified basis by the parent undertaking.

### Article 2

1. For the purposes of Article 1 (1) (a), (b) and (d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

2. For the purposes of Article 1 (1) (a), (b) and (d), the rights mentioned in paragraph 1 above must be reduced by the rights:

- (a) attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or
- (b) attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

3. For the purposes of Article 1 (1) (a) and (c), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings.

### Article 3

1. Without prejudice to Articles 13, 14 and 15, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated regardless of where the registered offices of such subsidiary undertakings are situated.

2. For the purposes of paragraph 1 above, any subsidiary undertaking of a subsidiary undertaking shall be considered a subsidiary undertaking of the parent undertaking which is the parent of the undertakings to be consolidated.

### Article 4

1. For the purposes of this Directive, a parent undertaking and all of its subsidiary undertakings shall be undertakings to be consolidated where either the parent undertaking or one or more subsidiary undertakings is established as one of the following types of company:

(a) in Germany:

die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung;

(b) in Belgium:

la société anonyme / de naamloze vennootschap — la société en commandite par actions / de commanditaire vennootschap op aandelen — la société de personnes à responsabilité limitée / de personenvennootschap met beperkte aansprakelijkheid;

(c) in Denmark:

aktieselskaber, kommanditaktieselskaber, anpartsselskaber;

(d) in France:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(e) in Greece:

η ανώνυμη εταιρία, η εταιρία περιορισμένης ευθύνης, η ετερόρρυθμη κατά μετοχές εταιρία;

(f) in Ireland:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee;

(g) in Italy:

la società per azioni, la società in accomandita per azioni, la società a responsabilità limitata;

(h) in Luxembourg:

la société anonyme, la société en commandite par actions, la société à responsabilité limitée;

(i) in the Netherlands:

de naamloze vennootschap, de besloten vennootschap met beperkte aansprakelijkheid;

(j) in the United Kingdom:

public companies limited by shares or by guarantee, private companies limited by shares or by guarantee.

2. A Member State may, however, grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is not established as one of the types of company listed in paragraph 1 above.

#### Article 5

1. A Member State may grant exemption from the obligation imposed in Article 1 (1) where the parent undertaking is a financial holding company as defined in Article 5 (3) of Directive 78/660/EEC, and:

(a) it has not intervened during the financial year, directly or indirectly, in the management of a subsidiary undertaking;

(b) it has not exercised the voting rights attaching to its participating interest in respect of the appointment of a member of a subsidiary undertaking's administrative, management or supervisory bodies during the financial year or the five preceding financial years or, where the exercise of voting rights was necessary for the operation of the administrative, management or supervisory bodies of the subsidiary undertaking, no shareholder in or member of the parent undertaking with majority voting rights or member of the administrative, management or supervisory bodies of that undertaking or of a member thereof with majority voting rights is a member of the administrative, management or supervisory bodies of the subsidiary undertaking and the members of those bodies so appointed have fulfilled their functions without any interference or influence on the part of the parent undertaking or of any of its subsidiary undertakings;

(c) it has made loans only to undertakings in which it holds participating interests. Where such loans have been made to other parties, they must have been repaid by the end of the previous financial year; and

(d) the exemption is granted by an administrative authority after fulfilment of the above conditions has been checked.

2. (a) Where a financial holding company has been exempted, Article 43 (2) of Directive 78/660/EEC shall not apply to its annual accounts with respect to any majority holdings in subsidiary undertakings as from the date provided for in Article 49 (2).

(b) The disclosures in respect of such majority holdings provided for in point 2 of Article 43 (1) of Directive 78/660/EEC may be omitted when their nature is such that they would be seriously prejudicial to the company, to its shareholders or members or to one of its subsidiaries. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

#### Article 6

1. Without prejudice to Articles 4 (2) and 5, a Member State may provide for an exemption from the obligation imposed in Article 1 (1) if as at the balance sheet date of a parent undertaking the undertakings to be consolidated do not together, on the basis of their latest annual accounts, exceed the limits of two of the three criteria laid down in Article 27 of Directive 78/660/EEC.

2. A Member State may require or permit that the set-off referred to in Article 19 (1) and the elimination referred to in Article 26 (1) (a) and (b) be not effected when the aforementioned limits are calculated. In that case, the limits for the balance sheet total and net turnover criteria shall be increased by 20 %.

3. Article 12 of Directive 78/660/EEC shall apply to the above criteria.

4. This Article shall not apply where one of the undertakings to be consolidated is a company the securities of which have been admitted to official listing on a stock exchange established in a Member State.

5. For 10 years after the date referred to in Article 49 (2), the Member States may multiply the criteria expressed in ECU by up to 2,5 and may increase the average number of persons employed during the financial year to a maximum of 500.

#### Article 7

1. Notwithstanding Articles 4 (2), 5 and 6, a Member State shall exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking if its own parent undertaking is governed by the law of a Member State in the following two cases:

(a) where that parent undertaking holds all of the shares in the exempted undertaking. The shares in that undertaking held by members of its administrative, management or supervisory bodies pursuant to an obligation in law or in the memorandum or articles of association shall be ignored for this purpose; or

(b) where that parent undertaking holds 90 % or more of the shares in the exempted undertaking and the remaining shareholders in or members of that undertaking have approved the exemption.

In so far as the laws of a Member State prescribe consolidation in this case at the time of the adoption of this Directive, that Member State need not apply this provision for 10 years after the date referred to in Article 49 (2).

2. Exemption shall be conditional upon compliance with all of the following conditions:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings, the parent undertaking of which is governed by the law of a Member State;

(b) (aa) the consolidated accounts referred to in (a) above and the consolidated annual report of the larger body of undertakings must be drawn up by the parent undertaking of that body and audited, according to the law of the Member State by which the parent undertaking of that larger body of undertakings is governed, in accordance with this Directive;

(bb) the consolidated accounts referred to in (a) above and the consolidated annual report referred to in (aa) above, the report by the person responsible for auditing those accounts and, where appropriate, the appendix referred to in Article 9 must be published for the exempted undertaking in the manner prescribed by the law of the Member State governing that undertaking in accordance with Article 38. That Member State may require that those documents be published in its official language and that the translation be certified;

(c) the notes on the annual accounts of the exempted undertaking must disclose:

(aa) the name and registered office of the parent undertaking that draws up the consolidated accounts referred to in (a) above; and

(bb) the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

3. A Member State need not, however, apply this Article to companies the securities of which have been admitted to official listing on a stock exchange established in a Member State.

#### Article 8

1. In cases not covered by Article 7 (1), a Member State may, without prejudice to Articles 4 (2), 5 and 6, exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking, the parent undertaking of which is governed by the law of a Member State, provided that all the conditions set out in Article 7 (2) are fulfilled and that the shareholders in or members of the exempted undertaking who own a minimum proportion of the subscribed capital of that undertaking have not requested the preparation of consolidated accounts at least six months before the end of the financial year. The Member States may fix that proportion at not more than 10 % for public limited liability companies and for limited partnerships with share capital, and at not more than 20 % for undertakings of other types.

2. A Member State may not make it a condition for this exemption that the parent undertaking which prepared the consolidated accounts described in Article 7 (2) (a) must also be governed by its national law.

3. A Member State may not make exemption subject to conditions concerning the preparation and auditing of the consolidated accounts referred to in Article 7 (2) (a).

#### Article 9

1. A Member State may make the exemptions provided for in Articles 7 and 8 dependent upon the disclosure of additional information, in accordance with this Directive, in the consolidated accounts referred to in Article 7 (2) (a), or in an appendix thereto, if that information is required of undertakings governed by the national law of that Member State which are obliged to prepare consolidated accounts and are in the same circumstances.

2. A Member State may also make exemption dependent upon the disclosure, in the notes on the consolidated accounts referred to in Article 7 (2) (a), or in the annual accounts of the exempted undertaking, of all or some of the following information regarding the body of undertakings, the parent undertaking of which it is exempting from the obligation to draw up consolidated accounts:

- the amount of the fixed assets,
- the net turnover,
- the profit or loss for the financial year and the amount of the capital and reserves,
- the average number of persons employed during the financial year.

#### Article 10

Articles 7 to 9 shall not affect any Member State's legislation on the drawing up of consolidated accounts or consolidated annual reports in so far as those documents are required:

- for the information of employees on their representatives, or
- by an administrative or judicial authority for its own purposes.

#### Article 11

1. Without prejudice to Articles 4 (2), 5 and 6, a Member State may exempt from the obligation imposed in Article 1 (1) any parent undertaking governed by its national law which is also a subsidiary undertaking of a parent undertaking not governed by the law of a Member State, if all of the following conditions are fulfilled:

(a) the exempted undertaking and, without prejudice to Articles 13, 14 and 15, all of its subsidiary undertakings must be consolidated in the accounts of a larger body of undertakings;

(b) the consolidated accounts referred to in (a) above and, where appropriate, the consolidated annual report must be drawn up in accordance with this Directive or in a manner equivalent to consolidated accounts and consolidated annual reports drawn up in accordance with this Directive;

(c) the consolidated accounts referred to in (a) above must have been audited by one or more persons authorized to audit accounts under the national law governing the undertaking which drew them up.

2. Articles 7 (2) (b) (bb) and (c) and 8 to 10 shall apply.

3. A Member State may provide for exemptions under this Article only if it provides for the same exemptions under Articles 7 to 10.

#### Article 12

1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

(a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or

(b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.

2. Where paragraph 1 above is applied, undertakings related as defined in that paragraph together with all of their subsidiary undertakings shall be undertakings to be consolidated, as defined in this Directive, where one or more of those undertakings is established as one of the types of company listed in Article 4.

3. Articles 3, 4 (2), 5, 6, 13 to 28, 29 (1), (3), (4) and (5), 30 to 38 and 39 (2) shall apply to the consolidated accounts and the consolidated annual report covered by this Article, references to parent undertakings being understood to refer to all the undertakings specified in paragraph 1 above. Without prejudice to Article 19 (2), however, the items "capital", "share premium account", "revaluation reserve", "reserves", "profit or loss brought forward", and "profit or loss for the financial year" to be included in the consolidated accounts shall be the aggregate amounts attributable to each of the undertakings specified in paragraph 1.

#### Article 13

1. An undertaking need not be included in consolidated accounts where it is not material for the purposes of Article 16 (3).

2. Where two or more undertakings satisfy the requirements of paragraph 1 above, they must nevertheless be included in consolidated accounts if, as a whole, they are material for the purposes of Article 16 (3).

3. In addition, an undertaking need not be included in consolidated accounts where:

(a) severe long-term restrictions substantially hinder:

(aa) the parent undertaking in the exercise of its rights over the assets or management of that undertaking; or

(bb) the exercise of unified management of that undertaking where it is in one of the relationships defined in Article 12 (1); or

(b) the information necessary for the preparation of consolidated accounts in accordance with this Directive cannot be obtained without disproportionate expense or undue delay; or

(c) the shares of that undertaking are held exclusively with a view to their subsequent resale.

#### Article 14

1. Where the activities of one or more undertakings to be consolidated are so different that their inclusion in the consolidated accounts would be incompatible with the obligation imposed in Article 16 (3), such undertakings must, without prejudice to Article 33 of this Directive, be excluded from the consolidation.

2. Paragraph 1 above shall not be applicable merely by virtue of the fact that the undertakings to be consolidated are partly industrial, partly commercial, and partly provide services, or because such undertakings carry on industrial or commercial activities involving different products or provide different services.

3. Any application of paragraph 1 above and the reasons therefor must be disclosed in the notes on the accounts. Where the annual or consolidated accounts of the undertakings thus excluded from the consolidation are not published in the same Member State in accordance with Directive 68/151/EEC [6], they must be attached to the consolidated accounts or made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

#### Article 15

1. A Member State may, for the purposes of Article 16 (3), permit the omission from consolidated accounts of any parent undertaking not carrying on any industrial or commercial activity which holds shares in a subsidiary undertaking on the basis of a joint arrangement with one or more undertakings not included in the consolidated accounts.

2. The annual accounts of the parent undertaking shall be attached to the consolidated accounts.

3. Where use is made of this derogation, either Article 59 of Directive 78/660/EEC shall apply to the parent undertaking's annual accounts or the information which would have resulted from its application must be given in the notes on those accounts.

## SECTION 2

### The preparation of consolidated accounts

#### Article 16

1. Consolidated accounts shall comprise the consolidated balance sheet, the consolidated profit-and-loss account and the notes on the accounts. These documents shall constitute a composite whole.

2. Consolidated accounts shall be drawn up clearly and in accordance with this Directive.
3. Consolidated accounts shall give a true and fair view of the assets, liabilities, financial position and profit or loss of the undertakings included therein taken as a whole.
4. Where the application of the provisions of this Directive would not be sufficient to give a true and fair view within the meaning of paragraph 3 above, additional information must be given.
5. Where, in exceptional cases, the application of a provision of Articles 17 to 35 and 39 is incompatible with the obligation imposed in paragraph 3 above, that provision must be departed from in order to give a true and fair view within the meaning of paragraph 3. Any such departure must be disclosed in the notes on the accounts together with an explanation of the reasons for it and a statement of its effect on the assets, liabilities, financial position and profit or loss. The Member States may define the exceptional cases in question and lay down the relevant special rules.
6. A Member State may require or permit the disclosure in the consolidated accounts of other information as well as that which must be disclosed in accordance with this Directive.

#### Article 17

1. Articles 3 to 10, 13 to 26 and 28 to 30 of Directive 78/660/EEC shall apply in respect of the layout of consolidated accounts, without prejudice to the provisions of this Directive and taking account of the essential adjustments resulting from the particular characteristics of consolidated accounts as compared with annual accounts.
2. Where there are special circumstances which would entail undue expense a Member State may permit stocks to be combined in the consolidated accounts.

#### Article 18

The assets and liabilities of undertakings included in a consolidation shall be incorporated in full in the consolidated balance sheet.

#### Article 19

1. The book values of shares in the capital of undertakings included in a consolidation shall be set off against the proportion which they represent of the capital and reserves of those undertakings:
  - (a) That set-off shall be effected on the basis of book values as at the date as at which such undertakings are included in the consolidations for the first time. Differences arising from such set-offs shall as far as possible be entered directly against those items in the consolidated balance sheet which have values above or below their book values.
  - (b) A Member State may require or permit set-offs on the basis of the values of identifiable assets and liabilities as at the date of acquisition of the shares or, in the event of acquisition in two or more stages, as at the date on which the undertaking became a subsidiary.
  - (c) Any difference remaining after the application of (a) or resulting from the application of (b) shall be shown as a separate item in the consolidated balance sheet with an appropriate heading. That item, the methods used and any significant changes in relation to the preceding financial year must be explained in the notes on the accounts. Where the offsetting of positive and negative differences is authorized by a Member State, a breakdown of such differences must also be given in the notes on the accounts.
2. However, paragraph 1 above shall not apply to shares in the capital of the parent undertaking held either by that undertaking itself or by another undertaking included in the consolidation. In the consolidated accounts such shares shall be treated as own shares in accordance with Directive 78/660/EEC.

#### Article 20

1. A Member State may require or permit the book values of shares held in the capital of an undertaking included in the consolidation to be set off against the corresponding percentage of capital only, provided that:
  - (a) the shares held represent at least 90 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares of that undertaking other than shares of the kind described in Article 29 (2) (a) of Directive 77/91/EEC [7];
  - (b) the proportion referred to in (a) above has been attained pursuant to an arrangement providing for the issue of shares by an undertaking included in the consolidation; and
  - (c) the arrangement referred to in (b) above did not include a cash payment exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the shares issued.
2. Any difference arising under paragraph 1 above shall be added to or deducted from consolidated reserves as appropriate.
3. The application of the method described in paragraph 1 above, the resulting movement in reserves and the names and registered offices of the undertakings concerned shall be disclosed in the notes on the accounts.

#### Article 21

The amount attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated balance sheet as a separate item with an appropriate heading.

#### Article 22

The income and expenditure of undertakings included in a consolidation shall be incorporated in full in the consolidated profit-and-loss account.

#### Article 23

The amount of any profit or loss attributable to shares in subsidiary undertakings included in the consolidation held by persons other than the undertakings included in the consolidation shall be shown in the consolidated profit-and-loss account as a separate item with an appropriate heading.

#### Article 24

Consolidated accounts shall be drawn up in accordance with the principles enunciated in Articles 25 to 28.

#### Article 25

1. The methods of consolidation must be applied consistently from one financial year to another.
2. Derogations from the provisions of paragraph 1 above shall be permitted in exceptional cases. Any such derogations must be disclosed in the notes on the accounts and the reasons for them given together with an assessment of their effect on the assets, liabilities, financial position and profit or loss of the undertakings included in the consolidation taken as a whole.

#### Article 26

1. Consolidated accounts shall show the assets, liabilities, financial positions and profits or losses of the undertakings included in a consolidation as if the latter were a single undertaking. In particular:
  - (a) debts and claims between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (b) income and expenditure relating to transactions between the undertakings included in a consolidation shall be eliminated from the consolidated accounts;
  - (c) where profits and losses resulting from transactions between the undertakings included in a consolidation are included in the book values of assets, they shall be eliminated from the consolidated accounts. Pending subsequent coordination, however, a Member State may allow the eliminations mentioned above to be effected in proportion to the percentage of the capital held by the parent undertaking in each of the subsidiary undertakings included in the consolidation.
2. A Member State may permit derogations from the provisions of paragraph 1 (c) above where a transaction has been concluded according to normal market conditions and where the elimination of the profit or loss would entail undue expense. Any such derogations must be disclosed and where the effect on the assets, liabilities, financial position and profit or loss of the undertakings, included in the consolidation, taken as a whole, is material, that fact must be disclosed in the notes on the consolidated accounts.
3. Derogations from the provisions of paragraph 1 (a), (b) or (c) above shall be permitted where the amounts concerned are not material for the purposes of Article 16 (3).

#### Article 27

1. Consolidated accounts must be drawn up as at the same date as the annual accounts of the parent undertaking.
2. A Member State may, however, require or permit consolidated accounts to be drawn up as at another date in order to take account of the balance sheet dates of the largest number or the most important of the undertakings included in the consolidation. Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts together with the reasons therefor. In addition, account must be taken or disclosure made of important events concerning the assets and liabilities, the financial position or the profit or loss of an undertaking included in a consolidation which have occurred between that undertaking's balance sheet date and the consolidated balance sheet date.
3. Where an undertaking's balance sheet date precedes the consolidated balance sheet date by more than three months, that undertaking shall be consolidated on the basis of interim accounts drawn up as at the consolidated balance sheet date.

#### Article 28

If the composition of the undertakings included in a consolidation has changed significantly in the course of a financial year, the consolidated accounts must include information which makes the comparison of successive sets of consolidated accounts meaningful. Where such a change is a major one, a Member State may require or permit this obligation to be fulfilled by the preparation of an adjusted opening balance sheet and an adjusted profit-and-loss account.

#### Article 29

1. Assets and liabilities to be included in consolidated accounts shall be valued according to uniform methods and in accordance with Articles 31 to 42 and 60 of Directive 78/660/EEC.
2. (a) An undertaking which draws up consolidated accounts must apply the same methods of valuation as in its annual accounts. However, a Member State may require or permit the use in consolidated accounts of other methods of valuation in accordance with the abovementioned Articles of Directive 78/660/EEC.  
(b) Where use is made of this derogation that fact shall be disclosed in the notes on the consolidated accounts and the reasons therefor given.
3. Where assets and liabilities to be included in consolidated accounts have been valued by undertakings included in the consolidation by methods differing from those used for the consolidation, they must be revalued in accordance with the methods used for the consolidation, unless the results of such revaluation are not material for the purposes of Article 16 (3). Departures from this principle shall be permitted in exceptional cases. Any such departures shall be disclosed in the notes on the consolidated accounts and the reasons for them given.
4. Account shall be taken in the consolidated balance sheet and in the consolidated profit-and-loss account of any difference arising on consolidation between the tax chargeable for the financial year and for preceding financial years and the amount of tax paid or payable in respect of those years, provided that it is probable that an actual charge to tax will arise within the foreseeable future for one of the undertakings included in the consolidation.
5. Where assets to be included in consolidated accounts have been the subject of exceptional value adjustments solely for tax purposes, they shall be incorporated in the consolidated accounts only after those adjustments have been eliminated. A Member State may, however, require or permit that such assets be incorporated in the consolidated accounts without the elimination of the adjustments, provided that their amounts, together with the reasons for them, are disclosed in the notes on the consolidated accounts.

#### Article 30

1. A separate item as defined in Article 19 (1) (c) which corresponds to a positive consolidation difference shall be dealt with in accordance with the rules laid down in Directive 78/660/EEC for the item "goodwill".
2. A Member State may permit a positive consolidation difference to be immediately and clearly deducted from reserves.

#### Article 31

An amount shown as a separate item, as defined in Article 19 (1) (c), which corresponds to a negative consolidation difference may be transferred to the consolidated profit-and-loss account only:

- (a) where that difference corresponds to the expectation at the date of acquisition of unfavourable future results in that undertaking, or to the expectation of costs which that undertaking would incur, in so far as such an expectation materializes; or
- (b) in so far as such a difference corresponds to a realized gain.

#### Article 32

1. Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, a Member State may require or permit the inclusion of that other undertaking in the consolidated accounts in proportion to the rights in its capital held by the undertaking included in the consolidation.
2. Articles 13 to 31 shall apply *mutatis mutandis* to the proportional consolidation referred to in paragraph 1 above.
3. Where this Article is applied, Article 33 shall not apply if the undertaking proportionally consolidated is an associated undertaking as defined in Article 33.

#### Article 33

1. Where an undertaking included in a consolidation exercises a significant influence over the operating and financial policy of an undertaking not included in the consolidation (an associated undertaking) in which it holds a participating interest, as defined in Article 17 of Directive 78/660/EEC, that participating interest shall be shown in the consolidated balance sheet as a separate item with an appropriate heading. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 shall apply.
2. When this Article is applied for the first time to a participating interest covered by paragraph 1 above, that participating interest shall be shown in the consolidated balance sheet either:
  - (a) at its book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by that participating interest shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time; or
  - (b) at an amount corresponding to the proportion of the associated undertaking's capital and reserves represented by that participating interest. The difference between that amount and the book value calculated in accordance with the valuation rules laid down in Directive 78/660/EEC shall be disclosed separately in the consolidated balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which that method is used for the first time.
- (c) A Member State may prescribe the application of one or other of (a) and (b) above. The consolidated balance sheet or the notes on the accounts must indicate whether (a) or (b) has been used.
- (d) In addition, for the purposes of (a) and (b) above, a Member State may require or permit the calculation of the difference as at the date of acquisition of the shares or, where they were acquired in two or more stages, as at the date on which the undertaking became an associated undertaking.
3. Where an associated undertaking's assets or liabilities have been valued by methods other than those used for consolidation in accordance with Article 29 (2), they may, for the purpose of calculating the difference referred to in paragraph 2 (a) or (b) above, be revalued by the methods used for consolidation. Where such revaluation has not been carried out that fact must be disclosed in the notes on the accounts. A Member State may require such revaluation.
4. The book value referred to in paragraph 2 (a) above, or the amount corresponding to the proportion of the associated undertaking's capital and reserves referred to in paragraph 2 (b) above, shall be increased or reduced by the amount of any variation which has taken place during the financial year in the proportion of the associated undertaking's capital and reserves represented by that participating interest: it shall be reduced by the amount of the dividends relating to that participating interest.
5. In so far as the positive difference referred to in paragraph 2 (a) or (b) above cannot be related to any category of assets or liabilities it shall be dealt with in accordance with Articles 30 and 39 (3).
6. The proportion of the profit or loss of the associated undertakings attributable to such participating interests shall be shown in the consolidated profit-and-loss account as a separate item under an appropriate heading.
7. The eliminations referred to in Article 26 (1) (c) shall be effected in so far as the facts are known or can be ascertained. Article 26 (2) and (3) shall apply.
8. Where an associated undertaking draws up consolidated accounts, the foregoing provisions shall apply to the capital and reserves shown in such

consolidated accounts.

9. This Article need not be applied where the participating interest in the capital of the associated undertaking is not material for the purposes of Article 16 (3).

#### Article 34

In addition to the information required under other provisions of this Directive, the notes on the accounts must set out information in respect of the following matters at least:

1. The valuation methods applied to the various items in the consolidated accounts, and the methods employed in calculating the value adjustments. For items included in the consolidated accounts which are or were originally expressed in foreign currency the bases of conversion used to express them in the currency in which the consolidated accounts are drawn up must be disclosed.

2. (a) The names and registered offices of the undertakings included in the consolidation; the proportion of the capital held in undertakings included in the consolidation, other than the parent undertaking, by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings; which of the conditions referred to in Articles 1 and 12 (1) following application of Article 2 has formed the basis on which the consolidation has been carried out. The latter disclosure may, however, be omitted where consolidation has been carried out on the basis of Article 1 (1) (a) and where the proportion of the capital and the proportion of the voting rights held are the same.

(b) The same information must be given in respect of undertakings excluded from a consolidation pursuant to Articles 13 and 14 and, without prejudice to Article 14 (3), an explanation must be given for the exclusion of the undertakings referred to in Article 13.

3. (a) The names and registered offices of undertakings associated with an undertaking included in the consolidation as described in Article 33 (1) and the proportion of their capital held by undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

(b) The same information must be given in respect of the associated undertakings referred to in Article 33 (9), together with the reasons for applying that provision.

4. The names and registered offices of undertakings proportionally consolidated pursuant to Article 32, the factors on which joint management is based, and the proportion of their capital held by the undertakings included in the consolidation or by persons acting in their own names but on behalf of those undertakings.

5. The name and registered office of each of the undertakings, other than those referred to in paragraphs 2, 3 and 4 above, in which undertakings included in the consolidation and those excluded pursuant to Article 14, either themselves or through persons acting in their own names but on behalf of those undertakings, hold at least a percentage of the capital which the Member States cannot fix at more than 20 %, showing the proportion of the capital held, the amount of the capital and reserves, and the profit or loss for the latest financial year of the undertaking concerned for which accounts have been adopted. This information may be omitted where, for the purposes of Article 16 (3), it is of negligible importance only. The information concerning capital and reserves and the profit or loss may also be omitted where the undertaking concerned does not publish its balance sheet and where less than 50 % of its capital is held (directly or indirectly) by the abovementioned undertakings.

6. The total amount shown as owed in the consolidated balance sheet and becoming due and payable after more than five years, as well as the total amount shown as owed in the consolidated balance sheet and covered by valuable security furnished by undertakings included in the consolidation, with an indication of the nature and form of the security.

7. The total amount of any financial commitments that are not included in the consolidated balance sheet, in so far as this information is of assistance in assessing the financial position of the undertakings included in the consolidation taken as a whole. Any commitments concerning pensions and affiliated undertakings which are not included in the consolidation must be disclosed separately.

8. The consolidated net turnover as defined in Article 28 of Directive 78/660/EEC, broken down by categories of activity and into geographical markets in so far as, taking account of the manner in which the sale of products and the provision of services falling within the ordinary activities of the undertakings included in the consolidation taken as a whole are organized, these categories and markets differ substantially from one another.

9. (a) The average number of persons employed during the financial year by undertakings included in the consolidation broken down by categories and, if they are not disclosed separately in the consolidated profit-and-loss account, the staff costs relating to the financial year.

(b) The average number of persons employed during the financial year by undertakings to which Article 32 has been applied shall be disclosed separately.

10. The extent to which the calculation of the consolidated profit or loss for the financial year has been affected by a valuation of the items which, by way of derogation from the principles enunciated in Articles 31 and 34 to 42 of Directive 78/660/EEC and in Article 29 (5) of this Directive, was made in the financial year in question or in an earlier financial year with a view to obtaining tax relief. Where the influence of such a valuation on the future tax charges of the undertakings included in the consolidation taken as a whole is material, details must be disclosed.

11. The difference between the tax charged to the consolidated profit-and-loss account for the financial year and to those for earlier financial years and the amount of tax payable in respect of those years, provided that this difference is material for the purposes of future taxation. This amount may also be disclosed in the balance sheet as a cumulative amount under a separate item with an appropriate heading.

12. The amount of the emoluments granted in respect of the financial year to the members of the administrative, managerial and supervisory bodies of the parent undertaking by reason of their responsibilities in the parent undertaking and its subsidiary undertakings, and any commitments arising or entered into under the same conditions in respect of retirement pensions for former members of those bodies, with an indication of the total for each category. A Member State may require that emoluments granted by reason of responsibilities assumed in undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

13. The amount of advances and credits granted to the members of the administrative, managerial and supervisory bodies of the parent undertaking by that undertaking or by one of its subsidiary undertakings, with indications of the interest rates, main conditions and any amounts repaid, as well as commitments entered into on their behalf by way of guarantee of any kind with an indication of the total for each category. A Member State may require that advances and credits granted by undertakings linked as described in Article 32 or 33 shall also be included with the information specified in the first sentence.

#### Article 35

1. A Member State may allow the disclosures prescribed in Article 34 (2), (3), (4) and (5):

(a) to take the form of a statement deposited in accordance with Article 3 (1) and (2) of Directive 68/151/EEC; this must be disclosed in the notes on the accounts;

(b) to be omitted when their nature is such that they would be seriously prejudicial to any of the undertakings affected by these provisions. A Member State may make such omissions subject to prior administrative or judicial authorization. Any such omission must be disclosed in the notes on the accounts.

2. Paragraph 1 (b) shall also apply to the information prescribed in Article 34 (8).

#### SECTION 3

The consolidated annual report

#### Article 36

1. The consolidated annual report must include at least a fair review of the development of business and the position of the undertakings included in the consolidation taken as a whole.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as a whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts.

#### SECTION 4



The auditing of consolidated accounts

Article 37

1. An undertaking which draws up consolidated accounts must have them audited by one or more persons authorized to audit accounts under the laws of the Member State which govern that undertaking.
2. The person or persons responsible for auditing the consolidated accounts must also verify that the consolidated annual report is consistent with the consolidated accounts for the same financial year.

SECTION 5

The publication of consolidated accounts

Article 38

1. Consolidated accounts, duly approved, and the consolidated annual report, together with the opinion submitted by the person responsible for auditing the consolidated accounts, shall be published for the undertaking which drew up the consolidated accounts as laid down by the laws of the Member State which govern it in accordance with Article 3 of Directive 68/151/EEC.
2. The second subparagraph of Article 47 (1) of Directive 78/660/EEC shall apply with respect to the consolidated annual report.
3. The following shall be substituted for the second subparagraph of Article 47 (1) of Directive 78/660/EEC: "It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost".
4. However, where the undertaking which drew up the consolidated accounts is not established as one of the types of company listed in Article 4 and is not required by its national law to publish the documents referred to in paragraph 1 in the same manner as prescribed in Article 3 of Directive 68/151/EEC, it must at least make them available to the public at its head office. It must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.
5. Articles 48 and 49 of Directive 78/660/EEC shall apply.
6. The Member States shall provide for appropriate sanctions for failure to comply with the publication obligations imposed in this Article.

SECTION 6

Transitional and final provisions

Article 39

1. When, for the first time, consolidated accounts are drawn up in accordance with this Directive for a body of undertakings which was already connected, as described in Article 1 (1), before application of the provisions referred to in Article 49 (1), a Member State may require or permit that, for the purposes of Article 19 (1), account be taken of the book value of a holding and the proportion of the capital and reserves that it represents as at a date before or the same as that of the first consolidation.
2. Paragraph 1 above shall apply mutatis mutandis to the valuation for the purposes of Article 33 (2) of a holding, or of the proportion of capital and reserves that it represents, in the capital of an undertaking associated with an undertaking included in the consolidation, and to the proportional consolidation referred to in Article 32.
3. Where the separate item defined in Article 19 (1) corresponds to a positive consolidation difference which arose before the date of the first consolidated accounts drawn up in accordance with this Directive, a Member State may:
  - (a) for the purposes of Article 30 (1), permit the calculation of the limited period of more than five years provided for in Article 37 (2) of Directive 78/660/EEC as from the date of the first consolidated accounts drawn up in accordance with this Directive; and
  - (b) for the purposes of Article 30 (2), permit the deduction to be made from reserves as at the date of the first consolidated accounts drawn up in accordance with this Directive.

Article 40

1. Until expiry of the deadline imposed for the application in national law of the Directives supplementing Directive 78/660/EEC as regards the harmonization of the rules governing the annual accounts of banks and other financial institutions and insurance undertakings, a Member State may derogate from the provisions of this Directive concerning the layout of consolidated accounts, the methods of valuing the items included in those accounts and the information to be given in the notes on the accounts:
  - (a) with regard to any undertaking to be consolidated which is a bank, another financial institution or an insurance undertaking;
  - (b) where the undertakings to be consolidated comprise principally banks, financial institutions or insurance undertakings.They may also derogate from Article 6, but only in so far as the limits and criteria to be applied to the above undertakings are concerned.
2. In so far as a Member State has not required all undertakings which are banks, other financial institutions or insurance undertakings to draw up consolidated accounts before implementation of the provisions referred to in Article 49 (1), it may, until its national law implements one of the Directives mentioned in paragraph 1 above, but not in respect of financial years ending after 1993:
  - (a) suspend the application of the obligation imposed in Article 1 (1) with respect to any of the above undertakings which is a parent undertaking. That fact must be disclosed in the annual accounts of the parent undertaking and the information prescribed in point 2 of Article 43 (1) of Directive 78/660/EEC must be given for all subsidiary undertakings;
  - (b) where consolidated accounts are drawn up and without prejudice to Article 33, permit the omission from the consolidation of any of the above undertakings which is a subsidiary undertaking. The information prescribed in Article 34 (2) must be given in the notes on the accounts in respect of any such subsidiary undertaking.
3. In the cases referred to in paragraph 2 (b) above, the annual or consolidated accounts of the subsidiary undertaking must, in so far as their publication is compulsory, be attached to the consolidated accounts or, in the absence of consolidated accounts, to the annual accounts of the parent undertaking or be made available to the public. In the latter case it must be possible to obtain a copy of such documents upon request. The price of such a copy must not exceed its administrative cost.

Article 41

1. Undertakings which are connected as described in Article 1 (1) (a), (b) and (d) (bb), and those other undertakings which are similarly connected with one of the aforementioned undertakings, shall be affiliated undertakings for the purposes of this Directive and of Directive 78/660/EEC.
2. Where a Member State prescribes the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), the undertakings which are connected as described in those Articles and those other undertakings which are connected similarly, or are connected as described in paragraph 1 above to one of the aforementioned undertakings, shall be affiliated undertakings as defined in paragraph 1.
3. Even where a Member State does not prescribe the preparation of consolidated accounts pursuant to Article 1 (1) (c), (d) (aa) or (2) or Article 12 (1), it may apply paragraph 2 of this Article.
4. Articles 2 and 3 (2) shall apply.
5. When a Member State applies Article 4 (2), it may exclude from the application of paragraph 1 above affiliated undertakings which are parent undertakings and which by virtue of their legal form are not required by that Member State to draw up consolidated accounts in accordance with the provisions of this Directive, as well as parent undertakings with a similar legal form.

Article 42

The following shall be substituted for Article 56 of Directive 78/660/EEC:

"Article 56

1. The obligation to show in annual accounts the items prescribed by Articles 9, 10 and 23 to 26 which relate to affiliated undertakings, as defined by Article 41 of Directive 83/349/EEC, and the obligation to provide information concerning these undertakings in accordance with Articles 13 (2), and 14 and point 7 of Article 43 (1) shall enter into force on the date fixed in Article 49 (2) of that Directive.
2. The notes on the accounts must also disclose:
  - (a) the name and registered office of the undertaking which draws up the consolidated accounts of the largest body of undertakings of which the

company forms part as a subsidiary undertaking;

(b) the name and registered office of the undertaking which draws up the consolidated accounts of the smallest body of undertakings of which the company forms part as a subsidiary undertaking and which is also included in the body of undertakings referred to in (a) above;

(c) the place where copies of the consolidated accounts referred to in (a) and (b) above may be obtained provided that they are available."

#### Article 43

The following shall be substituted for Article 57 of Directive 78/660/EEC:

##### "Article 57

Notwithstanding the provisions of Directives 68/151/EEC and 77/91/EEC, a Member State need not apply the provisions of this Directive concerning the content, auditing and publication of annual accounts to companies governed by their national laws which are subsidiary undertakings, as defined in Directive 83/349/EEC, where the following conditions are fulfilled:

(a) the parent undertaking must be subject to the laws of a Member State;

(b) all shareholders or members of the subsidiary undertaking must have declared their agreement to the exemption from such obligation; this declaration must be made in respect of every financial year;

(c) the parent undertaking must have declared that it guarantees the commitments entered into by the subsidiary undertaking;

(d) the declarations referred to in (b) and (c) must be published by the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC;

(e) the subsidiary undertaking must be included in the consolidated accounts drawn up by the parent undertaking in accordance with Directive 83/349/EEC;

(f) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(g) the consolidated accounts referred to in (e), the consolidated annual report, and the report by the person responsible for auditing those accounts must be published for the subsidiary undertaking as laid down by the laws of the Member State in accordance with Article 3 of Directive 68/151/EEC."

#### Article 44

The following shall be substituted for Article 58 of Directive 78/660/EEC:

##### "Article 58

A Member State need not apply the provisions of this Directive concerning the auditing and publication of the profit-and-loss account to companies governed by their national laws which are parent undertakings for the purposes of Directive 83/349/EEC where the following conditions are fulfilled:

(a) the parent undertaking must draw up consolidated accounts in accordance with Directive 83/349/EEC and be included in the consolidated accounts;

(b) the above exemption must be disclosed in the notes on the annual accounts of the parent undertaking;

(c) the above exemption must be disclosed in the notes on the consolidated accounts drawn up by the parent undertaking;

(d) the profit or loss of the parent company, determined in accordance with this Directive, must be shown in the balance sheet of the parent company."

#### Article 45

The following shall be substituted for Article 59 of Directive 78/660/EEC:

##### "Article 59

1. A Member State may require or permit that participating interests, as defined in Article 17, in the capital of undertakings over the operating and financial policies of which significant influence is exercised, be shown in the balance sheet in accordance with paragraphs 2 to 9 below, as sub-items of the items "shares in affiliated undertakings" or "participating interests", as the case may be. An undertaking shall be presumed to exercise a significant influence over another undertaking where it has 20 % or more of the shareholders' or members' voting rights in that undertaking. Article 2 of Directive 83/349/EEC shall apply.

2. When this Article is first applied to a participating interest covered by paragraph 1, it shall be shown in the balance sheet either:

(a) at its book value calculated in accordance with Articles 31 to 42. The difference between that value and the amount corresponding to the proportion of capital and reserves represented by the participating interest shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time; or

(b) at the amount corresponding to the proportion of the capital and reserves represented by the participating interest. The difference between that amount and the book value calculated in accordance with Articles 31 to 42 shall be disclosed separately in the balance sheet or in the notes on the accounts. That difference shall be calculated as at the date as at which the method is applied for the first time.

(c) A Member State may prescribe the application of one or other of the above paragraphs. The balance sheet or the notes on the accounts must indicate whether (a) or (b) above has been used.

## 31984L0253

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### Text

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  - [11957E054 -P3G](#)
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11957E170

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## Text

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EIGHTH COUNCIL DIRECTIVE of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (84/253/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 (3) (g) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, under Directive 78/660/EEC (4), the annual accounts of certain types of company must be audited by one or more persons entitled to carry out such audits from which only the companies mentioned in Article 11 of that Directive may be exempted;

Whereas the aforementioned Directive has been supplemented by Directive 83/349/EEC (5) on consolidated accounts;

Whereas the qualifications of persons entitled to carry out the statutory audits of accounting documents should be harmonized ; whereas it should be ensured that such persons are independent and of good repute;

Whereas the high level of theoretical knowledge required for the statutory auditing of accounting documents and the ability to apply that knowledge in practice must be ensured by means of an examination of professional competence;

Whereas the Member States should be given the power to approve persons who, while not fulfilling all the conditions imposed concerning theoretical training, nevertheless have engaged in professional activities for a long time, affording them sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence;

Whereas the Member States should also be authorized to adopt transitional provisions for the benefit of professional persons: (1) OJ No C 112, 13.5.1978, p. 6 ; OJ No C 317, 18.12.1975, p. 6. (2) OJ No C 140, 5.6.1979, p. 154. (3) OJ No C 171, 9.7.1979, p. 30. (4) OJ No L 222, 14.8.1978, p. 11. (5) OJ No L 193, 18.7.1983, p. 1.

Whereas the Member States will be able to approve both natural persons and firms of auditors which may be legal persons or other types of company, firms or partnership;

Whereas natural persons who carry out the statutory audits of accounting documents on behalf of such firms of auditors must fulfill the conditions of this Directive;

Whereas a Member State will be able to approve persons who have obtained qualifications outside that State which are equivalent to those required by this Directive;

Whereas a Member State which, when this Directive is adopted, recognizes categories of natural persons who fulfil the conditions imposed in this Directive, but whose level of examination of professional competence is below university, final examination level, should be allowed to continue, under certain conditions and until subsequent coordination, to grant such persons special approval for the purpose of carrying out the statutory audits of the accounting documents of companies and bodies of undertakings, of limited size, when such Member State has not made use of the possibilities for exemption afforded by Community Directives in respect of the preparation of consolidated accounts;

Whereas this Directive does not cover either the right of establishment or the freedom to provide services with regard to persons responsible for carrying out the statutory audits of accounting documents;

Whereas recognition of the approval given to nationals of other Member States for the purpose of carrying out such audits will be specifically regulated by Directives on the taking up and pursuit of activities in the fields of finance, economics and accountancy, as well as on the freedom to provide services in those fields,

HAS ADOPTED THIS DIRECTIVE:

## SECTION I Scope

## Article 1

1. The coordination measures prescribed in this Directive shall apply to the laws, regulations and administrative provisions of the Member States concerning persons responsible for: (a) carrying out statutory audits of the annual accounts of companies and firms and verifying that the annual reports are consistent with those annual accounts in so far as such audits and such verification are required by Community law;

(b) carrying out statutory audits of the consolidated accounts of bodies of undertakings and verifying that the consolidated annual reports are consistent with those consolidated accounts in so far as such audits and such verification are required by Community law.

2. The persons referred to in paragraph 1 may, depending on the legislation of each Member State, be natural or legal persons or other types of company, firm or partnership (firms of auditors as defined in this Directive).

## SECTION II Rules on approval

## Article 2

1. Statutory audits of the documents referred to in Article 1 (1) shall be carried out only by approved persons. The authorities of the Member States may approve only: (a) natural persons who satisfy at least the conditions laid down in Articles 3 to 19;

(b) firms of auditors which satisfy at least the following conditions: (i) the natural persons who carry out statutory audits of the documents referred to in Article 1 on behalf of firms of auditors must satisfy at least the conditions imposed in Articles 3 to 19 ; the Member States may provide that such natural persons must also be approved;

(ii) a majority of the voting rights must be held by natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19 with the exception of Article 11 (1) (b) ; the Member States may provide that such natural persons or firms of auditors must also be approved. However, those Member States which do not impose such majority at the time of the adoption of this Directive need not impose it provided that all the shares in a firm of auditors are registered and can be transferred only with the agreement of the firm of auditors and/or, where the Member State so provides, with the approval of the competent authority;

(iii) a majority of the members of the administrative or management body of a firm of auditors must be natural persons or firms of auditors who satisfy at least the conditions imposed in Articles 3 to 19 ; the Member States may provide that such natural persons or firms of auditors must also be approved. Where such body has no more than two members, one of those members must satisfy at least those conditions.

Without prejudice to Article 14 (2), the approval of a firm of auditors must be withdrawn when any of the conditions imposed in (b) is no longer fulfilled. The Member States may, however, provide for a period of grace of not more than two years for the purpose of meeting the requirements imposed in (b) (ii) and (iii).

2. For the purposes of this Directive, the authorities of the Member States may be professional associations provided that they are authorized by national law to grant approval as defined in this Directive.

## Article 3

The authorities of a Member State shall grant approval only to persons of good repute who are not carrying on any activity which is incompatible, under

the law of that Member State, with the statutory auditing of the documents referred to in Article 1 (1).

#### Article 4

A natural person may be approved to carry out statutory audits of the documents referred to in Article 1 (1) only after having attained university entrance level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university, final examination level organized or recognized by the State.

#### Article 5

The examination of professional competence referred to in Article 4 must guarantee the necessary level of theoretical knowledge of subjects relevant to the statutory auditing of the documents referred to in Article 1 (1) and the ability to apply such knowledge in practice.

Part at least of that examination must be written.

#### Article 6

The text of theoretical knowledge included in the examination must cover the following subjects in particular: (a) - auditing,

- analysis and critical assessment of annual accounts,
  - general accounting,
  - consolidated accounts,
  - cost and management accounting,
  - internal audit,
  - standards relating to the preparation of annual and consolidated accounts and to methods of valuing balance sheet items and of computing profits and losses,
  - legal and professional standards relating to the statutory auditing of accounting documents and to those carrying out such audits;
- (b) in so far as they are relevant to auditing: - company law,
- the law of insolvency and similar procedures,
  - tax law,
  - civil and commercial law,
  - social-security law and law of employment,
  - information and computer systems,
  - business, general and financial economics,
  - mathematics and statistics,
  - basic principles of the financial management of undertakings.

#### Article 7

1. By way of derogation from Articles 5 and 6, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

2. By way of derogation from Article 5, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 6 may be exempted from the test of the ability to apply in practice his theoretical knowledge of such subjects when he has received practical training in them attested by an examination or diploma recognized by the State.

#### Article 8

1. In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee must complete a minimum of three years' practical training in inter alia the auditing of annual accounts, consolidated accounts or similar financial statements. At least two-thirds of such practical training must be completed under a person approved under the law of the Member State in accordance with this Directive; the Member State may, however, permit practical training to be carried out under a person approved by the law of another Member State in accordance with this Directive.

2. Member States shall ensure that all training is carried out under persons providing adequate guarantees regarding training.

#### Article 9

Member States may approve persons to carry out statutory audits of the documents referred to in Article 1 (1) even if they do not fulfil the conditions imposed in Article 4, if they can show either: (a) that they have, for 15 years, engaged in professional activities which have enabled them to acquire sufficient experience in the fields of finance, law and accountancy and have passed the examination of professional competence referred to in Article 4, or

(b) that they have, for seven years, engaged in professional activities in those fields and have, in addition, undergone the practical training referred to in Article 8 and passed the examination of professional competence referred to in Article 4.

#### Article 10

1. Member States may deduct periods of theoretical instruction in the fields referred to in Article 6 from the years of professional activity referred to in Article 9, provided that such instruction is attested by an examination recognized by the State. Such instruction must last not less than one year, nor may it reduce the period of professional activity by more than four years.

2. The period of professional activity as well as the practical training must not be shorter than the programme of theoretical instruction and the practical training required by Article 4.

#### Article 11

1. The authorities of a Member State may approve persons who have obtained all or part of their qualifications in another State provided they fulfil the following two conditions: (a) the competent authorities must consider their qualifications equivalent to those required under the law of that Member State in accordance with this Directive; and

(b) they must have furnished proof of the legal knowledge required in that Member State for purposes of the statutory auditing of the documents referred to in Article 1 (1). The authorities of that Member State need not, however, require such proof where they consider legal knowledge obtained in another State sufficient.

2. Article 3 shall apply.

#### Article 12

1. A Member State may consider to be approved, in accordance with this Directive, those professional persons who were approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).

2. The admission of a natural person to a professional association recognized by the State where, according to the law of that State, such admission confers on the members of that association the right to carry out statutory audits of the documents referred to in Article 1 (1), may be considered as approval by individual act for the purposes of paragraph 1 of this Article.

#### Article 13

Until the application of the provisions referred to in Article 30 (2), a Member State may consider approved, in accordance with this Directive, those professional persons who have not been approved by individual acts of the competent authorities but who have nevertheless the same qualifications in that Member State as persons approved by individual acts who on the date of approval are carrying out statutory audits of the documents referred to in Article 1 (1) on behalf of such approved persons.

#### Article 14

1. A Member State may consider to be approved in accordance with this Directive those firms of auditors which have been approved by individual acts of that Member State's competent authorities before the application of the provisions referred to in Article 30 (2).
2. The conditions imposed in Article 2 (1) (b) (ii) and (iii) must be complied with no later than the end of a period which may not be fixed at more than five years from the date of application of the provisions referred to in Article 30 (2).
3. Those natural persons who, until the application of the provisions referred to in Article 30 (2), carried out statutory audits of the documents referred to in Article 1 (1) in the name of a firm of auditors may, after that date, be authorized to continue to do so even if they do not fulfil all the conditions imposed by this Directive.

#### Article 15

Until one year after the application of the provisions referred to in Article 30 (2), those professional persons who have not been approved by individual acts of the competent authorities but who are nevertheless qualified in a Member State to carry out statutory audits of the documents referred to in Article 1 (1) and have in fact carried on such activities until that date may be approved by that Member State in accordance with this Directive.

#### Article 16

For one year after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of professional persons who, after that date, maintain the right to audit the annual accounting documents of certain types of company or firm not subject to statutory audit but who will no longer be able to carry out such audits upon the introduction of new statutory audits unless special measures are enacted for their benefit.

#### Article 17

Article 3 shall apply to Articles 15 and 16.

#### Article 18

1. For six years after the application of the provisions referred to in Article 30 (2), Member States may apply transitional measures in respect of persons already undergoing professional or practical training when those provisions are applied who, on completion of their training, would not fulfil the conditions imposed by this Directive and would therefore be unable to carry out statutory audits of the documents referred to in Article 1 (1) for which they had been trained.
2. Article 3 shall apply.

#### Article 19

None of the professional persons referred to in Articles 15 and 16 or of those persons referred to in Article 18 may be approved by way of derogation from Article 4 unless the competent authorities consider that they are fit to carry out statutory audits of the documents referred to in Article 1 (1) and have qualifications equivalent to those of persons approved under Article 4.

#### Article 20

A Member State which does not make use of the possibility provided for in Article 51 (2) of Directive 78/660/EEC and in which, at the time of the adoption of this Directive, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (a) of this Directive, may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (a) in the case of a company which does not exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, natural persons acting in their own names who: (a) fulfil the conditions imposed in Articles 3 to 19 of this Directive save that the level of the examination of professional competence may be lower than that required in Article 4 of this Directive ; and

(b) have already carried out the statutory audit of the company in question before it exceeded the limits of two of the three criteria established in Article 11 of Directive 78/660/EEC.

However, if a company forms part of a body of undertakings to be consolidated which exceeds the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, such persons may not carry out the statutory audit of the documents referred to in Article 1 (1) (a) of this Directive in the case of that company.

#### Article 21

A Member State which does not make use of the possibility provided for in Article 6 (1) of Directive 83/349/EEC and in which, when this Directive is adopted, several categories of natural persons may, under national legislation, carry out statutory audits of the documents referred to in Article 1 (1) (b) of this Directive may, until subsequent coordination of the statutory auditing of accounting documents, specially approve, for the purpose of carrying out statutory audits of the documents referred to in Article 1 (1) (b), a person approved pursuant to Article 20 of this Directive if on the parent undertaking's balance sheet date, the body of undertakings to be consolidated does not, on the basis of those undertakings' latest annual accounts, exceed the limits of two of the three criteria established in Article 27 of Directive 78/660/EEC, provided that he is empowered to carry out the statutory audit, of the documents referred to in Article 1 (1) (a) of this Directive, of all the undertakings included in the consolidation.

#### Article 22

A Member State which makes use of Article 20 may allow the practical training of the persons concerned as referred to in Article 8 to be completed under a person who has been approved under the law of that Member State to carry out the statutory audits referred to in Article 20.

### SECTION III Professional integrity and independence

#### Article 23

Member States shall prescribe that persons approved for the statutory auditing of the documents referred to in Article 1 (1) shall carry out such audits with professional integrity.

#### Article 24

Member States shall prescribe that such persons shall not carry out statutory audits which they have required if such persons are not independent in accordance with the law of the Member State which requires the audit.

#### Article 25

Articles 23 and 24 shall also apply to natural persons who satisfy the conditions imposed in Articles 3 to 19 and carry out the statutory audit of the documents referred to in Article 1 (1) on behalf of a firm of auditors.

#### Article 26

Member States shall ensure that approved persons are liable to appropriate sanctions when they do not carry out audits in accordance with Articles 23, 24 and 25.

#### Article 27

Member States shall ensure at least that the members and shareholders of approved firms of auditors and the members of the administrative, management and supervisory bodies of such firms who do not personally satisfy the conditions laid down in Articles 3 to 19 in a particular Member State do not intervene in the execution of audits in any way which jeopardizes the independence of the natural persons auditing the documents referred to in Article 1 (1) on behalf of such firms of auditors.

### SECTION IV Publicity

#### Article 28

1. Member States shall ensure that the names and addresses of all natural persons and firms of auditors approved by them to carry out statutory audits of the documents referred to in Article 1 (1) are made available to the public.
2. In addition, the following must be made available to the public in respect of each approved firm of auditors: (a) the names and addresses of the natural persons referred to in Article 2 (1) (b) (i) ; and  
(b) the names and addresses of the members or shareholders of the firm of auditors;  
(c) the names and addresses of the members of the administrative or management body of the firm of auditors.
3. Where a natural person is permitted to carry out statutory audits of the documents referred to in Article 1 (1) in the case of a company according to

the conditions referred to in Articles 20, 21 and 22, paragraph 1 of this Article shall apply. The category of company or firm or the bodies of undertakings in respect of which such an audit is permitted must, however, be indicated.

SECTION V Final provisions

Article 29

The Contact Committee set up by Article 52 of Directive 78/660/EEC shall also: (a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, harmonized application of this Directive through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on additions or amendments to this Directive.

Article 30

1. Member States shall bring into force before 1 January 1988 the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

2. Member States may provide that the provisions referred to in paragraph 1 shall not apply until 1 January 1990.

3. Member States shall ensure that they communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

4. Member States shall also ensure that they communicate, to the Commission, lists of the examinations organized or recognized pursuant to Article 4.

Article 31

This Directive is addressed to the Member States.

Done at Brussels, 10 April 1984.

For the Council

The President

C. CHEYSSON

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<p>▶ <b>32006L0043</b></p> <p>Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance)</p> <p><i>OJ L 157, 9.6.2006, p. 87-107 (ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, SK, SL, FI, SV)</i></p> <p><b>Bibliographic notice</b>  <b>Bibliographic notice + Text (bilingual display)</b>  <a href="#">html</a>   <a href="#">pdf</a></p>	
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The High Level Group of Company Law Experts pointed out that groups of companies, which today are frequent in most, if not all, Member States, are to be seen as a legitimate way of doing business, but that they may present specific risks for shareholders and creditors in various ways.

The Commission, following the Group's recommendation, takes the view that there is no need to revive the draft Ninth Directive on group relations<sup>21</sup>, since the enactment of an autonomous body of law specifically dealing with groups does not appear necessary, but that particular problems should be addressed through specific provisions in three areas:

- Financial and non financial information
- Implementation of a group policy
- Pyramids, defined by the High Level Group as chains of holding companies with the ultimate control based on a small total investment thanks to the extensive use of minority shareholders,

A draft “Ninth Company Law Directive on the Conduct of Groups containing a Public Limited Company as a Subsidiary” was circulated by the Commission in December 1984 for consultation. According to its Explanatory Memorandum, the Directive was intended to provide a framework in which groups can be managed on a sound basis whilst ensuring that interests affected by group operations are adequately protected. Such a legal framework, adapted to the special circumstances of groups, was considered to be lacking in the legal system of most Member States.

Apart from its provisions dealing with the notification and disclosure of shareholdings in PLCs, which covered all PLCs, the Directive otherwise applied only when a PLC was the subsidiary of another undertaking (which could itself be a PLC, but could also be a natural person or a legal person).

The main features of the proposal were:

- a) a definition of a “subsidiary undertaking” which would oblige Member States to provide for “control contracts”,
- b) rules about the disclosure of shareholdings in PLCs,
- c) detailed rules (Section 4) as to the conduct of a “parent undertaking” towards a PLC subsidiary (including the liability of the parent undertaking for damage to the PLC subsidiary and for its debts),
- d) detailed rules applicable when the parent undertaking had entered into a control contract” with a PLC (Section 5), or when it had made a “unilateral declaration instituting a vertical group” (Section 6), which would contain similar safeguards to those prescribed in Section 4 but with important additions (including a rights for the employee representatives on the subsidiary PLC’s supervisory body to veto instructions from the parent undertaking).

The consultation on the draft Directive showed that there was very little support for such a comprehensive framework on group law: such an approach was largely unfamiliar to most Member States, and the business sector viewed it as too cumbersome and too inflexible. As a consequence, the decision was made not to issue an official proposal.

Excerpt from:

COM (2003) 284 final, Brussels, 21.5.2003

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward

Important legal notice

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## 32005L0056

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<p>&lt; Bibliographic notice 2 of 4 &gt;</p>		
<p><b>Title and reference</b></p> <p><b>Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (Text with EEA relevance)</b></p> <p><i>OJ L 310, 25.11.2005, p. 1–9 (ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, SK, SL, FI, SV)</i></p> <p>CS DA DE EL EN ES ET FI FR HU IT LT LV MT NL PL PT SK SL SV</p>		
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<p><b>Authentic language</b></p> <p>▶ The official languages, Other than Community language, Icelandic, Norwegian</p>		
<p><b>Dates</b></p> <p>of document: 26/10/2005          of effect: 15/12/2005; Entry into force Date pub. + 20 See Art 20          end of validity: 99/99/9999          of transposition: 15/12/2007; At the latest See Art 19</p>		
<p><b>Classifications</b></p> <p>▶ <b>EUROVOC descriptor:</b>  <a href="#">worker participation merger multinational enterprise company with share capital merger control registration of a company</a></p> <p>▶ <b>Directory code:</b>  <a href="#">17.10.00.00 Law relating to undertakings / Company law</a>  <a href="#">13.40.00.00 Industrial policy and internal market / Internal market: policy relating to undertakings</a></p> <p>▶ <b>Subject matter:</b>          Approximation of laws, Freedom of establishment and services, Internal market</p>		
<p><b>Miscellaneous information</b></p> <p>▶ <b>Author:</b>          Council, European Parliament</p> <p>▶ <b>Form:</b>          Directive</p> <p>▶ <b>Addressee:</b></p>		

The Member States

▶ **Additional information:**

EEA relevance

COD 2003/0277

Extended to the EEA by 22006D0127

**Procedure**

▶ **Procedure number:**

COD ( 2003 ) 0277

▶ **Legislative history:**

Proposal Commission; Com 2003/0703 Final

Opinion Economic and Social Committee; OJ C 117/2004 P 3

Co-decision procedure

Opinion European Parliament; given on 10/05/2005

Decision Council; given on 19/09/2005

▶ **European Parliament - OEIL**

**Relationship between documents**

▶ **Treaty:**

European Community

▶ **Legal basis:**

**12002E044**

**12002E251**

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▶ **Amendment to:**

**52003PC0703** Adoption

▶ **Amended by:**

Corrected by **32005L0056R(01)**

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▶ **Instruments cited:**

**31968L0151**

**31978L0855**

**31994L0045**

**31998L0059**

**32001L0023**

**32001L0086**

**32001R2157**

**32002L0014**

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Directive 2005/56/EC of the European Parliament and of the Council  
of 26 October 2005

on cross-border mergers of limited liability companies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) There is a need for cooperation and consolidation between limited liability companies from different Member States. However, as regards cross-border mergers of limited liability companies, they encounter many legislative and administrative difficulties in the Community. It is therefore necessary, with a view to the completion and functioning of the single market, to lay down Community provisions to facilitate the carrying-out of cross-border mergers between various types of limited liability company governed by the laws of different Member States.

(2) This Directive facilitates the cross-border merger of limited liability companies as defined herein. The laws of the Member States are to allow the cross-border merger of a national limited liability company with a limited liability company from another Member State if the national law of the relevant Member States permits mergers between such types of company.

(3) In order to facilitate cross-border merger operations, it should be laid down that, unless this Directive provides otherwise, each company taking part in a cross-border merger, and each third party concerned, remains subject to the provisions and formalities of the national law which would be applicable in the case of a national merger. None of the provisions and formalities of national law, to which reference is made in this Directive, should introduce restrictions on freedom of establishment or on the free movement of capital save where these can be justified in accordance with the case-law of the Court of Justice and in particular by requirements of the general interest and are both necessary for, and proportionate to, the attainment of such overriding requirements.

(4) The common draft terms of the cross-border merger are to be drawn up in the same terms for each of the companies concerned in the various Member States. The minimum content of such common draft terms should therefore be specified, while leaving the companies free to agree on other items.

(5) In order to protect the interests of members and others, both the common draft terms of cross-border mergers and the completion of the cross-border merger are to be publicised for each merging company via an entry in the appropriate public register.

(6) The laws of all the Member States should provide for the drawing-up at national level of a report on the common draft terms of the cross-border merger by one or more experts on behalf of each of the companies that are merging. In order to limit experts' costs connected with cross-border mergers, provision should be made for the

possibility of drawing up a single report intended for all members of companies taking part in a cross-border merger operation. The common draft terms of the cross-border merger are to be approved by the general meeting of each of those companies.

(7) In order to facilitate cross-border merger operations, it should be provided that monitoring of the completion and legality of the decision-making process in each merging company should be carried out by the national authority having jurisdiction over each of those companies, whereas monitoring of the completion and legality of the cross-border merger should be carried out by the national authority having jurisdiction over the company resulting from the cross-border merger. The national authority in question may be a court, a notary or any other competent authority appointed by the Member State concerned. The national law determining the date on which the cross-border merger takes effect, this being the law to which the company resulting from the cross-border merger is subject, should also be specified.

(8) In order to protect the interests of members and others, the legal effects of the cross-border merger, distinguishing as to whether the company resulting from the cross-border merger is an acquiring company or a new company, should be specified. In the interests of legal certainty, it should no longer be possible, after the date on which a cross-border merger takes effect, to declare the merger null and void.

(9) This Directive is without prejudice to the application of the legislation on the control of concentrations between undertakings, both at Community level, by Regulation (EC) No 139/2004 [3], and at the level of Member States.

(10) This Directive does not affect Community legislation regulating credit intermediaries and other financial undertakings and national rules made or introduced pursuant to such Community legislation.

(11) This Directive is without prejudice to a Member State's legislation demanding information on the place of central administration or the principal place of business proposed for the company resulting from the cross-border merger.

(12) Employees' rights other than rights of participation should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on collective redundancies [4], Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [5], Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [6] and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees [7].

(13) If employees have participation rights in one of the merging companies under the circumstances set out in this Directive and, if the national law of the Member State in which the company resulting from the cross-border merger has its registered office does not provide for the same level of participation as operated in the relevant merging companies, including in committees of the supervisory board that have decision-making powers, or does not provide for the same entitlement to exercise rights for employees of establishments resulting from the cross-border merger, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights are to be regulated. To that end, the principles and procedures provided for in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [8] and in Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees [9], are to be taken as a basis, subject, however, to modifications that are deemed necessary because the resulting company will be subject to the national laws of the Member State where it has its registered office. A prompt start to negotiations under Article 16 of this Directive, with a view to not unnecessarily delaying mergers, may be ensured by Member States in accordance with Article 3(2)(b) of Directive 2001/86/EC.

(14) For the purpose of determining the level of employee participation operated in the relevant merging companies, account should also be taken of the proportion of

employee representatives amongst the members of the management group, which covers the profit units of the companies, subject to employee participation.

(15) Since the objective of the proposed action, namely laying down rules with common features applicable at transnational level, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(16) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making [10], Member States should be encouraged to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Scope

This Directive shall apply to mergers of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of them are governed by the laws of different Member States (hereinafter referred to as cross-border mergers).

#### Article 2

##### Definitions

For the purposes of this Directive:

1) "limited liability company", hereinafter referred to as "company", means:

(a) a company as referred to in Article 1 of Directive 68/151/EEC [11], or

(b) a company with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others;

2. "merger" means an operation whereby:

(a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

(b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or

(c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital.

#### Article 3

Further provisions concerning the scope

1. Notwithstanding Article 2(2), this Directive shall also apply to cross-border mergers where the law of at least one of the Member States concerned allows the cash

payment referred to in points (a) and (b) of Article 2(2) to exceed 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of the securities or shares representing the capital of the company resulting from the cross-border merger.

2. Member States may decide not to apply this Directive to cross-border mergers involving a cooperative society even in the cases where the latter would fall within the definition of "limited liability company" as laid down in Article 2(1).

3. This Directive shall not apply to cross-border mergers involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

#### Article 4

##### Conditions relating to cross-border mergers

1. Save as otherwise provided in this Directive,

(a) cross-border mergers shall only be possible between types of companies which may merge under the national law of the relevant Member States, and

(b) a company taking part in a cross-border merger shall comply with the provisions and formalities of the national law to which it is subject. The laws of a Member State enabling its national authorities to oppose a given internal merger on grounds of public interest shall also be applicable to a cross-border merger where at least one of the merging companies is subject to the law of that Member State. This provision shall not apply to the extent that Article 21 of Regulation (EC) No 139/2004 is applicable.

2. The provisions and formalities referred to in paragraph 1(b) shall, in particular, include those concerning the decision-making process relating to the merger and, taking into account the cross-border nature of the merger, the protection of creditors of the merging companies, debenture holders and the holders of securities or shares, as well as of employees as regards rights other than those governed by Article 16. A Member State may, in the case of companies participating in a cross-border merger and governed by its law, adopt provisions designed to ensure appropriate protection for minority members who have opposed the cross-border merger.

#### Article 5

##### Common draft terms of cross-border mergers

The management or administrative organ of each of the merging companies shall draw up the common draft terms of cross-border merger. The common draft terms of cross-border merger shall include at least the following particulars:

(a) the form, name and registered office of the merging companies and those proposed for the company resulting from the cross-border merger;

(b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment;

(c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;

(d) the likely repercussions of the cross-border merger on employment;

(e) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;

(f) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross-border merger;

- (g) the rights conferred by the company resulting from the cross-border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;
- (h) any special advantages granted to the experts who examine the draft terms of the cross-border merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
- (i) the statutes of the company resulting from the cross-border merger;
- (j) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined pursuant to Article 16;
- (k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;
- (l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger.

#### Article 6

##### Publication

1. The common draft terms of the cross-border merger shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC for each of the merging companies at least one month before the date of the general meeting which is to decide thereon.
2. For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:
  - (a) the type, name and registered office of every merging company;
  - (b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
  - (c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors and of any minority members of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

#### Article 7

##### Report of the management or administrative organ

The management or administrative organ of each of the merging companies shall draw up a report intended for the members explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.

The report shall be made available to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 9.

Where the management or administrative organ of any of the merging companies receives, in good time, an opinion from the representatives of their employees, as provided for under national law, that opinion shall be appended to the report.

#### Article 8

##### Independent expert report

1. An independent expert report intended for members and made available not less than one month before the date of the general meeting referred to in Article 9 shall be



drawn up for each merging company. Depending on the law of each Member State, such experts may be natural persons or legal persons.

2. As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts, appointed for that purpose at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the company resulting from the cross-border merger or approved by such an authority, may examine the common draft terms of cross-border merger and draw up a single written report to all the members.

3. The expert report shall include at least the particulars provided for by Article 10(2) of Council Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies [12]. The experts shall be entitled to secure from each of the merging companies all information they consider necessary for the discharge of their duties.

4. Neither an examination of the common draft terms of cross-border merger by independent experts nor an expert report shall be required if all the members of each of the companies involved in the cross-border merger have so agreed.

#### Article 9

##### Approval by the general meeting

1. After taking note of the reports referred to in Articles 7 and 8, the general meeting of each of the merging companies shall decide on the approval of the common draft terms of cross-border merger.

2. The general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger.

3. The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the conditions laid down in Article 8 of Directive 78/855/EEC are fulfilled.

#### Article 10

##### Pre-merger certificate

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each merging company subject to its national law.

2. In each Member State concerned the authority referred to in paragraph 1 shall issue, without delay to each merging company subject to that State's national law, a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the ratio applicable to the exchange of securities or shares, or a procedure to compensate minority members, without preventing the registration of the cross-border merger, such procedure shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the cross-border merger in accordance with Article 9(1), the possibility for the members of that merging company to have recourse to such procedure, to be initiated before the court having jurisdiction over that merging company. In such cases, the authority referred to in paragraph 1 may issue the certificate referred to in paragraph 2 even if such procedure has commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the company resulting from the cross-border merger and all its members.

#### Article 11

##### Scrutiny of the legality of the cross-border merger

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger and, where appropriate, the formation of a new company resulting from the cross-border merger where the company created by the cross-border merger is subject to its national law. The said authority shall in particular ensure that the merging companies have approved the common draft terms of cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 16.

2. To that end each merging company shall submit to the authority referred to in paragraph 1 the certificate referred to in Article 10(2) within six months of its issue together with the common draft terms of cross-border merger approved by the general meeting referred to in Article 9.

#### Article 12

##### Entry into effect of the cross-border merger

The law of the Member State to whose jurisdiction the company resulting from the cross-border merger is subject shall determine the date on which the cross-border merger takes effect. That date must be after the scrutiny referred to in Article 11 has been carried out.

#### Article 13

##### Registration

The law of each of the Member States to whose jurisdiction the merging companies were subject shall determine, with respect to the territory of that State, the arrangements, in accordance with Article 3 of Directive 68/151/EEC, for publicising completion of the cross-border merger in the public register in which each of the companies is required to file documents.

The registry for the registration of the company resulting from the cross-border merger shall notify, without delay, the registry in which each of the companies was required to file documents that the cross-border merger has taken effect. Deletion of the old registration, if applicable, shall be effected on receipt of that notification, but not before.

#### Article 14

##### Consequences of the cross-border merger

1. A cross-border merger carried out as laid down in points (a) and (c) of Article 2(2) shall, from the date referred to in Article 12, have the following consequences:

(a) all the assets and liabilities of the company being acquired shall be transferred to the acquiring company;

(b) the members of the company being acquired shall become members of the acquiring company;

(c) the company being acquired shall cease to exist.

2. A cross-border merger carried out as laid down in point (b) of Article 2(2) shall, from the date referred to in Article 12, have the following consequences:

(a) all the assets and liabilities of the merging companies shall be transferred to the new company;

(b) the members of the merging companies shall become members of the new company;

(c) the merging companies shall cease to exist.

3. Where, in the case of a cross-border merger of companies covered by this Directive, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the merging companies

becomes effective against third parties, those formalities shall be carried out by the company resulting from the cross-border merger.

4. The rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

5. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

(a) by the acquiring company itself or through a person acting in his or her own name but on its behalf;

(b) by the company being acquired itself or through a person acting in his or her own name but on its behalf.

#### Article 15

##### Simplified formalities

1. Where a cross-border merger by acquisition is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired:

- Articles 5, points (b), (c) and (e), 8 and 14(1), point (b) shall not apply,
- Article 9(1) shall not apply to the company or companies being acquired.

2. Where a cross-border merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

#### Article 16

##### Employee participation

1. Without prejudice to paragraph 2, the company resulting from the cross-border merger shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger as referred to in Article 6, an average number of employees that exceeds 500 and is operating under an employee participation system within the meaning of Article 2(k) of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not

(a) provide for at least the same level of employee participation as operated in the relevant merging companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation, or

(b) provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the company resulting from the cross-border merger has its registered office.

3. In the cases referred to in paragraph 2, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis*

and subject to paragraphs 4 to 7 below, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

- (a) Article 3(1), (2) and (3), (4) first subparagraph, first indent, and second subparagraph, (5) and (7);
- (b) Article 4(1), (2), points (a), (g) and (h), and (3);
- (c) Article 5;
- (d) Article 6;
- (e) Article 7(1), (2) first subparagraph, point (b), and second subparagraph, and (3). However, for the purposes of this Directive, the percentages required by Article 7(2), first subparagraph, point (b) of Directive 2001/86/EC for the application of the standard rules contained in part 3 of the Annex to that Directive shall be raised from 25 to 33 1/3 %;
- (f) Articles 8, 10 and 12;
- (g) Article 13(4);
- (h) part 3 of the Annex, point (b).

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

(a) shall confer on the relevant organs of the merging companies the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in paragraph 3(h), as laid down by the legislation of the Member State in which the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;

(b) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated;

(c) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding these rules, determine to limit the proportion of employee representatives in the administrative organ of the company resulting from the cross-border merger. However, if in one of the merging companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third.

5. The extension of participation rights to employees of the company resulting from the cross-border merger employed in other Member States, referred to in paragraph 2 (b), shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6. When at least one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is to be governed by such a system in accordance with the rules referred to in paragraph 2, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

7. When the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in this Article.

Article 17

#### Validity

A cross-border merger which has taken effect as provided for in Article 12 may not be declared null and void.

#### Article 18

##### Review

Five years after the date laid down in the first paragraph of Article 19, the Commission shall review this Directive in the light of the experience acquired in applying it and, if necessary, propose its amendment.

#### Article 19

##### Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 December 2007.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### Article 20

##### Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

#### Article 21

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 October 2005.

For the European Parliament

The President

J. Borrell Fontelles

For the Council

The President

D. Alexander

[1] OJ C 117, 30.4.2004, p. 43.

[2] Opinion of the European Parliament of 10 May 2005 (not yet published in the Official Journal) and Council Decision of 19 September 2005.

[3] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

[4] OJ L 225, 12.8.1998, p. 16.

[5] OJ L 82, 22.3.2001, p. 16.

[6] OJ L 80, 23.3.2002, p. 29.

[7] OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

[8] OJ L 294, 10.11.2001, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

[9] OJ L 294, 10.11.2001, p. 22.

[10] OJ C 321, 31.12.2003, p. 1.

[11] First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.3.1968, p. 8). Directive as last amended by the 2003 Act of Accession.

[12] OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 2003 Act of Accession.

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**Proposal for a Directive of the European Parliament and of the Council on cross border mergers of companies with share capital**

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cross-border mergers of companies with share capital

(presented by the Commission)

**EXPLANATORY MEMORANDUM**

**1. Purpose of and grounds for the proposal**

The purpose of the Directive, which is to be viewed against the background of the Financial Services Action Plan and the Communication from the Commission to the Council and the European Parliament of 21 May 2003 entitled Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward, is to fill a significant gap in company law left by the need to facilitate cross-border mergers of commercial companies without the national laws governing them - as a rule the laws of the countries where their head offices are situated - forming an obstacle.

At present, as Community law now stands, such mergers are possible only if the companies wishing to merge are established in certain Member States. In other Member States, the differences between the national laws applicable to each of the companies which intend to merge are such that the companies have to resort to complex and costly legal arrangements. These arrangements often complicate the operation and are not always implemented with all the requisite transparency and legal certainty. They result, moreover, as a rule in the acquired companies being wound up - a very expensive operation.

There is an increasing need today in the Community of Fifteen for cooperation between companies from different Member States, as there will be tomorrow in the future enlarged Union, not forgetting the EFTA countries.

For a number of years now, Community companies have been calling for the adoption of a Community legal instrument that meets their needs for cooperation and consolidation between companies from different Member States and that enables them to carry out cross-border mergers.

More than ever, all companies, whether they be public limited liability companies or any other type of company with share capital, must have at their disposal a suitable legal instrument enabling them to carry out cross-border mergers under the most favourable conditions. The costs of such an operation must therefore be reduced, while guaranteeing the requisite legal certainty and enabling as many companies as possible to benefit. The scope of the Directive will therefore be drawn in such a way as to cover above all small and medium-sized enterprises, which stand to benefit because of their smaller size and lower capitalisation compared with large enterprises and for which, for the same reasons, the European company Statute does not provide a satisfactory solution.

**2. Historical context**

On 14 December 1984 the Commission adopted a proposal for a [tenth Council Directive](#) on cross-border mergers of companies. [1] Several committees of the European Parliament examined the proposal, including the Committee on Legal Affairs, which adopted its report on 21 October 1987. [2] However, Parliament did not deliver its opinion owing to the difficulties raised by the problem of employee participation in companies' decision-making bodies. This situation of deadlock, which was linked to the fate of the proposal for a European company Statute, lasted more than 15 years. In 2001, against the backdrop of a wholesale withdrawal of proposals which had been pending for several years or which had become devoid of purpose, the Commission withdrew this first proposal for a tenth Directive with a view to presenting a fresh proposal based on the latest developments in Community law. A resolution of the European company (SE) question having been reached on 8 October 2001,



the work on preparing a new proposal for a Directive on cross-border company mergers accordingly resumed. In the light of this state of affairs and of the fact that the parties have had an opportunity to comment on the broad lines of the proposal, both as part of the consultations carried out by the High-Level Group of Company Law Experts and as part of those on the above-mentioned Commission communication of 21 May 2003, further consultations and impact assessment on the present proposal, the speedy adoption of which is wished for by the interests concerned, have not been considered necessary.

[1] OJ C 23 25.1.1985, p. 11.

[2] PE/113303/JUR/FIN, A2/1987/186.

### 3. Features of the proposal

The present proposal differs from the original proposal of 1984 mainly in scope and in the way it takes account, with regard to the participation of employees in the decision-making bodies of the acquiring company or of the new company created by the cross-border merger, of the principles and solutions incorporated in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [3] and in Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees. [4]

[3] OJ L 294, 10.11.2001, p. 1.

[4] OJ L 294, 10.11.2001, p. 22.

#### 3.1. Scope

The original proposal covered only public limited liability companies. The present proposal extends that scope to include all companies with share capital which, in the unanimous view of the Member States, may be typified as companies having legal personality and separate assets which alone serve to cover the company's debts. It is aimed primarily at companies which are not interested in forming an SE, i.e. for the most part small and medium-sized enterprises.

#### 3.2. Principles governing the cross-border merger procedure

The basic principle underlying the cross-border merger procedure is that - save as otherwise provided by the Directive for reasons to do with the cross-border nature of the merger - the procedure is governed in each Member State by the principles and rules applicable to mergers between companies governed exclusively by the law of that State (domestic mergers).

The aim is to approximate the cross-border merger procedure with the domestic merger procedures with which operators are already familiar through use.

In order to take account of the cross-border aspects, the principle of the application of national law is incorporated - but no more than is strictly necessary - via provisions based on the relevant principles and rules already laid down for the formation of an SE.

Protection under national law is also afforded to the interests of creditors, debenture holders, the holders of securities other than shares, minority shareholders and employees, as regards rights other than those related to participation in the company, vis-à-vis each of the merging companies. Reference may be made here to Council Directive 2001/23/EC of 12 March 2001 relating to the safeguarding of employees' rights in the event of transfers of undertakings, [5] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, [6] and Council Directive 94/45/EC of 22 September 1994 [7] and Council Directive 97/74/EC [8] of 15 December 1997, both of which concern the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

These Directives also apply to companies created by a cross-border merger.

[5] OJ L 82, 22.3.2001, p. 16.

[6] OJ L 80, 23.3.2002, p. 29.

[7] OJ L 254, 30.9.1994, p. 64.

[8] OJ L 10, 16.1.1998, p. 22.

The Directive, as is the case for comparable previous legal acts [9], is without prejudice to the application of the legislation on the control of concentrations between undertakings, both at the Community level [10] and at the level of Member States.

[9] Third Council Directive concerning mergers of public limited liability companies (78/855/EEC) (OJ L 295, 20.10.1978, p.36).

[10] Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ L 395, 30.12.1989, p.1; corrected version OJ L 257, 21.9.1990, p. 13, Regulation as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p.1; corrigendum in OJ L 40, 13.2.1998, p. 17.

### 3.3. Employee participation and company law coordination

Employee participation in a company created by cross-border merger, which was the reason for the deadlock over the original proposal of 1984, is coordinated by the present proposal for a Directive with a view to ensuring freedom of establishment.

The overriding fear concerning cross-border mergers was that the process might be hijacked by companies which, faced with having to live with employee participation, might try to circumvent it by means of such a merger.

Regulation (EC) No 2157/2001 and Directive 2001/86/EC have come up with a solution which can be used, *mutatis mutandis*, also with a view to coordinating company law under Article 44(2)(g) of the EC Treaty, as is the purpose of this Directive.

The context in which the Regulation and the Directive on the SE operate is different, however, from that surrounding the application of this Directive. By virtue of its Community nature, the SE is not subject to any existing national rules on compulsory participation in the Member State in which its registered office is situated. By contrast, companies created by the cross-border merger operations covered by the present Directive will be companies governed by the law of a Member State. Such companies will accordingly remain subject to the compulsory participation rules applicable in that Member State. It may well be, however, that, following a cross-border merger, the registered office of the company created by the merger is situated in a Member State which does not have this type of rule, whereas one or more of the companies taking part in the merger were operating under a participation system before the merger. To deal with this eventuality, provision is made for extending to companies covered by the present Directive the same protection of rights acquired with respect to participation as is granted under the system set up by the SE Regulation and Directive. The protection of acquired rights of participation is entirely justified in this case. In cases where the national law of the Member State by whose law the company created by the merger is governed does have rules on compulsory employee participation, such specific protection is unnecessary as the company in question will be subject to those rules.

### 4. Comments on the articles

Article 1 contains definitions which serve to delimit the scope of the Directive. The definitions of merger by acquisition and merger by the formation of a new company are taken from Directive

90/434/EEC, which also covers mergers between companies from different Member States and forms of company other than public limited liability companies. These definitions are in keeping with those in Directive 78/855/EEC concerning domestic mergers of public limited liability companies. [11] The scope includes all Community companies with share capital which, in the unanimous view of the Member States, may be typified as companies having legal personality and separate assets which alone serve to cover the company's debts. It is wider than that of Directive 78/855/EEC in that it is not limited to public limited liability companies but covers all companies with share capital.

[11] OJ L 295, 20.10.1978, p. 36.

Article 2 is designed to identify the law applicable in the event of a cross-border merger to each of the merging companies. Save as otherwise provided by the present Directive for reasons to do with the cross-border nature of the operation, each company remains subject to its national law on domestic mergers.

As to the protection of employees, the cross-border merger remains subject, with regard to rights other than those of participation in the acquiring company or in the new company created by the cross-border merger, to the relevant provisions applicable in the Member States, as harmonised inter alia by Council Directive 2001/23/EC of 12 March 2001 relating to the safeguarding of employees' rights in the event of transfers of undertakings, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community and Directives 94/45/EC and 97/74/EC concerning the establishment of a European works council and the informing and consulting of employees. By virtue of these provisions, the change of employer resulting from the merger operation must have no effect on the contract of employment or employment relationship in force at the time of the merger, which is automatically transferred to the new owner. Likewise protected after the merger are all acquired rights of employees agreed under a collective agreement, and their rights to old-age, invalidity or survivor's benefits under statutory social security schemes.

Article 3 lists the points that have to be included in the draft terms of cross-border merger. It includes the items already harmonised by Directive 78/855/EEC for domestic mergers of public limited liability companies, to which have been added, as in the case of the SE, a number of further items dictated by the cross-border nature of the operation, such as the name and registered office proposed for the new company. The place where the registered office is situated determines which law will be applicable to the new company - an important piece of information as far as all interested parties, including creditors, are concerned. The draft terms must also contain information on the arrangements for employee involvement in decisions taken by the company created by the cross-border merger.

Article 4 deals with publication of the draft terms of cross-border merger and the information that must be furnished.

Article 5 provides for the possibility, as already laid down by Directive 78/855/EEC for domestic mergers of public limited liability companies and by Regulation (EC) No 2157/2001 for the European company, of providing for a single expert report on behalf of all shareholders.

Article 6 lays down the requirement of approval of the draft terms of cross-border merger by the general meeting. A similar requirement exists in the case of domestic mergers of public limited liability companies and in that of the formation of an SE by merger.

Articles 7 and 8 govern scrutiny of the legality of cross-border mergers. They are based on the corresponding principles and techniques provided for in Regulation (EC) No 2157/2001 for the SE.

Article 9 concerns the date on which the cross-border merger takes effect. The relevant date is

to be that provided for by the law of the Member State by which the acquiring company is governed in the case of cross-border merger by acquisition or by which the new company is governed in the case of cross-border merger by the formation of a new company. The date must be after all the checks on all the companies taking part in the operation have been carried out.

Article 10 deals with the disclosure that must be effected upon completion of a cross-border merger. It is based on the corresponding provisions of Article 3 of Directive 68/151/EEC on the safeguards required to protect the interests of members and others, [12] this being the article that governs the publicising of all essential documents relating to companies with share capital.

[12] OJ L 65, 14.3.1968, p. 8.

Article 11 is based on Articles 19 and 23 of Directive 78/855/EEC, which already coordinate the effects of a domestic merger for public limited liability companies.

Article 12 is based on Article 29 of Regulation (EC) No 2157/2001, according to which, after the date on which a cross-border merger takes effect, it is no longer possible to declare the merger null and void, the aim being to ensure absolute certainty for all third parties affected by the merger in the various Member States concerned. It would be highly dangerous for third parties subject to the laws of different Member States to be faced with the nullity of an operation after all the checks in each Member State had been carried out conclusively.

Article 13 seeks to simplify the cross-border merger procedure in the case of a merger between two companies where the acquiring company already holds all or most of the shares or other securities of the company being acquired that confer the right to vote at the latter's general meetings. In such cases, a number of steps can in fact be dispensed with.

Article 14 deals with the participation of employees in the company created by a cross-border merger where the protection of acquired rights of participation is put at risk by the merger. Article 14 is relevant only in a situation where one of the merging companies has a participation regime, be it compulsory or voluntary and the law of the Member State where the company created by merger is to be incorporated does not impose compulsory employee participation. In all other cases, the national law applicable to the company created by merger determines the rules on employees' involvement. Article 14 reflects the balance already found in the context of the European Company Statute, in particular the negotiation procedure which should enable the interested parties to negotiate an appropriate regime to be applied for employee participation. For this purpose, article 14 incorporates by reference the provisions of Directive 2001/86/EC and Part 3 of the Annex which are specifically relevant to mergers. Accordingly, it is only if the merging companies fail to reach a negotiated solution, that the participation system which best protects the acquired rights of the workers and which already exists in one of the merging companies is extended to the company created by merger.

Articles 15 and 16 contain the usual final provisions concerning implementation, entry into force and the addressees of the Directive.

2003/0277 (COD)

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cross-border mergers of companies with share capital

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission, [13]

[13] OJ C [...], [...], p. [...].

Having regard to the opinion of the European Economic and Social Committee, [14]

[14] OJ C [...], [...], p. [...].

Having regard to the opinion of the Committee of the Regions, [15]

[15] OJ C [...], [...], p. [...].

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The need for cooperation and consolidation between companies from different Member States and the difficulties encountered, at the legislative and administrative levels, by cross-border mergers of companies in the Community make it necessary, with a view to the completion and functioning of the single market, to lay down Community provisions to facilitate the carrying-out of cross-border mergers between various types of company with share capital governed by the laws of different Member States.
- (2) The above-mentioned objectives cannot be sufficiently attained by the Member States in so far they involve laying down rules with common features applicable at transnational level; owing to the scale and impact of the proposed action, they can therefore best be achieved at Community level, it being possible for the Community to take measures in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty. In accordance with the principle of proportionality as set forth in that article, this Directive does not go beyond what is necessary to achieve those objectives.
- (3) In order to facilitate cross-border merger operations, it should be laid down that, unless this Directive provides otherwise, each company taking part in a merger, and each third party concerned, remains subject to the provisions of national law by which the company is governed, being those provisions which are applicable in the event of a merger with other companies governed by the same law.
- (4) The common draft terms of cross-border merger must be drawn up in the same terms for each of the companies concerned in the various Member States. The minimum content of such common draft terms should therefore be specified, while leaving the companies free to agree on other items.
- (5) In order to protect the interests of members and others, both the draft terms of merger and the completion of the merger must be publicised for each merging company via an entry in the appropriate public register.
- (6) The laws of all the Member States provide for the drawing-up of a report on the draft terms of merger by one or more experts on behalf of each of the companies that are merging at national level. In order to limit experts' costs connected with cross-border mergers, provision should be made for the possibility of drawing up a single report intended for all members of companies taking part in a cross-border merger operation. The common draft terms of cross-border merger must be approved by the general meeting of each of these companies.
- (7) In order to facilitate cross-border merger operations, it should be provided that monitoring of the completion and legality of the decision-making process in each merging company should be carried out by the national authority having jurisdiction over each of those companies, whereas monitoring of the completion and legality of the merger should be carried out by the national authority having jurisdiction over the company created by the merger. The latter authority may be a court, a notary or any other competent authority appointed by the Member State concerned. The national law determining the date on which the merger takes effect - this being the law to

which the company created by the merger is subject - should also be specified.

- (8) In order to protect the interests of members and others, the legal effects of the cross-border merger - distinguishing according to whether the company created by the merger is an acquiring company or a new company - should be specified. In the interests of legal certainty, it should no longer be possible, after the date on which a cross-border merger takes effect, to declare the merger null and void.
- (9) This Directive is without prejudice to the application of the legislation on the control of concentrations between undertakings, both at the Community level [16] and at the level of Member States.
- [16] Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, OJ L 395, 30.12.1989, p. 1; corrected version OJ L 257, 21.9.1990, p. 13, Regulation as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p.1; corrigendum in OJ L 40, 13.2.1998, p. 17.
- (10) Employees' rights other than rights of participation should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, [17] Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, [18] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [19] and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. [20]
- [17] OJ L 225, 12.8.1998, p. 16.
- [18] OJ L 61, 5.3.1977, p. 26.
- [19] OJ L 80, 23.3.2002, p. 29.
- [20] OJ L 254, 30.9.1994, p. 64; Directive amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).
- (11) If at least one of the companies taking part in the cross-border merger is operating under a participation system and if the national law of the Member State in which the registered office of the company created by the merger is situated does not impose compulsory employee participation on that company, the participation of employees in the company created by the cross-border merger and their involvement in the definition of such rights must be regulated. To that end, the principles and procedures provided for in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company [21] and in Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company [22] should be taken as a basis,

[21] OJ L 294, 10.11.2001, p. 1.

[22] OJ L 294, 10.11.2001, p. 22.

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

For the purposes of this Directive:

- "merger" means an operation whereby:

- (a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company - the acquiring company - in exchange for the issue to their shareholders of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10% of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or
- (b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form - the new company - in exchange for the issue to their shareholders of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or
- (c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital;

- "cross-border merger" means a merger within the meaning of the first indent which involves companies with share capital formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of them are governed by the laws of different Member States;

- "company with share capital" means a company having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees such as are provided for by Council Directive 68/151/EEC [23] for the protection of the interests of members and others.

[23] OJ L 65, 14.3.1968, p. 8.

#### *Article 2*

Save as otherwise provided in this Directive, each company taking part in a cross-border merger shall be governed, as far as the merger formalities are concerned, by the provisions of national law to which it is subject that apply to mergers of this type of company with other companies with share capital subject to the same national law. The said provisions shall include those concerning the decision-making process relating to the merger and the protection of creditors, debenture holders and the holders of securities other than shares to which special rights are attached, as well as of employees as regards rights other than those governed by Article 14.

#### *Article 3*

1. The Member States shall provide that each management or administrative organ of each of the merging companies must draw up common draft terms of cross-border merger. The common draft terms of cross-border merger shall include the following particulars:

- (a) the form, name and registered office of the merging companies and those proposed for the company created by the merger;
- (b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any compensation;

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- (c) the terms for the allotment of securities or shares representing the capital of the company created by the merger;
  - (d) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;
  - (e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company created by the merger;
  - (f) the rights conferred by the company created by the merger on members enjoying special rights or on other holders of securities or shares representing the company capital, or the measures proposed concerning them;
  - (g) any special advantages granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
  - (h) the statutes of the company created by the merger;
  - (i) information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company created by the merger are determined pursuant to Article 14.

2. In addition to the items provided for in paragraph 1, the merging companies may, by common accord, include further items in the common draft terms of merger.

#### *Article 4*

The Member States shall provide that, for each of the merging companies, the following particulars at least must be published, not less than one month before the date of the general meeting referred to in Article 6, in the manner laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC:

- (a) the form, name and registered office of each merging company and those proposed for the company created by the merger;
- (b) the public register in which the documents of each merging company are filed and their identification number in that register;
- (c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors and of any minority shareholders of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

#### *Article 5*

1. An expert report intended for members and made available not less than one month before the date of the general meeting referred to in Article 6 shall be drawn up for each merging company.

2. As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts, appointed for that purpose at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the future company, may examine the draft terms of cross-border merger and draw up a single written report to all the shareholders. Depending on the law of each Member State, such experts may be natural



persons, legal persons or companies.

The experts shall be entitled to secure from each of the merging companies all information they consider necessary for the discharge of their duties.

*Article 6*

1. After taking note of the expert report referred to in Article 5, the general meeting of each of the merging companies shall approve the common draft terms of cross-border merger.
2. The general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to the involvement of employees in the company created by the merger.

*Article 7*

1. Each Member State shall designate the authorities competent to scrutinise the legality of the merger as regards that part of the procedure which concerns each merging company subject to its national law.
2. In each Member State concerned the competent authorities shall issue to each merging company subject to that State's national law a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities.

*Article 8*

Each Member State shall designate the authorities competent to scrutinise the legality of the merger as regards that part of the procedure which concerns the completion of the merger and, where appropriate, the formation of a new company created by the merger where the company created by the merger is subject to its national law. The said authorities shall in particular ensure that the merging companies have approved the common draft terms of cross-border merger in the same terms and that arrangements for employee participation have been determined in accordance with Article 14.

To that end each merging company shall submit to the competent authorities the certificate referred to in Article 7(2) within six months of its issue together with the common draft terms of cross-border merger approved by the general meeting referred to in Article 6.

*Article 9*

The law of the Member State to whose jurisdiction the company created by the merger is subject shall determine the date on which the cross-border merger takes effect. That date must be after the supervision as referred to in Article 8 has been carried out.

*Article 10*

The law of each of the Member States to whose jurisdiction the merging companies were subject shall determine, with respect to the territory of that State, the arrangements for publicising completion of the cross-border merger in the public register in which each of the companies is required to file documents.

*Article 11*

1. A merger carried out as laid down in point (a) of the first indent of Article 1 shall, from the date referred to in Article 9, have the following consequences:

- (a) all the assets and liabilities of each company being acquired are transferred, by way of universal succession, to the acquiring company;
- (b) the shareholders of the company being acquired become shareholders of the acquiring company;
- (c) the company being acquired ceases to exist.

2. A merger carried out as laid down in point (b) of the first indent of Article 1 shall, from the date referred to in Article 9, have the following consequences:

- (a) all the assets and liabilities of the merging companies are transferred, by way of universal succession, to the new company;
- (b) the shareholders of the merging companies become shareholders of the new company;
- (c) the merging companies cease to exist.

3. Where, in the case of a merger of companies covered by this Directive, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall be carried out by the company created by the merger.

*Article 12*

A cross-border merger which has taken effect as provided for in Article 9 may not be declared null and void.

*Article 13*

1. Where a cross-border merger by acquisition is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company being acquired, Articles 3(1)(b) and (c), 5 and 11(1)(b) shall not apply.

2. Where a merger by acquisition is carried out by a company which holds 90% or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and

the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

*Article 14*

Where at least one of the merging companies is operating under an employee participation system and where the national law applicable to the company created by the merger does not impose compulsory employee participation, the participation of employees in the company created by the merger and their involvement in the definition of such rights shall be regulated by the Member States in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

- (a) Article 3(1), (2) and (3), (4) first subparagraph, first indent, and second subparagraph, (5), (6) first and second subparagraphs and (7);
- (b) Article 4(1),(2), point (g), and (3);
- (c) Article 5;
- (d) Article 6;
- (e) Article 7(1), (2) first subparagraph, point (b), and second subparagraph, and (3);
- (f) Articles 8 to 12;
- (g) Part 3 of the Annex.

*Article 15*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within eighteen months of its publication. They shall forthwith inform the Commission thereof and communicate a table of equivalence between those provisions and this Directive.

When Member States adopt such measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such a reference shall be adopted by Member States.

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

*Article 16*

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament For the Council

The President The President

THE IMPACT OF THE PROPOSAL ON BUSINESS WITH SPECIAL REFERENCE TO SMALL

## AND MEDIUM-SIZED ENTERPRISES (SMEs)

## Title of proposal

Proposal for a Directive of the European Parliament and of the Council on cross-border mergers of companies with share capital

## Reference No

COM(2003) 703

## The proposal

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

In accordance with the principles of subsidiarity and proportionality as laid down in Article 3b of the Treaty, the objectives of the proposed action, namely to facilitate mergers between companies from different Member States, cannot be sufficiently achieved by the Member States acting alone. No one Member State is able to organize the operation in full because it has a dimension which goes beyond national frontiers. These objectives can therefore be achieved only at Community level. The Directive is confined to the minimum required in order to achieve those objectives and does not go beyond what is necessary to that end.

## The impact on business

2. Who will be affected by the proposal?

The scope of the Directive covers all companies with share capital. Besides public limited companies and partnerships partly limited by shares, it includes incorporated private companies and other national forms of company with share capital which offer safeguards as coordinated by Directive 68/151/EEC. The proposal will therefore benefit above all small and medium-sized enterprises (SMEs) as defined in the Commission Recommendation of 3 April 1996. [24] Owing to their smaller size and lower capitalisation compared with large enterprises, SMEs are rarely set up in the form of a public limited company but rather in that of a private company. SMEs account for about nine out of ten enterprises, almost three out of ten jobs, and just over one fifth of value added in the EU. The removal of legal obstacles to cross-border mergers will help to internationalise such enterprises' activities as advocated by the Commission in its Third Multiannual Programme for Small and Medium-sized Enterprises in the European Union (1997-2000). [25] No distinction is made according to sector of activity, size of business or geographical area.

[24] Commission Recommendation (COM(1996) 261 final) of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

[25] "Maximising European SMEs' full potential for employment, growth and competitiveness" - proposal for a Council Decision adopted by the Commission on 20 March 1996 (COM(96) 98 final; OJ C 156, 31.5.1996, p. 5).

3. What will business have to do to comply with the proposal?

Companies which wish to merge will basically have to draw up draft terms of cross-border merger and publicise them sufficiently in each Member State concerned. The general meeting of each merging company will have to approve the draft terms. The legality of the procedure will have to be certified by the competent authorities. Measures are provided for in order to protect the rights of creditors and the holders of securities. The completion of the cross-border merger will also have to be sufficiently publicised. As in the case of the European company, a single expert report is permitted, which is likely to reduce costs. Most of the measures proposed already exist in Member States' laws

on domestic mergers of companies with share capital and in the measures for implementing Directive 78/855/EEC concerning mergers of public limited liability companies. Responsibility for implementing the proposal will rest primarily with the Member States.

4. What economic effects is the proposal likely to have?

The key provisions of the proposal should allow companies which wish to carry out a cross-border merger to benefit from substantially reduced legal and economic requirements, which are currently highly complex and expensive. This benefit will accrue to all companies with share capital in the EU and should therefore have a favourable impact on employment and competitiveness.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The proposal is basically attuned to serving the needs of SMEs, which account for about nine out of ten enterprises, but other companies will also be able to benefit from it on the same terms.

Consultation

6. The present proposal is an appropriate response to the needs which companies have been expressing for many years now, and in particular since progress on the original proposal, which was presented in 1984, came to a halt. Other voices have joined in the chorus, including that of UNICE. The High-Level Group of Company Law Experts recently conducted a wide-ranging consultation exercise which elicited numerous responses and expressions of opinion in favour of the present proposal. The Commission's communication to the Council and Parliament of 21 May 2003 on modernising company law and enhancing corporate governance has likewise been the object of extensive consultations. Under the circumstances, it has not been considered necessary to carry out any further consultations, this time on the final draft, all the more so since they would result in the present proposal's adoption being considerably delayed.

<b>DOCNUM</b>	52003PC0703
<b>AUTHOR</b>	European Commission
<b>FORM</b>	Proposal for a directive
<b>TREATY</b>	European Community
<b>DOC</b>	2003/11/18
<b>DESPATCH</b>	2003/11/20
<b>ENDVAL</b>	2005/10/26
<b>LEGBASE</b>	12002E044 12002E251
<b>MODIFIED</b>	Adopted by 32005L0056
<b>SUBSPREP</b>	Relation 52004AE0664

EP Opinion **52005AP0166** No amendment proposed

**SUB** Internal market ; Freedom of establishment and services ; Approximation of laws

**REGISTER** 17100000;13400000

**MISCINF** COD 2003/0277

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## 31989L0666

### Title and reference

**Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State**

*OJ L 395, 30.12.1989, p. 36–39 (ES, DA, DE, EL, EN, FR, IT, NL, PT)*

*Finnish special edition: Chapter 17 Volume 1 P. 0099*

*Swedish special edition: Chapter 17 Volume 1 P. 0099*

*Special edition in Czech Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Estonian Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Hungarian Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Lithuanian Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Latvian Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Maltese Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Polish Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Slovakian Chapter 17 Volume 01 P. 100 - 103*

*Special edition in Slovenian Chapter 17 Volume 01 P. 100 - 103*

DA DE EL EN ES FR IT NL PT

### Text

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end of validity: 99/99/9999

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### Classifications

- ▶ **EUROVOC descriptor:**
  - branch
  - publication of accounts
  - organisation
  - company law
  - business management
- ▶ **Directory code:**
  - 17.10.00.00 Law relating to undertakings / Company law
- ▶ **Subject matter:**
  - Freedom of establishment and services, Internal market

### Miscellaneous information

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- ▶ **Form:**
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- ▶ **Addressee:**
  - The Member States
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  - COM/86/0397
- ▶ **Additional information:**
  - Extended to the EEA by 21994A0103(01)
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### Relationship between documents

- ▶ **Treaty:**
  - European Economic Community
- ▶ **Legal basis:**
  - 11957E054
  - 11957E149 -P2
- ▶ **Select all documents based on this document**
- ▶ **Amendment to:**
  - 31978L0660 Amendment Completion Article 46.2 from 03/01/1990
  - 31978L0660 Amendment abolition Article 54 from 03/01/1990
  - 31983L0349 Amendment abolition Article 48 from 03/01/1990
  - 51988PC0153 Adoption
- ▶ **Amended by:**
  - Incorporated by 21994A0103(72)
- ▶ **Display the national execution measures**
  - MNE
- ▶ **Instruments cited:**
  - 11957E058
  - 11957E169
  - 11957E170

31968L0151

31984L0253

31989L0117

1851

► [Select all documents mentioning this document](#)

Consolidated versions

► **consolidation form:**

01983L0349

01978L0660

## Text

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ELEVENTH COUNCIL DIRECTIVE of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas in order to facilitate the exercise of the freedom of establishment in respect of companies covered by Article 58 of the Treaty, Article 54 (3) (g) and the general programme on the elimination of restrictions on the freedom of establishment require coordination of the safeguards required of companies and firms in the Member States for the protection of the interests of members and others;

Whereas hitherto this coordination has been effected in respect of disclosure by the adoption of the First Directive 68/151/EEC (4) covering companies with share capital, as last amended by the 1985 Act of Accession; whereas it was continued in the field of accounting by the Fourth Directive 78/660/EEC (5) on the annual accounts of certain types of companies, as last amended by the 1985 Act of Accession, the Seventh Directive 83/349/EEC (6) on consolidated accounts, as amended by the 1985 Act of Accession, and the Eighth Directive 84/253/EEC (7) on the persons responsible for carrying out the statutory audits of accounting documents;

Whereas these Directives apply to companies as such but do not cover their branches; whereas the opening of a branch, like the creation of a subsidiary, is one of the possibilities currently open to companies in the exercise of their right of establishment in another Member State;

Whereas in respect of branches the lack of coordination, in particular concerning disclosure, gives rise to some

disparities, in the protection of shareholders and third parties, between companies which operate in other Member States by opening branches and those which operate there by creating subsidiaries;

Whereas in this field the differences in the laws of the Member States may interfere with the exercise of the right of establishment; whereas it is therefore necessary to eliminate such differences in order to safeguard, inter alia, the exercise of that right;

Whereas to ensure the protection of persons who deal with companies through the intermediary of branches, measures in respect of disclosure are required in the Member State in which a branch is situated; whereas, in certain respects, the economic and social influence of a branch may be comparable to that of a subsidiary company, so that there is public interest in disclosure of the company at the branch; whereas to effect such disclosure it is necessary to make use of the procedure already instituted for companies with share capital within the Community;

Whereas such disclosure relates to a range of important documents and particulars and amendments thereto;

Whereas such disclosure, with the exception of the powers of representation, the name and legal form and the winding-up of the company and the insolvency proceedings to which it is subject, may be confined to information concerning a branch itself together with a reference to the register of the company of which that branch is part, since under existing Community rules all information covering the company as such is available in that register;

Whereas national provisions in respect of the disclosure of accounting documents relating to a branch can no longer be justified following the coordination of national law in respect of the drawing up, audit and disclosure of companies' accounting documents; whereas it is accordingly sufficient to disclose, in the register of the branch, the accounting documents as audited and disclosed by the company;

Whereas letters and order forms used by a branch must give at least the same information as letters and order forms used by the company, and state the register in which the branch is entered;

Whereas to ensure that the purposes of this Directive are fully realized and to avoid any discrimination on the basis of a

company's country of origin, this Directive must also cover branches opened by companies governed by the law of non-member countries and set up in legal forms comparable to companies to which Directive 68/151/EEC applies; whereas for these branches it is necessary to apply certain provisions different from those that apply to the branches of companies governed by the law of other Member States since the Directives referred to above do not apply to companies from non-member countries;

Whereas this Directive in no way affects the disclosure requirements for branches under other provisions of, for example, employment law on workers' rights to information and tax law, or for statistical purposes;

HAS ADOPTED THIS DIRECTIVE:

### SECTION I

Branches of companies from other Member States

#### Article 1

1. Documents and particulars relating to a branch opened in a Member State by a company which is governed by the law of another Member State and to which Directive 68/151/EEC applies shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 3 of that Directive.

2. Where disclosure requirements in respect of the branch differ from those in respect of the company, the branch's disclosure requirements shall take precedence with regard to transactions carried out with the branch.

#### Article 2

1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars only:

(a) the address of the branch;

(b) the activities of the branch;

(c) the register in which the company file mentioned in Article 3 of Council Directive 68/151/EEC is kept, together with the registration number in that register;

(d)

the name and legal form of the company and the name of the branch if that is different from the name of the company;

(e)

the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings;

- as a company organ constituted pursuant to law or as members of any such organ, in accordance with



the disclosure by the company as provided for in Article 2 (1) (d) of Directive 68/151/EEC,

- as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

(f)

the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of Directive 68/151/EEC,

- insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

(g)

the accounting documents in accordance with Article 3;

(h)

the closure of the branch.

2. The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 1, of

(a) the signature of the persons referred to in paragraph

1 (e) and (f) of this Article;

(b) the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument in accordance with Article 2 (1) (a), (b) and (c) of Directive 68/151/EEC, together with amendments to those documents;

(c) an attestation from the register referred to in paragraph 1 (c) of this Article relating to the existence of the company;

(d) an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those securities.

Article 3

The compulsory disclosure provided for by Article 2 (1) (g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directives 78/660/EEC, 83/349/EEC and 84/253/EEC.

Article 4

The Member State in which the branch has been opened may stipulate that the documents referred to in Article 2 (2) (b) and Article 3 must be published in another official language of the Community and that the translation of such documents must be certified.

Article 5

Where a company has opened more than one branch in a Member State, the disclosure referred to in Article 2 (2) (b)

and Article 3 may be made in the register of the branch of the company's choice.

In this case, compulsory disclosure by the other branches shall cover the particulars of the branch register of which disclosure was made, together with the number of that branch in that register.

Article 6

The Member States shall prescribe that letters and order forms used by a branch shall state, in addition to the information prescribed by Article 4 of Directive 68/151/EEC, the register in which the file in respect of the branch is kept together with the number of the branch in that register.

SECTION II

Branches of companies from third countries

Article 7

1. Documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company to which Directive 68/151/EEC applies shall be disclosed in accordance with the law of the Member State of the branch as laid down in Article 3 of that Directive.

2. Article 1 (2) shall apply.

Article 8

The compulsory disclosure provided for in Article 7 shall cover at least the following documents and particulars:

(a) the address of the branch;

(b) the activities of the branch;

(c) the law of the State by which the company is governed;

(d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;

(e)

the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to these documents;

(f)

the legal form of the company, its principal place of business and its object and, at least annually, the amount of subscribed capital if these particulars are not given in the documents referred to in subparagraph (e);

(g)

the name of the company and the name of the branch if that is different from the name of the company;

(h)

the appointment, termination of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings:

- as a company organ constituted pursuant to law or as members of any such organ,

- as permanent representatives of the company for the activities of the branch.

The extent of the powers of the persons authorized to represent the company must be stated, together with whether they may do so alone or must act jointly;

(i)

- the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation;

- insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;

(j)

the accounting documents in accordance with Article 7;

(k)

the closure of the branch.

Article 9

1. The compulsory disclosure provided for by Article 8 (1) (j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company. Where they are not drawn up in accordance with or in a manner equivalent to Directives 78/660/EEC and 83/349/EEC, Member States may require that accounting documents relating to the activities of the branch be drawn up and disclosed.

2. Articles 4 and 5 shall apply.

Article 10

The Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. Where the law of the State by which the company is governed requires entry in a register, the register in which the company is entered, and the registration number of the company in that register must also be stated.

SECTION III

Indication of branches in the company's annual report

Article 11

The following subparagraph is added to Article 46 (2) of Directive 78/660/EEC:

'(e) the existence of branches of the company'.

SECTION IV

Transitional and final provisions

Article 12

The Member States shall provide for appropriate penalties in the event of failure to disclose the matters set out in Articles 1, 2, 3, 7, 8 and 9 and of omission from letters and order forms of the compulsory particulars provided for in Articles 6 and 10.

Article 13

Each Member State shall determine who shall carry out the disclosure formalities provided for in this Directive.

Article 14

1. Articles 3 and 9 shall not apply to branches opened by credit institutions and financial institutions covered by Directive 89/117/EEC (8).

2. Pending subsequent coordination, the Member States need not apply Articles 3 and 9 to branches opened by insurance companies.

Article 15

Article 54 of Directive 78/660/EEC and Article 48 of Directive 83/349/EEC shall be deleted.

Article 16

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this

Directive not later than 1 January 1992. They shall forthwith inform the Commission thereof.

2. Member States shall stipulate that the provisions referred to in paragraph 1 shall apply from 1 January 1993 and, with regard to accounting documents, shall apply for the first time to annual accounts for the financial year beginning on 1 January 1993 or during 1993.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 17

The Contact Committee set up pursuant to Article 52 of Directive 78/660/EEC shall also:

(a) facilitate, without prejudice to Articles 169 and 170 of the Treaty, the harmonized application of this Directive, through regular meetings dealing, in particular, with practical problems arising in connection with its application;

(b) advise the Commission, if necessary, on any additions or amendments to this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1989.

For the Council

The President

E. CRESSON

(1) OJ No C 105, 21. 4. 1988, p. 6.

(2) OJ No C 345, 21. 12. 1987, p. 76 and OJ No C 256,

9. 10. 1989, p. 27.

(3) OJ No C 319, 30. 11. 1987, p. 61.

(4) OJ No L 65, 14. 3. 1968, p. 8.

(5) OJ No L 222, 14. 8. 1978, p. 11.

(6) OJ No L 193, 18. 7. 1983, p. 1.

(7) OJ No L 126, 12. 5. 1984, p. 20. (8) OJ No L 44, 16. 2. 1989, p. 40.

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Agreement on the European Economic Area - Annex XXII - Company law - List provided for in Article 77

*OJ L 1, 3.1.1994, p. 517-522 (ES, DA, DE, EL, EN, FR, IT, NL, PT)*

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► **B**

**TWELFTH COUNCIL COMPANY LAW DIRECTIVE**  
**of 21 December 1989**  
**on single-member private limited-liability companies**  
 (89/667/EEC)  
 (OJ L 395, 30.12.1989, p. 40)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Council Directive 2006/99/EC of 20 November 2006	L 363	137	20.12.2006

Amended by:

► <b><u>A1</u></b>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <b><u>A2</u></b>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003



**TWELFTH COUNCIL COMPANY LAW DIRECTIVE**

**of 21 December 1989**

**on single-member private limited-liability companies**

(89/667/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty should be coordinated with a view to making such safeguards equivalent throughout the Community;

Whereas, in this field, Directives 68/151/EEC <sup>(4)</sup> and 78/660/EEC <sup>(5)</sup>, as last amended by the Act of Accession of Spain and Portugal, and Directive 83/349/EEC <sup>(6)</sup>, as amended by the Act of Accession of Spain and Portugal, on disclosure, the validity of commitments, nullity, annual accounts and consolidated accounts, apply to all share capital companies; whereas Directives 77/91/EEC <sup>(7)</sup> and 78/855/EEC <sup>(8)</sup>, as last amended by the Act of Accession of Spain and Portugal, and Directive 82/891/EEC <sup>(9)</sup> on formation and capital, mergers and divisions apply only to public limited-liability companies;

Whereas the small and medium-sized enterprises (SME) action programme <sup>(10)</sup> was approved by the Council in its Resolution of 3 November 1986;

Whereas reforms in the legislation of certain Member States in the last few years, permitting single-member private limited-liability companies, have created divergences between the laws of the Member States;

Whereas it is important to provide a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States which, in exceptional circumstances, require that entrepreneur to be liable for the obligations of his undertaking;

Whereas a private limited-liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder; whereas, pending the coordination of national provisions on the laws relating to groups, Member States may lay down certain special provisions and penalties for cases where a natural person is the sole member of several companies or where a single-member company or any other legal person is the sole member of a company; whereas the sole aim of this provision is to take account of the differences which currently

<sup>(1)</sup> OJ No C 173, 2. 7. 1988, p. 10.

<sup>(2)</sup> OJ No C 96, 17. 4. 1989, p. 92 and OJ No C 291, 20. 11. 1989, p. 53.

<sup>(3)</sup> OJ No C 318, 12. 12. 1988, p. 9.

<sup>(4)</sup> OJ No L 65, 14. 3. 1968, p. 8.

<sup>(5)</sup> OJ No L 222, 14. 8. 1978, p. 11.

<sup>(6)</sup> OJ No L 193, 18. 7. 1983, p. 1.

<sup>(7)</sup> OJ No L 26, 30. 1. 1977, p. 1.

<sup>(8)</sup> OJ No L 295, 20. 10. 1978, p. 36.

<sup>(9)</sup> OJ No L 378, 31. 12. 1982, p. 47.

<sup>(10)</sup> OJ No C 287, 14. 11. 1986, p. 1.

**▼B**

exist in certain national laws; whereas, for that purpose, Member States may in specific cases lay down restrictions on the use of single-member companies or remove the limits on the liabilities of sole members; whereas Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly to ensure that the subscribed capital is paid;

Whereas the fact that all the shares have come to be held by a single shareholder and the identity of the single member must be disclosed by an entry in a register accessible to the public;

Whereas decisions taken by the sole member in his capacity as general meeting must be recorded in writing;

Whereas contracts between a sole member and his company as represented by him must likewise be recorded in writing, insofar as such contracts do not relate to current operations concluded under normal conditions,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

— *in Germany:*

Gesellschaft mit beschränkter Haftung,

— *in Belgium:*

Société privée à responsabilité limitée / de besloten vennootschap met beperkte aansprakelijkheid,

— *in Denmark:*

Anpartsselskaber,

— *in Spain:*

Sociedad de responsabilidad limitada,

— *in France:*

Société à responsabilité limitée,

— *in Greece:*

Εταιρεία περιορισμένης ευθύνης,

— *in Ireland:*

Private company limited by shares or by guarantee,

— *in Italy:*

Società a responsabilità limitata,

— *in Luxembourg:*

Société à responsabilité limitée,

— *in the Netherlands:*

Besloten vennootschap met beperkte aansprakelijkheid,

— *in Portugal:*

Sociedade por quotas,

— *in the United Kingdom:*

Private company limited by shares or by guarantee,

**▼ A1**

— *in Austria:*  
Aktiengesellschaft, Gesellschaft mit beschränkter Haftung,

— *in Finland:*  
Osakeyhtiö/aktiebolag,

— *in Sweden:*  
Aktiebolag,

**▼ A2**

— *in the Czech Republic:*  
Společnost s ručením omezeným,

— *in Estonia:*  
Aktsiaselts, osuühing,

— *in Cyprus:*  
Ιδιωτική εταιρεία περιορισμένης ευθύνης με μετοχές ή με εγγύηση,

— *in Latvia:*  
Sabiedrība ar ierobežotu atbildību,

— *in Lithuania:*  
Uždaroji akcinė bendrovė,

— *in Hungary:*  
Korlátolt felelősségű társaság, részvénytársaság,

— *in Malta:*  
Kumpanija privata/Private limited liability company,

— *in Poland:*  
Spółka z ograniczoną odpowiedzialnością,

— *in Slovenia:*  
Družba z omejeno odgovornostjo,

— *in Slovakia:*  
Spoločnosť s ručením obmedzeným,

**▼ M1**

— *in Bulgaria:*  
Дружество с ограничена отговорност, акционерно дружество,

— *in Romania:*  
Societate cu răspundere limitată.

**▼ B***Article 2*

1. A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company).

2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or sanctions for cases where:

- (a) a natural person is the sole member of several companies;
- (b) a single-member company or any other legal person is the sole member of a company.

**▼B***Article 3*

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register within the meaning of Article 3 (1) and (2) of Directive 68/151/EEC or be entered in a register kept by the company and accessible to the public.

*Article 4*

1. The sole member shall exercise the powers of the general meeting of the company.
2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes or drawn up in writing.

*Article 5*

1. Contracts between the sole member and his company as represented by him shall be recorded in minutes or drawn up in writing.
2. Member States need not apply paragraph 1 to current operations concluded under normal conditions.

*Article 6*

Where a Member State allows single-member companies as defined by Article 2 (1) in the case of public limited companies as well, this Directive shall apply.

*Article 7*

A Member State need not allow the formation of single-member companies where its legislation provides that an individual entrepreneur may set up an undertaking the liability of which is limited to a sum devoted to a stated activity, on condition that safeguards are laid down for such undertakings which are equivalent to those imposed by this Directive or by any other Community provisions applicable to the companies referred to in Article 1.

*Article 8*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1992. They shall inform the Commission thereof.
2. Member States may provide that, in the case of companies already in existence on 1 January 1992, this Directive shall not apply until 1 January 1993.
3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 9*

This Directive is addressed to the Member States.



## 31989L0667

### Title and reference

**Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies**

*OJ L 395, 30.12.1989, p. 40-42 (ES, DA, DE, EL, EN, FR, IT, NL, PT)*

*Finnish special edition: Chapter 17 Volume 1 P. 0103*

*Swedish special edition: Chapter 17 Volume 1 P. 0103*

*Special edition in Czech Chapter 17 Volume 01 P. 104 - 106*

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*Special edition in Latvian Chapter 17 Volume 01 P. 104 - 106*

*Special edition in Maltese Chapter 17 Volume 01 P. 104 - 106*

*Special edition in Polish Chapter 17 Volume 01 P. 104 - 106*

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*Special edition in Slovenian Chapter 17 Volume 01 P. 104 - 106*

DA DE EL EN ES FR IT NL PT

### Text

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV	LT	HU	MT	NL	PL	PT	R
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- ▶ The official languages, Norwegian, Icelandic

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### Classifications

- ▶ **EUROVOC descriptor:**  
[company law](#)  
[private limited company](#)
- ▶ **Directory code:**  
[17.10.00.00 Law relating to undertakings / Company law](#)
- ▶ **Subject matter:**  
Freedom of establishment and services, Approximation of laws

### Miscellaneous information

- ▶ **Author:**  
Council
- ▶ **Form:**  
Directive
- ▶ **Addressee:**  
The Member States
- ▶ **Internal reference:**  
COM/88/0101
- ▶ **Additional information:**  
Extended to the EEA by 21994A0103(01)  
SYN 135

### Relationship between documents

- ▶ **Treaty:**  
European Economic Community
- ▶ **Legal basis:**  
[11957E054](#)  
[11957E149 -P2](#)
- ▶ [Select all documents based on this document](#)
- ▶ **Amendment to:**  
[51988PC0101](#) Adoption
- ▶ **Amended by:**  
Corrected by [31989L0667R\(01\)](#)  
Amended by [11994NN01/11/A](#) Completion Article 1 from 01/01/1995  
Incorporated by [21994A0103\(72\)](#)  
Amended by [12003TN02/04/A](#) Completion Article 1 from 01/05/2004  
Amended by [32006L0099](#) Completion Article 1 from 01/01/2007  
Amended by [32006L0099](#) Completion Article 1.1 from 01/01/2007
- ▶ **Consolidated versions**  
[1995-01-01](#)  
[2004-05-01](#)  
[2007-01-01](#)
- ▶ **Subsequent related instruments:**  
Relation [51989FC0667](#)  
Amendment proposed by [52008PC0344](#) Repeal
- ▶ **Display the national execution measures**  
[MNE](#)

► **Instruments cited:**

11957E058

31968L0151

31977L0091

31978L0660

31978L0855

31982L0891

31983L0349

► **Select all documents mentioning this document**

Consolidated versions

► **consolidation form:**

01989L0667

**Text****Bilingual display: BG CS DA DE EL EN ES ET FI FR HU IT LT LV MT NL PL PT RO SK SL SV**

TWELFTH COUNCIL COMPANY LAW DIRECTIVE of 21 December 1989 on single-member private limited-liability companies (89/667/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas certain safeguards which, for the protection of the interests of members and others, are required by Member States of companies and firms within the meaning of the second paragraph of Article 58 of the Treaty should be coordinated with a view to making such safeguards equivalent throughout the Community;

Whereas, in this field, Directives 68/151/EEC (4) and 78/660/EEC (5), as last amended by the Act of Accession of Spain and Portugal, and Directive 83/349/EEC (6), as amended by the Act of Accession of Spain and Portugal, on disclosure, the validity of commitments, nullity, annual accounts and consolidated accounts, apply to all share capital companies; whereas Directives 77/91/EEC (7) and 78/855/EEC (8), as last amended by the Act of Accession of Spain and Portugal, and Directive 82/891/EEC (9) on formation and capital, mergers and divisions apply only to public limited-liability companies;

Whereas the small and medium-sized enterprises (SME) action programme (10) was approved by the Council in its Resolution of 3 November 1986;

Whereas reforms in the legislation of certain Member States in the last few years, permitting single-member private limited-liability companies, have created divergences between the laws of the Member States;

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OJ No C 291, 20. 11. 1989, p. 53.

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Whereas it is important to provide a legal instrument allowing the limitation of liability of the individual entrepreneur throughout the Community, without prejudice to the laws of the Member States which, in exceptional circumstances, require that entrepreneur to be liable for the obligations of his undertaking;

Whereas a private limited-liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder; whereas, pending the coordination of national provisions on the laws relating to groups, Member States may lay down certain special provisions and penalties for cases where a natural person is the sole member of several companies or where a single-member company or any other legal person is the sole member of a company; whereas the sole aim of this provision is to take account of the differences which currently exist in certain national laws; whereas, for that purpose, Member States may in specific cases lay down restrictions on the use of single-member companies or remove the limits on the liabilities of sole members; whereas Member States are free to lay down rules to cover the risks that single-member companies may present as a consequence of having single members, particularly to ensure that the subscribed capital is paid;

Whereas the fact that all the shares have come to be held by a single shareholder and the identity of the single member must be disclosed by an entry in a register accessible to the public;

Whereas decisions taken by the sole member in his capacity as general meeting must be recorded in writing;

Whereas contracts between a sole member and his company as represented by him must likewise be recorded in writing, insofar as such contracts do not relate to current operations concluded under normal conditions,

HAS ADOPTED THIS DIRECTIVE:

## Article 1

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States relating to the following types of company:

- in Germany:

Gesellschaft mit beschränkter Haftung,

- in Belgium:

Société privée à responsabilité limitée/de besloten vennootschap met beperkte aansprakelijkheid,

- in Denmark:

Anpartsselskaber,

- in Spain:

Sociedad de responsabilidad limitada,

- in France:

Société à responsabilité limitée,

- in Greece:

Etaireia periorismenis efthynis,

- in Ireland:

Private company limited by shares or by guarantee,

- in Italy:

Società a responsabilità limitata,

- in Luxembourg:

Société à responsabilité limitée,

- in the Netherlands:

Besloten vennootschap met beperkte aansprakelijkheid,

- in Portugal:

Sociedade por quotas,

- in the United Kingdom:

Private company limited by shares or by guarantee.

Article 2

1. A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company).

2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or sanctions for cases where:

(a) a natural person is the sole member of several companies;

(b) a single-member company or any other legal person is the sole member of a company.

Article 3

Where a company becomes a single-member company because all its shares come to be held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register within the meaning of Article 3 (1) and (2) of Directive 68/151/EEC or be entered in a register kept by the company and accessible to the public.

Article 4

1. The sole member shall exercise the powers of the general meeting of the company.

2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes or drawn up in writing.

Article 5

1. Contracts between the sole member and his company as represented by him shall be recorded in minutes or drawn up in writing.

2. Member States need not apply paragraph 1 to current operations concluded under normal conditions.

Article 6

Where a Member State allows single-member companies as defined by Article 2 (1) in the case of public limited companies as well, this Directive shall apply.

Article 7

A Member State need not allow the formation of single-member companies where its legislation provides that an individual entrepreneur may set up an undertaking the liability of which is limited to a sum devoted to a stated activity, on condition that safeguards are laid down for such undertakings which are equivalent to those imposed by this Directive or by any other Community provisions applicable to the companies referred to in Article 1.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1992. They shall inform the Commission thereof.

2. Member States may provide that, in the case of companies already in existence on 1 January 1992, this Directive shall not apply until 1 January 1993.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1989.

For the Council

The President

E. CRESSON

(1) OJ No C 173, 2. 7. 1988, p. 10.(2) OJ No C 96, 17. 4. 1989, p. 92 and(3) OJ No C 318, 12. 12. 1988, p. 9.(4) OJ No L 65, 14. 3. 1968, p. 8.(5) OJ No L 222, 14. 8. 1978, p. 11.(6) OJ No L 193, 18. 7. 1983, p. 1.(7) OJ No L 26, 30. 1. 1977, p. 1.(8) OJ No L 295, 20. 10. 1978, p. 36.(9) OJ No L 378, 31. 12. 1982, p. 47.

(10) OJ No C 287, 14. 11. 1986, p. 1.

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## 32004L0025

### Title and reference

**Directive 2004/25/EC of the European Parliament and of the Council of 21 april 2004 on takeover bids (Text with EEA relevance)**

*OJ L 142, 30.4.2004, p. 12–23 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)*

*Special edition in Czech Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Estonian Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Hungarian Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Lithuanian Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Latvian Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Maltese Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Polish Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Slovakian Chapter 17 Volume 02 P. 20 - 31*

*Special edition in Slovenian Chapter 17 Volume 02 P. 20 - 31*

DA DE EL EN ES FI FR IT NL PT SV

### Text

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV	LT	HU	MT	NL	PL	PT	RO
html	html	html	html	html		html	html	html		html		html		html	html	html	html	html
pdf		pdf			pdf						pdf	pdf	pdf	pdf		pdf		pdf
	tiff		tiff	tiff		tiff	tiff	tiff		tiff					tiff		tiff	

### Authentic language

► The official languages, Other than Community language, Icelandic, Norwegian

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### Classifications

► **EUROVOC descriptor:**

**issue of securities**  
**takeover bid**  
**organisation**  
**securities**

► **Directory code:**

17.10.00.00 **Law relating to undertakings / Company law**

13.40.00.00 **Industrial policy and internal market / Internal market: policy relating to undertakings**

► **Subject matter:**

Approximation of laws, Internal market, Free movement of capital

### Miscellaneous information

► **Author:**

European Parliament, Council

► **Form:**

Directive

► **Addressee:**

The Member States

► **Additional information:**

EEA relevance

Extended to the EEA by 22005D0070

### Relationship between documents

► **Treaty:**

European Community

► **Legal basis:**

12002E044 -P1

► **Select all documents based on this document**

► **Amendment to:**

52002PC0534 Adoption

► **Subsequent related instruments:**

Amendment proposed by 52007PC0824

► **Display the national execution measures**

**MNE**

► **Select all documents mentioning this document**

## Text

**Bilingual display:** BG CS DA DE EL EN ES ET FI FR HU IT LT LV MT NL PL PT RO SK SL SV

Directive 2004/25/EC of the european parliament and of the council of 21 April 2004 on takeover bids (Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Economic and Social Committee(2),

Acting in accordance with the procedure laid down in Article 251 of the Treaty(3),

Whereas:

(1) In accordance with Article 44(2)(g) of the Treaty, it is necessary to coordinate certain safeguards which, for the protection of the interests of

members and others, Member States require of companies governed by the law of a Member State the securities of which are admitted to trading on a regulated market in a Member State, with a view to making such safeguards equivalent throughout the Community.

(2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.

(3) It is necessary to create Community-wide clarity and transparency in respect of legal issues to be settled in the event of takeover bids and to prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures.

(4) In view of the public-interest purposes served by the central banks of the Member States, it seems inconceivable that they should be the targets of takeover bids. Since, for historical reasons, the securities of some of those central banks are listed on regulated markets in Member States, it is necessary to exclude them explicitly from the scope of this Directive.

(5) Each Member State should designate an authority or authorities to supervise those aspects of bids that are governed by this Directive and to ensure that parties to takeover bids comply with the rules made pursuant to this Directive. All those authorities should cooperate with one another.

(6) In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles.

(7) Self-regulatory bodies should be able to exercise supervision.

(8) In accordance with general principles of Community law, and in particular the right to a fair hearing, decisions of a supervisory authority should in appropriate circumstances be susceptible to review by an independent court or tribunal. However, Member States should be left to determine whether rights are to be made available which may be asserted in administrative or judicial proceedings, either in proceedings against a supervisory authority or in proceedings between parties to a bid.

(9) Member States should take the necessary steps to protect the holders of securities, in particular those with minority holdings, when control of their companies has been acquired. The Member States should ensure such protection by obliging the person who has acquired control of a company to make an offer to all the holders of that company's securities for all of their holdings at an equitable price in accordance with a common definition. Member States should be free to establish further instruments for the protection of the interests of the holders of securities, such as the obligation to make a partial bid where the offeror does not acquire control of the company or the obligation to announce a bid at the same time as control of the company is acquired.

(10) The obligation to make a bid to all the holders of securities should not apply to those controlling holdings already in existence on the date on which the national legislation transposing this Directive enters into force.

(11) The obligation to launch a bid should not apply in the case of the acquisition of securities which do not carry the right to vote at ordinary general meetings of shareholders. Member States should, however, be able to provide that the obligation to make a bid to all the holders of securities relates not only to securities carrying voting rights but also to securities which carry voting rights only in specific circumstances or which do not carry voting rights.

(12) To reduce the scope for insider dealing, an offeror should be required to announce his/her decision to launch a bid as soon as possible and to inform the supervisory authority of the bid.

(13) The holders of securities should be properly informed of the terms of a bid by means of an offer document. Appropriate information should also be given to the representatives of the company's employees or, failing that, to the employees directly.

(14) The time allowed for the acceptance of a bid should be regulated.

(15) To be able to perform their functions satisfactorily, supervisory authorities should at all times be able to require the parties to a bid to provide information concerning themselves and should cooperate and supply information in an efficient and effective manner, without delay, to other authorities supervising capital markets.

(16) In order to prevent operations which could frustrate a bid, the powers of the board of an offeree company to engage in operations of an exceptional nature should be limited, without unduly hindering the offeree company in carrying on its normal business activities.

(17) The board of an offeree company should be required to make public a document setting out its opinion of the bid and the reasons on which that opinion is based, including its views on the effects of implementation on all the company's interests, and specifically on employment.

(18) In order to reinforce the effectiveness of existing provisions concerning the freedom to deal in the securities of companies covered by this Directive and the freedom to exercise voting rights, it is essential that the defensive structures and mechanisms envisaged by such companies be transparent and that they be regularly presented in reports to general meetings of shareholders.

(19) Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.

(20) All special rights held by Member States in companies should be viewed in the framework of the free movement of capital and the relevant provisions of the Treaty. Special rights held by Member States in companies which are provided for in private or public national law should be exempted from the «breakthrough» rule if they are compatible with the Treaty.

(21) Taking into account existing differences in Member States' company law mechanisms and structures, Member States should be allowed not to require companies established within their territories to apply the provisions of this Directive limiting the powers of the board of an offeree company during the time allowed for the acceptance of a bid and those rendering ineffective barriers, provided for in the articles of association or in specific agreements. In that event Member States should at least allow companies established within their territories to make the choice, which must be reversible, to apply those provisions. Without prejudice to international agreements to which the European Community is a party, Member States should be allowed not to require companies which apply those provisions in accordance with the optional arrangements to apply them when they become the subject of offers launched by companies which do not apply the same provisions, as a consequence of the use of those optional arrangements.

(22) Member States should lay down rules to cover the possibility of a bid's lapsing, the offeror's right to revise his/her bid, the possibility of competing bids for a company's securities, the disclosure of the result of a bid, the irrevocability of a bid and the conditions permitted.

(23) The disclosure of information to and the consultation of representatives of the employees of the offeror and the offeree company should be governed by the relevant national provisions, in particular those adopted pursuant to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees(4), Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies(5), Council Directive 2001/86/EC of 8 October 2001 supplementing the statute for a European Company with regard to the involvement of employees(6) and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation(7). The employees of the companies concerned, or their representatives, should nevertheless be given an opportunity to state their views on the foreseeable effects of the bid on employment. Without prejudice to the rules of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)(8), Member States may always apply or introduce national provisions concerning the disclosure of information to and the consultation of representatives of the employees of the offeror before an offer is launched.

(24) Member States should take the necessary measures to enable an offeror who, following a takeover bid, has acquired a certain percentage of a company's capital carrying voting rights to require the holders of the remaining securities to sell him/her their securities. Likewise, where, following a takeover bid, an offeror has acquired a certain percentage of a company's capital carrying voting rights, the holders of the remaining securities should be able to require him/her to buy their securities. These squeeze-out and sell-out procedures should apply only under specific conditions linked to takeover bids. Member States may continue to apply national rules to squeeze-out and sell-out procedures in other circumstances.

(25) Since the objectives of the action envisaged, namely to establish minimum guidelines for the conduct of takeover bids and ensure an adequate level of protection for holders of securities throughout the Community, cannot be sufficiently achieved by the Member States because of the need for transparency and legal certainty in the case of cross-border takeovers and acquisitions of control, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(26) The adoption of a Directive is the appropriate procedure for the establishment of a framework consisting of certain common principles and a limited number of general requirements which Member States are to implement through more detailed rules in accordance with their national systems and their

cultural contexts.

(27) Member States should, however, provide for sanctions for any infringement of the national measures transposing this Directive.

(28) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary, to take account of new developments on financial markets. For certain provisions, the Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts in accordance with the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC(9). The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(10) and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation. For the other provisions, it is important to entrust a contact committee with the task of assisting Member States and the supervisory authorities in the implementation of this Directive and of advising the Commission, if necessary, on additions or amendments to this Directive. In so doing, the contact committee may make use of the information which Member States are to provide on the basis of this Directive concerning takeover bids that have taken place on their regulated markets.

(29) The Commission should facilitate movement towards the fair and balanced harmonisation of rules on takeovers in the European Union. To that end, the Commission should be able to submit proposals for the timely revision of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive lays down measures coordinating the laws, regulations, administrative provisions, codes of practice and other arrangements of the Member States, including arrangements established by organisations officially authorised to regulate the markets (hereinafter referred to as «rules» ), relating to takeover bids for the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market within the meaning of Directive 93/22/EEC(11) in one or more Member States (hereinafter referred to as a «regulated market» ).

2. This Directive shall not apply to takeover bids for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption.

3. This Directive shall not apply to takeover bids for securities issued by the Member States' central banks.

Article 2

Definitions

1. For the purposes of this Directive:

(a) «takeover bid» or «bid» shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;

(b) «offeree company» shall mean a company, the securities of which are the subject of a bid;

(c) «offeror» shall mean any natural or legal person governed by public or private law making a bid;

(d) «persons acting in concert» shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;

(e) «securities» shall mean transferable securities carrying voting rights in a company;

(f) «parties to the bid» shall mean the offeror, the members of the offeror's board if the offeror is a company, the offeree company, holders of securities of the offeree company and the members of the board of the offeree company, and persons acting in concert with such parties;

(g) «multiple-vote securities» shall mean securities included in a distinct and separate class and carrying more than one vote each.

2. For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of Directive 2001/34/EC(12) shall be deemed to be persons acting in concert with that other person and with each other.

Article 3

General principles

1. For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

(b) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

(c) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

(d) false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

(e) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;

(f) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

2. With a view to ensuring compliance with the principles laid down in paragraph 1, Member States:

(a) shall ensure that the minimum requirements set out in this Directive are observed;

(b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

Article 4

Supervisory authority and applicable law

1. Member States shall designate the authority or authorities competent to supervise bids for the purposes of the rules which they make or introduce pursuant to this Directive. The authorities thus designated shall be either public authorities, associations or private bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. Member States shall inform the Commission of those designations, specifying any divisions of functions that may be made. They shall ensure that those authorities exercise their functions impartially and independently of all parties to a bid.

2. (a) The authority competent to supervise a bid shall be that of the Member State in which the offeree company has its registered office if that company's securities are admitted to trading on a regulated market in that Member State.

(b) If the offeree company's securities are not admitted to trading on a regulated market in the Member State in which the company has its registered office, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the company's securities are admitted to trading.

If the offeree company's securities are admitted to trading on regulated markets in more than one Member State, the authority competent to supervise the bid shall be that of the Member State on the regulated market of which the securities were first admitted to trading.

(c) If the offeree company's securities were first admitted to trading on regulated markets in more than one Member State simultaneously, the offeree company shall determine which of the supervisory authorities of those Member States shall be the authority competent to supervise the bid by notifying those regulated markets and their supervisory authorities on the first day of trading.

If the offeree company's securities have already been admitted to trading on regulated markets in more than one Member State on the date laid down in

Article 21(1) and were admitted simultaneously, the supervisory authorities of those Member States shall agree which one of them shall be the authority competent to supervise the bid within four weeks of the date laid down in Article 21(1). Otherwise, the offeree company shall determine which of those authorities shall be the competent authority on the first day of trading following that four-week period.

(d) Member States shall ensure that the decisions referred to in (c) are made public.

(e) In the cases referred to in (b) and (c), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Member State of the competent authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the competent authority shall be those of the Member State in which the offeree company has its registered office.

3. Member States shall ensure that all persons employed or formerly employed by their supervisory authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.

4. The supervisory authorities of the Member States for the purposes of this Directive and other authorities supervising capital markets, in particular in accordance with Directive 93/22/EEC, Directive 2001/34/EC, Directive 2003/6/EC and Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive and in particular in cases covered by paragraph 2(b), (c) and (e). Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the supervisory authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the supervisory authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

5. The supervisory authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

Provided that the general principles laid down in Article 3(1) are respected, Member States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

(i) by including such derogations in their national rules, in order to take account of circumstances determined at national level

and/or

(ii) by granting their supervisory authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.

6. This Directive shall not affect the power of the Member States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Member States to regulate whether and under which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Member State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Member States to determine the legal position concerning the liability of supervisory authorities or concerning litigation between the parties to a bid.

#### Article 5

Protection of minority shareholders, the mandatory bid and the equitable price

1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

2. Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.

3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.

4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first subparagraph in circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.

5. By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5 % or more of the voting rights in the offeree company.

Member States may provide that a cash consideration must be offered, at least as an alternative, in all cases.

6. In addition to the protection provided for in paragraph 1, Member States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

#### Article 6

Information concerning bids

1. Member States shall ensure that a decision to make a bid is made public without delay and that the supervisory authority is informed of the bid. They may require that the supervisory authority must be informed before such a decision is made public. As soon as the bid has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

2. Member States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the supervisory authority. When it is made public, the boards of the offeree company and of the offeror shall communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

Where the offer document referred to in the first subparagraph is subject to the prior approval of the supervisory authority and has been approved, it shall be recognised, subject to any translation required, in any other Member State on the market of which the offeree company's securities are admitted to trading, without its being necessary to obtain the approval of the supervisory authorities of that Member State. Those authorities may require the inclusion of additional information in the offer document only if such information is specific to the market of a Member State or Member States on which the offeree company's securities are admitted to trading and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

3. The offer document referred to in paragraph 2 shall state at least:

- (a) the terms of the bid;
- (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
- (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
- (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
- (e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;
- (f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
- (g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;
- (h) all the conditions to which the bid is subject;
- (i) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
- (j) the time allowed for acceptance of the bid;
- (k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
- (l) information concerning the financing for the bid;
- (m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
- (n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.

4. The Commission shall adopt rules for the application of paragraph 3 in accordance with the procedure referred to in Article 18(2).

5. Member States shall ensure that the parties to a bid are required to provide the supervisory authorities of their Member State at any time on request with all the information in their possession concerning the bid that is necessary for the supervisory authority to discharge its functions.

#### Article 7

Time allowed for acceptance

1. Member States shall provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. Provided that the general principle laid down in Article 3(1)(f) is respected, Member States may provide that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.

2. Member States may provide for rules changing the period referred to in paragraph 1 in specific cases. A Member State may authorise a supervisory authority to grant a derogation from the period referred to in paragraph 1 in order to allow the offeree company to call a general meeting of shareholders to consider the bid.

#### Article 8

Disclosure

1. Member States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.

2. Member States shall provide for the disclosure of all information and documents required by Article 6 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Member States on the regulated markets of which the offeree company's securities are admitted to trading and to the representatives of the employees of the offeree company and the offeror or, where there are no such representatives, to the employees themselves.

#### Article 9

Obligations of the board of the offeree company

1. Member States shall ensure that the rules laid down in paragraphs 2 to 5 are complied with.

2. During the period referred to in the second subparagraph, the board of the offeree company shall obtain the prior authorisation of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

Such authorisation shall be mandatory at least from the time the board of the offeree company receives the information referred to in the first sentence of Article 6(1) concerning the bid and until the result of the bid is made public or the bid lapses. Member States may require that such authorisation be obtained at an earlier stage, for example as soon as the board of the offeree company becomes aware that the bid is imminent.

3. As regards decisions taken before the beginning of the period referred to in the second subparagraph of paragraph 2 and not yet partly or fully implemented, the general meeting of shareholders shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.

4. For the purpose of obtaining the prior authorisation, approval or confirmation of the holders of securities referred to in paragraphs 2 and 3, Member States may adopt rules allowing a general meeting of shareholders to be called at short notice, provided that the meeting does not take place within two weeks of notification's being given.

5. The board of the offeree company shall draw up and make public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Article 6(3)(i). The board of the offeree company shall at the same time communicate that opinion to the representatives of its employees or, where there are no such representatives, to the employees themselves. Where the board of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

6. For the purposes of paragraph 2, where a company has a two-tier board structure «board» shall mean both the management board and the supervisory board.

#### Article 10

Information on companies as referred to in Article 1(1)

1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

- (a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;
- (b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;
- (c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;
- (d) the holders of any securities with special control rights and a description of those rights;
- (e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;



(f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;

(g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;

(h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;

(i) the powers of board members, and in particular the power to issue or buy back shares;

(j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;

(k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.

2. The information referred to in paragraph 1 shall be published in the company's annual report as provided for in Article 46 of Directive 78/660/EEC(13) and Article 36 of Directive 83/349/EEC(14).

3. Member States shall ensure, in the case of companies the securities of which are admitted to trading on a regulated market in a Member State, that the board presents an explanatory report to the annual general meeting of shareholders on the matters referred to in paragraph 1.

#### Article 11

##### Breakthrough

1. Without prejudice to other rights and obligations provided for in Community law for the companies referred to in Article 1(1), Member States shall ensure that the provisions laid down in paragraphs 2 to 7 apply when a bid has been made public.

2. Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).

3. Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of this Directive, shall not have effect at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures in accordance with Article 9.

4. Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of shareholders at short notice, provided that the meeting does not take place within two weeks of notification.

5. Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights. The terms for determining such compensation and the arrangements for its payment shall be set by Member States.

6. Paragraphs 3 and 4 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.

7. This Article shall not apply either where Member States hold securities in the offeree company which confer special rights on the Member States which are compatible with the Treaty, or to special rights provided for in national law which are compatible with the Treaty or to cooperatives.

#### Article 12

##### Optional arrangements

1. Member States may reserve the right not to require companies as referred to in Article 1(1) which have their registered offices within their territories to apply Article 9(2) and (3) and/or Article 11.

2. Where Member States make use of the option provided for in paragraph 1, they shall nevertheless grant companies which have their registered offices within their territories the option, which shall be reversible, of applying Article 9(2) and (3) and/or Article 11, without prejudice to Article 11(7).

The decision of the company shall be taken by the general meeting of shareholders, in accordance with the law of the Member State in which the company has its registered office in accordance with the rules applicable to amendment of the articles of association. The decision shall be communicated to the supervisory authority of the Member State in which the company has its registered office and to all the supervisory authorities of Member States in which its securities are admitted to trading on regulated markets or where such admission has been requested.

3. Member States may, under the conditions determined by national law, exempt companies which apply Article 9(2) and (3) and/or Article 11 from applying Article 9(2) and (3) and/or Article 11 if they become the subject of an offer launched by a company which does not apply the same Articles as they do, or by a company controlled, directly or indirectly, by the latter, pursuant to Article 1 of Directive 83/349/EEC.

4. Member States shall ensure that the provisions applicable to the respective companies are disclosed without delay.

5. Any measure applied in accordance with paragraph 3 shall be subject to the authorisation of the general meeting of shareholders of the offeree company, which must be granted no earlier than 18 months before the bid was made public in accordance with Article 6(1).

#### Article 13

##### Other rules applicable to the conduct of bids

Member States shall also lay down rules which govern the conduct of bids, at least as regards the following:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;
- (d) the disclosure of the results of bids;
- (e) the irrevocability of bids and the conditions permitted.

#### Article 14

##### Information for and consultation of employees' representatives

This Directive shall be without prejudice to the rules relating to information and to consultation of representatives of and, if Member States so provide, co-determination with the employees of the offeror and the offeree company governed by the relevant national provisions, and in particular those adopted pursuant to Directives 94/45/EC, 98/59/EC, 2001/86/EC and 2002/14/EC.

#### Article 15

##### The right of squeeze-out

1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 to 5 apply.

2. Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price.

Member States shall introduce that right in one of the following situations:

(a) where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company,

or

(b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95 % of the capital carrying voting rights and 95 % of the voting rights.

3. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4. If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.

5. Member States shall ensure that a fair price is guaranteed. That price shall take the same form as the consideration offered in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.

Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90 % of the capital carrying voting rights comprised in the bid.

Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.

#### Article 16

The right of sell-out

1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 and 3 apply.

2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).

3. Article 15(3) to (5) shall apply *mutatis mutandis*.

#### Article 17

Sanctions

Member States shall determine the sanctions to be imposed for infringement of the national measures adopted pursuant to this Directive and shall take all necessary steps to ensure that they are put into effect. The sanctions thus provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those measures no later than the date laid down in Article 21(1) and of any subsequent change thereto at the earliest opportunity.

#### Article 18

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Decision 2001/528/EC (hereinafter referred to as «the Committee»).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof, provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Without prejudice to the implementing measures already adopted, four years after the entry into force of this Directive, the application of those of its provisions that require the adoption of technical rules and decisions in accordance with paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them before the end of the period referred to above.

#### Article 19

Contact committee

1. A contact committee shall be set up which has as its functions:

(a) to facilitate, without prejudice to Articles 226 and 227 of the Treaty, the harmonised application of this Directive through regular meetings dealing with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Directive.

2. It shall not be the function of the contact committee to appraise the merits of decisions taken by the supervisory authorities in individual cases.

#### Article 20

Revision

Five years after the date laid down in Article 21(1), the Commission shall examine this Directive in the light of the experience acquired in applying it and, if necessary, propose its revision. That examination shall include a survey of the control structures and barriers to takeover bids that are not covered by this Directive.

To that end, Member States shall provide the Commission annually with information on the takeover bids which have been launched against companies the securities of which are admitted to trading on their regulated markets. That information shall include the nationalities of the companies involved, the results of the offers and any other information relevant to the understanding of how takeover bids operate in practice.

#### Article 21

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 20 May 2006. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the fields covered by this Directive.

#### Article 22

Entry into force

This Directive shall enter into force on the 20th day after that of its publication in the Official Journal of the European Union.

#### Article 23

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

For the European Parliament

The President

P. Cox

For the Council

The President

D. Roche

(1) OJ C 45 E, 25.2.2003, p. 1.

(2) OJ C 208, 3.9.2003, p. 55.

(3) Opinion of the European Parliament of 16 December 2003 (not yet published in the Official Journal) and Council decision of 30 March 2004 .

(4) OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(5) OJ L 225, 12.8.1998, p. 16.

(6) OJ L 294, 10.11.2001, p. 22.

(7) OJ L 80, 23.3.2002, p. 29.

(8) OJ L 96, 12.4.2003, p. 16.

(9) OJ L 191, 13.7.2001, p. 45. Decision as amended by Decision 2004/8/EC (OJ L 3, 7.1.2004, p. 33).

(10) OJ L 184, 17.7.1999, p. 23.

(11) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

(12) Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ L 184, 6.7.2001, p. 1). Directive as last amended by Directive 2003/71/EC (OJ L 345, 31.12.2003, p. 64).

(13) Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

(14) Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (OJ L 193, 18.7.1983, p.1). Directive as last amended by Directive 2003/51/EC.

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**COMMISSION STAFF WORKING DOCUMENT**

**Report on the implementation of the Directive on Takeover Bids**

## COMMISSION STAFF WORKING DOCUMENT

### Report on the implementation of the Directive on Takeover Bids

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## 1. INTRODUCTION

### 1.1. Objective of the report

The long-awaited Takeover Bids Directive<sup>1</sup> — the result of almost 20 years of work — was intended to be one of the main pillars of the economic reform boosting Europe's competitiveness.

The Commission's proposal was based on the assumption that takeovers offer a number of benefits for companies, investors and ultimately for the European economy as a whole. Takeovers may be efficient drivers of value creation. They facilitate corporate restructuring and consolidation and provide a means for companies to achieve an optimal scale, a precondition for competing effectively on an integrated European market as well as on the global market. They help in disseminating good management practices and technology, and thus improve the quality of management and corporate performance. Furthermore, takeovers discipline management and stimulate competition<sup>2</sup>. Such transactions are also beneficial for investors, allowing them to obtain a better return on their investments.

The aim of the Commission's proposal was to help exploit such benefits at European level and to promote integration of European capital markets by creating favourable conditions for the emergence of a European market for corporate control: efficient takeover mechanisms, a common regulatory framework and strong rights for shareholders, including minority shareholders.

The purpose of the directive in facilitating takeover activity through efficient takeover mechanisms required the removal of some of the main company-related obstacles permitted under national company law; these obstacles meant that takeovers could not be undertaken on equal conditions in the different Member States.

Two key provisions of the Directive — board neutrality and breakthrough — were considered to be particularly important in this respect. These rules restrict the use or availability of two different types of instruments which can be exploited by companies to thwart hostile bids (takeover defences). To take account of the differences in the takeover defences applied throughout the EU, the Commission's proposal covered both types of defences in order to ensure a level playing field between Member States.

The final text of the Directive, as adopted by the Council and the European Parliament, allows for considerable deviation at national level from its key provisions. As a consequence, member states are allowed not to impose the provisions on takeover defences at national level.

The ultimate impact of the Directive therefore depends largely on the modalities of its implementation in the Member States and on the extent to which they will use the exemption provided for in the Directive.

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<sup>1</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.

<sup>2</sup> Takeovers are not always beneficial for all (or any) of the parties involved. However, the Directive was based on the assumption that, in the long run, takeover facilitation is in the best interests of all stakeholders and the company.

This report indicates how the Directive has been, or is expected to be, transposed, focusing on those provisions which offer wide scope for the Member States to deviate from the Directive. In addition, the report analyses some of the issues which influence the effectiveness of these rules in the light of the objectives of the Directive. On the basis of this analysis preliminary conclusions are drawn on the likelihood of achieving the Directive's original objectives — particularly the aim of promoting an open market for corporate control and protecting shareholders, including minorities.

The Commission services have based this report primarily on answers provided by Member States to a questionnaire, as limited information was available on transposing laws at the time of its preparation. Although the transposition deadline expired on 20 May 2006, a significant number of Member States have not transposed the Directive. A more thorough analysis is foreseen once implementation is finalised in all the Member States.

In this report, the Commission services do not judge the quality of the transposing rules in terms of compliance with the Directive's rules<sup>3</sup>.

## **1.2. State of transposition**

At the time of publication of this report, seventeen Member States have transposed the Directive or adopted necessary framework rules<sup>4</sup>. Belgium, Cyprus, the Czech Republic, Estonia, Italy, the Netherlands, Poland and Spain have not yet (fully) aligned their legislation with the Directive<sup>5</sup>. The policy choices indicated in this report regarding these countries are based on information provided by Member States to the Commission services during the transposition process. These expectations mainly reflect the provisions of the draft laws prepared in national administrations or the official proposal submitted to the national parliament.

## **2. IMPLEMENTATION OF THE DIRECTIVE AT NATIONAL LEVEL**

### **2.1. Facilitation of takeovers**

#### *2.1.1. Board neutrality and breakthrough*

As already mentioned, some of the key issues in the context of takeover bids are the ways in which companies can apply takeover defences. These defences may prevent change of control over companies or make a takeover more difficult or costly. As a consequence, they entrench management and/or certain incumbent shareholders and render companies immune to unfriendly raiders.

There are two categories of defensive mechanisms. "Post-bid defences" are put in place once the company has become subject to a takeover bid. Such defences include share buybacks aimed at reducing the number of shares the bidder could acquire or the issue of share capital — so as to increase the cost of the bid. "Pre-bid defences" may constitute barriers to the

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<sup>3</sup> Accordingly, any reference to an implementing rule does not imply that the Commission acknowledges adequate transposition of that provision in the Member State referred to.

<sup>4</sup> Only Austria, Denmark, France, Hungary, Ireland, Luxembourg and the UK met the transposition deadline.

<sup>5</sup> Some of these countries have implemented the Directive partially (e.g. Estonia, Poland and Italy) or adopted interim measures to ensure the workability of some of the Directive's rules (the Netherlands).

acquisition of shares in the company (e.g. share transfer restrictions contained in the company's articles) or to the exercise of control in the general meeting (e.g. voting restrictions, shares with multiple voting rights).

Both categories of company-related takeover defences had to be restricted in order to facilitate takeovers and “prevent patterns of corporate restructuring within the Community from being distorted by arbitrary differences in governance and management cultures”<sup>6</sup>.

The board neutrality rule relates to post-bid defences. It provides that during the bid period the board of the target company must obtain prior authorisation from the general meeting of shareholders before taking any action which may result in the frustration of the bid<sup>7</sup>. This rule may facilitate takeover activity by limiting the board's power to raise obstacles to hostile takeovers to the detriment of shareholders' interests. It safeguards shareholders against opportunistic behaviour of the incumbent management and ensures that it is indeed the owners who decide on the future of the company.

The breakthrough rule<sup>8</sup> neutralises pre-bid defences during a takeover. This rule is considered to be a radical tool to facilitate takeovers as it makes certain restrictions (e.g. share transfer or voting restrictions) inoperable during the takeover period and allows a successful bidder<sup>9</sup> to easily remove the incumbent board of the target company and modify its articles of association. Based on the principle of proportionality between capital and control, this rule overrides multiple voting rights at the general meeting authorising post-bid defensive measures as well as at the first general meeting following a successful takeover bid.

### 2.1.2. *Optional arrangements*

The final compromise on the Directive subjected the board neutrality and breakthrough rules to complex optional arrangements<sup>10</sup>. Member States are allowed to choose between imposing these rules or not. However, if a Member State decides not to make them mandatory, it cannot prevent companies from applying these rules on a voluntary basis. The decision on voluntary application of the rules in turn has to be adopted by the general meeting and can be reversed in the same way.

A further element of the final compromise is the so-called reciprocity exception<sup>11</sup>, which allows Member States to permit companies applying one or both of these rules to disapply them, and thus to “retaliate” against a bidder who is not subject to the same rules. The reciprocating power can be used only if it is authorised by both the Member State and the general meeting<sup>12</sup> of the target company.

The following sections present the policy choices adopted by Member States when implementing the optional provisions.

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<sup>6</sup> Recital 3

<sup>7</sup> Article 9

<sup>8</sup> Breakthrough is referred to in this report as the provisions set out in Article 11.

<sup>9</sup> Who has acquired 75% of the voting capital

<sup>10</sup> Article 12

<sup>11</sup> Article 12(3)

<sup>12</sup> The general meeting must grant the authorisation no earlier than 18 months before the bid was made public.



### 2.1.3. Implementation of the board neutrality rule

Eighteen Member States in total impose (or are expected to impose) the application of the board neutrality rule. However, the board neutrality obligation is not new in any of these Member States, except one. Five of these Member States have introduced (or intend to introduce) the reciprocity exception, which may hold back the emergence of an active takeover market, as opposed to the original objective of the Directive.

- (a) In thirteen among the fourteen Member States where the Directive has already been transposed, board neutrality is not a new concept. All these Member States had the same or a similar board neutrality obligation in place before transposition<sup>13</sup>. It has to be acknowledged, however, that the implementation has contributed to clarifying or even strengthening the role of shareholders in some Member States. These benefits need to be analysed further.
- (b) However, in five of these thirteen Member States, the reciprocity exception has been introduced (France, Greece, Hungary, Portugal and Slovenia). Management boards which, before the transposition of the Directive had been required to abstain from taking any measures likely to frustrate the takeover bid during the bid period without the approval of shareholders (or their powers have been significantly restricted in this regard) are now permitted to do so under certain circumstances. Thus, these Member States have increased the managements' power to take frustrating measures without the approval of shareholders on the proposed measure during the bid period. This development will very likely hold back the emergence of an open takeover market, rather than promote it.
- (c) Although in the majority of these five Member States, shareholders need to regularly (every 18 months) give prior authorization to the management to apply takeover defences in a reciprocity situation, they will lose the possibility to have an immediate check on the validity of the proposed defensive measure during the bid period (where such a right existed before transposition). Reciprocity therefore may increase the likelihood of potential abuse by management to the detriment of shareholders' interests in these Member States.
- (d) Amendments to national law introduced parallel to the implementation of the Directive, such as the new French warrants may also potentially contribute to a slowdown in the emergence of a market in corporate control.
- (e) As to Member States which currently have board neutrality in place but have not transposed the Directive by the time of the publication of this report it should be noted that Cyprus and Spain informed the Commission about their intention to implement the Directive by introducing reciprocity. Italy might even decide not to impose the application of the board neutrality rule, although it is currently mandatory there.

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<sup>13</sup> In some of these Member States, however, there were only principles in place or board neutrality was regulated only at self-regulatory level.

No Member State has chosen (or intends) to impose the board neutrality rule where it was not (fully) applied before transposition, except for Malta<sup>14</sup>.

Some Member States had no strict board neutrality obligation before the implementation of the Directive. All these Member States have decided to introduce the rule only on an optional basis, except for Malta. The situation in terms of the legal obligations in these countries compared to previous or existing rules will therefore remain unchanged. One has to note, however, that in some of those Member States which do not impose (or intend to impose) a strict board neutrality rule, management are to some extent limited in their room for manoeuvre as regards the use of post-bid defences<sup>15</sup>.

#### 2.1.4. *Implementation of the breakthrough rule*

As explained above, the breakthrough rule is an efficient tool designed to make robust takeover defences contained in the target's articles of association or in shareholders' pacts unenforceable against a bidder during the bid period and to facilitate takeovers by lifting incumbent shareholders' disproportional control rights.

In terms of legal obligations, the way in which Member States have implemented this rule is unlikely to significantly change the status quo, for the following reasons.

The vast majority of Member States have not imposed (or are unlikely to impose) the breakthrough rule, but have made it optional for companies.

Breakthrough is expected to be imposed only by the Baltic States. None of the other countries will oblige their companies to apply this provision in full. Therefore a mere 1% of listed companies in the EU will apply this rule on a mandatory basis<sup>16</sup>.

Hungary had a partial breakthrough rule before transposition, which has been eliminated.

However, some Member States have already eliminated multiple voting securities and/or other pre-bid defences, and the structure of the companies in these Member States is therefore more open to takeovers<sup>17</sup>. Others lifted some of the barriers referred to in the breakthrough rule before transposition and this partial breakthrough rule continues to apply<sup>18</sup>. Portugal imposes the rule on a limited number of companies<sup>19</sup>.

Given that only a few Member States intend to impose the application of the rule, its takeover-facilitating effect will depend almost exclusively on whether or not companies will apply the rule on a voluntary basis. In this respect it is worth noting the following:

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<sup>14</sup> Those Member States where shareholder approval for post-bid defences was not mandatory before transposition (Denmark, Germany and Luxembourg) have chosen not to apply the rule (except for Malta), and allow the use of reciprocity. Among those countries that have not yet implemented the Directive, Belgium, the Netherlands and Poland intend to go in the same direction.

<sup>15</sup> E.g. Germany, Belgium, the Netherlands. The limitations are expected to remain valid after transposition in these Member States.

<sup>16</sup> These companies represent less than 1% in terms of market capitalisation.

<sup>17</sup> E.g. Germany.

<sup>18</sup> France and Italy.

<sup>19</sup> Portugal mandates the application of the rule to companies in which the approval of a supermajority (more than 75% of the votes) is required to change the articles of association.

- Voluntary application of the breakthrough rule is made conditional upon the approval of those benefiting from disproportionate or special rights or of a large proportion of shareholders in certain Member States. This makes the application of the rule on a voluntary basis more difficult<sup>20</sup>.
- The breakthrough rule does not neutralise all pre-bid defences. A company applying it may continue to use other robust defences to thwart hostile takeovers<sup>21</sup>. Companies having acquisition plans may therefore choose to apply it so as to avoid reciprocity and continue to be protected against takeovers once they become targets. Furthermore, the fact that the breakthrough rule has a limited coverage may induce companies to switch to other available pre-bid defences not covered by it.
- If a company decides to apply the breakthrough rule on a voluntary basis, such decision can immediately be reversed as soon as the bidder becomes a target. The reversibility of the company's decision may even create confusion on the market<sup>22</sup>.

#### 2.1.5. *Reciprocity*

As indicated in Annex 1, the majority of Member States have allowed companies to reciprocate against a bidder not subject to the board neutrality and/or breakthrough rules.

The endorsement of the reciprocity rule is justified by Member States in several ways. Member States which applied the board neutrality rule before transposition have presumably opted for reciprocity in order to ensure a "level playing field" with those countries which do not apply the rule and thus to give management greater room for manoeuvre against foreign raiders. One of the justifications for such a seemingly "protectionist" stance is the fear of regulatory competition. Such reasoning can be found in the preparatory works of the French transposing legislation, where it is stated that "an imbalance as to the powers of the management in a period of cross-border consolidation could favour those countries where the management's autonomy is not restricted. Such competition could even come from European countries. (...) there is a risk that such an imbalance plays globally to the disadvantage of the development of French corporate seats and favours those countries where the management has wider powers in a takeover context".

Another justification for the introduction of this rule in those Member States where board neutrality did not apply before transposition was to provide companies with all the flexibility the Directive offers.

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<sup>20</sup> Although companies are allowed to apply the breakthrough rule on a voluntary basis by adopting a resolution at the general meeting, such a resolution can be conditional upon the approval of a certain percentage of those affected by such a resolution (i.e. shareholders with multiple vote securities, where such multiple votes are neutralised during and after a successful bid). Austria requires approval of the person enjoying a right to appoint members of the supervisory board. Denmark and Slovakia make such a decision conditional on the approval of two-thirds of those affected by the resolution. In the UK, rights of shareholders in a particular class may not be overridden unless three-quarters of that class consent, etc. In some countries, no additional resolution is required (e.g. the Netherlands). Sweden made it particularly difficult for companies to adopt such a resolution by making its validity subject to the approval of not less than nine-tenths of all the shareholders in the company.

<sup>21</sup> E.g. non-voting or double vote shares, granting veto rights in respect of a change to the articles of association, granting special rights to an entity which is not a shareholder.

<sup>22</sup> To address these concerns, some Member States have imposed limitations on the reversibility of the decision (e.g. UK, Malta).

Furthermore, reciprocity is considered to be an incentive for companies which have acquisition plans to apply the rules of the Directive voluntarily in order to be able to benefit from the liberal regime abroad. However, this argument is undermined by the fact that the company's decision to apply voluntarily the board neutrality or breakthrough rule is reversible.

Thus, taking into account the modalities of implementing the reciprocity rule, the main "benefit" of reciprocity seems to be the fact that it gives management new powers to take frustrating action and makes it easier for companies to disapply the board neutrality or breakthrough rule<sup>23</sup>.

#### *2.1.6. Squeeze-out*

The right to squeeze out minority shareholders allows a bidder who has acquired a very large part<sup>24</sup> of the share capital to acquire the outstanding shares. Forcing minorities out of the company liberates the bidder from costs and risks which the continued existence of minorities could trigger. This is an efficient tool for bidders to finalise a takeover, thus making takeover bids more attractive. Takeover-related squeeze-out has been or will be introduced for the first time in the law of a number of Member States<sup>25</sup> and thus will help to facilitate such transactions within the EU.

In this respect, it is also important to note that the Directive offers at the same time guarantees to minority shareholders.

## **2.2. Protection of minority shareholders**

### *2.2.1. Mandatory bid*

Minority shareholders are protected in a number of ways under the Directive. The mandatory bid rule provides that if a person acquires control over a company, he/she is obliged to make a full takeover bid for all the remaining voting securities of this company at an equitable price<sup>26</sup>. This rule protects minority shareholders by granting them a right to sell their shares in the event of a change of control as well as the benefit of the premium paid for the controlling stake. The introduction of the mandatory bid obligation and/or the equitable price rule in those Member States where such a rule did not apply before transposition and the setting of a threshold lower than the one applied before transposition will increase minority shareholders' rights in some Member States.

The threshold above which control is deemed to have been acquired is defined at national level. Annex 2 gives an overview of the control thresholds applied in the Member States<sup>27</sup>.

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<sup>23</sup> In some Member States a lower majority requirement applies for a reciprocity decision than the one required for reversing the decision to voluntarily apply the board neutrality or breakthrough rule, e.g. Germany, the Netherlands, Greece, Luxembourg).

<sup>24</sup> 90% of voting capital and voting rights in most Member States. The squeeze-out and sell-out thresholds are listed in Annex 4.

<sup>25</sup> E.g. Greece, Spain, Luxembourg, Malta, Slovenia, Slovakia.

<sup>26</sup> Article 5.

<sup>27</sup> These thresholds vary from 25% to 66% of voting rights. Most Member States have set the threshold at 30%.

Member States have widely used the flexibility provided by the Directive to derogate from the Directive's provisions in order to maintain their exceptions from the mandatory bid rule<sup>28</sup>. Some of these exceptions are necessary to ensure that this obligation applies only where the holding actually confers control, while others are more far-reaching. Furthermore, in some Member States, supervisory authorities seem to have extensive powers to grant exceptions from the rule. Exceptions and wide-ranging discretionary power can undermine the effectiveness of the protection provided by such a rule.

### 2.2.2. *Sell-out*<sup>29</sup>

The sell-out right provides minority shareholders with a counterpart to the squeeze-out right: it allows them to force the majority shareholder to buy their shares at a fair price. Such a rule protects minorities from abuse by the majority shareholder of his dominant position, where such protection is not available below the sell-out threshold in national law. Furthermore, the obligation to fairly compensate minorities may offer them a better price for their shares than the one set by a potentially illiquid market.

The takeover-related sell-out rule has been (or will be) introduced in a large number of Member States<sup>30</sup> for the first time through the transposition of the Directive. Consequently it strengthens minority protection in the EU.

## 3. CONCLUSION

It is difficult to predict the Directive's effects. Some of its provisions are likely to bring benefits in terms of better protection of minority shareholders. Others may have potential indirect effects. The incorporation of the Directive's rules on takeover defences into national laws on a voluntary basis could set a benchmark. Shareholders may push for the voluntary provisions to be applied by companies. The directive's rules on disclosure of takeover defences will help increase transparency, thereby facilitating investor's decisions. In the longer term this may result in a gradual increase in corporate governance standards and a more open market.

However, there is a risk that the board neutrality rule, as implemented in Member States will hold back the emergence of a European market for corporate control, rather than facilitate it. It is unlikely that the breakthrough rule, as implemented in Member States would bring any significant benefits in the short term.

A large number of Member States have shown strong reluctance to lift takeover barriers. The new board neutrality regime may even result in the emergence of new obstacles on the market of corporate control. The number of Member States implementing the Directive in a seemingly protectionist way is unexpectedly large.

Taking into account the potential negative effects of the new takeover rules on the European market, the Commission intends to closely monitor the way in which the Directive's rules are applied and work in practice, and to evaluate their effects. Furthermore, the Commission will

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<sup>28</sup> See Annex 3.

<sup>29</sup> Articles 15 and 16

<sup>30</sup> E.g. Austria, Belgium, Estonia, Germany, Greece, the Netherlands, Malta, Spain, Luxembourg, Slovakia, Slovenia

analyse the reasons why Member States are so reluctant to endorse the fundamental rules of the Directive. In the light of this evaluation, the revision of the Directive scheduled for 2011 may, if necessary, be brought forward.

## Annex 1

Transposition of the Directive on takeover bids in the EU, January 2007						
	Transposition of the Directive	Obligation to apply the board neutrality rule	Obligation to apply the breakthrough rule	Reciprocity	Number of listed companies <sup>31*</sup>	Capitalisation in € million*
<b>Austria</b>	yes	yes	no	no	93	121803
<b>Belgium</b>	no	no	no	yes	136	266302
<b>Cyprus</b>	no	yes	no	yes	140	8442
<b>Czech Republic</b>	no	yes	no	no	31	31466
<b>Denmark</b>	yes	no	no	yes	180	approx. 156000
<b>Estonia</b>	no	yes	yes	no	16	approx. 3000
<b>Finland</b>	yes	Expectedly yes <sup>32</sup>	no	no	138	approx. 214000
<b>France</b>	yes	yes	no	yes <sup>33</sup>	647	1676585
<b>Germany</b>	yes	no	no	yes	650	1097336
<b>Greece</b>	yes	yes	no	yes	289	133115
<b>Hungary</b>	yes	yes	no	yes	44	26162
<b>Ireland</b>	yes	yes	no	no	55	105381
<b>Italy</b>	no	no	no	yes	284	732654
<b>Latvia</b>	yes	yes	yes	no	40	approx. 2000
<b>Lithuania</b>	yes	yes	yes	no	43	approx. 6000
<b>Luxembourg</b>	yes	no	no	yes	37	54941
<b>Malta</b>	yes	yes	no	no	13	3699
<b>The Netherlands</b>	no	no	no	yes	223	587758
<b>Poland</b>	no	no	no	yes	246	91358
<b>Portugal</b>	yes	yes	no	yes	47	69189
<b>Slovakia</b>	yes	yes	no	no	214	3880
<b>Slovenia</b>	yes	yes	no	yes	107	8092
<b>Spain</b>	no	yes	no	yes	224	862941
<b>Sweden</b>	yes	yes	no	no	269	approx. 387000
<b>UK</b>	yes	yes	no	no	2876	2703364

\* August 2006.

<sup>31</sup> This number refers to domestic companies (i.e. companies that are listed and registered in the same Member State), except for companies listed on the OMX Nordic Exchange (Sweden, Finland, Denmark, Estonia, Latvia, Lithuania). Therefore in these latter cases the numbers do not separately identify companies registered in other countries for which the applicable law is the one of the place of registration.

<sup>32</sup> Finland has informed the Commission that they opted into the board neutrality rule. However there is no obligation at the level of law in Finland on shareholder approval of post-bid defensive measures. Finland claims that further self-regulatory rules will complete the existing provisions to remedy to this situation. The Commission has not been informed that such rules have been adopted yet.

<sup>33</sup> Only regarding the board neutrality rule.

## Annex 2

Country	Conditions triggering the obligation to make a mandatory bid
Austria	<ul style="list-style-type: none"> <li>• Direct or indirect control through acquisition of more than 30% of voting rights</li> <li>• Indirect control through other rights conferring significant influence in the target company</li> <li>• Creation of controlling stake through creeping-in: acquisition of further 2% of voting rights to a controlling stake within 12 months, if the bidder does not have the majority of voting rights.</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>• Acquisition of 30% of voting rights</li> <li>• Indirect acquisition of control of the target under certain circumstances.</li> </ul>
Czech Republic	Acquisition of 40% of voting rights.
Cyprus	Acquisition of 30% of voting rights.
Denmark	<p>Acquisition of shares if the acquirer:</p> <ul style="list-style-type: none"> <li>• holds the majority of voting rights in the company,</li> <li>• becomes entitled to appoint or dismiss a majority of the members of the board of directors,</li> <li>• obtains the right to exercise a controlling influence over the company on the basis of the articles of association or any agreement with the company in general,</li> <li>• controls the majority of voting rights pursuant to an agreement with other shareholders, or</li> <li>• is able to exercise a controlling influence over the company and holds more than one-third of the voting rights.</li> </ul>
Estonia	<p>The mandatory bid obligation is triggered when a person has gained dominant influence over the target company, and thus</p> <ul style="list-style-type: none"> <li>• holds the majority of the votes in the company, or</li> <li>• has the right to appoint or remove the majority of members of the supervisory board or management board, or</li> <li>• controls alone the majority of votes pursuant to the agreement entered into with other shareholders.</li> </ul>
Germany	Indirect or direct acquisition of control, which is defined as 30% of the voting rights of the target company. This obligation is triggered if the threshold is overstepped by shareholders involved in a concert party arrangement even if such an arrangement is not linked to the acquisition of shares in the target company.
Greece	<ul style="list-style-type: none"> <li>• Acquisition of more than one-third of the voting rights or</li> <li>• Acquisition of further 3% or more of the voting rights within one year in addition to holding between one-third and 50% of the voting rights.</li> </ul>
Finland	Acquisition of 30% and 50% of the voting rights.
France	<ul style="list-style-type: none"> <li>• Acquisition of more than 33,33% of the voting capital or of voting rights and</li> <li>• Acquisition of at least 2% more of the voting capital or voting rights within less than one year by persons holding between 33% and 50% of the voting capital or voting rights.</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Acquisition of more than 25% of voting rights, provided that no other shareholder holds more than 10% of the voting rights of the company.</li> <li>• Acquisition of 33% of voting rights.</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>• Acquisition of 30% of voting rights.</li> <li>• Consolidation of existing control position.</li> </ul>
Italy	<p>According to the law currently in force the obligation to make a bid arises under the following conditions:</p> <ul style="list-style-type: none"> <li>• Direct or indirect acquisition of more than 30% of the company's capital represented by shares giving the right to vote in shareholders' meeting on resolutions concerning the appointment, removal or liability of directors or members of the supervisory board.</li> <li>• Acquisition of more than 3% within a year of the company's capital represented by shares giving the right to vote in shareholders' meeting on resolutions concerning the appointment, removal or liability of directors or members of the supervisory board by a person already holding, directly or indirectly, more than 30% of the company's capital represented by such shares without having the majority of voting rights in the ordinary shareholders' meeting.</li> </ul> <p>The draft implementing rules propose to maintain such conditions.</p>
Latvia	Acquisition of 50% of voting rights.
Lithuania	Acquisition of 40% or more of voting rights
Luxembourg	Direct or indirect acquisition of 33,33% of voting rights.
Malta	Direct or indirect acquisition of 50% plus one of the voting rights.



The Netherlands	Acquisition of 30% of voting rights.
Poland	Acquisition of more than 66% of the voting rights.
Portugal	Acquisition of one-third of voting rights (if presumption of control is not rebutted) and 50% of voting rights.
Spain	The draft law provides for a 30% voting rights threshold.
Slovakia	Acquisition of 33% of voting rights.
Slovenia	Acquisition of 25% of the voting rights.
Sweden	<ul style="list-style-type: none"> <li>• Acquisition of 30% of voting rights or</li> <li>• Increase of 30% holding if a person attained a 30% shareholding as a result of measures taken by the company or another shareholder.</li> </ul>
UK	<ul style="list-style-type: none"> <li>• Acquisition of an interest in shares which carry 30% or more of the voting rights of a company. An interest in shares arises: through ownership of the shares; through having the right to exercise or direct the exercise of the voting rights attaching to the shares; through having the right or option to acquire the shares or call for their delivery or being under an obligation to take delivery of them by virtue of any agreement to purchase, option or derivative; and being party to a derivative whose value is determined by reference to the price of the shares and which results, or may result in, his having a long position in them.</li> <li>• A person (together with persons acting in concert) has an interest in shares carrying between 30% and 50% of the voting rights of a company and acquires an interest in other shares which increase the percentage of voting rights in which he is interested.</li> </ul>

## Annex 3

Country	Derogations provided at the level of law, derogatory powers of the supervisory body/authority
Austria	<p><u>Derogations provided at the level of law:</u> The takeover code provides for exceptions from the mandatory bid obligation (e.g. when the shareholder subject to the obligation cannot exert a significant influence on the target company). Furthermore, the mandatory bid threshold can be lowered in the company's articles of association.</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemption from immediate publication of decision to make an offer and the publication of the offer in the prescribed deadline.</p>
Belgium	<p><u>Derogations provided at the level of law:</u> The draft executing decree provides for certain exceptions from the mandatory bid obligation (e.g. changes of control within the same corporate group, inheritance, rescue operations).</p> <p><u>Derogatory powers of the supervisory authority:</u> The draft law grants the supervisory authority the power to waive transposing rules, in order to take account of specific circumstances.</p>
Czech Republic	<p><u>Derogations provided at the level of law:</u> The definition provided in the draft law for the equitable price to be paid in case of a mandatory bid deviates from the rule of the Directive. In addition to the requirement of the Directive to define the equitable price as the highest price paid by the offeror over a certain period prior to the bid, the Czech draft law provides that the price should reflect the value of the securities and should not be lower than the weighted average price of the security over a certain period prior to the bid. The fairness of the price is subject to expert valuation. Furthermore, the draft law provides for exceptions from the mandatory bid obligation (e.g. inheritance).</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemptions from the mandatory bid obligation (e.g. temporary stepping over of the mandatory bid threshold, increase of capital under certain circumstances, changes of control within the same group).</p>
Cyprus	<p><u>Derogatory powers of the supervisory authority:</u> The draft takeover law sets out derogations from certain obligations which are granted by the supervisory authority on request. These obligations are as follows: mandatory bid, the obligation to post the offer document to all shareholders, equal treatment of all shareholders and certain prohibitions following a public offer.</p>
Denmark	<p><u>Derogations provided at the level of law:</u> The mandatory bid obligation does not apply to acquisitions by inheritance, gift, debt enforcement and transfer within the same group.</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exception from certain provisions, e.g. offer period, mandatory bid obligation.</p>
Estonia	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemption from the mandatory bid obligation (e.g. change of control within the same corporate group, the dominant influence was gained for the purpose of carrying out a merger or division, temporary acquisition of shares for the purpose of further transfer, etc.).</p>
Germany	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may release the offeror from the obligation to publish and submit a mandatory bid insofar as this seems justified having regard to the interests of the offeror and the shareholders of the target company, the way in which control was obtained, the shareholder structure of the company, the actual possibility of exercising control or the fact that the share in the target company is reduced below the control threshold subsequent to the acquisition of control.</p> <p>Furthermore, the supervisory authority permits voting rights to be disregarded under certain circumstances (e.g. inheritance, change of legal form).</p>
Greece	<p><u>Derogations provided at the level of law:</u> The law provides for exceptions from the mandatory bid obligation (temporary stepping over of the mandatory bid threshold, another person holds a higher percentage of the voting rights, securities have been acquired through the exercise of pre-emption rights during share capital increase, merger between affiliated companies, privatisation, etc.).</p>
Finland	<p><u>Derogations provided at the level of law:</u> The law provides for exceptions from the mandatory bid obligation (e.g. another person holds a higher percentage of the voting rights, the mandatory bid threshold has been stepped over as a result of measures taken by the target company or by another shareholder).</p> <p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exemptions from certain rules, e.g. offer price and mandatory bid obligation.</p>
France	<p><u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemptions from the mandatory bid obligation (merger authorised by the shareholders in general meeting, changes of control within the same corporate group, changes of control in order to save a company from bankruptcy, etc.)</p>

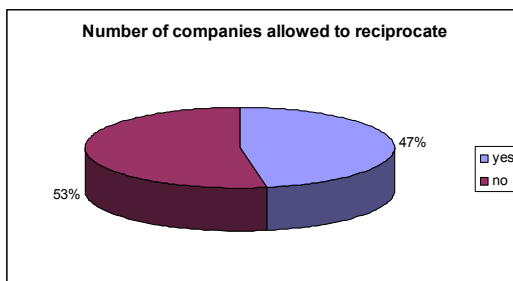
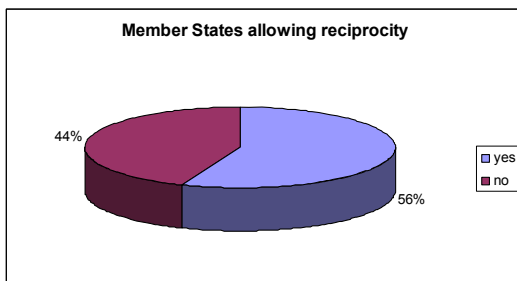
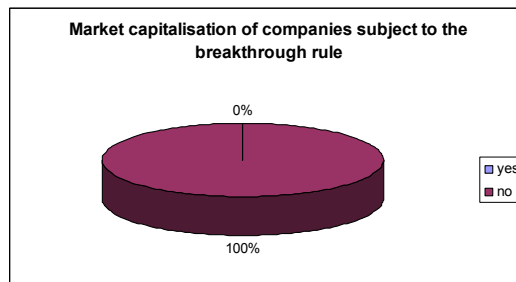
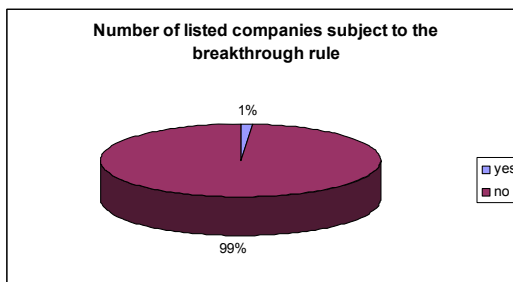
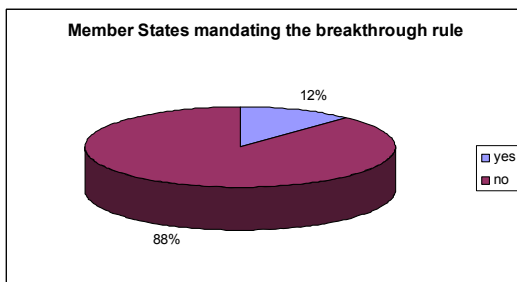
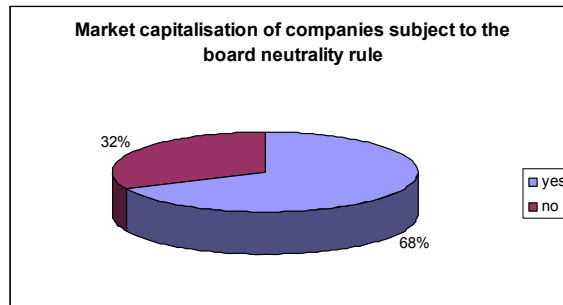
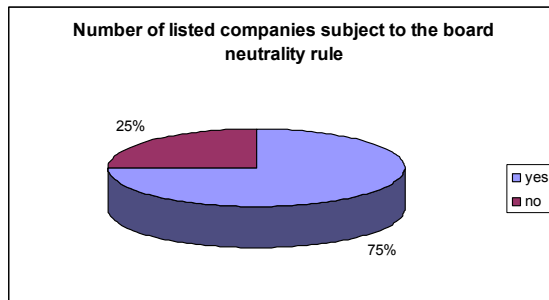
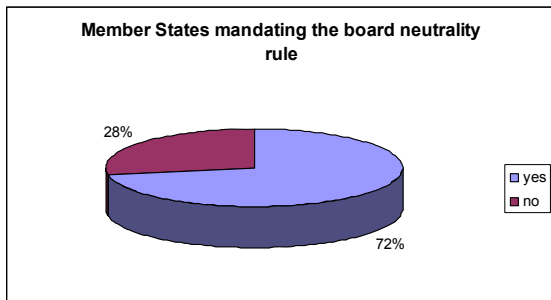
Hungary	-
Ireland	<u>Derogatory powers of the supervisory authority:</u> The supervisory body has power to provide for derogations and waivers in the rules in relation to particular matters having regard to exceptional circumstances and "in other circumstances".
Italy	<u>Derogations provided at the level of law:</u> The law currently in force provides for exceptions from the mandatory bid obligation (e.g. voluntary partial bid addressed to all shareholders for at least 60% of the voting capital, transactions aimed at rescuing companies in crisis, changes of control within the same corporate group, transactions of a temporary nature, mergers). The draft implementing rules propose to maintain such exceptions.
Latvia	-
Lithuania	<u>Derogations provided at the level of law:</u> The law on the securities market provides for certain exceptions from the mandatory bid rule (e.g. reorganisations under certain circumstances, stepping over the threshold in accordance with the rules on restructuring of enterprises, change of control within the same corporate group).
Luxembourg	<u>Derogatory powers of the supervisory authority:</u> The supervisory authority may grant exceptions under specific circumstances of certain implementing rules (mandatory bid, immediate publication of the decision to make a bid, contents of offer document, etc.).
Malta	<u>Derogatory powers of the supervisory authority:</u> The supervisory authority has power to grant exemptions from the mandatory bid obligation (control was obtained as a result of the reduction of the offeree's share capital, merger or division, transactions of a temporary nature, acquisition of control as a result of the exercise of pre-emption rights in case of increase of capital, etc.).
The Netherlands	<u>Derogations provided at the level of law:</u> The draft rules provide for derogations regarding the mandatory bid obligation. In the following situations no (immediate) obligation to launch a takeover bid will arise: preference shares held by a foundation, share certificates held by a foundation, restructuring within a group, change of control through inheritance or marriage, bankruptcy, shares held by a custodian which votes according to instructions.
Poland	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. change of control within the same group, in case of a bankruptcy or recovery procedure, inheritance)
Portugal	<u>Derogations provided at the level of law:</u> A subsequent bid is not mandatory if the acquisition of the voting rights at the level of the threshold is made i) through a previous general takeover bid; ii) through an insolvency process; iii) through the merger of companies, if the decision of the relevant shareholders explicitly refers that the merger operation would give rise to a mandatory bid.
Spain	<u>Derogations provided at the level of law:</u> Exceptions to the mandatory bid rule are likely to be maintained (e.g. unintentional acquisition of control, acquisition following a decision of the shareholders of the offeree company, certain operations in the context of bankruptcy procedures, operations within the same group)
Slovakia	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. changes of control within the same corporate group, inheritance).
Slovenia	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (e.g. inheritance, merger or division if the purpose of the operation was not the takeover of the target company, reduction of the capital of the offeree company).
Sweden	<u>Derogations provided at the level of law:</u> The rules provide for derogations regarding the mandatory bid obligation (temporary acquisition).  <u>Derogatory powers of the supervisory authority:</u> The supervisory authority may, under certain circumstances, waive the mandatory bid rule (e.g. inheritance) and the board neutrality rule (e.g. completion of an operation started prior to the bid).
UK	<u>Derogations provided at the level of law:</u>  Specific derogations from rules are included in the Takeover Code where necessary to facilitate a pragmatic approach to long-established practice. These include:  An exception from the obligation to draw up an offer document once an offeror has announced a decision to make a bid if, subsequent to the announcement of this decision a competing offeror has announced a higher bid and an exception from the board neutrality rule that requires the board of the offeree company to obtain the prior authorisation of the general meeting before taking any frustrating action, if shareholders holding more than 50% of the voting rights approve the proposed action.

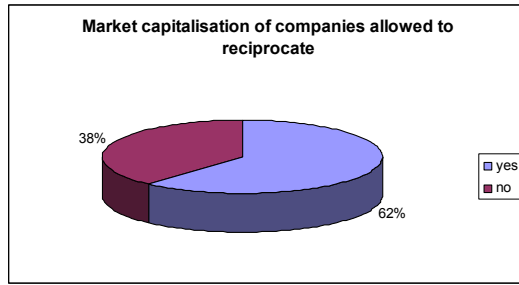
	<p>There are also certain exceptions from the mandatory bid rule (issue of new securities as consideration for an acquisition (provided approval is given by shareholders), rescue operation, acquisition of shares as a result of inadvertent mistake, holders of shares carrying 50% of the voting rights state that they would not accept the offer, etc.).</p> <p><u>Derogatory powers of the supervisory authority:</u> The Takeover Panel may derogate or grant a waiver to a person from the application of a rule where the Panel considers that the particular rule would operate unduly harshly or in an unnecessarily restrictive or burdensome or otherwise inappropriate manner.</p>
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## Annex 4

Country	Squeeze-out, sell-out threshold following a takeover bid
Austria	90 % of voting capital and voting rights
Belgium	95% of voting capital and voting rights
Czech Republic	90% of voting capital and voting rights
Cyprus	90% of voting capital and voting rights
Denmark	90% of shares and voting rights
Estonia	The draft amendments ensuring transposition of the Directive provide for a threshold of 90% of voting capital and voting rights
Germany	95% of the capital carrying voting rights
Greece	90 % of voting rights
Finland	90% of capital and voting rights
France	95% of capital or voting rights
Hungary	90 % of voting rights
Ireland	90% of voting capital and voting rights
Italy	The draft implementing rules provide for 95% of the voting capital and voting rights.
Latvia	Squeeze-out: 95%, sell-out: 90% of voting rights
Lithuania	Squeeze-out: 95% of voting capital and voting rights Sell out: 95% of voting rights
Luxembourg	Squeeze-out: 95% of voting capital and voting rights, sell-out: 90% of voting rights
Malta	90% of voting capital and voting rights
The Netherlands	95% of voting capital and voting rights
Poland	90% of capital and voting rights
Portugal	90% of capital and voting rights and 90% of the voting rights subject to the bid
Spain	90% of the voting capital and of the voting rights subject to the bid
Slovakia	95% of the voting capital and voting rights
Slovenia	90% of the voting capital and of the voting rights
Sweden	90% of capital
UK	Squeeze-out: 90% of shares to which the offer relates and of voting rights Sell-out: 90% of the voting shares in the company and of the voting rights

Annex 5





Brussels, 27 February 2007

## **Corporate governance: Member States reluctant to give a greater say to shareholders in the context of takeover bids, says Commission report**

*The European Commission has published a report on Member States' implementation into national law of the Directive on takeover bids (2004/25/EC). The Directive allows Member States to opt out of certain key provisions and to exempt companies from those provisions if the bidder is not subject to the same obligations. The Commission's report shows that in many cases Member States have made use of these options and exemptions. The report concludes that this could bring about new barriers in the EU takeover market, rather than eliminate existing ones.*

Internal Market and Services Commissioner Charlie McCreevy said: "Too many Member States are reluctant to lift existing barriers, and some are even giving companies yet more power to thwart bids. The protectionist attitude of a few seems to have had a knock-on effect on others. If this trend continues, then there is a real risk that companies launching a takeover bid will face more barriers, not fewer. That goes completely against the whole idea of the Directive."

The Directive on takeover bids aims to create favourable regulatory conditions for takeovers and to boost corporate restructuring within the EU.

However, the Directive's main provisions, which would restrict the possibilities for companies to defend themselves against bidders – for example by subjecting "poison pills" to shareholder approval or by making share transfer restrictions unenforceable against the bidder – are not mandatory. Furthermore, the Directive allows Member States to exempt their companies from applying these provisions if the bidder is not subject to the same obligations.

A large number of Member States have used these options and exemptions, and some have even strengthened the role of the management with regard to using takeover defences against a bidder. The Commission intends to closely monitor the way in which the Directive works in practice.

The report is available at:

[http://ec.europa.eu/internal\\_market/company/takeoverbids/index\\_en.htm](http://ec.europa.eu/internal_market/company/takeoverbids/index_en.htm)





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.12.2007  
SEC(2007) 1707

Part I

**COMMISSION STAFF WORKING DOCUMENT**

**Impact assessment on the Directive on the cross-border transfer of registered office**

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## 1. EXECUTIVE SUMMARY

The need to address the legal issues arising from the cross-border transfer of a company's registered office within the EU was highlighted in public consultations carried out by the Commission in 1997 and 2002, as well as in the 2002 report of the High-Level Group of Company Law experts, which paved the way for the 2003 Commission Action Plan on modernising company law and enhancing corporate governance in the EU. It was flagged as an important initiative of the 2005 Community Lisbon Programme for growth and jobs. The specific question of whether and how the EU could act to address the issue of the transfer of registered office was again submitted to public consultation in 2005. The Parliament, in its Resolutions of 2006 on the Commission legislative and work programme and on recent developments and prospects in relation to company law<sup>1</sup> as well as the Court of Justice, in its *Daily Mail* case, have also highlighted the need for a legislative action on this matter.

As the law stands in most Member States, moving a registered office would typically imply the winding-up of the company in Member State A and its re-incorporation in Member State B. Given the high costs involved, the time involved and the related administrative burden, with sometimes more than 35 procedural steps to overcome, this hardly ever occurs and European companies are, in practice, deprived of the possibility of moving their place of registration within the EU.

Some Community measures, in particular the European Company Statute and the European Cooperative Society, already grant the right of transfer of registered office, however, this possibility is available only to companies established as *Societas Europaea* (SE) or a European Cooperative Society. The practice to date has shown that not many companies decide to transfer their registered office on the basis of the SE Statute<sup>2</sup>.

This impact assessment reviews the nature and scope of the problems raised by the absence of cross-border transfers of companies' registered offices within the EU and identifies policy options to address the situation at EU level.

The twin objectives of any initiative on this matter should be to improve the efficiency and competitive position of European companies by providing them with the possibility of transferring their registered office more easily and, hence, choose a legal environment that best suits their business needs, while at the same time guaranteeing the effective protection of the interests of the main stakeholders in respect of the transfer.

The report looks at different options which could further the achievement of these objectives.

Firstly, the 'no action' option is examined. In particular, the possible impact of existing legislation and legislation about to enter into force, notably Directive 2005/56/EC of 26 October 2005 on cross-border mergers which will enter into force on 16 December 2007<sup>3</sup> and the possible European Private Company Statute, is assessed. The impact assessment focuses on whether the time, costs and procedures required to complete the transfer of registered office would be substantially different from those required to carry out such transfer through a cross-border merger operation under the existing cross-border merger directive. Possible developments in the Community case law are also examined, in particular the currently pending case which concerns a transfer of registered office and whose outcome might affect the scope and content of a possible EU measure.

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1 Resolution on the Commission legislative and work programme for 2006 (P6\_TA(2005)0524); Resolution on recent developments and prospects in relation to company law (2006/2051(INI)).

2 According to the information gathered from the Commission's Company Law Expert Group 7 SEs have transferred their registered offices to another Member State and 2 are planning to do so in the near future.

3 This method of relocating the company's registered office between the states is commonly used in the US (cf e.g.: Roberta Romano, *The Genius of American Corporate Law* 34 et seq. (1993)).

The 'no action' option and its possible impacts are compared with options which would involve proposing Community action to facilitate the transfer of the registered office. The different options on the content and the possible instrument are assessed and compared according to clearly defined criteria.

As for the nature of the instrument, the assessment considers four main options which are also compared with the 'no action' option. Option 1 considers action by the Member States, i.e. signature of the convention on mutual recognition of companies. Option 2 envisages a non-binding and flexible instrument, i.e. a recommendation. The last two options concern the adoption of a binding Community instrument, a directive (option 3) or a regulation (option 4).

From the comparison of the different possible options the assessment concludes that 'no action' option or a directive would be suitable to achieve of the policy objectives. However, when the proportionality test is applied, it is not clear that adopting a directive would represent the least onerous way of achieving the objectives set. Since the practical effect of the existing legislation on cross-border mobility (i.e. the cross-border merger directive) is not yet known and that the issue of the transfer of the registered office might be clarified by the Court of Justice in the near future, the assessment concludes that it might be more appropriate to wait until the impacts of those developments can be fully assessed and the need and scope for any EU action better defined.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Two public consultations launched by the Commission in 1997 and 2002 highlighted a need on the part of market operators for EU legislation allowing companies to transfer their registered office from one Member State to another without previous winding-up and subsequent re-incorporation.

On 4 November 2002 a High Level Group of Company Law Experts, appointed by the Commission, presented its Final Report on *A modern regulatory framework for company law in Europe*<sup>4</sup>. In this report the High-Level Group recommended the Commission to consider adopting a proposal for a Directive on the transfer of company's seat.

The Commission has stated in its Action Plan for Modernizing Company Law and Enhancing Corporate Governance in the European Union<sup>5</sup> that one of the means to achieve the overall aim of company law and corporate governance, i.e. to foster efficiency and competitiveness of business, is to ensure corporate mobility. Therefore, the Commission identified a proposal for a Directive on the cross-border transfer of registered office as a possible priority for achieving this.

The 14th Company Law Directive has also been listed as part of 2005 Commission Lisbon Agenda<sup>6</sup>. The European Parliament has repeatedly called on the Commission to submit, as soon as possible, a proposal for a directive on cross-border transfer of the registered office<sup>7</sup>. It has also adopted a resolution on this issue on 25 October 2007<sup>8</sup>.

A general consultation on the possible Directive had been carried out in December 2005<sup>9</sup>. Stakeholders were consulted, inter alia, on whether they consider that there is a need for the

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4 Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels, 4 November 2002; available at: [http://ec.europa.eu/internal\\_market/company/modern/index\\_en.htm#background](http://ec.europa.eu/internal_market/company/modern/index_en.htm#background).

5 Commission communication to the Council and the European Parliament on modernising company law and enhancing corporate governance in the European Union - A plan to move forward (COM(2003)284 final).

6 see SEC (2005) 981.

7 see note 1.

8 Resolution of the European Parliament of 25 October 2007 on the European Private Company and the Fourteenth Directive on the transfer of the registered office (PE: B6-0399/07).

9 The results of the public consultation and the summary report can be found at: [http://ec.europa.eu/internal\\_market/company/consultation/index\\_en.htm](http://ec.europa.eu/internal_market/company/consultation/index_en.htm).

EU measure on the transfer of registered office following the recent developments facilitating corporate mobility, in particular the recent judgements of the Court of Justice on the freedom of establishment and the adoption of the cross-border merger directive.

113 responses were received from a variety of stakeholders<sup>10</sup>. An overwhelming majority (79.6%) of the respondents considered that there is still a need for a directive on the transfer of registered office. In the view of stakeholders the directive would facilitate the mobility of European companies, in particular SMEs and allow them to locate their business in the Member State that best suits their needs. Many of the respondents mentioned that the existing measures still do not provide for a straightforward transfer of the registered office (the transfer of registered office is only possible through a conversion into an SE or a cross-border merger) and, therefore, European legislation is necessary. Several respondents also emphasised that there is still uncertainty on the legal and tax consequences of transfer under present law and on the effects of the jurisprudence of the European Court of Justice on the freedom of establishment. The need for a directive to ensure legal certainty of the transfer as well as to guarantee a proper protection of the interests of creditors, shareholders and employees in relation to the transfer was underlined.

A minority (20,4%) opposed the initiative or did not consider it as a priority, stating that the existing measures (i.e. the SE Statute and the cross-border merger directive) and the case law are sufficient for the time being and that no new initiatives should be undertaken before the practical implications of those measures have been properly assessed. Some suggested focusing on the facilitation and adaptation of existing measures. A few respondents questioned the practical value of a potential directive as it would only tackle a corporate law aspect of the transfer while issues such as taxation or employee participation would not be solved.

Half of the respondents indicated specific elements to be covered by a directive. A considerable number of respondents stressed that for the practical usefulness of the directive it is necessary to clarify and regulate taxation issues related to the transfer of registered office and ensure tax neutrality of such transfer. One fourth of the respondents suggested that a possible directive should afford sufficient protection of the interests of stakeholders, in particular creditors and shareholders (including minority shareholders) in the case of transfer.

Many mentioned the need to regulate the procedure for the transfer and to ensure transparency and necessary supervision through proper cooperation and information exchange between the home and host Member States (e.g. in the area of insolvency or in the case of disqualification of directors). Some underlined that the directive should allow companies to change legal statute while providing guarantees in order to make sure that the freedom of establishment is not misused to circumvent mandatory regulations.

Several stakeholders took a position on employee participation, calling for a satisfactory standard of employee participation. A number of industry representatives opposed the inclusion of the employee participation regime in a directive.

A detailed summary of the replies to the consultation is available on the Commission website<sup>11</sup>.

The expert groups (i.e. Company Law Expert Group and Advisory Group on Corporate Governance and Company Law) have assisted in the preparation of the impact assessment report. Within the European Commission an inter-service steering group composed of

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<sup>10</sup> 32% of the responses originated from the industry, 17% from public intermediaries, 12% from investors, 8% from financial intermediaries and 7% from trade unions.

<sup>11</sup> [http://ec.europa.eu/internal\\_market/company/consultation/index\\_en.htm](http://ec.europa.eu/internal_market/company/consultation/index_en.htm)

representatives from Secretariat General and Directorates Generals for Taxation and Customs Union, Enterprise and Industry, Employment and Social Affairs, Economic Affairs had been set up in October 2006. The group was consulted throughout the preparation of the impact assessment report.

The IA report has been examined by the Impact Assessment Quality Board on 5 November 2007. Following the Board's opinion several improvements were made in the IA. In particular, an explanation on the possible link between the transfer of the registered office and the real seat has been added in section 3.4. A clearer distinction and explanation of what is comprised in the baseline and the 'no action' scenario has been provided in Chapters 3, 5 and 6. More consideration has been given, in different parts of the report, on why the SE and SCE Statutes have not been extensively used by companies for the transfer of the registered office and whether improving these measures could make them more attractive instruments for companies to transfer their registered offices. In section 6.2.4 a comparison of the two main options ('no action' option and the policy option) with the baseline was added and a table illustrating the costs of these three situations has been improved. In this section an explanation is given on how the current situation can be improved by the 'no action' option and compares it with the gains that would occur in the policy scenario. The reference is also made to the views expressed by stakeholders in the public consultation. A clearer link between the initiative and the Lisbon Agenda has also been shown in section 4.3. In Chapter 6 the baseline against which the options are compared was added. Some background information has been moved from Chapter 3 to the annexes.

### **3. PROBLEM DEFINITION**

#### **3.1. Background**

##### **3.1.1. Freedom of establishment enshrined in the EC Treaty and its limitations with respect to companies**

The Treaty establishing the European Communities guarantees the freedom of establishment for Community nationals and companies formed in accordance with the law of the Member State and having their registered office, central administration or principle place of business within the Community<sup>12</sup>. In particular, Articles 43 and 48 of the Treaty secure the right of individuals and companies to move to another Member State to take up and pursue activities as self-employed persons and/or to set-up and manage undertakings in accordance with the conditions laid down in the law of that Member State for its own companies as well as to set up agencies, branches or subsidiaries in another Member State.

The right of establishment of natural persons has been clearly recognised in the Community<sup>13</sup>. In contrast, freedom of establishment of companies could not be fully achieved by the application of Article 43 and 48 of the EC Treaty due to the great differences of the Member States' laws with regard to company law matters (see section 3.1.2). It resulted in the recognition by Article 293 of the Treaty of the need for the adoption of agreements for the

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12 According to Article 48: "Companies of firms formed in accordance with the law of the Member State and having their registered office, central administration or principle place of business within the Community shall be treated in the same way as natural persons who are nationals of the Member States. "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those, which are non-profit-making.

13 It was also confirmed by the secondary Community legislation, i.e. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (L 158/77, 30.04.2004).



mutual recognition of companies and the retention of legal personality in the event of transfer of their seat from one country to another<sup>14</sup>.

### 3.1.2. Different traditional approaches of the Member States towards the transfer of company's seat

The Member States apply different principles to determine which company law applies in relation to a firm<sup>15</sup>. These differences have an impact on the rules governing the transfer of company's seat to another Member State.

There are two approaches in the Member States' laws with regard to the applicable company law within the Community: a) the principle of "the place of incorporation", according to which the company is governed by the law of the country where it is incorporated (registered)<sup>16</sup> and b) the principle of "the real seat" according to which the company is governed by the law of the country where its headquarters or principle place of business (i.e. head office)<sup>17</sup> are located<sup>18</sup>. Some Member States have adopted a mixed system having the characteristics of both of the above mentioned approaches<sup>19</sup>.

There are direct consequences of these different approaches on the principles governing the transfer of a company's seat. As a general rule, the countries applying incorporation principle allow a company to transfer its head office to another Member State without dissolution and without a change of the legal regime governing that company (as the applicable company law is linked to the country of the company's registration). However, the cross-border transfer of the registered office from the incorporation country results in a change of the company law applicable to that company and is not possible without the dissolution of the company in the home State and its reincorporation in the host Member State.

For countries applying the real seat principle, the cross-border transfer of the head office was, until recently, either legally impossible as it resulted in a winding-up of a company<sup>20</sup> or restricted by certain conditions<sup>21</sup>. The transfer of registered office under the real seat principle is usually forbidden unless the company's head office is also transferred (and the latter results in a winding-up of a company).

The co-existence of the above two different approaches made it, in most of the cases, practically impossible for the companies to move the head office or registered office to another Member State. **Table 1** below illustrates this.

**Table 1. The effect of different approaches for the transfer of the head office and the registered office.**

Transfer of the head office (HO)			Transfer of the registered office (RO)	
TO FROM	Incorporation state	Real seat state	Incorporation state	Real seat state
<b>Incorporation state</b>	<b>Possible</b> (no loss of legal status; the home MS recognises legal personality of a foreign company; transfer results in a change of applicable company law)	<b>Not possible</b> (the company needs to be re-incorporated in accordance with the law of the host MS)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)

14 Art. 293 of the EC Treaty states: "Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals (...) the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another (...)"

15 The company law with regard to a firm would normally cover the issues related to the setting-up, validity, functioning and winding-up of a company.

16 DK, IE, NL, UK, MT, SE, CZ, SK, FI, HU, CY.

17 The terms 'head office' and 'real seat' are used interchangeably.

18 BE, DE, ES, FR, LU, PT, EL, LT, PL, EE, NO, AT, SL, LV.

19 E.g. IT.

20 E.g. DE, FR.

21 E.g. FR (according to part of the doctrine), EL, ES, PT.

			State)	host Member State)
<b>Real seat state</b>	In principle <b>not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State or is restricted by certain requirements imposed by the home Member State)	In principle <b>not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State or is restricted by certain requirements imposed by the home Member State)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)

### 3.1.3. The impact of the Court of Justice's case law on the companies' freedom of establishment

In its earlier case law, the Court of Justice considered that the restrictions stemming from the divergences in Member States' corporate law principles in respect of the transfer of company's seat cannot be solved by the Treaty freedom of establishment and recognised the need for a legislative action in this respect<sup>22</sup>. Since the *Daily Mail* judgement (delivered in 1988), the Court's approach to the freedom of establishment has developed and its recent case law<sup>23</sup> has partially addressed the problems related to the transfer of company's seat. Notably, the Court has made it clear that the transfer of the company's head office is, in principle, allowed under Community law.

In particular, following the above rulings it has been widely accepted that a company validly incorporated in a Member State must be recognised in any other Member State to which it decides to move its real seat or operations<sup>24</sup>. In other words, the situation where a company is moving its real seat into a Member State has been solved in a way that a host Member State has to accept that a foreign company operates on its territory according to the company law rules of its home Member State.

As regards the situation where a company is moving its real seat from a Member State in which it is incorporated to a foreign country, the Court of Justice has not clearly forbidden or limited the Member States' power to impose restrictions on the transfer of the real seat of a company incorporated under their law to another Member State<sup>25</sup>. Therefore, a company may be required to fulfil certain conditions when moving its real seat from a Member State in which it is registered if such country decides to impose such requirements (such as obtaining an approval from certain public authorities).

Since the home country may have legitimate reasons to impose certain requirements on companies wishing to transfer their real seat abroad (in particular to prevent any cases of abuse). However, in the Commission's view, these requirements should be proportionate and justified on public interest grounds as otherwise the Treaty freedom of establishment would be rendered meaningless.

The situation resulting from the development of Community case law is illustrated in **Table 2**.

**Table 2. The effect of the case law on the possibility of transfer of the head office and the registered office.**

Transfer of HO	Transfer of RO <sup>26</sup>
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<sup>22</sup> Daily Mail, § 23 (see Annex II for a summary of the case)

<sup>23</sup> Centros (C-212/97), Überseering (C-208/00), Inspire Art (C-167/01).

<sup>24</sup> Even though the host Member State may impose on such company some additional requirements, they must be proportional and justified by a public interest reason (such as protection of the interests of creditors, minority shareholders and employees, the preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions).

<sup>25</sup> Daily Mail, §20 ("a Member State was able, in the case of a company incorporated under its law, to make the company's rights to retain its legal personality under the law of that State subject to restrictions on the transfer of the company's actual centre of administration to a foreign country").

<sup>26</sup> Some Member States have introduced the right to transfer the registered office from and into their jurisdictions provided that the other jurisdiction to or from which the company is moving permits such transfer and continuation of the company (CY) or that there is an international treaty or specific legislation in that respect (e.g. SK, CZ, FR, ES). However, no international treaty has been signed and since in most Member States such transfer it is not foreseen by the law, moving the registered office from or to the Member States allowing it is impossible in practice.

TO FROM	Incorporation state	Real seat state	Incorporation state	Real seat state
<b>Incorporation state</b>	<b>Possible</b> (no loss of legal status; the home Member State recognises legal personality of a foreign company; transfer results in a change of 'nationality' of a company; company governed by the home state rules)	<b>Possible</b> (the company has to be recognised by the host Member State <sup>27</sup> ; the company governed by the home state rules; the host state may impose certain additional requirements of its national law)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)
<b>Real seat state</b>	In principle <b>possible</b> (however, the home state could impose restrictions on the transfer <sup>28</sup> )	In principle <b>possible</b> (however, the home state could impose restrictions on the transfer <sup>29</sup> )	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)	<b>Not possible</b> (requires winding-up of a company in the home Member State and re-incorporation in the host Member State)

### 3.2. The current situation (status quo)

At present European companies, once incorporated in one of the Member States, can transfer their headquarters and business operations to other Member States. They may relocate their real seat to another country, provided that they fulfil all the necessary requirements and formalities imposed by their home country. Those requirements differ from one country to another.

#### *Newly established companies have the choice*

Newly formed companies may incorporate in a Member State which they think has the most advantageous corporate regime and subsequently transfer their real seat to a different Member State. As an empirical study conducted by M. Becht, C. Mayer and H.F. Wagner<sup>30</sup> shows, following the judgements of the Court of Justice allowing the transfer of the company's real seat to another Member State, many companies registered in one Member State transfer their head office to another Member State. In particular, there were numerous new companies registered in the UK (considered as one of the cheapest and efficient regime for company formation) which had all their operations in other EU countries. **Table A1**<sup>31</sup> reports new incorporations of private limited companies in the UK from other European states. In 2005 there were **19,686 companies registered in the UK, having their head offices in other Member States** (i.e. 5 times more than in 2001, before the relevant judgements of the Court of Justice were delivered<sup>32</sup>). In particular, in 2005 there were 12,019 companies registered in the UK and operating in Germany (as compared to 516 in 2001). Similarly, there were 2,127 companies registered in the UK and operating in the NL in 2005 (as compared to 91 in 2001).

In 2005 alone 2401 German companies and 621 Dutch companies incorporated in the UK. This amounts to respectively 3% of all private limited liability companies incorporated during that year in DE and 1% in NL<sup>33</sup>.

#### *Existing companies – currently available means of transferring the registered office*

The above analysis reveals that there is a high interest among companies to locate their registered office in another country than the country of their head office in order to benefit from what they consider to be a more favourable company law system. However, this option

27 Centros, Überseering.

28 Daily Mail, § 70.

29 Daily Mail, § 70.

30 M. Becht, C. MAYER H.F. Wagner, "Where do firms incorporate", ECGI Law Working Paper N° 70/2006, September 2006.

31 See Annex I (references to tables in Annex I are marked with letter A).

32 See Table A7.

33 See Table A7.

is currently available only to companies which are being established, but not to existing companies. This results from the lack of recognition in the EU of the right to move a registered office between the Member States for all companies.

Existing companies, in order to move the place of the registered office to another Member State, could use alternative means of achieving the equivalent result.

The first possibility would be to create a **European Company (SE)** or a **European Co-operative Society (SCE)** and subsequently transfer its registered office to another Member State<sup>34</sup> as the EU law gives such a right to these European legal forms.

However, the SE can only benefit a limited number of companies since it is designed for large companies (the minimum subscribed capital of the SE is EUR 120 000), which are already operating in more than one Member State.

The likely costs involved in creation of the European Company and subsequent transfer of its registered office would be considerably higher than that of the direct transfer of registered seat. Besides, this option is not available to all companies.

The 3-year experience has shown that the take up of a European Company is lower than initially expected (so far around 100 SEs have been created). The main reasons for a limited interest in this form indicated by stakeholders are: absence of a truly unified legal regime for SE, lack of harmonisation in many areas of law with respect to SE (e.g. specific requirements in the banking or insurance sectors, tax legislation), complex and long negotiation process for employee participation, lack of tax incentives. Further evaluation of the SE Statute with the aim to assess its attractiveness and propose necessary improvements will be carried out in 2008/2009 and the report will be published in 2009.

The European Co-operative Society, even though it may be created 'ex novo' (by 5 or more natural persons and/or 2 or more legal entities), it cannot be used by capital companies due to its principles specific for co-operatives. It is too early to provide a detailed assessment of the application of the SCE as it entered into force only in August 2006 and no single establishment of the ESC has been reported. An evaluation report on the ESC is foreseen for 2011.

Concluding, it appears from the above considerations that currently the only realistic possibility for existing companies to carry out the transfer of the registered office is to **wind up the company in the home Member State and create a new company in the host Member State**. Such operation involves substantial costs, including administrative burden, time, financial, social and tax costs. In particular, an average number of procedures involved in winding up and re-incorporating a company could vary **from 13 to more than 35**. An approximate cost of winding up and re-incorporating a company could, for example vary from €39,500 to €169,500 if a company moves from UK to EL. Winding up of a company would also involve liquidation taxation. On top of that, there will be the hidden costs of paying creditors earlier than in a normal trading environment, and of losing the use of the company's cash and assets during the liquidation period.

Further information on costs of the current situation is presented in Chapter 6 where the status quo situation is compared with the main options, i.e. 'no action' option and the policy option.

The very high cost of the transfer of the registered office results in a disadvantageous position of existing companies as compared with newly created firms and creates opportunity cost for

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<sup>34</sup> See Regulation 2157/2001/EC (SE) and Regulation 1435/2003/EC (SCE).

them. The example below describes one of the possible cases, where a company loses business opportunities because it cannot move its registered office to another Member State. Further possible benefits for companies from the possibility to transfer the registered office are described in section 3.3.

**Example**

An average company needs financing and wants to attract investors and lenders. Investors and banks are more likely to trust a company incorporated in a country known for investor friendly regulations and/or good insolvency law and efficient debt recovery system (such as recovery in bankruptcy). Therefore, a company would gain more trust from investors and lenders and, therefore, would have better access to finance, if it were incorporated in such a country.

A company registered in CZ or EL, which according to the rating of the World Bank have the weakest systems in the EU as regards investor protection and recovery rate in bankruptcy<sup>35</sup>, might be more attractive for banks and investors if it would move its registered office to IE<sup>36</sup> or UK<sup>37</sup> with much more efficient protection of investors' and lenders' interests. It is also likely that the cost of credit would be lower for a company registered in these countries.<sup>38</sup>

Since the CZ or EL company currently has no possibility to transfer its registered office to IE or UK, it loses the opportunity to have a better and cheaper access to finance. In this way it is also in worse position than companies incorporated in IE, UK or other more efficient corporate systems. In particular, the existing CZ or EL company has a competitive disadvantage towards a newly established company, which can subject itself to IE or UK corporate system by incorporating in those countries and subsequently transfer its headquarters and business operations to CZ or EL.

In addition, it should also be noted that the freedom of establishment of companies would be incomplete if the right to transfer the real seat would not be supplemented by the right to transfer the registered office. For instance, it would be unjustified if a company, after moving its headquarters and all business operations (real seat) from country A to country B, would still have to be subjected to the corporate law and jurisdiction of country A. Such company should be able to easily transfer its registered office to country B before, simultaneously or subsequently to the transfer of real seat. Currently this is practically impossible and the company has to wind up in country A and subsequently incorporate a new company in country B.

The case law of the Court of Justice could clarify the issue to some extent. However, its impact might be limited as it refers only to particular situations and could be subject to various interpretations by Member States' courts and legislators and could result in the adoption of different solutions at the national level. Besides, the judgements of the Court of Justice set up general principles without providing harmonised rules and procedures on how to apply those principles in practice<sup>39</sup>. Also, the Court of Justice, in its *Daily Mail* ruling, has referred to the need for legislative action to tackle the issue of the cross-border transfer of registered seat.<sup>40</sup>

*How many companies are concerned?*

There are **more than 10 million limited liability companies registered in the EU**<sup>41</sup> which could possibly benefit from the option to transfer the registered office. In particular, according to data provided by the European Commerce Registers Forum (ECRF), about 9.4 million private limited liability companies and about 700.000 public limited liability companies are incorporated in the EU Member States (the number of companies concerned is even bigger as the ECRF data does not cover 8 Member States).

Using the percentage of European limited liability companies incorporated in a different EU country (notably UK) in 2005 (approximately 0,6%, in some Member States even 3%) as a

<sup>35</sup> Out of 175 countries worldwide CZ has 83. position for investor protection and 113. for recovery in bankruptcy, Greece has 156. and 34. position respectively.

<sup>36</sup> IE has 5. position for investor protection and 7. for recovery in bankruptcy.

<sup>37</sup> UK has 9. position for investor protection and 10. for recovery in bankruptcy.

<sup>38</sup> See section 3.3.2.

<sup>39</sup> The Court stated in *Sevic* that the Community harmonisation rules are useful for facilitating the exercise of the freedom of establishment. (para. 26).

<sup>40</sup> *Daily Mail*, § 23: "the Treaty regards (...) the question whether the registered office or real head office of a company incorporated under national law may be transferred from one Member State to another as problems which are not resolved by the rules concerning the rights of establishment but must be dealt with by future legislation or conventions". While the transfer of the company's head office is possible following the recent case law of the European Court of Justice, the problem related to the transfer of the registered office has not been resolved by the rules on the right of establishment and, therefore, following the Court's reasoning in *Daily Mail*, must be dealt with by future legislation or conventions.

<sup>41</sup> see Tables A3 and A4.

proxy, a rough estimate could be made that between 0,6-3% of existing companies would use the possibility to transfer their registered office to another Member State if it was possible without winding up and subsequent reincorporation and without losing the legal continuity of a company. It means that **approximately 60.000-300.000 companies would likely use the option to relocate their legal seat to another EU country** (see **Table 3** below). This estimate, however, is based on the available data for the UK, which may not be representative for the EU as a whole. Given that this country's system is considered as particularly efficient, the number of relocations of registered offices to other Member States might be lower.

**Table 3. Approximate number of companies moving the registered office to another Member State (in three different scenarios, based on the assumption that 0,6%, 1% or 3% of companies would use the option)**

Type of companies	Private companies	Public companies	Listed companies	Total
<b>Nr of companies moving the RO to another MS (in % of total number of companies)</b>				
<b>0,6%</b>	56.400	4.200	55	<b>60.600</b>
<b>1%</b>	94.000	7.000	92	<b>101.000</b>
<b>3%</b>	282.000	21.000	276	<b>303.000</b>

### **3.3. The possible benefits from the transfer of the company's registered office within the European Union**

Since the transfer of the registered office would be an option for companies, the likely benefits of any instrument allowing such transfer could only be measured by looking at the possible advantages that companies could gain from moving the registered office. A closer look at the likely motives behind the companies' decision to transfer the place of registration is taken in this section.

Determining the reasons for the companies to move their registered office to another Member State is difficult at present since such possibility is not available to the companies and the alternative means are too costly. The requirement to go into liquidation in the home State and transfer the assets and liabilities to a new company in the host State effectively prevents the companies to engage in such transaction.

Therefore, possible motives that could drive a company to choose another corporate legal system would be based on the assumption that the transfer of the registered office is allowed. Since the transfer of registered office will be voluntary, the companies will only decide to transfer their office if the benefits of such transaction outweigh the costs. Every such decision would be a result of comprehensive weighting and balancing of pros and cons of a particular legal regime. The reasons would differ between companies and the overall motives behind a choice of a particular legal system would have to be assessed on a case by case basis.

Some could be based on the evidence from non-EU legal systems, in particular the experience of the United States, where the transfer of the company's registered office between the states is possible.

## Re-incorporations - the American experience and possible implications for the European Union

American corporations are free to opt for a corporate law of a state other than the one where their primary place of business or headquarters are located to govern their internal affairs, since the US law applies the incorporation doctrine<sup>42</sup>. As a result of this freedom, the state of Delaware emerged as the most popular state for the companies' location. About one-half of the publicly-traded US firms<sup>43</sup> as well as the majority of firms going public for the first time are incorporated there. Also the vast majority of firms changing their domicile mid-stream reincorporate in Delaware<sup>44</sup>.

Reportedly, the main reasons for the attractiveness of Delaware for corporations were its reputation for the most comprehensive corporate case law as well as its judicial and legal expertise in administering corporate law<sup>45</sup>. Major identified motives for existing businesses to reincorporate in Delaware are: a prospective public offering and the intended implementation of a merger and acquisition program. According to the studies<sup>46</sup> companies involved in such complex transactions, which may involve substantial transaction costs, look for the certain and predictable corporate legal rules (for which Delaware has reputation) to assist in structuring these transactions and reduce firms' operating costs<sup>47</sup>. As studies show, reincorporation in Delaware increases the company's stock-market value<sup>48</sup>.

The driver for Delaware to develop an efficient judicial system seems to be based on the relevance of the incorporation business for such a small state as Delaware at least on two counts: 1) incorporation fees; 2) the beneficial effects on the local legal profession.

This last point seems to be particularly relevant to explain the existence of a "defensive competition" on the part of the other US states, "whose local bar advocates' law reform so as to be able to offer a local domicile choice to their clients".<sup>49</sup>

The Delaware case is acknowledged to be a case of positive regulatory competition ("race to the top") for the US legal system. The Delaware migration has encouraged other US states to modify their national legislation towards guaranteeing a more efficient legal environment for US companies.

According to Romano<sup>50</sup> "one of the advantages of a competitive corporate law regime is that it is less likely to make regulatory mistakes than a centralized one, and any mistakes by a particular state are more easily corrected."

### *Differences in terms of quality of national legislation/outside investor protection*

According to Roberta Romano (2005) Delaware is the quickest state among the US states to introduce more efficient new legislation. However, in the long term other US States appear to follow Delaware. The result is that Delaware superiority is made in the short term also of legislative innovation on top of the efficiency of the judiciary. In the EU case, differences also encompass the quality of corporate legislation, not just the efficiency of court and the legal system in general. In particular, according to La Porta (2000) the quality of measures on investor, creditor protection and the accounting standards as well as the efficiency of judicial system varies across European legal traditions (see **Table A6** which shows differences in these measures among four main legal traditions in the EU).

### *The likely European scenario*

As we have seen, the reason for US companies to move their incorporation state is to seek a more efficient legal environment as far as company law is concerned. The US system, even though different in many aspects from the European system, could serve as an example of how the corporate mobility functions in other legal systems. The American experience shows that the motives for corporate mobility in the US are predominantly corporate law driven (companies seek more efficient legal environment in company law). One could imagine that at least some of the US developments could occur also in the EU, where the national company laws and judicial systems are much more divergent than those between the US states<sup>51</sup>.

### *Language diversity and diversity of legal systems: (for whom) would it matter?*

Language diversity and considerable divergence between the national legal systems in Europe could discourage (at least some) companies from moving to a foreign legal system. Moreover, access to locally provided finance, goods or services can also be hindered, specially for SMEs, by the fact that these providers would be dealing with a foreign legal form.

In particular, for smaller companies migration might be hindered by the language barrier. However, Becht et al. (2006), using a newly constructed dataset of companies from other EU countries incorporating in the U.K. between 1997 and 2005, find a large increase in new incorporations of limited liability firms from EU Member States. The authors find that incorporation costs, in particular minimum capital requirements, and delays in incorporation are significant factors for firms' location decisions. **Table A7** shows that almost 20,000 private limited companies from the rest of the EU incorporated in the UK in 2005. Apparently, foreign language was not considered as a significant obstacle.

To identify the possible motives underlying a company's decision to move its registered office in the EU, one has to determine which part of the legislative framework applicable to a company would change as a result of such transfer (see **Table 4** below).

**Table 4. The effect of the transfer of the registered office to another Member State on the applicable law (provided that there is no simultaneous transfer of the company's activities).**

42 See Franklin A. Gewurtz, Corporation Law 36 (2000). According to the incorporation doctrine the internal affairs of a corporation are governed by the law of the state of incorporation, regardless of where the corporation's headquarters is located.

43 Cf. Delaware state's official website, Division of Corporations, Why Choose Delaware as your corporate home?, available at: <http://www.state.de.us/corp/default.shtml> (last visited December 17, 2006), claims that "More than half a million business entities have their legal home in Delaware including more than 50% of all U.S. publicly-traded companies and 60% of the Fortune 500."

44 E.g., Robert Daines, "The Incorporation Choices of IPO Firms," New York University Law Review, vol.77 (2002), pp. 1559-1611, p. 1571 (IPO firms); Curtis Alva, "Delaware and the Market for Corporate Charters: History and Agency," Delaware Journal of Corporate Law, vol. 14 (1990), pp. 885-920, p. 887 (largest firms); Robert Daines, "Does Delaware Law Improve Firm Value?," Journal of Financial Economics, vol. 62 (2001), pp. 525-58, p. 538 (NYSE firms); Roberta Romano "Law as a Product: Some Pieces of the Incorporation Puzzle," Journal of Law, Economics, and Organization, vol. 1 (1985), pp. 225-83, pp. 244, 261 (reincorporating firms and largest firms).

45 Roberta Romano, The States as a Laboratory: Legal Innovation and State Competition for Corporate Charters, ECGI Law Working Paper Series, Working Paper No. 34/2005.

46 Idem.

47 Romano, The Genius pp. 244-59.

48 Robert Daines, Does Delaware Law improve Firm Value?, 62 J. Fin. Econ. 525 (2001) (finding 5% positive Delaware effect using Tobin's Q Analysis). Earlier event studies trying to determine the reincorporation effect on stock price cf. e.g. Allen Hyman, The Delaware Controversy – The legal debate, 4 J. Corp. L. 368, 385-7 (1979) (positive abnormal returns in the days and weeks surrounding the announcement of the move to Delaware); Roberta Romano, The Genius 271-2 (significantly positive abnormal returns in a 10-day period surrounding the reincorporation).

49 See Romano 2005a, p. 4-5.

50 Romano 2005a, p. 3.

51 Cf. T. H. Troger, Choice of Jurisdiction in European Corporate Law: Perspectives of European Corporate Governance, p. 17 (stating that the US corporate law is relatively uniform). For instance, insolvency law in the US is governed by federal law and, therefore, is not subject to competition between the states, while in Europe insolvency law is not harmonized at the European level. One could therefore expect that cost savings are likely to be superior for EU companies than for US companies.

<b><i>Change of Applicable Law/Court Jurisdiction</i></b>	
<b><i>COMPANY LAW AND CORPORATE GOVERNANCE RULES</i></b>	The law of the host Member State applies. There is a change of the applicable law, including the rules on employees' participation in the governance of the company.
<b><i>INSOLVENCY LAW</i></b>	The law of the host Member State applies. There may be a change of the applicable law. The applicable insolvency law would be determined by the court of the main insolvency proceedings, which is presumed to be the court of the company's registered office (unless it is proved that 'the centre of company's main interests' is located in another country). <sup>52</sup>
<b><i>JURISDICTION (competent court)</i></b>	The jurisdiction of the host Member State for some company law and insolvency law matters (see section 3.3.3 for details)
<b><i>NO Change of Applicable Law/Court Jurisdiction</i></b>	
<b><i>TAX LAW</i></b>	The law of the Member State where the "place of effective management" is situated applies (with some possible exceptions) <sup>53</sup> . Therefore, if only the registered office of the company is transferred (i.e. no transfer of head office or activities of the company is effected simultaneously) the company's situation with respect to taxation in general does not change.
<b><i>LABOR LAW</i></b>	The transfer of the registered office of a company would not imply any change in the labour law applicable to a company, insofar as it would not relocate its activity to the host Member State. By virtue of the Rome convention <sup>54</sup> , the law applicable to the employment contract does not change if there is no change in the country where the employee habitually carries out his work. As for the rules applicable to information and consultation of workers' representatives these are the rules of the country where the representatives carry out their functions, i.e. where they are employed. Moreover, since the employer would be a different legal person but the identity of the economic entity would be maintained, the transfer of registered office would entail a transfer of undertaking within the meaning of Directive 2001/23/EC <sup>55</sup> . In accordance with Article 3 of this directive, the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer are, by reason of such transfer, transferred to the transferee, with the only exception of complementary pension rights. In accordance with Article 4 of this directive, the transfer cannot constitute grounds for dismissal.
<b><i>ENVIRONMENTAL LAW</i></b>	The law of the Member State where the activities are performed applies. There is no change of the applicable law.

### 3.3.1. Company law and corporate governance related motives

According to the available indicators, differences in corporate law efficiency across the EU Member States are larger than across the US States. These differences may constitute reasons for companies to move to a different EU jurisdiction.

The box below lists the factors which may motivate existing companies to move their registered office to a different company law and corporate governance environment:

- reduced capital requirements;
- the increased efficiency and the reduction in the cost of the management of business (e.g. administrative and legal expenses<sup>56</sup>);
- more flexible merger/division rules outside the scope of the 3rd and the 6<sup>th</sup> company law directives;
- less stringent company law, more freedom to define the content of the articles of association;
- the scope of disclosure requirements (e.g. less burdensome obligations for listed companies with regard to disclosure requirements stemming from the Transparency Directive, e.g. absence of the requirement to provide quarterly financial information and/or auditing of the half-yearly financial statements);
- more choice as to the board structure (unitary or two-tier boards);
- the rules on employee participation (this issue will be further discussed in the options section);
- more transparency and accessibility of the company law (thus minimising the cost of professional advice);
- the corporate law with more lenient standards dealing with majority-minority conflicts (could have a value for a majority shareholder even if this could adversely affect the share value); the increased protection for investors.

<sup>52</sup> Art. 3(1) and 4 of the European Insolvency Regulation (EIR).

<sup>53</sup> It cannot be excluded that in double taxation conventions concluded between Member States or between Member States and the third countries the criterion "place of incorporation or registered office" determines the fiscal residence. In such a case the transfer of the registered office triggers a change of the fiscal residence of a company and shift of taxing rights on the income received from other countries from the home Member State to the host Member State.

<sup>54</sup> Convention on the Law applicable to Contractual Obligations opened for signature in Rome on 19 June 1980. The consolidated version of the Convention as well as the First protocol on the interpretation of the Convention by the Court of Justice and the Second Protocol conferring on the Court of Justice powers to interpret the Convention have been published in the OJ C27 of 26.1.98, p.34).

<sup>55</sup> Council Directive 2001/23/EC of 12 March 2001 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 part of undertakings or businesses. OJ L 82 of 22.3.2001, p.16.

<sup>56</sup> Graphisoft SE foresaw to save an estimated EUR 150,000 to 200,000 a year in administrative and legal expenses as a result of a relocation of its registered seat from the Netherlands to Hungary (cf. Proposal to transfer the seat of Graphisoft SE, Annex II: Report by the Board of Directors on the consequences of the proposed transfer of the seat of Graphisoft SE).



For instance, significant differences across the EU concern such a key corporate governance issue as shareholder protection.<sup>57</sup> **Table A8** provides indications on the ability of national systems to protect investors, with a particular focus on minority shareholder protection against misuse of corporate assets by directors and controlling shareholders. The World Bank's Investor Protection Index<sup>58</sup> for the EU Member States varies from 3 for EL and 3.7 in AT to 7 for BE and 8 for UK (the latter having the most investor friendly regulations). The systems providing the broadest transparency of transactions are FR, UK and CZ. According to the Ease of Shareholder Suit Index PL (with 9), CZ and LV (with 8) provide for the strongest shareholders' control over directors.

Another proxy for the efficiency of the legal system could be the World Bank's indicators on the bureaucratic and legal hurdles an entrepreneur must overcome to incorporate and register a new firm (i.e. the number of procedures, the time and cost of setting-up a company in the EU Member States), illustrated in **Table A9**. The number of procedures varies from 3 (in DK and FI) to 10 in CZ, PL and ES and 15 in EL. Translated in number of days, the most efficient Member State appears to be DK (5 days) while at the other end of the spectrum we find ES and SL (47 and 60 days respectively).

More general indicators can also be used as a proxy for the efficiency of corporate legal system. The most widely used indicator, the World Bank's *Doing Business* annual survey, ranks the world economies according to ease of doing business. **Table A10** reproduces the ranking for EU Member States covered in the World Bank report. It takes into account the issues that would be relevant for the transfer of the registered office, i.e. the investor protection and the efficiency of bankruptcy proceedings. In addition, the rankings on the costs of starting a business and on the enforcing contracts are taken into account as a general proxy for the efficiency of the corporate legal and judiciary systems of the Member States. A high ranking on the ease of doing business index means that the regulatory environment is favourable to the conduct of business. **Table A10** shows a wide dispersion of EU Member States across the world ranking, with the Ireland and Denmark ranking respectively 10<sup>th</sup> and 11<sup>th</sup> and Italy and Greece 82<sup>st</sup> and 109<sup>th</sup>.

On the basis of the World Bank ranking, it could be expected that companies registered in countries with less efficient regulations could decide to transfer their registered office to countries to benefit from the more efficient corporate legal regime.

### **3.3.2. Motives related to access to finance driven by company law, insolvency law and the efficiency of bankruptcy procedures<sup>59</sup>**

According to the World Bank's indexation, there are great differences in the Member States' legal systems with regard to investor protection (see **Table A8**) as well as the quality and efficiency of the judiciary system (see **Table A18**).

According to the World Bank's Investor Protection Index, as referred to in section 3.3.1, the EU countries indexes vary from 3 for EL (the weakest investor protection) to 8 for UK (the strongest investor protection). Since the shareholders' law suits (e.g. concerning the validity or nullity of the decisions of the company's organs) would be adjudicated in the forum of the company's registered office<sup>60</sup>, investors might be more inclined to invest in the company incorporated in the country with efficient corporate courts. The scope of rights of

<sup>57</sup> For a general introduction to the subject see Kraakman et al. 2004, particularly chapters 2, 3 and 8.

<sup>58</sup> It is a widely used indicator provided by the World Bank; it combines three following indexes: transparency of transactions (Extent of Disclosure Index); liability for self-dealing (Extent of Director Liability Index); shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suit Index).

<sup>59</sup> As regards the rules related to the bankruptcy jurisdiction and the applicable insolvency law, the possible regulatory competition would be especially available to companies which operate in different Member States. The European Insolvency Regulation gives room for selection of the forum (and hence the law) from among the jurisdictions in which the company carries out its operations (with the presumption that the main forum for the bankruptcy proceedings is in the Member State where the registered office of the company (debtor) is located). See also note 69.

<sup>60</sup> See note 69.

shareholders' control over directors' misconduct is also important for investors (according to the Ease of Shareholder Suit Index PL (with index 9) and LV (with index 8) provide for the strongest shareholders' control over directors).

The time and cost of bankruptcy proceedings in Member States is also an indicator of the efficiency of the national judiciary systems. According to the World Bank's indexation, the bankruptcy procedure may last from 9 years with a recovery rate of 18,5% (in CZ) to 5 months with a recovery rate of 88% (in IE).

A company may therefore decide to move its registered office to a country where company law and insolvency law are considered as more attractive for investors and lenders in order to boost the corporate value of a company, have better access to finance and financial markets (both equity and debt), or chose preferred location for a future public offering.

The US 'Delaware case' shows that the transfer of the company's registered office to a legal system considered as efficient may have a positive effect on the firm's value. Reportedly, the positive effect of reincorporation of a company in Delaware on its stock price is 5%<sup>61</sup>. Taking into account that legal systems of the Member States are more divergent than those of US states, it is likely that the impact of the transfer of the registered office on the share price of a company might be even greater in the EU.

The efficiency of bankruptcy proceedings in a Member State may have an important impact on credit ratings. As said earlier the length and cost of the bankruptcy procedures varies among the EU countries (see **Table A13**). A different degree of efficiency corresponds to higher or lower legal costs of credit recovery by banks<sup>62</sup>. Therefore, faster and easier enforcement of creditors' (banks') claims would presumably translate into lower credit cost<sup>63</sup>. It is therefore possible that credit institutions may extend better credit offers (lower interest rates) to companies incorporated in a country with efficient debt recovery system. It is, therefore, likely that in such a case companies wishing to have cheaper credit could decide to move to the Member States in which credit recovery is faster. However, the lower legal costs of credit recovery by creditors would have to be calculated against the higher cost of conducting bankruptcy proceedings in a foreign country.

The possibility of recovery of creditors' loans through enforcement or bankruptcy procedures constitutes a powerful incentive for debtors to respect the terms of loan agreements. Efficient bankruptcy legislations not only translate into greater percentages of credit recovery in case of non-payment, but above all into more favourable contractual terms for debtors, that is in a lower cost of credit. Santella (2004) evaluates the efficiency of bankruptcy in several EU Member States to the degree of creditor protection offered by the legal system and to the efficiency of the civil justice system. The cost for banking creditors of bankruptcy procedures according either to the powers of banking creditors and the time of recovery of credits is very differentiated across the EU (**Table A11**). This translates into widely differing percentages of credit recovery (**Table A12**).

There are very important differences both in the administrative costs entailed by bankruptcy proceedings and in the percentages of the credits recovered at the end of the procedures, as **Table A13**, containing an assessment of the costs of bankruptcy proceedings across the EU, shows. Administrative costs go from 1% to 22% of the total value of the estate.

Therefore, choosing to locate the registered office in a country with efficient judiciary could improve a company's access to finance. Case studies presented in **Table A19** illustrate what

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61 Robert Daines, Does Delaware Law improve Firm Value?, 62 J. Fin. Econ. 525 (2001) (finding 5% positive Delaware effect using Tobin's Q Analysis) see also studies quoted in note 47.

62 See Table A11 which shows a relation between the length of the bankruptcy procedure and the legal cost of bankruptcy for banking creditors.

63 See Zadra (2001), pp. 188-9.

possible benefits the option to transfer the registered office could bring to European companies.

### 3.3.3. The Jurisdiction. Motives related to the efficiency of the judicial system

The company may also decide to move its registered office because of the generally more efficient judicial system (i.e. the speed of rendering judgements, the expertise of judges and the legal advisors<sup>64</sup>) of another Member State.

According to the World Bank database, there are substantial differences in the efficiency of judicial systems between the EU Member States. Looking at the indicators related to contract enforcement (number of procedures, time and cost), DK and IE seem to have the most efficient systems. To enforce a contract in DK takes 190 days and requires 15 procedures. For IE it takes 18 procedures and 217 days respectively. In other countries it could take more than 3 years and require over 30 procedures. Similarly the indicators for the length and cost of bankruptcy proceedings could be a proxy for the efficiency of the Member States judicial systems.<sup>65</sup>

Since the duration and cost of proceedings in the EU varies greatly from one Member State to another the company could decide to relocate its registered office to a country with more efficient enforcement system in order to subject the corporation's internal and external affairs to the forum of that state<sup>66</sup>. However, the gains from the more efficient judicial system would have to be assessed against the costs related to the necessity to litigate in a foreign country (in particular language barriers and reliance on the foreign legal advice due to the substantial differences between EU legal and judicial systems).

The quality of the judiciary of a particular Member State can be an important indication for investors and lenders (see section 3.3.3).

### 3.3.4. Other motives

The transfer of registered office to another Member State may be related to an earlier or subsequent move of the real seat of the company to that state. A company wishing to build up or relocate its head office or operations to another country (e.g. due to market developments or a change of geographical focus of its activities) may consider registration in that state under the national corporate form of that Member State. Such relocation of registered office could positively contribute to the company's local image and facilitate contact with its clients.

A company could also wish to change the place of registration to have easier market entry by choosing to operate under a national corporate form which has good reputation and is easily recognised by the market participants (e.g. a company from a new Member State could be interested to operate under the form of GmbH, which is more familiar and trusted by the market participants).

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64 J. C. Damman, *The U.S. Concept of Granting Corporations Free Choice among State Corporate Law Regimes as a Model for the European Community*, p. 35-39 (available at SSRN: <http://ssrn.com/abstract=418660> or DOI: 10.2139/ssrn.418660).

65 See Tables A13 and A18 illustrating the indicators for the cost of bankruptcy and court efficiency in contract enforcement in the EU Member States may serve as an indication.

66 The internal affairs, according to Art. 22 (2)(1) the Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, have to be litigated in the Member State where the corporation's "seat" is located. This wording leads to the question of whether the real seat or the statutory seat is to be decisive. Art. 22 (2) (2) of the Regulation answers that question as follows: In order to determine the seat of a corporation, the court which is seized of a matter, shall apply its own, national rules of private international law. According to the state of incorporation doctrine, however, a corporation's "seat" is understood to be its statutory seat. Provided that the incorporation doctrine would be applied in all Member States, certain internal matters including the dissolution of the corporation as well as the validity or nullity of either the corporation or the decisions of its organs would have to be litigated in the courts of the state of incorporation (mandatory jurisdiction). As regards company's external affairs, Article 23 (1) of the Regulation allows to choose an incorporation state as a forum by mutual agreement of the parties: "If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction...that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise." If no forum selectio clause is agreed the third parties could sue the corporation in the Member State of its incorporation (Article 2(1), 60(1)(a)).

A company may choose to incorporate in a Member State with a view to transfer its registered office to another Member State at a later stage<sup>67</sup> (e.g. because in one country it is cheaper to start-up a company, but a different legal system offers more advantages at the later stage of a company's life).

The possibility to transfer registered office may also be attractive to foreign investors who may then be more confident in deciding to start an investment in a new market (one of the Member States) if they know that they can easily change the place of registration and, hence, the legal regime, at the later stage.

### **3.4. Are there any risks involved?**

As explained in the previous section due to bigger differences between the national corporate legal systems in the EU than in the US, European companies may be more likely to use the possibility to relocate their registered office than companies in the US. However, differences in the national systems could also pose risk that companies could use the possibility to relocate their registered office in order to avoid the application of more burdensome rules of the national law (e.g. to benefit from more lenient rules on creditor protection or lower standard or lack of employee participation in another Member State). Such use of the possible measure should be minimised and the appropriate protection of stakeholders should be ensured. To a large extent such risks are already eliminated by the rules harmonised at the EU level. For other possible risks further safeguards need to be provided at the EU level and/or the national level. **Table 5** below illustrates the possible benefits and risks of giving the option to transfer the registered office. The necessary safeguards (either existing in the harmonised legislation or to be provided by future EU or national measures) to minimise the identified possible risks are provided in the right hand side of the Table.

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<sup>67</sup> For instance, Graphisoft converted its legal form into an European Company (SE) solely in order to be able to transfer its registered office in the long/medium term to Hungary, where most of its operations were based. In this particular case the reason for establishment of a company in another country (the Netherlands) was a wish to be established in an EU country (at that time Hungary was not yet an EU Member). Following the accession, the company decided to move the registered office back to Hungary (cf. see supra 8). Project director of Elcoteq SE mentioned in her presentation at the UNICE seminar held in Brussels on 31 May, 2006 that the possibility to transfer the registered office offered by an SE form was considered as an important added value speaking in favour of the transformation into an SE.

**Table 5. Benefits and risks related to the transfer of the registered office (implying the change of applicable law)**

Expected benefits for companies	Possible Risks for stakeholders	Safeguards
Cheaper re-registration and lower amount of minimum capital required	More lenient capital maintenance rules may lead to the risk of insufficient protection of creditors	It is questionable whether the legal capital is an efficient means of creditors' protection (while harmonised rules on minimum capital requirement do not exist for private companies, there is such requirement for public companies in the 2 <sup>nd</sup> Company Law Directive (min. €25.000));  Further safeguards seem necessary at the EU level and in the Member States' laws (a requirement that the Member States put safeguards for creditors' claims in relation to the transfer).
Cheaper management of business	-	-
Choice of board structure (one-tier/two-tier, no board)	-	-
Lower standard of disclosure requirements for listed companies (cheaper listing)	Lower level of transparency	Transparency Directive ensures necessary minimum level of disclosure
-	8) Loss/diminishing of employees' participation rights	Further safeguards seem necessary at the EU level ensuring that no loss/diminishing of existing employees' participation rights after the transfer occurs
-	More lenient standards dealing with majority-minority conflicts (benefit for the majority shareholder) = diminishing of minority shareholders' rights	Further safeguards seem necessary at the EU level and the Member States' laws (qualified majority for the decision on the transfer, national protection measures)
Better investor protection (= positive effect on firm value)	Reduced investor protection	Further safeguards seem necessary at the EU level (investors/shareholders should decide by qualified majority about the transfer)
More takeover friendly system (easier to complete takeover bid)	Moving to legal system where anti-takeover mechanisms are broader	Further safeguards seem necessary at the EU level (qualified majority for the decision on the transfer).  The directive 2004/25/EC on takeover bids gives Member States the option to transpose or not the directive's main provisions on the lifting pre- and post-bid takeover defences. The way the Member States transposed the directive may induce companies to move their registered office. However, the analysis of the implementing legislation of the takeover bids directive shows that the avoidance of regulatory competition was one of the main reasons not to endorse the directive's liberal rules. Transfers driven by takeover law are unlikely in the EU.  The Commission is currently studying the possibility of an action to improve the proportionality between capital and control, which may have an impact on anti-takeover mechanisms.
Better and cheaper access to finance (because of better and more efficient creditor protection in case of bankruptcy and more efficient resolution of corporation's affairs)	Forum and law shopping to the detriment of shareholders' or creditors' interests (i.e. choice of a less creditor and investor friendly judicial system and more lenient rules on creditor protection in case of bankruptcy (could result in higher cost of credit))	Further safeguards seem necessary at the EU level and the Member States' laws (requirement that the Member States put safeguards for creditors' claims in relation to the transfer; qualified majority requirement for the shareholders' decision on transfer)  Big credit institutions such as banks are likely going to include safeguard clauses in the loan contracts or mitigate risks by adjusting interest rates
Possibility to locate the registered office in another Member State than the head office (more flexibility, more efficiency in running business)	Legal uncertainty for the third parties	The First Company Law Directive provides for the minimum disclosure requirements (it requires companies to disclose the location of their registered office in their commercial communication).
More efficient regulatory regime	Risk of a 'race to the bottom' and lowering the level of protection of stakeholders, i.e. tendency to enact more lenient rules by the Member States in order to attract companies registrations	The minimum standards and safeguards are harmonised at the European level (acquis communautaire);  lack of clear fiscal incentive for the Member States to attract the companies' incorporations;  institutionalised structures of stakeholders' protection (e.g. trade unions)
	Introduction of an uncertainty factor in the relationships with the existing stakeholders based in the home Member State	

	Legal costs for existing stakeholders would be higher because they would need counselling on the new status of the company	
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### *Possible benefits and risks for the Member States*

The possible measure would increase flexibility for existing companies to freely choose a corporate legal environment. Companies might choose the country which has the most efficient regulation. This could result in the emergence of "more popular" countries for the location of the companies' registered office. Those countries would gain regulatory control in corporate law matters over the companies registered on their territory. Such development might create an incentive for other companies, both from the EU and from the third countries, to incorporate there (new companies) or move their registered office there (existing companies).

However, the Member States attracting companies' registrations would not gain tax revenues, as tax residence is associated with the real seat of a company. Only if the company would decide to move its headquarters (effective management) together with or subsequently to the transfer of the registered office, would there be a tax gain for the host Member State. Similarly, the transfer of the registered office as such would have no impact on employment in the host country, as the applicable labour law is with the country where the company is operating.

Opening the possibility for companies to change the place of incorporation could also result in the loss by some Member States, in particular those with more burdensome business regulations, of companies' registrations and hence regulatory control as regards the matters concerning the registration and functioning of the company, for the benefit of the legal systems with more accessible and efficient corporate law. Moreover, the change of the law applicable to corporate matters might endanger national policies aiming at promoting balanced participation of women and men in companies' bodies.

The risk that some Member States would lose tax revenue will not occur in relation to the transfer of the registered office as taxation is related to the place of company's effective management, which would not be relocated. Nevertheless, one may not exclude that the company would transfer its central management, and hence, tax residence, to the host Member State at a later stage. However, in such a situation the home Member State may impose certain conditions on the transfer of the real seat and prevent the company from using the transfer as a means to circumvent national tax provisions<sup>68</sup>.

It is also relevant to ask the question whether the transfer of a company's registered office, if it were made easier, would lead to an increase in cross-border transfers of real seats. At present, given the high costs of transfer of registered office referred to above, in sections 3.2 and 6.1, the Commission is only aware of limited number of cases of such transfers. On the basis of the information provided by company law experts it seems there have been some cases of Italian companies transferring their registered offices to Luxembourg and a case of a Luxembourgish company transferring its registered office to Spain. In these cases the transfer of the registered office without winding-up and re-incorporating a company was possible<sup>69</sup> but it was not followed by the transfer of the real seat<sup>70</sup>. It is difficult to draw any conclusions on the basis of existing evidence. Other sources of information have been explored (consulting the expert groups, business

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68 See Communication of the Commission on exit taxation (COM(2006)825 final) for information on possible abuses.

69 However, it was reported that in Italy the courts have changed the approach and considered that a transfer of the registered office of a company facing bankruptcy abroad triggers the winding-up of a company in Italy. Apparently Italian companies were transferring registered offices in order to avoid the application of Italian bankruptcy law.

70 In the case of a company transferring its registered office from Luxembourg to Spain the real seat was already in Spain.

organisations such as BusinessEurope and Medef, the services within the Commission, in particular Directorate General for Economic Affairs and EU Statistical Office and the academic sources), but no relevant data on this issue was found.

In the US it seems companies often register first in the state where they conduct business (i.e. they have their real seat) and only on a later stage they move their registered office to Delaware. The *de facto* seat, however, in most cases stays in the state of a primary registration.

Whilst no firm conclusion can be drawn, it seems that the transfer of the registered office would not be a crucial triggering event in relation to the transfer of the real seat. Companies may already transfer their real seats abroad if all necessary conditions are fulfilled. Adding a possibility to transfer the registered office would only be an additional flexibility offered to companies, but would not substantially change the current situation in respect of the transfer of business activities.

### **3.5. 'No action' scenario**

If the European legislator were to decide not to undertake any action on the transfer of the registered office, companies wishing to carry out such a transfer could use alternative means of achieving the equivalent result, which would soon be available.

In particular, possible improvements of the existing legislation (i.e. the SE Statute and the Statute for a European Co-operative Society)<sup>71</sup>, legislation already in the pipeline (notably Directive 2005/56/EC of 26 October 2005 on **cross-border mergers** and a possible **Statute for a European Private Company**) as well as **possible developments in the Community case law** may clarify the legal situation in Europe and sufficiently improve the companies' current position in the single market.

#### **3.5.1. The cross-border merger directive**

The cross-border merger directive, which will become fully applicable on 16 December 2007, will give all limited liability companies, including SMEs, the possibility to effectuate the transfer of the registered office by means of a cross-border merger. They could do so by setting up a subsidiary in the Member State to which they want to move and then merging the existing company into this subsidiary.

It is worth noting that this method of transferring companies' registered offices is commonly used by American companies to move registered offices between the US states. The US law does not provide for a direct transfer of the registered office between the states. Such transfer can only be effectuated by means of a cross-border merger operation (i.e. a merger of the existing company with a subsidiary set up in the state to which it wants to move its office).

The fact that the US has not decided to introduce an option for a direct transfer of the registered office in addition to the provisions on cross-border mergers should be considered in the context of introducing a new legislation on this issue in the European Union.

#### **3.5.2. The case law of the Court of Justice**

Further developments of the European Court of Justice's case law could, to some extent, address the problems related to the transfer of the company's registered office in a long

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71 See section 3.2 for more details.



term. Notably, in the most recent judgement, *Sevic*<sup>72</sup>, the Court of Justice has given a very broad interpretation of the concept of freedom of establishment<sup>73</sup>. In particular, it recognised that cross-border merger operations constitute particular methods of exercise of the freedom of establishment. Given a general language used by the Court, it could be inferred from the ruling that other cross-border transformation operations, including the transfer of the company's seat, may also be considered as particular methods of exercise of the freedom of establishment. However, further clarification is needed in that regard.

Some issues related to the transfer of the company's seat are likely to be clarified in the Court's ruling in the currently pending case *Cartesio*<sup>74</sup>. It concerns a Hungarian company wishing to transfer its registered office to Italy. The Courts judgement may bring clarification of the Community approach to the Member States' legal traditions on the transfer of a company's seat and set up Community principles in this regard. A possibility should therefore be considered to wait with an action in this field until a possible clarification by the Court is given.

### **3.5.3. Statute for a European Private Company**

In its Company Law Action Plan 2003<sup>75</sup>, the Commission suggested that companies' mobility might be improved by a **Statute for a European Private Company (EPC)**. The primary aim of the Statute would be to provide a common legal framework for a European legal form facilitating the operation of business in several Member States of small and medium sized companies. Such measure could provide an EPC with a possibility to transfer the registered office. However, the transfer of the registered office would be available only following a company's transformation into the EPC form. It could nevertheless be a viable alternative in the future, in particular for SMEs, if a possible statute would allow for a quick and cheap formation of an EPC. The Commission has indicated its intention to make a proposal for an EPC Statute in mid-2008<sup>76</sup>.

Full analysis of the possible impact of the 'no action' option is provided in Chapter VI.

## **3.6. Does the Community have the right to act?**

### **3.6.1. The legal base**

One of the basic objectives of the Community is to ensure the freedom of establishment. Ensuring the right to transfer the registered office from one Member State to another contributes to achieving freedom of establishment for companies. Article 44(1) of the EC Treaty requires the Council to act by means of directives to attain freedom of establishment. Besides, the Court of Justice referred to the need for legislation on the issue of the transfer of the registered office in its *Daily Mail* judgement.

### **3.6.2. Necessity test**

The existence of highly diverse national legal systems of the Member States on the matter of the transfer of registered office of a company can constitute an obstacle to the exercise of freedom of establishment of companies in the Community. The need for a

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72 *Sevic*, C-411/03.

73 *Sevic*, § 19.

74 C-210/06 *Cartesio*.

75 See Chapter II.

76 See the speech of Commissioner McCreevy at the European Parliament Legal Affairs Committee on 4 October 2007 at: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/592&format=HTML&aged=0&language=EN>.

common solution at the transnational level has been recognised by Article 293 of the EC Treaty and by the Court of Justice in *Daily Mail* judgement.

The difficulties encountered by the companies wishing to move their registered seat, at the legislative and administrative level, necessitate, with a view to the completion and functioning of the single market, Community provisions which would facilitate the carrying-out of such transfers. Ensuring necessary coordination of safeguards for the protection of the interests of the third parties (i.e. creditors, shareholders and employees) on the occasion of the transfer of the company's registered office needs a supranational solution as well.

The above-mentioned objectives cannot be sufficiently attained by the Member States in so far as they involve laying down rules with common features applicable at transnational level, in particular a common procedure of the transfer of registered office with all the necessary safeguards for the stakeholders involved in this operation.

However, these objectives might also be achieved by other Community instruments. The existing and forthcoming measures, such as the European Company Statute and the cross-border merger directive, might be found sufficient in meeting the abovementioned objectives. In particular, they lay down common rules facilitating a cross-border transfer of a companies' registered office as well as provide for safeguards necessary in cross-border operations. Their effectiveness in achieving the above mentioned goals remains to be tested.

## 4. OBJECTIVES

The aim of providing an option to transfer a registered office within the EU is to improve efficiency and the competitive position of existing European companies. However, achievement of this objective may not be achieved without providing necessary protection to other stakeholders. The transfer of the registered office should not negatively affect the interests of shareholders, creditors or employees. Therefore, appropriate safeguards protecting these interests should be taken into account.

### 4.1. The objective: Improve efficiency and competitive position of existing European companies

To achieve the objective of improving efficiency and competitive position of existing European Companies, the following specific objectives are defined:

(a) *Ensure the same business opportunities for all European companies.*

- All companies, new and existing, should have the same possibilities with regard to the choice of the corporate legal framework applicable governing their registration and functioning.

#### Operational objective:

- Guarantee legal continuity of the company transferring the registered office

(b) *Ensure legal certainty of the rules governing the transfer.*

- Any action might establish common rules governing the cross-border aspects of the transfer procedure and provide for information and disclosure obligations ensuring the minimisation of risks implied by the transfer for companies and all interested stakeholders.

#### Operational objectives:

- Ensure efficient cooperation between the competent authorities during the transfer procedure;
- Ensure transparency and access to information to all stakeholders which could be affected by the transfer.

(c) *Promote integration of the company in the host Member State after the transfer of the registered office.*

- The proposal would ensure that the host Member State applies the same conditions to companies moving their registered office to its territory as those laid down for the companies established there.

#### Operational objective:

- Ensure that the company fulfils all the requirements of the host Member State at the time of its re-registration.

#### **4.2. Necessary protective measures complementary to the main objective: Guarantee the effective protection of the interests of the main stakeholders**

This general aim of improving efficiency and competitive position of existing European Companies may not be achieved without providing necessary protection to other stakeholders who may be affected by the transfer of a company's registered office. The following specific safeguards protecting the interests of the main stakeholders should be taken into account:

- (a) *Ensure the protection of shareholders' rights, in particular:*
  - Ensure that shareholders have easy access to information about the transfer and its implications.
  - Ensure that rules on minority shareholders' protection in relation to the transfer are provided by the Member States.
- (b) *Ensure protection of creditors' interests, in particular:*
  - Ensure that creditors are properly and timely informed about the transfer and its implications.
  - Ensure that creditor protection rules in relation to the transfer are provided by the Member States.
- (c) *Ensure protection of employees' rights, in particular:*
  - Ensure that the employees' rights arising from the employment contract are safeguarded.
  - Ensure that after the transfer employees' participation rights are not diminished.
  - Ensure that employees are properly and timely informed/consulted about the transfer and its implications.

#### **4.3. Consistency with the main EU policies and objectives**

One of the main goals of the Lisbon Strategy relaunched in Spring 2005 is to boost growth and jobs by increasing Europe's attractiveness as a place to invest and work. The Communication "Working together for growth and jobs. A new Start for the Lisbon Strategy"<sup>77</sup> indicates that removing remaining barriers in the internal market will create new opportunities for market participants and the resulting competition will spur investment and innovation. A single market that functions well is essential if European companies are to compete in the global market place. Improving efficiency and the competitive position of existing companies by providing them with the possibility to choose the corporate legal framework that best suits their needs, while ensuring that the interests of the stakeholders are properly protected, contributes to the achievement of the Lisbon objectives. Making an option to transfer registered offices available to European businesses would make EU markets more open and enhance corporate mobility. Opening the borders for companies would also increase the pressure on EU Member States to make their laws more flexible and business friendly. This would contribute to the Lisbon aim to simplify and modernise regulatory environment and cut the red tape.

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77 Communication to the Spring European Council Working together for growth and jobs. A new Start for the Lisbon Strategy, COM (2005) 24.

## 5. POLICY OPTIONS

In this chapter different possible policy options will be considered. First the status quo situation, already explained in Section 3.2, will be shortly presented for clarity. Secondly, 'no action' option, explained in detail in section 3.5, will be recalled. It will be followed by a presentation of different content options of a possible measure. In this section, different choices with regard to the content/substance of a possible action will be defined (5.2). It will be followed by a section (5.3) on different possible instruments to achieve the defined objectives according to the chosen content options.

### 5.1. Status quo

In summary, if there were no further developments in the field of company law existing companies wishing to transfer their registered offices to other EU countries would have to establish an SE or SCE and use the transfer option available under these Statutes or, alternatively, wind up a company in the home Member State and re-establish it in the Member State of destination.

### 5.2. The 'no action' option

This option would imply no policy change and awaiting the impact of other developments, such as the practical effects of the cross-border merger directive, the developments of the Community case law or an action on a European Private Company.

### 5.3. Community action: the content of the possible measure

#### 5.3.1. The principle

Taking into account the different legal traditions of the Member States (see section 3.1.2) and the recent developments in the case law of the Court of Justice there are two options:

#### *Option A.1: The limited approach*

According to this approach, the Member States applying the real seat principle could require that the company moving its registered office to their territory transfers its real seat/head office as well. As a result, companies could relocate their registered office alone when moving to the incorporation state, but would have to relocate both real and registered seat when moving to the real seat state. In all cases, the applicable company law would change with the transfer: the company would no longer be subject to the company law of the home Member State and will be subjected to the company law of the host Member State.

**Table 6.** Effect of the transfer of the registered office in option A.1:

Transfer of the registered office		
TO FROM	Incorporation state	Real seat state
Incorporation state	no transfer of HO necessary	<b>transfer of HO necessary</b>
Real seat state	no transfer of HO necessary	<b>transfer of HO necessary</b>

HO= head office

### *Option A.2: The extensive approach*

According to this approach the host Member State, irrespective of whether they apply real seat or incorporation principle, could not require that the company moving its registered office to their territory transfers also its real seat. As a result the companies could relocate their registered office alone (i.e. without having to move the head office at the same time) when moving to any Member State.

**Table 7.** Effect of the transfer of the registered office in option A.2:

Transfer of the registered office		
TO	Incorporation state	Real seat state
FROM		
Incorporation state	no transfer of HO necessary	no transfer of HO necessary
Real seat state	no transfer of HO necessary	no transfer of HO necessary

### **5.3.2. The applicable law determining the legal form of the company**

#### *Option B.1: The application of the company law of the home Member State*

This option would foresee that the host Member State would have to recognise the corporate legal form of the company as acquired in the home Member State. That would imply that all Member States would have to recognise all national corporate legal forms from all Member States.

#### *Option B.2: The application of the company law of the host Member State*

This option would envisage that a company has to adopt a corporate legal form available in the company law of the host Member State.

### **5.3.3. Shareholders' rights**

#### *Option C.1: No shareholders' rights*

The management or the administrative organ of the company would make the decision on the transfer of the registered office without the involvement of the shareholders.

#### *Option C.2: Information rights*

Shareholders could not vote on the transfer of the registered office, but would be informed in due time about the conditions of the transfer of the registered office and its consequences.

#### *Option C.3: Information rights and decision to be taken by simple majority at the general meeting*

In addition to information rights, shareholders would have the right to approve the transfer by simple majority at the general meeting.

#### *Option C.4: Information rights and decision to be taken by qualified majority at the general meeting*

In addition to information rights, shareholders would have the right to approve the transfer by the majority that is required to modify the memorandum and the articles of

association in the home Member State.

#### **5.3.4. Minority shareholders' protection**

##### *Option D.1: No additional protection*

The instrument would not address the issue of the protection of the minority shareholders who oppose the transfer. They would have the rights given to minority shareholders by the law of the home Member State.

##### *Option D.2: Right of veto*

As a means of protection of the minority shareholders the proposal would give them a possibility to thwart the transfer of the registered office. Therefore, the transfer decision would have to be taken unanimously at the general meeting.

##### *Option D.3: Sell out rights*

In this case the shareholders who opposed the transfer would have the right to sell their shares to the company or to the other shareholders. The company would have the obligation to buy the shares offered.

##### *Option D.4: Member States shall decide on the means of protection*

This option would allow the Member States to decide what kind of minority protection measures they wish to introduce.

#### **5.3.5. Creditor protection**

##### *Option E.1: No creditor protection*

The proposal would not address the issue of creditor protection. Therefore, the Member States would be free to introduce creditor protection rules in relation to the transfer or not.

##### *Option E.2: Information rights*

Creditors would be informed in due time about the characteristics and consequences of the transfer of the registered office.

##### *Option E.3: Information rights and security for claims*

In addition to information rights the minimum protection rule would be included requiring a company transferring its registered office to provide for an appropriate security for the creditors' claims due before the transfer.

##### *Option E.4: Right of veto*

The company would need the agreement of the creditors in order to transfer its registered office.

##### *Option E.5: Information rights and the requirement that the Member States decide on other means of protection*

In this case the proposal would require the Member States to introduce creditor protection rules in relation to the transfer, but leave them discretion as to their content and scope.

#### **5.3.6. The employees' involvement rights**

##### *Option F.1: Information/consultation rights and application of the rules of the host Member State concerning participation*

Apart from the right to be properly and timely informed/consulted about the transfer and its implications in a timely way this option would imply that the employee participation rules of the host Member State would apply after the company's transfer of the registered office to that state. In the case where a company would move to a Member State where no employees' participation rights are recognized or these rights are weaker than in the home Member State, the employees would lose these rights or their rights would be diminished.

*Option F.2: Information/consultation rights and application of the rules of the host Member State with the safeguards ensuring that existing employees' participation rights are not diminished or lost without their consent*

Apart from the right to be properly and timely informed/consulted about the transfer and its implications, this option would envisage that, in principle, the employee participation rules of the host Member State would apply after the company's transfer of the registered office to that state. However, a provision would be included ensuring that, in the case where a company would move to a Member State with no or weaker employee participation rights than in the home Member State, these rights would not be lost or diminished as a consequence of the transfer of the registered office without the employees' consent.

*Option F.3: Right of veto*

This option would foresee that the transfer of the registered office is subject to the approval of the employees' representatives.

*Option F.4: Information/consultation rights and application of the rules of the home Member State*

Apart from the right to be properly and timely informed/consulted about the transfer and its implications, this option would imply that the employee participation rules of the home Member State would continue to apply following the transfer of the registered office.

#### **5.4. The instrument to be used**

##### **5.4.1. Convention**

A possibility to tackle the issue of the transfer of registered office without direct Community intervention would be to use a delegation contained in the EC Treaty. Article 293 of the EC Treaty foresees the arrangements for the transfer of the company's seat: "Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals (...) the mutual recognition of companies or firms within the meaning of the second paragraph of Article 48, the retention of legal personality in the event of transfer of their seat from one country to another (...)".

##### **5.4.2. Recommendation**

This option would foresee an instrument non-binding for Member States. This instrument would guarantee maximum flexibility to Member States as they would have discretion on whether and to which extent implement it into their national legal regime.

##### **5.4.3. Directive**

The Directive would be an instrument legally binding for Member States. However, it would give Member States some flexibility for their national specificities.



## 5.4.4. Regulation

A Regulation would introduce uniform obligatory rules, directly applicable in the Member States, irrespective of the national specificities.

## 5.5. Screening and preliminary assessment of the options

The following tables present a screening of the options (both in terms of the content and the instrument to be used) that have been discarded at this early stage together with the reasoning. A more detailed analysis of the retained options will be presented in section 6.

**Table 8. Discarded content options**

Discarded content options	Reasoning
<b>Shareholders' rights</b>  <i>Option C.1: No shareholders' rights</i> <i>Option C.2: Information rights</i>	<p>The transfer of the registered office to another Member State is a major decision in the company's life and has important impact on the shareholders as well. For that reason the decision should be taken by the general meeting.</p>
<b>Minority shareholders' protection</b>  <i>Option D.1: No additional protection</i> <i>Option D.2: Right of veto</i>	<p>Option D.1 would not address the issue of the protection of the minority shareholders who oppose the transfer. As a result these shareholders would have the rights provided by the law of the home Member State. In the case option C.4 is chosen the requirement of the qualified majority decision would create some minority protection. If no additional minority protection is provided for in the proposal, in many cases the minority shareholders would be left with no way out of the company in the case they oppose the transfer. The transfer of the registered office may have beneficial effect on the minority interest (e.g. when the company would move to a more investor friendly legal system), but may also be detrimental (e.g. if the majority shareholder(s) would decide to move to a legal regime with weaker minority protection rules). This option would leave the minority shareholders without remedy but it would ensure high level of freedom for companies.</p> <p>While option D.2 would mean the absolute protection of shareholders who voted against the transfer, it would also make it nearly impossible (especially in cases of dispersed ownership) to transfer the registered office, as it would require the unanimity of all shareholders. There are less burdensome options to protect minority shareholders.</p>
<b>Creditor protection</b>  <i>Option E.1: No creditor protection</i> <i>Option E.4: Right of veto</i>	<p>Option E.1 would place creditors at a disadvantage in the case of cross-border transfer. Ensuring information or other rights to creditors would depend on the Member States' decision. If some Member States would decide not to introduce any protective measures in their national legislation, creditors would have to take into account the higher level of risk in their crediting policy in respect of such countries. It may result in the rise of costs of credit for enterprises. At the same time, this solution would put the least burden on companies.</p> <p>Option E.4 would fully protect creditors but would also make it very difficult for companies to exercise the freedom of establishment. Other options can duly protect the interest of creditors but do not create unreasonable obstacles to the transfer.</p>
<b>The employees' involvement</b>  <i>Option F.3: Right of veto</i>	<p>This option would imply an absolute protection of the employees' rights, but at the same time would have a negative impact on the right of the company to exercise their freedom of establishment, making it dependant on employees' agreement. Sufficient protection of employees' participation rights, but with no unnecessarily obstructive effect on the freedom of establishment is guaranteed by option 2, which is, therefore, more balanced than option 3.</p>

**Table 9. Discarded instruments.**

Discarded instruments	Reasoning
<b>Convention</b>	<p>The attempt undertaken in 1968, to find a workable solution in the Convention on the Mutual Recognition of Companies and Firms<sup>78</sup> has failed as no agreement could be reached among Member States due to the differences in national approaches towards the transfer of the company's seat (see section 3.1.2). It is, therefore, rather unlikely that such convention could be concluded in a near future, given that no attempt to sign such agreement was undertaken after the failed attempt in 1968. Besides, the procedure for the adoption of the convention is very complex and lengthy and requires the consent of all parties. Therefore, it would not provide for a short term solution. Moreover, in the public consultation the Member States expressed their support for a directive on this issue.</p>

The following tables present the retained options whose impacts will be analyzed in depth in section 6.

**Table 10. Retained options.**

No action	
<b>Retained content options.</b>	
<b>Content options</b>	
<b>A. The principle</b>	<i>Option A.1: The limited approach</i> <i>Option A.2: The extensive approach</i>
<b>B. The applicable law determining the legal form of the company</b>	<i>Option B.1: The application of the law of the home Member State</i> <i>Option B.2: The application of the law of the host Member State</i>

<sup>78</sup> Draft Treaty of 27 February 1968, Convention on the Mutual Recognition of Companies and Firms, see M. MENUJOCQ, La mobilité des sociétés dans l'espace européen, Paris, 1997, nr. 118.

<b>C. Shareholders' rights</b>	<i>Option C.3: Information rights and General Meeting's decision by simple majority</i> <i>Option C.4: Information rights and General Meeting's decision by qualified majority</i>
<b>D. Minority shareholders' protection</b>	<i>Option D.3: Guarantee of their investment</i> <i>Option D.4: The requirement that the Member States decide on the means of protection</i>
<b>E. Creditors' protection</b>	<i>Option E.2: Information rights</i> <i>Option E.3: Information rights and security for claims</i> <i>Option E.5: Information rights and the requirement that the Member States decide on other means of protection</i>
<b>F. Employees' involvement</b>	<i>Option F.1: Information rights and application of the rules of the host Member State</i> <i>Option F.2: Information rights and application of the rules of the host Member State with the safeguards ensuring that existing employees' participation rights are not diminished or lost without their consent</i> <i>Option F.4: Information rights and application of the rules of the home Member State</i>

**Table 11. Retained instruments.**

Instruments		
Recommendation	Directive	Regulation

## 6. ANALYSIS OF IMPACTS AND COMPARISON OF THE RETAINED OPTIONS

In this section a detailed analysis of the main impacts of the retained options is presented and compared with baseline (status quo). The tables presented in this chapter contain essentially qualitative information and are only meant to illustrate the assessment and comparison of different options.

After presenting the impacts, the options will be compared according to their effect on some pre-defined criteria (corresponding to the main issues that may be affected by the choice of a particular option). **The comparison of the 'no action' option and the option providing for a measure on the transfer of a registered office against the baseline (status quo) will be presented in this Chapter. It will focus on the assessment of the cross-border merger directive (which is a measure providing for a comparable legal framework to that of a possible measure on the transfer of registered office and of which the rules are already established) as against the option providing for a measure on a direct transfer of registered office. The 'no action' option will be compared with the best suggested content options for a possible measure.**

### 6.1. Status quo

This would involve substantial costs and lengthy procedures. **Table 12** below indicates the costs and procedures related to the transfer of the registered office in the status quo situation (i.e. the costs of winding up and re-incorporating a company).

**Table 12. The costs of winding up of a company in one country and creating a new company in another country<sup>79</sup>.**

Cost of status quo	Voluntary winding up of a company	Setting up a new company
<b>Administrative burden</b>	<p>The number of procedures for winding-up of a company may vary across the EU and depends on the complexity of the particular case.</p> <p>E.g. a voluntary winding up of a private limited liability company in the UK<sup>80</sup> (150 shareholders, € 6,5 mio in cash, no creditors, employees) requires approx. <b>10 steps</b><sup>81</sup>; in FR the liquidation of a limited liability company requires approximately <b>20 steps</b><sup>82</sup> and in DE <b>more than 20 steps</b>.<sup>83</sup></p>	<p>The number of procedures necessary to set-up a company is comprised <b>between 3 (DK, FI, SE) and 15 (EL)</b>, with an average of 7.</p> <p>As a general rule, there are 5 categories of procedures/requirements needed to set-up a company<sup>84</sup>: screening, tax-related, labour/social security, safety and health, and environmental related procedures.</p> <p>The particular procedures vary across MS, depending on the type of company and the sector in which it operates. <b>Table A14</b> in the Annex I lists the main mandatory procedures.</p> <p>The number of procedures needed to register the property of the new established company is comprised between 1 (SE) and 12 (EL) with an average of 5.</p>
An average number of procedures involved in winding up and re-incorporating a company could vary <b>from 13 to more than 35</b> .		
<b>Time</b>	<p>Comparable data on the time needed for a voluntary winding-up of a solvent company is not available and it would depend on the complexity of the case.</p> <p>E.g. in CZ the average time: <b>6 months</b>, in SE: <b>7-8 months</b>, in DE: <b>min. 1 year</b>.</p>	<p>Setting-up a company takes between <b>5 days (DK) and 2 months (SL)</b>, with an average of 24 days.</p> <p>Registering property for the new established company may take from 2 (SE) to 391 (SL) days with an average of 72, 5 days.</p>
<b>Financial cost</b>	<p>The financial cost of winding-up a company varies greatly, depending on the volume of business of the company, the cost of liquidator, number of creditors etc. E.g.:</p> <p><b>UK:</b> the estimated out-of-pocket cost for members' voluntary liquidation of a private company varies between <b>€20,000 and €150,000</b>, if no unusual problems arise. Above this, hidden costs due to paying creditors earlier than expected and to the inability to use cash and assets during the liquidation period should be added.</p> <p><b>IE:</b> a voluntary winding-up of a company (5 mio assets) will cost on average between <b>€15,000 and €30,000</b> (including the liquidator's fees and the legal fees of the solicitor and excluding VAT and outlays), providing that no contentious issues arise.</p> <p><b>DE:</b> a liquidation of a shell company costs approx. <b>€2,200</b>, plus the fees of the liquidator for a company with an ordinary line of business (<b>easily €120,000 per year</b>).</p> <p><b>FR:</b> three types of costs, i.e. costs related to mandatory formalities with the authorities (approx. <b>€200</b> or more); mandatory publications (approx. <b>€5</b>); the liquidation operations (substantial costs; different in every case).</p>	<p>An average set-up cost for a private limited liability varies from €285 (FI) and €6,715 (DK) and for public companies from €285 (FI) to €7,000 (AT).</p> <p>The minimum capital to set-up a company varies from €1-2 (UK, IE, FR, CY) to €35,000 (AT) for private companies and from €8,850 (CY) to €124,580 (PL) for public companies</p> <p>The costs of re-incorporation of a company would vary depending on the choice of the country of destination (e.g. in IE <b>approx. €1,500</b>, in EL <b>€19,500</b>).<sup>85</sup></p>
Approx. cost of winding up and re-incorporating a company in the above cases could vary for example from <b>€39,500 to €169,500</b> if a company moves from UK to EL.		
<b>Social cost<sup>86</sup></b>	<p>The rights of workers are safeguarded by virtue of the Directive 2001/23/EC; however:</p> <p>Employees' rights under complementary pension schemes might not be continued (depending on the Member State)</p>	

79 The evaluation of the costs is based mainly on data of the Doing Business Database of the World Bank, which provides objective measures of business regulations and their enforcement. The Doing Business indicators are comparable across 175 economies. They indicate the regulatory costs of business and can be used to analyze specific regulations that enhance or constrain investment, productivity and growth (<http://rru.worldbank.org/DoingBusiness/>). Some data has been gathered from the company law experts advising the Commission.

80 Example provided by a Member of the Advisory Group on Company Law and Corporate Governance.

81 I.e. (i) pre-liquidation review, (ii) statutory declaration of solvency, (iii) General Meeting to approve the liquidation by a 75%, (iv) filing of liquidation documents with the Registrars of Companies, (v) communication to creditors and shareholders, (vi) press advertisements, (vii) tax computations and returns, (viii) payment of creditors, (ix) distribution to shareholders, and (x) final dissolution.

82 See Table A16 for the list of particular steps required.

83 See Table A17 for the list of particular steps required.

84 See Djankov, S., La Porta, R., Lopez de Dilanes, F., and Shleifer, A.: The Regulation of Entry, Quarterly Journal of Economics, 117, pp. 1-37, Feb. 2002, Table I (List of procedures for Starting-up a Company).

85 See Table A15 in Annex 1.

86 This process would imply a transfer of undertaking within the meaning of Article 1 of Directive 2001/23/EC. The rights of workers are mainly safeguarded by virtue of the directive, but there are still some effects for workers. As to the scope, the directive does not cover all types of activities (sea-going vessels are explicitly excluded).

	The participation rights would be governed by the company law of the host MS, which may in some cases result in workers' rights being diminished or lost.	
<b>Tax implications</b>	<p>Profits from liquidations distributed to shareholders would be taxed.</p> <p>Capital gain taxation would be triggered in every country where the dissolved company has permanent establishments (a <b>corporate income</b> tax would be levied on such gains, which may vary <b>from 10% in CY to 33% in FR, 34% in BE, 37 % in IT and 38% in DE</b>).</p> <p>Other charges would arise, derived from the liquidation of the company and the transfer of the ownership of fixed assets<sup>87</sup>.</p>	<p>The company may lose specific tax advantages or benefits that would not be rolled over to the new company.</p> <p>Transfer and registration taxes may arise.</p> <p>Some MS (EL, ES, CY, LU, AT, PL and PT) charge capital duty on the incorporation of a company.</p> <p>Stamp duty is levied on listed companies in several Member States.</p>

<sup>87</sup> See ([http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/info\\_docs/tax\\_inventory/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm)) for an overview of such taxes in 27 Member States.

Not all the costs and procedural requirements presented in **Table 12** are to be considered as unnecessary and unjustified restrictions. Some of the requirements and procedural steps related to the move of the legal seat to another country are legitimate and necessary to protect various legitimate interests, such as the interests of creditors, employees or minority shareholders as well as the public interest. The costs related to the requirements on protection of legitimate interests would not be eliminated by the two main options ('no action' option and the policy option). Therefore, the costs that these options could reduce mainly concern administrative burdens and social and tax costs related to winding-up of a company in one country and setting up a new one in another. **The comparison of the costs of the three situations, i.e. (I) carrying out the transfer of the registered office in the current situation (status quo), (II) the costs of carrying out a transfer through a cross-border merger ('no action' option) and (III) directly on the basis of a possible measure (the policy option) is presented in Table 13.**

## 6.2. 'No action' scenario

If no policy action is taken at the Community level, companies will not be able to carry out a direct transfer of the registered office. Such right would remain available under the SE and SCE Statutes.

However, future developments in the field of companies' mobility may open new possibilities to companies and provide them with alternative means of achieving the result equivalent to the transfer of the registered office, making the need for a measure on the transfer of the registered office less pressing.

In particular, one should consider whether the cross-border merger directive and a possible Statute for a European Private Company (see section 3.5 for details) could sufficiently meet the policy objectives defined in Chapter IV. Furthermore the future developments in the Community case law as well as in other policy developments at EU and Member States' level may affect the situation in the market.

### 6.2.1. The cross-border merger directive

Once the Directive 2005/56/EC of 26 October 2005 on cross-border mergers is implemented into the national laws of the Member States, i.e. after 15 December 2007, it will be possible to effectuate the transfer of the registered office by means of **a merger of the existing company with a subsidiary set up in the Member State to which it wants to move its office (the host Member State)**<sup>88</sup>. Since this option is not yet practically possible in the EU it is difficult to predict whether and how many companies would use it to transfer their registered office to another Member State. However, even though no precise data could be provided, it is possible to make a preliminary estimation. In particular, one should examine whether the costs involved in completing of the direct transfer of registered office would be substantially different from the costs involved in carrying such transfer through a cross-border merger operation. This comparison seems reasonable, especially when looking at other legal systems, notably the US, where, in the absence of specific legislation providing for a direct transfer, the cross-border merger law is commonly used by companies to transfer their offices between US states (see section 3.5.1).

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<sup>88</sup> This method of relocating the company's registered office between the states is commonly used in the US (cf e.g.: Roberta Romano, *The Genius of American Corporate Law* 34 et seq. (1993)).

### 6.2.2. The European Private Company

The possible Statute for a European Private Company could improve companies', in particular SMEs' mobility as it would facilitate the operation of business in several Member States and could provide a possibility to transfer the registered office of an EPC. The Statute, if allowing for a reasonably cheap and quick formation of a company, could be attractive for companies, also SMEs, as a tool for transferring registered offices across the EU. More detail analysis of this possible measure would only be possible once its form and content are clearly defined.

### 6.2.3. The Community case law

As already mentioned in section 3.5, the Court of Justice may clarify in the course of 2008 Community law as it applies to the Member States' legal traditions in relation to the transfer of a company's seat. In particular, the case currently pending before the Court, i.e. *Cartesio*, relates to an issue of the transfer of the registered office, the very subject of the possible EU measure. The outcome of the Court's judgement may affect the scope and content of such measure. Should a principle of freedom of transfer of the registered office be established on the basis of the Treaty, the need and possible scope of an EU action would have to be reconsidered.

Considering that the practical effect of the cross-border merger directive is not yet known and that the Community approach to the issue of the transfer of the registered office might soon be clarified by the Court of Justice, it might be advisable to wait until the impacts of those developments can be fully assessed and the need and scope for the EU action better defined.

### 6.2.4. The comparison of the current situation (status quo) with 'no action' option and the policy option

Before presenting a possible content of a possible Community measure (section 6.2) it should be considered to what extent the problems of the current situation (**status quo**) could be solved in the case no Community action is undertaken (**'no action' option**). The latter should then be compared with the situation when Community action would be embarked on (**the policy option**). **Table 13** contains a comparison of these three scenarios and provides an indication on their costs.

The status quo situation involves substantial burdens in terms of administrative costs (procedures), time, financial costs as well as social and tax costs involved in winding-up and re-incorporating a company. The cost of winding-up of a company appears to cause the biggest problem as usually the company, even if solvent needs to go through all the liquidation proceedings, which can last even for several years and require sometimes more than 35 procedural steps to complete. Furthermore, there are also the hidden costs of paying creditors earlier than in the normal trading environment (which is less advantageous) and of losing the use of the company's cash and assets during the liquidation period (as the management of a company has to be ceded to an appointed liquidator) which can last from several months to several years. The examples of the list of procedural steps involved in winding-up of a company are provided in **Tables A16** and **A17**). The comparison of the status quo with the two main options shows that the latter provide for less costly solutions. In particular, both options ensure the legal continuity of a company transferring its registered office to another country, therefore, no loss of business and the costs involved therein, occur. A company would not have to go through a burdensome winding-up procedure, but a specific, much easier and less costly,

procedure for cross-border merger or for the transfer (see **Table 13** for details). Both options ensure (or would ensure) tax neutrality of the transaction and provide safeguards for employees, which is not legally guaranteed in the current situation.

The cross-border merger directive (one of the elements of the 'no action' option) addresses already many of the problems related to the status quo, in particular it ensures that no interruption of business occurs, i.e. it reduces the costs of winding-up of a company. It also ensures tax neutrality in case of cross-border transfer through a merger operation and secures that employees' existing rights are not lost in the case of cross-border transfer.

The cross-border directive would not reduce costs of setting up of a new company in the host Member State as also in this option a subsidiary has to be created which an existing company is then merged into. In this respect the policy option providing for a direct transfer of the registered office is more advantageous in addressing the problems related to status quo situation. However, the costs of setting up a company are not substantial in the cross-border transaction. The most burdensome part of the procedure is related to the cost of winding up of a business in the home Member State. Besides, recent developments and trends in the EU and Member States' policies suggest that the costs related to establishing a business in any of the EU countries are likely going to be reduced. In particular, the 'one stop shop' initiative making the setting up of a company easier and cheaper and the EU simplification program aiming at cutting red tape and reducing unnecessary administrative burdens imposed on businesses would significantly reduce the administrative cost of setting up companies. Therefore, it can be expected that in the future cost differences between the 'no action' option and the policy option will be even less significant than they are now. The two main options, if compared in the context presented above, would provide for a similar solution to the defined problem. The 'no action' option seems more proportional as no further EU action is required. The 'no action' option was preferred by a number of stakeholders in the public consultation. Those respondents considered the existing measures (i.e. the SE Statute and the cross-border merger directive) and the Community case law as sufficient for the time being and stated that no new initiatives should be undertaken before the practical implications of those measures have been properly assessed.

Table 13. A comparison of the costs of (I) status quo (current situation) with the costs of (II) 'No action' (i.e. carrying out a transfer through a cross-border merger) and (III) a policy option (i.e. carrying out a transfer directly on the basis of a possible measure). [more "€" indicates that the transaction is more costly; the comparison refers to absolute cost of the transactions, i.e. the baseline is not a benchmark against which the options (I) and (II) are assessed]			
Policy option Costs	(I) Status quo (i.e. winding up of a company in one country and creating a new company in another country)	(II) 'No action' (i.e. transfer of the registered office through the cross-border merger directive)	(III) A policy option (i.e. a possible measure on the transfer of the registered office)
<b>Required procedures</b>	<p>An average number of procedures involved in winding up and re-incorporating a company could vary from 13 to more than 35.</p> <p>Approx. cost of winding up and re-incorporating a company could vary for example from €39,500 to €169,500 if a company moves from UK to EL.</p> <p>The company may lose specific tax advantages or benefits that would not be rolled over to the new company. Transfer and registration taxes may arise. Some MS<sup>89</sup> charge capital duty on the incorporation of a company. Stamp duty is levied on listed companies in several Member States.</p> <p>The number of procedures, the time and the financial cost of winding-up a company varies greatly, depending on the volume of business of the company, the cost of liquidator, number of creditors etc. as well as from/to which country a company is moving its registered office.</p> <p>In any case the number of procedures and the time needed to complete all winding-up procedures (which are not necessary in two other options) would be more burdensome than in (II) and (III). On the top of that, there are also the hidden costs of paying creditors earlier than in the normal trading environment and of losing the use of the company's cash and assets during the liquidation period.</p>	<p>Transferring the registered office through a merger operation would require setting up of a new company (subsidiary) in a host Member State and, subsequently, an acquisition of an existing company by this subsidiary. This would imply the costs of setting up a company (Table 12) and the costs of carrying out a cross-border merger, which is subject to the following procedural formalities<sup>90</sup>:</p> <ul style="list-style-type: none"> <li>- the drawing-up of joint draft terms of merger;</li> <li>- the publication of the draft terms of merger in the national gazette;</li> <li>- the drawing-up of a report by the administrative or management bodies of each of the companies involved;</li> <li>- the approval of the merger by the appropriate organs of each of the companies involved (in principle the general meeting);</li> <li>- the drawing-up of an expert's report for each of the companies involved;</li> <li>- the judicial or administrative preventive supervision of the legality of the merger, or the drawing-up and certification in due legal form of the acts required for the merger, for each of the companies involved;</li> <li>- the publication of the merger.</li> </ul>	<p>The possible measure would have to provide for a procedure for a transfer of the registered office. It would have to include similar procedural steps as in the case of cross-border merger:</p> <ul style="list-style-type: none"> <li>- the drawing-up of a transfer proposal;</li> <li>- the publication of the transfer proposal in the national gazette;</li> <li>- the drawing-up of a report by the administrative or management bodies of the company;</li> <li>- the approval of the transfer proposal by the appropriate organs of the company (in principle the general meeting);</li> <li>- the drawing-up of an expert's report;</li> <li>- the judicial or administrative preventive supervision of the legality of the transfer, or the drawing-up and certification in due legal form of the acts required for the transfer;</li> <li>- the publication of the registration of a company in the host Member State.</li> </ul> <p>No setting up of a subsidiary in the host Member State would be necessary; however, there will be formalities necessary for the adaptation of a legal form of a company transferring its registered office to the requirements of the law of the host Member State.</p>
<b>Comparison</b>	€€€€€	€€€	€€
<b>Social implications</b>	<p>The rights of workers are safeguarded by virtue of the Directive 2001/23/EC; however:</p> <p>Employees' rights under complementary pension schemes might not be continued (depending on the Member State).</p> <p>The participation rights would be governed by the company law of the host MS, which may in some cases result in workers' rights being diminished or lost.</p>	<p><b>Employees' individual rights:</b> Article 14(4) of Directive 2005/56/EC concerning states that "<i>the rights and obligations of the merging companies arising from contracts of employment or employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect</i>".</p> <p><b>Collective rights:</b> the situation would be similar to that mentioned in Table 12 (social cost), except for <b>participation rights</b>, which are regulated in Article 16 of Directive 2005/56/EC. This provision provides, in a nutshell, that when one of the merging companies has more than 500 employees and is operating under a</p>	<p><b>Employees' individual rights:</b> no change if no change of the place where an employee habitually carries out his work.</p> <p>Since the employer would be a different legal person but the identity of the economic entity would be maintained, the transfer of registered office would entail a transfer of undertaking within the meaning of Directive 2001/23/EC<sup>91</sup>. Article 3 of this directive: the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer are, by reason of such transfer, <b>transferred to the transferee</b>, with the only exception of complementary pension rights. Article 4 of this directive: the transfer cannot constitute grounds for dismissal.</p> <p><b>Collective rights:</b></p>

<sup>89</sup> EL, ES, CY, LU, AT, PL PT

<sup>90</sup> Directive 2005/56/EC on cross-border mergers states that the procedure for such mergers is governed in each Member State by the principles and rules applicable to domestic mergers (harmonised in the EU by the Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies)

<sup>91</sup> Council Directive 2001/23/EC of 12 March 2001 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 part of undertakings or businesses. OJ L 82 of 22.3.2001, p.16.



		participation system or the national legislation applicable to the company resulting from the merger does not provide for the same level of participation as operated in the relevant merging companies, the rules of Directive 2001/86/EC (European Company) apply mutatis mutandis.	- information and consultation: no change if not change of place of work, as the rules of the country where the workers' representatives are employed apply; - participation rights: the possible measure should contain provisions on participation rights.
<b>Comparison</b>	€€€€	€€€	€€€
<b>Tax implications</b>	Profits from liquidations distributed to shareholders would be taxed.  Capital gain taxation would be triggered in every country where the dissolved company has permanent establishments (a corporate income tax would be levied on such gains, which may vary from 10% in CY to 33% in FR, 34% in BE, 37 % in IT and 38% in DE).  Other charges would arise, derived from the liquidation of the company and the transfer of the ownership of fixed assets <sup>92</sup> .	As regards tax implications, Council Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfer of assets and exchange of shares concerning companies of different Member States (Tax Merger Directive) provides for a principle of tax neutrality of the cross-border merger. It contains rules for the situation where there is an effective connection of the transferred assets and liabilities with a remaining permanent establishment and it plays a part in generating the profits and losses that are taken into account for tax purposes, but is silent on situations where these conditions are not fulfilled. The shareholders may benefit from the roll-over relief of the latent capital gains from the allotment of shares in exchange for the shares of the merged companies. However, any cash payment to the shareholder is subject to taxation.	Similar rules would apply if Tax Merger Directive's rules would be extended to cover the case of the transfer of the registered office of all companies.
<b>Comparison</b>	€€€€	€€	€€
<b>Other costs</b>	Costs of the legal advice, administrative costs are likely to be higher, in particular in respect of the winding-up of a company	Costs of the legal advice, administrative costs	Similar costs of the legal advice, administrative costs
<b>Comparison</b>	€€€	€€	€€

<sup>92</sup> An overview of such taxes in 27 Member States is available at: [http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/info\\_docs/tax\\_inventory/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm).

## 6.3. Community action: Content options

### 6.3.1. The principle

#### *Option A.1: The limited approach*

This approach, preserving the co-existence of the real seat principle and the incorporation principle, would result in a limited use by companies of the option to move the registered office to other Member States. The possibility to move the registered office without simultaneous transfer of the head office would only be possible if the company would move to an incorporation country (see **Table 6**). Since a number of Member States still apply the real seat doctrine, often a company would have to move its head office together with the registered office. In such scenario the benefit of the instrument would be very limited. It would result in a limited choice of the likely destinations for the move of the registered office as companies would move predominantly to countries applying incorporation principle (such as UK, IE or NL). These Member States are likely to become the most popular re-incorporation choices since the companies would prefer to move to a country with more flexible company laws rather than having to locate their registered and head office in the same Member State (which the real seat state would require). This may result in a disadvantageous position of the Member States applying the real seat principle as they may experience considerable outflow of companies registered in their territories and increased number of foreign legal forms operating on their national market.<sup>93</sup> It should be noted that, following the experiences of regulatory competition resulting from the case law of the Court of Justice (see section 3.2) some Member States applying the 'real seat' principle are considering to change the 'real seat' principle to 'incorporation principle' in their national law. For example, the German government, traditionally applying the real seat doctrine, has announced a reform of its corporate law which, inter alia, introduces the incorporation principle into German law allowing companies registered in Germany to conduct their business outside German territory. The motive for this change was to give German companies the same flexibility as the companies from other Member States enjoy<sup>94</sup>. Hungary has also recently introduced an incorporation principle in its national law<sup>95</sup>.

In addition, the 'real seat' principle is more and more difficult to apply in the modern economy, where international companies are often managed from different locations. Different criteria used by the Member States to determine the real seat (e.g. the place of the location of headquarters, the principal place of the company's operations, the place where the general meeting is held) would make it very difficult to determine which legal regime should govern the company following the move of the registered office. This would go against the objective of ensuring legal certainty in relation to the transfer.

#### *Option A.2: The extensive approach*

This approach would provide a common framework facilitating the exercise of the freedom of establishment for companies based on a uniform, simple and easily applicable principle, i.e.

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93 E.g. an existing Hungarian company could move its registered office to UK (which would imply that it would acquire a British corporate form and be governed by the British company law) and continue to operate under this form in Hungary. Such possibility is already available to new establishments of companies as a result of the Centros case law. Following the adoption of the directive this possibility would also be available to existing companies.

94 The press communication of the German Ministry of Justice (BMJ) on the reform (available at [http://www.bmj.bund.de/enid/0\\_c6eaea707265737365617274696b656c5f6964092d0932343639093a096d795f79656172092d0932303036093a096d795f6d6f6e7468092d093035093a095f7472636964092d0932343639/Presse/Pressemittellungen\\_58.html](http://www.bmj.bund.de/enid/0_c6eaea707265737365617274696b656c5f6964092d0932343639093a096d795f79656172092d0932303036093a096d795f6d6f6e7468092d093035093a095f7472636964092d0932343639/Presse/Pressemittellungen_58.html)) states in point 2(a): It is considered a competitive disadvantage that, according to the ECJ case-law in the Überseering and Inspire Art cases, foreign companies from EU Member States can choose to locate their true place of business in another State – i.e. in Germany too. These foreign companies are to be recognised as such in Germany. Conversely, German companies do not as yet have this possibility. As a result of the deletion of § 4a(2) of the GmbH Act, it is therefore to be made possible for German companies to choose a true place of business which is not necessarily the same as the registered place of business. This true place of business may also be located abroad. This increases the scope for German companies to conduct their business outside German territory as well. For example, this may be an attractive possibility for German groups to manage their foreign subsidiaries in the familiar legal form of the GmbH.

95 Act LXI of 2007, entered into force on 1 September 2007.

allowing companies to move their registered office to a different Member State without the obligation to relocate, at the same time, their headquarters or centre of business to that State. It would give all companies the possibility to freely choose the destination for their registration and change the applicable company law regime according to the needs of their businesses as well as to the developments of the national regulatory regimes.

The possible impacts (benefits and risks) of providing companies with the option to transfer the registered office have been already presented in sections 3.3 and 3.4. Therefore, in this section, only main conclusions are provided.

First of all, a new option (to transfer the registered office) would be open for companies, which is now prohibitively expensive and requires winding-up and subsequent re-incorporating of a company. On average, such transaction, taking as a proxy the data available for some countries, could cost €21.500-169.500, last up to one year and involve between 13 and more than 35 procedural steps. Providing the option to transfer the registered office would not eliminate all costs currently involved in conducting the transfer of the registered office, i.e. the costs of winding-up and re-establishing a company in another Member State. Some requirements imposed by the Member States on companies when they move the legal seat to another country are necessary to protect legitimate interests, such as the interests of creditors, employees or minority shareholders as well as the public interest. Those requirements need to be preserved. However, the costs of transferring the registered office would be significantly reduced and it would be ensured that companies do not lose their legal continuity and maintain control over their business throughout the transfer process.

The American experience has shown that the impact of providing companies with an option to transfer solely the registered office to another state works for the benefit of companies and has a positive effect on the quality and convergence of the corporate law and judicial systems. It can be expected that in the EU, where the national company laws and judicial systems are much more divergent than those between the US states, the cross-border mobility of companies would be even bigger. More than 10 million limited liability companies registered in the EU could potentially benefit from the option to transfer the registered office. Assuming that even 0,6-3% of EU companies would use this possibility, would mean a benefit for approximately 60.000-300.000 EU small and big companies could transfer their registered office to seek savings in credit costs and in their cost of capital. Applying the estimates released by the Italian Banking Association, only for Italian companies the possibility to transfer the registered office could translate in as much as 6 billion EUR savings in the cost of credit. In terms of cost of capital, using the estimates provided by the studies on shareholder expropriation, EU listed companies could increase their market value from 2% to 56%.

The transfer of the registered office may involve certain risks for different stakeholders. However, as **Table 5** (in section 3.4) shows the possible risks either are mitigated by the harmonised law already in place or would be minimised by the safeguards provided in the future EU legislation. Therefore, a risk that the possible measure would cause a 'race to the bottom' resulting in a lower level of protection of stakeholders' interests should not occur in the EU.

There would be no change in the tax and labour law applicable to a company, provided that the transfer of the registered office is not accompanied by the transfer of the company's headquarters and/or activities. The transfer of the registered office as such has no impact on the applicable tax and labour laws. According to the main principle applied in the EU countries, the fiscal residence of a company is determined by the place where its effective management (head office) is situated. As for labour law, the employment contract is governed

by the law of the country where the employee habitually carries out his/her work. The transfer cannot constitute grounds for dismissal of workers.

It should also be noted that in order to ensure that the transfer of the registered office is not rendered ineffective, the tax neutrality of the transfer should be guaranteed, i.e. that the transfer of the registered office to another Member State would not result in immediate taxation of unrealised gains on assets remaining in the Member State from which the office is transferred. However, this issue would need to be tackled by special action in the field of taxation, either at the EU or the national level. This could be achieved by extending the rules of the tax merger directive (currently ensuring tax neutrality in respect of cross-border mergers and the transfer of the registered office of the European Company) to cover the transfer of the registered office of all companies or by promoting co-ordination of Member States' tax policies in that respect<sup>96</sup>.

This approach should give all companies the possibility to choose the corporate environment which best suits their needs and bring better allocation of business. The emergence of the most efficient corporate system(s) in the EU is likely to result, in the long term, in the increased convergence and efficiency of the national corporate regimes. The Member States with the company laws less responsive to the entrepreneurs' needs are likely to reform their legal systems in the quest for attracting local company incorporations<sup>97</sup>, which in turn should have a beneficial effect on economic growth.

The studies prove that business regulations are an important determinant of growth. One of the most recent studies on the relation between business regulation and growth, conducted by the World Bank, has shown that more business-friendly regulations improve economic growth<sup>98</sup> and, in consequence, have positive impact on employment.

Some studies also show that small businesses will benefit the most, because they are the ones which suffer most from the existence of low quality regulation. As firms increase in size, fixed costs of regulatory compliance are spread over a larger revenue and employee base, which often results in lower regulatory costs per unit of output. A study by Crain<sup>99</sup> found that regulatory costs per employee decline as firm size—as measured by the number of employees per firm—increases. Crain estimates that the total cost of federal regulation was 45 percent greater per employee for firms with fewer than 20 employees compared to firms with over 500 employees.

This approach would also ensure legal certainty by introducing easily determinable and uniform principle on the applicable company law, i.e. the law of the company's place of incorporation.

### *Comparing the options*

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<sup>96</sup> E.g. by means of Communication.

<sup>97</sup> The regulatory competition has already occurred with regard to the new company establishments (for explanation of the impact of the case law of the Court of Justice on regulatory competition see Section 3.1.3 and 3.2). As a result, Member States the most affected by the regulatory competition (Germany, the Netherlands) have undertaken reforms to ensure that their national corporate forms are more responsive to entrepreneurs' needs. For German reform see reference in note 97; for the Dutch reform see: <http://english.justitie.nl/currenttopics/pressreleases/archives2004/-call-for-simple-flexible-law-private-companies.aspx> (consulted on 19 December 2006).

<sup>98</sup> Simeon Djankov, Caralee McLeish, Rita Ramalho, Regulation and Growth, The World Bank, 17.03.2006, p. 2-5 (available at SSRN: <http://ssrn.com/abstract=893321>). The analysis is based on objective measures of business regulations in 135 countries (indicators of the Doing Business database of the World Bank in seven regulatory areas: starting a business, hiring and firing workers, registering property, getting bank credit, protecting equity investors, enforcing contracts in the courts and closing a business). The results of the study reveals that government business regulation is an important determinant of growth. According to the study the relationship between more business-friendly regulations and higher growth rates is consistently significant in various specifications of standard growth models. The study suggests that national growth policies should put priority on reforming business regulations, e.g. the number of procedures to register a business or property could be decreased by combining them at a "one stop shop" for businesses.

<sup>99</sup> Crain, W.M. 2001. "The Impact of Regulatory Costs on Small Firms." Report prepared for the Office of Advocacy, U.S. Small Business Administration.

This choice between limited and extensive approach will affect the extent of freedom of establishment given to companies. The limited approach would reduce freedom of companies to decide whether they want to transfer their registered office alone or together with the head office. In such case the potential impacts of the proposal will be limited. The extended approach, giving companies full freedom in that respect, will have a greater impact. Legal certainty provided by each option is the third relevant criterion in the assessment of the options.

**Table 14. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Freedom of establishment	Expected impacts	Legal certainty
<b>The principle</b>			
<i>Status quo</i>	+	=	+
<b>No action</b>	+ / ++	=	+++
<i>Option A.1: The limited approach</i>	++	++	++
<i>Option A.2: The extensive approach</i>	+++	+++	+++

Concluding, in order to achieve a clear and easy solution for European companies Community action should be based on the principle that when the company moves its registered office to another Member State it should be free to decide whether it wants to move its real seat at the same time or not. This approach would provide flexibility to companies and at the same time would ensure that possible risks to the interests of stakeholders are eliminated. It would also enable regulatory competition between the Member States' company law systems and encourage reforms of the less efficient systems, which should have positive effect on the economic growth in the EU.

If no action is taken, companies could use the cross-border merger directive to carry out the transfer of the registered office. However, whether a company would have freedom to move its registered office together or without its headquarters would depend on whether the home and the host Member State apply the real seat or the incorporation principle. Therefore, freedom of establishment given to companies would be somewhat more limited than in the case of the extensive approach.

### **6.3.2. Applicable company law determining the legal form of a company**

#### *Option B.1: Application of the company law of the home Member State*

This option would imply that a company would be governed by the company law of the home Member State even after it has transferred its registered office abroad. In this scenario, the transfer of the registered office would not result in a change of the applicable company law or a national corporate form acquired in the home Member State.

Even though this solution would allow companies to move their registered offices freely around the EU, it could cause legal uncertainty and the lack of proper administrative control over such company.

In particular, after the transfer of its registered offices to the host Member State the company would retain the national corporate form of the home Member State and would continue to be subject to its company law. However, the home Member State could no longer control the company's compliance with its national rules as the company would lose the link with its legal order (it would be removed from the home country's commercial register). Even though such control could, theoretically, be exercised by the host Member State, this would require the application of a foreign (home Member State's) company law by that state. This solution is not currently feasible due to the considerable differences in the national company laws.

In this context it should be considered whether the principle of home country control, provided for in other Community measures (e.g. in the financial services sector), might also be followed in the company law field. Therefore, a solution allowing the Member State to exercise control over a company which is incorporated under its law would be superior.

Finally, this approach would not enable companies to change the legal regime applicable to them by transferring the registered office as the transfer would not imply a change of the applicable law.

*Option B.2: Application of the company law of the host Member State*

This option would envisage that, following the transfer of the registered office a company should adopt a corporate legal form available in the company law of the host Member State and would be subject to the corporate rules of that State. This would result in the necessity of adaptation of the form of the company to the requirements of the host Member State.

The advantage of this approach would be that the companies could change the legal regime applicable to them as well as the corporate form by moving to a country of their choice (see section 3.3 for the possible motives of the companies to move to a different country). It would also ensure efficient supervision and control over the proper application of the corporate law as it would be seized with the national authorities of the Member State where the company is registered. This option would not require the application and/or interpretation of foreign law by the national supervisory authorities, hence lesser disputes would emerge.

*Comparing the options*

This choice may affect mainly (i) the legal certainty and (ii) the complexity of the legislative framework as well as (iii) the level of supervision/control over the companies by the public authorities. Option B.2. would be better solution if the Community action is taken. The 'no action' option (i.e. the cross-border merger directive) would also result in the application of the host Member State's law following the merger. The degree of legal complexity of the cross-border merger transaction is not substantially higher than the direct transfer of the registered office, to the extent that a new company must be created in the host Member State in addition to the standard procedure (see the detailed comparison of the procedures in **Table 13**).

**Table 15. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Legal certainty	Legal complexity	Supervision/Control
<b>Applicable law</b>			
<i>Status quo</i>	+	--	--
<i>No action</i>	++	+	++
<i>Option B.1: Law of the home Member State</i>	+	--	--
<i>Option B.2: Law of the host Member State</i>	++	++	++

**6.3.3. Shareholders' rights**

*Option C.3: Information rights and decision at the general meeting by simple majority*

This option would ensure that the decision on the transfer of the registered office is taken by the owners of the company, i.e. the shareholders. Such approach would be appropriate given the importance of the decision for the company's life and its likely effects for the financial and other interests of shareholders.

This option would also enable shareholders to take a fully informed decision at the general meeting following the examination of the draft terms of transfer and the management report

explaining and justifying the transfer.

However, the solution allowing a decision on transfer to be taken by simple majority would make it possible, in public companies with block-holdings, for one or two majority shareholders to decide on the transfer. In private companies, often SMEs, the personal aspects of the enterprise could be damaged.

*Option C.4: Information rights and decision at the general meeting by qualified majority*

This option, like option C.3, would ensure that shareholders are properly informed. It would also secure that the decision on transfer, crucial for the company, is taken by the same qualified majority as the majority required for other important issues, such as the amendment of the memorandum or the articles of association. Given that the transfer would result in a change of the company law regime applicable to the company a high level of consent between the shareholders of the company should be secured.

Qualified majority would also provide a means to protect minority shareholders as they would more easily achieve a percentage of votes required to block the decision.

*Comparing the options*

Two overall objectives have been defined on this project (i) improve competitiveness of existing companies by ensuring that companies can fully enjoy the freedom of establishment while (ii) guaranteeing that the rights of shareholders and stakeholders are protected. There is always a trade-off between both objectives. The more stringent are the protection rules the less space there is for a company to enjoy its freedom of establishment. Therefore, these options will be compared according to the extent to which they respect the freedom of establishment and the shareholders' and stakeholders' rights. In the case of 'no action' (i.e. the cross-border merger directive) the situation would be similar to the option C.4 as the cross-border merger directive requires the general meeting's decision on merger to be taken by a qualified majority.

**Table 16. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Freedom of establishment	Shareholders' rights	Minority shareholders' rights
<b>Shareholders</b>			
<i>Status quo</i>	+	++	++
<i>No action</i>	++	+++	++
<i>Option C.3: Simple majority</i>	+++	++	-
<i>Option C.4: Qualified majority</i>	++	+++	++

**6.3.4. Minority shareholders' protection**

*Option D.3: Sell out rights*

This option would provide for minority shareholder protection rules at the EU level, notably it would allow the shareholders who oppose the transfer to opt out, i.e. to sell their shares to the company (which would be obliged to buy them) or to the other shareholders.

While providing for solid protection of minority interests this solution would significantly raise the financial and time costs of the transfer for the company. Besides, the sell out right is very distant from some Member States' legal system and its introduction could compromise the success of the proposal. Choosing this option would disproportionately limit the freedom of companies and the flexibility of the Member States.

*Option D.4: The requirement that the Member States decide on the means of protection*

This option would ensure the protection of the interest of the minority shareholders in every Member State, but would not imply harmonisation of the rules. This would allow the Member

States to decide on the scope and the content of the minority protection measures. Given that the transfer of the registered office may have a serious impact on the minority interests (e.g. new board structure, new system for appointing directors, etc.), the appropriate protection of their rights has to be ensured. However, in order to respect the different traditions of the national rules, the differences in approach to private and public companies, etc. flexibility should be given to the Member States. As a result, the protection of the interests of the minority would be ensured, while the Member States would not need to modify their laws substantially and no unnecessary new regulation would be imposed on the companies. This solution is in line with the requirement of proportionality, it involves some uncertainty on the actual level of minority protection and the nature of the rules.

### *Comparing the options*

The criteria of the comparison are (i) freedom of establishment and (ii) the level of minority protection and (iii) the proportionality of the rules. The assessment of the option leaving the establishment of the protection rules to the Member States (D.4) is based on the assumption that they are prevented, by a general clause contained in a measure, from introducing rules which would have the effect of hindering the freedom of establishment. In the case of 'no action' (i.e. the cross-border merger directive) the situation would be analogous to the option D.4.

**Table 17. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Freedom of establishment	Minority shareholders' protection	Proportionality Principle
<b>Minority shareholders</b>			
<i>Status quo</i>	+	+/>+++	++
<b>No action</b>	+/>++	+/>+++	+++
<i>Option D.3: Sell out rights</i>	+	+++	-
<b>Option D.4: Member States' rules</b>	+/>++	+/>+++	+++

### **6.3.5. Creditor protection**

#### *Option E.2: Information rights*

This option would ensure that creditors are properly and timely informed about the transfer, i.e. have the possibility to examine the draft terms of the transfer and the management report on the characteristics and consequences of the transfer. This would reduce the risks involved in the transfer of the registered office to another Member State. As the shareholders of the company must receive appropriate information on the transfer, giving creditors access to the same information would not create high additional costs for the company.

Nevertheless, the possibility to obtain security for creditors' claims or any other protection measure would solely depend on the rules provided by the national legislation and/or on individual agreements between creditors and the company.

#### *Option E.3: Information rights and security for claims*

This option would ensure a higher level of protection of creditors compared to *option E.2* as, in addition to information rights, it would introduce security for creditors' claims in relation to the transfer.

This option would result in the harmonisation of the basic protection rules at the EU level. The rules would ensure more extensive protection of creditors' rights but they would add – sometimes unnecessary – financial and time cost to the transfer (e.g. when there are no creditors in the home Member State or when the company leaves a branch in the home Member State and the creditors' claims are not at stake). Nevertheless, there may be creditors



and claims that should be protected but the costs of a general obligation on the companies would exceed the potential benefits which may be better achieved by less burdensome means.

*Option E.5: Information rights and the requirement that the Member States decide on other means of protection*

The possibility to examine the draft terms of the transfer and the management's report is essential for creditors in order to be able to assess the consequences of the transfer of the registered office.

This option would ensure, in addition to information rights, that the Member States introduce other measures for the protection of creditors. It would ensure respect for the traditions of the national approaches to the creditor protection and would allow the Member States to decide on the content of the particular measures. This solution would not impose unnecessary regulation, neither would result in harmonised rules but it would ensure the protection of the interests of creditors in every Member State. Therefore it is in line with the principle of proportionality.

*Comparing the options*

The same criteria, as defined in point D for minority shareholders' rights, will be used to compare these options with respect to creditors. In the case of 'no action' (i.e. the cross-border merger directive) the situation would be analogical to the option E.5.

**Table 18. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Freedom of establishment	Creditors' rights	Proportionality Principle
<b>Creditors</b>			
<i>Status quo</i>	+	+ / ++	++
<b>No action</b>	++	+ / ++	+++
<i>Option E.2: Information rights</i>	+++	+	+
<i>Option E.3: Information rights and security for claims</i>	+	++	-
<b>Option E.5: Information rights and Member States' rules</b>	++	+ / ++	+++

**6.3.6. Employee participation rights**

*Option F.1: Information/consultation rights and application of the rules of the host Member State on participation*

This option would establish a clear principle, but could have negative impact on the employees participation rights in the case where a company would move to a Member State with no or weaker employees participation rights than in the home Member State, i.e. the employees would lose these rights or their rights would be diminished following the transfer of the registered office. Besides, the application of the host rules would have a chilling effect on the companies wishing to avoid increased employees' participation rights. This could limit the mobility of the companies to the countries with similar level of employee participation rights (e.g. UK, LV, EE and BE which have no such rights or countries which have similar arrangements for employee participation).

*Option F.2: Information/consultation rights and application of the rules of the host Member State with the safeguards ensuring that existing employees' participation rights are not diminished without their consent*

This option would provide for a balanced solution. It would ensure that in the situation described in the point above (option F.1) employees' participation rights would not be lost or diminished as a consequence of the transfer of the registered office.

This solution would ensure that the approach remains coherent with other EU measures on cross-border restructuring (i.e. the cross-border merger directive and the Statute for a European Company). It would envisage that the scope of the participation rights must be negotiated with employee representatives according to a harmonised procedure. If the negotiations fail, the default rules on employees' participation, harmonised at the EU level, would apply. The negotiations would make the procedure of the transfer of the registered office longer and more complex.

*Option F.4: Information/consultation rights and application of the home Member State rules*

This option could have different results depending on the laws of the particular home and host countries. If the company would move e.g. from Member State with no employee participation rights to Member States providing for such rights, it would be able to move to such country without introducing employee participation rights. The transfer in such situation would be easier and less burdensome and, therefore, would likely result in the increased mobility of companies. However, in the reverse situation (i.e. the company moving from the Member State with employee participation rights to the one with no such rights), the company would need to keep the participation rights in the form required by the home state law.

Besides, since the employee participation issue belongs to corporate law (as it concerns the board composition), this option would imply a general exception from a principle that after the transfer the company law of the host Member State applies. In this respect, option F.2 provides for a more balanced solution.

*Comparing the options*

The options will be measured against the two main objectives of the proposal, the third criteria in this case is the coherence with other EU rules. It should be noted that the impact of the options on freedom of establishment and the employees' rights would differ, depending on whether a company comes from a country with employees' participation system to a country with no/weaker system or the reverse situation occurs.

In the case of 'no action' (i.e. the cross-border merger directive) the situation would be analogical to the option F.2.

**Table 19. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Freedom of establishment	Employees' participation rights	Coherence
<b>Employees' participation</b>			
<i>Status quo</i>	++	-/+	-
<b>No action</b>	++	++	+++
<i>Option F.1: Application of the rules of the host Member State</i>	++	-/+	-
<i>Option F.2: Application of the rules of the host Member State with safeguards</i>	++	++	+++
<i>Option F.4: Application of the rules of the home Member State</i>	++	=-	-

**6.3.7. Summary of the identified possible package of suggested content options**

The analysis and comparison of the content options of the possible measure and the 'no action' option does not give a clear answer as to which of the general options, i.e. 'no action' or 'Community action', would best meet the pre-defined assessment criteria. If there would be a Community measure, the following content options could be appropriate:

**Table 20. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Content option	Suggested content options
A. The principle	<i>Option A.2: The extensive approach</i>

B. The applicable law determining the legal form of the company	<i>Option B.2: Law of the host Member State</i>
C. Shareholders' rights	<i>Option C.4: Qualified majority</i>
D. Minority shareholders' protection	<i>Option D.4: Member States' rules</i>
E. Creditors' protection	<i>Option E.5: Information rights and Member States' rules</i>
F. Employees' participation	<i>Option F.2: Application of the rules of the host Member State with safeguards</i>

However, the 'no action' option could well meet the defined policy options i.e. improve efficiency and competitive position of existing European Companies as well as guarantee the effective protection of the interests of the main stakeholders in respect of the transfer. At the same time, it would be a more proportionate solution as there would be no new legislation.

## **6.4. Instruments**

### **6.4.1. Recommendation**

The recommendation would not be sufficient to ensure the recognition of the right of the transfer of the registered office by all Member States. As it was already explained in section 3.6.2, an action taken only by some Member State is not sufficient to ensure corporate mobility across the EU. In order to enable all European companies to move their registered seat from and to any EU country, all Member States have to provide such possibility. Otherwise the principle of freedom of establishment would remain an illusion and companies would not be able to fully use their right to freedom of establishment.

In particular, the recommendation would not secure the adequate level of legal certainty. The instrument should provide for a transfer procedure during which an appropriate co-operation between the competent national authorities must be ensured. The lack of or different implementation of certain provisions in different Member States could result in legal uncertainty. In the public consultation, several respondents emphasised that enhanced certainty is needed on the transfer of the registered office.

Similar problems would emerge in relation to the rights of the stakeholders. If the Commission aims at ensuring that every Member State provides for the protection of the rights of the creditors and the employees, it would not be sufficient to choose a regulatory instrument that allows Member States to freely select whether and which standards they apply.

### **6.4.2. Directive**

The directive is an instrument best suited to guarantee basic common rules, applicable in all Member States, while respecting national specificities. This view was shared by the respondents to the public consultation. In particular, the need for a directive to ensure a proper protection of the interests of creditors, shareholders and employees in relation to the transfer as well as a formal procedure for the transfer was underlined.

A Directive is a less intrusive way to achieve the objectives set out in section 4 as well as more adequate as regards the content of the proposal, therefore, it fully respects the proportionality principle.

### 6.4.3. Regulation

This instrument is normally only used in the field of company law in exceptional cases, e.g. when a new type of supranational corporate form (such as the European Company) is created<sup>100</sup>. The most common basis for measures in this field, clearly provided for in the Treaty, is a directive.

The adoption of a regulation would provide for common rules directly applicable across the EU. However, the costs of such solution would be significant as it would require adoption of uniform rules in respect of the transfer of the registered office in all the Member States and would not guarantee flexibility for national specificities deeply embedded in corporate law.

In order to ensure the effective cross-border transfer of the registered office, certain procedural and substantial rules have to be put in place. Most of these rules already exist in the national legal systems, although they differ from one country to another.

To ensure the transfer of the registered office, it is sufficient to co-ordinate the national laws and introduce minimum standards on the cross-border aspects of such transfer. Therefore, a rigid approach of a regulation is not necessary and would be against the proportionality principle.

### 6.4.4. Choice of an instrument

The choice of an instrument may have an effect on: (i) legal certainty; (ii) proportionality (i.e. whether the instrument chosen is the least interventionist to achieve the objectives, e.g. directive should be preferred over the regulation); (iii) adequacy of the instrument with regard to the content of the proposal.

**Table 21. Comparison of the options (positive effect: +; neutral effect: =; negative effect: -).**

Criteria	Legal certainty	Proportionality	Adequacy
<b>Instruments</b>			
<i>Status quo</i>	--	-	--
<i>No action</i>	++	+++	++
<i>Recommendation</i>	-	++	-
<i>Directive</i>	++	++	+++
<i>Regulation</i>	+++	--	--

The analysis of the content options suggests that the two preferred options are: 'no action' or a directive. However, in terms of the proportionality test, it is not clear that adopting a directive would represent the least onerous way of achieving the policy objectives. Considering that the practical effect of the existing legislation on cross-border mobility (i.e. the cross-border merger directive) is not yet known and that the Community approach to the issue of the transfer of the registered office might be clarified by the Court of Justice in the near future, it might be advisable to wait until the impacts of those developments can be fully assessed and the need and scope for the EU action better defined.

100 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1376&format=HTML&aged=1&language=en&guiLanguage=en>.

## **7. EVALUATION AND MONITORING**

Should a measure on the transfer of the registered office be adopted, the Commission, with the help of the company law expert groups (i.e. Company Law Expert Group and the Advisory Group on Corporate Governance and Company Law), will closely monitor and evaluate the results and impacts of such measure.

This process will be developed in two steps:

### **7.1. The monitoring**

In the case 'no action' option is chosen, the Commission will monitor the implementation of other measures and assess over time the practical effect of developments identified as possible means of achieving policy objectives defined in Chapter IV. In particular, an evaluation report on the European Company Statute, together with the recommendations on possible amendments, will be issued in the course of 2009. An evaluation report on the European Cooperative Society shall be delivered in 2011.

Furthermore, the implementation of the cross-border merger directive will be monitored within the standard Commission procedures. In addition, information on the application of the directive in Member States will be gathered with the assistance of the Company Law Expert Group and the Advisory Group on Corporate Governance and Company Law. A revision of the directive is foreseen for 2012 on the basis of the experience acquired in applying it.

If there were to be a measure on the transfer of a company's registered office, the Commission, with the assistance of the Advisory Group on Corporate Governance and Company Law, will examine each year:

- The process of transposition and implementation of the measure.
- Its first results and impacts (once the implementation deadline expires).
  - Quantification of the number of companies transferring their registered office
  - Identification of the trends in the transfer of companies (the Member States receiving and losing companies, types of companies moving their registered office)

In order to prepare this review, Member States (through the Company Law Expert Group) will be required to collect the following information regarding the companies transferring their registered office to the Member State's territory:

- Country of origin.
- Legal form, before and after the transfer.
- Main characteristics of the company: number of employees, total turnover, total balance sheet etc.

### **7.2. The evaluation report**

If there were to be a measure on the transfer of a company's registered office, it should be subject to a complete evaluation exercise in order to analyse its effectiveness, efficiency and relevance, and to decide whether additional measures or amendments are needed. This evaluation exercise should be prepared five years after the end of the transposition period with the help of the company law expert groups. The evaluation will be based on the information and data produced by the ongoing monitoring measures, and complemented with additional information collected from companies, Member States and stakeholders.

In order to evaluate the results and the impacts of the new legislation, some evaluation questions should be addressed:

- Has the number of companies moving its registered office to a different Member State shown an increase in the years following the transposition? Which Member States are the recipients of companies and which countries do the companies leave? What are the reasons for the transfer of the registered office?
- Can existing companies in Europe freely move their registered office without losing their legal continuity? How long does it take? How costly is it? Are there still obstacles that have not been removed by the measure?
- Has legal certainty been ensured in the process of the transfer? Are there any legal ambiguities that should still be addressed? Have there been any risks identified that have not been properly treated either by the Community law or by national legislation?
- Has there been any impact on the rights of main stakeholders?
  - Shareholders/investors
  - Minority Shareholders
  - Creditors
  - Employees
- Have there been any reforms of the national company laws of the Member States aiming to attract the companies' registration as a result of the measure? Have any legal systems emerged as the favourite destinations of European companies?

Annexes (in a separate document)

**EN**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.12.2007  
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Part II

**COMMISSION STAFF WORKING DOCUMENT**

**Impact assessment on the Directive on the cross-border transfer of registered office**

**ANNEX I. TABLES**



## ANNEX I. TABLES

**Table A1.** This table reports new incorporations of private limited companies in the U.K. from other EU Member States except the U.K. Incorporations from country *x* count the number of firms where *the majority* of directors resides in country *x*. Incorporations in parentheses from country *x* count the number of firms where *all* directors reside in country *x*.

Year	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>	Majority of directors from country <i>x</i>	All directors from country <i>x</i>
	Austria		Belgium		Cyprus		Czech Republic		Denmark	
1997	31	(22)	116	(85)	144	(120)	22	(9)	59	(26)
1998	19	(13)	144	(87)	194	(154)	15	(8)	42	(31)
1999	43	(30)	169	(109)	673	(568)	32	(19)	71	(54)
2000	31	(15)	121	(56)	936	(657)	39	(17)	60	(20)
2001	77	(11)	199	(13)	864	(353)	33	(5)	201	(5)
2002	99	(21)	219	(57)	985	(422)	38	(8)	515	(259)
2003	142	(75)	282	(124)	872	(452)	54	(31)	957	(896)
2004	371	(292)	330	(204)	801	(519)	67	(33)	196	(97)
2005	609	(514)	458	(346)	959	(646)	89	(63)	248	(179)
	Estonia		Finland		France		Germany		Greece	
1997	0	(0)	9	(4)	1,061	(805)	258	(169)	72	(50)
1998	4	(0)	23	(8)	1,337	(1,042)	279	(179)	121	(94)
1999	0	(0)	11	(2)	1,431	(1,031)	277	(165)	120	(88)
2000	5	(5)	7	(3)	1,342	(764)	233	(104)	78	(37)
2001	6	(0)	23	(4)	1,175	(212)	516	(100)	74	(6)
2002	6	(0)	11	(2)	1,235	(241)	950	(354)	105	(23)
2003	9	(2)	21	(12)	1,269	(400)	2,516	(1,753)	113	(36)
2004	14	(6)	11	(7)	1,378	(682)	9,618	(8,702)	91	(35)
2005	27	(16)	21	(12)	1,666	(937)	12,019	(11,035)	120	(76)
	Hungary		Ireland		Italy		Latvia		Lithuania	
1997	2	(0)	188	(96)	427	(302)	4	(0)	7	(7)
1998	4	(2)	296	(160)	433	(279)	0	(0)	0	(0)
1999	7	(2)	410	(210)	513	(334)	7	(6)	2	(2)
2000	2	(0)	264	(106)	419	(199)	9	(5)	2	(0)
2001	18	(2)	257	(49)	319	(50)	13	(0)	13	(1)
2002	6	(2)	287	(67)	348	(46)	16	(4)	18	(2)
2003	31	(18)	330	(81)	405	(121)	13	(8)	25	(23)
2004	33	(26)	365	(105)	408	(168)	16	(6)	24	(20)
2005	63	(43)	328	(110)	538	(278)	31	(13)	13	(8)
	Luxembourg		Malta		Netherlands		Norway		Poland	
1997	59	(55)	11	(9)	381	(274)	103	(74)	31	(20)
1998	60	(29)	27	(17)	400	(292)	85	(56)	27	(19)
1999	105	(75)	21	(9)	440	(309)	111	(56)	39	(22)
2000	58	(31)	22	(12)	380	(192)	107	(34)	20	(14)
2001	55	(7)	15	(0)	477	(117)	91	(10)	24	(4)
2002	49	(9)	11	(3)	560	(213)	105	(8)	30	(7)
2003	33	(7)	19	(3)	637	(338)	315	(233)	292	(271)
2004	87	(45)	23	(9)	1,506	(1,185)	1,220	(1,080)	113	(50)
2005	111	(72)	23	(9)	2,127	(1,770)	2,328	(2,163)	136	(85)
	Portugal		Slovakia		Slovenia		Spain		Sweden	
1997	53	(28)	15	(7)	0	(0)	243	(151)	166	(114)
1998	67	(42)	6	(2)	4	(2)	237	(140)	258	(158)
1999	54	(28)	4	(4)	6	(4)	300	(169)	247	(159)
2000	44	(24)	7	(3)	2	(0)	271	(117)	233	(107)
2001	45	(5)	8	(1)	11	(4)	273	(42)	131	(10)
2002	26	(3)	11	(1)	7	(3)	370	(71)	204	(80)
2003	52	(18)	12	(8)	9	(4)	269	(79)	238	(109)
2004	53	(16)	13	(11)	18	(8)	376	(144)	241	(112)
2005	66	(35)	16	(12)	32	(16)	539	(309)	406	(288)

Source: M. Becht, C. MAYER H.F. Wagner, "Where do firms incorporate", ECGI Law Working Paper N° 70/2006, September 2006.

**Table A2. Registered Companies: Private Limited Companies**

<b>Registered Companies: Private Limited Companies</b>	
<b>Country</b>	<b>year 2005</b>
Austria	100709
Bulgaria(1)	106689
Denmark	119855
Estonia	66200
Finland	180332
France	1466781
Germany	995940
Great Britain(2)	2118700
Greece	25585
Hungary	218384
Iceland	23481
Ireland	140194
Italy	988557
Latvia	79711
Liechtenstein	80
Lithuania	55374
Luxembourg	25023
Malta	NA
Netherlands	660298
Norway	NA
Romania	NA
Slovenia	NA
Spain	1715888
Sweden(1)	309012
<b>TOTAL</b>	<b>9396793</b>

*Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.*

**Table A3. Registered Companies: Public Limited Companies**

<b>Registered Companies: Public Limited Companies</b>	
<b>Country</b>	<b>year 2005</b>
Austria	1720
Bulgaria <sup>1</sup>	NA
Denmark	39535
Estonia	5945
Finland	204
France	143401
Germany	20297
Great Britain <sup>2</sup>	11500
Greece	22542
Hungary	4336
Iceland	880
Ireland	1286
Italy	54852
Latvia	1280
Liechtenstein	8500
Lithuania	727
Luxembourg	47196
Malta	NA
Netherlands	6027
Romania	NA
Norway	NA
Slovenia	NA
Spain	316699
Sweden <sup>1</sup>	NA
<b>TOTAL</b>	<b>686927</b>

*Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.*

**Table A4. Listed companies in the EU**

All market segments, excluding ETFs Investments Trusts, Listed Unit Trusts and UCITS, market transfers		
<b>Exchange</b>	<b>N° of companies with listed shares</b>	
Athens Exchange	290	
Borsa Italiana	311	
Bratislava Stock Exchange	187	
Budapest Stock Exchange	41	
Cyprus Stock Exchange	141	
Deutsche Börse	760	
Euronext	954	
Irish Stock Exchange	68	
Ljubljana Stock Exchange	100	
London Stock Exchange	3.256	
Luxembourg Stock Exchange	260	
Malta Stock Exchange	14	
OMX	791	
Oslo Børs	229	
Prague Stock Exchange	32	
Spanish Exchanges (BME)	n/d	
Virt-X	1.446	
Warsaw Stock Exchange	265	
Wiener Börse	113	
<b>TOTAL</b>	<b>9258</b>	

Source: Federation of European Securities Exchanges, December 2006

**Table A5. Listed companies in the EU: market capitalisation**

All market segments, Domestic Equity (in million EUR)	
<b>Exchange</b>	<b>Value at month end (EUOM)</b>
Athens Exchange	157.941,41
Borsa Italiana	778.500,79
Bratislava Stock Exchange	4.213,84
Budapest Stock Exchange	31.687,05
Cyprus Stock Exchange	12.254,04
Deutsche Börse	1.241.963,25
Euronext	2.812.261,00
Irish Stock Exchange	123.823,58
Ljubljana Stock Exchange	11.513,08
London Stock Exchange	2.876.985,94
Luxembourg Stock Exchange	60.290,14
Malta Stock Exchange	3.415,69
OMX (Finland)	851.459,52
Oslo Børs	212.271,52
Prague Stock Exchange	34.693,42
Spanish Exchanges (BME)	1.003.298,96
Warsaw Stock Exchange	112.825,56
Wiener Börse	146.197,00
<b>TOTAL</b>	<b>10.475.595,79</b>

*Source: Federation of European Securities Exchanges, December 2006*

**Table A6. Legal origin and investors rights**

The table presents data on measures of investor protection according of legal origin. The "Antidirectors rights index" is a summary measure of shareholder protection, it ranges from zero to six. The creditors rights index is a summary measure of creditors protection which ranges from from zero to four. The "efficiency of the judicial system" index ranges from zero to ten representing the average of investors' assessments of conditions of the judicial system between 1980-1983 (lower scores represent lower efficiency levels). "Corruption" is an index ranging from zero to ten representing the average of investors' assessments of corruption in government in each country between 1982-1995 (lower scores indicate higher corruption). "Accounting standards" is an index created by examining abd rating companies' 1990 annual reports on their inclusion or omission of 90 items falling in the categories of general information, income statements, balance sheets, funds flow statement, accounting standards, stock data, and special items.

	Common law countries	French civil law	German civil law	Scandinavian civil law
Directors' liability index	4.00	2.33	2.33	3.00
Creditors rights index	3.11	1.58	2.33	2.00
Efficiency of the judicial system	8.15	6.56	8.54	10
Corruption	7.06	5.84	8.03	10.00
Accounting standards	69.92	51.17	62.67	74.00

Source: La Porta et al. 2000

**Table A7. New private limited companies incorporated in the UK by Country of origin**

This table reports new incorporations of private limited companies in the UK from the rest of the UE. A company is assigned to a given Member State according to the majority of its directors.

Country of origin	Year 2001	Year 2005	New company registrations (2005): limited private companies	Companies registered in UK (2005) as % of total number of companies in a MS
	Total nr of registrations of new plcs in the UK			
		(new company registrations in 2005 in brackets)		
Austria	77	609	Na	-
Belgium	199	458	Na	-
Czech Republic	33	89	Na	-
Denmark	201	248 (52)	18723	0,3%
Estonia	6	27 (13)	9749	0,1%
Finland	23	21 (10)	8421	0,1%
France	1175	1666 (288)	143143	0,2%
<b>Germany</b>	<b>516</b>	<b>12019 (2401)</b>	<b>69167</b>	<b>3%</b>
<b>Greece</b>	<b>74</b>	<b>120 (29)</b>	<b>1192</b>	<b>2%</b>
Hungary	18	63 (30)	21501	0,1%
Ireland	257	328 (-37)	15446	-0,2%
Italy	319	538 (130)	73644	0,2%
Latvia	13	31 (15)	8782	0,2%
Lithuania	13	13 (-11)	4502	-0,2%
Luxembourg	55	111 (24)	3922	0,6%
Malta	15	23 (0)	2360	0%
<b>Netherlands</b>	<b>477</b>	<b>2127 (621)</b>	<b>40595</b>	<b>1%</b>
Poland	24	136	Na	-
Portugal	45	66	Na	-
Slovakia	8	16	Na	-
Slovenia	11	32 (14)	3660	0,4%
Spain	273	539 (163)	136280	0,1%
Sweden	131	406 (165)	20532	0,8%
<b>TOTAL</b>	<b>3963</b>	<b>19686 (3903)</b>	<b>581619</b>	<b>0,6%</b>

Source: Becht et al. (2006); Swedish Companies Registration Office 2007.

**Table A8. The Investor Protection Index indicates the quality of the national systems in protecting the investors (i.e. the strength of minority shareholder protections against misuse of corporate assets by directors for their personal gain).** The Investor Protection Index is the average of the following indexes: 1) transparency of transactions (Extent of Disclosure Index) ; 2) liability for self-dealing (Extent of Director Liability Index); 3) shareholders' ability to sue officers and directors for misconduct (Ease of Shareholder Suit Index)

Region or Economy	Disclosure Index	Director Liability Index	Shareholder Suits Index	Investor Protection Index
Austria	2	5	4	3.7
Belgium	8	6	7	7.0
Bulgaria	10	1	7	6.0
Czech Republic	2	5	8	5.0
Denmark	7	5	7	6.3
Estonia	8	4	6	6.0
Finland	6	4	7	5.7
France	10	1	5	5.3
Germany	5	5	5	5.0
Greece	1	3	5	3.0
Hungary	2	4	7	4.3
Iceland	4	5	6	5.0
Italy	7	2	6	5.0
Latvia	5	4	8	5.7
Lithuania	6	4	6	5.3
Netherlands	4	4	6	4.7
Norway	7	6	7	6.7
Poland	7	2	9	6.0
Portugal	6	5	7	6.0
Romania	9	5	4	6.0
Slovakia	2	4	7	4.3
Slovenia	3	8	6	5.7
Spain	5	6	4	5.0
Sweden	6	4	7	5.7
United Kingdom	10	7	7	8.0

Source: World Bank, *Doing Business 2006*.



**Table A9. Starting a business table illustrating the number of procedures, the time and cost of setting-up a company in the Member States.**

Economy	Procedures (number)	Duration (days)	Cost	Min. Capital
			(% GNI per capita)	(% GNI per capita)
Austria	9	29	5.6	59.6
Belgium	4	27	5.8	21.8
Bulgaria	9	32	7.9	91.3
Czech Republic	10	24	8.9	36.8
Denmark	3	5	0.0	44.6
Estonia	6	35	5.1	34.3
Finland	3	14	1.1	27.1
France	7	8	1.1	0.0
Germany	9	24	5.1	46.2
Greece	15	38	24.2	116.0
Hungary	6	38	20.9	74.2
Iceland	5	5	3.1	15.9
Ireland	4	19	0.3	0.0
Italy	9	13	15.2	10.4
Latvia	5	16	3.5	26.1
Netherlands	6	10	7.2	62.3
Norway	4	13	2.5	25.1
Poland	10	31	21.4	204.4
Portugal	8	8	4.3	38.7
Romania	5	11	4.4	0.0
Slovakia	9	25	4.8	39.1
Slovenia	9	60	9.4	16.1
Spain	10	47	16.2	14.6
Sweden	3	16	0.7	33.7
United Kingdom	6	18	0.7	0.0

Source: World Bank, *Doing Business 2006*.

**Table A10. Ranking of the Member States on the ease of doing business.**

Economy	Ease of Doing Business Rank		Starting a Business	Protecting Investors	Enforcing Contracts	The recovery rate in bankruptcy
	EU	world				
IE	1	10	6	5	24	7
DK	2	11	14	19	1	20
UK	3	12	9	9	22	10
BE	4	19	37	12	21	8
FI	5	20	18	46	13	6
SE	6	21	20	46	2	17
FR	7	30	12	60	19	32
PT	7	30	33	33	35	18
LT	8	35	48	60	4	30
LV	9	36	25	46	11	62
ET	10	38	51	33	20	47
NL	11	44	38	99	31	9
RO	12	48	7	33	45	108
DE	13	51	66	83	29	28
BG	14	58	85	33	52	64
ES	15	60	102	83	42	15
SL	16	61	98	46	84	35
AT	17	62	74	142	14	19
HU	18	66	87	118	12	48
SK	19	68	63	118	59	31
PL	20	75	114	33	112	85
CZ	21	82	74	83	57	113
IT	21	82	52	83	141	49
EL	22	109	140	156	48	34

Source : World Bank, *Doing Business 2006*.

**Table A11. Legal cost of bankruptcy for banking creditors**

	CREDITORS' POWERS	1. Bankruptcy procedures: 2. Average length (months)	Legal cost of bankruptcy for banking creditors
SWE	DIRECTIVE	12	LOW
UK	DIRECTIVE	Less than one year	LOW
GER	DIRECTIVE	12/27	LOW (AVERAGE-LOW**)
FRA	CONSULTATIVE	24-36	HIGH (AVERAGE-HIGH***)
ITA	CONSULTATIVE	72	HIGH

Sources: for Sweden, Mimeo 1999; for the UK, Germany, France and Italy, Bianco-Marcucci 2001; for the UK and Germany (length of the procedures) Franks, Nyborg and Torous 1996. \*\* After the 1999 reform \*\*\* After the 1994 reform, which allowed to reduce the length of the liquidation procedure.

**TABLE A12. Bankruptcy procedures: percentages of credit recovery**

	Percentage of credit recovery <sup>1</sup>
SWE	45%(preferential) <sup>2</sup> ; 3% (ordinary)
UK	70% (preferential) <sup>3</sup>
GER	3-5% (ordinary) <sup>4</sup>
FRA	14-66% (preferential); 5% (ordinary)
ITA	33% (preferential); 10% (ordinary)

Source: Santella (2004).

<sup>1</sup> Where not otherwise specified, the source is Bianco, Marcucci [2001].

<sup>2</sup> This figure refers only to floating charge creditors. Franks and Sussman [2000b. 37] report for fixed-charge creditors recovery percentages between 83% and 91%.

<sup>3</sup> In this category are to be included also floating charge creditors.

<sup>4</sup> Kamlah [1996].

**Table A13. Closing business table illustrating the time and cost of the bankruptcy proceedings in the Member States may serve as an indicator on the efficiency of the national judiciary systems.**

<b>Region or Economy</b>	<b>Time (years)</b>	<b>Cost (% of estate)</b>	<b>Recovery rate (cents on the dollar)</b>
Austria	1.1	18.0	73.7
Belgium	0.9	3.5	86.4
Bulgaria	3.3	9.0	34.4
Czech Republic	9.2	14.5	18.5
Denmark	3.0	4.0	70.5
Estonia	3.0	9.0	39.9
Finland	0.9	3.5	89.1
France	1.9	9.0	48.0
Germany	1.2	8.0	53.1
Greece	2.0	9.0	46.3
Hungary	2.0	14.5	39.7
Iceland	1.0	3.5	79.7
Ireland	0.4	9.0	87.9
Italy	1.2	22.0	39.7
Latvia	3.0	13.0	34.8
Lithuania	1.7	7.0	50.5
Netherlands	1.7	1.0	86.3
Norway	0.9	1.0	91.1
Poland	3.0	22.0	27.9
Portugal	2.0	9.0	75.0
Romania	4.6	9.0	19.9
Slovakia	4.0	18.0	48.1
Slovenia	2.0	8.0	44.9
Spain	1.0	14.5	77.6
Sweden	2.0	9.0	75.7
United Kingdom	1.0	6.0	85.2

Source: World Bank, *Doing Business 2006*

**Table A14. The list of the main mandatory procedures for setting up a company in the EU Member States (the exact number and types of procedures vary across the EU)**

1. Formal approval of proposed name
2. Confirm skills/qualifications with authorities (if applicable to all new enterprises)
3. Obtain certificate of no outstanding taxes
4. Obtain certificate of "good character" (no criminal record, etc.)
5. Obtain overall permit to conduct economic activity (if applicable to all new enterprises)
6. Complete management training course (if applicable to all new enterprises)
7. Registration of domicile of business
8. Formal validation of signatures of representatives of the business
9. Notary draws up (or confirms) formal deed of incorporation/partnership agreement/registration deed
10. Founders (or advisers) draw up formal deed of incorporation/partnership agreement/registration deed
11. Appoint Board Members/Manager
12. Open bank account and deposit capital
13. Obtain certificate from bank of capital deposited
14. Audit report on deed of incorporation/foundation report or equivalent
15. Create financial plan to show viability
16. Hold statutory meetings (shareholders/ subscribers, approval of foundation report by board, etc.)
17. Shares offered for subscription
18. Lawyer or notary certifies documents for submission to registration authorities
19. Prepare dossier for registration authorities
20. Certificate of all social security charges paid
21. Certificate of all compulsory healthcare paid
22. Obtain certificate of management skills

*Source: the Commission study "Benchmarking the administration of start-ups" (January 2002, available at:[http://ec.europa.eu/enterprise/entrepreneurship/support\\_measures/start-ups/bench\\_admin\\_business\\_start-up\\_final\\_2002.pdf](http://ec.europa.eu/enterprise/entrepreneurship/support_measures/start-ups/bench_admin_business_start-up_final_2002.pdf))*

**Table A15. This table reports minimum capital requirements for private and public limited liability companies in the 25 E.U. Member States and Norway. Typical setup costs are the upper bounds of figures reported in EVCA (2004) and checked against estimates of law firms based in various Member States. A contact list is available from the authors. All reported figures are in Euro.**

Country	Private limited company					Public limited company				
	Local name	Abbreviation	Minimum capital	Paid-up capital	Typical setup costs	Local name	Abbreviation	Minimum capital	Typical setup costs	
Austria	Gesellschaft mit beschränkter Haftung	GesmbH	35.000	17.500	3.500	Aktiengesellschaft	AG	70.000	7.000	
Belgium	Besloten vennootschap met beperkte aansprakelijkheid or Société responsabilité limitée	BVBA or SPRL	18.550	6.000	980	Naamloze vennootschap or Société anonyme	NV or SA	61.500	1.798	
Cyprus	Private company limited by shares	Ltd	2	2	n.a.	Public company limited by shares	Plc	8.850	n.a.	
Czech Republic	Společnost s ručením omezeným	s.r.o.	6.700	3.350	1.234	Akciová společnost	a.s.	67.000	1.234	
Denmark	Anpaartsselskab	ApS	16.800	16.800	6.715	Akieselskab	A/S	67.200	6.715	
Estonia	Osahing	OU	2.560	2.560	n.a.	Aktsiaselts	AS	25.560	n.a.	
Finland	Osakeyhtiö	Oy	8.000	8.000	285	Julkinen osakeyhtiö	OYJ	80.000	285	
France	Société à responsabilité limitée	SARL	1	1	450	Société anonyme	SA	37.000	550	
Germany	Gesellschaft mit beschränkter Haftung	GmbH	25.000	12.500	1.000	Aktiengesellschaft	AG	50.000	1.500	
Greece	Eteria periorismenis efhynis	E.P.E.	18.000	18.000	1.500	Anonymos eteria	A.E.	60.000	3.000	
Hungary	Korlátolt felelősségű társaság	Kft	12.170	12.170	430	Részvénytársaság	Rt	81.150	2.443	
Ireland	Private limited liability company	Ltd	1	1	1.500	Public limited liability company	Plc	38.092	5.000	
Italy	Società a responsabilità limitata	S.r.l.	10.000	2.500	2.750	Società per azioni	S.p.A.	120.000	2.750	
Latvia	Sabiedriba ar ierobežotu atbildību	SIA	2.880	2.440	n.a.	Akciju sabiedriba	AS	35.950	n.a.	
Lithuania	Uždaroji akcine bendrove	UAB	2.900	2.900	n.a.	Akcine bendrove	AB	43.440	n.a.	
Luxembourg	Société à responsabilité limitée	SARL	12.500	12.500	2.300	Société anonyme	SA	31.000	2.500	
Malta	Private limited liability company	Ltd	1.160	232	n.a.	Public limited liability company	Plc	46.400		
Netherlands	Besloten vennootschap	B.V.	18.000	18.000	1.750	Naamloze vennootschap	N.V.	45.000	1.750	
Norway	Aksjeselskap	AS	11.913	5.957	1.787	Allmennakselskap	ASA	119.130	1.787	
Poland	Spółka z ograniczoną odpowiedzialnością	SP.Z O.O	12.460	12.460	650	Spółka akcyjna	S.A.	124.580	3.500	
Portugal	Limitada	Lda.	5.000	5.000	650	Sociedade anónima	S.A.	50.000	830	
Slovakia	spoločnosť s ručením omezeným	s.r.o.	5.230	4.230	4.000	Akciová spoločnosť	a.s.	26.140	5.000	
Slovenia	Družba z omejeno odgovornostjo	d.o.o.	8.780	4.180	n.a.	Delniška družba	d.d.	25.090	n.a.	
Spain	Sociedad de responsabilidad limitada	S.L.	3.010	3.010	600	Sociedad anónima	S.A.	60.100	1.200	
Sweden	Privat aktieföretag	privat AB	10.650	10.650	2.210	Publikt aktieföretag	publikt AB	53.240	2.210	
United Kingdom	Private limited company	Ltd	2	2	425	Public limited company	Plc	75.450	779	

Source: M. Becht, C. MAYER H.F. Wagner, "Where do firms incorporate", ECGI Law Working Paper N° 70/2006, September 2006.

**Table A16. The procedural steps required to wind-up a company in FR.**

<p><b>Preparatory measures</b></p>	<ul style="list-style-type: none"> <li>• Drafting the different resolutions to be adopted by the shareholders during the shareholders' meeting.</li> </ul>
<p><b>During the shareholders' meeting</b></p>	<ul style="list-style-type: none"> <li>• Adoption of the dissolution of the company resolution. The dissolution leads to the liquidation of the company but the company "survives" as long as the liquidation operations need it.</li> <li>• Nomination of the liquidator.</li> <li>• Publication of the liquidation and appointment of the liquidator decisions in a journal of legal notice (from the company's seat competence). Listed companies (to be precise: companies "faisant appel public à l'épargne") also need to publish the notice in the BALO (Bulletin d'annonces légales obligatoires – This is an official gazette that contains the mandatory legal notices companies are due to publish).</li> <li>• Registration of the juridical acts (decision of dissolution and appointment of the liquidator) at the office of the court clerk.</li> <li>• Notice of discontinuance of the business to the Commercial Register (within one month after the day the dissolution has been decided by the shareholders' meeting).</li> <li>• The clerk of court must publish the notice of discontinuance in the BODACC (Bulletin officiel des annonces civiles et commerciales – Official Bulletin for civil and commercial notices).</li> </ul>
<p><b>Measures during liquidation (Liquidator's obligations)</b></p>	<p><u>within 6 months after his nomination:</u></p> <ul style="list-style-type: none"> <li>• Convocation of the shareholders' meeting.</li> <li>• Draft and present to the shareholders a report on the financial situation of the company, on the liquidation operations and on the schedule of these operations.</li> <li>• Request all the necessary authorizations from the shareholders.</li> </ul> <p><u>within three months after the end of the exercise:</u></p> <ul style="list-style-type: none"> <li>• Preparation of the financial statements and of a report presenting the ongoing liquidation operations.</li> </ul> <p><u>within six months after the end of the exercise:</u></p> <ul style="list-style-type: none"> <li>• Convocation of a shareholders' meeting: presentation and approval of the financial statements and renewal of the necessary authorizations.</li> </ul>
<p><b>Termination of liquidation</b></p>	<ul style="list-style-type: none"> <li>• Termination is possible only after distribution of the share capital and discharge of all liabilities of the company.</li> <li>• The termination of the liquidation is confirmed by the shareholders' meeting or by decision of a court and must be confirmed maximum three years after the dissolution of the company.</li> <li>• Registration of the final financial statements drawn up by the liquidator and approved by the shareholders' meeting at the office of the court clerk. The discharge of the liquidator also has to be registered at the office of the court clerk.</li> <li>• Publication of the termination of the liquidation in the same gazette than the one used to publish the decision of opening the liquidation. Listed companies (to be precise: companies "faisant appel public à l'épargne") also need to publish the notice in the BALO (Bulletin d'annonces légales obligatoires – This is an official gazette that contains the mandatory notices companies are due to publish).</li> <li>• Within one month after the publication of the termination of the liquidation, application for registration of the termination of the liquidation to the Commercial Register (held by the court clerk) by the liquidator.</li> <li>• Maximum eight days after the registration of the termination of the liquidation, the clerk of court must publish the termination of the liquidation in the BODACC (Bulletin officiel des annonces civiles et commerciales – Official Bulletin for civil and commercial notices).</li> <li>• Within one year after the termination of the liquidation, the liquidator has to deposit on a special bank account (Caisse des dépôts et consignations) the amount assigned to some creditors or shareholders and not called for by them.</li> <li>• Once the liquidation is terminated, distribution of the remaining assets.</li> </ul>

*Source: information obtained from the Advisory Group on Company Law and Corporate Governance in 2006/2007.*

**Table A17. The procedural steps required to wind-up a company in DE.**

<b>Preparatory measures</b>	<p>Drafting of:</p> <ul style="list-style-type: none"> <li>shareholders' resolution on dissolution of the company, letters of information to clients and business partners,</li> <li>letter of information to employees</li> </ul>
<b>Start of liquidation</b>	<ul style="list-style-type: none"> <li>Shareholders' resolution on dissolution of the company (3/4 majority requested);</li> <li>Appointment of the liquidator; Application of liquidation to the commercial register by liquidator;</li> <li>Triple publication of the notice to the creditors in the electronic Federal Gazette (<i>elektronischer Bundesanzeiger</i>); Preparation of the closing financial statements of the active company;</li> <li>Preparation of an opening liquidation balance sheet</li> </ul>
<b>Measures during liquidation</b>	<ul style="list-style-type: none"> <li>Letters to clients and business partners;</li> <li>Discharge of liabilities, collection of claims and conversion of assets of the company into money (alternatively asset deal with the new company incorporated under the law of the foreign Member State);</li> <li>Preparation of a balance sheet for each year of liquidation;</li> <li>After termination of all business activities: Notice of discontinuance of the business to the responsible Trade Supervisory Office</li> </ul>
<b>Distribution of remaining assets</b>	<ul style="list-style-type: none"> <li>Distribution only possible after one year from the third publication of the notice to creditors in the electronic Federal Gazette and after discharge of or provision of security for the obligations of the company;</li> <li>Preparation of a closing balance sheet of the liquidated company;</li> <li>Distribution of the remaining assets</li> </ul>
<b>Termination of liquidation</b>	<ul style="list-style-type: none"> <li>Termination is possible only after distribution of the share capital and discharge of all liabilities of the company; Pending law suits have to be resolved before termination;</li> <li>Preparation of final account by the liquidator; Confirmation of termination of liquidation;</li> <li>Approval of closing balance sheet;</li> <li>Approval of final account;</li> <li>Formal approval of the liquidator's activities;</li> <li>Application for registration of the termination of the liquidation to the Commercial Register by the liquidator</li> </ul>
<b>Measures after termination of liquidation</b>	<ul style="list-style-type: none"> <li>Notification of the Chamber of Industry and Commerce about the termination of the liquidation;</li> <li>Notification of the relevant Tax Office about the termination of the liquidation;</li> <li>Storage for the next ten years of the books and records of the company by the person determined in the Articles of Association of the company, by a shareholders' resolution or by the responsible court</li> </ul>

*Source: information obtained from the Advisory Group on Company Law and Corporate Governance in 2006/2007.*



**Table A18. Court efficiency – contract enforcement.** The table shows the three main indicators for enforcing contracts:

- number of procedures from the moment the plaintiff files a lawsuit in court until the moment of payment,
- time in calendar days to resolve the dispute, and
- cost in court fees and attorney fees, where the use of attorneys is mandatory or common, expressed as a percentage of the debt value.

<b>Region or Economy</b>	<b>Procedures (number)</b>	<b>Time (days)</b>	<b>Cost (% of debt)</b>
Belgium	27	328	9.5
Bulgaria	34	440	14.0
Denmark	15	190	6.5
Estonia	25	275	11.5
Finland	27	228	5.9
France	21	331	11.8
Germany	30	394	10.5
Greece	22	730	12.7
Hungary	21	335	9.6
Iceland	14	352	5.9
Ireland	18	217	21.1
Italy	40	1,21	17.6
Latvia	21	240	11.8
Lithuania	24	166	8.6
Netherlands	22	408	15.9
Norway	14	277	9.0
Poland	41	980	10.0
Slovakia	27	565	15.7
Slovenia	25	1,35	15.2
Spain	23	515	15.7
Sweden	19	208	5.9
United Kingdom	19	229	16.8

Source: World Bank, *Doing Business 2006*

### Table A19. Case studies

Since the option of the cross-border transfer of the registered office is not yet available, no accurate data exists on benefits of such an option. Therefore, the presented cases should not be considered as precise cost calculations, but simply preliminary estimates, based on certain assumptions.

#### Case studies

##### *1. Estimated cost savings for EU companies in terms of lower interest rates – example of Italy*

In order to provide a quantification of the potential benefits of the option to transfer the registered office recourse is made to the analysis provided by the Italian Banking Association on the consequences of the higher legal costs of credit recovery in Italy. According to the Chairman of the Italian Banking Association, higher cost of legal procedures relied to banking credit recovery entails 1 percentage point more in interest rate required by Italian banks in their loans to non-financial companies.<sup>5</sup> It could be assumed that if the company would move its registered office to a jurisdiction with a more efficient credit recovery system, the cost of credit in Italy is likely to be lower.

In order to build a case study, we apply such estimation to the total loans provided by Italian credit institutions to non-financial companies (**Table A20**). Taking into account that in 2005 the average interest rate applied to banking loans to non-financial companies was 4.24%,<sup>6</sup> a benefit to Italian companies from moving to a jurisdiction with a more efficient credit recovery system in terms of savings on interest rates could be as much as **6 billion EUR**, that is **22% of the total cost of credit in 2005 (Table A21)**. In 2005 **total loans provided by credit institutions to EU companies** amounted to **more than 4000 billion EUR (Table A20)**.

##### *2. Estimated cost savings for EU listed companies in terms of lower cost of capital*

With regard more specifically to listed companies, **Table A4** illustrates the number of companies listed on the EU stock exchanges. As of December 2006, **the total number of listed companies was of more than 9000**, with the London Stock Exchange, Euronext and Deutsche Börse leading the way and representing about 54% of the total. As **Table A5** shows, the total market capitalisation represented by companies listed on the EU stock exchanges is about 10 trillion EUR, with the London Stock Exchange, Euronext, and Deutsche Börse representing about 66% of the total.

For listed companies the cost of capital is very important. In this respect, the studies measuring the extent of private benefits of control provide data to estimate the potential for savings in terms of cost of capital that could be ushered if an option to transfer the registered offices provided<sup>7</sup>.

**Table A22** illustrates the potential savings in terms of cost of capital that could be possible if the option to transfer the registered office is made available. Potential savings are calculated by considering the re-registration of EU listed companies in another Member State characterized by a lower level of private benefits of control. Potential savings range from 2% for Spanish companies to 35% for Italian companies and 56% for Czech companies.

<sup>5</sup> See ABI (2002), p. 21: " As credit recovery depends on judicial procedures, the efficiency of the latter affects even more active rates. Empirical evidence shows that credit recovery delays are much longer in Italy than in the rest of Europe: 6 years as compared to one. Such a substantial delay also determines a penalisation in terms of effectively recovered amount. Once the new Basilea's Ratios will enter into force, medium-high risk rates could be even lower than one percentage point, if only the average length of credit recovery in Italy would align to that of the rest of Europe. This is to say that the inefficiency of Italian judicial system of credit protection burdens businesses with billions of Euros."

<sup>6</sup> Source: Italian Banking Association and European Central Bank (ECB).

<sup>7</sup> See Annex 3 for more information on studies.

**Table A20. Loans of Credit Institutions to non financial companies**

<b>- bln euro -</b>					
	2005	2004	2003	2002	2001
<b>BE</b>	90,6	84,5	86,9	90,8	94,2
<b>CZ</b>	18,8	15,5	13,8	13,8	
<b>DK</b>	102,4	89,5	83,5		
<b>DE</b>	774,1	786,8	813,7	840,7	844,2
<b>EE</b>	3,2	2,0	1,5	1,2	1,1
<b>EL</b>	69,1	63,0	58,3	52,3	48,6
<b>ES</b>	579,7	454,7	387,8	341,0	306,0
<b>FR</b>	610,9	566,9	534,7	548,9	540,1
<b>IE</b>	107,1	85,6	65,0	54,9	52,8
<b>IT</b>	647,5	615,2	588,7	546,6	520,9
<b>CY</b>	N.A.	N.A.	N.A.	N.A.	N.A.
<b>LV</b>	5,1	3,5	2,6	2,2	2,0
<b>LT</b>	4,6	3,6	2,8	1,9	1,6
<b>LU</b>	37,3	33,7	36,6	40,2	45,4
<b>HU</b>	23,1	20,8	16,1	14,5	13,6
<b>MT</b>	3,3	3,2	3,0	6,3	5,6
<b>NL</b>	242,0	224,0	214,0	206,0	213,3
<b>AT</b>	121,6	114,0	131,3	132,2	134,1
<b>PL</b>	32,2	30,9	25,8	29,4	40,7
<b>PT</b>	88,0	84,1	82,7	78,7	72,6
<b>SI</b>	11,0	8,1	6,8	5,9	5,6
<b>SK</b>	7,2	5,9	6,0	5,5	5,6
<b>FI</b>	41,2	37,7	34,7	33,0	30,9
<b>SE</b>	138,5	128,3	125,0	127,4	124,8
<b>UK</b>	540,0	426,9	408,6	439,5	439,7
<b>MU</b>	3409,1	3152,2	3034,3	2965,1	2903,1
<b>EU</b>	<b>4298,5</b>	<b>3890,4</b>	<b>3729,7</b>	<b>3612,9</b>	<b>3543,6</b>

Source: ECB

**Table A21. The Italian case (lower interest rates on loans)**

	Bln EUR
Loans to non-financial companies (bln EUR)	647
Average interest rate	4.24
Interests paid in 2005 (bln EUR)	27
Possible lower interest rate	3.24
Possible interests paid	21
Possible savings	6 (22%)

Data refer to 2005. Source: Italian Banking Association.

**Table A22. Potential savings in terms of cost of capital**

	Control block premia (mean values)	Market capitalization (Bln EUR)	Possible market capitalization by moving registered office to FI, FR, NL or the UK (Bln EUR)
Austria	0.38	146	198 (+34%)
Czech Republic	0.58	35	55 (+56%)
Denmark	0.08		
Finland	0.02	851	Na
France	0.02	2812*	Na
Germany	0.10	1242	1342 (+8%)
Italy	0.37	778	1050 (+35%)
Netherlands	0.02	2812*	Na
Poland	0.11		
Portugal	0.20		
Spain	0.04	1003	1023 (+2%)
Sweden	0.06		
UK	0.02	2877	Na

Source: Dyck and Zingales 2004; FESE.

\* Total capitalization for Euronext, which includes France, Belgium and the Netherlands.

**Table A23. Different scenarios: public limited companies**

Registered Companies: Public Limited Companies				
Country	year 2005	0,6% moving	1% moving	3% moving
Austria	1720	10	17	52
Bulgaria1	NA	Na	Na	Na
Denmark	39535	237	395	1.186
Estonia	5945	36	59	178
Finland	204	1	2	6
France	143401	860	1.434	4.302
Germany	20297	122	203	609
Great Britain2	11500	69	115	345
Greece	22542	135	225	676
Hungary	4336	26	43	130
Iceland	880	5	9	26
Ireland	1286	8	13	39
Italy	54852	329	549	1.646
Latvia	1280	8	13	38
Liechtenstein	8500	51	85	255
Lithuania	727	4	7	22
Luxembourg	47196	283	472	1.416
Malta	NA	Na	Na	Na
Netherlands	6027	36	60	181
Romania	NA	Na	Na	Na
Norway	NA	Na	Na	Na
Slovenia	NA	Na	Na	Na
Spain	316699	1.900	3.167	9.501
Sweden1	NA	Na	Na	Na
<b>TOTAL</b>	<b>686927</b>	<b>4.122</b>	<b>6.869</b>	<b>20.608</b>

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

**Table A24. Different scenarios: private limited companies**

<b>Registered Companies: Private Limited Companies</b>		0,6% moving	1% moving	3% moving
<b>Country</b>	<b>year 2005</b>			
Austria	100709	604	1.007	3.021
Bulgaria(1)	106689	640	1.067	3.201
Denmark	119855	719	1.199	3.596
Estonia	66200	397	662	1.986
Finland	180332	1.082	1.803	5.410
France	1466781	8.801	14.668	44.003
Germany	995940	5.976	9.959	29.878
Great Britain(2)	2118700	12.712	21.187	63.561
Greece	25585	154	256	768
Hungary	218384	1.310	2.184	6.552
Iceland	23481	141	235	704
Ireland	140194	841	1.402	4.206
Italy	988557	5.931	9.886	29.657
Latvia	79711	478	797	2.391
Liechtenstein	80	0	1	2
Lithuania	55374	332	554	1.661
Luxembourg	25023	150	250	751
Malta	NA	Na	Na	Na
Netherlands	660298	3.962	6.603	19.809
Norway	NA	Na	Na	Na
Romania	NA	Na	Na	Na
Slovenia	NA	Na	Na	Na
Spain	1715888	10.295	17.159	51.477
Sweden(1)	309012	1.854	3.090	9.270
<b>TOTAL</b>	<b>9396793</b>	<b>56.381</b>	<b>93.968</b>	<b>281.904</b>

(1) The figures include both public and private limited companies.

(2) The figures are taken from the DTI Companies In Reports for a year ending March 2006.

Source: European Commerce Registers Forum 2005 Survey, prepared by the Swedish Companies Registration Office, January 2007.

**Table A25. Different scenarios: listed companies**

<b>Exchange</b>	<b>N° of companies with listed shares</b>	<b>0,6% moving</b>	<b>1% moving</b>	<b>3% moving</b>
Athens Exchange	290	2	3	9
Borsa Italiana	311	2	3	9
Bratislava Stock Exchange	187	1	2	6
Budapest Stock Exchange	41	0	0	1
Cyprus Stock Exchange	141	1	1	4
Deutsche Börse	760	5	8	23
Euronext	954	6	10	29
Irish Stock Exchange	68	0	1	2
Ljubljana Stock Exchange	100	1	1	3
London Stock Exchange	3.256	20	33	98
Luxembourg Stock Exchange	260	2	3	8
Malta Stock Exchange	14	0	0	0
OMX (Finland)	791	5	8	24
Oslo Børs	229	1	2	7
Prague Stock Exchange	32	0	0	1
Spanish Exchanges (BME)	n/d	n/d	n/d	n/d
Warsaw Stock Exchange	1.446	9	14	43
Wiener Börse	265	2	3	8
<b>TOTAL</b>	113	1	1	3
	<b>9258</b>	<b>56</b>	<b>93</b>	<b>278</b>

Source: Federation of European Securities Exchanges, December 2006 (All market segments, excluding ETFs Investments Trusts, Listed Unit Trusts and UCITS, market transfers).

## **ANNEX II. The recent case law of the Court of Justice on the freedom of establishment**

- (1) **Case C-81/87, Daily Mail** (The Queen v H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc (reference for a preliminary ruling: High Court of Justice, Queen's Bench Division, United Kingdom)).

**Content:** Articles 52 and 58 (new Articles 43 and 48) of the EC-Treaty - the right of free establishment - the right to leave the Member State of origin

**Basic Principles of the Judgement:** With regard to the present stand of harmonisation of company law, Articles 52 and 58 of the EC Treaty cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management and their central administration to another Member State while retaining their status as companies incorporated under the legislation of the first Member State.

- (2) **Case C-212/97, Centros Ltd** v Erhvervs- og Selskabsstyrelsen (reference for a preliminary ruling: Højesteret, Denmark)

**Source:** [1999] ECR I-1459

**Content:** Articles 52 and 58 (new Articles 43 and 48) of the EC-Treaty -right of free movements of persons - right of free establishment

**Basic Principles of the Judgement:** It is contrary to Articles 52 and 58 of the Treaty for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business, where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there. The fact that a national of a Member State who wishes to set up a company chooses to form it in the Member State whose rules of company law seem to him the least restrictive and to set up branches in other Member States cannot, in itself, constitute an abuse of the right of establishment. However, the authorities of the Member State concerned are not precluded from adopting appropriate measure for preventing or penalising fraud.

- (3) **Case C-208/00, Überseering BV** v Nordic Construction Company Baumanagement GmbH (NCC), (reference for a preliminary ruling, Bundesgerichtshof, Germany)

**Content:** Articles 43 EC and 48 EC - Company formed in accordance with the law of a Member State and having its registered office there - Company exercising its freedom of establishment in another Member State - Company deemed to have transferred its actual centre of administration to the host Member State under the law of that State - Non-recognition by the host Member State of the company's legal capacity and its capacity to be a party to legal proceedings - Restriction on freedom of establishment

**Basic Principles of the Judgement:** 1. Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office is deemed, under the law of another Member State ('B'), to have moved its actual centre of administration to Member State B, Articles 43 EC and 48 EC preclude Member State B from denying the company legal capacity and, consequently, the capacity to bring legal proceedings before its national courts for the purpose of enforcing rights under a contract with a company established in Member State B.

2. Where a company formed in accordance with the law of a Member State ('A') in which it has its registered office exercises its freedom of establishment in another Member State ('B'), Articles 43 EC and 48 EC require Member State B to recognise the legal capacity and, consequently, the capacity to be a party to legal proceedings which the company enjoys under the law of its State of incorporation ('A').

- (4) **Case C-167/01, Inspire Art Ltd** (Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd), reference for a preliminary ruling, Kantongerecht te Amsterdam, Netherlands

**Content:** Articles 43 EC, 46 EC and 48 EC + Twelfth Company Law Directive - Company formed in one Member State and carrying on its activities in another Member State - Application of the company law of the Member State of establishment intended to protect the interests of others

**Basic Principles of the Judgement:** It is contrary to Article 2 of the Eleventh Council Directive 89/666/EEC of 21 December 1989 for national legislation to impose on the branch of a company formed in accordance with the laws of another Member State disclosure obligations not provided for by that directive.

It is contrary to Articles 43 EC and 48 EC for national legislation to impose on the exercise of freedom of secondary establishment in that State by a company formed in accordance with the law of another Member State certain conditions provided for in domestic company law in respect of company formation relating to minimum capital and directors' liability. The reasons for which the company was formed in that other Member State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive it of the right to invoke the freedom of establishment guaranteed by the EC Treaty, save where the existence of an abuse is established on a case-by-case basis.

- (5) **Case C-411/03, SEVIC Systems AG**

**Basic Principles of the Judgement:** The Court of Justice observes that freedom of establishment for companies includes in particular the establishment and management of those companies under conditions laid down by the legislation of the State of establishment for its own companies. The Court went on to emphasise that cross-border merger operations, like other company transformation operations, meet needs for cooperation and consolidation between companies established in the various Member States. They constitute particular forms of exercise of the freedom of establishment, which are important for the proper functioning of the internal market, and therefore fall within those economic activities in respect of which Member States are required to comply with the freedom of establishment laid down by Article 43 EC.



The Court notes that a difference in treatment between companies according to the internal or cross-border nature of the merger constitutes a restriction on the right of establishment and can be allowed only if it pursues a legitimate objective compatible with the Treaty and is justified by imperative reasons in the public interest, such as protection of the interests of creditors, minority shareholders and employees, preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions. Such a restrictive measure must also be appropriate for ensuring the attainment of the objectives pursued and not go beyond what is necessary to attain them.

To refuse generally in a MS to register a merger between a company established in that MS and one established in another MS when such registration is possible where both companies are established in the same MS is contrary to Articles 43 and 48 of the Treaty. Limitations to fundamental freedoms must meet the proportionality test.

### **ANNEX III. Studies on private benefits of control.**

Empirical studies of private benefits of control try to measure whether the controlling votes are valued more than non-controlling ones.<sup>8</sup> These studies take recourse to two different methodologies. A first group of studies measures the value of control-block votes, while a second group measures the value of a single vote.

*Controlling block trades.* One methodology is to focus on privately negotiated transfers of controlling blocks in publicly traded companies: “The assumption made is that the price per share an acquirer pays for the controlling block reflects the cash flow benefits from his fractional ownership and the private benefits stemming from his controlling position in the firm. By contrast, the market price of a share after the change in control is announced reflects only the cash flow benefits non-controlling shareholders expect to receive under the new management. Hence, the difference between the price per share paid by the acquiring party and the price per share prevailing on the market reflects the differential payoff accruing to the controlling shareholder.”<sup>9</sup> As a result of such a methodology, countries are ranked according to a ratio of value of control to value of equity. The most recent estimates in this respect are those provided by Dyck and Zingales 2004.

*Vote premium studies.* An alternative methodology consists of linking the extraction of private benefits by controlling shareholders to their willingness to pay a premium price for voting shares at the moment of their acquiring control of the company. Some of the relevant studies in this field are Zingales (1994 and 1995a), Rydqvist (1996), Modigliani and Perotti (1998), and Nenova 2003.<sup>10</sup> To sum up the findings of this literature, we may say that, although methodologies differ and the number of companies included in the various samples is limited, in some EU states there might be a significant level of private benefits of control. With particular reference to Italy, such benefits are the highest in relative terms in all the more recent and complete studies. In the Nenova study, the value of control-block votes in Brazil, Chile, France, Italy, and Mexico is one-quarter or more of firm market capitalization. Such figures are confirmed by Dyck and Zingales 2004 as regards Italy in particular, while France in this study shows a low level of private benefits. It should also be noted that while in general such studies are based on a small number of observations for each country, in one of these studies<sup>11</sup> Italy is covered with a rather large set of cases.<sup>12</sup>

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<sup>8</sup> Overviews of this subject are provided by Shleifer and Vishny 1997, Nenova 2003, and Dyck and Zingales 2004.

<sup>9</sup> Dyck and Zingales 2004, p. 1.

<sup>10</sup> According to the definition of such a method provided by Dyck and Zingales 2004, p. 9: “The second method of estimating the value of private benefits of control uses the price difference between two classes of stock, with similar or identical dividend rights, but different voting rights. If control is valuable, then corporate votes, which allocate control, should be valuable as well. How valuable? It depends on how decisive some votes are in allocating control and how valuable control is. If one can find a reasonable proxy for the strategic value of votes in winning control - for example in forming a winning coalition block - then one can infer the value of control from the relationship between the market price of the votes and their strategic role.” As underlined by Marcello Bianchi in a private interview, the main problem of this methodology is that prices of non-voting classes of shares often are highly variable due to the limited quantities traded.

<sup>11</sup> Nenova 2003.

<sup>12</sup> The latest available data are provided by the annual report of the Consob (the Italian stock market regulator) for 2003, p. 9: out of 21 cases identified, the average premium for the purchase of controlling blocks is 12.3%. Such findings are also confirmed from non-systematic findings reported in the press. For instance, Penati 2004a refers to recent cases in which controlling voting blocks in Italian listed companies have been paid a premium between 30% and almost 100% vis-à-vis their stock market price. For a general treatment on the importance of shareholder expropriation in Italian corporate governance, see Rajan and Zingales 2004 and Pinza and Zoppini 2004.




## Transfer of the registered office of limited companies

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- [Impact Assessment \(December 2007\)](#)
  - [Public consultation](#)
  - [Case Law](#)
- 

### Impact Assessment (December 2007)

The European Commission has published in December 2007 an impact assessment on the Directive on the cross-border transfer of registered office. The document presents the pros and cons of possible policy actions, also including an evaluation of the consequences of not undertaking any regulatory action in this field. The impact assessment has been validated by the Commission's impact assessment board. Having weighed the arguments advanced, Commissioner McCreevy has decided there is no need for action at EU level on this issue. DG Internal Market and Services has therefore stopped work in this area.

- Impact Assessment     (December 2007)
- [Opinion of the impact assessment board](#) (November 2007)

### Public consultation

The public consultation relates to the outline of the planned proposal for a 14th Company Law Directive on the cross-border transfer of the registered office of limited companies.

- [Press release](#) (26.2.2004)
- [Read more](#)

### Case Law

Date	Case	Description
13.12.2005	<a href="#">C 411/03</a>	SEVIC Systems AG
30.09.2003	<a href="#">C 167/01</a>	Kamer van Koophandel en Fabrieken voor Amsterdam vs. Inspire Art Ltd
05.11.2002	<a href="#">C 208/00</a>	Überseering BV vs. Nordic Construction Company Baumanagement GmbH (NCC)
09.03.1999	<a href="#">C 212/97</a>	Centros Ltd vs. Erhvervs- og Selskabsstyrelsen
27.09.1988	<a href="#">C 81/87</a>	The Queen vs. H. M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc
10.07.1986	<a href="#">C 79/85</a>	Segers vs. Bestuur van de Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen

## 31985R2137

### Title and reference

#### Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

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*Finnish special edition: Chapter 17 Volume 1 P. 0090*  
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*Swedish special edition: Chapter 17 Volume 1 P. 0090*  
*Portuguese special edition Chapter 17 Volume 2 P. 0003*  
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*ET.ES Chapter 17 Volume 01 P. 83*  
*HU.ES Chapter 17 Volume 01 P. 83*  
*LT.ES Chapter 17 Volume 01 P. 83*  
*LV.ES Chapter 17 Volume 01 P. 83*  
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*PL.ES Chapter 17 Volume 01 P. 83*  
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### Text

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV	LT	HU	MT	NL	PL	PT	R
<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>		<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	<a href="#">html</a>	
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- ▶ **EUROVOC descriptor:**  
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 management  
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- ▶ **Directory code:**  
 17.10.00.00 Law relating to undertakings / Company law
- ▶ **Subject matter:**  
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### Miscellaneous information

- ▶ **Author:**  
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- ▶ **Legal basis:**  
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- ▶ **Select all documents based on this document**
- ▶ **Amendment to:**  
 51973PC2046 Adoption  
 51978PC0139 Adoption
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- ▶ **Instruments cited:**  
 11957E058  
  
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### Text

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COUNCIL REGULATION (EEC) No 2137/85  
 of 25 July 1985  
 on the European Economic Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN

COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishment and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented vis-à-vis third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

- social and labour laws,
- competition law,
- intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.

2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

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 as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

(a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;

(b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;

(c) employ more than 500 persons;

(d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;

(e) be a member of another European Economic Interest Grouping.

#### Article 4

1. Only the following may be members of a grouping:

(a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;

(b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:

(a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or

(b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or

(c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

#### Article 5

A contract for the formation of a grouping shall include at least:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;

(b) the official address of the grouping;

(c) the objects for which the grouping is formed;

(d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;

(e) the duration of the grouping, except where this is indefinite.

#### Article 6

A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39 (1).

#### Article 7

A contract for the formation of a grouping shall be filed at the registry referred to in Article 6.

The following documents and particulars must also be filed at that registry: (a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;

(b) notice of the setting up or closure of any establishment of the grouping;

(c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;

(d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;

(e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22 (1);

(f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;

(g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;

(h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35 (2);

(i) any proposal to transfer the official address, as referred to in Article 14 (1);

(j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26 (2).

#### Article 8

The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:

(a) the particulars which must be included in the contract for the formation of a grouping, pursuant to Article 5, and any amendments thereto;

(b) the number, date and place of registration as well as notice of the termination of that registration;

(c) the documents and particulars referred to in Article 7 (b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

#### Article 9

1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions laid down by the national law applicable pursuant to Article 3 (5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1).

2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

#### Article 10

Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

#### Article 11

Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the Official Journal of the European Communities after it has been published in the gazette

referred to in Article 39 (1).

#### Article 12

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

The official address must be fixed either:

- (a) where the grouping has its central administration, or
- (b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

#### Article 13

The official address of a grouping may be transferred within the Community.

When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

#### Article 14

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

#### Article 15

1. Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.

2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9 (1).

Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

#### Article 16

1. The organs of a grouping shall be the members acting collectively and the manager or managers.

A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.

2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

#### Article 17

1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.

2. A unanimous decision by the members shall be required to:

- (a) alter the objects of a grouping;
- (b) alter the number of votes allotted to each member;
- (c) alter the conditions for the taking of decisions;
- (d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;
- (e) alter the contribution by every member or by some members to the grouping's financing;
- (f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;
- (g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.

4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

#### Article 18

Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records.

#### Article 19

1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.

No person may be a manager of a grouping if:

- by virtue of the law applicable to him, or
- by virtue of the internal law of the State in which the grouping has its official address, or
- following a judicial or administrative decision made or recognized in a Member State

he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.

2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7 (d) to represent them.

If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.

The restrictions imposed in paragraph 1 shall also apply to those representatives.

3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

#### Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 (c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1) only if it is published in accordance with Article 8.

#### Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

#### Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

#### Article 23

No grouping may invite investment by the public. Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

#### Article 25

Letters, order forms and similar documents must indicate legibly:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;

(b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;

(c) the grouping's official address;

(d) where applicable, that the managers must act jointly;

(e) where applicable, that the grouping is in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

#### Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.

2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9 (1), only if it is published in accordance with Article 8.

#### Article 27

1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

#### Article 28

1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4 (1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

#### Article 29

As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

#### Article 30

Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.

#### Article 31

1. A grouping may be wound up by a decision of its members ordering its winding up. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping. 2. A grouping must be wound up by a decision of its members:

(a) noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or

(b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.



Where, three months after one of the situation referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

3. A grouping must also be wound up by a decision of its members or of the remaining member when the conditions laid down in Article 4 (2) are no longer fulfilled.

4. After a grouping has been wound up by decision of its members, the manager or managers must take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

#### Article 32

1. On application by any person concerned or by a competent authority, in the event of the infringement of Articles 3, 12 or 31 (3), the court must order a grouping to be wound up, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On applications by a member, the court may order a grouping to be wound up on just and proper grounds.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the grouping acts in contravention of that State's public interest, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

#### Article 33

When a member ceases to belong to a grouping for any reason other than the assignment of his rights in accordance with the conditions laid down in Article 22 (1), the value of his rights and obligations shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

The value of the rights and obligations of a departing member may not be fixed in advance.

#### Article 34

Without prejudice to Article 37 (1), any member who ceases to belong to a grouping shall remain answerable, in accordance with the conditions laid down in Article 24, for the debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

#### Article 35

1. The winding up of a grouping shall entail its liquidation.

2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.

3. A grouping shall retain its capacity, within the meaning of Article 1 (2), until its liquidation is concluded.

4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

#### Article 36

Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

#### Article 37

1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

#### Article 38

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible. Article 39

1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8 (c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the Official Journal of the European Communities pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

#### Article 40

The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

#### Article 41

1. The Member States shall take the measures required by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4 (4). The Commission shall inform the other Member States.

#### Article 42

1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;

(b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

#### Article 43

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1985.

For the Council

The President

J. POOS

(1) OJ No C 14, 15. 2. 1974, p. 30 and OJ No C 103, 28. 4. 1978, p. 4.

(2) OJ No C 163, 11. 7. 1977, p. 17.

(3) OJ No C 108, 15. 5. 1975, p. 46.

(1) OJ No L 65, 14. 3. 1968, p. 8.

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CORRIGENDUM TO:

Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

*OJ L 124, 15.5.1990, p. 52-52 (PT)*

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▶ **21994A0103(72)**

Agreement on the European Economic Area - Annex XXII - Company law - List provided for in Article 77

*OJ L 1, 3.1.1994, p. 517-522 (ES, DA, DE, EL, EN, FR, IT, NL, PT)*

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**COUNCIL REGULATION (EC) No 2157/2001**  
**of 8 October 2001**  
**on the Statute for a European company (SE)**  
(OJ L 294, 10.11.2001, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Council Regulation (EC) No 885/2004 of 26 April 2004	L 168	1	1.5.2004
► <u>M2</u>	Council Regulation (EC) No 1791/2006 of 20 November 2006	L 363	1	20.12.2006



**COUNCIL REGULATION (EC) No 2157/2001**  
**of 8 October 2001**  
**on the Statute for a European company (SE)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.
- (2) Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers. Such operations can be carried out only with due regard to the rules of competition laid down in the Treaty.
- (3) Restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems. The approximation of Member States' company law by means of Directives based on Article 44 of the Treaty can overcome some of those difficulties. Such approximation does not, however, release companies governed by different legal systems from the obligation to choose a form of company governed by a particular national law.
- (4) The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.
- (5) Member States are obliged to ensure that the provisions applicable to European companies under this Regulation do not result either in discrimination arising out of unjustified different treatment of European companies compared with public limited-liability companies or in disproportionate restrictions on the formation of a European company or on the transfer of its registered office.
- (6) It is essential to ensure as far as possible that the economic unit and the legal unit of business in the Community coincide. For that purpose, provision should be made for the creation, side by

<sup>(1)</sup> OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.

<sup>(2)</sup> Opinion of 4 September 2001 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 124, 21.5.1990, p. 34.

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side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States.

- (7) The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.
- (8) The Statute for a European public limited-liability company (hereafter referred to as 'SE') is among the measures to be adopted by the Council before 1992 listed in the Commission's White Paper on completing the internal market, approved by the European Council that met in Milan in June 1985. The European Council that met in Brussels in 1987 expressed the wish to see such a Statute created swiftly.
- (9) Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where the functioning of an SE does not need uniform Community rules reference may be made to the law governing public limited-liability companies in the Member State where it has its registered office.
- (10) Without prejudice to any economic needs that may arise in the future, if the essential objective of legal rules governing SEs is to be attained, it must be possible at least to create such a company as a means both of enabling companies from different Member States to merge or to create a holding company and of enabling companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries.
- (11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.
- (12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.
- (13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.
- (14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.
- (15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling



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undertaking by its own law, for example the requirement to prepare consolidated accounts.

- (16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.
- (17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.
- (18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.
- (19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC <sup>(1)</sup>, and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.
- (20) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.
- (21) Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conditions, to public limited-liability companies.
- (22) The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/86/EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.
- (23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.
- (24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.
- (25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.

<sup>(1)</sup> See p. 22 of this Official Journal.

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- (26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.
- (27) In view of the specific Community character of an SE, the 'real seat' arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.
- (28) The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article 308 thereof.
- (29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

HAS ADOPTED THIS REGULATION:

TITLE I  
GENERAL PROVISIONS

*Article 1*

1. A company may be set up within the territory of the Community in the form of a European public limited-liability company (*Societas Europaea* or SE) on the conditions and in the manner laid down in this Regulation.
2. The capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed.
3. An SE shall have legal personality.
4. Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.

*Article 2*

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.
2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:
  - (a) is governed by the law of a different Member State, or
  - (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

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3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:

- (a) is governed by the law of a different Member State, or
- (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.

5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

*Article 3*

1. For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.

2. An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies<sup>(1)</sup> shall apply to SEs *mutatis mutandis*.

*Article 4*

- 1. The capital of an SE shall be expressed in euro.
- 2. The subscribed capital shall not be less than EUR 120 000.
- 3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

*Article 5*

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 40. Directive as last amended by the 1994 Act of Accession.

**▼B***Article 6*

For the purposes of this Regulation, ‘the statutes of the SE’ shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

*Article 7*

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

*Article 8*

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:

- (a) the proposed registered office of the SE;
- (b) the proposed statutes of the SE including, where appropriate, its new name;
- (c) any implication the transfer may have on employees' involvement;
- (d) the proposed transfer timetable;
- (e) any rights provided for the protection of shareholders and/or creditors.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.

4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.

5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

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The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.

11. When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.

13. On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

#### *Article 9*

1. An SE shall be governed:

- (a) by this Regulation,
- (b) where expressly authorised by this Regulation, by the provisions of its statutes

or

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- (c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
- (i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;
  - (ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;
  - (iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.
2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.
3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

*Article 10*

Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

*Article 11*

1. The name of an SE shall be preceded or followed by the abbreviation SE.
2. Only SEs may include the abbreviation SE in their name.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

*Article 12*

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community <sup>(1)</sup>.
2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.
3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement,

<sup>(1)</sup> OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.

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including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.

4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

*Article 13*

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

*Article 14*

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the *Official Journal of the European Communities* after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.

2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

## TITLE II

**FORMATION**

## Section 1

**General***Article 15*

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.

2. The registration of an SE shall be publicised in accordance with Article 13.

*Article 16*

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.

2. If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons,

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companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

## Section 2

**Formation by merger***Article 17*

1. An SE may be formed by means of a merger in accordance with Article 2(1).
2. Such a merger may be carried out in accordance with:
  - (a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies <sup>(1)</sup> or
  - (b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

*Article 18*

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

*Article 19*

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

*Article 20*

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:
  - (a) the name and registered office of each of the merging companies together with those proposed for the SE;
  - (b) the share-exchange ratio and the amount of any compensation;
  - (c) the terms for the allotment of shares in the SE;

<sup>(1)</sup> OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.



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- (d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;
  - (e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;
  - (f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
  - (g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
  - (h) the statutes of the SE;
  - (i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.
2. The merging companies may include further items in the draft terms of merger.

*Article 21*

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

- (a) the type, name and registered office of every merging company;
- (b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
- (c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
- (d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;
- (e) the name and registered office proposed for the SE.

*Article 22*

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

*Article 23*

1. The general meeting of each of the merging companies shall approve the draft terms of merger.

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2. Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

*Article 24*

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

- (a) creditors of the merging companies;
- (b) holders of bonds of the merging companies;
- (c) holders of securities, other than shares, which carry special rights in the merging companies.

2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

*Article 25*

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23 (1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

*Article 26*

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.

2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the

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same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.

4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

*Article 27*

1. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.

2. The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

*Article 28*

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

*Article 29*

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences *ipso jure* and simultaneously:

- (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;
- (b) the shareholders of the company being acquired become shareholders of the acquiring company;
- (c) the company being acquired ceases to exist;
- (d) the acquiring company adopts the form of an SE.

2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences *ipso jure* and simultaneously:

- (a) all the assets and liabilities of the merging companies are transferred to the SE;
- (b) the shareholders of the merging companies become shareholders of the SE;
- (c) the merging companies cease to exist.

3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

4. The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

*Article 30*

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

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The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

*Article 31*

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.

2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

**Section 3****Formation of a holding SE***Article 32*

1. A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (f), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or

**▼B**

administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

Employee involvement in the holding SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each company promoting the operation may reserve the right to make registration of the holding SE conditional upon its express ratification of the arrangements so decided.

7. These provisions shall apply *mutatis mutandis* to private limited-liability companies.

*Article 33*

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

*Article 34*

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.



#### Section 4

##### Formation of a subsidiary SE

###### Article 35

An SE may be formed in accordance with Article 2(3).

###### Article 36

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

#### Section 5

##### Conversion of an existing public limited-liability company into an SE

###### Article 37

1. An SE may be formed in accordance with Article 2(4).
2. Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.
3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.
4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.
5. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.
6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC <sup>(1)</sup> *mutatis mutandis* that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.
7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

<sup>(1)</sup> Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the 1994 Act of Accession.

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8. Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

9. The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE.

TITLE III  
STRUCTURE OF THE SE

*Article 38*

Under the conditions laid down by this Regulation an SE shall comprise:

- (a) a general meeting of shareholders and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1  
Two-tier system

*Article 39*

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.

3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

5. Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

**▼B***Article 40*

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.
2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.
3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

*Article 41*

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.
2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.
3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.
4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.
5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

*Article 42*

The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

**Section 2****The one-tier system***Article 43*

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.
2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.



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3. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

4. Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

*Article 44*

1. The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

2. Each member of the administrative organ shall be entitled to examine all information submitted to it.

*Article 45*

The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

**Section 3****Rules common to the one-tier and two-tier systems***Article 46*

1. Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

*Article 47*

1. An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2. No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 who:

- (a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or
- (b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's

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registered office is situated, lay down special conditions of eligibility for members representing the shareholders.

4. This Regulation shall not affect national law permitting a minority of shareholders or other persons or authorities to appoint some of the members of a company organ.

*Article 48*

1. An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

*Article 49*

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

*Article 50*

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:

- (a) quorum: at least half of the members must be present or represented;
- (b) decision-taking: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

*Article 51*

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.



Section 4  
General meeting

*Article 52*

The general meeting shall decide on matters for which it is given sole responsibility by:

- (a) this Regulation or
- (b) the legislation of the Member State in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE's registered office is situated, either by the law of that Member State or by the SE's statutes in accordance with that law.

*Article 53*

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

*Article 54*

1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.

2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

*Article 55*

1. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2. The request that a general meeting be convened shall state the items to be put on the agenda.

3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

**▼B***Article 56*

One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

*Article 57*

Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.

*Article 58*

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

*Article 59*

1. Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority.
2. A Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.
3. Amendments to an SE's statutes shall be publicised in accordance with Article 13.

*Article 60*

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.
2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

## TITLE IV

**ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS***Article 61*

Subject to Article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the Member State in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the

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accompanying annual report and the auditing and publication of those accounts.

*Article 62*

1. An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(1)</sup> as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings<sup>(2)</sup> as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

## TITLE V

**WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS***Article 63*

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

*Article 64*

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:

- (a) by re-establishing its head office in the Member State in which its registered office is situated or
- (b) by transferring the registered office by means of the procedure laid down in Article 8.

2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.

3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.

4. Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of

<sup>(1)</sup> OJ L 126, 26.5.2000, p. 1.

<sup>(2)</sup> OJ L 374, 31.12.1991, p. 7.

**▼B**

a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

*Article 65*

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up, liquidation, insolvency or cessation of payment procedures and any decision to continue operating shall be publicised in accordance with Article 13.

*Article 66*

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.

3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.

4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.

6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

## TITLE VI

**ADDITIONAL AND TRANSITIONAL PROVISIONS***Article 67*

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may,

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however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu <sup>(1)</sup>.

## TITLE VII

## FINAL PROVISIONS

*Article 68*

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.
2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

*Article 69*

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a) allowing the location of an SE's head office and registered office in different Member States;
- (b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;
- (c) revising the jurisdiction clause in Article 8(16) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;
- (d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.

*Article 70*

This Regulation shall enter into force on 8 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

<sup>(1)</sup> OJ L 317, 16.11.1990, p. 57.

**▼ B***ANNEX I***PUBLIC LIMITED-LIABILITY COMPANIES REFERRED TO IN  
ARTICLE 2(1)**

BELGIUM:

la société anonyme/de naamloze vennootschap

**▼ M2**

BULGARIA:

акционерно дружество

**▼ M1**

CZECH REPUBLIC:

akciová společnost

**▼ B**

DENMARK:

aktieselskaber

GERMANY:

die Aktiengesellschaft

**▼ M1**

ESTONIA:

aktsiaselts

**▼ B**

GREECE:

ανώνυμη εταιρία

SPAIN:

la sociedad anónima

FRANCE:

la société anonyme

IRELAND:

public companies limited by shares

public companies limited by guarantee having a share capital

ITALY:

società per azioni

**▼ M1**

CYPRUS:

Δημόσια Εταιρεία περιορισμένης ευθύνης με μετοχές, Δημόσια Εταιρεία περιορισμένης ευθύνης με εγγύηση

LATVIA:

akciju sabiedrība

LITHUANIA:

akcinės bendrovės

**▼ B**

LUXEMBOURG:

la société anonyme

**▼ M1**

HUNGARY:

részvénytársaság

MALTA:

kumpaniji pubbliċi / public limited liability companies



▼ **B**

NETHERLANDS:

de naamloze vennootschap

AUSTRIA:

die Aktiengesellschaft

▼ **M1**

POLAND:

spółka akcyjna

▼ **B**

PORTUGAL:

a sociedade anónima de responsabilidade limitada

▼ **M2**

ROMANIA:

societate pe acțiuni

▼ **M1**

SLOVENIA:

delniška družba

SLOVAKIA:

akciová spoločnosť

▼ **B**

FINLAND:

julkinen osakeyhtiö/publikt aktiebolag

SWEDEN:

publikt aktiebolag

UNITED KINGDOM:

public companies limited by shares

public companies limited by guarantee having a share capital

**▼ B***ANNEX II***PUBLIC AND PRIVATE LIMITED-LIABILITY COMPANIES  
REFERRED TO IN ARTICLE 2(2)**

BELGIUM:

la société anonyme/de naamloze vennootschap,

la société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid

**▼ M2**

BULGARIA:

акционерно дружество, дружество с ограничена отговорност

**▼ M1**

CZECH REPUBLIC:

akciová společnost,

společnost s ručením omezeným

**▼ B**

DENMARK:

aktieselskaber,

anpartselskaber

GERMANY:

die Aktiengesellschaft,

die Gesellschaft mit beschränkter Haftung

**▼ M1**

ESTONIA:

aktsiaselts ja osuühing

**▼ B**

GREECE:

ανώνυμη εταιρία

εταιρία περιορισμένης ευθύνης

SPAIN:

la sociedad anónima,

la sociedad de responsabilidad limitada

FRANCE:

la société anonyme,

la société à responsabilité limitée

IRELAND:

public companies limited by shares,

public companies limited by guarantee having a share capital,

private companies limited by shares,

private companies limited by guarantee having a share capital

ITALY:

società per azioni,

società a responsabilità limitata

**▼ M1**

CYPRUS:

Δημόσια εταιρεία περιορισμένης ευθύνης με μετοχές,

δημόσια Εταιρεία περιορισμένης ευθύνης με εγγύηση,

ιδιωτική εταιρεία

**▼ M1**

LATVIA:

akciju sabiedrība,

un sabiedrība ar ierobežotu atbildību

LITHUANIA:

akcinės bendrovės,

uždariosios akcinės bendrovės

**▼ B**

LUXEMBOURG:

la société anonyme,

la société à responsabilité limitée

**▼ M1**

HUNGARY:

részvénytársaság,

korlátolt felelősségű társaság

MALTA:

kumpaniji pubbliċi / public limited liability companies

kumpaniji privati/private limited liability companies

**▼ B**

NETHERLANDS:

de naamloze vennootschap,

de besloten vennootschap met beperkte aansprakelijkheid

AUSTRIA:

die Aktiengesellschaft,

die Gesellschaft mit beschränkter Haftung

**▼ M1**

POLAND:

spółka akcyjna,

spółka z ograniczoną odpowiedzialnością

**▼ B**

PORTUGAL:

a sociedade anónima de responsabilidade limitada,

a sociedade por quotas de responsabilidade limitada

**▼ M2**

ROMANIA:

societate pe acțiuni, societate cu răspundere limitată

**▼ M1**

SLOVENIA:

delniška družba,

družba z omejeno odgovornostjo

SLOVAKIA:

akciová spoločnosť,

spoločnosť s ručením obmedzeným

**▼ B**

FINLAND:

osakeyhtiö

aktiebolag

SWEDEN:

aktiebolag

**▼B**

UNITED KINGDOM:

public companies limited by shares,

public companies limited by guarantee having a share capital,

private companies limited by shares,

private companies limited by guarantee having a share capital

## 32001R2157

### Title and reference

**Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)**

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*Special edition in Latvian Chapter 06 Volume 04 P. 251 - 271*  
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<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>		<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>
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Consolidated versions

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Council Regulation (EC) No 2157/2001

of 8 October 2001

on the Statute for a European company (SE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas:

(1) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(2) Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers. Such operations can be carried out only with due regard to the rules of competition laid down in the Treaty.

(3) Restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems. The approximation of Member States' company law by means of Directives based on Article 44 of the Treaty can overcome some of those difficulties. Such approximation does not, however, release companies governed by different legal systems from the obligation to choose a form of company governed by a particular national law.

(4) The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(5) Member States are obliged to ensure that the provisions applicable to European companies under this Regulation do not result either in discrimination arising out of unjustified different treatment of European companies compared with public limited-liability companies or in disproportionate restrictions on the formation of a European company or on the transfer of its registered office.

(6) It is essential to ensure as far as possible that the economic unit and the legal unit of business in the Community coincide. For that purpose, provision should be made for the creation, side by side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States.

(7) The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.

(8) The Statute for a European public limited-liability company (hereafter referred to as "SE") is among the measures to be adopted by the Council before 1992 listed in the Commission's White Paper on completing the internal market, approved by the European Council that met in Milan in June 1985. The European Council that met in Brussels in 1987 expressed the wish to see such a Statute created swiftly.

(9) Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where the functioning of an SE does not need uniform Community rules reference may be made to the law governing public limited-liability companies in the Member State where it has its registered office.

(10) Without prejudice to any economic needs that may arise in the future, if the essential objective of legal rules governing SEs is to be attained, it must be possible at least to create such a company as a means both of enabling companies from different Member States to merge or to create a holding company and of enabling companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries.

(11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.

(12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.

(13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.

(14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.

(15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling undertaking by its own law, for example the requirement to prepare consolidated accounts.

(16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present

required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.

(17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.

(18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.

(19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC(4), and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.

(20) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(21) Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conditions, to public limited-liability companies.

(22) The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/86/EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.

(23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.

(24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.

(25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.

(26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.

(27) In view of the specific Community character of an SE, the "real seat" arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.

(28) The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article 308 thereof.

(29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

1. A company may be set up within the territory of the Community in the form of a European public limited-liability company (*Societas Europaea* or SE) on the conditions and in the manner laid down in this Regulation.
2. The capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed.
3. An SE shall have legal personality.
4. Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.

Article 2

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.
2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:
  - (a) is governed by the law of a different Member State, or
  - (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:
  - (a) is governed by the law of a different Member State, or
  - (b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.
4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.
5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

1. For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.
2. An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies(5) shall apply to SEs *mutatis mutandis*.

Article 4

1. The capital of an SE shall be expressed in euro.
2. The subscribed capital shall not be less than EUR 120000.
3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

Article 5

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

Article 6

For the purposes of this Regulation, "the statutes of the SE" shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

#### Article 7

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

#### Article 8

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.
2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:
  - (a) the proposed registered office of the SE;
  - (b) the proposed statutes of the SE including, where appropriate, its new name;
  - (c) any implication the transfer may have on employees' involvement;
  - (d) the proposed transfer timetable;
  - (e) any rights provided for the protection of shareholders and/or creditors.
3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.
4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.
5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.
6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.
7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.
  9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.
  10. The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.
  11. When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.
  12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.
  13. On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.
  14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.
- Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.
- Review by a judicial authority shall be possible.
15. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.
  16. An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

#### Article 9

1. An SE shall be governed:
  - (a) by this Regulation,
  - (b) where expressly authorised by this Regulation, by the provisions of its statutesor
  - (c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
    - (i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;
    - (ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;
    - (iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.
2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.
3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

#### Article 10

Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

#### Article 11

1. The name of an SE shall be preceded or followed by the abbreviation SE.
2. Only SEs may include the abbreviation SE in their name.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.



## Article 12

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community(6).
  2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.
  3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.
  4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.
- In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

## Article 13

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

## Article 14

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.
2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.
3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

## TITLE II

## FORMATION

## Section 1

## General

## Article 15

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.
2. The registration of an SE shall be publicised in accordance with Article 13.

## Article 16

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.
2. If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

## Section 2

## Formation by merger

## Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).
2. Such a merger may be carried out in accordance with:
  - (a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3) (g) of the Treaty concerning mergers of public limited-liability companies(7) or
  - (b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

## Article 18

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

## Article 19

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

## Article 20

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:
  - (a) the name and registered office of each of the merging companies together with those proposed for the SE;
  - (b) the share-exchange ratio and the amount of any compensation;
  - (c) the terms for the allotment of shares in the SE;
  - (d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;
  - (e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;
  - (f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
  - (g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;
  - (h) the statutes of the SE;
  - (i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.
2. The merging companies may include further items in the draft terms of merger.

## Article 21

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

- (a) the type, name and registered office of every merging company;
- (b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;
- (c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information may be obtained free of charge;
- (d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information may be obtained free of charge;
- (e) the name and registered office proposed for the SE.

#### Article 22

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

#### Article 23

1. The general meeting of each of the merging companies shall approve the draft terms of merger.
2. Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

#### Article 24

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

- (a) creditors of the merging companies;
- (b) holders of bonds of the merging companies;
- (c) holders of securities, other than shares, which carry special rights in the merging companies.

2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

#### Article 25

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.
2. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.
3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23(1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

#### Article 26

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.
2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.
3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.
4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

#### Article 27

1. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.
2. The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

#### Article 28

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

#### Article 29

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences ipso jure and simultaneously:

- (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;
- (b) the shareholders of the company being acquired become shareholders of the acquiring company;
- (c) the company being acquired ceases to exist;
- (d) the acquiring company adopts the form of an SE.

2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences ipso jure and simultaneously:

- (a) all the assets and liabilities of the merging companies are transferred to the SE;
- (b) the shareholders of the merging companies become shareholders of the SE;
- (c) the merging companies cease to exist.

3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

4. The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

#### Article 30

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

## Article 31

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.
2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

## Section 3

## Formation of a holding SE

## Article 32

1. A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (f), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

Employee involvement in the holding SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each company promoting the operation may reserve the right to make registration of the holding SE conditional upon its express ratification of the arrangements so decided.

7. These provisions shall apply *mutatis mutandis* to private limited-liability companies.

## Article 33

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

## Article 34

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.

## Section 4

## Formation of a subsidiary SE

## Article 35

An SE may be formed in accordance with Article 2(3).

## Article 36

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

## Section 5

## Conversion of an existing public limited-liability company into an SE

## Article 37

1. An SE may be formed in accordance with Article 2(4).

2. Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.

3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.

4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.

5. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.

6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC(8) *mutatis mutandis* that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.

7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

8. Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

9. The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE.

#### TITLE III

#### STRUCTURE OF THE SE

##### Article 38

Under the conditions laid down by this Regulation an SE shall comprise:

(a) a general meeting of shareholders and

(b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

##### Section 1

##### Two-tier system

##### Article 39

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.

3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

5. Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

##### Article 40

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.

2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

##### Article 41

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.

3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

##### Article 42

The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

##### Section 2

##### The one-tier system

##### Article 43

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.

3. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

4. Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

##### Article 44

1. The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

2. Each member of the administrative organ shall be entitled to examine all information submitted to it.

##### Article 45

The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

##### Section 3

##### Rules common to the one-tier and two-tier systems

##### Article 46

1. Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

## Article 47

1. An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2. No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 who:

(a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or

(b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, lay down special conditions of eligibility for members representing the shareholders.

4. This Regulation shall not affect national law permitting a minority of shareholders or other persons or authorities to appoint some of the members of a company organ.

## Article 48

1. An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

## Article 49

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

## Article 50

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:

(a) quorum: at least half of the members must be present or represented;

(b) decision-taking: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

## Article 51

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

## Section 4

## General meeting

## Article 52

The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation or

(b) the legislation of the Member State in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE's registered office is situated, either by the law of that Member State or by the SE's statutes in accordance with that law.

## Article 53

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

## Article 54

1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.

2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

## Article 55

1. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2. The request that a general meeting be convened shall state the items to be put on the agenda.

3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

## Article 56

One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

## Article 57

Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.

## Article 58

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

## Article 59

1. Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority.
2. A Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.
3. Amendments to an SE's statutes shall be publicised in accordance with Article 13.

## Article 60

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.
2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

## TITLE IV

## ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

## Article 61

Subject to Article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the Member State in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

## Article 62

1. An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions(9) as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.
2. An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings(10) as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

## TITLE V

## WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

## Article 63

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

## Article 64

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:
  - (a) by re-establishing its head office in the Member State in which its registered office is situated or
  - (b) by transferring the registered office by means of the procedure laid down in Article 8.
2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.
3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.
4. Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

## Article 65

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up, liquidation, insolvency or cessation of payment procedures and any decision to continue operating shall be publicised in accordance with Article 13.

## Article 66

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.
2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.
3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.
4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.
6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

## TITLE VI

## ADDITIONAL AND TRANSITIONAL PROVISIONS

## Article 67

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.
2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu(11).

## TITLE VII

## FINAL PROVISIONS

## Article 68

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.
2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

## Article 69

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a) allowing the location of an SE's head office and registered office in different Member States;
- (b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;
- (c) revising the jurisdiction clause in Article 8(16) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;
- (d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.

## Article 70

This Regulation shall enter into force on 8 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. Onkelinx

- (1) OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.
- (2) Opinion of 4 September 2001 (not yet published in the Official Journal).
- (3) OJ C 124, 21.5.1990, p. 34.
- (4) See p. 22 of this Official Journal.
- (5) OJ L 395, 30.12.1989, p. 40. Directive as last amended by the 1994 Act of Accession.
- (6) OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.
- (7) OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.
- (8) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the 1994 Act of Accession.
- (9) OJ L 126, 26.5.2000, p. 1.
- (10) OJ L 374, 31.12.1991, p. 7.
- (11) OJ L 317, 16.11.1990, p. 57.

## ANNEX I

## PUBLIC LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(1)

## BELGIUM:

la société anonyme//de naamloze vennootschap

## DENMARK:

aktieselskaber

## GERMANY:

die Aktiengesellschaft

## GREECE:

ανώνυμη εταιρία

## SPAIN:

la sociedad anónima

## FRANCE:

la société anonyme

## IRELAND:

public companies limited by shares

public companies limited by guarantee having a share capital

## ITALY:

società per azioni

## LUXEMBOURG:

la société anonyme

## NETHERLANDS:

de naamloze vennootschap

## AUSTRIA:

die Aktiengesellschaft

## PORTUGAL:

a sociedade anónima de responsabilidade limitada

## FINLAND:

julkinen osakeyhtiö//publikt aktiebolag

## SWEDEN:

publikt aktiebolag  
UNITED KINGDOM:  
public companies limited by shares  
public companies limited by guarantee having a share capital  
ANNEX II  
PUBLIC AND PRIVATE LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(2)  
BELGIUM:  
la société anonyme//de naamloze vennootschap,  
la société privée à responsabilité limitée//besloten vennootschap met beperkte aansprakelijkheid  
DENMARK:  
aktieselskaber,  
anpartselskaber  
GERMANY:  
die Aktiengesellschaft,  
die Gesellschaft mit beschränkter Haftung  
GREECE:  
ανώνυμη εταιρία  
εταιρία περιορισμένης ευθύνης  
SPAIN:  
la sociedad anónima,  
la sociedad de responsabilidad limitada  
FRANCE:  
la société anonyme,  
la société à responsabilité limitée  
IRELAND:  
public companies limited by shares,  
public companies limited by guarantee having a share capital,  
private companies limited by shares,  
private companies limited by guarantee having a share capital  
ITALY:  
società per azioni,  
società a responsabilità limitata  
LUXEMBOURG:  
la société anonyme,  
la société à responsabilité limitée  
NETHERLANDS:  
de naamloze vennootschap,  
de besloten vennootschap met beperkte aansprakelijkheid  
AUSTRIA:  
die Aktiengesellschaft,  
die Gesellschaft mit beschränkter Haftung  
PORTUGAL:  
a sociedade anónima de responsabilidade limitada,  
a sociedade por quotas de responsabilidade limitada  
FINLAND:  
osakeyhtiö  
aktiebolag  
SWEDEN:  
aktiebolag  
UNITED KINGDOM:  
public companies limited by shares,  
public companies limited by guarantee having a share capital,  
private companies limited by shares,  
private companies limited by guarantee having a share capital

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## 32001L0086

### Title and reference

**Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees**

*OJ L 294, 10.11.2001, p. 22–32 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)*  
*Special edition in Czech Chapter 06 Volume 04 P. 272 - 282*  
*Special edition in Estonian Chapter 06 Volume 04 P. 272 - 282*  
*Special edition in Hungarian Chapter 06 Volume 04 P. 272 - 282*  
*Special edition in Lithuanian Chapter 06 Volume 04 P. 272 - 282*  
*Special edition in Latvian Chapter 06 Volume 04 P. 272 - 282*  
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### Text

BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	IT	LV	LT	HU	MT	NL	PL	PT	R
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<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>		<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>	<a href="#">pdf</a>
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### Authentic language

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- **EUROVOC descriptor:**  
[European company](#)  
[worker participation](#)  
[worker consultation](#)  
[labour law](#)  
[information transfer](#)
- **Directory code:**  
[06.10.00.00 Right of establishment and freedom to provide services / Principles and conditions](#)  
[10.40.00.00 Economic and monetary policy and free movement of capital / Free movement of capital](#)  
[17.10.00.00 Law relating to undertakings / Company law](#)  
[05.20.30.20 Freedom of movement for workers and social policy / Social policy / Employment and unemployment / Protection of workers](#)
- **Subject matter:**  
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### Relationship between documents

- **Treaty:**  
 European Community
- **Legal basis:**  
[11997E308](#)
- [Select all documents based on this document](#)
- **Amendment to:**  
[51991PC0174 Adoption](#)
- **Display the national execution measures**  
[MNE](#)
- **Instruments cited:**  
[31994L0045](#)  
[11997E005](#)  
[31997L0074](#)  
[32001R2157](#)

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## Text

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Council Directive 2001/86/EC

of 8 October 2001

supplementing the Statute for a European company with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the amended proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas:

- (1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 2157/2001(4) establishes a Statute for a European company (SE).
- (2) That Regulation aims at creating a uniform legal framework within which companies from different Member States should be able to plan and carry out the reorganisation of their business on a Community scale.
- (3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SE does not entail the disappearance or reduction of practices of employee involvement existing within the companies participating in the establishment of an SE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of the Regulation.
- (4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee involvement applicable to the SE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.
- (5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within companies makes it inadvisable to set up a single European model of employee involvement applicable to the SE.
- (6) Information and consultation procedures at transnational level should nevertheless be ensured in all cases of creation of an SE.
- (7) If and when participation rights exist within one or more companies establishing an SE, they should be preserved through their transfer to the SE, once established, unless the parties decide otherwise.
- (8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.
- (9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating companies must in that case be maintained by adapting registration rules.
- (10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating companies, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SE established by way of transformation or merger than by way of creating a holding company or a common subsidiary.
- (11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating companies, provision should be made for certain standard requirements to apply to the SE, once it is established. These standard requirements should ensure effective practices of transnational information and consultation of employees, as well as their participation in the relevant organs of the SE if and when such participation existed before its establishment within the participating companies.
- (12) Provision should be made for the employees' representatives acting within the framework of the Directive to enjoy, when exercising their functions, protection and guarantees which are similar to those provided to employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.
- (13) The confidentiality of sensitive information should be preserved even after the expiry of the employees' representatives terms of office and provision should be made to allow the competent organ of the SE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SE.
- (14) Where an SE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees(5), the provisions of that Directive and the provision transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.
- (15) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.
- (16) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
- (17) The Treaty has not provided the necessary powers for the Community to adopt the proposed Directive, other than those provided for in Article 308.
- (18) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SEs should provide the basis for employee rights of involvement in the SE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SE but also to structural changes in an existing SE and to the companies affected by structural change processes.
- (19) Member States should be able to provide that representatives of trade unions may be members of a special negotiating body regardless of whether they are employees of a company participating in the establishment of an SE. Member States should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.
- (20) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectoral and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL

Article 1

Objective

1. This Directive governs the involvement of employees in the affairs of European public limited-liability companies (Societas Europaea, hereinafter referred to as "SE"), as referred to in Regulation (EC) No 2157/2001.

2. To this end, arrangements for the involvement of employees shall be established in every SE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Article 7, in accordance with the Annex.

Article 2

## Definitions

For the purposes of this Directive:

- (a) "SE" means any company established in accordance with Regulation (EC) No 2157/2001;
- (b) "participating companies" means the companies directly participating in the establishing of an SE;
- (c) "subsidiary" of a company means an undertaking over which that company exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;
- (d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating company which is proposed to become a subsidiary or establishment of the SE upon its formation;
- (e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;
- (f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SE;
- (g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent body of the participating companies regarding the establishment of arrangements for the involvement of employees within the SE;
- (h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company;
- (i) "information" means the informing of the body representative of the employees and/or employees' representatives by the competent organ of the SE on questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SE;
- (j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SE;
- (k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a company by way of:
  - the right to elect or appoint some of the members of the company's supervisory or administrative organ, or
  - the right to recommend and/or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

## SECTION II

## NEGOTIATING PROCEDURE

## Article 3

## Creation of a special negotiating body

1. Where the management or administrative organs of the participating companies draw up a plan for the establishment of an SE, they shall as soon as possible after publishing the draft terms of merger or creating a holding company or after agreeing a plan to form a subsidiary or to transform into an SE, take the necessary steps, including providing information about the identity of the participating companies, concerned subsidiaries or establishments, and the number of their employees, to start negotiations with the representatives of the companies' employees on arrangements for the involvement of employees in the SE.

2. For this purpose, a special negotiating body representative of the employees of the participating companies and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it must be ensured:

(i) that these members are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together;

(ii) that in the case of an SE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating company which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SE, in so far as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i), and

- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such companies is higher than the number of additional seats available pursuant to the first subparagraph, these additional seats shall be allocated to companies in different Member States by decreasing order of the number of employees they employ;

(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating company which has employees in the Member State concerned. Such measures must not increase the overall number of members.

Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating company or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating companies shall determine, by written agreement, arrangements for the involvement of employees within the SE.

To this end, the competent organs of the participating companies shall inform the special negotiating body of the plan and the actual process of establishing the SE, up to its registration.

4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

- in the case of an SE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating companies, or

- in the case of an SE to be established by way of creating a holding company or forming a subsidiary, if participation covers at least 50 % of the overall number of employees of the participating companies.

Reduction of participation rights means a proportion of members of the organs of the SE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating companies.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out below not to open negotiations or to terminate negotiations already opened, and to

rely on the rules on information and consultation of employees in force in the Member States where the SE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States.

In the case of an SE established by way of transformation, this paragraph shall not apply if there is participation in the company to be transformed.

The special negotiating body shall be reconvened on the written request of at least 10 % of the employees of the SE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating companies so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

#### Article 4

##### Content of the agreement

1. The competent organs of the participating companies and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating companies and the special negotiating body shall specify:

- (a) the scope of the agreement;
- (b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments;
- (c) the functions and the procedure for the information and consultation of the representative body;
- (d) the frequency of meetings of the representative body;
- (e) the financial and material resources to be allocated to the representative body;
- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
- (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;
- (h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 13(3)(a), in the case of an SE established by means of transformation, the agreement shall provide for at least the same level of all elements of employee involvement as the ones existing within the company to be transformed into an SE.

#### Article 5

##### Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

#### Article 6

##### Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3 to 5 shall be the legislation of the Member State in which the registered office of the SE is to be situated.

#### Article 7

##### Standard rules

1. In order to achieve the objective described in Article 1, Member States shall, without prejudice to paragraph 3 below, lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SE is to be situated shall apply from the date of the registration of the SE where either:

- (a) the parties so agree; or
  - (b) by the deadline laid down in Article 5, no agreement has been concluded, and:
    - the competent organ of each of the participating companies decides to accept the application of the standard rules in relation to the SE and so to continue with its registration of the SE, and
    - the special negotiating body has not taken the decision provided in Article 3(6).
2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:
- (a) in the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a company transformed into an SE;
  - (b) in the case of an SE established by merger:
    - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 25 % of the total number of employees in all the participating companies, or
    - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 25 % of the total number of employees in all the participating companies and if the special negotiating body so decides,
  - (c) in the case of an SE established by setting up a holding company or establishing a subsidiary:
    - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering at least 50 % of the total number of employees in all the participating companies; or
    - if, before registration of the SE, one or more forms of participation applied in one or more of the participating companies covering less than 50 % of the total number of employees in all the participating companies and if the special negotiating body so decides.

If there was more than one form of participation within the various participating companies, the special negotiating body shall decide which of those forms must be established in the SE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SE registered in their territory. The special negotiating body shall inform the competent organs of the participating companies of any decisions taken pursuant to this paragraph.

3. Member States may provide that the reference provisions in part 3 of the Annex shall not apply in the case provided for in point (b) of paragraph 2.

#### SECTION III

## MISCELLANEOUS PROVISIONS

## Article 8

## Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SE or of a participating company established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SE (or, as the case may be, the participating company) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SE or participating company demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

## Article 9

## Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

## Article 10

## Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SE who are employees of the SE, its subsidiaries or establishments or of a participating company shall, in the exercise of their functions, enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating company or the SE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

## Article 11

## Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

## Article 12

## Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SE and the supervisory or administrative organs of subsidiaries and of participating companies which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SE has its registered office within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

## Article 13

## Link between this Directive and other provisions

1. Where an SE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Directive 97/74/EC(6) extending the said Directive to the United Kingdom, the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to companies established in accordance with Regulation (EC) No 2157/2001 and covered by this Directive.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SE and its subsidiaries and establishments, other than participation in the bodies of the SE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SE.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating companies which will cease to exist as separate legal entities are maintained after the registration of the SE.

## Article 14

## Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 8 October 2004, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

## Article 15

## Review by the Commission

No later than 8 October 2007, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the procedures for applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

## Article 16

## Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

## Article 17

## Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 8 October 2001.

For the Council

The President

L. Onkelinx

(1) OJ C 138, 29.5.1991, p. 8.

(2) OJ C 342, 20.12.1993, p. 15.

(3) OJ C 124, 21.5.1990, p. 34.

(4) See page 1 of this Official Journal.

(5) OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(6) OJ L 10, 16.1.1998, p. 22.

## ANNEX

## STANDARD RULES

(referred to in Article 7)

## Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules.

(a) The representative body shall be composed of employees of the SE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.

Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SE and its subsidiaries and establishments.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the participating companies and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by the participating companies and concerned subsidiaries or establishments in all the Member States taken together.

(f) The competent organ of the SE shall be informed of the composition of the representative body.

(g) Four years after the representative body is established, it shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Articles 3(4) to (7) and 4 to 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

## Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SE shall be governed by the following rules.

(a) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(b) Without prejudice to meetings held pursuant to point (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its shareholders.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request the competent organ of the SE or any more appropriate level of management within the SE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the competent organ of the SE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

(e) Without prejudice to Article 8, the members of the representative body shall inform the representatives of the employees of the SE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(f) The representative body or the select committee may be assisted by experts of its choice.

(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(h) The costs of the representative body shall be borne by the SE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

## Part 3: Standard rules for participation

Employee participation in an SE shall be governed by the following provisions

(a) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Point (b) shall apply mutatis mutandis to that end.

(b) In other cases of the establishing of an SE, the employees of the SE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SE equal to the highest proportion in force in the participating companies concerned before registration of the SE.

If none of the participating companies was governed by participation rules before registration of the SE, the latter shall not be required to establish provisions for employee participation.

The representative body shall decide on the allocation of seats within the administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote.

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**COUNCIL REGULATION (EC) No 1435/2003**  
**of 22 July 2003**  
**on the Statute for a European Cooperative Society (SCE)**  
(OJ L 207, 18.8.2003, p. 1)

Corrected by:

► **C1** Corrigendum, OJ L 49, 17.2.2007, p. 35 (1435/2003)





**COUNCIL REGULATION (EC) No 1435/2003**  
**of 22 July 2003**  
**on the Statute for a European Cooperative Society (SCE)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) The European Parliament adopted resolutions on 13 April 1983 on cooperatives in the European Community <sup>(4)</sup>, on 9 July 1987 on the contribution of cooperatives to regional development <sup>(5)</sup>, on 26 May 1989 on the role of women in cooperatives and local employment initiatives <sup>(6)</sup>, on 11 February 1994 on the contribution of cooperatives to regional development <sup>(7)</sup> and on 18 September 1998 on the role of cooperatives in the growth of women's employment <sup>(8)</sup>.
- (2) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension. For that purpose it is essential that companies of all types the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.
- (3) The legal framework within which business should be carried on in the Community is still based largely on national laws and therefore does not correspond to the economic framework within which it should develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.
- (4) The Council has adopted Regulation (EC) No 2157/2001 <sup>(9)</sup> establishing the legal form of the European Company (SE) according to the general principles of the public limited-liability company. This is not an instrument which is suited to the specific features of cooperatives.
- (5) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85 <sup>(10)</sup>, allows undertakings to promote certain of their activities in common, while nevertheless preserving their independence, but does not meet the specific requirements of cooperative enterprise.

<sup>(1)</sup> OJ C 99, 21.4.1992, p. 17 and OJ C 236, 31.8.1993, p. 17.

<sup>(2)</sup> OJ C 42, 15.2.1993, p. 75 and opinion delivered on 14 May 2003 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 223, 31.8.1992, p. 42.

<sup>(4)</sup> OJ C 128, 16.5.1983, p. 51.

<sup>(5)</sup> OJ C 246, 14.9.1987, p. 94.

<sup>(6)</sup> OJ C 158, 26.6.1989, p. 380.

<sup>(7)</sup> OJ C 61, 28.2.1994, p. 231.

<sup>(8)</sup> OJ C 313, 12.10.1998, p. 234.

<sup>(9)</sup> OJ L 294, 10.11.2001, p. 1.

<sup>(10)</sup> OJ L 199, 31.7.1985, p. 1.

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- (6) The Community, anxious to ensure equal terms of competition and to contribute to its economic development, should provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities. The United Nations has encouraged all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise <sup>(1)</sup>.
- (7) Cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis.
- (8) These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the 'one man, one vote' rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.
- (9) Cooperatives have a share capital and their members may be either individuals or enterprises. These members may consist wholly or partly of customers, employees or suppliers. Where a cooperative is constituted of members who are themselves cooperative enterprises, it is known as a 'secondary' or 'second-degree' cooperative. In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services, or of third parties who benefit by their activities or carry out work on their behalf.
- (10) A European cooperative society (hereinafter referred to as 'SCE') should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:
- its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,
  - members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,
  - control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,
  - there should be limited interest on loan and share capital,
  - profits should be distributed according to business done with the SCE or retained to meet the needs of members,
  - there should be no artificial restrictions on membership,
  - net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes.
- (11) Cross-border cooperation between cooperatives in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers.

<sup>(1)</sup> Resolution adopted by the General Assembly of the 88th plenary meeting of the United Nations, 19 December 2001 (A/RES/56/114).

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- (12) The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community.
- (13) The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State.
- (14) In view of the specific Community character of an SCE, the 'real seat' arrangement adopted by this Regulation in respect of SCEs is without prejudice to Member States' laws and does not preempt the choices to be made for other Community texts on company law.
- (15) References to capital in this Regulation should comprise solely the subscribed capital. This should not affect any undistributed joint assets/equity capital in the SCE.
- (16) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.
- (17) The rules on the involvement of employees in the European cooperative society are laid down in Directive 2003/72/EC <sup>(1)</sup>, and those provisions thus form an indissociable complement to this Regulation and are to be applied concomitantly.
- (18) Work on the approximation of national company law has made substantial progress so that certain provisions adopted by the Member State where the SCE has its registered office for the purpose of implementing directives on companies may be referred to by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such provisions being appropriate to the arrangements governing the SCE, especially:
- first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community <sup>(2)</sup>,
  - fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies <sup>(3)</sup>,
  - seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts <sup>(4)</sup>,
  - eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents <sup>(5)</sup>,

<sup>(1)</sup> See page 25 of this Official Journal.

<sup>(2)</sup> OJ L 65, 14.3.1968, p. 8; Directive as last amended by the 1994 Act of Accession.

<sup>(3)</sup> OJ L 222, 14.8.1978, p. 11; Directive as last amended by Directive 2001/65/EC (OJ L 283, 27.10.2001, p. 28).

<sup>(4)</sup> OJ L 193, 18.7.1983, p. 1; Directive as last amended by Directive 2001/65/EC.

<sup>(5)</sup> OJ L 126, 12.5.1984, p. 20.

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- 11th Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State <sup>(1)</sup>.
- (19) Activities in the field of financial services in particular in so far as they concern credit establishments and insurance undertakings have been the subject of legislative measures pursuant to the following Directives:
- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions <sup>(2)</sup>,
  - Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) <sup>(3)</sup>.
- (20) This form of organisation should be optional,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

## GENERAL PROVISIONS

*Article 1***Form of the SCE**

1. A cooperative society may be set up within the territory of the Community in the form of a European Cooperative Society (SCE) on the conditions and in the manner laid down in this Regulation.
2. The subscribed capital of an SCE shall be divided into shares. The number of members and the capital of an SCE shall be variable. Unless otherwise provided by the statutes of the SCE when that SCE is formed, no member shall be liable for more than the amount he/she has subscribed. Where the members of the SCE have limited liability, the name of the SCE shall end in 'limited'.
3. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. An SCE may conduct its activities through a subsidiary.
4. An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.
5. An SCE shall have legal personality.
6. Employee involvement in an SCE shall be governed by the provisions of Directive 2003/72/EC.

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 36.

<sup>(2)</sup> OJ L 372, 31.12.1986; Directive as last amended by Directive 2001/65/EC.

<sup>(3)</sup> OJ L 228, 11.8.1992, p. 1; Directive as last amended by Directive 2002/13/EC (OJ L 77, 20.3.2002, p. 17).

**▼B***Article 2***Formation**

1. An SCE may be formed as follows:
  - by five or more natural persons resident in at least two Member States,
  - by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,
  - by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,
  - by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States,
  - by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.
2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

*Article 3***Minimum capital**

1. The capital of an SCE shall be expressed in the national currency. An SCE whose registered office is outside the Euro-area may also express its capital in euro.
2. The subscribed capital shall not be less than EUR 30 000.
3. The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State.
4. The statutes shall lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE. This sum may not be less than the amount laid down in paragraph 2. The date laid down in Article 16 by which members who cease to belong to the SCE are entitled to repayment shall be suspended as long as repayment would result in subscribed capital falling below the set limit.
5. The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to paragraph 4.

Variations in the amount of the capital shall not require amendment of the statutes or disclosure.

*Article 4***Capital of the SCE**

1. The subscribed capital of an SCE shall be represented by the members' shares, expressed in the national currency. An SCE whose registered office is outside of the Euro-area may also express its shares in euro. More than one class of shares may be issued.

The statutes may provide that different classes of shares shall confer different entitlements with regard to the distribution of surpluses. Shares conferring the same entitlements shall constitute one class.

2. The capital may be formed only of assets capable of economic assessment. Members' shares may not be issued for an undertaking to perform work or supply services.

3. Shares shall be held by named persons. The nominal value of shares in a single class shall be identical. It shall be laid down in the statutes. Shares may not be issued at a price lower than their nominal value.

4. Shares issued for cash shall be paid for on the day of the subscription to not less than 25 % of their nominal value. The balance shall be paid within five years unless the statutes provide for a shorter period.

5. Shares issued otherwise than for cash shall be fully paid for at the time of subscription.

6. The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE.

7. The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at general meetings shall be constituted by members who are natural persons and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share.

8. When it considers the accounts for the financial year, the annual general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.

At the proposal of the administrative or management organ, the subscribed capital may be increased by the capitalisation of all or part of the reserves available for distribution, following a decision of the general meeting, in accordance with the quorum and majority requirements for an amendment of the statutes. New shares shall be awarded to members in proportion to their shares in the previous capital.

9. The nominal value of shares may be increased by consolidating the shares issued. Where such an increase necessitates a call for supplementary payments from the members under provisions laid down in the statutes, the decision shall be taken by the general meeting in accordance with the quorum and majority requirements for the amendment of the statutes.

10. The nominal value of shares may be reduced by subdividing the shares issued.

11. In accordance with the statutes and with the agreement either of the general meeting or of the management or administrative organ, shares may be assigned or sold to a member or to anyone acquiring membership.

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12. An SCE may not subscribe for its own shares, purchase them or accept them as security, either directly or through a person acting in his/her own name but on behalf of the SCE.

An SCE's shares may, however, be accepted as security in the ordinary transactions of SCE credit institutions.

*Article 5***Statutes**

1. For the purposes of this Regulation, 'the statutes of an SCE' shall mean both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE.

2. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office. The statutes shall be in writing and signed by the founder members.

3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE.

4. The statutes of the SCE shall include at least:

- the name of the SCE, preceded or followed by the abbreviation 'SCE' and, where appropriate, the word 'limited',
- a statement of the objects,
- the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,
- the address of the SCE's registered office,
- the conditions and procedures for the admission, expulsion and resignation of members,
- the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,
- the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,
- specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,
- the powers and responsibilities of the members of each of the governing organs,
- provisions governing the appointment and removal of the members of the governing organs,
- the majority and quorum requirements,
- the duration of the existence of the society, where this is of limited duration.

*Article 6***Registered office**

The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in

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addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place.

*Article 7***Transfer of registered office**

1. The registered office of an SCE may be transferred to another Member State in accordance with paragraphs 2 to 16. Such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and number of the SCE and shall cover:

- (a) the proposed registered office of the SCE;
- (b) the proposed statutes of the SCE including, where appropriate, its new name;
- (c) the proposed timetable for the transfer;
- (d) any implication the transfer may have on employees' involvement;
- (e) any rights provided for the protection of members, creditors and holders of other rights.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects as well as the employment effects of the transfer and explaining the implications of the transfer for members, creditors, employees and holders of other rights.

4. An SCE's members, creditors and the holders of other rights, and any other body which according to national law can exercise this right, shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the SCE's registered office, the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of these documents free of charge.

5. Any member who opposed the transfer decision at the general meeting or at a sectorial or section meeting may tender his/her resignation within two months of the general meeting's decision. Membership shall terminate at the end of the financial year in which the resignation was tendered; the transfer shall not take effect in respect of that member. ► **C1** Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16. ◀

6. No decision to transfer may be taken for two months after publication of the proposal. ► **C1** Such a decision shall be taken as laid down in Article 61(4). ◀

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer.



**▼B**

The first and second subparagraphs shall apply without prejudice to the application to SCEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which the SCE has its registered office, the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted and evidence has been produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SCE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SCE is registered in accordance with Article 11(1) in the register for its new registered office.

11. When the SCE's new registration has been effected, the registry for its new registration shall notify the register for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned, in accordance with Article 12.

13. On publication of an SCE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SCE's registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SCE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SCE is supervised by a national financial supervisory authority according to Community directives, the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SCE may not transfer its registered office if proceedings for winding-up, including voluntary winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SCE which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member State where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.

*Article 8***Law applicable**

1. An SCE shall be governed:

(a) by this Regulation;

(b) where expressly authorised by this Regulation, by the provisions of its statutes;

**▼B**

- (c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:
- (i) the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs;
  - (ii) the laws of Member States which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office;
  - (iii) the provisions of its statutes, in the same way as for a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office.
2. If national law provides for specific rules and/or restrictions related to the nature of business carried out by an SCE, or for forms of control by a supervisory authority, that law shall apply in full to the SCE.

*Article 9***Principle of non-discrimination**

Subject to this Regulation, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office.

*Article 10***Particulars to be stated in the documents**

1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation 'SCE' and, where appropriate, by the word 'limited'.
2. Only SCEs may include the acronym 'SCE' before or after their name in order to determine their legal form.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the acronym 'SCE' appears shall not be required to alter their names.

*Article 11***Registration and disclosure requirements**

1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.
2. An SCE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2003/72/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

**▼B**

3. In order for an SCE established by way of merger to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2003/72/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating cooperatives must have been governed by participation rules before registration of the SCE.

4. The statutes of the SCE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where such new arrangements determined pursuant to Directive 2003/72/EC conflict with the existing statutes, the statutes shall be amended to the extent necessary.

In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting.

5. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE.

*Article 12***Publication of documents in the Member States**

1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office.

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives.

*Article 13***Notice in the *Official Journal of the European Union***

1. Notice of an SCE's registration and of the deletion of such a registration shall be published for information purposes in the *Official Journal of the European Union* after publication in accordance with Article 12. That notice shall state the name, number, date and place of registration of the SCE, the date and place of publication and the title of publication, the registered office of the SCE and its sector of activity.

2. Where the registered office of an SCE is transferred in accordance with Article 7, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 12(1).

**▼B***Article 14***Acquisition of membership**

1. Without prejudice to Article 33(1)(b) the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ. Candidates refused membership may appeal to the general meeting held following the application for membership.

Where the laws of the Member State of the SCE's registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE's goods and services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes.

Members who are legal bodies shall be deemed to be users by virtue of the fact that they represent their own members provided that their members who are natural persons are users.

Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal bodies.

2. The statutes may make admission subject to other conditions, in particular:

- subscription of a minimum amount of capital,
- conditions related to the objects of the SCE.

3. Where provided for in the statutes, applications for a supplementary stake in the capital may be addressed to members.

4. An alphabetical index of all members shall be kept at the registered office of the SCE, showing their addresses and the number and class, if appropriate, of the shares they hold. Any party having a direct legitimate interest may inspect the index on request, and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof.

5. Any transaction which affects the manner in which the capital is ascribed or allotted, or increased or reduced, shall be entered on the index of members provided for in paragraph 4 no later than the month following that in which the change occurs.

6. The transactions referred to in paragraph 5 shall not take effect with respect to the SCE or third parties having a direct legitimate interest until they are entered on the index referred to in paragraph 4.

7. Members shall on request be given a written statement certifying that the change has been entered.

*Article 15***Loss of membership**

1. Membership shall be lost:

- upon resignation,
- upon expulsion, where the member commits a serious breach of his/her obligations or acts contrary to the interests of the SCE,
- where authorised by the statutes, upon the transfer of all shares held to a member or a natural person or legal entity which has acquired membership,

**▼B**

- upon winding-up in the case of a member that is not a natural person,
- upon bankruptcy,
- upon death,
- in any other situation provided for in the statutes or in the legislation on cooperatives of the Member State in which the SCE has its registered office.

2. Any minority member who opposed an amendment to the statutes at the general meeting whereby:

- (i) new obligations in respect of payments or other services were introduced; or
- (ii) existing obligations for members were substantially extended; or
- (iii) the period of notice for resignation from the SCE was extended to more than five years;

may tender his/her resignation within two months of the general meeting's decision.

Membership shall terminate at the end of the current financial year in the cases referred to in points (i) and (ii) of the first subparagraph and at the end of the period of notice which applied before the statutes were amended in the case referred to in point (iii) thereof. The amendment to the statutes shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.

3. The decision to expel a member shall be taken by the administrative or management organ, after the member has been heard. The member may appeal against such a decision to the general meeting.

#### *Article 16*

#### **Financial entitlements of members in the event of resignation or expulsion**

1. Except where shares are transferred and subject to Article 3, loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE's capital.

2. The amounts deducted under paragraph 1 shall be calculated by reference to the balance sheet for the financial year in which the entitlement to repayment arose.

3. The statutes shall lay down the procedures and conditions for exercising the right to resign and lay down the time within which repayment shall be made, which may not exceed three years. In any event, the SCE shall not be obliged to make the repayment less than six months after approval of the balance sheet issued following the loss of membership.

4. Paragraphs 1, 2 and 3 shall apply also where only a part of a member's shareholding is to be repaid.

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## CHAPTER II

**FORMATION**

## Section 1

**General***Article 17***Law applicable during formation**

1. Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SCE establishes its registered office.
2. The registration of an SCE shall be made public in accordance with Article 12.

*Article 18***Acquisition of legal personality**

1. An SCE shall acquire legal personality on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 11(1).
2. If acts are performed in an SCE's name before its registration in accordance with Article 11 and the SCE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit in the absence of agreement to the contrary.

## Section 2

**Formation by merger***Article 19***Procedures for formation by merger**

An SCE may be formed by means of a merger carried out in accordance with:

- the procedure for merger by acquisition,
- the procedure for merger by the formation of a new legal person.

In the case of a merger by acquisition, the acquiring cooperative shall take the form of an SCE when the merger takes place. In the case of a merger by the formation of a new legal person, the latter shall take the form of an SCE.

**▼B***Article 20***Law applicable in the case of merger**

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State.

*Article 21***Grounds for opposition to a merger**

The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

*Article 22***Conditions of merger**

1. The management or administrative organ of merging cooperatives shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

- (a) the name and registered office of each of the merging cooperatives together with those proposed for the SCE;
- (b) the share-exchange ratio of the subscribed capital and the amount of any cash payment. If there are no shares, a precise division of the assets and its equivalent value in shares;
- (c) the terms for the allotment of shares in the SCE;
- (d) the date from which the holding of shares in the SCE will entitle the holders to share in surplus and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the merging cooperatives will be treated for accounting purposes as being those of the SCE;

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- (f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 64, do not confer the status of members;

**▼B**

- (g) the rights conferred by the SCE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
- (h) the forms of protection of the rights of creditors of the merging cooperatives;
- (i) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging cooperatives;
- (j) the statutes of the SCE;

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- (k) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2003/72/EC.
2. The merging cooperatives may include further items in the draft terms of merger.
3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE.

*Article 23***Explanation and justification of the terms of merger**

The administrative or management organs of each merging cooperative shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic viewpoint and in particular the share-exchange ratio. The report shall also indicate any special valuation difficulties.

*Article 24***Publication**

1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject.
2. Publication of the draft terms of merger in the national gazette shall, however, include the following particulars for each of the merging cooperatives:
- (a) the type, name and registered office of each merging cooperative;
  - (b) the address of the place or of the register in which the statutes and all other documents and particulars are filed in respect of each merging cooperative, and the number of the entry in that register;
  - (c) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of the creditors of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
  - (d) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of members of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
  - (e) the name and registered office proposed for the SCE;
  - (f) the conditions determining the date on which the merger will take effect pursuant to Article 31.

*Article 25***Disclosure requirements**

1. Any member shall be entitled, at least one month before the date of the general meeting required to decide on the merger, to inspect at the registered office the following documents:
- (a) the draft terms of merger mentioned in Article 22;



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- (b) the annual accounts and management reports of the merging cooperatives for the three preceding financial years;
  - (c) an accounting statement drafted in accordance with the provisions applicable to the internal mergers of public limited-liability companies, to the extent that such a statement is required by these provisions;
  - (d) the experts' report on the value of shares to be distributed in exchange for the assets for the merging cooperatives or the share exchange ratio as provided for in Article 26;
  - (e) the report from the cooperative's administrative or management organs as provided for in Article 23.
2. A full copy of the documents referred to in paragraph 1 or, if he/she so wishes, an extract, may be obtained by any member on request and free of charge.

*Article 26***Report of independent experts**

1. For each merging cooperative, one or more independent experts, appointed by that cooperative in accordance with the provisions of Article 4(6), shall examine the draft terms of merger and draw up a written report for the members.
2. A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject.
3. The law applicable to the mergers of public limited-liability companies concerning the rights and obligations of experts shall apply by analogy to the merger of cooperatives.

*Article 27***Approval of the terms of merger**

1. The general meeting of each of the merging cooperatives shall approve the draft terms of the merger.
2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2003/72/EC. The general meetings of each of the merging cooperatives may reserve the right to make registration of the SCE conditional upon its express ratification of the arrangements so decided.

*Article 28***Laws applicable to formation by merger**

1. The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:
  - creditors of the merging cooperatives,
  - holders of bonds in the merging cooperatives.
2. A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.



### *Article 29*

#### **Scrutiny of merger procedure**

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging cooperative, in accordance with the law of the Member State to which the merging cooperative is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited companies under the law of that State.
2. In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities.
3. If the law of a Member State to which a merging cooperative is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority members, without preventing the registration of the merger, such procedures shall apply only if the other merging cooperatives situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 27 (1), the possibility for the members of that merging cooperative to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been started. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring cooperative and all its members.

### *Article 30*

#### **Scrutiny of legality of merger**

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies.
2. To that end, each merging cooperative shall submit to the competent authority the certificate referred to in Article 29(2) within six months of its issue together with a copy of the draft terms of merger approved by that cooperative.
3. The authority referred to in paragraph 1 shall in particular ensure that the merging cooperatives have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2003/72/EC.
4. The said authority shall also satisfy itself that the SCE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office.

### *Article 31*

#### **Registration of merger**

1. A merger and the simultaneous formation of an SCE shall take effect on the date on which the SCE is registered in accordance with Article 11(1).

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2. The SCE may not be registered until all the formalities provided for in Articles 29 and 30 have been completed.

*Article 32***Publication**

For each of the merging cooperatives the completion of the merger shall be made public as laid down by the law of the Member State concerned in accordance with the laws governing mergers of public companies limited by shares.

*Article 33***Consequences of merger**

1. A merger carried out as laid down in the first indent of the first subparagraph of Article 19 shall have the following consequences *ipso jure* and simultaneously:

- (a) all the assets and liabilities of each cooperative being acquired are transferred to the acquiring legal person;
- (b) the members of each cooperative being acquired become members of the acquiring legal person;
- (c) the cooperatives being acquired cease to exist;
- (d) the acquiring legal person assumes the form of an SCE.

2. A merger carried out as laid down in the second indent of the first subparagraph of Article 19 shall have the following consequences *ipso jure* and simultaneously:

- (a) all the assets and liabilities of the merging cooperatives are transferred to the SCE;
- (b) the members of the merging cooperatives become members of the SCE;
- (c) the merging cooperatives cease to exist.

3. Where, in the case of a merger of cooperatives, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging cooperatives becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging cooperatives or by the SCE following its registration.

4. The rights and obligations of the participating cooperatives in relation to both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SCE.

The first subparagraph shall not apply to the right of workers' representatives to participate in general or section or sectorial meetings provided for in Article 59(4).

5. When the merger has been registered, the SCE shall immediately inform the members of the cooperative being acquired of the fact that they have been entered in the register of members and of the number of their shares.

**▼B***Article 34***Legality of the merger**

1. A merger as provided for in the fourth indent of Article 2(1) may not be declared null and void once the SCE has been registered.

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2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 73.

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## Section 3

**Conversion of an existing cooperative into an SCE***Article 35***Procedures for formation by conversion**

1. Without prejudice to Article 11, the conversion of a cooperative into an SCE shall not result in the winding-up of the cooperative or in the creation of a new legal person.

2. The registered office may not be transferred from one Member State to another pursuant to Article 7 at the same time as the conversion is effected.

3. The administrative or management organ of the cooperative in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications for members and employees of the adoption of the form of an SCE.

4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called upon to decide thereon.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify *mutatis mutandis* that the rules of Article 22(1)(b) are respected.

6. The general meeting of the cooperative in question shall approve the draft terms of conversion together with the statutes of the SCE.

7. Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised.

8. The rights and obligations of the cooperative to be converted on both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the SCE.



## CHAPTER III

### STRUCTURE OF THE SCE

#### *Article 36*

#### **Structure of organs**

Under the conditions laid down by this Regulation an SCE shall comprise:

- (a) a general meeting; and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

#### Section 1

#### **Two-tier system**

#### *Article 37*

#### **Functions of the management organ; appointment of members**

1. The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

However, a Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory.

3. No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number.

5. Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

#### *Article 38*

#### **Chairmanship and the calling of meetings of the management organ**

1. The management organ shall elect a chairman from among its members, in accordance with the statutes.

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2. The chairman shall call a meeting of the management organ under the conditions laid down in the statutes, either on his own initiative or at the request of any member. Any such request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the management organ may be called by the member(s) who made the request.

*Article 39***Functions of the supervisory organ; appointment of members**

1. The supervisory organ shall supervise the duties performed by the management organ. It may not itself exercise the power to manage the SCE. The supervisory organ may not represent the SCE in dealings with third parties. It shall represent the SCE in dealings with the management organ, or its members, in respect of litigation or the conclusion of contracts.

2. The members of the supervisory organ shall be appointed and removed by the general meeting. The members of the first supervisory organ may, however, be appointed in the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

3. Of the members of the supervisory organ, not more than one quarter of the posts available may be filled by non-user members.

4. The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number.

*Article 40***Right to information**

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable developments of the SCE's business, taking account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly communicate to the supervisory organ any information on events likely to have an appreciable effect on the SCE.

3. The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

**▼B***Article 41***Chairmanship and the calling of meetings of the supervisory organ**

1. The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.
2. The chairman shall call a meeting of the supervisory organ under the conditions laid down in the statutes, either on his/her own initiative, or at the request of at least one third of its members, or at the request of the management organ. The request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the supervisory organ may be called by those who made the request.

**Section 2****The one-tier system***Article 42***Functions of the administrative organ; appointment of members**

1. The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.
2. The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members. Of the members of the administrative organ, not more than one quarter of the posts available may be filled by non-user members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2003/72/EC.

3. The members of the administrative organ, and, where the statutes so provide, their alternate members, shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.
4. Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

*Article 43***Intervals between meetings and the right to information**

1. The administrative organ shall meet at least once every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE's business, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

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2. Each member of the administrative organ shall be entitled to examine all reports, documents and information submitted to it.

*Article 44***Chairmanship and the calling of meetings of the administrative organ**

1. The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the administrative organ under the conditions laid down in the statutes, either on his/her own initiative or at the request of at least one third of its members. The request must indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the administrative organ may be called by those who made the request.

**Section 3****Rules common to the one-tier and two-tier systems***Article 45***Term of office**

1. Members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be re-appointed once or more than once for the period determined in accordance with paragraph 1.

*Article 46***Conditions of membership**

1. An SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise.

That company shall designate a natural person as its representative to exercise its functions on the organ in question. The representative shall be subject to the same conditions and obligations as if he/she were personally a member of the organ.

2. No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who:

- is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or
- is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.



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3. An SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ.

*Article 47***Power of representation and liability of the SCE**

1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise that authority collectively, unless the law of the Member State in which the SCE's registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12.

2. Acts performed by an SCE's organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them.

Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

3. The limits on the powers of the organs of the SCE, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

4. A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.

*Article 48***Operations requiring authorisation**

1. An SCE's statutes shall list the categories of transactions requiring:

- under the two-tier system, authorisation from the supervisory organ or the general meeting to the management organ,
- under the one-tier system, an express decision adopted by the administrative organ or authorisation from the general meeting.

2. Paragraph 1 shall apply without prejudice to Article 47.

3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

**▼B***Article 49***Confidentiality**

The members of an SCE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SCE the disclosure of which might be prejudicial to the cooperative's interests or those of its members, except where such disclosure is required or permitted under national law provisions applicable to cooperatives or companies or is in the public interest.

*Article 50***Conduct of the business of organs**

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SCE organs shall be as follows:

- (a) quorum: at least half of the members with voting rights must be present or represented;
- (b) decision-taking: a majority of the members with voting rights present or represented.

Members who are absent may take part in decisions by authorising another member of the organ or the alternate members who were appointed at the same time to represent them.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned.

*Article 51***Civil liability**

Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which the SCE's registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

**Section 4****General meeting***Article 52***Competence**

The general meeting shall decide on matters for which it is given sole responsibility by:

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- (a) this Regulation; or
- (b) the legislation of the Member State in which the SCE's registered office is situated, adopted under Directive 2003/72/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE's registered office is situated, either by the law of that Member State or by the SCE's statutes in accordance with that law.

*Article 53***Conduct of general meetings**

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE's registered office is situated.

*Article 54***Holding of general meetings**

1. An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation.
2. General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.
3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the allocation of profits.
4. The general meeting may in the course of a meeting decide that a further meeting be convened and set the date and the agenda.

*Article 55***Meeting called by a minority of members**

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require the SCE to convene a general meeting and may draw up its agenda. The above proportions may be reduced by the statutes.

*Article 56***Notice of meeting**

1. A general meeting shall be convened by a notice in writing sent by any available means to every person entitled to attend the SCE's

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general meeting in accordance with Article 58(1) and (2) and the provisions of the statutes. That notice may be given by publication in the official internal publication of the SCE.

2. The notice calling a general meeting shall give at least the following particulars:

- the name and registered office of the SCE,
- the venue, date and time of the meeting,
- where appropriate, the type of general meeting,
- the agenda, indicating the subjects to be discussed and the proposals for decisions.

3. The period between the date of dispatch of the notice referred to in paragraph 1 and the date of the opening of the general meeting shall be at least 30 days. It may, however, be reduced to 15 days in urgent cases. Where Article 61(4) is applied, relating to quorum requirements, the time between a first and second meeting convened to consider the same agenda may be reduced according to the law of the Member State in which the SCE has its registered office.

*Article 57***Additions to the agenda**

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require that one or more additional items be put on the agenda of any general meeting. The above proportions may be reduced by the statutes.

*Article 58***Attendance and proxies**

1. Every member shall be entitled to speak and vote at general meetings on the points that are included in the agenda.

2. Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights.

3. A person entitled to vote shall be entitled to appoint a proxy to represent him/her at a general meeting in accordance with procedures laid down in the statutes.

The statutes shall lay down the maximum number of persons for whom a proxy may act.

4. The statutes may permit postal voting or electronic voting, in which case they shall lay down the necessary procedures.

*Article 59***Voting rights**

1. Each member of an SCE shall have one vote, regardless of the number of shares he holds.

2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a

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number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30 % of total voting rights, whichever is the lower.

If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20 % of total voting rights, whichever is the lower.

In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity.

3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25 % of total voting rights.

4. If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15 % of total voting rights. Such rights shall cease to apply as soon as the registered office of the SCE is transferred to a Member State whose law does not provide for such participation.

#### *Article 60*

#### **Right to information**

1. Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative organ on the affairs of the SCE arising from items on which the general meeting may take a decision in accordance with Article 61(1). In so far as possible, information shall be provided at the general meeting in question.

2. The management or administrative organ may refuse to supply such information only where:

- it would be likely to be seriously prejudicial to the SCE,
- its disclosure would be incompatible with a legal obligation of confidentiality.

3. A member refused information may require that his/her question and the grounds for refusal be entered in the minutes of the general meeting.

4. Within the 10 days preceding the general meeting required to decide on the end of the financial year, members may examine the balance sheet, the profit-and-loss account and the notes thereon, the management report, the conclusion of the audit of the accounts by the person responsible and, where a parent company within the meaning of Directive 83/349/EEC is concerned, the consolidated accounts.

**▼B***Article 61***Decisions**

1. A general meeting may pass resolutions on items on its agenda. A general meeting may also deliberate and pass resolutions concerning items placed on the agenda of the meeting by a minority of members in accordance with Article 57.
2. A general meeting shall act by majority of the votes validly cast by the members present or represented.
3. The statutes shall lay down the quorum and majority requirements which are to apply to general meetings.

Where the statutes provide for the possibility of an SCE to admit investor (non-user) members, or to allocate votes according to capital contribution in SCEs involved in financial or insurance activities, the statutes shall also lay down special quorum requirements with relation to members other than investor (non-user) members or members that have voting rights according to capital contribution in SCEs involved in financial or insurance activities. Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory.

4. A general meeting may amend the statutes the first time it is convened only if the members present or represented make up at least half of the total number of members on the date the general meeting is convened, and the second time it is convened on the same agenda no quorum shall be necessary.

In the cases referred to in the first subparagraph, at least two thirds of the votes cast validly must be cast in favour, unless the law applicable to cooperatives in the Member State in which the SCE's registered office is situated requires a greater majority.

*Article 62***Minutes**

1. Minutes shall be drawn up for every general meeting. The minutes shall include at least the following particulars:
  - the venue and date of the meeting,
  - the resolutions passed,
  - the result of the voting.
2. The attendance list, the documents relating to the convening of the general meeting and the reports submitted to the members on the items on the agenda shall be annexed to the minutes.
3. The minutes and the documents annexed thereto shall be preserved for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request against defrayal of the administrative cost.
4. The minutes shall be signed by the chairman of the meeting.

*Article 63***Sectorial or section meetings**

1. Where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500

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members, its statutes may provide for sectorial or section meetings, if permitted by the relevant Member State legislation. The statutes shall establish the division in sectors or sections and the number of delegates thereof.

2. The sectorial or section meetings shall elect their delegates for a maximum period of four years, unless early revocation takes place. Delegates so elected shall constitute the general meeting of the SCE and shall represent therein their sector or section to which they shall report on the outcome of the general meeting. The provisions of Section 4 of Chapter III shall be applied to the workings of the sectorial and section meetings.

## CHAPTER IV

**ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE***Article 64***Securities other than shares and debentures conferring special advantages**

1. An SCE's statutes may provide for the issue of securities other than shares, or debentures the holders of which are to have no voting rights. These may be subscribed for by members or by non-members. Their acquisition does not confer the status of member. The statutes shall also lay down the procedure for redemption.

2. Holders of securities or debentures referred to in paragraph 1 may be given special advantages in accordance with the statutes or the conditions laid down when they are issued.

3. The total nominal value of securities or debentures referred to in paragraph 1 held may not exceed the figure laid down in the statutes.

4. Without prejudice to the right to attend the general meeting provided for in Article 58(2), the statutes may provide for special meetings of holders of securities or debentures referred to in paragraph 1. Before any decision of the general meeting is taken relating to the rights and interests of such holders, a special meeting may state its opinion, which shall be brought to the attention of the general meeting by the representatives which the special meeting appoints.

The opinion referred to in the first subparagraph shall be recorded in the minutes of the general meeting.

## CHAPTER V

**ALLOCATION OF PROFITS***Article 65***Legal reserve**

1. Without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year.

2. Where there is such a surplus, the statutes shall require the establishment of a legal reserve funded out of the surplus before any other allocation.

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Until such time as the legal reserve is equal to the capital referred to in Article 3(2), the amount allocated to it may not be less than 15 % of the surplus for the financial year after deduction of any losses carried over.

3. Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve.

*Article 66***Dividend**

The statutes may provide for the payment of a dividend to members in proportion to their business with the SCE, or the services they have performed for it.

*Article 67***Allocation of available surplus**

1. The balance of the surplus after deduction of the allocation to the legal reserve, of any sums paid out in dividends and of any losses carried over, with the addition of any surpluses carried over and of any sums drawn from the reserves, shall constitute the profits available for distribution.

2. The general meeting which considers the accounts for the financial year may allocate the surplus in the order and proportions laid down in the statutes, and in particular:

- carry them forward,
- appropriate them to any legal or statutory reserve fund,
- provide a return on paid-up capital and quasi-equity, payment being made in cash or shares.

3. The statutes may also prohibit any distribution.

## CHAPTER VI

**ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS***Article 68***Preparation of annual accounts and consolidated accounts**

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC. However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives.

2. Where an SCE is not subject, under the law of the Member State in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. The price charged for such copies shall not exceed their administrative cost.



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3. An SCE must draw up its annual accounts and its consolidated accounts if any in the national currency. An SCE whose registered office is outside the euro area may also express its annual accounts and, where appropriate, consolidated accounts, in euro. In that event, the bases of conversion used to express in euro those items included in the accounts which are or were originally expressed in another currency shall be disclosed in the notes on the accounts.

*Article 69***Accounts of SCEs with credit or financial activities**

1. An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives relating to the taking up and pursuit of the business of credit institutions as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

*Article 70***Auditing**

The statutory audit of an SCE's annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorised to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC.

*Article 71***System of auditing**

Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its registered office in that Member State provided that this body meets the requirements of Directive 84/253/EEC.

## CHAPTER VII

**WINDING UP; LIQUIDATION; INSOLVENCY AND CESSATION OF PAYMENTS***Article 72***Winding-up, insolvency and similar procedures**

As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal

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provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

*Article 73***Winding-up by the court or other competent authority of the Member State where the SCE has its registered office**

1. On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34.

The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up.

2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its situation within a specified period either:

- by re-establishing its head office in the Member State in which its registered office is situated, or
- by transferring the registered office by means of the procedure laid down in Article 7.

3. The Member State in which the SCE's registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its position in accordance with paragraph 2 is liquidated.

4. ►**C1** The Member State in which the SCE's registered office is situated shall set up a judicial or other appropriate remedy ◀ with regard to any established infringement of Article 6. That remedy shall have suspensory effect on the procedures laid down in paragraphs 2 and 3.

5. Where it is established on the initiative of either the authorities or any interested party that an SCE has its head office within the territory of a Member State in breach of Article 6, the authorities of that Member State shall immediately inform the Member State in which the SCE's registered office is situated.

*Article 74***Publication of winding-up**

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicised in accordance with Article 12.

**▼B***Article 75***Distribution**

Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of members' capital contributions.

*Article 76***Conversion into a cooperative**

1. An SCE may be converted into a cooperative governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.
2. The conversion of an SCE into a cooperative shall not result in winding-up or in the creation of a new legal person.
3. The management or administrative organ of the SCE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications of the adoption of the cooperative form for members and holders of shares referred to in Article 14 and for employees.
4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital.
6. The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in the provisions of national law.

## CHAPTER VIII

**ADDITIONAL AND TRANSITIONAL PROVISIONS***Article 77***Economic and monetary union**

1. If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital. An SCE may, in any case, express its capital in euro as well. In that event the national currency/euro

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conversion rate shall be that for the last day of the month preceding that of the formation of the SCE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SCE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu <sup>(1)</sup>.

## CHAPTER IX

## FINAL PROVISIONS

*Article 78***National implementing rules**

1. Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.
2. Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly.

*Article 79***Review of the Regulation**

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and to the Council a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a) allowing the location of an SCE's head office and registered office in different Member States;
- (b) allowing provisions in the statutes of an SCE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation with regard to the SCE which deviate from, or are complementary to, these laws, even when such provisions would not be authorised in the statutes of a cooperative having its registered office in the Member State;
- (c) allowing provisions which enable the SCE to split into two or more national cooperatives;
- (d) allowing for specific legal remedies in the case of fraud or error during the registration of an SCE established by way of merger.

<sup>(1)</sup> OJ L 317, 16.11.1990, p. 57.

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*Article 80*

**Entry into force**

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

It shall apply from 18 August 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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<p><b>Title and reference</b></p> <p><b>Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)</b></p> <p><i>OJ L 207, 18.8.2003, p. 1–24 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)</i>  <i>Special edition in Czech Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Estonian Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Hungarian Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Lithuanian Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Latvian Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Maltese Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Polish Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Slovakian Chapter 17 Volume 01 P. 280 - 303</i>  <i>Special edition in Slovenian Chapter 17 Volume 01 P. 280 - 303</i></p> <p>DA DE EL EN ES FI FR IT NL PT SV</p> <p><b>Text</b></p> <p><a href="#">html</a>   <a href="#">pdf</a>   <a href="#">tiff</a></p> <p><b>Authentic language</b></p> <p>▶ The official languages, Other than Community language, Icelandic, Norwegian</p> <p><b>Dates</b></p> <p>of document: 22/07/2003  of effect: 21/08/2003; Entry into force Date pub. + 3 See Art 80  of effect: 18/08/2006; Implementation See Art 80  end of validity: 99/99/9999</p> <p><b>Classifications</b></p> <p>▶ <b>EUROVOC descriptor:</b>  <a href="#">legal status</a>  <a href="#">European cooperative</a></p> <p>▶ <b>Directory code:</b>  17.10.00.00 <a href="#">Law relating to undertakings / Company law</a>  13.40.00.00 <a href="#">Industrial policy and internal market / Internal market: policy relating to undertakings</a></p> <p>▶ <b>Subject matter:</b>  Internal market, Provisions governing the Institutions</p> <p><b>Miscellaneous information</b></p> <p>▶ <b>Author:</b>  Council</p>		

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[31968L0151](#)  
  
[31978L0660](#)  
  
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Council Regulation (EC) No 1435/2003

of 22 July 2003

on the Statute for a European Cooperative Society (SCE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the European Economic and Social Committee(3),

Whereas:

(1) The European Parliament adopted resolutions on 13 April 1983 on cooperatives in the European Community(4), on 9 July 1987 on the contribution of cooperatives to regional development(5), on 26 May 1989 on the role of women in cooperatives and local employment initiatives(6), on 11 February 1994 on the contribution of cooperatives to regional development(7) and on 18 September 1998 on the role of cooperatives in the growth of women's employment(8).

(2) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension. For that purpose it is essential that companies of all types the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) The legal framework within which business should be carried on in the Community is still based largely on national laws and therefore does not correspond to the economic framework within which it should develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(4) The Council has adopted Regulation (EC) No 2157/2001(9) establishing the legal form of the European Company (SE) according to the general principles of the public



limited-liability company. This is not an instrument which is suited to the specific features of cooperatives.

(5) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85(10), allows undertakings to promote certain of their activities in common, while nevertheless preserving their independence, but does not meet the specific requirements of cooperative enterprise.

(6) The Community, anxious to ensure equal terms of competition and to contribute to its economic development, should provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities. The United Nations has encouraged all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise (11).

(7) Cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis.

(8) These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the "one man, one vote" rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.

(9) Cooperatives have a share capital and their members may be either individuals or enterprises. These members may consist wholly or partly of customers, employees or suppliers. Where a cooperative is constituted of members who are themselves cooperative enterprises, it is known as a "secondary" or "second-degree" cooperative. In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services, or of third parties who benefit by their activities or carry out work on their behalf.

(10) A European cooperative society (hereinafter referred to as "SCE") should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:

- its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,
- members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,
- control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,
- there should be limited interest on loan and share capital,
- profits should be distributed according to business done with the SCE or retained to meet the needs of members,
- there should be no artificial restrictions on membership,
- net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes.

(11) Cross-border cooperation between cooperatives in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers.

(12) The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community.

(13) The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State.

(14) In view of the specific Community character of an SCE, the "real seat" arrangement adopted by this Regulation in respect of SCEs is without prejudice to Member States' laws and does not pre-empt the choices to be made for other Community texts on company law.

(15) References to capital in this Regulation should comprise solely the subscribed capital. This should not affect any undistributed joint assets/equity capital in the SCE.

(16) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(17) The rules on the involvement of employees in the European cooperative society are laid down in Directive 2003/72/EC(12), and those provisions thus form an indissociable complement to this Regulation and are to be applied concomitantly.

(18) Work on the approximation of national company law has made substantial progress so that certain provisions adopted by the Member State where the SCE has its registered office for the purpose of implementing directives on companies may be referred to by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such provisions being appropriate to the arrangements governing the SCE, especially:

- first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community(13),

- fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies(14),

- seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts(15),

- eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents(16),

- 11th Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State(17).

(19) Activities in the field of financial services in particular in so far as they concern credit establishments and insurance undertakings have been the subject of legislative measures pursuant to the following Directives:

- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions(18),

- Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)(19).

(20) This form of organisation should be optional,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

## Article 1

### Form of the SCE

1. A cooperative society may be set up within the territory of the Community in the form of a European Cooperative Society (SCE) on the conditions and in the manner laid down in this Regulation.

2. The subscribed capital of an SCE shall be divided into shares.

The number of members and the capital of an SCE shall be variable.

Unless otherwise provided by the statutes of the SCE when that SCE is formed, no member shall be liable for more than the amount he/she has subscribed. Where the members of the SCE have limited liability, the name of the SCE shall end in "limited".

3. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. An SCE may conduct its activities through a subsidiary.

4. An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.

5. An SCE shall have legal personality.

6. Employee involvement in an SCE shall be governed by the provisions of Directive 2003/72/EC.

## Article 2

### Formation

1. An SCE may be formed as follows:

- by five or more natural persons resident in at least two Member States,
- by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,
- by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,
- by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community, provided that at least two of them are governed by the law of different Member States,
- by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.

2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

## Article 3

### Minimum capital

1. The capital of an SCE shall be expressed in the national currency. An SCE whose registered office is outside the Euro-area may also express its capital in euro.

2. The subscribed capital shall not be less than EUR 30000.
3. The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State.
4. The statutes shall lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE. This sum may not be less than the amount laid down in paragraph 2. The date laid down in Article 16 by which members who cease to belong to the SCE are entitled to repayment shall be suspended as long as repayment would result in subscribed capital falling below the set limit.
5. The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to paragraph 4.

Variations in the amount of the capital shall not require amendment of the statutes or disclosure.

#### Article 4

##### Capital of the SCE

1. The subscribed capital of an SCE shall be represented by the members' shares, expressed in the national currency. An SCE whose registered office is outside of the Euro-area may also express its shares in euro. More than one class of shares may be issued.

The statutes may provide that different classes of shares shall confer different entitlements with regard to the distribution of surpluses. Shares conferring the same entitlements shall constitute one class.

2. The capital may be formed only of assets capable of economic assessment. Members' shares may not be issued for an undertaking to perform work or supply services.
3. Shares shall be held by named persons. The nominal value of shares in a single class shall be identical. It shall be laid down in the statutes. Shares may not be issued at a price lower than their nominal value.
4. Shares issued for cash shall be paid for on the day of the subscription to not less than 25 % of their nominal value. The balance shall be paid within five years unless the statutes provide for a shorter period.
5. Shares issued otherwise than for cash shall be fully paid for at the time of subscription.
6. The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE.
7. The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at general meetings shall be constituted by members who are natural persons and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share.
8. When it considers the accounts for the financial year, the annual general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.

At the proposal of the administrative or management organ, the subscribed capital may be increased by the capitalisation of all or part of the reserves available for distribution, following a decision of the general meeting, in accordance with the quorum and majority requirements for an amendment of the statutes. New shares shall be awarded to members in proportion to their shares in the previous capital.

9. The nominal value of shares may be increased by consolidating the shares issued. Where such an increase necessitates a call for supplementary payments from the members under provisions laid down in the statutes, the decision shall be taken by the general meeting in accordance with the quorum and majority requirements for the amendment of the statutes.

10. The nominal value of shares may be reduced by subdividing the shares issued.

11. In accordance with the statutes and with the agreement either of the general meeting or of the management or administrative organ, shares may be assigned or sold to a member or to anyone acquiring membership.

12. An SCE may not subscribe for its own shares, purchase them or accept them as security, either directly or through a person acting in his/her own name but on behalf of the SCE.

An SCE's shares may, however, be accepted as security in the ordinary transactions of SCE credit institutions.

#### Article 5

##### Statutes

1. For the purposes of this Regulation, "the statutes of an SCE" shall mean both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE.

2. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office. The statutes shall be in writing and signed by the founder members.

3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE.

4. The statutes of the SCE shall include at least:

- the name of the SCE, preceded or followed by the abbreviation "SCE" and, where appropriate, the word "limited",
- a statement of the objects,
- the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,
- the address of the SCE's registered office,
- the conditions and procedures for the admission, expulsion and resignation of members,
- the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,
- the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,
- specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,
- the powers and responsibilities of the members of each of the governing organs,
- provisions governing the appointment and removal of the members of the governing organs,
- the majority and quorum requirements,
- the duration of the existence of the society, where this is of limited duration.

#### Article 6

### Registered office

The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place.

### Article 7

#### Transfer of registered office

1. The registered office of an SCE may be transferred to another Member State in accordance with paragraphs 2 to 16. Such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and number of the SCE and shall cover:

- (a) the proposed registered office of the SCE;
- (b) the proposed statutes of the SCE including, where appropriate, its new name;
- (c) the proposed timetable for the transfer;
- (d) any implication the transfer may have on employees' involvement;
- (e) any rights provided for the protection of members, creditors and holders of other rights.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects as well as the employment effects of the transfer and explaining the implications of the transfer for members, creditors, employees and holders of other rights.

4. An SCE's members, creditors and the holders of other rights, and any other body which according to national law can exercise this right, shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the SCE's registered office, the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of these documents free of charge.

5. Any member who opposed the transfer decision at the general meeting or at a sectorial or section meeting may tender his/her resignation within two months of the general meeting's decision. Membership shall terminate at the end of the financial year in which the resignation was tendered; the transfer shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 4(4) and 16.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 62(4).

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer.

The first and second subparagraphs shall apply without prejudice to the application to SCEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which the SCE has its registered office, the court, notary or other competent authority shall issue a certificate attesting to the completion of the

acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted and evidence has been produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SCE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SCE is registered in accordance with Article 11(1) in the register for its new registered office.

11. When the SCE's new registration has been effected, the registry for its new registration shall notify the register for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned, in accordance with Article 12.

13. On publication of an SCE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SCE's registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SCE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SCE is supervised by a national financial supervisory authority according to Community directives, the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SCE may not transfer its registered office if proceedings for winding-up, including voluntary winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SCE which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member State where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.

## Article 8

### Law applicable

1. An SCE shall be governed:

(a) by this Regulation;

(b) where expressly authorised by this Regulation, by the provisions of its statutes;

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs;

(ii) the laws of Member States which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office;

(iii) the provisions of its statutes, in the same way as for a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office.

2. If national law provides for specific rules and/or restrictions related to the nature of

business carried out by an SCE, or for forms of control by a supervisory authority, that law shall apply in full to the SCE.

#### Article 9

##### Principle of non-discrimination

Subject to this Regulation, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office.

#### Article 10

##### Particulars to be stated in the documents

1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation "SCE" and, where appropriate, by the word "limited".
2. Only SCEs may include the acronym "SCE" before or after their name in order to determine their legal form.
3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the acronym "SCE" appears shall not be required to alter their names.

#### Article 11

##### Registration and disclosure requirements

1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.
2. An SCE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2003/72/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.
3. In order for an SCE established by way of merger to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2003/72/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating cooperatives must have been governed by participation rules before registration of the SCE.
4. The statutes of the SCE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where such new arrangements determined pursuant to Directive 2003/72/EC conflict with the existing statutes, the statutes shall be amended to the extent necessary.

In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting.

5. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE.

#### Article 12

##### Publication of documents in the Member States

1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office.



2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives.

#### Article 13

##### Notice in the Official Journal of the European Union

1. Notice of an SCE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Union after publication in accordance with Article 12. That notice shall state the name, number, date and place of registration of the SCE, the date and place of publication and the title of publication, the registered office of the SCE and its sector of activity.

2. Where the registered office of an SCE is transferred in accordance with Article 7, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 12(1).

#### Article 14

##### Acquisition of membership

1. Without prejudice to Article 33(1)(b) the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ. Candidates refused membership may appeal to the general meeting held following the application for membership.

Where the laws of the Member State of the SCE's registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE's goods and services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes.

Members who are legal bodies shall be deemed to be users by virtue of the fact that they represent their own members provided that their members who are natural persons are users.

Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal bodies.

2. The statutes may make admission subject to other conditions, in particular:

- subscription of a minimum amount of capital,
- conditions related to the objects of the SCE.

3. Where provided for in the statutes, applications for a supplementary stake in the capital may be addressed to members.

4. An alphabetical index of all members shall be kept at the registered office of the SCE, showing their addresses and the number and class, if appropriate, of the shares they hold. Any party having a direct legitimate interest may inspect the index on request, and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof.

5. Any transaction which affects the manner in which the capital is ascribed or allotted, or increased or reduced, shall be entered on the index of members provided for in paragraph 4 no later than the month following that in which the change occurs.

6. The transactions referred to in paragraph 5 shall not take effect with respect to the SCE or third parties having a direct legitimate interest until they are entered on the index referred to in paragraph 4.

7. Members shall on request be given a written statement certifying that the change has been entered.

#### Article 15

##### Loss of membership

1. Membership shall be lost:

- upon resignation,
- upon expulsion, where the member commits a serious breach of his/her obligations or acts contrary to the interests of the SCE,
- where authorised by the statutes, upon the transfer of all shares held to a member or a natural person or legal entity which has acquired membership,
- upon winding-up in the case of a member that is not a natural person,
- upon bankruptcy,
- upon death,
- in any other situation provided for in the statutes or in the legislation on cooperatives of the Member State in which the SCE has its registered office.

2. Any minority member who opposed an amendment to the statutes at the general meeting whereby:

- (i) new obligations in respect of payments or other services were introduced; or
- (ii) existing obligations for members were substantially extended; or
- (iii) the period of notice for resignation from the SCE was extended to more than five years;

may tender his/her resignation within two months of the general meeting's decision.

Membership shall terminate at the end of the current financial year in the cases referred to in points (i) and (ii) of the first subparagraph and at the end of the period of notice which applied before the statutes were amended in the case referred to in point (iii) thereof. The amendment to the statutes shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.

3. The decision to expel a member shall be taken by the administrative or management organ, after the member has been heard. The member may appeal against such a decision to the general meeting.

#### Article 16

##### Financial entitlements of members in the event of resignation or expulsion

1. Except where shares are transferred and subject to Article 3, loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE's capital.
2. The amounts deducted under paragraph 1 shall be calculated by reference to the balance sheet for the financial year in which the entitlement to repayment arose.
3. The statutes shall lay down the procedures and conditions for exercising the right to resign and lay down the time within which repayment shall be made, which may not exceed three years. In any event, the SCE shall not be obliged to make the repayment less than six months after approval of the balance sheet issued following the loss of membership.
4. Paragraphs 1, 2 and 3 shall apply also where only a part of a member's shareholding is to be repaid.

#### CHAPTER II

## FORMATION

### Section 1

#### General

#### Article 17

##### Law applicable during formation

1. Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SCE establishes its registered office.
2. The registration of an SCE shall be made public in accordance with Article 12.

#### Article 18

##### Acquisition of legal personality

1. An SCE shall acquire legal personality on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 11(1).
2. If acts are performed in an SCE's name before its registration in accordance with Article 11 and the SCE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit in the absence of agreement to the contrary.

### Section 2

#### Formation by merger

#### Article 19

##### Procedures for formation by merger

An SCE may be formed by means of a merger carried out in accordance with:

- the procedure for merger by acquisition,
- the procedure for merger by the formation of a new legal person.

In the case of a merger by acquisition, the acquiring cooperative shall take the form of an SCE when the merger takes place. In the case of a merger by the formation of a new legal person, the latter shall take the form of an SCE.

#### Article 20

##### Law applicable in the case of merger

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State.

#### Article 21

##### Grounds for opposition to a merger

The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 29(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

## Article 22

### Conditions of merger

1. The management or administrative organ of merging cooperatives shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

- (a) the name and registered office of each of the merging cooperatives together with those proposed for the SCE;
- (b) the share-exchange ratio of the subscribed capital and the amount of any cash payment. If there are no shares, a precise division of the assets and its equivalent value in shares;
- (c) the terms for the allotment of shares in the SCE;
- (d) the date from which the holding of shares in the SCE will entitle the holders to share in surplus and any special conditions affecting that entitlement;
- (e) the date from which the transactions of the merging cooperatives will be treated for accounting purposes as being those of the SCE;
- (f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 66, do not confer the status of member;
- (g) the rights conferred by the SCE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
- (h) the forms of protection of the rights of creditors of the merging cooperatives;
- (i) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging cooperatives;
- (j) the statutes of the SCE;
- (k) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2003/72/EC.

2. The merging cooperatives may include further items in the draft terms of merger.

3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE.

## Article 23

### Explanation and justification of the terms of merger

The administrative or management organs of each merging cooperative shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic viewpoint and in particular the share-exchange ratio. The report shall also indicate any special valuation difficulties.

## Article 24

### Publication

1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject.

2. Publication of the draft terms of merger in the national gazette shall, however, include the following particulars for each of the merging cooperatives:

- (a) the type, name and registered office of each merging cooperative;
- (b) the address of the place or of the register in which the statutes and all other

documents and particulars are filed in respect of each merging cooperative, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of the creditors of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of members of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the SCE;

(f) the conditions determining the date on which the merger will take effect pursuant to Article 31.

#### Article 25

##### Disclosure requirements

1. Any member shall be entitled, at least one month before the date of the general meeting required to decide on the merger, to inspect at the registered office the following documents:

(a) the draft terms of merger mentioned in Article 22;

(b) the annual accounts and management reports of the merging cooperatives for the three preceding financial years;

(c) an accounting statement drafted in accordance with the provisions applicable to the internal mergers of public limited-liability companies, to the extent that such a statement is required by these provisions;

(d) the experts' report on the value of shares to be distributed in exchange for the assets for the merging cooperatives or the share exchange ratio as provided for in Article 26;

(e) the report from the cooperative's administrative or management organs as provided for in Article 23.

2. A full copy of the documents referred to in paragraph 1 or, if he/she so wishes, an extract, may be obtained by any member on request and free of charge.

#### Article 26

##### Report of independent experts

1. For each merging cooperative, one or more independent experts, appointed by that cooperative in accordance with the provisions of Article 4(6), shall examine the draft terms of merger and draw up a written report for the members.

2. A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject.

3. The law applicable to the mergers of public limited-liability companies concerning the rights and obligations of experts shall apply by analogy to the merger of cooperatives.

#### Article 27

##### Approval of the terms of merger

1. The general meeting of each of the merging cooperatives shall approve the draft terms of the merger.

2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2003/72/EC. The general meetings of each of the merging cooperatives may reserve the right to make registration of the SCE conditional upon its express ratification of the arrangements so decided.

#### Article 28

#### Laws applicable to formation by merger

1. The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

- creditors of the merging cooperatives,
- holders of bonds in the merging cooperatives.

2. A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.

#### Article 29

##### Scrutiny of merger procedure

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging cooperative, in accordance with the law of the Member State to which the merging cooperative is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited companies under the law of that State.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging cooperative is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority members, without preventing the registration of the merger, such procedures shall apply only if the other merging cooperatives situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 27(1), the possibility for the members of that merging cooperative to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been started. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring cooperative and all its members.

#### Article 30

##### Scrutiny of legality of merger

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies.

2. To that end, each merging cooperative shall submit to the competent authority the certificate referred to in Article 29(2) within six months of its issue together with a copy of the draft terms of merger approved by that cooperative.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging cooperatives have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2003/72/EC.

4. The said authority shall also satisfy itself that the SCE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office.

#### Article 31

##### Registration of merger

1. A merger and the simultaneous formation of an SCE shall take effect on the date on which the SCE is registered in accordance with Article 11(1).

2. The SCE may not be registered until all the formalities provided for in Articles 29 and 30 have been completed.

#### Article 32

##### Publication

For each of the merging cooperatives the completion of the merger shall be made public as laid down by the law of the Member State concerned in accordance with the laws governing mergers of public companies limited by shares.

#### Article 33

##### Consequences of merger

1. A merger carried out as laid down in the first indent of the first subparagraph of Article 19 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of each cooperative being acquired are transferred to the acquiring legal person;

(b) the members of each cooperative being acquired become members of the acquiring legal person;

(c) the cooperatives being acquired cease to exist;

(d) the acquiring legal person assumes the form of an SCE.

2. A merger carried out as laid down in the second indent of the first subparagraph of Article 19 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of the merging cooperatives are transferred to the SCE;

(b) the members of the merging cooperatives become members of the SCE;

(c) the merging cooperatives cease to exist.

3. Where, in the case of a merger of cooperatives, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging cooperatives becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging cooperatives or by the SCE following its registration.

4. The rights and obligations of the participating cooperatives in relation to both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SCE.

The first subparagraph shall not apply to the right of workers' representatives to participate in general or section or sectorial meetings provided for in Article 59(4).

5. When the merger has been registered, the SCE shall immediately inform the members of the cooperative being acquired of the fact that they have been entered in the register of members and of the number of their shares.

#### Article 34

##### Legality of the merger

1. A merger as provided for in the fourth indent of Article 2(1) may not be declared null and void once the SCE has been registered.

2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 74.

#### Section 3

##### Conversion of an existing cooperative into an SCE

## Article 35

## Procedures for formation by conversion

1. Without prejudice to Article 11, the conversion of a cooperative into an SCE shall not result in the winding-up of the cooperative or in the creation of a new legal person.
2. The registered office may not be transferred from one Member State to another pursuant to Article 7 at the same time as the conversion is effected.
3. The administrative or management organ of the cooperative in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications for members and employees of the adoption of the form of an SCE.
4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called upon to decide thereon.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify *mutatis mutandis* that the rules of Article 22(1)(b) are respected.
6. The general meeting of the cooperative in question shall approve the draft terms of conversion together with the statutes of the SCE.
7. Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised.
8. The rights and obligations of the cooperative to be converted on both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the SCE.

## CHAPTER III

## STRUCTURE OF THE SCE

## Article 36

## Structure of organs

Under the conditions laid down by this Regulation an SCE shall comprise:

- (a) a general meeting; and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

## Section 1

## Two-tier system

## Article 37

## Functions of the management organ; appointment of members

1. The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.
2. The member or members of the management organ shall be appointed and removed by the supervisory organ.



However, a Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory.

3. No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SCE's statutes. However, a Member State may fix a minimum and/or maximum number.

5. Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

#### Article 38

##### Chairmanship and the calling of meetings of the management organ

1. The management organ shall elect a chairman from among its members, in accordance with the statutes.

2. The chairman shall call a meeting of the management organ under the conditions laid down in the statutes, either on his own initiative or at the request of any member. Any such request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the management organ may be called by the member(s) who made the request.

#### Article 39

##### Functions of the supervisory organ; appointment of members

1. The supervisory organ shall supervise the duties performed by the management organ. It may not itself exercise the power to manage the SCE. The supervisory organ may not represent the SCE in dealings with third parties. It shall represent the SCE in dealings with the management organ, or its members, in respect of litigation or the conclusion of contracts.

2. The members of the supervisory organ shall be appointed and removed by the general meeting. The members of the first supervisory organ may, however, be appointed in the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

3. Of the members of the supervisory organ, not more than one quarter of the posts available may be filled by non-user members.

4. The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number.

#### Article 40

##### Right to information

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable developments of the SCE's business, taking account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly communicate to the supervisory organ any information on events likely to have an appreciable effect on the SCE.

3. The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

#### Article 41

##### Chairmanship and the calling of meetings of the supervisory organ

1. The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the supervisory organ under the conditions laid down in the statutes, either on his/her own initiative, or at the request of at least one third of its members, or at the request of the management organ. The request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the supervisory organ may be called by those who made the request.

#### Section 2

##### The one-tier system

#### Article 42

##### Functions of the administrative organ; appointment of members

1. The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State's territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members. Of the members of the administrative organ, not more than one quarter of the posts available may be filled by non-user members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2003/72/EC.

3. The members of the administrative organ, and, where the statutes so provide, their alternate members, shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

4. Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

#### Article 43

##### Intervals between meetings and the right to information

1. The administrative organ shall meet at least once every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE's business, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. Each member of the administrative organ shall be entitled to examine all reports, documents and information submitted to it.

#### Article 44

##### Chairmanship and the calling of meetings of the administrative organ

1. The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the administrative organ under the conditions laid down in the statutes, either on his/her own initiative or at the request of at least one third of its members. The request must indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the administrative organ may be called by those who made the request.

#### Section 3

##### Rules common to the one-tier and two-tier systems

#### Article 45

##### Term of office

1. Members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be re-appointed once or more than once for the period determined in accordance with paragraph 1.

#### Article 46

##### Conditions of membership

1. An SCE's statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE's registered office is situated does not provide otherwise.

That company shall designate a natural person as its representative to exercise its functions on the organ in question. The representative shall be subject to the same conditions and obligations as if he/she were personally a member of the organ.

2. No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who:

- is disqualified, under the law of the Member State in which the SCE's registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or

- is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SCE's statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ.

#### Article 47

##### Power of representation and liability of the SCE

1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise that authority collectively, unless the law of the Member State in which the SCE's registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12.

2. Acts performed by an SCE's organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them.

Member States may, however, provide that the SCE shall not be bound where such acts are outside the objects of the SCE, if it proves that the third party knew that the act was outside those objects or could not in the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

3. The limits on the powers of the organs of the SCE, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

4. A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.

#### Article 48

##### Operations requiring authorisation

1. An SCE's statutes shall list the categories of transactions requiring:

- under the two-tier system, authorisation from the supervisory organ or the general meeting to the management organ,
- under the one-tier system, an express decision adopted by the administrative organ or authorisation from the general meeting.

2. Paragraph 1 shall apply without prejudice to Article 47.

3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

#### Article 49

##### Confidentiality

The members of an SCE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SCE the disclosure of which might be prejudicial to the cooperative's interests or those of its members, except where such disclosure is required or permitted under national law provisions applicable to cooperatives or companies or is in the public interest.

#### Article 50

##### Conduct of the business of organs

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SCE organs shall be as follows:

- (a) quorum: at least half of the members with voting rights must be present or represented;
- (b) decision-taking: a majority of the members with voting rights present or represented.

Members who are absent may take part in decisions by authorising another member of the organ or the alternate members who were appointed at the same time to represent them.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned.

#### Article 51

##### Civil liability

Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which the SCE's registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

#### Section 4

##### General meeting

#### Article 52

##### Competence

The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation; or

(b) the legislation of the Member State in which the SCE's registered office is situated, adopted under Directive 2003/72/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE's registered office is situated, either by the law of that Member State or by the SCE's statutes in accordance with that law.

#### Article 53

##### Conduct of general meetings

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE's registered office is situated.

#### Article 54

##### Holding of general meetings

1. An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation.

2. General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.

3. The agenda for the general meeting held after the end of the financial year shall

include at least the approval of the annual accounts and the allocation of profits.

4. The general meeting may in the course of a meeting decide that a further meeting be convened and set the date and the agenda.

#### Article 55

##### Meeting called by a minority of members

Members of the SCE who together number more than 5000, or who have at least 10 % of the total number of the votes, may require the SCE to convene a general meeting and may draw up its agenda. The above proportions may be reduced by the statutes.

#### Article 56

##### Notice of meeting

1. A general meeting shall be convened by a notice in writing sent by any available means to every person entitled to attend the SCE's general meeting in accordance with Article 58(1) and (2) and the provisions of the statutes. That notice may be given by publication in the official internal publication of the SCE.

2. The notice calling a general meeting shall give at least the following particulars:

- the name and registered office of the SCE,
- the venue, date and time of the meeting,
- where appropriate, the type of general meeting,
- the agenda, indicating the subjects to be discussed and the proposals for decisions.

3. The period between the date of dispatch of the notice referred to in paragraph 1 and the date of the opening of the general meeting shall be at least 30 days. It may, however, be reduced to 15 days in urgent cases. Where Article 61(4) is applied, relating to quorum requirements, the time between a first and second meeting convened to consider the same agenda may be reduced according to the law of the Member State in which the SCE has its registered office.

#### Article 57

##### Additions to the agenda

Members of the SCE who together number more than 5000, or who have at least 10 % of the total number of the votes, may require that one or more additional items be put on the agenda of any general meeting. The above proportions may be reduced by the statutes.

#### Article 58

##### Attendance and proxies

1. Every member shall be entitled to speak and vote at general meetings on the points that are included in the agenda.

2. Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights.

3. A person entitled to vote shall be entitled to appoint a proxy to represent him/her at a general meeting in accordance with procedures laid down in the statutes.

The statutes shall lay down the maximum number of persons for whom a proxy may act.

4. The statutes may permit postal voting or electronic voting, in which case they shall lay down the necessary procedures.

#### Article 59

### Voting rights

1. Each member of an SCE shall have one vote, regardless of the number of shares he holds.
2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30 % of total voting rights, whichever is the lower.

If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20 % of total voting rights, whichever is the lower.

In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity.

3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25 % of total voting rights.
4. If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15 % of total voting rights. Such rights shall cease to apply as soon as the registered office of the SCE is transferred to a Member State whose law does not provide for such participation.

### Article 60

#### Right to information

1. Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative organ on the affairs of the SCE arising from items on which the general meeting may take a decision in accordance with Article 61(1). In so far as possible, information shall be provided at the general meeting in question.
2. The management or administrative organ may refuse to supply such information only where:
  - it would be likely to be seriously prejudicial to the SCE,
  - its disclosure would be incompatible with a legal obligation of confidentiality.
3. A member refused information may require that his/her question and the grounds for refusal be entered in the minutes of the general meeting.
4. Within the 10 days preceding the general meeting required to decide on the end of the financial year, members may examine the balance sheet, the profit-and-loss account and the notes thereon, the management report, the conclusion of the audit of the accounts by the person responsible and, where a parent company within the meaning of Directive 83/349/EEC is concerned, the consolidated accounts.

### Article 61

#### Decisions

1. A general meeting may pass resolutions on items on its agenda. A general meeting may also deliberate and pass resolutions concerning items placed on the agenda of

the meeting by a minority of members in accordance with Article 57.

2. A general meeting shall act by majority of the votes validly cast by the members present or represented.

3. The statutes shall lay down the quorum and majority requirements which are to apply to general meetings.

Where the statutes provide for the possibility of an SCE to admit investor (non-user) members, or to allocate votes according to capital contribution in SCEs involved in financial or insurance activities, the statutes shall also lay down special quorum requirements with relation to members other than investor (non-user) members or members that have voting rights according to capital contribution in SCEs involved in financial or insurance activities. Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory.

4. A general meeting may amend the statutes the first time it is convened only if the members present or represented make up at least half of the total number of members on the date the general meeting is convened, and the second time it is convened on the same agenda no quorum shall be necessary.

In the cases referred to in the first subparagraph, at least two thirds of the votes cast validly must be cast in favour, unless the law applicable to cooperatives in the Member State in which the SCE's registered office is situated requires a greater majority.

#### Article 62

##### Minutes

1. Minutes shall be drawn up for every general meeting. The minutes shall include at least the following particulars:

- the venue and date of the meeting,
- the resolutions passed,
- the result of the voting.

2. The attendance list, the documents relating to the convening of the general meeting and the reports submitted to the members on the items on the agenda shall be annexed to the minutes.

3. The minutes and the documents annexed thereto shall be preserved for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request against defrayal of the administrative cost.

4. The minutes shall be signed by the chairman of the meeting.

#### Article 63

##### Sectorial or section meetings

1. Where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500 members, its statutes may provide for sectorial or section meetings, if permitted by the relevant Member State legislation. The statutes shall establish the division in sectors or sections and the number of delegates thereof.

2. The sectorial or section meetings shall elect their delegates for a maximum period of four years, unless early revocation takes place. Delegates so elected shall constitute the general meeting of the SCE and shall represent therein their sector or section to which they shall report on the outcome of the general meeting. The provisions of Section 4 of Chapter III shall be applied to the workings of the sectorial and section meetings.

#### CHAPTER IV

##### ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE



## Article 64

## Securities other than shares and debentures conferring special advantages

1. An SCE's statutes may provide for the issue of securities other than shares, or debentures the holders of which are to have no voting rights. These may be subscribed for by members or by non-members. Their acquisition does not confer the status of member. The statutes shall also lay down the procedure for redemption.
2. Holders of securities or debentures referred to in paragraph 1 may be given special advantages in accordance with the statutes or the conditions laid down when they are issued.
3. The total nominal value of securities or debentures referred to in paragraph 1 held may not exceed the figure laid down in the statutes.
4. Without prejudice to the right to attend the general meeting provided for in Article 58(2), the statutes may provide for special meetings of holders of securities or debentures referred to in paragraph 1. Before any decision of the general meeting is taken relating to the rights and interests of such holders, a special meeting may state its opinion, which shall be brought to the attention of the general meeting by the representatives which the special meeting appoints.

The opinion referred to in the first subparagraph shall be recorded in the minutes of the general meeting.

## CHAPTER V

## ALLOCATION OF PROFITS

## Article 65

## Legal reserve

1. Without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year.
2. Where there is such a surplus, the statutes shall require the establishment of a legal reserve funded out of the surplus before any other allocation.  
  
Until such time as the legal reserve is equal to the capital referred to in Article 3(2), the amount allocated to it may not be less than 15 % of the surplus for the financial year after deduction of any losses carried over.
3. Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve.

## Article 66

## Dividend

The statutes may provide for the payment of a dividend to members in proportion to their business with the SCE, or the services they have performed for it.

## Article 67

## Allocation of available surplus

1. The balance of the surplus after deduction of the allocation to the legal reserve, of any sums paid out in dividends and of any losses carried over, with the addition of any surpluses carried over and of any sums drawn from the reserves, shall constitute the profits available for distribution.
2. The general meeting which considers the accounts for the financial year may allocate the surplus in the order and proportions laid down in the statutes, and in particular:
  - carry them forward,
  - appropriate them to any legal or statutory reserve fund,

- provide a return on paid-up capital and quasi-equity, payment being made in cash or shares.

3. The statutes may also prohibit any distribution.

## CHAPTER VI

### ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

#### Article 68

##### Preparation of annual accounts and consolidated accounts

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC. However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives.

2. Where an SCE is not subject, under the law of the Member State in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. The price charged for such copies shall not exceed their administrative cost.

3. An SCE must draw up its annual accounts and its consolidated accounts if any in the national currency. An SCE whose registered office is outside the euro area may also express its annual accounts and, where appropriate, consolidated accounts, in euro. In that event, the bases of conversion used to express in euro those items included in the accounts which are or were originally expressed in another currency shall be disclosed in the notes on the accounts.

#### Article 69

##### Accounts of SCEs with credit or financial activities

1. An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives relating to the taking up and pursuit of the business of credit institutions as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

#### Article 70

##### Auditing

The statutory audit of an SCE's annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorised to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC.

#### Article 71

##### System of auditing

Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its registered office in that Member State

provided that this body meets the requirements of Directive 84/253/EEC.

## CHAPTER VII

### WINDING UP; LIQUIDATION; INSOLVENCY AND CESSATION OF PAYMENTS

#### Article 72

##### Winding-up, insolvency and similar procedures

As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

#### Article 73

Winding-up by the court or other competent authority of the Member State where the SCE has its registered office

1. On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34.

The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up.

2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its situation within a specified period either:

- by re-establishing its head office in the Member State in which its registered office is situated, or
- by transferring the registered office by means of the procedure laid down in Article 7.

3. The Member State in which the SCE's registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its position in accordance with paragraph 2 is liquidated.

4. The Member State in which the SCE's registered office is situated shall seek judicial or other appropriate remedy with regard to any established infringement of Article 6. That remedy shall have suspensory effect on the procedures laid down in paragraphs 2 and 3.

5. Where it is established on the initiative of either the authorities or any interested party that an SCE has its head office within the territory of a Member State in breach of Article 6, the authorities of that Member State shall immediately inform the Member State in which the SCE's registered office is situated.

#### Article 74

##### Publication of winding-up

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicised in accordance with Article 12.

#### Article 75

##### Distribution

Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has

its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of members' capital contributions.

#### Article 76

##### Conversion into a cooperative

1. An SCE may be converted into a cooperative governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.
2. The conversion of an SCE into a cooperative shall not result in winding-up or in the creation of a new legal person.
3. The management or administrative organ of the SCE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications of the adoption of the cooperative form for members and holders of shares referred to in Article 14 and for employees.
4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital.
6. The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in the provisions of national law.

#### CHAPTER VIII

##### ADDITIONAL AND TRANSITIONAL PROVISIONS

#### Article 77

##### Economic and monetary union

1. If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital. An SCE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SCE.
2. If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SCE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu(20).

#### CHAPTER IX

##### FINAL PROVISIONS

## Article 78

## National implementing rules

1. Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.
2. Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly.

## Article 79

## Review of the Regulation

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and to the Council a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

- (a) allowing the location of an SCE's head office and registered office in different Member States;
- (b) allowing provisions in the statutes of an SCE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation with regard to the SCE which deviate from, or are complementary to, these laws, even when such provisions would not be authorised in the statutes of a cooperative having its registered office in the Member State;
- (c) allowing provisions which enable the SCE to split into two or more national cooperatives;
- (d) allowing for specific legal remedies in the case of fraud or error during the registration of an SCE established by way of merger.

## Article 80

## Entry into force

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Union.

It shall apply from 18 August 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 July 2003.

For the Council

The President

G. Alemanno

- (1) OJ C 99, 21.4.1992, p. 17 and OJ C 236, 31.8.1993, p. 17.
- (2) OJ C 42, 15.2.1993, p. 75 and opinion delivered on 14 May 2003 (not yet published in the Official Journal).
- (3) OJ C 223, 31.8.1992, p. 42.
- (4) OJ C 128, 16.5.1983, p. 51.
- (5) OJ C 246, 14.9.1987, p. 94.
- (6) OJ C 158, 26.6.1989, p. 380.
- (7) OJ C 61, 28.2.1994, p. 231.
- (8) OJ C 313, 12.10.1998, p. 234.

- (9) OJ L 294, 10.11.2001, p. 1.
- (10) OJ L 199, 31.7.1985, p. 1.
- (11) Resolution adopted by the General Assembly of the 88th plenary meeting of the United Nations, 19 December 2001 (A/RES/56/114).
- (12) See page 25 of this Official Journal.
- (13) OJ L 65, 14.3.1968, p. 8; Directive as last amended by the 1994 Act of Accession.
- (14) OJ L 222, 14.8.1978, p. 11; Directive as last amended by Directive 2001/65/EC (OJ L 283, 27.10.2001, p. 28).
- (15) OJ L 193, 18.7.1983, p. 1; Directive as last amended by Directive 2001/65/EC.
- (16) OJ L 126, 12.5.1984, p. 20.
- (17) OJ L 395, 30.12.1989, p. 36.
- (18) OJ L 372, 31.12.1986; Directive as last amended by Directive 2001/65/EC.
- (19) OJ L 228, 11.8.1992, p. 1; Directive as last amended by Directive 2002/13/EC (OJ L 77, 20.3.2002, p. 17).
- (20) OJ L 317, 16.11.1990, p. 57.

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< Bibliographic notice 1 of 3 >		
<p><b>Title and reference</b></p> <p><b>Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees</b></p> <p><i>OJ L 207, 18.8.2003, p. 25–36 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)</i>  <i>Special edition in Czech Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Estonian Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Hungarian Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Lithuanian Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Latvian Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Maltese Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Polish Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Slovakian Chapter 05 Volume 04 P. 338 - 349</i>  <i>Special edition in Slovenian Chapter 05 Volume 04 P. 338 - 349</i></p> <p>DA DE EL EN ES FI FR IT NL PT SV</p> <p><b>Text</b></p> <p style="text-align: center;"><a href="#">html</a>    <a href="#">pdf</a>    <a href="#">tiff</a></p> <p><b>Authentic language</b></p> <p>▶ The official languages, Other than Community language, Icelandic, Norwegian</p> <p><b>Dates</b></p> <p>of document: 22/07/2003  of effect: 18/08/2003; Entry into force Date pub. See Art 18  end of validity: 99/99/9999  of transposition: 18/08/2006; At the latest See Art 16.1</p> <p><b>Classifications</b></p> <p>▶ <b>EUROVOC descriptor:</b>  <a href="#">legal status</a>  <a href="#">European cooperative worker participation</a></p> <p>▶ <b>Directory code:</b>  05.20.05.00 <a href="#">Freedom of movement for workers and social policy / Social policy / General social provisions</a>  17.10.00.00 <a href="#">Law relating to undertakings / Company law</a></p> <p>▶ <b>Subject matter:</b>  Approximation of laws, Provisions governing the Institutions, Social provisions</p> <p><b>Miscellaneous information</b></p> <p>▶ <b>Author:</b>  Council</p>		

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- ▶ **Addressee:**  
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- ▶ **Additional information:**  
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Co-decision procedure  
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Opinion Economic and Social Committee; OJ C 223/1992 P 42

#### Relationship between documents

- ▶ **Treaty:**  
European Community
- ▶ **Legal basis:**  
[12002E308](#)
- ▶ **Select all documents based on this document**
- ▶ **Amendment to:**  
[51991PC0273\(04\)](#) Adoption
- ▶ **Display the national execution measures**  
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[31994L0045](#)  
  
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Council Directive 2003/72/EC

of 22 July 2003

supplementing the Statute for a European Cooperative Society with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission(1),



Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the European Economic and Social Committee(3),

Whereas:

(1) In order to attain the objectives of the Treaty, Council Regulation (EC) No 1435/2003(4) establishes a Statute for a European Cooperative Society (SCE).

(2) That Regulation aims at creating a uniform legal framework within which cooperatives and other entities and natural persons from different Member States should be able to plan and carry out the reorganisation of their business in cooperative form on a Community scale.

(3) In order to promote the social objectives of the Community, special provisions have to be set, notably in the field of employee involvement, aimed at ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the entities participating in the establishment of an SCE. This objective should be pursued through the establishment of a set of rules in this field, supplementing the provisions of Regulation (EC) No 1435/2003.

(4) Since the objectives of the proposed action, as outlined above, cannot be sufficiently achieved by the Member States, in that the object is to establish a set of rules on employee-involvement applicable to the SCE, and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve these objectives.

(5) The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within cooperatives makes it inadvisable to set up a single European model of employee involvement applicable to the SCE.

(6) Information and consultation procedures at transnational level should be ensured in all cases of creation of an SCE, with the necessary adaptation for SCEs formed ex novo where this is justified by their size, as measured in terms of employment.

(7) If participation rights exist within one or more entities establishing an SCE, they should in principle be preserved through their transfer to the SCE, once established, unless the parties decide otherwise.

(8) The concrete procedures of employee transnational information and consultation, as well as, if applicable, participation, to apply to each SCE should be defined primarily by means of an agreement between the parties concerned or, in the absence thereof, through the application of a set of subsidiary rules.

(9) Member States should still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement. Existing systems and practices of participation where appropriate at the level of participating entities must in that case be maintained by adapting registration rules.

(10) The voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating entities, should be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SCE established by way of transformation or merger than by way of creating an ex novo SCE.

(11) In the absence of an agreement subsequent to the negotiation between employees' representatives and the competent organs of the participating entities, provision should be made for certain standard rules to apply to the SCE, once it is established. These standard rules should ensure effective practices of transnational

information and consultation of employees, as well as their participation in the relevant organs of the SCE if such participation existed before its establishment within the participating entities.

(12) When application of the abovementioned procedures to the entities participating in the ex novo SCE cannot be justified because of their small size as measured in terms of employment, the SCE should be subject to the national rules on the involvement of employees in force in the Member State where it establishes its registered office, or in the Member States where it has subsidiaries or establishments. This should be without prejudice to the obligation placed on an SCE already established to implement these procedures if a significant number of employees so requests.

(13) Specific provisions should apply to employee participation in general meetings, in so far as national laws so allow. The application of these provisions does not preclude the application of other forms of participation, as provided for in this Directive.

(14) Member States should ensure through appropriate provisions that, in the case of structural changes following the creation of an SCE, the arrangements for the involvement of employees can, where appropriate, be renegotiated.

(15) Provision should be made for the employees' representatives acting within the framework of this Directive to enjoy, when exercising their functions, the same protection and guarantees as those provided for employees' representatives by the legislation and/or practice of the country of employment. They should not be subject to any discrimination, including harassment, as a result of the lawful exercise of their activities and should enjoy adequate protection as regards dismissal and other sanctions.

(16) The confidentiality of sensitive information should be preserved even after the expiry of the terms of office of the employees' representatives, and provision should be made to allow the competent organ of the SCE to withhold information which would seriously harm, if subject to public disclosure, the functioning of the SCE.

(17) Where an SCE and its subsidiaries and establishments are subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>(5)</sup>, the provisions of that Directive and the provisions transposing it into national legislation should not apply to it nor to its subsidiaries and establishments, unless the special negotiating body decides not to open negotiations or to terminate negotiations already opened.

(18) This Directive should not affect other existing rights regarding involvement and need not affect other existing representation structures, provided for by Community and national laws and practices.

(19) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.

(20) The Treaty has not provided the necessary powers for the Community to adopt this Directive, other than those provided for in Article 308.

(21) It is a fundamental principle and stated aim of this Directive to secure employees' acquired rights as regards involvement in company decisions. Employee rights in force before the establishment of SCEs should provide the basis for employee rights of involvement in the SCE (the "before and after" principle). Consequently, that approach should apply not only to the initial establishment of an SCE but also to structural changes in an existing SCE and to the entities affected by structural change processes. Therefore, where the registered office of an SCE is transferred from one Member State to another, at least the same level of employee involvement rights should continue to apply. Further, if the threshold concerning employee involvement is reached or exceeded after the registration of an SCE, these rights should apply in the same manner in which they would have applied, had the threshold been reached or exceeded before registration.

(22) Member States may provide that representatives of trade unions may be

members of a special negotiating body regardless of whether they are employees of an entity participating in the establishment of an SCE. Member States should in this context in particular be able to introduce this right in cases where trade union representatives have the right to be members of, and to vote in, supervisory or administrative company organs in accordance with national legislation.

(23) In several Member States, employee involvement and other areas of industrial relations are based on both national legislation and practice which in this context is understood also to cover collective agreements at various national, sectorial and/or company levels,

HAS ADOPTED THIS DIRECTIVE:

## SECTION I

### GENERAL

#### Article 1

##### Objective

1. This Directive governs the involvement of employees in the affairs of European Cooperative Societies (hereinafter referred to as SCEs), as referred to in Regulation (EC) No 1435/2003.

2. To this end, arrangements for the involvement of employees shall be established in every SCE in accordance with the negotiating procedure referred to in Articles 3 to 6 or, under the circumstances specified in Articles 7 and 8, in accordance with the Annex.

#### Article 2

##### Definitions

For the purposes of this Directive:

(a) "SCE" means any cooperative society established in accordance with Regulation (EC) No 1435/2003;

(b) "participating legal entities" means companies and firms within the meaning of the second paragraph of Article 48 of the Treaty, including cooperatives, as well as legal bodies formed under, and governed by, the law of a Member State, directly participating in the establishing of an SCE;

(c) "subsidiary" of a participating legal entity or of an SCE means an undertaking over which that legal entity or SCE exercises a dominant influence defined in accordance with Article 3(2) to (7) of Directive 94/45/EC;

(d) "concerned subsidiary or establishment" means a subsidiary or establishment of a participating legal entity which is proposed to become a subsidiary or establishment of the SCE upon its formation;

(e) "employees' representatives" means the employees' representatives provided for by national law and/or practice;

(f) "representative body" means the body representative of the employees set up by the agreements referred to in Article 4 or in accordance with the provisions of the Annex, with the purpose of informing and consulting the employees of an SCE and its subsidiaries and establishments situated in the Community and, where applicable, of exercising participation rights in relation to the SCE;

(g) "special negotiating body" means the body established in accordance with Article 3 to negotiate with the competent organ of the participating legal entities regarding the establishment of arrangements for the involvement of employees within the SCE;

(h) "involvement of employees" means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within an undertaking;

(i) "information" means the informing of the body representative of the employees

and/or the employees' representatives by the competent organ of the SCE on questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State at a time, in a manner and with a content which allows the employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare consultations with the competent organ of the SCE;

(j) "consultation" means the establishment of dialogue and exchange of views between the body representative of the employees and/or the employees' representatives and the competent organ of the SCE, at a time, in a manner and with a content which allows the employees' representatives, on the basis of information provided, to express an opinion on measures envisaged by the competent organ which may be taken into account in the decision-making process within the SCE;

(k) "participation" means the influence of the body representative of the employees and/or the employees' representatives in the affairs of a legal entity by way of:

- the right to elect or appoint some of the members of the legal entity's supervisory or administrative organ, or
- the right to recommend and/or oppose the appointment of some or all of the members of the legal entity's supervisory or administrative organ.

## SECTION II

### NEGOTIATING PROCEDURE APPLICABLE TO SCEs ESTABLISHED BY AT LEAST TWO LEGAL ENTITIES OR BY TRANSFORMATION

#### Article 3

##### Creation of a special negotiating body

1. Where the management or administrative organs of participating legal entities draw up a plan for the establishment of an SCE, they shall as soon as possible take the necessary steps, including providing information on the identity of the participating legal entities and subsidiaries or establishments, as well as the number of their employees, to start negotiations with the representatives of the legal entities' employees on arrangements for the involvement of employees in the SCE.

2. For this purpose, a special negotiating body representative of the employees of the participating legal entities and concerned subsidiaries or establishments shall be created in accordance with the following provisions:

(a) in electing or appointing members of the special negotiating body, it shall be ensured:

(i) that such members are elected or appointed in proportion to the number of employees employed in each Member State by the participating legal entities and concerned subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(ii) that in the case of an SCE formed by way of merger, there are such further additional members from each Member State as may be necessary in order to ensure that the special negotiating body includes at least one member representing each participating cooperative which is registered and has employees in that Member State and which it is proposed will cease to exist as a separate legal entity following the registration of the SCE, insofar as:

- the number of such additional members does not exceed 20 % of the number of members designated by virtue of point (i); and
- the composition of the special negotiating body does not entail a double representation of the employees concerned.

If the number of such cooperatives is higher than the number of additional seats

available pursuant to the first subparagraph, these additional seats shall be allocated to cooperatives in different Member States by decreasing order of the number of employees they employ.

(b) Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories. They shall take the necessary measures to ensure that, as far as possible, such members shall include at least one member representing each participating legal entity which has employees in the Member State concerned. Such measures must not increase the overall number of members. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance.

Member States may provide that such members may include representatives of trade unions whether or not they are employees of a participating legal entity or concerned subsidiary or establishment.

Without prejudice to national legislation and/or practice laying down thresholds for the establishing of a representative body, Member States shall provide that employees in undertakings or establishments in which there are no employees' representatives through no fault of their own have the right to elect or appoint members of the special negotiating body.

3. The special negotiating body and the competent organs of the participating legal entities shall determine, by written agreement, arrangements for the involvement of employees within the SCE.

To this end, the competent organs of the participating legal entities shall inform the special negotiating body of the plan and the actual process of establishing the SCE, up to its registration.

4. Subject to paragraph 6, the special negotiating body shall take decisions by an absolute majority of its members, provided that such a majority also represents an absolute majority of the employees. Each member shall have one vote. However, should the result of the negotiations lead to a reduction of participation rights, the majority required for a decision to approve such an agreement shall be the votes of two thirds of the members of the special negotiating body representing at least two thirds of the employees, including the votes of members representing employees employed in at least two Member States,

- in the case of an SCE to be established by way of merger, if participation covers at least 25 % of the overall number of employees of the participating cooperatives, or

- in the case of an SCE to be established by any other way, if participation covers at least 50 % of the overall number of employees of the participating legal entities.

Reduction of participation rights means a proportion of members of the organs of the SCE within the meaning of Article 2(k), which is lower than the highest proportion existing within the participating legal entities.

5. For the purpose of the negotiations, the special negotiating body may request experts of its choice, for example representatives of appropriate Community level trade union organisations, to assist it with its work. Such experts may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body, where appropriate to promote coherence and consistency at Community level. The special negotiating body may decide to inform the representatives of appropriate external organisations, including trade unions, of the start of the negotiations.

6. The special negotiating body may decide by the majority set out in the second subparagraph not to open negotiations or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SCE has employees. Such a decision shall stop the procedure to conclude the agreement referred to in Article 4. Where such a decision has been taken, none of the provisions of the Annex shall apply.

The majority required to decide not to open or to terminate negotiations shall be the votes of two thirds of the members representing at least two thirds of the employees,

including the votes of members representing employees employed in at least two Member States.

In the case of an SCE established by way of transformation, this paragraph shall not apply if there is participation in the cooperative to be transformed.

The special negotiating body shall be reconvened at the written request of at least 10 % of the employees of the SCE, its subsidiaries and establishments, or their representatives, at the earliest two years after the abovementioned decision, unless the parties agree to negotiations being reopened sooner. If the special negotiating body decides to reopen negotiations with the management but no agreement is reached as a result of those negotiations, none of the provisions of the Annex shall apply.

7. Any expenses relating to the functioning of the special negotiating body and, in general, to negotiations shall be borne by the participating legal entities so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

#### Article 4

##### Content of the agreement

1. The competent organs of the participating legal entities and the special negotiating body shall negotiate in a spirit of cooperation with a view to reaching an agreement on arrangements for the involvement of the employees within the SCE.

2. Without prejudice to the autonomy of the parties, and subject to paragraph 4, the agreement referred to in paragraph 1 between the competent organs of the participating legal entities and the special negotiating body shall specify:

(a) the scope of the agreement;

(b) the composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SCE in connection with arrangements for the information and consultation of the employees of the SCE and its subsidiaries and establishments;

(c) the functions and the procedure for the information and consultation of the representative body;

(d) the frequency of meetings of the representative body;

(e) the financial and material resources to be allocated to the representative body;

(f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;

(g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SCE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights;

(h) the date of entry into force of the agreement and its duration, cases where the agreement should be renegotiated and the procedure for its renegotiation, including, where appropriate, in the event of structural changes in the SCE and its subsidiaries and establishments which occur after the creation of the SCE.

3. The agreement shall not, unless provision is made otherwise therein, be subject to the standard rules referred to in the Annex.

4. Without prejudice to Article 15(3)(a), in the case of an SCE established by means of transformation, the agreement shall provide for at least the same level of all elements

of employee involvement as the ones existing within the cooperative to be transformed into an SCE.

5. The agreement may specify the arrangements for the entitlement of employees to participate in the general meetings or in the section or sectorial meetings in accordance with Article 9 of this Directive and Article 59(4) of Regulation (EC) No 1435/2003.

#### Article 5

##### Duration of negotiations

1. Negotiations shall commence as soon as the special negotiating body is established and may continue for six months thereafter.

2. The parties may decide, by joint agreement, to extend negotiations beyond the period referred to in paragraph 1, up to a total of one year from the establishment of the special negotiating body.

#### Article 6

##### Legislation applicable to the negotiation procedure

Except where otherwise provided in this Directive, the legislation applicable to the negotiation procedure provided for in Articles 3, 4 and 5 shall be the legislation of the Member State in which the registered office of the SCE is to be situated.

#### Article 7

##### Standard rules

1. In order to achieve the objective described in Article 1, Member States shall lay down standard rules on employee involvement which must satisfy the provisions set out in the Annex.

The standard rules as laid down by the legislation of the Member State in which the registered office of the SCE is to be situated shall apply from the date of the registration of the SCE where either:

(a) the parties so agree; or

(b) by the deadline laid down in Article 5, no agreement has been concluded, and:

- the competent organ of each of the participating legal entities decides to accept the application of the standard rules in relation to the SCE and so to continue with its registration of the SCE, and

- the special negotiating body has not taken the decision provided in Article 3(6).

2. Moreover, the standard rules fixed by the national legislation of the Member State of registration in accordance with part 3 of the Annex shall apply only:

(a) in the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied to a cooperative transformed into an SCE;

(b) in the case of an SCE established by merger:

- if, before registration of the SCE, one or more forms of participation applied in one or more of the participating cooperatives covering at least 25 % of the total number of employees employed by them, or

- if, before registration of the SCE, one or more forms of participation applied in one or more of the participating cooperatives covering less than 25 % of the total number of employees employed by them and if the special negotiating body so decides;

(c) in the case of an SCE established by any other way:

- if, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering at least 50 % of the total number of employees employed by them; or

- if, before registration of the SCE, one or more forms of participation applied in one or more of the participating legal entities covering less than 50 % of the total number of employees employed by them and if the special negotiating body so decides.

If there was more than one form of participation within the various participating legal entities, the special negotiating body shall decide which of those forms must be established in the SCE. Member States may fix the rules which are applicable in the absence of any decision on the matter for an SCE registered in their territory. The special negotiating body shall inform the competent organs of the participating legal entities of any decisions taken pursuant to this paragraph.

3. Member States may lay down that the standard rules referred to in Part 3 of the Annex shall not apply in the case provided for in paragraph 2(b).

### SECTION III

#### RULES APPLICABLE TO SCEs ESTABLISHED EXCLUSIVELY BY NATURAL PERSONS OR BY A SINGLE LEGAL ENTITY AND NATURAL PERSONS

##### Article 8

1. In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ at least 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall apply.

2. In the case of an SCE established exclusively by natural persons or by a single legal entity and natural persons, which together employ fewer than 50 employees, or employ 50 or more employees in only one Member State, employee involvement shall be governed by the following:

- in the SCE itself, the provisions of the Member State of the SCE's registered office, which are applicable to other entities of the same type, shall apply,

- in its subsidiaries and establishments, the provisions of the Member State where they are situated, and which are applicable to other entities of the same type, shall apply.

In the case of transfer from one Member State to another of the registered office of an SCE governed by participation, at least the same level of employee participation rights shall continue to apply.

3. If, after the registration of an SCE referred to in paragraph 2, at least one third of the total number of employees of the SCE and its subsidiaries and establishments in at least two different Member States so requests, or if the total number of employees reaches or exceeds 50 employees in at least two Member States, the provisions of Articles 3 to 7 shall be applied, *mutatis mutandis*. In this case, the words "participating legal entities" and "concerned subsidiaries or establishments" shall be replaced by the words "SCE" and "subsidiaries or establishments of the SCE" respectively.

### SECTION IV

#### PARTICIPATION IN THE GENERAL MEETING OR SECTION OR SECTORIAL MEETING

##### Article 9

Subject to the limits laid down in Article 59(4) of Regulation (EC) No 1435/2003, the employees of the SCE and/or their representatives will be entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote, in the following circumstances:

1. when the parties so decide in the agreement referred to in Article 4, or

2. when a cooperative governed by such a system transforms itself into an SCE, or

3. when, in the case of an SCE established by means other than transformation, a participating cooperative was governed by such a system and:

(i) the parties cannot reach agreement, as referred to in Article 4, by the deadline laid down in Article 5; and



(ii) Article 7(1)(b) and Part 3 of the Annex apply; and

(iii) the participating cooperative governed by such a system has the highest proportion of participation, within the meaning of Article 2(k), in force in the participating cooperatives concerned before registration of the SCE.

## SECTION V

### MISCELLANEOUS PROVISIONS

#### Article 10

##### Reservation and confidentiality

1. Member States shall provide that members of the special negotiating body or the representative body, and experts who assist them, are not authorised to reveal any information which has been given to them in confidence.

The same shall apply to employees' representatives in the context of an information and consultation procedure.

This obligation shall continue to apply, wherever the persons referred to may be, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the supervisory or administrative organ of an SCE or of a participating legal entity established in its territory is not obliged to transmit information where its nature is such that, according to objective criteria, to do so would seriously harm the functioning of the SCE (or, as the case may be, a participating legal entity) or its subsidiaries and establishments or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for SCEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.

4. In applying paragraphs 1, 2 and 3, Member States shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the supervisory or administrative organ of an SCE or of a participating legal entity demands confidentiality or does not give information.

Such procedures may include arrangements designed to protect the confidentiality of the information in question.

#### Article 11

##### Operation of the representative body and procedure for the information and consultation of employees

The competent organ of the SCE and the representative body shall work together in a spirit of cooperation with due regard for their reciprocal rights and obligations.

The same shall apply to cooperation between the supervisory or administrative organ of the SCE and the employees' representatives in conjunction with a procedure for the information and consultation of employees.

#### Article 12

##### Protection of employees' representatives

The members of the special negotiating body, the members of the representative body, any employees' representatives exercising functions under the information and consultation procedure and any employees' representatives in the supervisory or administrative organ of an SCE who are employees of the SCE, its subsidiaries or establishments or of a participating legal entity shall, in the exercise of their functions,

enjoy the same protection and guarantees provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of the special negotiating body or representative body, any other meeting under the agreement referred to in Article 4(2)(f) or any meeting of the administrative or supervisory organ, and to the payment of wages for members employed by a participating legal entity or the SCE or its subsidiaries or establishments during a period of absence necessary for the performance of their duties.

#### Article 13

##### Misuse of procedures

Member States shall take appropriate measures in conformity with Community law with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or withholding such rights.

#### Article 14

##### Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of an SCE and the supervisory or administrative organs of subsidiaries and of participating legal entities which are situated within its territory and the employees' representatives or, as the case may be, the employees themselves abide by the obligations laid down by this Directive, regardless of whether or not the SCE has its registered office within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular they shall ensure that administrative or legal procedures are available to enable the obligations deriving from this Directive to be enforced.

#### Article 15

##### Link between this Directive and other provisions

1. Where an SCE is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings within the meaning of Directive 94/45/EC or of Council Directive 97/74/EC of 15 December 1997 extending the said Directive to the United Kingdom(6), the provisions of these Directives and the provisions transposing them into national legislation shall not apply to them or to their subsidiaries.

However, where the special negotiating body decides in accordance with Article 3(6) not to open negotiations or to terminate negotiations already opened, Directive 94/45/EC or Directive 97/74/EC and the provisions transposing them into national legislation shall apply.

2. Provisions on the participation of employees in company bodies provided for by national legislation and/or practice, other than those implementing this Directive, shall not apply to the SCEs to which Articles 3 to 7 apply.

3. This Directive shall not prejudice:

(a) the existing rights to involvement of employees provided for by national legislation and/or practice in the Member States as enjoyed by employees of the SCE and its subsidiaries and establishments, other than participation in the bodies of the SCE;

(b) the provisions on participation in the bodies laid down by national legislation and/or practice applicable to the subsidiaries of the SCE or to SCEs to which Articles 3 to 7 do not apply.

4. In order to preserve the rights referred to in paragraph 3, Member States may take the necessary measures to guarantee that the structures of employee representation in participating legal entities which will cease to exist as separate legal entities are maintained after the registration of the SCE.

#### Article 16

#### Final provisions

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 18 August 2006, or shall ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

#### Article 17

##### Review by the Commission

Not later than 18 August 2009, the Commission shall, in consultation with the Member States and with management and labour at Community level, review the application of applying this Directive, with a view to proposing suitable amendments to the Council where necessary.

#### Article 18

##### Entry into force

This Directive shall enter into force on the date of its publication in the Official Journal of the European Union.

#### Article 19

##### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 22 July 2003.

For the Council

The President

G. Alemanno

(1) OJ C 236, 31.8.1993, p. 36.

(2) OJ C 42, 15.2.1993, p. 75.

(3) OJ C 223, 31.8.1992, p. 42.

(4) See page 1 of this Official Journal.

(5) OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

(6) OJ L 10, 16.1.1998, p. 22.

#### ANNEX

##### STANDARD RULES

(referred to in Articles 7 and 8)

##### Part 1: Composition of the body representative of the employees

In order to achieve the objective described in Article 1, and in the cases referred to in Article 7, a representative body shall be set up in accordance with the following rules:

(a) The representative body shall be composed of employees of the SCE and its subsidiaries and establishments elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

(b) The election or appointment of members of the representative body shall be carried out in accordance with national legislation and/or practice.

Member States shall lay down rules to ensure that the number of members of, and allocation of seats on, the representative body shall be adapted to take account of changes occurring within the SCE and its subsidiaries and establishments. The methods used to nominate, appoint or elect employee representatives should seek to promote gender balance.

(c) Where its size so warrants, the representative body shall elect a select committee from among its members, comprising at most three members.

(d) The representative body shall adopt its rules of procedure.

(e) The members of the representative body are elected or appointed in proportion to the number of employees employed in each Member State by the SCE and its subsidiaries or establishments, by allocating in respect of a Member State one seat per each portion of employees employed in that Member State which equals 10 %, or a fraction thereof, of the number of employees employed by them in all the Member States taken together.

(f) The competent organ of the SCE shall be informed of the composition of the representative body.

(g) Not later than four years after its establishment, the representative body shall examine whether to open negotiations for the conclusion of the agreement referred to in Articles 4 and 7 or to continue to apply the standard rules adopted in accordance with this Annex.

Article 3(4) to (7) and Articles 4, 5 and 6 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 4, in which case the term "special negotiating body" shall be replaced by "representative body". Where, by the deadline by which the negotiations come to an end, no agreement has been concluded, the arrangements initially adopted in accordance with the standard rules shall continue to apply.

#### Part 2: Standard rules for information and consultation

The competence and powers of the representative body set up in an SCE shall be governed by the following rules:

(a) The competence of the representative body shall be limited to questions which concern the SCE itself and any of its subsidiaries or establishments situated in another Member State or which exceed the powers of the decision-making organs in a single Member State.

(b) Without prejudice to meetings held pursuant to paragraph (c), the representative body shall have the right to be informed and consulted and, for that purpose, to meet with the competent organ of the SCE at least once a year, on the basis of regular reports drawn up by the competent organ, on the progress of the business of the SCE and its prospects. The local managements shall be informed accordingly.

The competent organ of the SCE shall provide the representative body with the agenda for meetings of the administrative, or, where appropriate, the management and supervisory organ, and with copies of all documents submitted to the general meeting of its members.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, initiatives with regard to corporate social responsibility, the situation and probable trend of employment, investments, and substantial changes concerning organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

(c) Where there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of

establishments or undertakings or collective redundancies, the representative body shall have the right to be informed. The representative body or, where it so decides, in particular for reasons of urgency, the select committee, shall have the right to meet at its request, the competent organ of the SCE or any more appropriate level of management within the SCE having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Where the competent organ decides not to act in accordance with the opinion expressed by the representative body, this body shall have the right to a further meeting with the competent organ of the SCE with a view to seeking agreement.

In the case of a meeting organised with the select committee, those members of the representative body who represent employees who are directly concerned by the measures in question shall also have the right to participate.

The meetings referred to above shall not affect the prerogatives of the competent organ.

(d) Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the competent organ of the SCE, the representative body or the select committee, where necessary enlarged in accordance with the third subparagraph of paragraph (c), shall be entitled to meet without the representatives of the competent organ being present.

(e) Without prejudice to Article 10, the members of the representative body shall inform the representatives of the employees of the SCE and of its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(f) The representative body or the select committee may be assisted by experts of its choice.

(g) In so far as this is necessary for the fulfilment of their tasks, the members of the representative body shall be entitled to time off for training without loss of wages.

(h) The costs of the representative body shall be borne by the SCE, which shall provide the body's members with the financial and material resources needed to enable them to perform their duties in an appropriate manner.

In particular, the SCE shall, unless otherwise agreed, bear the cost of organising meetings and providing interpretation facilities and the accommodation and travelling expenses of members of the representative body and the select committee.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the representative body. They may in particular limit funding to cover one expert only.

### Part 3: Standard rules for participation

Employee participation in an SCE shall be governed by the following provisions:

(a) In the case of an SCE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SCE. Paragraph (b) shall apply *mutatis mutandis* to that end.

(b) In other cases where an SCE is established, the employees of the SCE, its subsidiaries and establishments and/or their representative body shall have the right to elect, appoint, recommend or oppose the appointment of a number of members of the administrative or supervisory body of the SCE equal to the highest proportion in force in the participating companies concerned before registration of the SCE.

(c) If none of the participating legal entities was governed by participation rules before registration of the SCE, the latter shall not be required to establish provisions for employee participation.

(d) The representative body shall decide on the allocation of seats within the

administrative or supervisory body among the members representing the employees from the various Member States or on the way in which the SCE's employees may recommend or oppose the appointment of the members of these bodies according to the proportion of the SCE's employees in each Member State. If the employees of one or more Member States are not covered by this proportional criterion, the representative body shall appoint a member from one of those Member States, in particular the Member State of the SCE's registered office where that is appropriate. Each Member State may determine the allocation of the seats it is given within the administrative or supervisory body.

(e) Every member of the administrative body or, where appropriate, the supervisory body of the SCE who has been elected, appointed or recommended by the representative body or, depending on the circumstances, by the employees shall be a full member with the same rights and obligations as the members representing the members of the cooperative, including the right to vote.

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2008/xxxx (CNS)

Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European private company**

(presented by the Commission)

{SEC(2008) 2098}

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## EXPLANATORY MEMORANDUM

### 1. CONTEXT

The Commission's communication on the Single Market for 21<sup>st</sup> century Europe<sup>1</sup> stresses the need for the continuous improvement of the framework conditions for businesses in the Single Market.

Small and medium-sized enterprises (SMEs) account for more than 99% of companies in the European Union but only 8% of them engage in cross-border trade and 5% have subsidiaries or joint ventures abroad. While it has become easier in recent years to set up businesses across the EU, more needs to be done to improve the access of SMEs to the Single Market, facilitate their growth and unlock their business potential.

The European Private Company Statute (*Societas Privata Europaea*) forms part of a package of measures designed to assist SMEs, referred to as the Small Business Act for Europe (SBA). The objective of the SBA is to make it easier for SMEs to do business in the Single Market and consequently to improve their market performance. The SPE is one of the priority initiatives of the Commission's 2008 Work Programme<sup>2</sup>.

### 2. OBJECTIVES OF THE PROPOSAL

The initiative creates a new European legal form intended to enhance the competitiveness of SMEs by facilitating their establishment and operation in the Single Market. At the same time, the Statute has the potential to benefit larger companies and groups.

The proposal for a Statute for an SPE is adapted to the specific needs of SMEs. It allows entrepreneurs to set up an SPE following the same, simple, flexible company law provisions across the Member States.

The proposal also aims to reduce compliance costs on the creation and operation of businesses arising from the disparities between national rules both on the formation and on the operation of companies.

The proposal does not regulate matters related to labour law, tax law, accounting, or the insolvency of the SPE. Nor does it deal with the contractual rights and obligations of the SPE or those of its shareholders other than those deriving from the articles of association of the SPE. These matters will continue to be governed by national law and existing Community law instruments, where relevant.

The choice of SPE as a legal form to conduct business activities in the EU should be neutral from a tax perspective. It is therefore important to ensure that the SPE enjoys the same tax treatment as similar national legal forms. To this end, the European Commission intends to

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "A single market for 21st century Europe" - COM(2007) 724, 20.11.2007.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: "Commission Legislative and Work Programme 2008" - COM(2007) 640.



begin discussions with Member States in autumn 2008 with a view to tabling a proposal to extend to the SPE the scope of the Parent Subsidiary Directive (90/435/EEC)<sup>3</sup>, the Merger Directive (90/434/EEC)<sup>4</sup> and the Interest and Royalties Directive (2003/49/EC)<sup>5</sup>. The Commission's objective is to ensure that these measures are in place and benefit SPEs from the start of their operations.

### **3. LEGAL BASIS**

The proposal is based on Article 308 of the EC Treaty. This provision provides the legal basis for EU actions aiming to attain one of the Community objectives in the absence of any specific legal basis in the EC Treaty. Article 308 is the legal basis of the existing European company forms, i.e. the European Company, the European Economic Interest Grouping and the European Co-operative Society.

### **4. SUBSIDIARITY AND PROPORTIONALITY**

The proposal aims to make the Single Market more accessible to SMEs by providing them with an instrument that facilitates the expansion of their activities in other Member States. However, the proposal does not make the creation of an SPE subject to a cross-border requirement (e.g. shareholders from different Member States or evidence of cross-border activity). In practice, entrepreneurs usually set up businesses in their own Member State before expanding to other countries. An initial cross-border requirement would, therefore, significantly reduce the potential of the instrument. In addition, a cross-border requirement could easily be circumvented and monitoring and enforcing it would put an unreasonable burden on Member States.

Action at EU level is necessary to enable SMEs to use the same company form across the EU. This objective cannot be achieved by the Member States themselves. Even if all Member States committed to making their corporate legislations more business-friendly, SMEs would still face a patchwork of 27 national regimes.

By offering SMEs a corporate vehicle that is uniform and legally certain, yet flexible, the SPE would constitute the most effective and targeted means of achieving the objective set out above. An alternative means of achieving the same objective would be to harmonise at least the core provisions of national company law regimes applicable to private limited-liability companies. This solution would entail a significant and probably disproportionate intrusion in Member States' legislations. In contrast to harmonisation, this proposal leaves national law largely untouched. It provides SMEs with an alternative form that would exist in parallel to national company forms.

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<sup>3</sup> Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 225, 22.9.1990, p. 6).

<sup>4</sup> Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ L 225, 20.8.1990, p.1).

<sup>5</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

The creation of a new European legal form requires a legal instrument that is directly applicable, i.e. a regulation. Neither a recommendation nor a directive would result in a uniform regime that is applicable in all Member States.

## 5. CONSULTATION OF INTERESTED PARTIES

The European Private Company Statute was initially developed by business and academic circles in the 1990s and gained broader support over time from industry organisations and from the European Economic and Social Committee<sup>6</sup>. It was listed as a possible measure of the 2003-2009 Action Plan on Modernising Company Law and Enhancing Corporate Governance<sup>7</sup>. The 2006 public consultation on the future priorities of the Commission in the fields of company law and corporate governance confirmed this support<sup>8</sup>.

In June 2006, the Legal Affairs Committee of the European Parliament held a public hearing on the SPE and drafted an own-initiative report and a resolution calling on the European Commission to present a proposal for an SPE before the end of 2007<sup>9</sup>. The Parliament reiterated its support and firm commitment to the initiative in a resolution of 25 October 2007<sup>10</sup>. Given the strong interest of the Parliament in the proposal, it should be closely associated in the work on the SPE from the start.

In July 2007, the Directorate General for Internal Market and Services launched a specific public consultation on the SPE. In addition, a survey among companies in the 27 Member States was conducted through the European Business Test Panel<sup>11</sup>.

On 10 March 2008, the Commission held a conference on the SPE.

The European Commission's advisory group on corporate governance and company law<sup>12</sup> provided information in relation to the impact assessment and advised on the substance of the SPE Statute. The group is also drafting examples of provisions for the articles of association of an SPE, which will be made available to facilitate the understanding of the draft Statute.

## 6. IMPACT ASSESSMENT

Recent surveys<sup>13</sup> and public consultations show that, despite their strong potential, SMEs face legal and administrative obstacles, which hinder their development in the Single Market.

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<sup>6</sup> Opinion of the Economic and Social Committee on a 'European Company Statute for SMEs' (OJ C 125, 27.5.2002, p. 19).

<sup>7</sup> COM(2003) 284.

<sup>8</sup> [http://ec.europa.eu/internal\\_market/company/consultation/index\\_en.htm](http://ec.europa.eu/internal_market/company/consultation/index_en.htm)

<sup>9</sup> European Parliament Report with recommendations to the Commission on the European private company Statute (2006/2013(INI)), A6-0434/2006 final.

<sup>10</sup> European Parliament resolution on the 14th company law directive and the European Private Company (B6-0399/07).

<sup>11</sup> Consultation: [http://ec.europa.eu/internal\\_market/company/epc/index\\_en.htm](http://ec.europa.eu/internal_market/company/epc/index_en.htm)

EBTP: [http://ec.europa.eu/yourvoice/ebtp/consultations/2007\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/2007_en.htm)

<sup>12</sup> [http://ec.europa.eu/internal\\_market/company/advisory/index\\_en.htm](http://ec.europa.eu/internal_market/company/advisory/index_en.htm)

<sup>13</sup> Survey of the Observatory of European SMEs (Flash EB N° 196) conducted by Gallup Organisation Hungary upon the request of DG for Enterprise and Industry, Survey presented at BusinessEurope's SME Action Day on 21 November 2007.

<http://www.business-europe.eu/Content/Default.asp?PageId=496>

Although all companies wishing to expand cross-border are affected by legal and administrative barriers, these are proportionately greater for smaller companies, who are less well equipped in terms of financial and human resources.

The difficulties which businesses face as a result of the diversity of company forms essentially consist of *compliance costs on the formation of a company* (e.g. mandatory minimum capital requirement, registration and notary fees, cost of expert legal advice) and of *difficulties and compliance costs associated with the operation of a company*, which make the day-to-day operation of foreign subsidiaries more expensive compared with domestic subsidiaries.

SMEs are also hindered in their cross-border development by the *lack of trust in certain foreign company forms* in other Member States. This problem exists mainly in relation to the less widely known company forms.

The impact assessment examines four high level policy options:

- *Taking no action and relying on existing legislation and case law:* despite efforts to make company formation quicker and easier throughout the EU, SMEs still have to face 27 company law regimes.
- *Seeking to harmonise the company laws of the Member States:* A high degree of harmonisation of national regimes would be necessary to significantly reduce the costs of company formation and operation across Member States. However, the major changes to national legislation which this approach would entail would not necessarily be proportionate to the objective of the proposal.
- *Improving the European Company Statute (SE) and adapting it to the needs of SMEs:* Making the Statute of the SE accessible to SMEs would require significant amendments. This option would require a thorough redrafting and re-negotiation of the SE Regulation before it is evaluated in 2008/2009.
- *Proposing an SPE Statute for SMEs:* The creation of a new European legal form targeting SMEs best solves the problems presented above by offering a company form featuring uniform rules on formation throughout the EU, flexibility as regards the internal organisation, thus saving costs. It would also offer SMEs a European label and thus make cross-border business easier.

## **7. EXPLANATION OF THE PROPOSAL**

### ***Chapter I: General provisions***

The general provisions define the main *features of the SPE*. The SPE is a company having legal personality and share capital. It is a limited-liability company, i.e. its shareholders may not be liable for more than the amount they have subscribed for. As the SPE is a private company, the shares of the SPE may not be offered to the public or be publicly traded.

There is no restriction on the *formation of the SPE*. It may be set up by one or more founders, natural persons and/or companies or firms under Article 48 of the EC Treaty. In addition, an SE, a European Co-operative Society, a European Economic Interest Grouping or another SPE may also take part in the formation of an SPE.

As regards the scope of application of the Statute and its interface with national law, the Regulation provides that:

- (1) An SPE is governed first and foremost by the directly applicable mandatory provisions of the Regulation. These rules facilitate the formation and ensure the necessary uniformity of the SPE in the EU.
- (2) The Regulation requires a range of matters, in particular the internal organisation of the SPE, to be regulated in the articles of association (Annex I). In order to ensure flexibility, shareholders are free to decide how to regulate these questions, subject only to the rules of the Regulation.
- (3) In matters covered by the SPE Statute, national company law is only relevant where specified by the Regulation. The provisions which are required or allowed by Annex I to be included in the articles of association are not subject to national law.

The provisions of the Regulation and the list of matters in Annex I which must be covered in the articles of association define the scope of the EU rules. The proposal does not contain any default provisions which apply in case the articles do not cover the matters listed in Annex I. However national law has to set out the sanctions of such omission or other breach of the Regulation.

National law governs those matters which are not covered by the Regulation or by the articles of association of the SPE as stipulated in Annex I. This is the case, in particular, for matters not mentioned in Annex I or in areas which are outside the scope of company law as such (e.g. labour, insolvency or tax law). The relevant applicable law is the law of the Member State where the SPE has its registered office, which applies to private limited-liability companies. Member States shall notify the name of the respective company form to the Commission.

## ***Chapter II: Formation***

The Regulation does not restrict the manner in which an SPE may be created. A SPE may be set up *ex nihilo*, in accordance with the provisions of the Regulation. It may also be created by transforming or dividing an existing company or by the merger of existing companies. Any company form existing under national law (private or public, with or without legal personality) may become an SPE, in accordance with the relevant provisions of national law. An SE or another SPE may also participate in the formation of an SPE.

The name of any European Private Company must be followed by the abbreviation "SPE". The SPE is required to have its registered office and its central administration or principal place of business in the territory of the Member States. However, in accordance with the *Centros* judgment<sup>14</sup> of the European Court of Justice, the SPE may be set up with its registered office and central administration or principal place of business in different Member States. Shareholders may also decide to transfer the registered office of the company to another Member State.

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<sup>14</sup> C-212/97.

The Regulation does not set up a specific registration procedure for the SPE but builds on the provisions laid down by the First Company law Directive (68/151/EEC), while setting out some requirements to make the formation of an SPE easier and cheaper. First, it must be possible to apply for the registration of a SPE by electronic means. Secondly, the Regulation contains a closed list of documents and particulars which Member States may require for the registration of the SPE. Changes in the documents and particulars must also be filed at the register.

Finally, the proposal provides for a single legality check, i.e. either control of the legality of the SPE's documents and particulars by an administrative or judicial body, or their certification by a notary, on registration of an SPE. Founders of the SPE must not be required to satisfy both conditions.

### ***Chapter III: Shares***

The Regulation allows shareholders a large degree of freedom to determine matters relating to *shares*, in particular the rights and obligations attached to shares. An SPE may issue ordinary or priority shares. Restrictions only apply when necessary in the interest of third parties or minority shareholders.

All shareholdings must be registered in the *list of the shareholders* drawn up and kept by the management body of the SPE. This list serves as evidence of shareholdings, unless proven otherwise. The list may be inspected by the shareholders or third parties on request.

The conditions for the *transfer of the shares* must be regulated in the articles of association. Any new restriction or prohibition on transfers requires a qualified majority decision (Article 27). In addition, to protect the interests of minority shareholders, such decision requires the consent of each shareholder affected by the restriction or prohibition.

The Regulation does not provide shareholders with the right to *squeeze-out* minority shareholders. Nor does it put an obligation on the majority shareholder or the SPE to buy the shares of the minority shareholder (*sell-out right*). Such provisions may be adopted in the articles of association. However, the Regulation allows both the expulsion and the withdrawal of a shareholder under specific circumstances.

### ***Chapter IV: Capital***

In order to facilitate start-ups, the Regulation sets the *minimum capital* requirement at €1. The proposal departs from the traditional approach that considers the requirement of a high minimum of legal capital as a means of creditor protection. Studies show that creditors nowadays look rather at aspects other than capital, such as cash flow, which are more relevant to solvency. Director-shareholders of small companies often offer personal guarantees to their creditors (e.g. to banks) and suppliers also use other methods to secure their claims, e.g. providing that ownership of goods only passes upon payment. Moreover, companies have different capital needs depending on their activity, and thus it is impossible to determine an appropriate capital for all companies. The shareholders of a company are the best placed to define the capital needs of their business.

The Regulation does not restrict the founding shareholders' right to decide what type of *consideration* is to be provided for the shares upon creation of the SPE or on capital increase. Accordingly, the articles of association must set out whether the founders need to provide consideration in cash or in kind. They are free to decide what property, rights, services, etc.

they accept as consideration for the shares and when it has to be paid or provided. Also, the articles must provide whether an expert valuation of the consideration in kind is needed or not. Shareholders are liable for their contribution, in accordance with the provisions of national law.

The Regulation contains uniform rules regarding *distributions* (e.g. dividend, purchase of the SPE's own shares, incurring of debt) to shareholders from the assets of the SPE. A distribution may only be made if the SPE satisfies a balance-sheet test, i.e. after the distribution its assets fully cover its liabilities. The proposal does not define "assets" or "liabilities", in this respect the relevant accounting provisions apply (i.e. the Fourth Directive (78/660/EEC) or Regulation (EC) No 1606/2002).

Since the preparation of a solvency test on distributions only exists at present in few Member States, the proposal does not make it mandatory for SPEs. However, it explicitly allows shareholders to provide for a solvency test in the articles, in addition to the balance-sheet test that is required by the Regulation. If shareholders require the management body to sign a solvency certificate before distribution, they also have to define the related requirements (e.g. the grounds, the criteria) and the certificate is to be disclosed.

The proposal does not prevent the SPE from acquiring its own shares under certain conditions to protect the company's assets. Before the acquisition of its own shares, the SPE must carry out a balance-sheet test and, if prescribed in the articles of association, a solvency test. Shareholders decide on acquisition. The non-pecuniary rights attached to the respective shares (in particular, voting and pre-emption rights) will be suspended. Additional conditions and further restrictions may be set out in the articles of association.

### ***Chapter V: Organisation of the SPE***

The shareholders of the SPE enjoy a high degree of freedom in determining the internal organisation of the SPE, subject to the Regulation. Article 27 provides a non exhaustive list of the *decisions which must be taken by shareholders*. The articles of association must set out the required majority and quorum for voting subject to Article 27 which provides that certain of these decisions require a qualified majority (i.e., at least 2/3 of the voting rights of the SPE, but the articles may provide for a greater majority, e.g. 3/4).

There is no obligation to hold physical general meetings. The method for the decision-making of shareholders is to be prescribed in the articles of association. Shareholders have broad information rights regarding the affairs of the SPE. Their right to challenge collective resolutions is subject to national law.

The Regulation ensures two specific minority rights for the shareholders: the right to request a shareholders' resolution and the right to request the competent court or administrative authority to appoint an independent expert (in particular, an independent auditor).

All decisions which are not listed in the Regulation or in the articles of association fall under the competence of the SPE's *management body* which is responsible for running the company. The articles determine the management structure of the SPE (a single director or several directors, a one-tier or a two-tier board system). However, if the SPE is subject to employee participation, the chosen management structure must allow for the exercise of this right.

The shareholders of the SPE decide on the appointment and removal of directors. The articles must set out the term of directors' mandates and any eligibility criterion. The Regulation

prohibits anyone who is disqualified from serving as a director in any Member State from serving as a director of the SPE.

The Regulation imposes on directors the duty of acting in the best interests of the company. Accordingly, *directors' duties* are owed to the SPE and may only be enforced by the company. The Regulation does not give individual shareholders or creditors the right to directly sue the members of the management body.

The Regulation lays down a general standard of care by requiring from directors the care and skill reasonably required in the conduct of business. The interpretation of this provision may be developed by national courts. While the Regulation also identifies the most important specific duties of the directors (e.g. propose distributions), the articles may set out further duties. Directors are required to avoid any actual or potential conflicts of interests. However, the articles of association may provide that situations involving such conflicts may be authorised.

The Regulation establishes *directors' liability* for any loss or damage suffered by the SPE due to the breach of their duties deriving from the Regulation, articles of association or a resolution of shareholders. However other aspects of liabilities, e.g. the consequences of the breach of duties or any business judgement rule, are governed by national law.

#### ***Chapter VI: Employee participation***

Employee participation exists in small companies only in a few Member States (e.g. Sweden, Denmark).

The general principle, derived from the Directive on cross-border mergers (2005/56/EC), is that the SPE is subject to the employee participation rules of the Member State where it has its registered office. Accordingly, the SPE, as regards employee participation, will be no more and no less attractive than comparable national companies.

Cross-border mergers involving SPEs are governed by the Directive on cross-border mergers. However, special rules are required in the case of the transfer of the registered office of an SPE.

#### ***Chapter VII: Transfer of the registered office of the SPE***

The SPE can transfer its registered office to another Member State, while maintaining its legal personality and not having to wind-up. In order to protect the interests of third parties, the Regulation does not allow the transfer of the SPE's registered office during winding-up, liquidation or similar proceedings.

The transfer procedure is inspired by the provisions on the transfer of the registered office of the SE Regulation.

The Regulation provides for a special regime where an SPE that is subject to employee participation transfers its registered office to another Member State where there is no or a lower level of employee participation rights or which does not provide for employees of establishments of the SPE situated in other Member States the same entitlement to exercise participation rights as they enjoyed before the transfer. In such cases, if at least one third of the SPE's employees are employed in the home Member State, negotiations must take place between the management body and the representatives of the employees to reach an

agreement on the participation of employees. In the absence of an agreement, the participation arrangements existing in the home Member State are maintained.

#### ***Chapter VIII: Restructuring, dissolution and nullity***

The Regulation refers the dissolution of an SPE or its transformation to a national company form to national law. Also, the SPE may merge with other companies and be divided up in accordance with the rules applicable to private limited-liability companies.

#### ***Chapter IX: Additional and transitional provisions***

Article 42 allows SPEs registered in a Member State outside the euro-zone to express their capital and to draw up their accounts in the national currency of that Member State, although such SPEs may also express their capital and/or draw up their accounts in euro.

#### ***Chapter X: Final provisions***

The Regulation requires the adoption of certain provisions by Member States. In particular, the procedural rules on registration, on the transfer of the registered office of the SPE along with sanction for breach of the Regulation and the articles of association, have to be adopted.



Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European private company**

**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission<sup>15</sup>,

Having regard to the opinion of the European Parliament<sup>16</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>17</sup>,

Whereas:

- (1) The legal framework in which business is carried out in the Community remains largely national. This exposes companies to a wide diversity of national laws, company forms and company regimes. The approximation of national laws by means of directives based on Article 44 of the Treaty can overcome some of these difficulties. Such approximation, however, does not release persons seeking to create companies from the obligation to adopt in each Member State a company form governed by the national law of that Member State.
- (2) Existing Community forms of company, notably the European Company (SE), whose legal form was established by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company<sup>18</sup> are designed for large companies. The minimum capital requirement for an SE and the restrictions on its formation make that form of company unsuitable for many businesses, in particular of a smaller size. In view of the problems faced by such businesses as a result of the diversity of company law regimes and the unsuitability of the SE for small businesses, it is appropriate to provide for a European company form specifically designed for small businesses, which it is possible to create throughout the Community.

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> OJ C , , p. .

<sup>18</sup> OJ L 294, 10.11.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

- (3) Since a private company (hereinafter "SPE") which may be created throughout the Community is intended for small businesses, a legal form should be provided which is as uniform as possible throughout the Community and as many matters as possible should be left to the contractual freedom of shareholders, while a high level of legal certainty is ensured for shareholders, creditors, employees and third parties in general. Given that a high degree of flexibility and freedom is to be left to the shareholders to organise the internal affairs of the SPE, the private nature of the company should also be reflected by the fact that its shares may not be offered to the public or negotiated on the capital markets, including being admitted to trading or listed on regulated markets.
- (4) In order to enable businesses to reap the full benefits of the internal market, the SPE should be able to have its registered office and principal place of business in different Member States and to transfer its registered office from one Member State to another, with or without also transferring its central administration or principal place of business.
- (5) To enable businesses to gain efficiencies and save costs, the SPE should be available in every Member State, with as few variations as possible as regards the company form.
- (6) To ensure a high degree of uniformity of the SPE, as many matters pertaining to the company form as possible should be governed by this Regulation, either through substantive rules or by reserving matters to the articles of association of the SPE. It is therefore appropriate to provide for a list of matters, to be set out in an Annex, in respect of which the shareholders of the SPE are obliged to lay down rules in the articles of association. In relation to those matters only Community law should apply, and consequently shareholders should be able to set out rules to regulate those matters, which are different from the rules prescribed by the law of the Member State where the SPE is registered, in relation to national forms of private limited-liability companies. National law should apply to matters where this is provided for by this Regulation and to all other matters that are not covered by the articles of this Regulation, such as insolvency, employment and tax, or are not reserved by it to the articles of association.
- (7) In order to make the SPE an accessible company form for individuals and small businesses, it should be capable of being created *ex nihilo* or of resulting from the transformation, the merger or the division of existing national companies. The creation of an SPE by way of transformation, merger or division of companies should be governed by the applicable national law.
- (8) In order to reduce the costs and administrative burdens associated with company registration, the formalities for the registration of the SPE should be limited to those requirements which are necessary to ensure legal certainty and the validity of the documents filed upon the creation of a SPE should be subject to a single verification, which may take place either before or after registration. For the purposes of registration, it is appropriate to use the registries designated by First Council Directive 68/151/EEC of 9 March 1968 on the co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of

companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community<sup>19</sup>.

- (9) Since small businesses often require long term financial and personal commitment, they should be able to adapt the structure of their share capital and the rights attached to shares to their specific circumstances. SPE shareholders should therefore be free to determine the rights attached to their shares, the procedure for the variation of those rights, the procedure to be followed if shares are transferred and any restriction on such transfer.
- (10) In order to preserve both the operation of the SPE and the freedom of shareholders, the SPE should have the possibility of applying to court to expel shareholders who seriously harm its interests and shareholders of the SPE whose interest suffered serious harm as a result of specific events should have the right to withdraw from the SPE.
- (11) The SPE should not be subject to a high mandatory capital requirement since this would be a barrier to the creation of SPEs. Creditors, however, should be protected from excessive distributions to shareholders which could affect the ability of the SPE to pay its debts. To this end, distributions that leave the SPE with liabilities exceeding the value of the assets of the SPE should be prohibited. Shareholders, however, should also be free to require the management body of the SPE to sign a solvency certificate.
- (12) Since creditors should be granted protection in the event of a reduction of the capital of the SPE, certain rules should be laid down concerning when such reductions are to take effect.
- (13) Since small businesses need legal structures that can be adapted to their needs and size and are able to evolve as activity develops, shareholders of the SPE should be free to determine in their articles of association the internal organisation which is best suited to their needs. An SPE may opt for one or more individual managing directors, a unitary or a dual board structure. However, mandatory rules ensuring the protection of minority shareholders should be introduced in order to avoid any unfair treatment of shareholders, in particular certain key resolutions should be adopted by a majority of no less than two-thirds of the total voting rights attached to the shares issued by the SPE. While a limit may be introduced on the right to request a resolution or to request an independent expert to investigate abuses, such right may not be made conditional on the ownership of more than 5% of the voting rights of the SPE, although the articles of association of the SPE may provide for a lower threshold.
- (14) Competent national authorities should monitor the completion and legality of the transfer of the registered office of an SPE to another Member State. The timely access of shareholders, creditors and employees to the transfer proposal and to the report of the management body should be ensured.
- (15) Employees' rights of participation should be governed by the legislation of the Member State in which the SPE has its registered office (the "home Member State"). The SPE should not be used for the purpose of circumventing such rights. Where the national legislation of the Member State to which the SPE transfers its registered

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<sup>19</sup> OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

office does not provide for at least the same level of employee participation as the home Member State, the participation of employees in the company following the transfer should in certain circumstances be negotiated. Should such negotiations fail, the provisions applying in the company before the transfer should continue to apply after the transfer.

- (16) Employees' rights other than rights of participation should remain subject to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>20</sup>, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies<sup>21</sup>, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the law of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses<sup>22</sup> and Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community<sup>23</sup>.
- (17) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation, including infringements of the obligation to regulate in the articles of association of the SPE the matters prescribed by this Regulation, and should ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (18) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308.
- (19) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States in so far as they involve the creation of a company form with common features throughout the Community and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity laid down in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives,

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<sup>20</sup> OJ L 254, 30.9.1994, p. 64. Directive as last amended by Directive 2006/109/EC (OJ L 363, 20.12.2006, p. 416).

<sup>21</sup> OJ L 225, 12.8.1998, p. 16.

<sup>22</sup> OJ L 82, 22.3.2001, p. 16.

<sup>23</sup> OJ L 80, 23.3.2002, p. 29.

HAS ADOPTED THIS REGULATION:

## ***CHAPTER I*** ***GENERAL PROVISIONS***

### *Article 1* **Subject matter**

This Regulation lays down the conditions governing the establishment and operation within the Community of companies in the form of a European private company with limited liability (*Societas Privata Europaea*, hereinafter "SPE").

### *Article 2* **Definitions**

1. For the purposes of this Regulation, the following definitions shall apply:
  - (a) 'shareholder' means the founding shareholder and any other person whose name is entered in the list of shareholders in accordance with Articles 15-16;
  - (b) 'distribution' means any financial benefit derived directly or indirectly from the SPE by a shareholder, in relation to the shares held by him, including any transfer of money or property, as well as the incurring of a debt;
  - (c) 'director' means any individual managing director, any member of the management, administrative board or supervisory body of an SPE;
  - (d) 'management body' means one or more individual managing directors, the management board (dual board) or the administrative board (unitary board), designated in the articles of association of the SPE as being responsible for the management of the SPE;
  - (e) 'supervisory body' means the supervisory board (dual board), designated in the articles of association of the SPE as being responsible for the supervision of the management body;
  - (f) 'home Member State' means the Member State in which the SPE has its registered office immediately before any transfer of its registered office to another Member State;
  - (g) 'host Member State' means the Member State to which the registered office of the SPE is transferred.
2. For the purposes of point (b) of paragraph 1, distributions may be made through a purchase of property, the redemption or other kind of acquisition of shares or by any other means.

*Article 3*  
**Requirements for the establishment of an SPE**

1. An SPE shall comply with the following requirements:
  - (a) its capital shall be divided into shares,
  - (b) a shareholder shall not be liable for more than the amount he has subscribed or agreed to subscribe,
  - (c) it shall have legal personality,
  - (d) its shares shall not be offered to the public and shall not be publicly traded,
  - (e) it may be formed by one or more natural persons and/or legal entities, hereinafter "founding shareholders".
2. For the purposes of point (d) of paragraph 1, shares shall be regarded as 'offered to the public' where a communication is addressed to persons in any form and by any means, and it presents sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe to these shares, including when shares are placed through financial intermediaries.
3. For the purposes of point (e) of paragraph 1, 'legal entities' shall mean any company or firm within the meaning of the second paragraph of Article 48 of the Treaty, a European public limited-liability company as provided for in Regulation (EC) No 2001/2157, hereinafter "European Company", a European Co-operative Society as provided for in Council Regulation (EC) No 1435/2003, a European Economic Interest Grouping as provided for in Council Regulation (EEC) No 2137/85 and an SPE.

*Article 4*  
**Rules applicable to an SPE**

1. An SPE shall be governed by this Regulation and also, as regards the matters listed in Annex I, by its articles of association.

However, where a matter is not covered by the articles of this Regulation or by Annex I, an SPE shall be governed by the law, including the provisions implementing Community law, which applies to private limited-liability companies in the Member State in which the SPE has its registered office, hereinafter "applicable national law".

## ***CHAPTER II*** ***FORMATION***

### *Article 5* **Method of formation**

1. Member States shall allow the formation of an SPE by any of the following methods:
  - (a) the creation of a SPE in accordance with this Regulation;
  - (b) the transformation of an existing company;
  - (c) the merger of existing companies;
  - (d) the division of an existing company.
2. Formation of the SPE by the transformation, merger or division of existing companies shall be governed by the national law applicable to the transforming company, to each of the merging companies or to the dividing company. Formation by transformation shall not give rise to the winding up of the company or any loss or interruption of its legal personality.
3. For the purposes of paragraphs 1 and 2, 'company' shall mean any form of company that may be set up under the law of the Member States, a European Company and, where applicable, an SPE.

### *Article 6* **Name of the company**

The name of an SPE shall be followed by the abbreviation "SPE".

Only an SPE may add the abbreviation "SPE" to its name.

### *Article 7* **Seat of the company**

An SPE shall have its registered office and its central administration or principal place of business in the Community.

An SPE shall not be under any obligation to have its central administration or principal place of business in the Member State in which it has its registered office.

### *Article 8* **Articles of association**

1. An SPE shall have articles of association that cover at least the matters set out in this Regulation, as provided for in Annex I.

2. The articles of association of a SPE shall be in writing and signed by every founding shareholder.
3. The articles of association and any amendments thereto may be relied upon as follows:
  - (a) in relation to the shareholders and the management body of the SPE and its supervisory body, if any, from the date on which they are signed or, in the case of amendments, adopted;
  - (b) in relation to third parties, in accordance with the provisions of the applicable national law implementing paragraphs 5, 6 and 7 of Article 3 of Directive 68/151/EEC.

*Article 9*  
**Registration**

1. Each SPE shall be registered in the Member State in which it has its registered office in a register designated by the applicable national law in accordance with Article 3 of Directive 68/151/EEC<sup>24</sup>.
2. The SPE shall acquire legal personality on the date on which it is entered in the register.
3. In the case of a merger by acquisition, the acquiring company shall adopt the form of an SPE on the day the merger is registered.

In the case of a division by acquisition, the recipient company shall adopt the form of an SPE on the day the division is registered.

*Article 10*  
**Formalities relating to registration**

1. Application for registration shall be made by the founding shareholders of the SPE or by any person authorised by them. Such application may be made by electronic means.
2. Member States shall not require any particulars and documents to be supplied upon application for the registration of a SPE other than the following:
  - (a) the name of the SPE and the address of its registered office;
  - (b) the names, addresses and any other information necessary to identify the persons who are authorised to represent the SPE in dealings with third parties and in legal proceedings, or take part in the administration, supervision or control of the SPE;
  - (c) the share capital of the SPE;

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<sup>24</sup> OJ L 65, 14.3.1968, p. 8.



- (d) the share classes and the number of shares in each share class;
  - (e) the total number of shares;
  - (f) the nominal value or accountable par of the shares;
  - (g) the articles of association of the SPE;
  - (h) where the SPE was formed as a result of a transformation, merger or division of companies, the resolution on the transformation, merger or division that led to the creation of the SPE.
3. The documents and particulars referred to in paragraph 2 shall be provided in the language required by the applicable national law.
  4. Registration of the SPE may be subject to only one of the following requirements:
    - (a) a control by an administrative or judicial body of the legality of the documents and particulars of the SPE;
    - (b) the certification of the documents and particulars of the SPE.
  5. The SPE shall submit any change in the particulars or documents referred to in points (a) to (g) of paragraph 2 to the register within 14 calendar days of the day on which the change takes place. After every amendment to the articles of association, the SPE shall submit its complete text to the register as amended to date.
  6. The registration of an SPE shall be disclosed.

*Article 11*  
**Disclosure**

1. The disclosure of the documents and particulars concerning an SPE which must be disclosed under this Regulation shall be effected in accordance with the applicable national law implementing Article 3 of Directive 68/151/EEC.
2. The letters and order forms of an SPE, whether they are in paper or electronic form, as well as its website, if any, shall state the following particulars:
  - (a) the information necessary to identify the register referred to in Article 9, with the number of entry of the SPE in that register;
  - (b) the name of the SPE, the address of its registered office and, where appropriate, the fact that the company is being wound up.

*Article 12*  
**Liability for acts undertaken before the registration of an SPE**

Where acts were performed on behalf of an SPE before its registration, the SPE may assume the obligations arising out of such acts after its registration. Where the SPE does not assume

those obligations, the persons who performed those acts shall be jointly and severally liable, without limit.

*Article 13*  
**Branches**

Branches of an SPE shall be governed by the law of the Member State in which the branch is located, including the relevant provisions implementing Council Directive 89/666/EEC<sup>25</sup>.

**CHAPTER III**  
**SHARES**

*Article 14*  
**Shares**

1. The shares of the SPE shall be entered in the list of shareholders.
2. Shares carrying the same rights and obligations shall constitute one class.
3. Subject to Article 27, the adoption of an amendment to the articles of association of the SPE which varies the rights attached to a class of shares (including any change to the procedure for varying the rights attached to a class of share) shall require the consent of a majority of not less than two-thirds of the voting rights attached to the shares issued in that class.
4. Where a share is owned by more than one person, those persons shall be regarded as one shareholder in relation to the SPE. They shall exercise their rights through a common representative, who in the absence of any notification to the SPE shall be the person whose name appears first in the list of shareholders for that share. They shall be jointly and severally liable for the commitments attached to the share.

*Article 15*  
**List of shareholders**

1. The management body of the SPE shall draw up a list of shareholders. The list shall contain at least the following:
  - (a) the name and address of each shareholder;
  - (b) the number of shares held by the shareholder concerned, their nominal value or accountable par;
  - (c) where a share is owned by more than one person, the names and addresses of the co-owners and of the common representative;

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<sup>25</sup> OJ L 395, 30.12.1989, p. 36.

- (d) the date of acquisition of the shares;
  - (e) the amount of each consideration in cash, if any, paid or to be paid by the shareholder concerned;
  - (f) the value and nature of each consideration in kind, if any, provided or to be provided by the shareholder concerned;
  - (g) the date on which a shareholder ceases to be a member of the SPE.
2. The list of shareholders shall, unless proven otherwise, constitute evidence of the authenticity of the matters listed in points (a) to (g) of paragraph 1.
  3. The list of shareholders and any amendments thereto shall be kept by the management body and may be inspected by the shareholders or third parties on request.

#### *Article 16*

#### **Transfer of shares**

1. Subject to Article 27, a decision introducing or amending a restriction on or prohibition of the transfer of shares may be adopted only with the consent of all shareholders affected by the restriction or prohibition in question.
2. All agreements on the transfer of shares shall be in written form.
3. On notification of a transfer, the management body shall, without undue delay, enter the shareholder in the list referred to in Article 15, provided that the transfer has been executed in accordance with this Regulation and the articles of association of the SPE and the shareholder submits reasonable evidence as to his lawful ownership of the share.
4. Subject to paragraph 3, any transfer of shares shall become effective as follows:
  - (a) in relation to the SPE, on the day the shareholder notifies the SPE of the transfer;
  - (b) in relation to third parties, on the day the shareholder is entered in the list referred to in Article 15.
5. A transfer of shares shall be valid only if it complies with this Regulation and the articles of association. The provisions of the applicable national law concerning the protection of persons who acquire shares in good faith shall apply.

#### *Article 17*

#### **Expulsion of a shareholder**

1. On the basis of a resolution of the shareholders and on an application by the SPE, the competent court may order the expulsion of a shareholder if he has caused serious harm to the SPE's interest or the continuation of the shareholder as a member of the

SPE is detrimental to its proper operation. An application to the court shall be made within 60 calendar days of the resolution of the shareholders.

2. The court shall decide whether, as an interim measure, the voting and other non-pecuniary rights of such shareholder should be suspended until a final decision is taken.
3. If the court orders the expulsion of a shareholder, it shall decide whether his shares are to be acquired by the other shareholders and/or by the SPE itself and on payment of the price of the shares.

#### *Article 18*

#### **Withdrawal of a shareholder**

1. A shareholder shall have the right to withdraw from the SPE if the activities of the SPE are being or have been conducted in a manner which causes serious harm to the interests of the shareholder as a result of one or more of the following events:
  - (a) the SPE has been deprived of a significant part of its assets;
  - (b) the registered office of the SPE has been transferred to another Member State;
  - (c) the activities of the SPE have changed substantially;
  - (d) no dividend has been distributed for at least 3 years even though the SPE's financial position would have permitted such distribution.
2. The shareholder shall submit his withdrawal in writing to the SPE stating his reasons for the withdrawal.
3. The management body of the SPE shall, on receipt of the notice referred to in paragraph 2, without undue delay, request a resolution of the shareholders on the purchase of the shareholder's shares by the other shareholders or by the SPE itself.
4. Where the shareholders of the SPE fail to adopt a resolution referred to in paragraph 3 or do not accept the shareholder's reasons for withdrawal within 30 calendar days of the submission of the notice referred to in paragraph 2, the management body shall notify the shareholder of that fact without undue delay.
5. In the case of a dispute regarding the price of the shares, their value shall be determined by an independent expert appointed by the parties or, failing an agreement between them, by the competent court or administrative authority.
6. On an application of the shareholder, the competent court may, if satisfied that the interests of the shareholder have suffered serious harm, order the acquisition of his shares by the other shareholders or by the SPE itself and the payment of the price of the shares.

An application to the court shall be made either within 60 calendar days of the resolution of the shareholders referred to in paragraph 3 or, where no resolution is

adopted within 30 calendar days of the shareholder submitting his notice of withdrawal to the SPE, within 60 calendar days of the expiry of that period.

## ***CHAPTER IV*** ***CAPITAL***

### ***Article 19*** **Share capital**

1. Without prejudice to Article 42, the capital of the SPE shall be expressed in euro.
2. The capital of the SPE shall be fully subscribed.
3. The shares of the SPE do not need to be fully paid on issue.
4. The capital of the SPE shall be at least EUR 1.

### ***Article 20*** **Consideration for shares**

1. Shareholders must pay the agreed consideration in cash or provide the agreed consideration in kind in accordance with the articles of association of the SPE.
2. Except in the case of a reduction of the share capital, shareholders may not be released from the obligation to pay or provide the agreed consideration.
3. Without prejudice to paragraphs 1 and 2, the liability of shareholders for the consideration paid or provided shall be governed by the applicable national law.

### ***Article 21*** **Distributions**

1. Without prejudice to Article 24, the SPE may, on the basis of a proposal of the management body, make a distribution to shareholders provided that, after the distribution, the assets of the SPE fully cover its liabilities. The SPE may not distribute those reserves that may not be distributed under its articles of association.
2. If the articles of association so require, the management body of the SPE, in addition to complying with paragraph 1, shall sign a statement, hereinafter a 'solvency certificate', before a distribution is made, certifying that the SPE will be able to pay its debts as they become due in the normal course of business within one year of the date of the distribution. Shareholders shall be provided with the solvency certificate before the resolution on the distribution referred to in Article 27 is taken.

The solvency certificate shall be disclosed.

### ***Article 22*** **Recovery of distributions**

Any shareholder who has received distributions made contrary to Article 21 must return those distributions to the SPE, provided that the SPE proves that the shareholder knew or in view of the circumstances should have been aware of the irregularities.

*Article 23*  
**Own shares**

1. The SPE shall not, directly or indirectly, subscribe for its own shares.
2. In the case of acquisition by the SPE of its own shares, Articles 21 and 22 shall apply mutatis mutandis. Shares may not be purchased by the SPE unless they are fully paid. The SPE shall always have at least one issued share.
3. The right to vote and other non-pecuniary rights attached to the SPE's own shares shall be suspended, while the SPE is the registered owner of its own shares.
4. Where the SPE cancels its own shares, its share capital shall be reduced accordingly.
5. Shares acquired by the SPE in contravention of this Regulation or the articles of association shall be sold or cancelled within one year of their acquisition.
6. Subject to paragraph 5 and to the articles of association of the SPE, the cancellation of shares shall be governed by the applicable national law.
7. This Article shall apply mutatis mutandis to any shares acquired by a person acting in his own name but on behalf of the SPE.

*Article 24*  
**Capital reduction**

1. In the case of a reduction of the share capital of the SPE, Articles 21 and 22 shall apply mutatis mutandis.
2. Following the disclosure of the resolution of the shareholders to reduce the capital of the SPE, those creditors whose claims antedate the disclosure of the resolution shall have the right to apply to the competent court for an order that the SPE provide them with adequate safeguards.

An application shall be made within 30 calendar days of the disclosure of the resolution.

3. The court may order the SPE to provide safeguards only if the creditor credibly demonstrates that due to the reduction in the capital the satisfaction of his claims is at stake, and that no adequate safeguards have been obtained from the SPE.
4. A capital reduction shall take effect as follows:
  - (a) where the SPE has no creditors at the time when the resolution is adopted, on its adoption;

- (b) where the SPE has creditors at the time when the resolution is adopted and no creditor has made an application within 30 calendar days of the disclosure of the resolution of the shareholders, on the thirty-first calendar day following that disclosure;
  - (c) where the SPE has creditors at the time when the resolution is adopted and an application is made by a creditor within 30 calendar days of the disclosure of the resolution of shareholders, on the first date on which the SPE has complied with all orders by the competent court to provide adequate safeguards or, if earlier, the first date on which the court has determined, in relation to all applications that the SPE need not provide any safeguards.
5. If the purpose of a reduction of the capital is to offset losses incurred by the SPE, the reduced amount may be used only for this purpose and shall not be distributed to the shareholders.
  6. A capital reduction shall be disclosed.
  7. In the case of a capital reduction, the equal treatment of shareholders in the same position shall be ensured.

#### *Article 25*

##### **Accounts**

1. An SPE shall be subject to the requirements of the applicable national law as regards preparation, filing, auditing and publication of accounts.
2. The management body shall keep the books of the SPE. The bookkeeping of the SPE shall be governed by the applicable national law.

#### **CHAPTER V**

##### **ORGANISATION OF THE SPE**

#### *Article 26*

##### **General provisions**

1. The SPE shall have a management body, which shall be responsible for the management of the SPE. The management body may exercise all the powers of the SPE not required by this Regulation or the articles of association to be exercised by the shareholders.
2. The shareholders shall determine the organisation of the SPE, subject to this Regulation.

*Article 27*

**Resolutions of shareholders**

1. Without prejudice to paragraph 2, at least the following matters shall be decided by a resolution of the shareholders by a majority as defined in the articles of association of the SPE:
  - (a) variation of rights attaching to shares;
  - (b) expulsion of a shareholder;
  - (c) withdrawal of a shareholder;
  - (d) approval of the annual accounts;
  - (e) distribution to the shareholders;
  - (f) acquisition of own shares;
  - (g) redemption of shares;
  - (h) increase of share capital;
  - (i) reduction of share capital;
  - (j) appointment and removal of directors and their terms of office;
  - (k) where the SPE has an auditor, appointment and removal of the auditor;
  - (l) transfer of the registered office of the SPE to another Member State;
  - (m) transformation of the SPE;
  - (n) mergers and divisions;
  - (o) winding up;
  - (p) amendments to the articles of association, not covering matters mentioned in points (a) to (o).
2. Resolutions on the matters indicated in points (a), (b), (c), (i), (l), (m) (n), (o) and (p) of paragraph 1 shall be taken by a qualified majority.

For the purposes of the first subparagraph, the qualified majority may not be less than two-thirds of the total voting rights attached to the shares issued by the SPE.
3. The adoption of resolutions shall not require the organisation of a general meeting. The management body shall provide all shareholders with the proposals for resolutions together with sufficient information to enable them to take an informed decision. Resolutions shall be recorded in writing. Copies of the decisions taken shall be sent to every shareholder.



4. Resolutions of the shareholders shall comply with this Regulation and the articles of association of the SPE.

The right of shareholders to challenge resolutions shall be governed by the applicable national law.

5. If the SPE has only one shareholder, he shall exercise the rights and fulfill the obligations of the shareholders of the SPE set out in this Regulation and the articles of association of the SPE.
6. Resolutions on matters indicated in paragraph 1 shall be disclosed.
7. Resolutions may be relied on as follows:
  - (a) in relation to the shareholders, the management body of the SPE and its supervisory body, if any, on the date they are adopted,
  - (b) in relation to third parties, in accordance with the provisions of the applicable national law implementing paragraphs 5, 6 and 7 of Article 3 of Directive 68/151/EEC.

#### *Article 28*

#### **Information rights of shareholders**

1. Shareholders shall have the right to be duly informed and to ask questions to the management body about resolutions, annual accounts and all other matters relating to the activities of the SPE.
2. The management body may refuse to give access to the information only if doing so could cause serious harm to the business interests of the SPE.

#### *Article 29*

#### **Right to request a resolution and right to request an independent expert**

1. Shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the management body to submit a proposal for a resolution to the shareholders.

The request must state the reasons and indicate the matters that should be subject to such resolution.

If the request is refused or if the management body does not submit a proposal within 14 calendar days of receiving the request, the shareholders concerned may then submit a proposal for a resolution to the shareholders regarding the matters in question.

2. In the case of suspicion of serious breach of law or of the articles of association of the SPE, shareholders holding 5% of the voting rights attached to the shares of the SPE shall have the right to request the competent court or administrative authority to appoint an independent expert to investigate and report on the findings of the investigation to shareholders.

The expert shall be allowed access to the documents and records of the SPE and to require information from the management body.

3. The articles of association may grant the rights set out in paragraphs 1 and 2 to individual shareholders or to shareholders holding less than 5% of the voting rights attached to the shares of the SPE.

#### *Article 30*

##### **Directors**

1. Only a natural person may be a director of an SPE.
2. A person who acts as a director without having been formally appointed shall be considered a director as regards all duties and liabilities to which the latter are subject.
3. A person who is disqualified under national law from serving as a director of a company by a judicial or administrative decision of a Member State may not become or serve as a director of an SPE.
4. Disqualification of a person serving as a director of the SPE shall be governed by the applicable national law.

#### *Article 31*

##### **General duties and liabilities of directors**

1. A director shall have a duty to act in the best interests of the SPE. He shall act with the care and skill that can reasonably be required in the conduct of the business.
2. The duties of directors shall be owed to the SPE.
3. Subject to the articles of association of the SPE, a director shall avoid any situation that can be reasonably regarded as likely to give rise to an actual or potential conflict between his personal interests and those of the SPE or between his obligations towards the SPE and his duty to any other legal or natural person.
4. A director of the SPE shall be liable to the company for any act or omission in breach of his duties deriving from this Regulation, the articles of association of the SPE or a resolution of shareholders which causes loss or damage to the SPE. Where such breach has been committed by more than one director, all directors concerned shall be jointly and severally liable.
5. Without prejudice to the provisions of this Regulation, the liability of directors shall be governed by the applicable national law.

#### *Article 32*

##### **Related party transactions**

Related party transactions shall be governed by the provisions of the applicable national law implementing Council Directives 78/660/EEC<sup>26</sup> and 83/349/EEC<sup>27</sup>.

*Article 33*

**Representation of the SPE in relation to third parties**

1. The SPE shall be represented in relation to third parties by one or more directors. Acts undertaken by the directors shall be binding on the SPE even if they are not within the objects of the SPE.
2. The articles of association of the SPE may provide that directors are to exercise jointly the general power of representation. Any other limitation of the powers of the directors, following from the articles of association, a resolution of shareholders or a decision of the management or supervisory body, if any, may not be relied on against third parties even if they have been disclosed.
3. Directors may delegate the right to represent the SPE in accordance with the articles of association.

**CHAPTER VI**

**EMPLOYEE PARTICIPATION**

*Article 34*

**General provisions**

1. The SPE shall be subject to the rules on employee participation, if any, applicable in the Member State in which it has its registered office, subject to the provisions of this Article.
2. In the case of the transfer of the registered office of an SPE Article 38 shall apply.
3. In the case of a cross-border merger of an SPE with an SPE or other company registered in another Member State, the provisions of the laws of the Member States implementing Directive 2005/56/EC of the European Parliament and of the Council<sup>28</sup> shall apply.

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<sup>26</sup> OJ L 222, 14.8.1978, p. 11.

<sup>27</sup> OJ L 193, 18.7.1983, p. 1.

<sup>28</sup> OJ L 310, 25.11.2005, p. 1.

**CHAPTER VII**  
**TRANSFER OF THE REGISTERED OFFICE OF THE SPE**

*Article 35*

**General provisions**

1. The registered office of an SPE may be transferred to another Member State in accordance with this Chapter.

The transfer of the registered office of an SPE shall not result in the winding-up of the SPE or in any interruption or loss of the SPE's legal personality or affect any right or obligation under any contract entered into by the SPE existing before the transfer.

2. Paragraph 1 shall not apply to SPEs against which proceedings for winding-up, liquidation, insolvency or suspension of payments have been brought, or in respect of which preventive measures have been taken by the competent authorities to avoid the opening of such proceedings.
3. A transfer shall take effect on the date of registration of the SPE in the host Member State. From that date, for matters covered by the second paragraph of Article 4, the SPE shall be regulated by the law of the host Member State.
4. For the purpose of judicial or administrative proceedings commenced before the transfer of the registered office, the SPE shall be considered, following the registration referred to in paragraph 3, as having its registered office in the home Member State.

*Article 36*

**Transfer procedure**

1. The management body of an SPE planning a transfer shall draw up a transfer proposal, which shall include at least the following particulars:
  - (a) the name of the SPE and the address of its registered office in the home Member State;
  - (b) the name of the SPE and the address of its proposed registered office in the host Member State;
  - (c) the proposed articles of association for the SPE in the host Member State;
  - (d) the proposed timetable for the transfer;
  - (e) the date from which it is proposed that the transactions of the SPE are to be regarded for accounting purposes as having been carried out in the host Member State;

- (f) the consequences of the transfer for employees, and the proposed measures concerning them;
  - (g) where appropriate, detailed information on the transfer of the central administration or principal place of business of the SPE.
2. At least one month before the resolution of the shareholders referred to in paragraph 4 is taken, the management body of the SPE shall:
    - (a) submit the transfer proposal to the shareholders and employee representatives, or where there are no such representatives, to the employees of the SPE for examination and make it available to the creditors for inspection;
    - (b) disclose the transfer proposal.
  3. The management body of the SPE shall draw up a report to the shareholders explaining and justifying the legal and economic aspects of the proposed transfer and setting out the implications of the transfer for shareholders, creditors and employees. The report shall be submitted to the shareholders and the employee representatives, or where there are no such representatives, to the employees themselves together with the transfer proposal.
 

Where the management body receives in time the opinion of the employee representatives on the transfer, that opinion shall be submitted to the shareholders.
  4. The transfer proposal shall be submitted to the shareholders for approval in accordance with the rules of the articles of association of the SPE relating to the amendment of the articles of association.
  5. Where the SPE is subject to an employee participation regime, shareholders may reserve the right to make the implementation of the transfer conditional on their express ratification of the arrangements with respect to the participation of employees in the host Member State.
  6. The protection of any minority shareholders who oppose the transfer and of the creditors of the SPE shall be governed by the law of the home Member State.

#### *Article 37*

#### **Scrutiny of the legality of the transfer**

1. Each Member State shall designate a competent authority to scrutinise the legality of the transfer by verifying compliance with the transfer procedure laid down in Article 36.
2. The competent authority of the home Member State shall verify, without undue delay, that the requirements of Article 36 have been met and, if that is found to be the case, shall issue a certificate confirming that all the formalities required under the transfer procedure have been completed in the home Member State.

3. Within one month of the receipt of the certificate referred to in paragraph 2, the SPE shall present the following documents to the competent authority in the host Member State:
  - (a) the certificate provided for in paragraph 2;
  - (b) the proposed articles of association for the SPE in the host Member State, as approved by the shareholders;
  - (c) the transfer proposal, as approved by the shareholders.

Those documents shall be deemed to be sufficient to enable the registration of the SPE in the host Member State.

4. The competent authority in the host Member State shall, within 14 calendar days of receipt of the documents referred to in paragraph 3, verify that the substantive and formal conditions required for the transfer of the registered office are met and if that is found to be the case, take the measures necessary for the registration of the SPE.
5. The competent authority of the host Member State may refuse to register an SPE only on the grounds that the SPE does not meet all the substantive or formal requirements under this Chapter. The SPE shall be registered when it has fulfilled all requirements under this Chapter.
6. Using the notification form set out in Annex II, the competent authority of the host Member State shall, without undue delay, notify the competent authority responsible for removing the SPE from the register in the home Member State of the registration of the SPE in the host Member State.

Removal from the register shall be effected as soon as, but not before, a notification has been received.

7. Registrations in the host Member State and removals from the register in the home Member State shall be disclosed.

#### *Article 38*

#### **Arrangements for the participation of employees**

1. The SPE shall be subject, as from the date of registration, to the rules in force in the host Member State, if any, concerning arrangements for the participation of employees.
2. Paragraph 1 shall not apply where the employees of the SPE in the home Member State account for at least one third of the total number of employees of the SPE including subsidiaries or branches of the SPE in any Member State, and where one of the following conditions is met:
  - (a) the legislation of the host Member State does not provide for at least the same level of participation as that operated in the SPE in the home Member State prior to its registration in the host Member State. The level of employee participation shall be measured by reference to the proportion of employee

representatives amongst the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the SPE, subject to employee representation;

- (b) the legislation of the host Member State does not confer on the employees of establishments of the SPE that are situated in other Member States the same entitlement to exercise participation rights as such employees enjoyed before the transfer.
3. Where one of the conditions set out in points a) or b) of paragraph 2 is met, the management body of the SPE shall take the necessary steps, as soon as possible, after disclosure of the transfer proposal, to start negotiations with the representatives of the SPE's employees with a view to reaching an agreement on arrangements for the participation of the employees.
  4. The agreement between the management body of the SPE and the representatives of the employees shall specify:
    - (a) the scope of the agreement;
    - (b) where, during the negotiations, the parties decide to establish arrangements for participation in the SPE following the transfer, the substance of those arrangements including, where applicable, the number of members in the company's administrative or supervisory body employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by employees, and their rights;
    - (c) the date of entry into force of the agreement and its duration, and any cases in which the agreement should be renegotiated and the procedure for its renegotiation.
  5. Negotiations shall be limited to a period of six months. The parties may agree to extend negotiations beyond this period for an additional six-month period. The negotiations shall otherwise be governed by the law of the home Member State.
  6. In the absence of an agreement, the participation arrangements existing in the home Member State shall be maintained.

## ***CHAPTER VIII*** ***RESTRUCTURING, DISSOLUTION AND NULLITY***

### *Article 39* **Restructuring**

The transformation, merger and division of the SPE shall be governed by the applicable national law.

*Article 40*  
**Dissolution**

1. The SPE shall be dissolved in the following circumstances:
  - (a) by expiry of the period for which it was established;
  - (b) by the resolution of the shareholders;
  - (c) in cases set out in the applicable national law.
2. Winding-up shall be governed by the applicable national law.
3. Liquidation, insolvency, suspension of payments and similar procedures shall be governed by the applicable national law and by Council Regulation (EC) No 1346/2000<sup>29</sup>.
4. Dissolution of the SPE shall be disclosed.

*Article 41*  
**Nullity**

The nullity of the SPE shall be governed by the provisions of the applicable national law implementing Article 11(1) of Directive 68/151/EEC, points (a), (b), (c) and (e), except for the reference in point (c) to the objects of the company, of Article 11(2) and Article 12 of that Directive.

**CHAPTER IX**  
**ADDITIONAL AND TRANSITIONAL PROVISIONS**

*Article 42*  
**Use of national currency**

1. Member States in which the third phase of the economic and monetary union (EMU) does not apply may require SPEs having their registered office in their territory to express their capital in the national currency. An SPE may also express its capital in euro. The national currency/euro conversion rate shall be as on the last day of the month preceding the registration of the SPE.
2. An SPE may prepare and publish its annual and, where applicable, consolidated accounts in euro in Member States where the third phase of the economic and monetary union (EMU) does not apply. However such Member States may also require SPEs to prepare and publish their annual and, where applicable, consolidated accounts in the national currency in accordance with the applicable national law.

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<sup>29</sup> OJ L 160, 30.6.2000, p. 1.



## **CHAPTER X**

### **FINAL PROVISIONS**

#### *Article 43*

#### **Effective application**

Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

#### *Article 44*

#### **Penalties**

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 July 2010 at the latest and shall notify it without delay of any subsequent amendment affecting them.

#### *Article 45*

#### **Notification of private limited-liability companies**

Member States shall notify the form of private limited-liability company referred to in the second paragraph of Article 4 to the Commission by 1 July 2010 at the latest.

The Commission shall publish this information in the *Official Journal of the European Union*.

#### *Article 46*

#### **Obligations of authorities responsible for registers**

1. The authorities responsible for the register referred to in Article 9(1) shall notify the Commission before 31 March each year, of the name, registered office and registration number of the SPEs registered in and removed from the register in the preceding year as well as the total number of registered SPEs.
2. The authorities referred to in paragraph 1 shall cooperate with each other to ensure that the documents and particulars of the SPEs listed in Article 10(2) are also accessible through the registers of all other Member States.

#### *Article 47*

#### **Review**

The Commission shall, no later than 30 June 2015, review the application of this Regulation.

*Article 48*  
**Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX I

**The articles of association of an SPE shall regulate at least the following:**

### ***Chapter II – Formation***

- the name of the SPE,
- the names and addresses of the founding shareholders of the SPE and the nominal value or accountable par of the shares held by them,
- the initial capital of the SPE,

### ***Chapter III - Shares***

- whether sub-division, consolidation or redenomination of the shares is permitted and any applicable requirements,
- the pecuniary and non-pecuniary rights and the obligations attached to the shares (share classes), in particular
  - (a) the participation in the assets and profits of the company, if any,
  - (b) the votes attached to the shares, if any,
- the procedure for agreeing on any variation of the rights and obligations attached to the shares (share classes), and, subject to Article 14(3), the required majority of voting rights,
- any pre-emption rights either on issue or on transfer of shares, if any, and any applicable requirements,
- where the transfer of shares is restricted or prohibited, the details of the restriction or prohibition, in particular the form, time limit, the applicable procedure, and the rules applicable in the event of the death or dissolution of a shareholder,
- where the approval of the share transfer by the SPE or by the shareholders is required or other rights are provided for shareholders or for the SPE on the transfer of shares (for example, right of first refusal), a deadline by which the transferor is to be notified of the decision,
- whether, in addition to Article 17, shareholders have any rights to require other shareholders to sell their shares, and any applicable requirements,
- whether, in addition to Article 18, shareholders have the right to sell their shares to other shareholders or to the SPE, who are obliged to buy those shares, and the applicable requirements,

## ***Chapter IV – Capital***

- the financial year of the SPE and how it may be changed,
- whether the SPE is required to establish reserves and if so, the type of reserve, the circumstances in which it is to be established and whether it is distributable,
- whether consideration in kind are to be evaluated by an independent expert and any formalities that must be complied with,
- the time when the payment or provision of the consideration is to be made and any conditions relating to such payment or provision,
- whether or not the SPE can provide financial assistance, in particular advance funds, make loans or provide security, with a view to the acquisition of its shares by a third party,
- whether interim dividends can be paid and any applicable requirements,
- whether the management body is required to sign a solvency certificate before a distribution is made, and the applicable requirements,
- the procedure the SPE must follow to recover any unlawful distribution,
- whether the acquisition of own shares is permitted and, if permitted, the procedure to be followed, including the conditions under which the shares may be held, transferred or cancelled,
- the procedure for increasing, reducing or otherwise changing the share capital, and any applicable requirements,

## ***Chapter V – Organisation of the SPE***

- the method of adopting shareholder resolutions,
- subject to the provisions of this Regulation, the majority required to adopt shareholder resolutions,
- the resolutions to be adopted by the shareholders, in addition to those listed in Article 27(1), the quorum and the required majority of voting rights,
- subject to Articles 21, 27 and 29, the rules on proposing resolutions,
- the period of time and the manner in which the shareholders are to be informed of proposals for shareholder resolutions and, if the articles of association provide for general meetings, general meetings,
- the way in which the shareholders obtain the text of any proposed shareholder resolution and any other preparatory documents in relation to the adoption of a resolution,
- the manner in which copies of an adopted resolution are made available to the shareholders,
- where the articles of association provide for the adoption of some or all resolutions at a general meeting, the manner of convening the general meeting, the working methods and the rules on voting by proxy,
- the procedure and time limits for the SPE to respond to requests from shareholders for information, to grant access to the documents of the SPE, and to notify resolutions that have been adopted by shareholders,
- whether the SPE's management body is composed of one or more managing directors, a management board (dual board) or an administrative board (unitary board),
- where there is an administrative board (unitary board), its composition and organisation,

- where there is a management board (dual board), its composition and organisation,
- where there is a management board (dual board) or one or more managing directors, whether the SPE has a supervisory body, and if so, its composition and organisation and its relationship with the management body,
- any eligibility criterion of directors,
- the procedure for appointing and removing directors,
- whether the SPE has an auditor and where the articles of association provide that the SPE should have an auditor, the procedure for his appointment, removal and resignation,
- any specific duties of directors other than those mentioned in this Regulation,
- whether situations involving an actual or potential conflict of interest by a director may be authorised and, if so, an indication of who may authorise such a conflict and the applicable requirements and procedures for the authorisation of such a conflict,
- whether related party transactions as referred to in Article 32 need to be authorised and the applicable requirements,
- the rules on representation of the SPE by the management body, in particular if the directors have the right to represent the SPE jointly or separately and any delegation of this right,
- the rules on delegation of any management power to another person.

**ANNEX II**

**NOTIFICATION FORM CONCERNING THE REGISTRATION OF THE  
TRANSFER OF THE REGISTERED OFFICE OF AN SPE**

**NOTIFICATION**

**concerning the registration of the transfer of the registered office of a European private  
company (SPE)**

[Name and address of the new register/competent authority]

**hereby informs**

[Name and address of the former register/competent authority]

**that the following transfer of the registered office of an SPE has been registered:**

[Name of the SPE]

[New registered office of the SPE]

[New number of entry in the register]

[Date of registration of the transfer]

**In accordance with Regulation ... on the Statute for a European private company, the  
following SPE is to be removed from its former register on receipt of this notification:**

[Name of the SPE]

[Former registered office of the SPE]

[Former number of entry in the register]

**Done at..., [...]**

*[signed]*

## **"Think Small First": A Small Business Act for Europe**

***Most jobs in the EU are provided for by Small and Medium Sized Enterprises (SMEs), companies of 250 employees or less. They have a crucial importance for the future development, but very often face enormous bureaucratic hurdles and obstacles. European SMEs deserve to be better assisted to fully unlock their potential of long term sustainable growth and of more job creation. To achieve this goal, the European Commission has unveiled today the Small Business Act for Europe (SBA), based on ten guiding principles and proposes policy actions to be undertaken by both the Commission and Member States.***

Commission President José Manuel Durão Barroso said: *"Today's Small Business Act is a step towards a Europe of entrepreneurs, with less red tape and more red carpet for Europe's 23 million SMEs. It aims to help small businesses to thrive and to give the best ones a launch pad to grow into world beaters. The Small Business Act is a crucial milestone in the implementation of the Lisbon Strategy for Growth and Jobs. It will mean more responsive public administrations, less late payment of invoices, access to more help with finance, innovation and training, lower VAT for services supplied locally and better access to public procurement contracts. The package will also give SMEs access to a European Private Company Statute to cut bureaucracy and increase clarity"*

Commission Vice-President Günter Verheugen, responsible for enterprise and industry policy said *"Entrepreneurs and entrepreneurship are of enormous importance for our societies. Today and even more so tomorrow small and medium sized enterprises will provide for professional education and employment opportunities. Caring about SMEs means therefore caring about present and future jobs in the EU. Therefore it is high time that an SME friendly policy becomes mainstream policy in the EU. The Small Business Act is driven by the "Think Small First principle" and brings the full weight of EU and its Member States behind small companies. Together we can deliver."*

Internal Market and Services Commissioner Charlie McCreevy said: *"Small companies across Europe can look forward to a new instrument to do business in the Single Market. The SPE is transparent, flexible and will offer a strong label everywhere. I therefore encourage the Council and the European Parliament to quickly reach an agreement on the Commission's proposal."*

European Investment Bank (EIB) President Philippe Maystadt, added: *"The analysis of the Commission confirms the conclusions of the EIB's own consultation exercise: small and medium-sized enterprises wellbeing and growth will be key to Europe's future competitiveness. The market alone is unable to provide sufficient and appropriately priced finance for SMEs, in particular for high growth, innovative businesses. The EIB Group will therefore seek to address gaps in the market by broadening the scope of its financing."*

The Commission is proposing a genuine political partnership between the EU and the Member States reflecting the **political willingness to recognise the central role of SMEs in the EU economy** and to put in place for the first time a comprehensive policy framework for the EU and its Member States. The SBA proposal goes hand in hand with the recently announced plans of the European Investment Bank Group to simplify, modernise and diversify the range of its instruments to support SMEs.

At the heart of the SBA is the conviction that achieving the best possible framework conditions for SMEs depends first and foremost on **society's recognition of entrepreneurs**, including crafts, micro-enterprises, family owned or social economy enterprises, **and making the option of starting one's own business** attractive. This means that the rather negative perception of the role of entrepreneurs and risk-taking in the EU must change.

The European Small Business Act sets out 10 principles which should be adopted at the highest political level and concrete measures that will make life easier for small businesses. After consulting with businesses and their representatives, the European Commission has also resolved to **propose new legislation in four areas** that particularly affect SMEs:

- First, a new **General Block Exemption Regulation on state aids** will simplify procedures and reduce costs. It will increase the aid intensity for SMEs and make it easier for SMEs to benefit from aid for training, research and development, environmental protection and other types of aid.
- Secondly, a **new statute for a European Private Company** will allow a "Société privée européenne" (SPE) to be created and operate according to the same uniform principles in all Member States. It has been designed to address the current onerous obligations on SMEs operating across borders, who need to set up subsidiaries in different company forms in every Member State in which they want to do business. In practical terms, the SPE would mean that SMEs can set up their company in the same form, no matter if they do business in their own Member State or in another. Opting for the SPE will save entrepreneurs time and money on legal advice, management and administration
- Thirdly, a new proposal on VAT will offer Member States the option to apply **reduced VAT rates for locally supplied services, including labour intensive services**, which are mainly provided by small and medium enterprises.
- Lastly, an amendment to the directive on **late payments** is foreseen in 2009 to help to ensure that SMEs are paid within the 30 day time limit stipulated.

**10 principles shall** guide the conception and implementation of policies at EU and Member State level, such as granting a second chance for business failures, facilitating access to finance and enabling SMEs to turn environmental challenges into opportunities.

In addition to the standing commitment to **cut administrative burden by 25% by 2012**, the time needed to **start a new company** should be no more than one week, the maximum time to obtain **business licenses** and permits should not surpass one month and **one-stop-shops** should assist to facilitate start-ups and recruitment procedures.

Where practical, the Commission plans to use concrete dates in a year for the entry into force of **regulations/decisions** affecting business. Member States are invited to consider similar measures.



The SBA includes an ambitious set of measures to allow SMEs to fully benefit from the Single Market and expand into international markets by orienting more resources to small companies' access to finance, Research & Development and innovation. They will also make it easier for them to participate in the **standard-setting process**, win **public procurement contracts** and turn **environmental challenges into business opportunities**.

Finally, the SBA seeks new ways to **stimulate interest in entrepreneurship** and cultivate a **more entrepreneurial mindset, especially among young people**. Young people, who want to start up a business, can now gain experience by spending time in an SME abroad via the just launched "Erasmus for young entrepreneurs" programme. This will help upgrade their skills and contribute to the networking among SMEs in Europe. Similar mobility programmes are also underway for apprentices.

The SBA is fully embedded in the Growth and Jobs strategy. Member States are invited to take advantage of the update of the Lisbon cycle 2008 to reflect the SBA in their National Reform Programmes.

## **Background**

Although 99% of companies in the EU are SMEs (companies with a maximum of 250 employees and a maximal turnover of € 50 million), most legislation and administrative procedures don't distinguish on the basis of company size. As a result, 23 million SMEs often have the same administrative requirements as Europe's 41,000 large companies. During past years SMEs have created 80 % of the new jobs in the EU.

More information

[http://ec.europa.eu/enterprise/entrepreneurship/sba\\_en.htm](http://ec.europa.eu/enterprise/entrepreneurship/sba_en.htm)

**European Investment Bank consultation report:**

<http://www.eib.org/attachments/strategies/sme-consultation-2007-2008-en.pdf>



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
SEC(2008) 2098

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European Private Company (SPE)**

**Impact assessment**

{COM(2008) 396}  
{SEC(2008) 2099}

## COMMISSION WORKING DOCUMENT

### Impact assessment on a European Private Company Statute (SPE)

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## 1. INTRODUCTION

The Lisbon Strategy<sup>1</sup> aims at boosting growth and jobs by increasing Europe's attractiveness as a place to invest and work. The Strategy underlines that removing remaining barriers in the Single Market will create new opportunities for market participants and the resulting competition will spur investment and innovation.

Helping small and medium sized enterprises<sup>2</sup> to exploit the full potential of the Single Market forms integral part of the Lisbon strategy. SMEs are a driving force of the EU economy. They account for more than 99% of all European companies and provide around 70% of jobs in the European Union.

The potential for the expansion of SMEs in the Single Market, however, remains unfulfilled. More than 40% of SMEs operating in the EU market would like to develop their cross-border activity but complain that they lack the instruments to do so.<sup>3</sup>

The Commission's public consultations<sup>4</sup> have shown that the diversity of national legislations and company law forms is a barrier to expansion in the Single Market. Having uniform, yet flexible, company law rules for private companies across Member States could help reduce some of the obstacles and costs European SMEs currently face.

More uniform company law rules could help SMEs keen to expand in other Member States save on the costs of setting-up and running their businesses abroad. Cross-border groups would also benefit from such rules which would allow them to set up the same organisational structure in all Member States.

A possible solution, supported by stakeholders in the consultations mentioned above and analysed in this impact assessment report (IA), is the Statute for a European Private Company (*Societas Privata Europaea* - SPE).

The Commission's Communication on the Single Market for 21<sup>st</sup> century Europe<sup>5</sup> mentions the SPE Statute as one of the measures to facilitate cross-border activities of SMEs. The SPE Statute also forms part of the Small Business Act for Europe to be put forward in June 2008 and which aims at introducing concrete measures to unlock the growth potential of SMEs.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The European Private Company Statute (SPE) was initially developed by business and academic circles and gained broader support over time from business and industry

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1 Communication to the Spring European Council "Working together for growth and jobs. A new Start for the Lisbon Strategy", COM (2005) 24.

2 According to a general EU definition, small and medium sized enterprises are those with less than 250 employees. Within this category the following sub-categories are distinguished as per Commission recommendation 2003/361/EC: (a) Medium-sized enterprises [headcount <250 and turnover ≤€ 50 million and/or balance sheet total ≤€ 43 million]; (b) Small enterprises [headcount <50 and turnover ≤€ 10 million and/or balance sheet total ≤€ 10 million] Micro enterprises [headcount <10 and turnover ≤€ 2 million and/or balance sheet total ≤€ 2 million]; (c) Micro enterprises [headcount <10 and turnover ≤€ 2 million and/or balance sheet total ≤€ 2 million].

3 KPMG survey presented at BusinessEurope's SME Action Day on 21 November 2007.

4 Public consultation: [http://ec.europa.eu/internal\\_market/company/epc/index\\_en.htm](http://ec.europa.eu/internal_market/company/epc/index_en.htm); the EBTP: [http://ec.europa.eu/yourvoice/ebtp/consultations/2007\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/2007_en.htm).

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A single market for 21st century Europe, COM(2007) 724 final, 20.11.2007.

organisations as well as from the European Economic and Social Committee.<sup>6</sup> It was listed as a possible medium term measure in the Commission 2003-2009 Action Plan on Modernising Company Law and Enhancing Corporate Governance.<sup>7</sup>

A feasibility study on the SPE<sup>8</sup> was launched by the European Commission, its results presented in December 2005. A question on the need for the SPE was also included in the public consultation of spring 2006 on the future priorities of the Commission Company Law and Corporate Governance Action Plan.<sup>9</sup>

Furthermore, the Legal Affairs Committee of the European Parliament held a public hearing on the SPE on 22 June 2006 where different aspects of the possible SPE Statute were discussed among experts. The Committee also drafted an own-initiative report on the SPE and a resolution requesting the European Commission to present a proposal for a uniform SPE before the end of 2007,<sup>10</sup> was endorsed by the European Parliament in February 2007.<sup>11</sup> The Parliament reiterated its support and strong commitment to the initiative in a resolution of 25 October 2007.<sup>12</sup>

In July 2007, the Services of Directorate General Internal Market & Services launched a specific public consultation on the SPE to gather stakeholders' views on the need and the possible content of a future Statute. 75 contributions were received of which approximately half came from individual companies. These were mostly SMEs, though a few replies came from large groups or companies belonging to such groups. The other half came from business associations, lawyers, accountants and trade unions.

In addition, a survey among companies in the 27 Member States was conducted through the on-line platform, the European Business Test Panel (EBTP). Over 500 companies replied to the EBTP. Some 25% of the respondents were micro enterprises (0-10 employees), 46% small and medium companies (10-249 employees) and 28.5% companies with more than 250 employees. Two thirds of the companies were from the EU-15 and one third from the EU-12. The sectors most represented were services (40%) and goods (33%), though 25% of the respondents were active in both. 35% of the respondent companies had an establishment in at least one other Member State and 64% engaged in cross-border trade or provision of services.

The detailed results of the consultations will be presented in the context of the discussion of particular issues. The summary reports of the consultations are available on the Commission website.<sup>13</sup>

To receive further input from experts and stakeholders on the key aspects of the possible SPE, the Commission held a conference on 10 March which was attended by 130 participants (SMEs, larger companies, cooperatives, lawyers, notaries, trade unions and academics). The conference showed a strong consensus on the key features of the SPE. The SPE must be

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6 See Opinion of the Economic and Social Committee on a 'European Company Statute for SMEs' (2002/C 125/19).

7 Communication from the European Commission to the Council and the European Parliament "Modernising company law and enhancing corporate governance in the EU – a plan to move forward" COM(2003)284 final

8 The feasibility study is available at: [http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-priorities/craft\\_spe\\_event.htm](http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-priorities/craft_spe_event.htm).

9 [http://ec.europa.eu/internal\\_market/company/consultation/index\\_en.htm](http://ec.europa.eu/internal_market/company/consultation/index_en.htm).

10 European Parliament Report with recommendations to the Commission on the European private company Statute (2006/2013(INI)), A6-0434/2006 final.

11 European Parliament resolution with recommendations to the Commission on the European private company Statute (2006/2013(INI)).

12 European Parliament resolution on the 14th company law directive and the European Private Company (B6-0399/07).

13 [http://ec.europa.eu/internal\\_market/company/epc/index\\_en.htm](http://ec.europa.eu/internal_market/company/epc/index_en.htm)

widely accessible, easy to set up, cheap to run, and as uniform throughout the EU as possible. It should leave a great deal of flexibility to founders and shareholders to organise themselves internally in the way that is best suited to their activity. The debates also highlighted that there is room for different approaches on important aspects of the SPE, as regards e.g. capital, directors' duties and liabilities, the issue of registered office and real seat or workers' participation.<sup>13</sup>

The Commission's advisory group on corporate governance and company law<sup>14</sup> provided information for the preparation of the IA and provided advice in relation to the key aspects of the SPE. The IA has also been actively discussed in an inter-service steering group, established at the beginning of 2007, to which the representatives from the Secretariat General, the Legal Service and the Directorates General for Taxation and Customs Union, Enterprise and Industry, Employment and Social Affairs and Economic Affairs take part. This group met twice and also commented on the IA in writing. Its comments are reflected in the IA.

The IA report was been examined by the Impact Assessment Quality Board on 16 April 2008. Following the Board's opinion, several changes were made to this IA. In particular, the description of the limited harmonisation scenario in section 5.2.2. was expanded. A description of the relative importance of the SPE initiative to other relevant policies for SMEs was inserted in section 5.4, together with a description of the costs which national companies might incur when switching to the SPE and which Member States might face as a result of the introduction of the SPE. The possibility of limiting the access to the SPE to companies according to their size was added as an additional sub-option in section 6.1 (Sub-option A). Considerations on the relationship between the SPE and national law and on whether the SPE contributes to simplifying company law or making it more complex were inserted in Sub-option C.3 in section 6.1. In sub-option C.3 some examples of the issues that would be left to the SPE founders' discretion were added. The tax considerations in Option E.2 in section 6.1 were clarified. Minimum capital requirements and rules on distributions to shareholders were separated and addressed as different sub-options (F and G) in section 6.1. The specific company law concepts (e.g. balance sheet test, solvency test) have been clarified in the text of the IA.

### **3. PROBLEM DEFINITION**

#### **3.1. Context**

SMEs are the driving force of the EU economy. The report “*SMEs in Europe 2003*”, which is based on extensive literature and studies, considers SMEs are a key driver of economic growth. Indeed, the 23 million EU SMEs<sup>15</sup> account for more than 99% of all European

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<sup>14</sup> The group is composed of twenty non-governmental experts from various professional backgrounds (issuers, investors, employees' representatives, academics, regulated professions, etc.) with particular experience and knowledge of the subject. They provide detailed technical advice on preparing corporate governance and company law measures.

<sup>15</sup> Estimations vary on the exact number of EU-27 SMEs: Eurostat, in European business, Facts and figures 2007, mentions 19 million enterprises in the EU-27's non-financial business economy in 2004. The 2003 Observatory on EU SMEs: ([http://ec.europa.eu/enterprise/enterprise\\_policy/analysis/doc/smes\\_observatory\\_2003\\_report8\\_en.pdf](http://ec.europa.eu/enterprise/enterprise_policy/analysis/doc/smes_observatory_2003_report8_en.pdf), indicates an absolute number of around 24,668 million SMEs for EU 15 (18,698 million, 2003 data) + EU 12 + Turkey (5,970 million, 2001 data). These statistical differences stem mainly from a different evaluation of the number of micro enterprises and from the fact that Eurostat data do not take into account personal services where many enterprises are SMEs. However, both Eurostat and the EU Observatory on EU SMEs acknowledge that 99.8 % of EU-27 enterprises are SMEs.

enterprises and provide jobs for around 97 million people.<sup>16</sup> This represents close to 70% of total private employment in the EU-25, as shown in Annex 1, graph A1.<sup>17</sup> Supporting the development of SMEs, therefore, is crucial for the improvement of the EU economy.

To foster economic activity, all EU Member States about a century ago introduced in their legislations legal entities known as 'companies', which all offer to their founders and members some form of limitation of personal liability. This explains to a large extent the enormous success of these legal vehicles which make it possible to engage in economic activity without putting the entirety of one's assets at risk.

Most EU Member States have at least two kinds of companies. The first kind, the joint stock company (e.g. the AG, SA, NV, plc, etc), is designed for large companies. It is often subject to a high minimum capital requirement and detailed internal organisation rules. Its shares may be listed on the stock market. This kind of company is often referred to as "public companies". The second kind of company is designed for smaller companies (e.g. the GmbH, the SARL, the srl, etc). While this form offers its founders and members the much needed limitation of liability, it is often designed some way between a joint stock company and a partnership to take account of the fact that the personal involvement of shareholders usually is very strong in small companies. This makes of this second kind of company the preferred legal form for small companies. These company forms cannot offer their shares to the public and as a result are often referred to as 'private companies'.

### **3.2. Problem: low participation of SMEs in the Single Market**

SMEs are crucial for the EU economy but their participation in the Single Market remains low, both in absolute terms and compared to large companies. Only about 5% of EU SMEs have foreign subsidiaries or joint ventures, compared to 20% of large companies.<sup>18</sup>

SMEs, however, have a strong potential to expand into new markets. 40% of the European SMEs interviewed in a recent survey conducted by KPMG<sup>19</sup> mention that such expansion is important for them. Overall, about a quarter of the total respondents to that survey had an international presence but these were more often larger companies: 42% had revenues in excess of € 50 million, 33% between € 10 and 50 million and 24% with revenues below € 10 million.

The KPMG survey shows that although there is a great potential among SMEs for the expansion of business beyond national borders, SMEs do not fully use the opportunities the Single Market offers them as they face many obstacles hindering their development, be it at national, EU or at a global level. Taxation, heavy regulation of labour and administrative burdens are considered to be the greatest obstacles to SMEs development. More than 40 % of the companies operating on the EU market consider that they lack sufficient information

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16 Calculated from the information reported on European Commission (2003): "SMEs in Europe 2003", Observatory of European SMEs 2003/No. 7, DG Enterprise Publications and European Commission (2003): "The impact of EU enlargement on European SMEs", Observatory of European SMEs 2003/No.6, DG Enterprise Publications. This data and other data mentioned in this impact assessment based on the Observatory of European SMEs reports, is primarily drawn from Eurostat's SMEs database and an European Network for SME Research (ENSR) survey among over 7 600 SMEs in Europe, compiled by the Commission.

17 See Annex 1.

18 Survey of the Observatory of European SMEs (Flash EB N° 196) conducted by Gallup Organisation Hungary between 11/2006-01/2007 upon the request of DG for Enterprise and Industry See Annex 1, graph A3.

19 Survey presented at BusinessEurope's SME Action Day on 21 November 2007. The KPMG study and the presentations at the conference are available at: <http://www.busineurope.eu/Content/Default.asp?PageId=496>. Results of the study are based on interviews with 840 SMEs in the EU. The focus of market research was on expansion strategies, internationalisation behaviour and perceived reform needs.



about doing business abroad. Just as many mention that they lack instruments to facilitate their internationalization. In Sweden, Hungary and Denmark, this percentage exceeds 50%.

### **3.3. Causes and drivers of the problem: legal and administrative requirements SMEs face when starting and operating a business in the European Union**

Companies and company founders seeking to benefit from the Single Market face legal and administrative barriers every time they seek to set up a business in a new Member State. These legal and administrative requirements affect both the creation and the day-to-day operation of businesses. These barriers require companies to dedicate human and financial resources and expose them to significant costs.

Though all companies wishing to expand cross-border are affected, these administrative and legal burdens are proportionately much heavier for smaller companies and their founders, who often have fewer sufficient financial and human resources than large companies.

**This IA report focuses strictly on specific problems related to the company law burdens on the formation and operation of companies in the Single Market. Other problems encountered by SMEs in the Single Market, including those related to the diversity of tax regimes and labour legislations and other regulatory restrictions, are outside the scope of this IA.**

Company law compliance comes at a cost. These compliance costs are generated (1) by the formation of a company and (2) by the day-to-day operation of a company. In addition, the diversity of national company forms in the EU means that some company forms are less well known and trusted than others. The less well known forms of companies are less trusted in other Member States as a result and this is detrimental to cross-border activity.

#### *3.3.1. Compliance costs associated with the formation of a company in a Member State (home Member State or a different Member State)*

In general, compliance costs are defined as expenditure in conforming with legislation. In the context of formation of companies, compliance costs are identified as the cash or assets which company founders must put up to be able to create a company. These costs are primarily generated by minimum capital obligations, administrative costs (including notaries' fees) and the need for expert legal advice.

The first source of compliance costs upon the creation of a company is the minimum legal capital requirement. The average minimum legal capital is of about €10,000 in the EU-15 and of about €4,400 in the EU-12, even though some countries have much higher requirements (e.g. €35,000 in Austria, €18,550 in Belgium or €13,870 in Poland).<sup>20</sup> Even though the consideration put up for the minimum capital requirement can be used for the company's initial investment, it exposes company founders to a potential cost because it can oblige them to put up more money that is actually necessary to launch the company. As an example, one could argue that a minimum capital requirement of €35,000 (which is the case in Austria), of which 50% must be paid up upon the formation of the company, might be excessive for a company which is operated from the home of one of its founders and which, to start its activity, requires a couple of computers (at a global cost of approximately €2,000).

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See Annex A3

The second source of compliance costs covers administrative costs associated with the registration of a new company. This includes registration and notary fees, administrative and publication fees. According to a study conducted in 2008 by Baker & McKenzie for the German company association VDMA, these costs taken globally are estimated to average around €1300 for small companies.<sup>21</sup>

The third source of compliance costs upon the creation of a company is expert legal advice. Typically, expert legal advice would cover advice on the company form and the drafting of articles of association. The Baker & McKenzie study estimates that, if the cost of expert legal advice is taken into account, the average cost on the formation of a small company, excluding minimum capital requirement, rises to around €4,300, it is multiplied by 3. However, unlike capital and administrative costs which are the same for national and foreign company founders on a given market, the cost of expert legal advice falls to a greater extent on foreign companies, which require guidance notably with regard to the company legal form, which will be different in every Member State.

The total of the above costs on the creation of a company, including capital, can run up to levels that can deter from company formation in some markets. The Baker & McKenzie study, for example, estimates that a total of €28,550 would be required in Belgium, €20,500 in the Netherlands, or € 16,500 in Italy, to set up a small company.

#### **Example**

Shunk&Co GMBH KG, a German group gave the following example at the public hearing of the European Parliament on 22 June 2006. The example is relevant in so far as Schunk faces the same obstacles as SMEs. However, Schunk itself is not a SME.

An export-oriented German company having 1,300 employees, operates in 12 EU countries by means of own subsidiaries. It plans to set up additional subsidiaries.

#### *Internal approach*

When only internal resources are used (which is possible when a subsidiary is being created in a Member State which has a legal framework similar to that of the home Member State and where the language barrier does not constitute a significant problem), setting up a subsidiary involves one to two months of a qualified specialist or approximately 200-400 working hours and it can represent up to €12,000 of personnel cost. In addition, 4-5 journeys are necessary on average, which involves an additional cost of €1,500-3,000.

#### *External approach*

If the language barrier and the differences in the legal system of the Member State of destination are significant, the company will have recourse to an external consultant or a lawyer to coordinate the subsidiary creation process locally. The costs of creation will differ depending on the Member State. For instance, the fixed cost of setting up a subsidiary with help of external consultant in Czech Republic would average €15,000 and € 20,000 in Poland. In addition, administrative fees and notaries fees etc. add up to between €1,200 and 6,500. It would take on average two to four months (sometimes up to six months) before all the conditions for a company's incorporation are met.<sup>22</sup>

No matter which approach is chosen, therefore, companies face significant costs as a result of the diversity of company forms, when seeking to expand in the Single Market

21 . Member States covered by the study: AT, BE, UK, FR, HU, IT, NL, PL, ES and SE. See Annex 3, table A2

22 Based on the presentation by Kristina Schunk, legal consultant at Schunk GMBH&CO. KG, held at the public hearing before the Legal Affairs Committee of the European Parliament in Brussels, 22 June 2006, on the European Private Company, published in European Company Law, December 2006, vol. 3, issue 6.

### 3.3.2. *Difficulties and compliance costs associated with the operation of national company forms*

Of the more than two thirds of EBTP respondents who have an establishment in another Member State, respectively 69% and 65% identify the diversity of national legislations governing the operation of a company and the difficulty of dealing with different company law systems as the most burdensome barriers to conducting business in other Member States.

With each Member State comes a different form of company and different rules on the organisation and structure of companies, company organs, shareholders' rights, shares, etc.

This diversity of private limited company forms in the EU exposes on companies to a lack of flexibility which makes it extremely complicated for groups of companies to rationalize the internal organisation of their subsidiaries. SMEs expanding in the Single market have to choose a different company form in each Member State. As a result, they will have to operate under a different internal organisation and different articles of association in each Member State. They do not have the flexibility to opt for the same internal structure throughout their organisation. For example, a group of companies present in 6 Member States will have 6 different company forms, each with a different management structure. In contrast, a domestic group of comparable size can apply a single model.

In addition, groups must keep track of differing requirements existing in national law and which often go into the details of the day-to-day operation of the company. For example, the convocation to a general meeting of a SARL of more than 25 associates formed in Luxembourg must be sent to the shareholders 8 days in advance of the date of the meeting. In France, the same convocation must be sent 15 days in advance of the meeting. Similarly, the documents that must be sent to associates vs. made available to them at the registered address of the company will differ from one Member State to the other.

The Baker & McKenzie study estimates the compliance costs associated with the day-to-day operation of companies in various Member States to average €2,300 on a yearly basis.<sup>23</sup> This is only partly consistent with the results of the EBTP. Only some 14% of the EBTP respondents who have an establishment in another Member State estimate the yearly legal costs associated to the operation of a company in another Member State to be below €5,000. In contrast, almost 57% consider these costs to exceed €5,000 and close to 30% consider them to exceed €10,000. The differences in estimates owe to the fact that the average cost of expert legal advice will depend on the size of the company, the complexity of its structure, the complexity of the relevant rules of the particular Member State, etc.

Furthermore, SMEs are also constrained in their ability to transfer their registered office to other Member States. The lack of flexible means to move their registered office and business operations to other Member States exposes SMEs to opportunity costs. Even though the directive on cross-border mergers, which was to be transposed by 15 December 2007, provides companies with an indirect way to move to another Member State (i.e. by creating a new company in another Member State and merging the existing company into that company), it is considered too complex a procedure for SMEs.

### 3.3.3. *Lack of trust in foreign legal forms*

43% of the EBTP respondents who have an establishment in another Member State mention the lack of trust in foreign legal forms as an obstacle to the cross-border business operation. Companies indicate that operating in another Member State under their domestic legal form (e.g. by providing cross-border services or via branches) makes it more difficult to penetrate markets and gain the trust of consumers and business partners. This explains in part that some companies prefer to set up subsidiaries established under the better-known and more trusted legal form of the Member State with which they trade.

The lack of trust in foreign legal forms is particularly acute for businesses from new Member States. While company forms such as the UK "Ltd" or the German "GmbH" are well known in most Member States, the same cannot be said of the company forms of the new Member States (e.g. the Polish "sp. z o.o." or the Hungarian "Kft"). This makes the penetration of other EU markets by SMEs from the EU-12 more difficult.

### 3.4. **Expected development and the need for the EU to act**

While it may be expected that certain obstacles such as the lack of trust in the less known company forms might reduce over time, small companies wishing to expand cross-border will continue in the future to face the issues described in Section 3.3. The diversity of national company laws and forms, as business unfriendly as it may be, is long anchored in the legal traditions of the Member States. Even though some Member States are currently reviewing their private company legislations, nothing today gives grounds to expect any major change to this diversity over the short term.

Even assuming that all Member States would decide simultaneously to make their company laws more business friendly, the end result would still remain a patchwork of different legal models and company forms. Only action undertaken at EU level can create a legal environment that is sufficiently uniform throughout the EU to serve the practical needs of SMEs wishing to take advantage of the Single Market.

The legal basis for EU action would depend on the option chosen.

Should the EU legislator decide to adopt a Statute for a European Private Company, the EU action would be based on Article 308 of the EC Treaty. This provision provides a legal basis for EU actions aiming to attain one of the Community objectives<sup>24</sup> in the absence of any specific legal basis in the EC Treaty. This is the case of the creation of a new European legal form such as the SPE. Article 308 is the legal basis of the existing European legal forms, i.e. the European Company, the European Economic Interest Grouping and the European Co-operative Society.

Should the option be chosen to harmonise Member States' laws on some aspects of their laws on private companies, Article 95 (ex 100a) of the EC Treaty could be an appropriate legal basis. This provision provides a legal basis for measures which have as their object the improvement of the conditions for the establishment and functioning of the Single Market.

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24 Article 308 of the EC Treaty can be used as a legal basis for an EU measure if action by the Community proves necessary to attain one of the objectives of the Community and the EC Treaty has not provided the necessary powers.

#### 4. OBJECTIVES

The main objective is to enhance competitiveness of small and medium sized companies by facilitating their establishment and operation in the Single Market. Given the economic importance of SMEs and the difficulties they face seeking to take advantage of the Single Market, the action should target primarily SMEs even though it may at the same time benefit larger companies and groups. Ideally, any action taken should serve in the short term to facilitate the activities of those SMEs, albeit relatively few in number, which are already in the Single Market. In the longer term, it should serve to encourage a larger number of SMEs to operate business activities in other Member States.

In particular, the initiative aims at:

##### **4.1. Providing for a simple, flexible corporate law regime widely known across the EU, adapted to the specific needs SMEs and based on uniform principles throughout the EU**

Respondents to the Commission public consultations<sup>25</sup> consider that the ability to apply a single set of rules to businesses across the EU would facilitate, and reduce costs on, the formation and operation of subsidiaries in other Member States. To be attractive to SMEs, such single set of rules must respond to the specific needs of SMEs, in particular as regards flexibility in the internal organisation and freedom for the location of registered office and principal place of business. It should also give companies a common label known to all.

##### **4.2. Reducing compliance costs arising from the operation of businesses in several different company law systems:**

– *Reducing costs of setting up a company or a subsidiary abroad*

The first specific objective would be to reduce compliance costs related to the establishment of subsidiaries in other EU Member States, in particular the costs arising from the disparities in Member States' laws with regard to the formation of companies and the drafting of articles of association (see section 3.3.1).

– *Reducing costs of administration and operation of a company or a subsidiary abroad*

The second specific objective would be to reduce the costs related to the day-to-day operation of companies in other Member States, in particular the costs of continuous legal advice on different national laws related to company organisation and structure, shareholders' rights, shares etc. (see section 3.3.2).

These objectives can be reached by limited and targeted action without imposing on Member States an extensive amendment to their legal systems.

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The public consultation: [http://ec.europa.eu/internal\\_market/company/epc/index\\_en.htm](http://ec.europa.eu/internal_market/company/epc/index_en.htm); the EBTP: [http://ec.europa.eu/yourvoice/ebtp/consultations/2007\\_en.htm](http://ec.europa.eu/yourvoice/ebtp/consultations/2007_en.htm).

## 5. POLICY OPTIONS AND THEIR RESPECTIVE IMPACTS

For the sake of clarity, this section only addresses high level policy options, i.e., the respective merits of doing nothing, harmonising national laws or proposing a new company form. These options are discussed and measured against the following pre-defined criteria:

- (a) Uniformity: The creation and operation of a small company should be governed by essentially the same company law rules in all Member States. Uniformity is also a cost indicator: the more uniformity throughout the EU, the lower the costs for companies. The European label is also an advantage which would derive from the uniformity of rules.
- (b) Flexibility: An environment should be established to facilitate the operation of SMEs across the Member States. Company founders should have the maximum flexibility to choose the internal organisation which best suits their needs, but without prejudicing third parties' interests. Like larger companies, SMEs should also benefit from the possibility to transfer their registered office from one Member State to another. Flexibility, which captures simplicity, also is a cost indicator: the greater the flexibility left to companies, the more companies can make choices adapted to their needs and control their costs.
- (c) Legal certainty: There should be absolute certainty about the applicable law with a view to ensuring legal certainty for all relevant stakeholders.
- (d) Effectiveness: The extent to which the measure fulfils the objectives of the proposal.
- (e) Political acceptability: The political risk associated with the proposed measure.

Political acceptability is presented alongside criteria a) to d) although, unlike these other criteria, it is a criterion of feasibility and should, as a result, be considered independently. Experience shows that certain company law matters are particularly sensitive in a number of Member States: the Commission has had to withdraw some proposals after more than 20 years of discussion;<sup>26</sup> some other proposals have taken close to 30 years to reach adoption.<sup>27</sup> Proposals which run a high risk of being politically unacceptable should be disregarded from the outset, irrespective of their merits on substance.

The options for the content of the SPE Statute are discussed separately in Section 6. Section 6.2, contains a comparison of the retained content options with the baseline scenario.

### 5.1. Baseline option: 'no action'

The existing framework is composed of various instruments which actually or potentially address some of the difficulties identified in Section 3 but fail to meet the objectives identified in Section 4.

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26 5th company law directive on the structure of public limited companies, proposals for a European Association and a European Mutual Society.

27 SE Regulation, 10th company law directive on cross-border mergers of limited liability companies

## Description

- *Existing relevant EU legal forms*

The European Company ("SE") Statute,<sup>28</sup> which entered into force in 2004, provides for a European corporate form governed by a set of uniform rules in all Member States and offers a European label to businesses. With a minimum subscribed capital of €120,000, the SE is designed for large companies. SEs can also only be created by companies already operating in more than one Member State. Some 140 SEs have been created to-date.

The European Co-operative Society ("SCE"),<sup>29</sup> cannot be used by capital companies due to its principles which are specific to co-operatives. The SCE Statute entered into force only in August 2006 and to-date no single establishment of a SCE has been reported. An evaluation report on the ESC is scheduled for 2011.

- *Possibilities created by the Community case law on corporate mobility*

Recent rulings of the European Court of Justice<sup>30</sup> establish the right of individuals and legal persons to register companies anywhere in the EU irrespective of the location of their business activities. According to a study conducted for the European Corporate Governance Institute,<sup>31</sup> the number of private limited companies from all Member States incorporating in the UK per year increased by 560% after the Centros judgement of the ECJ.

- *Implementation of the Services Directive*

The Services Directive,<sup>32</sup> to be transposed by 28 December 2009, will reduce barriers currently hampering the cross-border provision of services and the freedom of establishment.<sup>33</sup> In particular, the Directive will streamline authorisation processes and simplify administrative procedures. Member States will have to establish points of single contacts through which service providers can obtain all relevant information and complete, at a distance and by electronic means, all procedures and formalities relating to their activities.

- *Cross-border mergers directive*

The cross-border merger directive,<sup>34</sup> which was to be transposed by 16 December 2007, gives all limited liability companies, including SMEs, the possibility to develop their cross-border business by merging with businesses from other Member States.

- *The reform of national company laws*

Recent policy developments and trends both at EU and national levels could improve the business environment of European companies, in particular SMEs. In particular, the 'one stop

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28 Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), O.J. [2001] L 294, p. 1

29 Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), O.J. [2003] L 207, 1

30 Centros (C-212/97), Überseering (C-208/00), Inspire Art (C-167/01), Sevic, C-411/03.

31 M. Becht, C. Mayer, H.F. Wagner (2006). Where do firms incorporate?, Working paper no. 70/2006.

32 Directive 2006/123/EC of the European parliament and of the Council of 12 December 2006 on services in the internal market. O.J. [2006], L 376, p. 36.

33 The Directive will apply to all cases where a business seeks to establish in a Member State, irrespective of whether a provider intends to start a new business or whether an existing business seeks to open a new establishment, for example a subsidiary or a branch.

34 Directive 2005/56/EC of the European parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies. O.J. [2005], L 310, p. 1

shop' initiative,<sup>35</sup> which enables companies to undertake at a single point all the formalities associated with the creation of a business, and the EU simplification program<sup>36</sup>, should significantly reduce the administrative cost of setting up companies.

- *One-stop initiatives*

On-going initiatives such as the "one-stop shop initiative" enable companies to undertake at a single point all the formalities associated with the creation of a business. Moreover, the trend in national legislations to give private limited companies more flexibility can be expected to have a positive impact on SMEs, notably by reducing the costs on the formation and the operation of companies.

### Assessment

The existing framework fails to meet the policy objectives.

The existing framework is not sufficiently effective because it fails to address the specific needs of SMEs, at least for two reasons. The first reason is that some of the existing tools, like the SE and the SCE, which offer a European label, are ill-suited to SMEs. The second reason is that even though the existing framework facilitates establishment and makes company mobility within the EU feasible, company founders still have to set up and run companies under a different national company form in each Member State. This, as described in sections 3.3.1 and 3.3.2 above, is cost intensive. It is also proportionately more expensive for SMEs, which have fewer human and financial resources than larger companies.

The existing framework does not ensure the level of uniformity and flexibility which would enable SMEs to save costs on the creation and operation of their businesses in the Single Market.

The baseline scenario also is not politically acceptable since there seems to be a growing consensus that SMEs at present do not benefit sufficiently from the Single Market. It is this political imperative which has led the Commission to propose the Small Business Act and which underlies the Single Market Review.

Nothing, however, indicates that all Member States will undertake to reform their company legislations. Furthermore, even if SMEs would benefit from simpler company law forms and a one-stop shop procedure for the creation of their businesses, they would still have to operate under different national forms and would as a result still face a lack of uniformity and flexibility.

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35 See section 3.3, [http://ec.europa.eu/enterprise/entrepreneurship/start\\_en.htm](http://ec.europa.eu/enterprise/entrepreneurship/start_en.htm)

36 See [http://ec.europa.eu/internal\\_market/company/simplification/index\\_en.htm](http://ec.europa.eu/internal_market/company/simplification/index_en.htm). The initiative aims at cutting red tape and reducing unnecessary administrative burdens imposed on businesses.



## 5.2. Alignment of national company laws for private companies

### 5.2.1. Extensive harmonisation by means of a directive

#### Description

Such harmonisation would seek to align national company laws in respect of all issues relating to the establishment and operation of a company, i.e., the rules on formation, registration, internal organisation, shares, minority and third party protection (creditors and employees).

#### Assessment

Such harmonisation would make the various national private company forms similar to one another in all key respects and ensure a high level of uniformity, thus reducing costs on the formation and the operation of subsidiaries in different Member States. However, it would require deep changes to national legislation, going far beyond company law and as a result would run into strong political opposition.

### 5.2.2. Limited harmonisation

#### Description

Alternatively, the harmonisation could be limited to those aspects which are the most problematic and costly in cross-border establishment. To be useful to SMEs, harmonisation, in particular, should cover capital, registration requirements and the internal organisation of companies (i.e., management structure, general meetings, rights of shareholders). Other matters, such as the rules on creditors' protection, directors' liability, insolvency, where national legislations are very different, would be left outside the scope of harmonisation.

#### Assessment

Harmonisation of certain limited aspects of national company forms would offer SMEs a greater degree of uniformity compared to the present situation. Indeed, while still having to set up businesses under national company forms, SMEs would be subject to the same capital requirements and identical rules on internal organisation throughout the EU. Depending on the outcome of the political negotiations, such harmonisation could also be effective and offer them more flexibility than they have at present.

However, even though limited harmonisation might seem to offer a higher degree of feasibility than the extensive harmonisation envisaged in the preceding option, such a reform would nonetheless run into significant political difficulties. Firstly, national company laws are long anchored in the legal traditions of Member States. They are often considered as forming a consistent set of rules, so that modifying only certain key aspects would be resisted as altering the overall balance. This is true, in particular of company forms, and the suggestion to modify certain core aspects of the operation of private limited companies while leaving others untouched is likely to run into strong opposition as a result. Secondly, national company forms reflect the different legal and corporate cultures of the Member States. To offer SMEs a sufficient degree of uniformity (i.e. similarity between the national company forms), harmonisation should seek to impose the same standards throughout the EU, rather than mere minimum standards. Seeking to introduce common aspects in very different company forms, each of which is considered to be consistent and self contained, would be a difficult political

exercise. Recent discussions on the directive on capital maintenance show that harmonisation in such core aspects of company law provide ample evidence of this.

Furthermore, by altering core aspects of national company forms while leaving others untouched such harmonisation risks creating legal uncertainty with regard to national company forms that have been well established for decades.

Lastly, even assuming that one would succeed in making such harmonisation a reality, SMEs would still be left with a variety of national forms and no European label.

### **5.3. Improvement of an existing EU legal forms – Statutes for a European Company (SE) and a European Co-operative Society (SCE)**

#### Description

Existing legislation, in particular the SE Statute, could be made more accessible to SMEs. This, however, would require profound amendments to the existing SE Statute, both to make it more uniform and to address the specific needs of SMEs. This option would require a thorough redrafting and re-negotiation of the SE Regulation.

#### Assessment

An evaluation of the SE Statute will be carried out in 2008/2009 with a view to assessing the attractiveness of the SE and propose necessary improvements, if appropriate. A report is to be published in 2009. Reopening the SE to negotiation before the publication of this report would not make sense. Further, re-opening the discussion on the SE Statute is likely to make the negotiations more complex than focusing the discussion strictly on private companies. The SCE Statute, for its part, will be only evaluated in 2011.

### **5.4. A Statute for a European Private Limited Company (SPE)**

#### Description

A proposal would be made for a new European legal form, the "Societas Privata Europea" or "SPE", designed for private limited companies, which would provide an alternative company form to be voluntarily adopted by companies. Such a company could be created in the same form in any Member State either from scratch by any legal or natural person or by an existing company by transformation or via a merger with another company. The SPE would leave great flexibility to shareholders to determine the internal organisation of the company. Regulation would be limited to those areas where it is strictly necessary to ensure a satisfactory degree of protection for stakeholders. SPEs would also be able to transfer their registered office to other Member States.

Furthermore, the SPE could, as any other company form, be used to engage into cross-border trade without setting up any separate establishment in another Member State. It could also equally provide groups with a very useful tool as they would be able to set up SPEs as subsidiaries in Member States throughout the EU.

#### Assessment

A uniform SPE Statute would allow individual SMEs to expand in the Single Market using a single company form, substantially similar in all Member States. Such uniformity of the SPE

throughout the EU would also allow company founders and shareholders to make significant *cost savings* both on the formation and on the operation of the SPE, compared to national forms (cost savings on the company's capital and on expert legal advice on company law matters). These savings, however, are likely to be greater on the formation and operation of 'subsequent SPEs' (e.g. subsidiaries) than on the formation and operation of 'first time' SPEs. Legal advice with regard to local social, administrative, tax and labour matters, which would fall outside the scope of the SPE Statute, however, would also still be required, as SPEs would be active in the national environment of the Member States. Furthermore, the SPE cannot be expected to result in a reduction of the registration and publication fees, since SPEs would always have to be registered on the companies' register to come into existence.

A uniform SPE with the same name and content throughout the EU would offer SMEs a *European label* which would make cross-border business easier and help companies compete in the global environment, by enhancing their image, visibility, competitiveness and dynamism. This may be true, in particular, for the companies of the EU-12 whose national company forms are less well-known throughout the EU than the company forms of the EU-15.

The SPE would leave company founders full flexibility to choose the internal organisation of the company best suited to their needs and activities and thus *save costs*. For example, shareholders could decide to have one director rather than a board, or to hold general meetings by telephone rather than by meeting physically, thus saving on travel costs and time. This increased flexibility would also allow cross-border groups to make economies of scale by choosing the same management structure as they create more SPEs, thus saving on legal advice.

The SPE could offer a high level of legal certainty by avoiding as much as possible references to national law as far as the company form is concerned. Matters pertaining to the SPE would be regulated either in the SPE Statute or in the SPE's articles of association (as prescribed in the Statute). However, there would still need to be references to national law for example for insolvency matters, but these should be limited.

By offering SMEs a corporate vehicle which is uniform and legally certain, yet flexible, the SPE would constitute the most effective and targeted means to achieve the objectives set out in Section 4. Most importantly, SMEs would be entirely free to choose the SPE form or not. The SPE as such, therefore, does not impose any new administrative burden on companies and is fully compliant with the Commission's objectives to cut red tape.

A proposal for a SPE also presents a good level of political acceptability as it would not require Member States to modify their existing legislations and, on sensitive issues, could draw on solutions agreed and implemented in the SE and the cross-border mergers directive.

How many companies are likely to be interested in the SPE Statute?

The exact number of companies that would use the SPE is impossible to determine. Based on the assumption that the SPE will be widely available, simple, easy to set up, cheap to run, uniform and flexible, **all EU companies** which do not wish to offer their shares to the public may be potentially interested in using it.

The SPE should appeal certainly to companies which already have subsidiaries or joint ventures and could transform their current legal form(s) into more flexible SPE(s). Based on the 2007 European Commission survey,<sup>37</sup> according to which about 5% of all EU SMEs have foreign business partnerships, of which 77% are located within the EU (see Annex 1), the number of SMEs that could potentially be interested in the SPE is of **about 1.15 million**. As regards medium and large companies, of which 20% have foreign business partnerships, **about 7,600 companies** could potentially benefit from the SPE.

Since the transformation of a national company into a SPE would be subject to national law, the costs of switching from a national company form to a SPE should not exceed the costs which companies face today when switching other (national) company forms. Switching company forms usually becomes significantly more costly when it entails in addition a delisting of securities from a stock exchange. Switching from a listed public company to a SPE would be no exception.

Obviously, even if the SPE is an attractive enough form for SMEs to want to use it, it will not become well-known overnight. Efforts will need to be made in particular by the European institutions to inform companies and company founders about the SPE and ensure the attractiveness of the label if it is to have value.

#### What is the added-value of the SPE for SMEs?

Even though it would offer SMEs a valuable business vehicle, the SPE does not purport to solution alone all difficulties which SMEs face in the Single Market. As described in Section 3.3 indeed, the SPE would provide a response to only part of these difficulties. The SPE should rather be seen in the more global context of the Commission's policy in favour of SMEs. The SPE is one of the measures envisaged as part of the Small Business Act (SBA), which is specifically intended to make the Single Market more approachable to SMEs. Other measures envisaged in the SBA include the reduction of unnecessary administrative burdens, the increase of SMEs' participation in EU programmes, the improvement of SMEs' access to public procurement, and the reduction of obstacles to cross-border trade. SMEs will also benefit from other wider policies not specifically targeted at SMEs, such as the simplification of EU legislation. Together with these other measures, the SPE can be expected to offer small businesses a tool that makes it easier for them to set up or expand their activity.

#### What burdens are Member States likely to experience as a result of the introduction of the SPE?

Though Member States are not expected to incur severe expenditure as a result of the introduction of the SPE, they will have to make space for the SPE as a new company form in their legal systems. This will require an adjustment to the companies' registers of the Member States to include the SPE as a new category of company. Member States will be able to build on existing systems, so that the IT systems of the companies' registries would only require to be adjusted to include the SPE. The introduction of the SPE will also require that the entities running the companies' registries train some member of their staff to become familiar with the features of the SPE and its registration requirements. The extent of the training will be somewhat limited since the SPE will be governed for a series of matters by the national law applicable to private limited liability companies.

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<sup>37</sup> See note 17.

## 5.5. Comparison of the options (summary)

In the table below, the options are measured against pre-defined criteria, mentioned at the beginning of Section 5. Each scenario is rated between "---" (very negative impact), "=" (no change) and "+++" (very positive impact).

Scenario	Uniformity	Flexibility	Legal Certainty	Effectiveness	Political acceptability
Baseline	-	-	++	--	-
Extensive harmonisation	++	+	++	++	--
Partial harmonisation	+	+	++	+	-
Improvement of existing legislation	+	+	++	++	-
SPE	++	++	++	++	+

As has been explained in section 5.1, the baseline scenario fails to offer SMEs the level of uniformity required to take advantage of the Single market and as a result does not offer any effective tool to help SMEs take advantage of the Single Market. It also is not consistent with the Commission's current policy in favour of SMEs.

Extensive harmonisation, which could be equally effective as the SPE Statute in terms of uniformity and legal certainty, should also be discarded because it is politically unfeasible.

Partial harmonisation would still be difficult to achieve politically and would likely not provide for sufficiently uniform rules and fail to secure sufficient level of legal certainty by leaving many issues to national law. As a result, it would not be effective. Harmonisation, whether extensive or partial, would also not provide for a European label, unlike the SPE.

Improving the existing SE and/or SCE Statutes to adapt them to the needs of SMEs must be discarded as politically unfeasible at this stage, as these instruments must first be evaluated. Furthermore, reopening these company forms to adapt them to the specific risks burdening them, which would not be effective.

Lastly, while offering a satisfactory level of legal certainty, the SPE would offer a good level of uniformity by making the same company form available throughout the EU. It would offer flexibility by letting companies free to opt for their internal organisation. It presents also a reasonable degree of political acceptability, as entrepreneurs will be free to choose it (or not) as a company form and also not least because the European Parliament strongly supports EU action in this field.<sup>38</sup>

## 6. EUROPEAN PRIVATE COMPANY STATUTE – DESCRIPTION, ANALYSIS OF IMPACTS AND COMPARISON OF SUB-OPTION

This section discusses each main issue to be covered by the possible SPE Statute. Summary tables at the end of each sub-section measure the comparative advantages and disadvantages of the different possible solutions against the criteria described in section 5, i.e. uniformity, flexibility, legal certainty, effectiveness and political acceptability. Except for effectiveness, not all criteria are relevant for each content option. Politically unrealistic options are discarded from the outset and do not appear in the summary tables.

38

See note 9-11.

## 6.1. Content sub-options

### A. Companies falling within the scope of the SPE Statute

#### *Option A1: Limitation to businesses of a certain size*

Description: The SPE would only be available to SMEs subject to a limit in size. Such a limit could be defined e.g. by reference to the number of shareholders, the number of employee, or the annual turnover.

Assessment: Such an option would deprive the SPE of part of its usefulness and attractiveness. As a flexible tool, the SPE should remain a relevant legal form throughout the life and growth of the company. If the SPE were reserved to small companies, such a limit might result in sanctioning successful SPEs whose activity has grown or even in inciting SPEs to limit the growth of their business, both of which would be inconsistent with the global policy objective to help SMEs expand in the Single Market. It would result de facto in a mandatory obligation on SPEs which have reached a certain size to change company form, thus exposing them to additional costs and administrative burdens. If the SPE, in contrast, is reserved to larger companies, it would deprive small companies, which have the most difficulties expanding their activity in the Single Market, of an instrument to do so. There also, the SPE would not fulfil its policy objective. This option, therefore, must be discarded.

#### *Option A2: Opening the SPE to businesses of all sizes*

Description: The SPE would be available to all businesses with no restriction on size. However, the SPE would be prohibited from offering its shares on the stock markets. . If an SPE intends to offer their shares to the public, they would need to transform their company form into a public limited liability.

Assessment: Such an option would make of the SPE a legal form that would be relevant to companies throughout their lives and expansion. The SPE would be relevant to small businesses wishing to expand in the Single Market and would remain relevant while they grow. The prohibition on public offers is standard in national private company forms. When the possibility is given to companies to offer their shares to the public, this always comes with detailed rules about the companies' internal organisation to protect shareholders, as shareholders of listed companies often do not have a direct relationship with the management. Prohibiting public offers means, therefore, that more flexibility can be left to the SPE in determining its internal organisation.

#### *Summary of the retained option*

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Effectiveness</i>
<i>Option A.2: Opening the SPE to businesses of all sizes</i>	Neutral, as the kind of company that can use the SPE form has no impact on the uniformity of the SPE	High, as the SPE will be able to evolve as the business develops	High, as no complicated size criteria will have to be applied and monitored	High, as the SPE will remain a relevant company form throughout the life of a business, with the exception of listed companies
	=	++	++	+++

## B. Degree of autonomy vis-à-vis national legislation

### *Option B.1: Autonomy from national law in general*

Description. The SPE would have an entirely autonomous regime, with uniform rules on company law, tax law, accounting law and labour law in all Member States. There would be no references to the national law in the SPE Statute.

Assessment. This option is politically unrealistic and should be discarded. Such an autonomous SPE regime would require harmonisation of tax law and labour law, where Member States are very reluctant to agree on common rules.

### *Option B.2: Autonomy from national company law regimes*

Description. While the SPE would be autonomous from national company laws, issues such as accounting, insolvency law, tax law, labour and social security law and criminal law would not be covered by the SPE Statute. For these matters, a SPE would be subject to the national law of the Member State of its incorporation.

Assessment. An autonomous set of rules applicable to SPEs in all Member States would allow founders to save some of the compliance costs of setting up and organising businesses across the EU by allowing them to use the same company form and arrange their company's affairs in the same way in every Member State as there would be few references to national legal provisions. Drawing up articles of association or applying rules e.g. on capital maintenance or share transfers would not require professional advice in each Member State as the rules would be identical regardless of the place of registration of the SPE.

### *Option B.3: Reliance on national company law*

Description. The SPE Statute would contain some basic principles on the formation, organisation and transfer of the registered office of a SPE, but other matters (such as shares, capital, and creditor protection) would be governed by the national law of the Member State of the incorporation of the SPE. This is the model of the SE Statute.

Assessment. This approach implies the application of a complex combination of national and European rules, requiring an extensive legal advice, which SMEs cannot afford. Stakeholders find the system of SE Statute as too complicated and creating legal uncertainty. This solution would also result in 27 different SPE forms in the EU.

### *Comparison of the retained options*

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Effectiveness</i>
<i>Option B.2: Autonomy from Member States' company law legislation</i>	High, on company law matters.	Full flexibility to determine the company's internal organisation.	High, on company law matters, as only the Statute and the SPE's articles of association apply.	Effective, ensures application of the same company law rules to the SPE in every MS.
	++	++	++	++
<i>Option B.3: Reliance on Member States' company law legislation</i>	A little more uniformity than at present, but overall fairly low	Flexibility would depend on the applicable national law	Low, as the different national rules would apply to the majority of issues.	Ineffective, limited added value as companies would have to apply different national rules.
	+	=	=	=

The table above shows that option B.2 would ensure a higher level of uniformity, legal certainty and it would be more efficient than option B.3. In option B.3, the degree of flexibility would depend on the national legislations while in option B.2 the level would be defined by the Statute, which increases legal certainty.

### **C. Degree of uniformity of the Statute**

#### ***Option C.1. Uniform Statute***

Description. The SPE Statute would contain a complete set of rules regulating the external (e.g. representation, creditor protection) and the internal affairs (i.e. organisation and operation) of the SPE autonomously and independently from the national laws. It would leave limited possibility to founders/shareholders to depart from its provisions in the articles of association.

Assessment. This option would ensure the absolute uniformity of the SPE form across the EU. Shareholders, however, would lack the flexibility to choose an internal organisation best suited to their needs (in relation to the size of a company or sector of its activity). The Statute, as a result, would be less appealing to companies.

Furthermore, the experience of negotiations of the SE is a useful reference in this context. The initial draft SE Statute contained a complete set of rules creating a SE completely autonomous and independent from national legislations. No political agreement could be reached on such an ambitious proposal and a new approach had to be developed, i.e. a Statute containing independent rules on the SE to the extent possible and numerous references to the national laws of the Member States on other issues.

#### ***Option C.2. Full flexibility***

Description. The Statute would leave full flexibility to the shareholders to regulate all company matters in the articles of association, i.e. internal organisation, capital, protection of creditors, liability of directors, employees' participation rights etc. The Statute would be limited to a few provisions on the creation of the SPE and the obligation to regulate all other matters in the articles of association.

Assessment. Giving total freedom to shareholders to arrange for all company matters, both on internal organisation and the company's relations with third parties, would result in an insufficient level of protection of third parties. This option is politically unfeasible and therefore should be discarded.

#### ***Option C.3. Uniformity on core issues in external relations and flexibility in internal affairs***

Description. The Statute would contain provisions on some core issues (the basic features of the SPE) which are indispensable for the formation of the company and the SPE's relations to third parties (e.g. registration, representation of the SPE vis-à-vis third parties, creditor protection). But the internal organisation of the SPE would be left for the most to be governed by the articles of association. The Statute would prescribe the minimum content of the articles of association while leaving founders free to decide on the substance of these matters (e.g. pecuniary and non pecuniary rights of the shareholders, the method of decision-making, quorum, management powers, etc). The shareholders could also make use of model articles of association, which would be developed by the Commission in parallel to the SPE Statute. The model could be taken by companies off-the-shelf or provide an example to draw from. Most



importantly, the Statute and the matters forming part of the minimum content of the articles as prescribed by the Statute would take precedence over national law.

Assessment. This SPE model would give company members more flexibility than Option C.1. The SPE would be uniform throughout the EU as regards its main characteristics (e.g. limited liability of the shareholders, share capital, contributions, name of the company) and matters which have an impact on the interests of third parties (e.g. profit distribution, formation, disclosure, creditor and minority shareholder protection). The broad contractual freedom which would apply to other issues not of direct concern to third parties would allow the shareholders to adapt the organisation and operation of the SPE to their business needs. In particular, they would be able to decide on the management structure, the manner in which shareholders' resolutions should be adopted (with the possibility of not having a general meeting), the majority required for the resolutions, etc. It would also allow companies to opt for the same – uniform – internal organisation and the same articles in all subsidiaries set up as SPEs, thus making significant savings on legal advice. The model articles of association could also contribute to substantially reduce the costs of the legal advice and provide added legal certainty. Option C.3 would also offer a very good level of legal certainty, as the SPE would be governed first by the SPE Statute and the matters forming part of the minimum content of the articles as prescribed by the Statute. All other matters would be governed by the national law of the Member State in which the SPE has its registered office. This would guarantee that there is no legal vacuum. At the same time, it would not impose on Member States the burden of introducing specific legislation to address matters not covered by the Statute and the minimum content of the articles. For all matters not covered the SPE Statute and the minimum content of the articles, the SPE would be assimilated to the equivalent national private company form. For example, the Polish authorities could decide that the SPE in Poland would be governed, for all matters not covered by the SPE Statute and the matters forming part of the minimum content of the articles, by the national law applicable to the sp. z.o.o. This also means that the SPE would not lead to any new legal regime or added complexity in the national legislations of Member States but merely offer SMEs an additional legal form, alongside existing national legal forms.

### *Comparison of the retained options*

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Effectiveness</i>
<b><i>Option C.1. Uniform Statute</i></b>	Very high, with the same set of rules used by every SPE in the EU.	No flexibility for the founders in designing internal/external company's affairs.	Very high; no references to national law or to the articles of association.	Low. No possibility of adapting the SPE to the needs of different companies Not attractive for businesses.
	+++	+	+++	+
<b><i>Option C.3. Uniformity in the external and flexibility in the internal affairs</i></b>	Significant level of uniformity on the content of the Statute and the list of matters to be covered by the Articles (drafting tasks).	Flexibility left to founders on the internal organisation of a company.	Good because Statute would contain uniform core rules, the list of matters to be covered by the Articles. Limited references to national company legislation.	High. Ensures legal certainty while allowing the shareholders to adapt the Statute to the specific needs of their company.
	++	++	++	+++

The table shows that option C.1 would ensure more uniformity and legal certainty than option C.3 though its lack of flexibility risks making the SPE unattractive to businesses. Option C.3 offers a better balance between uniformity and flexibility without compromising legal certainty.

## **D. Cross-border dimension**

### ***Option D.1: No cross-border dimension***

Description. The SPE may be set up by any legal or natural person(s) in any Member State.

Assessment. This option would make the SPE widely available as it would allow any natural person or legal entity to set up a SPE, irrespective of any cross-border presence or activity. The impact of a SPE open to domestic and cross-border businesses alike would be greater as more companies could use the SPE form. As a company form which leaves shareholders free to choose the internal organisation best suited to their needs, the SPE should be attractive in a purely domestic context. Of course, founders of domestic businesses with no ambition to expand abroad (e.g. small retail businesses), might still prefer opting for national company forms with which they may be more familiar. However, founders of other businesses, which do not exclude expanding abroad at a later stage, may find it attractive to opt for the SPE company form from the outset. This would allow them to expand abroad using the SPE form, i.e., with the same internal organisation and the same articles. This option would also offer a wider choice of legal forms for SMEs and foster competition between the SPE and national company forms. It could put pressure on Member States to make their laws more attractive for entrepreneurs. On the other hand, this may make these Member States more reluctant to accept such a Statute.

It may be argued, however, that making the SPE accessible also to companies with no cross-border dimension is not fully in line with the subsidiarity principle. However, such availability of the SPE would make it much easier for companies to expand on a cross-border basis, as companies set up as SPEs could expand in the Single Market using the same company form (the SPE). This would make cross-border expansion easier. This also means that SMEs would enjoy the benefits of the SPE (cost savings, uniformity, flexibility) as they set up their first subsidiary or joint venture in another Member State.

### ***Option D.2: Cross-border dimension***

Description. The SPE may be set up by any legal or natural person(s) in any Member State provided there is a cross-border element (e.g. shareholders from at least two different Member States or, or evidence of cross-border activity).

Assessment. Serious consideration was given to this option. A cross-border requirement would mean that the SPE, like the SE, is strictly focused on cross-border activity. Such a cross-border element would appear consistent with the objective of helping SMEs to expand cross-border and make a better use of the possibilities of the Single Market. The need for EU intervention might also raise fewer questions with regard to the subsidiarity principle. The SPE would also not come in direct competition with national company forms and, as a result, it might be less criticised. However, on a closer look, the absence of a cross-border requirement actually makes the SPE more 'Single Market' friendly, rather than the contrary. The absence of any such requirement would enable company founders to set up their business as a SPE at home. This means that they could later set up subsidiaries in other Member States also formed as SPEs, with the same internal organisation and the same articles of association. This, of itself, would make cross-border expansion in the Single Market significantly easier and cheaper. Furthermore, cross-border requirements in the form of shareholders from different Member States are purely formal and can be easily circumvented. Other cross-border requirements, such as the evidence of a cross-border activity, would require constant

monitoring on the part of Member States to ensure that every SPE meets the requirement on an on-going basis. Not only would this impose significant administrative costs on Member States, but it would also expose SPEs to a heavy reporting burden which would be inconsistent with the global policy objective of making the Single Market more approachable to SMEs.

### ***Comparison of the retained options***

	<i>Legal certainty</i>	<i>Effectiveness</i>	<i>Political acceptability</i>
<b><i>Option D.1: No cross-border dimension</i></b>	High. No need to examine and monitor the cross-border element by the registering authority.	Greater choice of legal forms. Pressure on Member States to introduce more business-friendly corporate legislation.	May be opposed by some MS as it would create direct competition between the national legal forms and the SPE.
	+++	+++	+
<b><i>Option D.2: Cross-border dimension</i></b>	On-going control that the cross-border requirement continues to be met during the life of the SPE would be cumbersome and costly for MS	Limited to companies with cross-border activity. Limited competition between national legal forms and the SPE.	Focus on cross-border activity; more directly linked to the completion of the Single Market; more easily accepted by MS.
	+	+	++

The table shows that the lack of requirement for a cross-border element has very positive impact both on legal certainty and the effectiveness of the legislation, compared to Option C.2. The only drawback is that Member States may find option C.1 challenging as their national private companies forms will face the direct competition of the SPE. On the whole, therefore, preference is given to a SPE without any cross-border requirement.

## **E. The company's seat and its transfer**

### ***Option E.1: Inseparability of the registered office and the principal place of business***

Description. The registered office and the principal place of business of an SPE would have to be in the same Member State. The transfer of the registered office to another country would, therefore, require the simultaneous transfer of the principal place of business.

Assessment. The SE Regulation applies this principle. However, this approach is not in line with the recent case law of the Court of Justice, which allows company having its registered office in a Member State to have its principal place of business in another Member State. This option, therefore, should be discarded.

### ***Option E.2: Separation of the registered office and the principal place of business***

Description. The registered office and the principal place of business of an SPE would not have to be in the same Member State. The transfer of the registered office to another country would, therefore, not require the simultaneous transfer of the principal place of business. Such a freedom would confirm the recent case law of the European Court of Justice.

Assessment. This approach would facilitate the exercise of the freedom of establishment for the SPE based on a uniform, simple and easily applicable principle, i.e., that a company may locate its registered office and its headquarters in different Member States as well as move the registered office and/or the principal place of business to another Member State. At present, companies cannot transfer their registered office to another Member State without first winding up their business in their home Member State and then setting a new company business in their host Member State, which triggers a heavy tax burden. The only way for a

company to transfer its registered office to another Member State is to create a company abroad and be taken over by that company. The takeover would qualify as a cross-border merger falling within the scope of Directive 2005/56/EC. This, however, is perceived as being unduly cumbersome.

The change of the registered office triggers the change of the national company legislation applicable to the SPE. One may argue that this may give rise to forum shopping and a race to lighter regulatory environments which are less protective of shareholders, creditors and employees. The risk of extensive forum shopping, however, may be overstated. According to a study conducted for the European Corporate Governance Institute,<sup>39</sup> the number of private limited companies from all Member States incorporating in the UK per year increased by 560% after the Centros judgement of the ECJ in 1997. The main rationale for the creation of those companies in the UK was ease of registration and low costs. A sufficiently uniform SPE Statute means that the cost of setting up a SPE will be approximately the same throughout the EU, thus making forum shopping less attractive. Furthermore, company law is not the only legislation that applies to companies. Numerous other national legislations apply to companies such as labour, commercial or environmental legislation. These legislations usually apply to businesses located on the national territory. For example, the Danish factory of a Danish company will remain subject to Danish environmental legislation, even if the company transfers its registered office to another Member State.

The effectiveness of the transfer of the SPE's registered office would much depend on whether it is tax neutral. The (tax) Merger Directive<sup>40</sup> provides that the transfer of registered office of an SE or SCE from a home Member State to a host Member State does not result in any taxation of the unrealised capital gains on the assets which remain effectively connected with a permanent establishment of the SE or SCE in the home Member State (article 10b). There are diverging views as to whether this provision strictly and only applies to the SE and SCE or whether, following the case law of the ECJ,<sup>41</sup> it would apply mutatis mutandis to other types of companies. To ensure absolute clarity, the rules of the (tax) Merger Directive should be amended to cover the transfer of the registered office of the SPE and therefore ensure that the transfer is tax neutral.

This option ensures legal certainty by introducing an easily determinable and uniform principle on the applicable company law, i.e. the law of the company's place of incorporation.

### ***Option E.3: Determination of an applicable rule by the law of the Member State of registration***

Description. The Statute would not contain any provisions on the SPE's seat and leave it to conflict of laws to determine the applicable law in the light of the recent case law of the European Court of Justice. Accordingly, some Member States would require the registered office and the principal place of business of the company to be in the same country ("real seat" principle)<sup>42</sup>, while others would allow the SPE the registered office and headquarters in different countries ("incorporation principle"). As regards the transfer of the registered office,

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39 M. Becht, C. Mayer, H.F. Wagner (2006). Where do firms incorporate?, Working paper no. 70/2006.

40 Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Members States, amended by Council Directive 2005/19 /EC of 17 February 2005 90/434/EEC as amended by Council Directive 2005/19/EC of 17.2.2005

41 C-9/02, de Lasteyrie, 11 March 2004, O.J. [2004] C 94/6

42 According to the principle of "the real seat" a company is governed by the law of the country where its headquarters or principle place of business. The following Member States apply it: BE, DE, ES, FR, LU, PT, EL, LT, PL, EE, NO, AT, SL, LV.

the Member States applying the real seat principle could require that the SPE moving its registered office from/to their jurisdiction transfers its real seat/principal place of business as well. Companies moving from/to the incorporation state could relocate their registered office alone.

**Assessment.** This approach would give companies less flexibility and legal certainty in both at the stage of the formation and later, when they wish to transfer their registered office. The SPE's right to move its registered office without simultaneous transfer of the principal place of business would depend on the principle (incorporation or real seat) applied by the Member State of destination. This option would limit the effectiveness of the instrument and create legal uncertainty with regard to the applicable law. In addition, this approach would be conflicting with the objective to ensure the uniformity of the SPE Statute in all Member States.

In this context the recent developments in some Member States are worth noting. Further to the recent case law of the Court, some Member States applying the real seat principle have introduced (Hungary)<sup>43</sup> or are considering to opt<sup>44</sup> for the incorporation principle (Germany).

### *Comparison of the retained options*

	Uniformity	Flexibility	Legal certainty	Effectiveness	Political acceptability
<b>Option E.2:</b> <i>Separation of the registered office (RO) and the principal place of business (HO)</i>	High. Same principle applying to all SPEs across the EU.	High. Full freedom to choose the location of the HO and the RO.	Sufficient, as the same principle would apply in all MS. Applicable law = law of the MS of registration.	Flexibility in the allocation of a company's business. Some regulatory competition between MS laws.	Good, because solution limited to the SPE, but possible opposition of MS requiring RO and HO to be located in the same MS
	++	+++	++	+++	++
<b>Option E.3:</b> <i>Determination of an applicable rule by the law of the MS of registration</i>	None as national law would apply.	Dependent on the rules applied by MS.	The applicable law would depend on the law of the country of registration. No uniform principle.	No added value to the present situation where companies encounter obstacles when moving to another MS.	More easily accepted by MS as national law rules would apply with respect to the SPE's seat.
	=	=	=	=	+++

The table clearly indicates that option E.2 would be favourable in terms of uniformity, flexibility, legal certainty and effectiveness, even though it may be less acceptable to some Member States that still apply the real seat principle.

43 Act L+1 of 2007, entered into force on 1 September 2007.

44 The press communication of the German Ministry of Justice (BMJ) on the reform (available at: <http://www.bmj.bund.de/>). The motive for this change was to give German companies the same flexibility as the companies from other Member States enjoy, i.e. using their national form (e.g. GmbH) to conduct their business outside the national territory.

## F. Capital regime

### ***Option F.1: Minimum capital based on the average existing in the "Old member States" (EU-15)***

Description: The SPE would be subject to a minimum capital requirement set at the level of the average minimum capital in the EU-15, i.e., €10,000 or €12,000.

Assessment: Minimum capital used to be considered as providing essential protection to creditors. This, however, is now largely challenged. Creditors usually insist on other means of protection. Banks, for example, will usually require another form of security, be it a personal guarantee, a mortgage or other form of security. Yet, it could be argued that a minimum capital requirement would have the effect of a seriousness test and discourage abusive company creations. However, a level as high as €10,000 or €12,000 would be comparatively very high for entrepreneurs of the EU-12, and make the SPE much less accessible to them than to entrepreneurs of the EU-15, which, as a matter of policy, is unacceptable. This option, therefore, should be discarded.

### ***Option F.2: Minimum capital based on the average existing in the "New Member States" (EU-12)***

Description: The SPE would be subject to a minimum capital requirement set at the level of the average minimum capital in the EU-12, i.e., €5,000.

Assessment: With a lower minimum capital requirement, the SPE would be accessible to EU entrepreneurs of all Member States, though the differences in standards of living mean that, in relative terms, the SPE would remain, as a matter of fact, less accessible to entrepreneurs of the EU-12 than to those from the EU-15. The real question here is that of the added value of such a minimum mandatory capital level. Even less than Option F.1, this option would not afford creditors any protection. A low level of minimum capital also would probably not prove sufficiently deterrent to prevent abusive company creations. Furthermore, like Option F.1, it would ignore the fact that SMEs have different actual capital requirements depending on the nature of their activity.

### ***Option F.3: Minimum capital of €1***

Description: The SPE would be subject to a minimum capital requirement of €1.

Assessment: This option would align the SPE with private limited liability company forms in the UK, France, Ireland and Cyprus and would be in line with the current trend at national level to suppress minimum capital requirements.<sup>45</sup> It would also take stock of the growing consensus that creditors do not rely in practice on minimum capital requirements for protection. It would also significantly contribute to making of the SPE a truly flexible form which entrepreneurs can adapt to their exact needs. It would also make the SPE equally accessible to the entrepreneurs of the EU-12 and of the EU-15.

### ***Comparison of the retained options***

	Uniformity	Flexibility	Legal certainty	Effectiveness	Political
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France is considering the suppression of the minimum capital requirement for the SAS. The Netherlands are considering the same measure for the B.V.

					acceptability
<b>Option F.2: Minimum capital at level of EU-12 average</b>	Neutral, as founders would put up whichever capital above the minimum threshold as is required for the launch of the SPE's activities are.	Low, as founders would have to put up at least the minimum capital, no matter what the actual capital needs for the launch of the SPE's activities are.	Neutral, as a minimum capital requirement has no impact on legal certainty.	Low, as it would not protect creditors while imposing on SPE founders a stringent and rigid requirement.	High as most MS still impose minimum capital requirements.
	=	-	=	-	++
<b>Option F.3: Minimum capital of €1</b>	Neutral as founders would put up whichever capital as is required for the launch of the SPE's activities are.	High, as founders would put up the exact amount of capital they need for the launch of the SPE's activities.	Neutral, as a level of capital has no impact on legal certainty.	High, as founders would put up the exact amount of capital they need for the launch of the SPE's activities.	Lower than option F.2, as only a minority of MS have such low minimum capital requirements.
	=	++	=	++	+

The table indicates that Option F.3 is to be preferred to Option F.2 as being more effective and making it possible for SPE founder to put up the exact amount of capital needed to launch the activities of the SPE. This said, Option F.3 may appear less familiar to Member States than Option F.2.

## G. Distributions to shareholders

### *Option G.1: Simplified Second Company Law Directive regime*

Description. The SPE Regulation could take over certain core provisions of the Second Company law Directive on the capital of public limited companies, as are adapted to the specific needs of private companies and are deemed to be necessary for the protection of creditors and shareholders. These provisions would include the rules on distribution limits (e.g. the balance sheet test which prohibits distributions as a result of which liabilities would exceed assets), specific creditor protection measures in case of capital reduction, and provisions on capital increase and share redemption. There would be mandatory rules in the SPE Statute (unlike the Second Directive which provides them as a minimum and allows Member States to introduce more stringent requirements). Other provisions unduly cumbersome for SMEs, e.g. expert evaluation of contributions in kind, would be left out.

Assessment. This option would expose SMEs to unnecessary burdens. In addition to making the distribution of dividends conditional on the existence of a positive balance-sheet (assets exceeding liabilities) after dividend distribution, it would also make the capital reduction subject to the preliminary approval of the shareholders' meeting and would also impose specific creditor protection rules on the SPE, which are unduly cumbersome for small businesses. It would also unnecessarily limit shareholders' freedom in the decision-making and would reduce the flexibility of the SPE.

### *Option G.2: Balance-sheet test*

Description. The SPE Statute would contain fewer provisions on the capital regime than in Option G.1. Like Option G.1, it would require a balance-sheet test along the model of the Second Company Law Directive, but this test would apply before any distribution including share redemptions, acquisition of own shares and dividend distribution. The articles of association could require non-distributable legal or statutory reserves if the shareholders find it necessary. Also, the shareholders would be free to introduce a liquidity test in the articles of association in addition to the balance-sheet test required by law, to ensure that no distribution

is made unless the SPE remains able to pay its debts when these become due. The SPE Statute would also prescribe that the most important decisions in relation to the company's capital (e.g. capital increase or reduction) have to be taken by the shareholders.

**Assessment.** Founders would have more flexibility in designing the SPE's capital regime than in option E.1. The same test, the balance-sheet test, would have to be satisfied before any kind of transfer of the SPE's assets to the shareholders. The model articles of association to be elaborated by the Commission could encourage using an additional liquidity test that is not yet common in the Member States but could increase the shareholders and creditors security. This option would also give shareholders freedom to determine the rules on capital increase and reduction and share redemption. SPEs would also be able to adopt flexible rules on own shares, capital increase and, with some limitations, on capital reduction.

### **Option G.3: Solvency test**

**Description.** The Statute would contain the same provisions as in option G.2, with the difference that at every distribution the SPEs would have to satisfy a solvency test instead of a mere balance-sheet test. A solvency test would combine a balance sheet test and a liquidity test. For example, as is the case in New Zealand, the board, in order to make a lawful distribution, would have to satisfy itself that (1) the company must remain able to pay its debts as they fall due and (2) the value of the company's assets must exceed the value of its liabilities, including contingent liabilities. This option would require a statement by the directors of the SPE confirming that the above conditions are met at the time of the distribution.

**Assessment.** This option would give the same flexibility to the founders as option G.2 in designing the SPE's capital regime. In relation to distribution limits, it would also be consistent, because the same test would apply on the occasion of every distribution. A two-fold cumulative test may even ensure more security for shareholders and creditors than a pure balance-sheet test as it does not only take into account the net assets of the company but also its prospects for the future. On the down side, measuring the future liquidity of a company is a very burdensome and expensive requirement for small companies. Also, potential directors' liability may influence the management of the company in both positive and negative ways. Lastly, most entrepreneurs are unfamiliar with such a test which only exists in a few Member States (e.g. UK, NL, HU).

Regarding start-up capital and the other elements of the capital regime, the same assessment applies as in option G.2.

### **Comparison of the options**

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Effectiveness</i>	<i>Political acceptability</i>
<b>Option G.1: Simplified Second Company Law Directive regime</b>	High, since all SPEs would apply the same capital regime.	No flexibility on the terms of share redemption and increase/reduction of capital, minimum capital requirement	SPEs would apply the same provisions in all MS.	Too rigid system to be attractive for SMEs.	Rules designed for public companies and considered by some MS as outdated.
	+++	+	+++	+	+
<b>Option G.2: Balance-</b>	Lower level of uniformity than	Flexibility on the terms of share	Common provisions on	More flexibility but mandatory	A known system of distribution and



<i>sheet test</i>	E.1. Common provisions would apply only to distributions.	redemption and increase/reduction of capital, minimum capital, etc. Important restrictions only on distributions.	some elements of the capital regime, freedom left to the shareholders on other matters.	provisions on distributions.	freedom to the shareholders on other matters. May be questioned by some MS.
	++	++	++	+++	++
<i>Option G.3: Solvency test</i>	Lower level of uniformity than E.1. Common provisions would apply only to distributions.	Flexibility with regard to terms of share redemption and increase/reduction of capital, minimum capital, etc. Important restrictions would only apply to distributions.	Common provisions on some elements of the capital regime, freedom left to the shareholders on other matters.	More flexibility but mandatory provisions on distributions. Mandatory solvency test may be too burdensome for SMEs.	A system of distribution that is only known is a few MS and outside the EU.
	++	++	++	++	+

The table shows that limiting the scope of the restrictive provisions to the absolutely necessary and avoiding the introduction of burdensome provisions result in the highest level of effectiveness and may also reach the most political support. Option G.2 also embodies an acceptable compromise between uniformity, flexibility and legal certainty.

## H. Employee participation

### *Option H.1: Rules determined by Statute*

Description. The SPE Statute would contain a completely new, ad hoc, employee participation regime.

Assessment. This would have the advantage of ensuring the uniformity of employee participation rules in all SPEs throughout the EU. As such, it would, therefore, contribute to the uniformity of the SPE Statute and employees of SPEs would be subject to the same regime throughout the EU.

The major disadvantage of this option is that it would reopen the employee participation debate. The SE Statute and of the cross-border mergers directive were stalled for decades until Member States found an agreement on employee participation. Reopening the employee participation debate in the context of the SPE would expose the SPE to an unreasonable political risk. This option, therefore, must be discarded.

### *Option H.2: National rules of Member States of the place of incorporation of an SPE*

Description. The SPE would be subject to the employee participation rules applying to the similar kind of companies in the Member State in which the SPE is incorporated.

Assessment. By assimilating the SPE to similar national company forms, this option is both simple and legally certain. Although SPE founders creating a SPE ex-novo would, in choosing the Member State in which to incorporate their SPE, de facto also choose the national employee participation regime applicable to their SPE, this would not be a change to today's situation as company founders can set up companies anywhere in the EU regardless of the location of the company's principal place of business.

This option, however, would not address the sensitive situation in which a SPE with employee participation transfers its registered office to a Member State which does not provide for this right. The SPE, as a result, could be a potential vehicle to escape national employee

participation regimes. This would create legal uncertainty and would be unacceptable for employees and for Member States. Another, yet smaller, disadvantage is that the employee participation regime of the SPE would vary from one Member State to the other, though this should not be overstated as only six Member States provide for mandatory employee participation in companies with 100 or fewer employees<sup>46</sup>.

***Option H.3: National rules of Member States of the place of incorporation of a SPE, combined with specific rules in the case of cross-border mergers and seat transfers in the SPE Statute inspired from the SE Directive and the Directive on cross-border mergers***

Description. The SPE would be subject to the employee participation rules of its Member State of incorporation. However, the SPE Statute would contain in addition specific rules on the cross-border transfer of the SPE registered office, inspired from the rules existing in the directive on cross-border mergers.

Assessment. This option has the same advantages of Option H.2 without its major disadvantage (not addressing the cross-border seat transfer). It is, therefore, a flexible, yet efficient and legally certain option, which is beneficial to both employees and companies. In addition, employee participation in the case of the cross-border transfer of the SPE's registered office would be addressed by referring to solutions which have been agreed at EU level and embedded in the cross-border mergers' directive). As a result, this option should offer a higher degree of political acceptability. The rules on employee participation contained in the cross-border mergers' Directive are considered to be complex and fairly cumbersome. But these rules would be of limited practical relevance since they would only apply in those cases where a SPE that is subject to employee participation in its Member State of registration transfers its registered office to a Member State which offers no employee participation or a lower level of employee participation. At present, only six Member States legally impose employee participation in small companies. In light of their limited actual impact, the rules inspired from the rules on employee participation in the cross-border mergers' directive, therefore, would not appear disproportionate.

***Comparison of the retained options***

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Effectiveness</i>	<i>Political acceptability</i>
<b><i>Option H.2: National rules of Member States of the place of incorporation of an SPE</i></b>	None, as national law would apply	High. Employee participation regime determined by choice of Member State of registration	Low, because transfer of the SPE's registered office unregulated.	Low, because transfer of the SPE's registered office unregulated.	Low, because SPE could be used to escape employee participation regime.
	+	+++	+	+	+

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SE: from 25 employees; DK: from 35 employees; CZ, SK and SI: from 50 employees; NL: from 100 employees.

<b>Option H.3 National rules of Member States of the place of incorporation of an SPE combined with employee participation rules of the SE on cross-border seat transfer and of the Directive on cross-border mergers</b>	None upon creation of the SPE (national legislation); but common rules on cross-border seat transfers	Medium: choice of employee participation regime determined by choice of MS of registration. But common regime applicable to cross-border seat transfers	High. Mobility situations (transfer of seat) would be covered.	Effective as maintains existing participation rights. It also allows companies some freedom in case of start-ups.	High: aligns SPE with national forms and addresses sensitive situations (seat transfer) with rules already existing in EU legislation.
	++	++	+++	++	+++

Option H.3 is to be preferred as it builds on existing agreements and avoids politically dangerous loopholes.

## 6.2. Summary of the suggested content sub-options

The table below summarizes the content sub-options for the SPE which would be suggested to be retained. Together, these sub-options form together the suggested core package of the SPE.

Content Option	Suggested Sub-option
A: Companies within the scope of the Statute	Option A.2: no restriction on the size of companies
B: Degree of Autonomy	Option B.2: Autonomy from national company law regimes
C: Degree of Uniformity	Option C.3. Uniformity in the external and flexibility in the internal affairs
D: Cross-Border Dimension	Option D.1: No cross-border dimension
E: Company's seat and its Transfer	Option E.2: Separation of the registered office and the principal place of business
F: Capital Regime	Option F.3: Minimum capital requirement of €1
G: Distributions to shareholders	Option G.2: Balance sheet test
H: Employee Participation	Option H.3 Employee participation rules of the SE and of the Directive on cross-border mergers

The table below compares the suggested core SPE package with the baseline scenario in light of the pre-defined criteria.

Criteria	Impact Rating from zero (0) to high (+++)		Explanation of Rating and aspects of the core SPE package most relevant for the criteria
	In absolute terms	Compared to Baseline Scenario	
Uniformity	++	++	Since it will be autonomous from Member States' company legislations regarding company forms, the SPE will be substantially the same in all Member States. As a result, it will offer SMEs a high degree of uniformity, which does not exist in the baseline scenario.
Flexibility	+++	+++	The SPE would make available in all Member States a company form for SMEs with a high degree of flexibility as far as the internal organisation of the company is

			<p>concerned. At present, this flexibility only exists in some of the national company forms.</p> <p>The possibility for an SPE to have its registered office and principal place of business in different Member States will also give SPEs flexibility, no matter where SPEs are located in the EU. This flexibility at present only exists in those Member States which have modified their national legislation following the recent case law of the ECJ. This would also mean that the SPE can transfer its registered office from one Member State to the other, without losing legal personality. This possibility currently does not exist.</p> <p>The absence of a minimum capital requirement would enable companies to choose the level of capital best adapted to their actual needs.</p>
Legal Certainty	++	=	<p>The SPE will offer SMEs legal certainty since it will be governed for all company law matters by the EU instrument creating it. For other matters, e.g. labour law or insolvency law, the law of the Member State in which the SPE is registered will apply.</p>
Effectiveness	+++	+++	<p>In the absence of any cross-border requirement, the SPE will be available to all. Because of its uniformity, it will be available in the same form in all Member States. These features, combined with the high degree flexibility as regards capital and internal organisation, will make of the SPE a highly effective instrument for SMEs. At present, SMEs must operate under a separate national company form in each Member State.</p>
Political Acceptability	++	+	<p>The SPE responds to the growing consensus that action is needed to help SMEs make the most of the Single Market, which the baseline scenario does not offer.</p> <p>The adoption of the SPE will not require Member States to make extensive amendments to their existing legislations, as the SPE will stand as a separate form alongside to the existing national company forms.</p> <p>With regard to the sensitive issue of employee participation, the SPE would be in the situation of any comparable national company form. The specific rules that would have to be introduced in the SPE Statute to cater for specific mobility situations such as the transfer of seat, would be drawn from existing instruments (SE Regulation) and solutions which have already been accepted by Member States and the European Parliament.</p>

## 7. THE SUMMARY OF THE IMPACTS OF THE SPE STATUTE

The SPE with the content suggested in section 6 would bring positive **economic impacts** to the EU economy. As shown in Table 1 below, it would stimulate growth and expansion of EU businesses in the Single Market by reducing the costs of setting up a company in a Member State and the compliance costs resulting from diverging Member States' company law regimes. In the short term, the impact may be greater for those SMEs which already operate in other Member States. In the medium to longer term, a wider range of companies might use the new company form, which could have a multiplier effect by facilitating more cross-border investment and joint ventures.

The European label would make it easier for EU SMEs, in particular those from EU12, to integrate in the single market and compete in a globalised environment. The SPE, because of its uniformity, the option to move its registered office to another Member State and its European label, could also be attractive to non EU entrepreneurs wishing to set foot in the

EU. Also, by providing entrepreneurs with an additional choice of a legal form the SPE Statute will intensify competition between corporate legal forms in the EU and thus increase the pressure on EU Member States to make their laws more flexible and business friendly. This would contribute to the Lisbon aim to simplify and modernise regulatory environment and cut red tape. The SPE Statute will be an option for companies and, therefore, would not impose any new administrative burden on them. The Member States would need to adapt their national registration systems to a new legal form and there will be some costs of adaptation of the national laws to the rules introduced in the SPE Statute. However, these costs would not be significant.

**Table 1. The table below illustrates the expected gains from having the SPE Statute (preferred option) compared to the identified costs companies currently face (baseline).**

<b>Baseline: current company law related costs of cross-border activities</b>	<b>Preferred option: the SPE</b>
High minimum capital requirement in some Member States	No minimum capital requirement. Savings will depend on the MS, ranging <b>from €0 to €35.000</b> . The higher the minimum capital requirement in the MS law the bigger savings SPE would bring (e.g. <b>AT: €35.000; EL: €18.000; LT: €2896; UK, IE: 0</b> ). See Table A3 for data on other MS.
Legal advice required on issues related to setting up a subsidiary in another MS (company law matters only, excluding other matters such as labour or environment) Notary fees	No or less external professional advice to draft articles and preparing documents for registration. Model articles of association available – if taken of the shelf would significantly reduce legal costs The savings, which would vary depending on the MS, the SPE size, the complexity of the articles etc. are estimated by SMEs themselves to <b>€2000 - €10000</b> . <sup>47</sup>
Legal advice (company law matters only, excluding other matters such as labour or environment) required on issues related to day-to-day management and internal administration of a network of subsidiaries in different MSs	No external professional advice needed for day-to-day operation of business in other MSs as the same rules would apply across the EU. Possibility to set up the same organisational structure for all subsidiaries in the cross-border group EU. The savings, which would vary depending on the MS, the SPE size etc., are estimated to <b>€750 - €8000</b> .
Unfamiliarity with foreign legal forms	<b>European label</b> recognisable across the Member States. A strong marketing tool in and outside the EU.
No possibility to transfer a company's registered office to another MS	Possibility to move the SPE registered office to another MS – more flexibility for SMEs

As mentioned in Chapter 5.4 the SPE would address only part of the problems SMEs face in the Single Market. Other on-going EU measures for SMEs or for business in general such as simplification of EU legislation, reduction of administrative burdens or 'one-stop-shop' also contribute to enhancing competitiveness of SMEs and the benefits of the SPE should be looked at in this broader context.

As regards the **social impacts**, the SPE, as an attractive company form, could help foster business creation and expansion. This in turn could have a positive effect on job creation and employment.

The number of jobs which the SPE might contribute to create will depend on the overall creation of businesses, the actual take up of the SPE as a company form and the rate of success and development of businesses formed as SPEs. Furthermore, a certain part of the SPEs that would be created would possibly result from the transformation of existing national company forms, so that the associated jobs would not be newly created but merely transferred

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to the SPE. It is accordingly very difficult to give any precise estimate of the number of jobs which the SPE might contribute to create, let alone of net job creations.

As estimated in Section 5.4, about 1.15 million SMEs could be potentially interested in the SPE. If, as an example, 10% of these SMEs adopt the SPE form, this would result in the creation of 115,000 SPEs. If these SPEs employ on average 5 persons, this would result in the creation of 575,000 jobs.

The possibility given to the SPE to transfer its registered office cross-border could raise concerns with regard to the safeguard of employee rights. These concerns, however, are not founded. The SPE would, like any other company form, have to abide by the Rome convention<sup>48</sup> which provides that employment contracts are governed by the law of the country where employees habitually carries out their work. Also, employee participation rights in the preferred option (H.3) would be guaranteed by drawing on the existing rules of the SE Regulation and the cross-border mergers directive. While, company founders creating a SPE ex novo could choose to register the SPE in a Member State with less stringent participation rules than the Member State in which the SPE employees are located, this possibility already exists in relation to all national company forms under the Community case law.

The measure will have no **environmental impacts**.

## **8. THE INSTRUMENT TO BE USED**

### **8.1. Self regulation**

To ensure legal certainty, notably for third parties, a company form must be embedded in law and enforceable in the legal systems of the Member States. Self regulation, therefore, is not an option.

### **8.2. Recommendation**

A recommendation would not succeed in introducing a new legal form into the Member States' laws and ensure the application of a uniform set of rules in all Member States. It would not secure a sufficient level of legal certainty. While giving more flexibility to Member States, the measure would not be sufficiently effective.

### **8.3. Directive**

The directive would not guarantee directly applicable provisions uniformly applied across the EU and the introduction of a European legal form. It would not ensure legal certainty due to the many references to the national laws. Such instrument would not be attractive for companies and, therefore, its effectiveness would be limited.

### **8.4. Regulation**

The regulation would be the most appropriate means to ensure the uniformity of the Statute in all EU Member States. This instrument was clearly favoured by the experts at the public

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Convention on the Law applicable to Contractual Obligations opened for signature in Rome on 19 June 1980. The consolidated version of the Convention as well as the First protocol on the interpretation of the Convention by the Court of Justice and the Second Protocol conferring on the Court of Justice powers to interpret the Convention have been published in the OJ C27 of 26.1.98, p.34).

hearing at the European Parliament<sup>49</sup> and by a majority of the participants to the conference on the SPE held on 10 March 2008.<sup>50</sup> All the existing European legal forms have been introduced by regulation.

<b>Criteria</b> <b>Instruments</b>	<b>Legal certainty</b>	<b>Effectiveness</b>	<b>Political acceptability</b>
<i>Status quo</i>	=	=	-
<i>Self regulation</i>	-	-	-
<i>Recommendation</i>	-	-	+
<i>Directive</i>	++	+	++
<i>Regulation</i>	+++	+++	++

Since providing for a new European legal form operating according to a common set of rules across the EU requires that the uniform rules apply directly in all Member States the Regulation would be the most appropriate instrument.

A SPE Regulation would, in this instance, be a proportionate measure, tailor-made to fulfil the objectives of providing for a simple, flexible corporate law regime widely known across the EU, adapted to the specific needs of SMEs, based on uniform principles throughout the EU and reducing compliance costs. It will offer SMEs a uniform, legally certain, yet flexible tool to expand their activities in the Single Market. The SPE will be available as an additional tool in the toolkit of SMEs, which they can, if they wish, choose to use. It will reduce compliance costs while not imposing any new cost or administrative burdens on SMEs. Furthermore, by introducing a new legal form, the SPE regulation would not impose on the Member States any requirement to modify substantially their existing laws, but merely to introduce the SPE alongside national company forms.

A directive or recommendation, in theory more proportionate, would not achieve the necessary level of uniformity and legal certainty and therefore would not be sufficiently effective.

## **9. CONSISTENCY WITH THE MAIN EU POLICIES AND OBJECTIVES**

The Lisbon Strategy<sup>51</sup> aims at boosting growth and jobs by increasing Europe's attractiveness as a place to invest and work. Removing remaining barriers in the Single Market will create new opportunities for market participants and the resulting competition will spur investment and innovation. By reducing the costs of setting up and operation of a company in a Member State and providing for a European label, the SPE would complement other EU and Member States' actions, mentioned in chapter 5. It would improve the efficiency and the competitive position of EU companies and would, therefore, contribute to meeting the Lisbon objectives. The SPE Statute is also listed in the Single Market Review and forms part of the Small Business Act for Europe to be put forward in June 2008 which aims to unlock the SMEs' growth potential and facilitate cross-border activity of SMEs.<sup>52</sup>

49 See Chapter 2.

50 Idem.

51 Communication to the Spring European Council "Working together for growth and jobs. A new Start for the Lisbon Strategy", COM (2005) 24.

52 See Chapter 1.

## **10. EVALUATION AND MONITORING**

Should a measure on the SPE Statute be adopted, the Commission, with the help of the company law expert groups (i.e. Company Law Expert Group and the Advisory Group on Corporate Governance and Company Law), will closely monitor and evaluate the results and impacts of such measure.

This process will be developed in two steps:

### **10.1. Monitoring**

The Commission will examine regularly the process of adaptation of the national laws to the requirements of the measure and its impacts. The following data will be examined:

- Quantification of the number of the SPEs established;
- Identification of the trends, in particular: (a) Member States with the highest number of SPEs' registrations or locations of the SPEs' principal places of business and why; (b) types of companies (size, industry sector, geographical presence) which use the SPE form; (c) SPE formation methods (from scratch, transformation, merger etc.); (d) whether the SPE Statute is used for the creation of subsidiaries in other Member States or rather as an instrument for trading (providing services) in other Member States; (e) the location/transfer of the registered office and the principal place of business of the SPE in different Member States.

### **10.2. The evaluation report**

The SPE Statute should be evaluated five years after the date of its entry into force. It should analyse its effectiveness, relevance for the market and form a basis for a decision on any amendments, if needed. The evaluation will be based on the data gathered from the monitoring exercise, complemented with information collected from companies, Member States and stakeholders.

In order to evaluate the results and the impacts of the new legislation, some evaluation questions should be addressed:

- How many companies/individuals have decided to create or transform into a SPE since the entry into force of the SPE Statute? Which Member States, if any, are the most popular destinations for SPEs (both the registration and the location of principal place of business)? Why?
- How many companies have used the model articles of associations?
- How much have the advisory costs related to the creation and operation of a company decreased?
- How many of the SPEs have their registered office and principal place of business in the same or different Member States? How long does it take to transfer the registered office? How costly is it? Are there still obstacles that have not been removed by the measure?

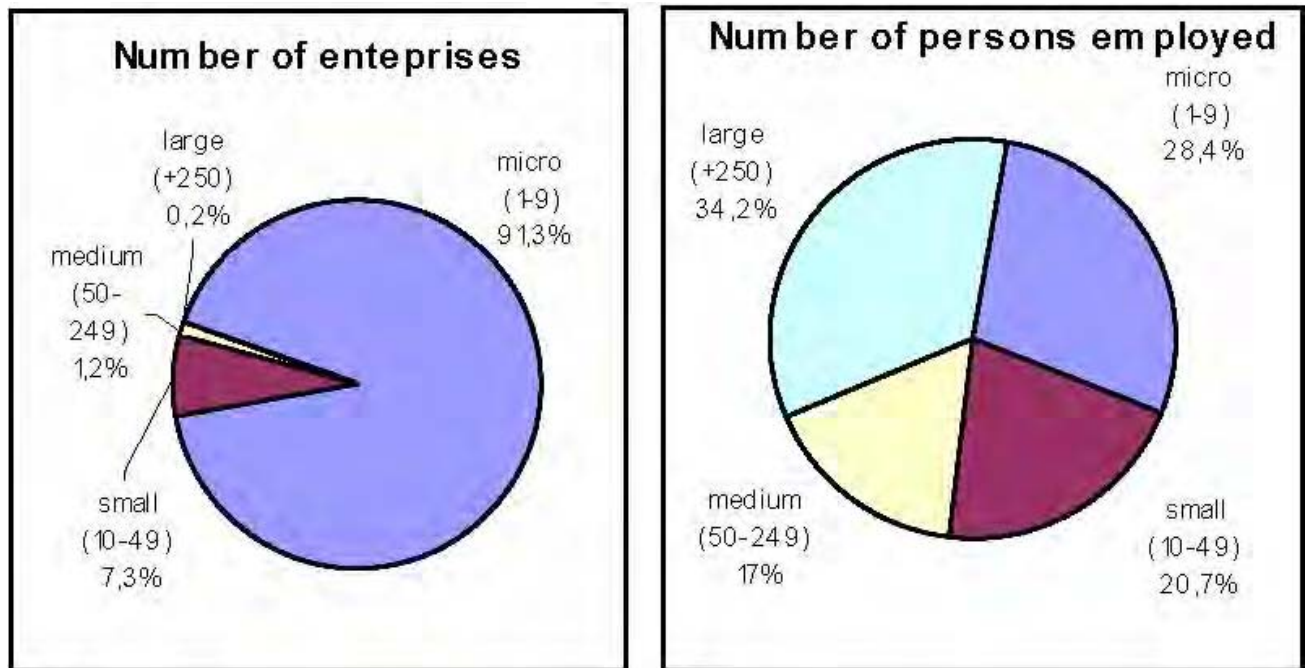


- Are there any legal ambiguities in the SPE Statute or in the rules applying to it that should still be addressed? Have there been any risks identified that have not been properly treated either by the Community law or by national legislation?
- What have been the impacts on the main stakeholders, i.e. minority shareholders, creditors, employees?
- Have there been any reforms of the national company laws on private liability companies of the Member States in relation to the entry into force of the SPE Statute?

ANNEXES (in a separate document)

Annex 1

Graph A1. Number of enterprises in the EU in 2003 (breakdown by size and number of employees)



Source: European Commission (2003).

Graph A2. Foreign business partnerships



Q37. How much of your total turnover, that is your annual sales in percentages is created in foreign subsidiaries, joint ventures abroad?  
 Base: SMEs % any income from foreign business partnerships, [no subsidiary or joint venture] and [DK/NA] answers were recoded to zero income, by country

Source: European Commission (2007).

Graph A3 illustrates the location of the foreign business partnerships of EU SMEs.

	EU country	Europe, outside the EU	Asia	Else- where
EU27 SMEs	77	4	9	10
Size class				
1-9 persons employed	72	5	11	12
10-49 persons employed	85	2	5	8
50-249 persons employed	67	10	11	11
250+ persons employed	67	2	17	14
SME Activity sector				
D. Manufacturing	79	2	10	10
F. Construction	85	0	4	11
G. Wholesale and retail	71	4	14	11
H. Hotels and restaurants	78	5	9	8
I. Transport, storage and communication	82	12	6	0
J. Financial intermediation	85	0	9	5
K. Real estate, renting and business activities	81	4	5	10
N. Health and social work	92	3	0	4
O. Other community, social and personal service	70	0	3	26

\* The averages for the total of SMEs and the averages for the SME sub-categories by sector are based on the replies of all those enterprises which were identified and sampled as SMEs. As some of them did not disclose their number of persons employed during the survey, the averages for the SME sub-categories by size class are based on a smaller sample.

Source: European Commission (2007).

Annex 2.

Country assessment of compliance with the objectives set by the 2006 Spring Council conclusions for start-up procedures

One stop shop to start-up a company (1)				
	Name	Fully operational*	Time required to start-up a company (1)	Cost to start-up a company (1) **
Belgium	Guichet agréé d'entreprises	YES	1,5	517 €
Bulgaria		NO*	12-30	155 €
Czech Republic	Central Registration Offices (CRO)	NO*	42-66	345 €
Denmark	Danish Commerce and Companies Agency (DCCA)	YES	3	0 €
Germany	Starter-Center	NO*	6,5	783 €
Estonia	Notaries	YES	2	100 €
Ireland	Companies Registration Office (CRO)	NO*	2-6	60 €
Greece	Directorate of Development at the prefectures (KYE)	NO*	30	1,366 €
Spain	Ventanilla Unica Empresarial (VUE) + PAIT for Ltd.	YES	30-40	617 €
France	Centres de formalités des entreprises (CFE)	YES	4	84 €
Italy	*Sportello unico*	YES	4	2,673 €
Cyprus	OSS at Ministry of Commerce, Industry and Tourism	YES	7	265 €
Latvia	Register of Enterprises	NO*	4	205 €
Lithuania	Centre of Registers	YES	6	130-289 €
Luxembourg	Guichet unique d'entreprises	YES	14	1,000 €
Hungary	County Courts	YES	2-3	392 €
Malta	Registrar of Companies - Malta Financial Services Authority (MFSA)	NO*	7-10	450 €
Netherlands	Chambers of Commerce	NO*	3	1,040 €
Austria	WKO Gründerservice	YES	7-30	400 €
Poland	Tax Offices	NO*	30	735 €
Portugal	Enterprise Formality Centres (CFE)	YES	1	300-360 €
Romania	Counties Trade Registers	YES	3	100-125 €
Slovenia	VEM	YES	3	260 €
Slovakia	Trade licence offices, companies register	NO*	14	330 €
Finland	Trade Register	YES	14	330 €
Sweden	Foretagsregistrering	YES	21	222 €
United Kingdom	Companies House & Business Link	YES	1	64 €
Compliant		17	13	23
Non compliant		10	14	4
Average		10,15 to 12,77 days		€ 485

NOTES

(1) All figures on cost and time based on information provided by Member States which have not been fully validated. Calculation methods as described in Commission Staff Working Document SEC(2007)129  
 \*NO means that services offered by the one-stop-shop are not sufficient to consider it a fully functional one-stop-shop.  
 \*\*Cost: numbers in a red box for countries with cost above the established threshold.

Source: European Commission (2006).

**Annex 3.Tables:**

**Table A1. New private limited companies incorporated in the UK by Country of origin**

This table reports new incorporations of private limited companies in the UK from the rest of the UE. A company is assigned to a given Member State according to a majority of its directors.

<b>Country of origin</b>	<b>year 2005</b>
Austria	609
Belgium	458
Czech Republic	89
Denmark	248
Estonia	27
Finland	21
France	1666
Germany	12019
Greece	120
Hungary	63
Ireland	328
Italy	538
Latvia	31
Lithuania	13
Luxembourg	111
Malta	23
Netherlands	2127
Poland	136
Portugal	66
Slovakia	16
Slovenia	32
Spain	539
Sweden	406
<b>TOTAL</b>	<b>19.686</b>

*Source: M. Becht, C. Mayer, H.F. Wagner (2006). Where do firms incorporate?, Working paper no. 70/2006.*

**Table A2.** The table presents the costs of the legal advice on company law issues related to the incorporation of a company and the amount of the capital required in a number of Member States. The numbers indicated are the costs of a small subsidiary. The numbers indicated in the brackets are the costs of a medium-sized subsidiary if they differ from those of a small subsidiary). The table indicates how much money an entrepreneur has to put up before he actually sets up a company. However, it should be noted that part of the capital, once paid up upon registration, can be used later on by a company for its business, e.g. to buy the necessary equipment etc.

The current IA focuses on the possible reduction of the costs related to company law, i.e. the costs of legal advice on company law issues, the notary fees and the amount of minimum capital that has to be paid up upon the registration of a company. Other costs (registration fees, publication, taxes and administrative fees) are dealt with by other EU or Member States actions (one-stop shop<sup>1</sup>, simplification<sup>2</sup>).

The incorporation process	AT	BE	UK	FR	HU	IT	NL	PL	ES	SE
Lawyer's advice on company law <sup>3</sup>	€880	€750	€400	€200-3000 (-4000)	Min. €3000 (€4500)	€2500 (€3000)	€2000 (€3500)	€100 (€100) + €200 <sup>4</sup>	€500 (€700)	€1500 (€4000-5300)
Registration fee	ca. €20	€500	€80	N/A	€8,3	€500 (€700)	€150	App. €280	N/A	€200
Notary	€1000	2000	€10	N/A	vary	€3000 (€5000)	€250 (€500)	App. €340 <sup>5</sup>	€400 (€800)	N/A
Taxes/administrative fees	€350 (1% of share cap.)	€0	N/A	N/A	N/A	€500	€100	€70 (€1000) + €50 <sup>6</sup>	€400 (€800)	N/A
Publication	€0	€0	N/A	€200-300	€0	€0	€0	€140	N/A	N/A
<b>Total cost of incorporation (excluding capital)</b>	<b>€3550</b>	<b>€10000</b>	<b>€2490</b>	<b>€2000 (-8000)</b>	<b>App. €2000 (€2500)</b>	<b>€6500 (€9200)</b>	<b>€2500 (€4250)</b>	<b>App. €6180 (€8060)</b>	<b>€6300 (€8600)</b>	<b>€1700 (€4200-5500)</b>
<b>Min. capital<sup>7</sup> (in brackets % of capital to be paid upon formation)</b>	<b>€ 35,000 (50%)</b>	<b>€ 18,550 (33%)</b>	<b>equiv. of €1,5</b>	<b>€1 (SARL) €37,000 (SAS) (50%)</b>	<b>equiv. of € 11,760</b>	<b>€10,000 (33%)</b>	<b>€18,000 (20%)</b>	<b>equiv. of € 13,869 (25%)</b>	<b>€3005 (100%)</b>	<b>equiv. of € 10,681 (100%)</b>

Source: Baker & McKenzie: *European Private Company. Legal Costs for Setting up a foreign subsidiary. Survey for VDMA and the University of Wuerzburg, 29 February 2008.*

<sup>1</sup> European commission, Lisbon Strategy for Growth and Jobs: 2007 Strategic Report Country – Assessment of the National Reform Programmes, 11 December 2007

<sup>2</sup> [http://ec.europa.eu/internal\\_market/company/simplification/index\\_en.htm](http://ec.europa.eu/internal_market/company/simplification/index_en.htm)

<sup>3</sup> Lawyer's fee for advice on company law includes the fee for: legal advice to client about the local company structures (e.g. choice of the appropriate legal form for a subsidiary); drafting articles of association, preparation of votes/resolutions/general assembly, research about further required steps and further legal consulting during the process.

<sup>4</sup> The cost of €2 200 refers to further general legal consulting during the process of incorporation, including other issues than company law, e.g. tax registration.

<sup>5</sup> The cost of notary fee only for executing the articles of association.

<sup>6</sup> €70 (€1000) refers to the taxes for executing the articles of association only. €50 refers to the tax registration fee.

<sup>7</sup> The amount of minimum capital in other Member States can be found in the Annex.

**Table A3. Private companies: minimum legal capital across the EU expressed in €**

Member State	Minimum Capital (in €, for countries using other currency, an equiv. in €)	Conditions (subscription/paid up)
PL	€ 13,869	25% paid up on formation
LT	€ 2,896	25% paid up on formation
LV	€ 2,863	50% paid up upon formation, 50% within the first year thereafter
HU	€ 11,760	At least 30% of the capital must be paid up in cash
EE	€ 2,556	
CZ	€ 3,825	
MT	€ 1,164	
SLO	€ 8,757	25% paid up upon formation
SK	€ 5,984	30% paid up upon formation
UK	€1,5	
FR	€1 (SARL) € 37,000 (SAS)	SARL: Capital is set freely by the partners in light of the size, activity and capital needs of the company. At least 20% of the contributions in kind must be paid up upon formation. The remainder must be paid up within 5 years SAS: 50% must be paid up upon formation and the remainder within 5 years
DE	€10,000	
DK	€ 16,778	Entirely subscribed and paid up
IE	€1	
PT	€ 5,000	100% subscribed, 50% paid up upon formation
ES	€ 3005	100% subscribed and paid up upon formation
IT	€ 10,000	100% subscribed and 1/3 paid up upon formation
AT	€ 35,000	100% subscribed and 50% paid up upon formation
NL	€18,000	100% subscribed and 20% paid up upon formation
BE	€ 18,550	100% subscribed and 1/3 paid up upon formation
FI	€ 8,000	
SE	€ 10,681	100% subscribed and paid up upon formation
LU	€ 12,500	Entirely subscribed
EL	€18,000	Entirely subscribed
RO	N/A	
BG	€ 2,500	
CY	€2	

Between 0 and € 5,000: 11 MS (6 new: CY, LT, LV, EE, CZ, MT) (5 old: UK, FR, ES, PT, IE)

Between € 5,000 and € 10,000: 5 MS

Between €10,000 and € 20,000: 8 MS

More than € 20,000: 2 MS

Source: Interex – Fiches pays – 2006, <http://www.interex.fr/fr/fiches-pays>.



**Table A4. The cost of legal advice on company law issues related to day-to-day administration of a foreign subsidiary, including the preparation of regular assemblies, shareholder resolutions and general consulting on specific company law aspects. The numbers indicated are the costs of a small subsidiary. The numbers indicated in the brackets are the costs of a medium-sized subsidiary if they differ from those of a small subsidiary).**

The incorporation process	AT	BE	UK	FR	HU	IT	NL	PL	ES	SE
Regular legal consulting (after incorporation) <sup>8</sup>	€1410	€1500	€1500	N/A	€750 (€1000)	€3000 (€6000)	€1500 (€1750)	App. €3000	€6000 (€8000)	€1500

Source: Baker & McKenzie: *European Private Company. Legal Costs for Setting up a foreign subsidiary. Survey for VDMA and the University of Wuerzburg, 29 February 2008.*

<sup>8</sup> The costs of regular legal consulting (after incorporation) include: preparation of regular assemblies and shareholder resolutions, general consulting in specific company law aspects.

Table A5. Summary of the retained content options. The suggested options are marked in bold.

	<i>Uniformity</i>	<i>Flexibility</i>	<i>Legal certainty</i>	<i>Efficiency</i>	<i>Political acceptability</i>
<b>Option A.2: Autonomy from national company law regimes</b>	++	++	++	++	
<i>Option A.3: Reliance on national company law</i>	+	++	+	+	
<i>Option B.1. Uniform Statute</i>	+++	+	+++	+	
<b>Option B.3. Uniformity in the external and flexibility in the internal affairs</b>	++	++	++	+++	
<b>Option C.1: No cross-border dimension</b>			+++	+++	+
<i>Option C.2: Cross-border dimension</i>			++	++	++
<b>Option D.2: Separation of the registered office and the head office</b>	++	+++	++	+++	++
<i>Option D.3: Determination of an applicable rule by the law of the Member State of registration</i>	+	++	+	+	+++
<i>Option E.1: Simplified Second Company Law Directive</i>	+++	+	+++	+	+
<i>Option E.2: Balance-sheet test</i>	++	++	++	++	+
<b>Option E.3: Shareholders' choice between a balance sheet test or a solvency test</b>	+	+++	++	+++	++
<i>Option F.1: Rules determined by the SPE Statute</i>	+++	+	+++	+	+
<i>Option F.2: National rules of Member States of the place of incorporation of an SPE</i>	+	+++	++	++	+
<b>Option F.3 Employee participation rules of the SE and of the Directive on cross-border mergers</b>	++	++	+++	++	+++



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
SEC(2008) 2099

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

**COUNCIL REGULATION**

**on the Statute for a European Private Company (SPE)**

***Summary of the Impact assessment***

{COM(2008) 396}  
{SEC(2008) 2098}

## 1. INTRODUCTION

### 1.1. Procedural aspects

The European Private Company Statute (SPE) was a medium term measure (2005-2008) of the Commission's Action Plan on Modernising Company Law and Enhancing Corporate Governance in the EU. It also forms part of the Single Market Review and is one of the key features of the Commission's Small Business Act which was announced in November 2007 and seeks to make the Single Market accessible to small and medium-sized enterprises (SMEs).

A feasibility study on the SPE was published in December 2005. The Legal Affairs Committee of the European Parliament held a public hearing on the SPE in June 2006. It issued an own-initiative report, endorsed by the European Parliament in February 2007, which calls for a Commission proposal for an SPE.

In addition to two public consultations which were conducted between July and November 2007, DG Internal Market and Services organised a public conference in March 2008 which gathered experts from various Member States and addressed key options for an SPE.

### 1.2. Low participation of SMEs in the Internal Market

SMEs account for more than 99% of companies and for almost 70% of private employment in the European Union. Despite the key role of SMEs in the European economy, only 8% of SMEs engage in cross-border trade and only about 5% have set up subsidiaries or joint ventures abroad. Recent surveys and public consultations show that despite their strong potential for cross-border expansion, SMEs face legal and administrative obstacles which hinder their development in the Single Market.

The main legal and administrative obstacles which SMEs face in their cross-border development in the Single Market include:

- *Compliance costs associated with the formation of a company.* Compliance costs on the formation of a company include essentially the costs of registration and legal advice, notary fees and the minimum start-up capital. While minimum capital requirements and administrative costs are the same for national and foreign company founders, the cost of legal advice falls to a greater extent on foreign founders who have to get acquainted with new company forms and regimes.
- *Difficulties and compliance costs associated with the operation of a company generated by the diversity of national rules.* Different legal rules on the organisation and structure of companies, company organs, shareholders' rights, shares, etc., make the day-to-day operation of foreign subsidiaries more expensive compared with domestic subsidiaries. The day-to-day operation of foreign subsidiaries requires continuous legal advice. Even though the cost of such advice will largely depend on the size and complexity of the subsidiary, a third of respondents to consultations consider it to be in excess of €10,000 per year.
- *Lack of trust in foreign legal forms.* SMEs find it often difficult to operate in another Member State under their home company form, and as a result often choose to set up subsidiaries instead. This is true, in particular, of SMEs from the

EU-12, which use company forms which are less known in other Member States than the company forms of the EU-15. In this respect, the ability to do business under a company form common to all Member States, which would confer an EU label, is considered a significant asset.

## **2. THE EXPECTED DEVELOPMENT AND THE NEED FOR THE EU TO ACT**

The diversity of national company laws and forms, as business unfriendly as it may be, is long anchored in the legal traditions of the Member States. Nothing today gives grounds to expect this to change over the short term. Furthermore, only action undertaken at EU level can create a legal environment that is sufficiently uniform throughout the EU to serve the practical needs of SMEs wishing to take advantage of the Single Market.

Should the EU legislator decide to adopt an SPE Statute, Article 308 of the EC Treaty would constitute the appropriate legal basis.

## **3. OBJECTIVES**

The initiative seeks to enhance the competitiveness of SMEs by facilitating their operation in the Single Market. In particular, the initiative aims at providing a flexible corporate law regime widely known across the EU and based on common principles, adapted to the specific needs of SMEs. It also aims at reducing the compliance costs which arise both on the creation and on the operation of companies in other Member States.

## **4. POLICY OPTIONS**

The impact assessment presents three alternative high level policy options to the SPE.

- *Taking no action and relying on existing legislation and case law.* The existing legal framework, however, is ill-suited to the specific needs of SMEs and fails to reduce the legal and administrative obstacles which SMEs face when seeking to expand in the Single Market.
- *Harmonising the company laws of the Member States,* so that the requirements on the creation and the operation of companies are uniform in all Member States. Even though the scope of such harmonisation may be limited, such an option would require Member States to amend rules which have formed part of the core provisions of their national company laws for decades and with which they are regarded as forming a whole. Such a major overhaul of national legislations does not appear politically feasible at present.
- *Improving the SE* and adapting it to the needs of SMEs, but achieving a 'one-size-fits-all' company form would make of the SE Regulation extremely complex. In addition, the SE is to be evaluated in 2009.

By contrast with the above options, the SPE alone would give individuals and companies, no matter where they are based in the EU, access to the same company form. The SPE could be created from scratch by a legal or natural person or be established by an existing company, either by transformation or by a merger with another company. The SPE could be established

in a Member State and provide services or operate via branches or subsidiaries in its own or another country. A group of companies could also be transformed into a group of SPEs (with a mother company being an SPE or another company form).

In addition to the European label, which according to the respondents to consultations would make cross-border business easier, the SPE is expected to offer significant *cost savings* due to its *uniformity* throughout the EU. The mere use of the same company form in several Member States would limit the need for legal advice upon the creation of subsidiaries and reduce associated costs. The legal costs associated with the day-to-day operation of subsidiaries in several Member States would also be reduced. Furthermore, the SPE would leave company founders full *flexibility* to choose the internal organisation of the company best suited to their needs and activities and thus *save costs*. The SPE could offer a high level of *legal certainty* by avoiding as much as possible references to national law as far as the company form is concerned. Lastly, the SPE would exist in the Member States alongside national company forms. The introduction of the SPE in the legal orders of the Member States would not entail any harmonisation of core aspects of national company legislations and therefore it seems politically feasible.

## **5. SUB-OPTIONS FOR A SPE**

The impact assessment assesses a number of options for the key features of the SPE, which have a direct impact on the SPE's flexibility, accessibility, uniformity and legal certainty.

### **5.1. Companies falling within the scope of the SPE Statute**

Any restriction of the SPE to businesses of a certain size would oblige businesses to switch company forms at some point, which is both cumbersome and costly. To avoid exposing SMEs to undue administrative burdens and costs, the SPE, therefore, should be available to businesses upon formation and remain available to them as they develop and grow. However, like national private limited company forms, the SPE should not be allowed to offer its shares to the public or access the stock markets, as this would entail detailed rules, especially with regard to the internal organisation of the SPE, to protect shareholders.

### **5.2. Degree of autonomy vis-a-vis national legislation**

The first option is that of an SPE, which would be totally autonomous and would not rely in any way on national legislation. This option, which would require the full harmonisation of tax and labour laws and therefore it is unrealistic.

The second option is that of an SPE, which would be autonomous from the national company law regimes. Such an option would achieve a satisfactory degree of uniformity in the EU as company law aspects would be covered in the Statute and would therefore be the same across the EU. This would also ensure legal certainty while making it possible to offer to shareholders a high degree of flexibility in determining the internal organisation of the SPE.

The third option is that if an SPE, which would heavily rely on national company legislations. While such option may offer a high degree of political acceptability, it would result in a different SPE in every Member State and would deprive individuals and companies of the specific benefits of a uniform company form throughout the EU, in particular cost savings and increased efficiency. It would, therefore, fail to fulfil the policy objectives.

### **5.3. Degree of uniformity of the Statute**

The first option would be one of a comprehensive Statute which would seek to regulate both the external and the internal affairs of the SPE. Even though this would ensure full uniformity of the SPE in the EU and a very high degree of legal certainty, it would deprive shareholders of any of the much needed flexibility, notably in determining the internal organisation of the SPE. The pursuit of such a 'one-size-fits-all' company statute would most likely make the SPE statute unattractive to businesses.

The second option envisaged is the exact opposite to the first option, i.e., a SPE Statute which would leave full flexibility to the shareholders of the SPE to regulate in the articles of association all company matters, including capital, creditor protection or employee participation. Such an option, which is likely to result in insufficient third party protection, would certainly meet strong opposition from the Member States.

The third and chosen option consists in regulating in the SPE Statute the main characteristics of the SPE (limited liability, share capital, contributions, name) and matters relevant to third parties (creditor protection, disclosure, employee participation), while leaving internal matters (general meetings, management structure) to the free determination of the shareholders in the articles of association. This balanced option would entail limited references to national law, thus ensure a significant degree of uniformity of the SPE in the EU and legal certainty, while offering much needed flexibility as regards internal organisation.

### **5.4. Cross-border dimension**

The first, chosen, option would be to make the SPE accessible to all founders, irrespective of any cross-border dimension. In other words, the SPE would come in competition with national company law forms. This is the chosen option because it offers a high degree of legal certainty and offers founders a free choice between the SPE and national company law forms, even though it could prove politically less acceptable than the second, more restrictive, option.

The second option would consist in making access to the SPE subject to a cross-border requirement (e.g. shareholders from different Member States or evidence of cross-border activity). Such a SPE may be politically more acceptable because it would appear more focused on making the Internal Market more accessible. However, it would offer less legal certainty because of the need to control the existence of the cross-border dimension on a continuous basis. It would also limit the choice of company forms for entrepreneurs.

### **5.5. The company seat and its transfer**

The first option which could be envisaged is to provide that the registered office and the head office of the SPE must be in the same Member State. The transfer of the registered office of a SPE to another Member State, as a result, would entail the transfer of the head office. This option is contrary to the ruling of the European Court of Justice in the *Centros* case.

The second option is to allow the SPE to have its registered office and its head office in different Member States and therefore, to transfer its registered office without having to transfer its head office at the same time. The express provision for this freedom would be enshrined in the Regulation would ensure uniformity across the EU and offer a very high degree of flexibility in the organisation of businesses. It would also achieve a satisfactory

degree of legal certainty, though the regulation would have to state clearly which national law is applicable to the SPE.

The third option under consideration would consist in leaving this matter to the national legislation of the Member State of registration of the SPE. Such an option would not offer any uniformity since there would be a different regime in every Member State. Nor would it offer much legal certainty. In addition, it would not bring any improvement to the current situation and the impossibility of companies to transfer their registered office from one Member State to the other.

## **5.6. Capital regime**

Mandatory minimum capital requirements account for a large part of company formation costs and are no longer considered as appropriate creditors' protection. Also, care should be taken to make the SPE accessible to entrepreneurs of all EU-27 Member States. A minimum capital of €1, as exists in the UK 'limited' or the French SARL, therefore, appears to be the better option. In light of the differences in standards of living, opting for a mandatory minimum capital requirement, whether based on the average in the EU-15 (€10,000-12,000) or in the EU-12 (€4,000) would make the SPE less accessible to entrepreneurs of the EU-12.

## **5.7. Distributions to shareholders**

The first envisaged option consists in building the capital regime of the SPE on a simplified second Company Law Directive. Even though such an option would ensure a high degree of legal certainty and uniformity across the EU, it would, however, deprive SMEs of any flexibility and prove exceedingly burdensome.

The second option would make distributions to shareholders subject to a balance sheet test that is well known across the Member States. This option would entail less uniformity as more freedom would be left to the shareholders in the articles of association, but a satisfactory degree of flexibility would be left to shareholders regarding e.g. capital increase or share redemption.

The third option, i.e. the combination of a balance sheet test with a mandatory liquidity test, though ensuring a higher degree of protection for creditors, would expose SPEs to disproportionate costs.

## **5.8. Employee participation**

The first option envisaged is to create an ad-hoc employee participation regime for the SPE. In light of the fact that solutions on employee participation already exist in the SE Statute and in the Directive on cross-border mergers and of the high political sensitivity of employee participation questions, this option should be discarded.

The second option would consist in leaving employee participation entirely to the legislation of the Member State in which the SPE has its registered office. While this option would offer SPE a high degree of flexibility, it would not address the question of employee participation in case of cross-border seat transfer. The fact that the SPE could be used to escape national employee participation regimes, could make the SPE unacceptable.

The third option would consist in subjecting the SPE to the employee participation regime of the Member State in which it has its registered office while inserting in the SPE statute rules



governing employee participation in the case of the cross-border transfer of the SPE's registered office. While giving SPEs the needed flexibility, this option would ensure that the SPE cannot be used as a vehicle to escape employee participation regimes.

## **6. EVALUATION AND MONITORING**

The Commission will conduct a yearly review of the take up of the SPE in the Member States. In addition, the Commission will conduct an assessment of the effectiveness and relevance of the SPE Statute to be published five years after the entry into force of the Statute.

## European Commission proposes the creation of a European Private Company (SPE)

### What is the issue?

Small and medium-sized enterprises (SMEs) represent 99.8% of all companies in the European Union and account for 70% of employment. However, unlike large companies, **small businesses remain mostly within national borders.**

Problems related to setting up and doing business abroad, in particular

- language barriers and cultural differences
- differences in company law, tax and labour systems

create difficulties and generate costs to the extent that they discourage entrepreneurs from expanding their business to other Member States.

### What benefits the SPE can bring to SMEs?

The SPE is a company form **designed for SMEs**. Entrepreneurs will be able to set up their business in the form of an SPE following **the same company law rules throughout the EU**. Thus they can set up an SPE instead of a 'GmbH' in Germany, an 'sp. z o o' in Poland and an 'SAS' or 'SARL' in France.

The advantages of the SPE are the following:

- it exists in all Member States
- it is a **light and flexible yet transparent** company form
- it allows entrepreneurs to set up all their companies and/or their subsidiaries with **the same management structure**, regardless where they are located
- it offers a **European label** that is easily recognisable throughout the EU

These features allow entrepreneurs to **save time and reduce costs**, especially legal costs related to setting up different company forms in different Member States.

However, the SPE Statute will not solve all the problems businesses face when they want to set up a company abroad. It does not address questions related to tax and employment.

### Why is action needed at EU level?

The SPE will only make a difference compared to national company forms if it exists in the same form and shape in every Member State. The only way to ensure this is that the SPE is adopted as a company form at EU level.

### What does the proposed SPE look like?

- the European Private Company is referred to as 'SPE' after its Latin name *Societas Privata Europaea* that allows the use the abbreviation SPE without needing to translate it to national languages

- its **shareholders liability is limited** to the contribution they provide for the SPE
- its **shares may not be publicly traded** on any market
- it may be **set up by any individual or legal entity, from scratch, or by the transformation, merger or division** of existing companies
- it may have its registered office in one Member State and conduct its activities in another; it may also **transfer its registered office** to another Member State
- **application** to set up an SPE may be made **by electronic means**, in the language of the Member State of registration
- to ensure that the SPE is accessible to all entrepreneurs, the proposed SPE **may be set up with a capital of only €1**
- shareholders enjoy a **broad freedom** to determine the manner in which shareholders take their decisions (meeting, telephone or video conference)
- shareholders are also **free to determine the rights attached to shares** such as voting rights and rules on share transfers
- the SPE Statute provides for rules to **protect the interests of creditors and pre-existing rights of employees.**

#### **When will the SPE become a reality?**

The proposed SPE Regulation will have to be adopted by a unanimous decision of the Member States in the Council of Ministers of the European Union. It will also require the approval of the European Parliament. The **European Commission proposes that the SPE Regulation enter into force on 1 July 2010**, but this will depend on the progress of the negotiations.

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## Title and reference

### Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

*OJ L 184, 14.7.2007, p. 17–24 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*

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## Classifications

- ▶ **EUROVOC descriptor:**  
[shareholder right to vote](#)  
[corporate governance](#)  
[company with share capital](#)  
[proxy vote](#)  
[postal vote](#)  
[shareholding](#)  
[electronics](#)
- ▶ **Directory code:**  
[17.10.00.00 Law relating to undertakings / Company law](#)  
[13.30.99.00 Industrial policy and internal market / Internal market: approximation of laws / Other sectors for approximation of laws](#)
- ▶ **Subject matter:**  
 Approximation of laws, Internal market, Investments

## Miscellaneous information

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- ▶ **Form:**  
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- ▶ **Addressee:**  
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- ▶ **Additional information:**

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Decision Council; given on 12/06/2007
- ▶ **European Parliament - OEIL**

### Relationship between documents

- ▶ **Treaty:**  
European Community
- ▶ **Legal basis:**  
[12006E044](#)  
[12006E095](#)  
[12006E251](#)
- ▶ **Select all documents based on this document**
- ▶ **Amendment to:**  
[52005PC0685](#) Adoption
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[31985L0611](#)  
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**Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies**

*Official Journal L 184 , 14/07/2007 P. 0017 - 0024*

Directive 2007/36/EC of the European Parliament and of the Council  
of 11 July 2007

on the exercise of certain rights of shareholders in listed companies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) In its Communication to the Council and the European Parliament of 21 May 2003, entitled "Modernising Company Law and enhancing Corporate Governance in the European Union — A Plan to Move Forward", the Commission indicated that new tailored initiatives should be taken with a view to enhancing shareholders' rights in listed companies and that problems relating to cross-border voting should be solved as a matter of urgency.

(2) In its Resolution of 21 April 2004 [3], the European Parliament expressed its support for the Commission's intention to strengthen shareholders' rights, in particular through the extension of the rules on transparency, proxy voting rights, the possibility of participating in general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised.

(3) Holders of shares carrying voting rights should be able to exercise those rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a pre-requisite to sound corporate governance and should, therefore, be facilitated and encouraged. It is therefore necessary to adopt measures to approximate the laws of the Member States to this end. Obstacles which deter shareholders from voting, such as making the exercise of voting rights subject to the blocking of shares during a certain period before the general meeting, should be removed. However, this Directive does not affect existing Community legislation on units issued by collective investment undertakings or on units acquired or disposed of in such undertakings.

(4) The existing Community legislation is not sufficient to achieve this objective. Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities [4] focuses on the information issuers have to disclose to the market and accordingly does not deal with the shareholder voting process itself. Moreover, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market [5] imposes on issuers an obligation to make available certain information and documents relevant to general meetings, but such information and documents are to be made available in the issuer's home Member State. Therefore, certain minimum standards should be introduced with a view to protecting investors and promoting the smooth and effective exercise of shareholder rights attaching to voting shares. As regards rights other than the right to vote, Member States are free to extend the application of these minimum standards also to non-voting shares, to the extent that those shares do not enjoy such standards already.

(5) Significant proportions of shares in listed companies are held by shareholders who do not reside in the Member State in which the company has its registered office. Non-resident

shareholders should be able to exercise their rights in relation to the general meeting as easily as shareholders who reside in the Member State in which the company has its registered office. This requires that existing obstacles which hinder the access of non-resident shareholders to the information relevant to the general meeting and the exercise of voting rights without physically attending the general meeting be removed. The removal of these obstacles should also benefit resident shareholders who do not or cannot attend the general meeting.

(6) Shareholders should be able to cast informed votes at, or in advance of, the general meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares. To this end, timely notice should be given of the general meeting, and shareholders should be provided with the complete information intended to be submitted to the general meeting. The possibilities which modern technologies offer to make information instantly accessible should be exploited. This Directive presupposes that all listed companies already have an Internet site.

(7) Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda. Without prejudice to different time-frames and modalities which are currently in use across the Community, the exercise of those rights should be made subject to two basic rules, namely that any threshold required for the exercise of those rights should not exceed 5 % of the company's share capital and that all shareholders should in every case receive the final version of the agenda in sufficient time to prepare for the discussion and voting on each item on the agenda.

(8) Every shareholder should, in principle, have the possibility to ask questions related to items on the agenda of the general meeting and to have them answered, while the rules on how and when questions are to be asked and answered should be left to be determined by Member States.

(9) Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications. However, this should not prevent Member States from adopting rules aimed at ensuring that the results of the voting reflect the intentions of the shareholders in all circumstances, including rules aimed at addressing situations where new circumstances occur or are revealed after a shareholder has cast his vote by correspondence or by electronic means.

(10) Good corporate governance requires a smooth and effective process of proxy voting. Existing limitations and constraints which make proxy voting cumbersome and costly should therefore be removed. But good corporate governance also requires adequate safeguards against a possible abuse of proxy voting. The proxy holder should therefore be bound to observe any instructions he may have received from the shareholder and Member States should be able to introduce appropriate measures ensuring that the proxy holder does not pursue any interest other than that of the shareholder, irrespective of the reason that has given rise to the conflict of interests. Measures against possible abuse may, in particular, consist of regimes which Member States may adopt in order to regulate the activity of persons who actively engage in the collection of proxies or who have in fact collected more than a certain significant number of proxies, notably to ensure an adequate degree of reliability and transparency. Shareholders have an unfettered right under this Directive to appoint such persons as proxy holders to attend and vote at general meetings in their name. This Directive does not, however, affect any rules or sanctions that Member States may impose on such persons where votes have been cast by making fraudulent use of proxies collected. Moreover, this Directive does not impose any obligation on companies to verify that proxy holders cast votes in accordance with the voting instructions of the appointing shareholders.

(11) Where financial intermediaries are involved, the effectiveness of voting upon instructions relies, to a great extent, on the efficiency of the chain of intermediaries, given that investors are frequently unable to exercise the voting rights attached to their shares without the cooperation of every intermediary in the chain, who may not have an economic stake in the shares. In order to enable the investor to exercise his voting rights in cross-border situations, it is therefore important that intermediaries facilitate the exercise of voting rights. Further consideration should be given to this issue by the Commission in the context of a

Recommendation, with a view to ensuring that investors have access to effective voting services and that voting rights are exercised in accordance with the instructions given by those investors.

(12) While the timing of disclosure to the administrative, management or supervisory body as well as to the public of votes cast in advance of the general meeting electronically or by correspondence is an important matter of corporate governance, it can be determined by Member States.

(13) Voting results should be established through methods that reflect the voting intentions expressed by shareholders, and they should be made transparent after the general meeting at least through the company's Internet site.

(14) Since the objective of this Directive, namely to allow shareholders effectively to make use of their rights throughout the Community, cannot be sufficiently achieved by the Member States on the basis of the existing Community legislation and can therefore, by reason of the scale and effects of the measures, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(15) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making [6], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Subject-matter and scope

1. This Directive establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meetings of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.

2. The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the "applicable law" are references to the law of that Member State.

3. Member States may exempt from this Directive the following types of companies:

(a) collective investment undertakings within the meaning of Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [7];

(b) undertakings the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC;

(c) cooperative societies.

#### Article 2

##### Definitions

For the purposes of this Directive the following definitions shall apply:

(a) "regulated market" means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [8];

(b) "shareholder" means the natural or legal person that is recognised as a shareholder under the applicable law;

(c) "proxy" means the empowerment of a natural or legal person by a shareholder to exercise some or all rights of that shareholder in the general meeting in his name.



### Article 3

#### Further national measures

This Directive shall not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.

## CHAPTER II

### GENERAL MEETINGS OF SHAREHOLDERS

#### Article 4

##### Equal treatment of shareholders

The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.

#### Article 5

##### Information prior to the general meeting

1. Without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids [9], Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting.

Member States may provide that, where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 14th day before the day of the meeting. This decision is to be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the minimum periods referred to in the first and second subparagraphs for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

2. Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 of this Article in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

3. The convocation referred to in paragraph 1 shall at least:

(a) indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;

(b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. This includes information concerning:

(i) the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;

(ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and

(iii) where applicable, the procedures for casting votes by correspondence or by electronic means;

(c) where applicable, state the record date as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;

(d) indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;

(e) indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.

4. Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:

(a) the convocation referred to in paragraph 1;

(b) the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares);

(c) the documents to be submitted to the general meeting;

(d) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;

(e) where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

Where the forms referred to in point (e) cannot be made available on the Internet for technical reasons, the company shall indicate on its Internet site how the forms can be obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.

Where, pursuant to Articles 9(4) or 11(4) of Directive 2004/25/EC, or to the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the 21st day before the meeting, the period specified in this paragraph shall be shortened accordingly.

#### Article 6

Right to put items on the agenda of the general meeting and to table draft resolutions

1. Member States shall ensure that shareholders, acting individually or collectively:

(a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and

(b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.

Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.

Member States may provide that those rights shall be exercised in writing (submitted by postal services or electronic means).

2. Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed 5 % of the share capital.

3. Each Member State shall set a single deadline, with reference to a specified number of

days prior to the general meeting or the convocation, by which shareholders may exercise the right referred to in paragraph 1, point (a). In the same manner each Member State may set a deadline for the exercise of the right referred to in paragraph 1, point (b).

4. Member States shall ensure that, where the exercise of the right referred to in paragraph 1, point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date as defined in Article 7(2) or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.

#### Article 7

##### Requirements for participation and voting in the general meeting

1. Member States shall ensure:

(a) that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and

(b) that the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date, as defined in paragraph 2, and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.

2. Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the record date).

Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3. Each Member State shall ensure that a single record date applies to all companies. However, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least eight days elapse between the latest permissible date for the convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included.

4. Proof of qualification as a shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

#### Article 8

##### Participation in the general meeting by electronic means

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

(a) real-time transmission of the general meeting;

(b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;

(c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.

#### Article 9

##### Right to ask questions

1. Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.
2. The right to ask questions and the obligation to answer are subject to the measures which Member States may take, or allow companies to take, to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies. Member States may allow companies to provide one overall answer to questions having the same content.

Member States may provide that an answer shall be deemed to be given if the relevant information is available on the company's Internet site in a question and answer format.

#### Article 10

##### Proxy voting

1. Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled.

Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.

2. Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently in respect of shares held by one and the same shareholder.

3. Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States shall not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States shall not impose any requirements other than the following:

- (a) Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;
- (b) Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;
- (c) Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:

- (i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;
- (ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);
- (iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);

(iv) has a family relationship with a natural person referred to in points (i) to (iii).

4. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.

Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.

5. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.

#### Article 11

##### Formalities for proxy holder appointment and notification

1. Member States shall permit shareholders to appoint a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.

2. Member States shall ensure that proxy holders may be appointed, and that such appointment be notified to the company, only in writing. Beyond this basic formal requirement, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.

3. The provisions of this Article shall apply *mutatis mutandis* for the revocation of the appointment of a proxy holder.

#### Article 12

##### Voting by correspondence

Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

#### Article 13

##### Removal of certain impediments to the effective exercise of voting rights

1. This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the client).

2. Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.

3. Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary to ensure the identification of the client, or the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.

4. A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

5. Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation shall not prevent a shareholder referred to in paragraph 1 of this Article from granting a proxy to each of his clients or to any third party designated by a client.

#### Article 14

##### Voting results

1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.

However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

2. Within a period of time to be determined by the applicable law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.

3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.

#### CHAPTER III

#### FINAL PROVISIONS

##### Article 15

###### Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 August 2009 at the latest. They shall forthwith communicate to the Commission the text of those measures.

Notwithstanding the first paragraph, Member States which on 1 July 2006 had in force national measures restricting or prohibiting the appointment of a proxy holder in the case of Article 10(3), second subparagraph, point (ii), shall bring into force the laws, regulations and administrative provisions necessary in order to comply with Article 10(3) as concerns such restriction or prohibition by 3 August 2012 at the latest.

Member States shall forthwith communicate the number of days specified under Articles 6(3) and 7(3), and any subsequent changes thereof, to the Commission, which shall publish this information in the Official Journal of the European Union.

When Member States adopt the measures referred to in the first paragraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

##### Article 16

###### Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

##### Article 17

###### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 July 2007.

For the European Parliament

The President

H.-G. Pöttering

For the Council

The President

M. Lobo Antunes

[1] OJ C 318, 23.12.2006, p. 42.

[2] Opinion of the European Parliament of 15 February 2007 (not yet published in the Official Journal) and Council Decision of 12 June 2007.

[3] OJ C 104 E, 30.4.2004, p. 714.

[4] OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

[5] OJ L 390, 31.12.2004, p. 38.

[6] OJ C 321, 31.12.2003, p. 1.

[7] OJ L 375, 31.12.1985, p. 3.

[8] OJ L 145, 30.4.2004, p. 1.

[9] OJ L 142, 30.4.2004, p. 12.

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**Council regulation (EC) No 1346/2000  
of 29 May 2000  
on insolvency proceedings**

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on insolvency proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67(1) thereof,

Having regard to the initiative of the Federal Republic of Germany and the Republic of Finland,

Having regard to the opinion of the European Parliament(1),

Having regard to the opinion of the Economic and Social Committee(2),

Whereas:

- (1) The European Union has set out the aim of establishing an area of freedom, security and justice.
- (2) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (3) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.
- (4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).
- (5) These objectives cannot be achieved to a sufficient degree at national level and action at Community level is therefore justified.
- (6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.
- (7) Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters(3), as amended by the Conventions on Accession to this Convention(4).
- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.
- (9) This Regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The insolvency proceedings to which this Regulation



applies are listed in the Annexes. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.

- (10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression "court" in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened and should be collective insolvency proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator.
- (11) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.
- (12) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the Community.
- (13) The "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
- (14) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the Community.
- (15) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.
- (16) The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, a liquidator temporarily appointed

prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.

- (17) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and creditors of the local establishment or to cases where main proceedings cannot be opened under the law of the Member State where the debtor has the centre of his main interest. The reason for this restriction is that cases where territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary. If the main insolvency proceedings are opened, the territorial proceedings become secondary.
- (18) Following the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment is not restricted by this Regulation. The liquidator in the main proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (19) Secondary insolvency proceedings may serve different purposes, besides the protection of local interests. Cases may arise where the estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires.
- (20) Main insolvency proceedings and secondary proceedings can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators must cooperate closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended.
- (21) Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (22) This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should

be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.

- (23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.
- (24) Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provisions should be made for a number of exceptions to the general rule.
- (25) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main proceedings are being carried out in another Member State, the liquidator in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the liquidator in the main proceedings.
- (26) If a set-off is not permitted under the law of the opening State, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (27) There is also a need for special protection in the case of payment systems and financial markets. This applies for example to the position-closing agreements and netting agreements to be found in such systems as well as to the sale of securities and to the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems(5). For such transactions, the only law which is material should thus be that applicable to the system or market concerned. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the Member States being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules in this Regulation.
- (28) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law. Any other insolvency-law questions, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, should be determined by the law of the opening State.

- (29) For business considerations, the main content of the decision opening the proceedings should be published in the other Member States at the request of the liquidator. If there is an establishment in the Member State concerned, there may be a requirement that publication is compulsory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.
- (30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign liquidator, it should be provided that such a payment is to have a debt-discharging effect.
- (31) This Regulation should include Annexes relating to the organisation of insolvency proceedings. As these Annexes relate exclusively to the legislation of Member States, there are specific and substantiated reasons for the Council to reserve the right to amend these Annexes in order to take account of any amendments to the domestic law of the Member States.
- (32) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (33) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

#### Scope

1. This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.
2. This Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

##### *Article 2*

#### Definitions

For the purposes of this Regulation:

- (a) "insolvency proceedings" shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;

- (b) "liquidator" shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
- (c) "winding-up proceedings" shall mean insolvency proceedings within the meaning of point (a) involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets. Those proceedings are listed in Annex B;
- (d) "court" shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) "judgment" in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) "the time of the opening of proceedings" shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) "the Member State in which assets are situated" shall mean, in the case of:
- tangible property, the Member State within the territory of which the property is situated,
  - property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
  - claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) "establishment" shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

### *Article 3*

#### International jurisdiction

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.
2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.
4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:
- (a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

- (b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

*Article 4*

Law applicable

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the "State of the opening of proceedings".

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
- (b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
- (c) the respective powers of the debtor and the liquidator;
- (d) the conditions under which set-offs may be invoked;
- (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- (g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

*Article 5*

Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the debtor which are situated within the territory of another Member State at the time of the opening

of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

#### *Article 6*

##### Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

#### *Article 7*

##### Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

#### *Article 8*

#### Contracts relating to immovable property

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

#### *Article 9*

#### Payment systems and financial markets

1. Without prejudice to Article 5, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

#### *Article 10*

#### Contracts of employment

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

#### *Article 11*

#### Effects on rights subject to registration

The effects of insolvency proceedings on the rights of the debtor in immovable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

#### *Article 12*

#### Community patents and trade marks

For the purposes of this Regulation, a Community patent, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).

#### *Article 13*

#### Detrimental acts

Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the



creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
- that law does not allow any means of challenging that act in the relevant case.

*Article 14*

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

- an immovable asset, or
- a ship or an aircraft subject to registration in a public register, or
- securities whose existence presupposes registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

*Article 15*

Effects of insolvency proceedings on lawsuits pending

The effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending.

## CHAPTER II

### RECOGNITION OF INSOLVENCY PROCEEDINGS

*Article 16*

Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

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*Article 17*

## Effects of recognition

1. The judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.
2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

*Article 18*

## Powers of the liquidator

1. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there nor any preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. He may in particular remove the debtor's assets from the territory of the Member State in which they are situated, subject to Articles 5 and 7.
2. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. He may also bring any action to set aside which is in the interests of the creditors.
3. In exercising his powers, the liquidator shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

*Article 19*

## Proof of the liquidator's appointment

The liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which he intends to act may be required. No legalisation or other similar formality shall be required.

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*Article 20*

## Return and imputation

1. A creditor who, after the opening of the proceedings referred to in Article 3(1) obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator, subject to Articles 5 and 7.

2. In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

*Article 21*

## Publication

1. The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State in accordance with the publication procedures provided for in that State. Such publication shall also specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or Article 3(2).

2. However, any Member State within the territory of which the debtor has an establishment may require mandatory publication. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) are opened shall take all necessary measures to ensure such publication.

*Article 22*

## Registration in a public register

1. The liquidator may request that the judgment opening the proceedings referred to in Article 3(1) be registered in the land register, the trade register and any other public register kept in the other Member States.

2. However, any Member State may require mandatory registration. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) have been opened shall take all necessary measures to ensure such registration.

*Article 23*

## Costs

The costs of the publication and registration provided for in Articles 21 and 22 shall be regarded as costs and expenses incurred in the proceedings.

*Article 24*

## Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.
2. Where such an obligation is honoured before the publication provided for in Article 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

*Article 25*

## Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Conventions of Accession to this Convention.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.
3. The Member States shall not be obliged to recognise or enforce a judgment referred to in paragraph 1 which might result in a limitation of personal freedom or postal secrecy.

## Article 26 (6)

## Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

## CHAPTER III

## SECONDARY INSOLVENCY PROCEEDINGS

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*Article 27*

## Opening of proceedings

The opening of the proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in that other Member State, a court of which has jurisdiction pursuant to Article 3(2), of secondary insolvency proceedings without the debtor's insolvency being examined in that other State. These latter proceedings must be among the proceedings listed in Annex B. Their effects shall be restricted to the assets of the debtor situated within the territory of that other Member State.

*Article 28*

## Applicable law

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

*Article 29*

## Right to request the opening of proceedings

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

*Article 30*

## Advance payment of costs and expenses

Where the law of the Member State in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 31*

## Duty to cooperate and communicate information

1. Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant

to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.

2. Subject to the rules applicable to each of the proceedings, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to cooperate with each other.

3. The liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

#### *Article 32*

##### Exercise of creditors' rights

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings.

2. The liquidators in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides.

3. The liquidator in the main or secondary proceedings shall be empowered to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

#### *Article 33*

##### Stay of liquidation

1. The court, which opened the secondary proceedings, shall stay the process of liquidation in whole or in part on receipt of a request from the liquidator in the main proceedings, provided that in that event it may require the liquidator in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors. Such a request from the liquidator may be rejected only if it is manifestly of no interest to the creditors in the main proceedings. Such a stay of the process of liquidation may be ordered for up to three months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of liquidation:

- at the request of the liquidator in the main proceedings,
- of its own motion, at the request of a creditor or at the request of the liquidator in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings.

#### *Article 34*

##### Measures ending secondary insolvency proceedings

1. Where the law applicable to secondary proceedings allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main

proceedings shall be empowered to propose such a measure himself.

Closure of the secondary proceedings by a measure referred to in the first subparagraph shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the creditors in the main proceedings are not affected by the measure proposed.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.

3. During a stay of the process of liquidation ordered pursuant to Article 33, only the liquidator in the main proceedings or the debtor, with the former's consent, may propose measures laid down in paragraph 1 of this Article in the secondary proceedings; no other proposal for such a measure shall be put to the vote or approved.

#### *Article 35*

Assets remaining in the secondary proceedings

If by the liquidation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings shall immediately transfer any assets remaining to the liquidator in the main proceedings.

#### *Article 36*

Subsequent opening of the main proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 31 to 35 shall apply to those opened first, in so far as the progress of those proceedings so permits.

Article 37 (7)

Conversion of earlier proceedings

The liquidator in the main proceedings may request that proceedings listed in Annex A previously opened in another Member State be converted into winding-up proceedings if this proves to be in the interests of the creditors in the main proceedings.

The court with jurisdiction under Article 3(2) shall order conversion into one of the proceedings listed in Annex B.

#### *Article 38*

Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator

shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

#### CHAPTER IV

#### PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

##### *Article 39*

##### Right to lodge claims

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States, shall have the right to lodge claims in the insolvency proceedings in writing.

##### *Article 40*

##### Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

##### *Article 41*

##### Content of the lodgement of a claim

A creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in rem or a reservation of title in respect of the claim and what assets are covered by the guarantee he is invoking.

##### *Article 42*

##### Languages

1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading "Invitation to lodge a claim. Time limits to be observed" in all the official languages of the institutions of the European Union.



2. Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading "Lodgement of claim" in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings.

## CHAPTER V

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 43*

##### Applicability in time

The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.

#### *Article 44*

##### Relationship to Conventions

1. After its entry into force, this Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States, in particular:

- (a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
- (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
- (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
- (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;

- 
- (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
  - (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
  - (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Regulation.

3. This Regulation shall not apply:

- (a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that State with one or more third countries before the entry into force of this Regulation;
- (b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time this Regulation enters into force.

#### *Article 45*

##### Amendment of the Annexes

The Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes.

#### *Article 46*

##### Reports

No later than 1 June 2012, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied if need be by a proposal for adaptation of this Regulation.

#### *Article 47*

##### Entry into force

This Regulation shall enter into force on 31 May 2002.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

For the Council

The President

A. Costa

- (1) Opinion delivered on 2 March 2000 (not yet published in the Official Journal).
- (2) Opinion delivered on 26 January 2000 (not yet published in the Official Journal).
- (3) OJ L 299, 31.12.1972, p. 32.
- (4) OJ L 204, 2.8.1975, p. 28; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1.
- (5) OJ L 166, 11.6.1998, p. 45.
- (6) Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).
- (7) Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

#### ANNEX A

Insolvency proceedings referred to in Article 2(a)

BELGIE-/BELGIQUE

- Het faillissement/La faillite
- Het gerechtelijk akkoord/Le concordat judiciaire
- De collectieve schuldenregeling/Le règlement collectif de dettes

DEUTSCHLAND

- Das Konkursverfahren
- Das gerichtliche Vergleichsverfahren
- Das Gesamtvollstreckungsverfahren
- Das Insolvenzverfahren

>ISO\_7>ΕΕΕΑύ

- άδο οοç
- Ç áéääé« âêêæÛñέοç
- Ç =ñïòùñéí« äéá ßñέοç áðáññáο. Ç äéíβêçοç êáé ç äéá ßñέοç ðùí =έοðùðοί
- Ç ο=ααùα« á=έ ßñçοçο ο=ü á=βðñí=í íá οêí=ü ôç οuíαøç οοíâéáοíïù íá ðïοο =έοðùð;ο

>ISO\_1>ESPAÑA

- Concurso de acreedores
- Quiebra
- Suspension de pagos

## FRANCE

- Liquidation judiciaire
- Redressement judiciaire avec nomination d'un administrateur

## IRELAND

- Compulsory winding up by the court
- Bankruptcy
- The administration in bankruptcy of the estate of persons dying insolvent
- Winding-up in bankruptcy of partnerships
- Creditors' voluntary winding up (with confirmation of a Court)
- Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
- Company examinership

## ITALIA

- Fallimento
- Concordato preventivo
- Liquidazione coatta amministrativa
- Amministrazione straordinaria
- Amministrazione controllata

## LUXEMBOURG

- Faillite
- Gestion contrôlée
- Concordat préventif de faillite (par abandon d'actif)
- Régime spécial de liquidation du notariat

## NEDERLAND

- Het faillissement
- De surséance van betaling
- De schuldsaneringsregeling natuurlijke personen

## OSTERREICH

- Das Konkursverfahren
- Das Ausgleichsverfahren

## PORTUGAL

- O processo de falência
- Os processos especiais de recuperação de empresa, ou seja:
- A concordata
- A reconstituição empresarial

- A reestruturação financeira

- A gestão controlada

SUOMI-/FINLAND

- Konkursrikonkurs

- Yrityssaneerausföretagssanering

SVERIGE

- Konkurs

- Företagsrekonstruktion

UNITED KINGDOM

- Winding up by or subject to the supervision of the court

- Creditors' voluntary winding up (with confirmation by the court)

- Administration

- Voluntary arrangements under insolvency legislation

- Bankruptcy or sequestration

#### ANNEX B

Winding up proceedings referred to in Article 2(c)

BELGIE-/BELGIQUE

- Het faillissement/La faillite

DEUTSCHLAND

- Das Konkursverfahren

- Das Gesamtvollstreckungsverfahren

- Das Insolvenzverfahren

>ISO\_7>ÁÈÈÁú

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>ISO\_1>ESPAÑA

- Concurso de acreedores

- Quiebra

- Suspension de pagos basada en la insolvencia definitiva

FRANCE

- Liquidation judiciaire

IRELAND

- 
- Compulsory winding up
  - Bankruptcy
  - The administration in bankruptcy of the estate of persons dying insolvent
  - Winding-up in bankruptcy of partnerships
  - Creditors' voluntary winding up (with confirmation of a court)
  - Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

## ITALIA

- Fallimento
- Liquidazione coatta amministrativa

## LUXEMBOURG

- Faillite
- Régime spécial de liquidation du notariat

## NEDERLAND

- Het faillissement
- De schuldsaneringsregeling natuurlijke personen

## OSTERREICH

- Das Konkursverfahren

## PORTUGAL

- O processo de falência

## SUOMI-/FINLAND

- Konkurssikonkurs

## SVERIGE

- Konkurs

## UNITED KINGDOM

- Winding up by or subject to the supervision of the court
- Creditors' voluntary winding up (with confirmation by the court)
- Bankruptcy or sequestration

*ANNEX C*

Liquidators referred to in Article 2(b)

## BELGIE-/BELGIQUE

- De curator/Le curateur
- De commissaris inzake opschorting/Le commissaire au sursis

- De schuldbemiddelaarLe médiateur de dettes

#### DEUTSCHLAND

- Konkursverwalter
- Vergleichsverwalter
- Sachwalter (nach der Vergleichsordnung)
- Verwalter
- Insolvenzverwalter
- Sachwalter (nach der Insolvenzordnung)
- Treuhänder
- Vorläufiger Insolvenzverwalter

#### >ISO\_7>GREECE

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- Ι áéáééüο àêêàèañéοô«o
- Ι á=βôñî=ïο

#### >ISO\_1>ESPAÑA

- Depositario-administrador
- Interventor o Interventores
- Síndicos
- Comisario

#### FRANCE

- Représentant des créanciers
- Mandataire liquidateur
- Administrateur judiciaire
- Commissaire à l'exécution de plan

#### IRELAND

- Liquidator
- Official Assignee
- Trustee in bankruptcy
- Provisional Liquidator
- Examiner

#### ITALIA

- Curatore
- Commissario

## LUXEMBOURG

- Le curateur
- Le commissaire
- Le liquidateur
- Le conseil de gérance de la section d'assainissement du notariat

## NEDERLAND

- De curator in het faillissement
- De bewindvoerder in de surséance van betaling
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen

## OSTERREICH

- Masseverwalter
- Ausgleichsverwalter
- Sachwalter
- Treuhänder
- Besondere Verwalter
- Vorläufiger Verwalter
- Konkursgericht

## PORTUGAL

- Gestor judicial
- Liquidatario judicial
- Comissao de credores

## SUOMI-/FINLAND

- Pesähoitajaboförvaltare
- Selvittäjäutredare

## SVERIGE

- Förvaltare
- God man
- Rekonstruktör

## UNITED KINGDOM

- Liquidator
- Supervisor of a voluntary arrangement
- Administrator
- Official Receiver
- Trustee



- Judicial factor

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