COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 6 May 1991

Amended proposal for a

COUNCIL REGULATION (EEC)

on the Statute for a European company

(presented by the Commission pursuant to Article 149(3) of the EEC-Treaty)

EXPLANATORY MEMORANDUM

Parliament and the Economic and Social Committee have delivered opinions on the proposal for a Council Regulation on the Statute for a European company, to be adopted in accordance with Article 149 of the EEC Treaty. The amended proposal which the Commission is submitting here takes account of Parliament's amendments, approved on 24 January 1991, and of the Economic and Social Committee's opinion, which was adopted on 28 March 1990.

The Commission has likewise given consideration to the many contributions put forward by interested parties, trade associations and trade union organizations, and to studies carried out by specialists in company law.

A number of technical improvements have also been made to the initial proposal. These reflect the discussion of the proposal on the Council's ad hoc Working Party on Economic Questions since September 1989.

Certain other amendments have been made for the sake of consistency.

Article 1

Paragraph 3 of this Article has been deleted in view of the difficulties certain Member States had with it, which were raised on the ad hoc Working Party on Economic Questions. In some Member States a distinction is made between what are known as "commercial" companies and others, with commercial companies being subject to specific rules purely on the basis of their legal form; other Member States draw no such distinction.

The paragraph can be deleted because under Article 7(4) the SE is to be treated in each of the Member States in the same way as a public limited company incorporated under national law. Thus the Regulation does not interfere with the legislation of those States which do distinguish between so-called "commercial" companies and others.

Article 2

Article 2 has been amended substantially in order to make the conditions of access to the SE form of company wider and more flexible, in line with the wishes expressed by Parliament and the Economic and Social Committee.

Firstly, private limited companies would be enabled to set up an SE by forming a holding company.

Parliament drew attention to the economic importance of wider access if smaller firms were to be allowed to reorganize their business by taking advantage of the SE form, and pointed out that private limited companies account for a major proportion of economic activity in the Community.

Secondly, it will now be possible for companies in a single Member State to set up a holding company or joint subsidiary in SE form, provided they have a subsidiary or establishment in a Member State other than that of their central administration, the proviso will ensure that the operation is a cross-border one.

Thirdly, the new paragraph 3 allows a single public limited company to convert into SE form provided it has a subsidiary or an establishment in a Member State other than that of its central administration.

Thus the cross-border dimension which justifies the establishment of a European company form is required here too. To transform into an SE a company must have a subsidiary or establishment in a Member State other than that of its central administration.

Article 3

The new paragraph 1a is a consequence of the fact that private limited companies are now to be permitted for form SEs.

It will be noted that paragraph 3 no longer prohibits a subsidiary which is itself an SE from forming subsidiaries in SE form. The Commission is here complying with the wishes of Parliament, the Economic and Social Committee and the Council's ad hoc Working Party.

Article 4

Paragraph 1 has been clarified at the request of Parliament and the Economic and Social Committee, who wanted it made clear that the minimum laid down was the minimum subscribed capital, that is to say the capital which the founder bodies have undertaken to provide rather than the assets of the company, which will fluctuate constantly.

Paragraphs 2 and 3 have been replaced by a more general wording which has the advantage of covering all cases in which the law of the Member State in which an SE has its registered office requires a higher subscribed capital for domestic companies exercising certain types of activity.

Article 5a

The transfer of the SE's registered office is expressly regulated by the new Article 5a. Transfer is not to result in the winding up of the company or the creation of a new legal person. The procedure is based on that adopted for the European economic interest grouping.

Where the transfer of the registered office results in a change of the law applicable to the SE pursuant to Article 7(1)(b), the decision to transfer must be taken under the conditions laid down for the amendment of the statutes, and a notice must have been published stating that a transfer is proposed.

The publication requirement provides one safeguard against an SE's transferring its registered office in order to evade its obligations. It may be pointed out here that at Parliament's request a further safeguard has been inserted into Artricle 3(7) of the Directive complementing the Statute for a European company with regard to the involvement of employees. Under that provision the model of participation which applied before a transfer can be changed only by the same process of negotiation which under Article 3(1), (1a), (1b) and (2) of the Directive must precede the formation of an SE.

Article 7

The order of primacy of the rules governing the SE has been spelt out in accordance with the wishes of Parliament, the Economic and Social Committee and the Council's ad hoc Working Party on Economic Questions.

SEs are to be governed in the first place by the Regulation, and where the Regulation expressly authorizes it, by the statutes of the SE.

Where the Regulation is silent the principles of independence and freedom of contract will apply to the full, always subject to the requirements of the law on public limited companies in the Member State in which the SE has its registered office. The SE will therefore enjoy the same freedom of contract as domestic public companies in the Member State of its registered office, whether that freedom derives from the scope expressly left to company statutes or is simply a reflection of the company's independent personality.

It should be borne in mind that in addition to the rules applying to the SE under the Regulation and under the law governing public companies in the State of its registered office, there is also the Community and national law, including provisions deriving from international conventions, which applies in fields not covered by the Regulation, such as social and labour law, the law of intellectual property, the law governing bankruptcy and winding up, etc.

Article 8

Paragraph 2 of this Article is an addition based on Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).

The old paragraph 2, which was purely declaratory, has been deleted; the rules stated in it are covered by Article 7.

A new paragraph 3 has been inserted, at Parliament's request. A model of participation must have been chosen before the SE is registered. This obligation applies wherever a fresh registration is called for, whether an SE is being registered for the first time or following the transfer of its registered office.

Article 10

This Article is based directly on Article 11 of the EEIG Regulation, and the improvements now made are mainly technical. At the end of the first subparagraph of paragraph 1 the references to the SE's registered office and to its objects have been added to those required of EEIGs, as this information has been found to be very useful in the EEIG's case.

It will be observed that it is now the fact that an SE has been registered, rather than the fact that it has been formed, which has to be published in the Official Journal. The Commission feels that this is more rational since it is upon registration that the SE is to acquire legal personality under the new Article 16.
Notice is also to be given in the OJ where the SE's registered office is transferred.

Article 11

This Article has been simplified and clarified. It may be worth drawing attention to the deletion of points (d) and (e), which went beyond the requirements laid down in the first Company Law Directive. Parliament and the Economic and Social Committee considered that to require that the SE's VAT number be indicated on its business documents served no useful purpose and represented an excessive bureaucratic burden.

Article 11a

The new Article 11a states a principle valid for the whole of Title II, namely that except where there is express provision in the Regulation all the rules applicable to the formation of public limited companies in the State of the SE's registered office are to apply to the SE.

A new paragraph 2 had also to be added requiring publication under Article 9 whenever an SE is formed.

Articles 13 and 14

These Articles have been deleted in view of the insertion of the new Article 11a just referred to.

Article 15

This Article has been deleted for the same reason as Articles 13 and 14. The supervision mechanisms established in the Member States under the first Company Law Directive, Council Directive 68/151/EEC, will also apply to the SE.

Article 16

In line with the opinions of Parliament and the Economic and Social Committee, the Commission here proposes that the time at which the SE acquires legal personality should be set on a uniform basis in the Regulation.

In view of the disparity of national rules on this question a uniform rule is needed in the interests of legal certainty, particularly where the creditors and shareholders of the SE are concerned.

Article 17

Paragraph 2, which authorized a company in liquidation to participate in the formation of an SE by merger, has been deleted.

This possibility exists as an option left to the Member States under Article 3(2) of Directive 78/855/EEC.

The Commission therefore prefers to give full play to Article 7, so as to avoid any danger of a difference of treatment between companies undertaking a domestic merger and the founder companies of an SE undertaking an international merger.

Paragraph 3 has been deleted in view of its purely declaratory nature.

The national measures taken under Directive 77/187/EEC will protect the rights of the employees of the founder companies in the event of a transfer of business.

Article 18

In paragraph 1, the list of particulars which must be stated in the draft terms of merger for each founder company has been reduced to a minimum. Founder companies may in the draft terms of merger go beyond what is expressly required by the Regulation, but the Member States may not impose any further requirement on them in this regard.

Paragraph 3 has been deleted in view of its declaratory character.

Article 19

Several technical improvements have been made to Article 19. Paragraph 2(c) has been deleted in accordance with the wishes of Parliament and the ad hoc Working Party on Economic Questions.

New particulars have been added for the publication of the draft terms of merger for each of the founder companies. These are the proposed name and the proposed registered office of the SE. A technical simplification has been made in paragraph 3.

Article 20

Heeding Parliament's call, the Commission has deleted the requirement that the report drawn up by the founder company boards explaining and justifying the draft terms of merger be detailed.

Article 21

The Commission has made two amendments. A new paragraph 1a states that the experts referred to in the Article may be either natural persons or legal persons, it being appropriate to adopt here the approach followed in the case of national mergers.

Paragraph 4 is reworded so as to simplify and clarify the cross-border aspect of the experts' work.

Article 22

Paragraph 2 has been amended at Parliament's request to align it on Article 11 of Directive 78/855/EEC, to which it refers.

The Article 11 in question provides, not for the provision of information, but for the making available of documents for inspecton before the general meeting called to approve the merger.

Article 23

This Article has been restructured in the interests of clarity. Subparagraph (b) has been rephrased. It is the law to which each of the founder companies is subject that will as a rule govern the protection of the interests of holders of securities, other than shares, which carry special rights, in particular the right to redemption of their securities by the SE. It may well be that the law of the State in which the SE is to have its registered office makes no provision for redemption of such securities by the SE.

Article 24 and 24a

Article 24 has also been completely recast to make it hang together better and to improve the chronology of the procedures it provides for. It is supplemented by a new Article 24a.

Article 24 describes the procedure for supervising the legality of the merger as regards that part of the procedure which concerns each founder company.

Article 24a deals with the supervision of the legality of the merger as regards that part of the procedure which concerns the completion of the merger.

Articles 24 and 24a also specify when the national supervisory authorities are to act, the manner in which they are to exercise supervision and the nature of the supervision.

Article 25

The amendments to Article 25 are determined by those to Article 16 and have been made in response to Parliament's wishes. Reference should be made to the comments on that Article.

The Commission felt it would be more logical to make express provision for a correspondence between, on the one hand, the effects of the merger and of the formation of the SE and, on the other, the time of registration of the SE and hence of the acquisition of legal personality.
There is a danger in the absence of such a provision that the merged companies might disappear without the new legal person that is the SE having taken over or, on the contrary, that they might continue to exist in law while the SE itself has legal personality.

Article 27

A number of improvements have been made by the Commission in order to align this provision more closely on Article 19 of Directive 78/855/EEC, on which it is directly modelled.

A new paragraph 2 has the effect of safeguarding the law of a Member State which requires the completion of special formalities before the transfer of certain assets, rights and obligations by the founder companies becomes effective against third parties.

Articles 28 and 29

These provisions have been simplified in the light of the improvements to Articles 21 and 24.

A new paragraph 2 has been added to Article 29. It stipulates that nullification proceedings must be initiated within six months and that the SE may rectify the irregularity.

Articles 30 and 30a

Article 30, which deals with the question of a merger where one of the founder companies holds shares in another founder company, is deleted and replaced by a new Article 30a which lays down more detailed and precise rules and introduces simplified merger arrangements by referring expressly to the procedure laid down in Chapter IV of Directive 78/855/EEC.

The simplified arrangements may apply where a founder company holds 90% or more of the shares in any other founder company. The law to which the former founder company is subject will apply to the merger.

The simplified arrangements may also apply as between several founder companies which are controlled by the same company to the extent of 90% of their shares. The controlling company need not have its registered office and central administration in the Community.

Articles 31 and 32

The wording of Article 31, which lays down the conditions under which companies may form an SE holding company, has undergone extensive modification in the light of the opinions of Parliament and the Economic and Social Committee and of the deliberations of the ad hoc Working Party on Economic Questions.

The Commission's original version treated the formation of an SE holding company as a sort of merger requiring the compulsory transfer of all the shares of the founder companies to the SE in exchange for shares in the SE holding company. The shareholders of the founder companies would consequently have been forced to assign all their shares.

The question was raised of the protection of minority shareholders who did not wish to take part in the operation. As originally conceived, the operation would have involved a compulsory contribution of capital by shareholders who did not wish to take part - a situation contrary to the legal traditions of many countries.

The techniques normally used in the Member States for forming a holding company are different in so far as shareholders freely decide to transfer the shares they hold in one or more companies to a holding company. The national systems are based, therefore, on the principle of freedom of contract.

The Commission now prefers an optional system in so far as under the new Article 31a shareholders will no longer be obliged to transfer their shares to the holding company. However, the Commission has sought to maintain a body of minimum rules laying down the principle of, and the procedure for forming, an SE holding company. The holding company is fundamental to the restructuring of business at European level and the Commission considers it absolutely essential that the SE should be able to play such a role.

At the request of Parliament and the Economic and Social Committee the formation of the SE holding company is conditional on 51% of the voting shares in each of the founder companies being transferred to the SE holding company. The SE holding company can therefore be not only a holding company in the normal sense but also a company carrying on industrial and commercial activities and supervising the running of the companies whose shares it holds.

Article 33

The deletion of this provision is justified by the introduction, in Article 3 of the Directive complementing the Statute for a European company with regard to the involvement of employees in the European company, of a negotiation procedure between the management of the founder companies and the representatives of the employees of those companies. Pursuant to Article 8(3) of the Regulation an SE may not be registered until Article 3 of the Directive has been applied.

Articles 34 to 37

These Articles have been simplified, the procedure they contained having been judged too cumbersome compared with current practice in the Member States.

Article 2(2), supplemented by Article 3(2) where an already existing SE is involved, lays down the principle of the setting up of an SE in the form of a joint subsidiary.

Article 11a contains, moreover, a reference to the law applicable to public limited companies in the Member State in which the SE establishes its registered office.

Article 37a

As requested by Parliament and the Economic and Social Committee, the Commission considers it appropriate to include among the range of processes for forming an SE the conversion of a public limited company formed under national law.

The principle of this new way of forming an SE is laid down in Article 2(3). The transnational and Community character of the SE is preserved in so far as this option is open only to a public limited company having its registered office and central administration in the Community and having a subsidiary or an establishment in a Member State other than that of its central administration.

This new way of forming an SE renders even more flexible the conditions governing acquisition of SE status and will enable, say, a public limited company with a number of establishments in different Member States to restructure in the form of a European company without having to be wound up. Under the procedure set out in Article 37a such conversion gives rise neither to the company being wound up nor to new legal personality being created.

TITLE III

Article 38

Capital of the SE

Where consideration for shares is in kind it shall be valued in a report by independent experts in accordance with the provisions of national law applying Article 10 of Directive 77/91/EEC in respect of the capital of public limited companies.

Article 39

The possibility to charge professional intermediaries less than the issue price is confined to the limits (if any) authorized in the Member State of the registered office of the SE.

Article 42

This article has been simplified and a number of changes incorporated in order to follow more closely the provisions of Directive 77/91/EEC in respect of increases of capital.

First, the SE may increase its capital in any manner permitted for public limited companies in the Member State of the registered office.

Secondly, paragraph 5 provides, as Article 28 of Directive 77/91/EEC, that where the issue is not fully subscribed the capital can only be increased by the amount of the subscriptions actually taken up if the terms of the issue allow this.

Finally, paragraph 7 provides that where the existing capital is not fully paid up at the time of an issue of new capital this information shall be given in advance.

Article 43

First, the amount of any increase in capital which may be authorized by the general meeting shall take account of the amounts fixed for national public limited companies. This reflects the provisions of Article 25 (2) of Directive 77/91/EEC. In addition it is made clear that the general meeting must decide to give such an authorization by a qualified majority.

Secondly, the various stages of authorization by the general meeting (paragraph 1), together with subsequent issues of shares and resulting increases in capital (paragraph 3) shall be published in accordance with the system of Directive 68/151/EEC.

Article 44

Paragraph 1A clarifies the position in respect of the rights of pre-emption of existing shareholders where there are several classes of shares: the increase in respect of a class of shares shall first be offered to those within that class. Pursuant to the amendments of the European Parliament and the Economic and Social Committee the minimum period in which the right may be exercised has been extended to one month.

Paragraph 4 has been deleted since it is no longer proposed to allow the statutes or the general meeting of the SE to authorize the management or administrative board to restrict or withdraw the right of pre-emption.

Paragraph 6 and 7 makes it clear that the provisions relating to increases in capital also apply to convertible securities and that the use of financial institutions to offer the share to shareholders is not considered as excluding the right of pre-emption.

Article 45

This Article on reductions of capital has been modified, in the same way as that on increases in capital, to allow the SE to effect the operation by all means open to national public limited companies in the Member State of its registered office. Further paragraphs 3 and 4 reflect more closely the relevant provisions of Directive 77/91/EEC.

Article 45A(new)

This new Article makes it clear that where there are several classes of shares all decisions of the general meeting in respect of increases and reductions of capital must be subject to a separate vote for each class of shareholders whose rights are affected by the operation in question.

Article 46

Directive 77/91/EEC, in particular Article 32, provides for a minimum standard of protection of creditors, namely there must be security for claims which antedate the publication of the decision to reduce the capital and which have not fallen due by that date.

Article 46 in its original form provided for this minimum level of protection but it appears more favourable to creditors in general to provide that they benefit from all the provisions of national law in respect of the reduction of capital of public limited companies of the Member State of the registered office of the SE. The Article has been amended accordingly.

Article 47

This Article has been deleted since Article 45(3) in respect of a reduction following losses largely covers the matter.

Article 49

This Article now adopts a different approach: namely it permits the SE to acquire its own shares within the limits set by the Member State of its registered office for such acquisitions by national public limited companies. This will allow the SE access to the options of Directive 77/91/EEC where a Member State has in fact applied them. It avoids distortion between SEs and national PLCs in this area. This result reflects the desire of the European Parliament and the Economic and Social Committee not to exclude SEs from possibilities open to national plcs of the same Member State.

In addition, however, acquisitions by undertakings controlled by the SE shall be prohibited as if acquisitions by the SE. This extension corresponds with the Commission's proposal to amend the Second Directive[1] to achieve this result in respect of public limited companies in the Community.

Other amendments cover the position of SEs operating as banks and financial institutions.

(1) JO N° C8, 12.1.1991

Article 50

Directive 88/627/EEC will apply to the disclosure of acquisitions by SEs in publicly quoted companies and, where the SE is publicly quoted, to acquisitions in the SE. Article 50 has therefore been deleted to avoid confusion.

Article 52

Paragraph 5 has been deleted since separate votes for classes of shares are dealt with in Article 98.

Article 53

Paragraph 1A (new) requires that bearer shares must be fully paid up. Where shares are registered the register may be kept in any way that ensures its preservation and, in accordance with Amendment 65 of the European Parliament, is accessible as of right by all shareholders.

Article 55

This Article has been deleted for the same reasons as Article 50, namely the two directives cited, Directives 80/390/EEC and 89/298/EEC will apply in any event.

Article 56

Article 56 now takes up amendments of both the European Parliament and the Economic Committee to allow the SE access to all methods of raising finance available to plcs in the Member State of the SE's registered office.

Articles 57 to 60

These Articles have been deleted since the broad assimilation of the SE with a national plc in Article 56 in respect of the use of available financial instruments renders them unnecessary.

TITLE IV

Article 61

Article 61 which allows the SE a choice between either a two tier or the one tier board structure has been amended to allow a Member State to restrict the choice to one of the two. This will permit greater reliance on national law in respect of the functioning of public limited companies. In addition the statutes of the SE must provide for the general meeting.

Article 62

In paragraph 1 the right to represent the SE is clearly referred to the relevant law of the Member State of the seat of the SE under the First "Company Law" Directive (Directive 68/151/EEC).

In paragraph 3 the possibility is introduced of supervisory board member to replacing a management board member in the event of a vacancy. In this case the member shall not exercise his functions on the supervisory board.

Article 63

At the request of the European Parliament paragraph 1 confers a clear positive function on the supervisory board namely, the supervision of the duties performed by the management board.
In addition to the general principle of nomination of members by the general meeting paragraph 2 allows the members of the first supervisory board to be nominated by the statutes. This is without prejudice to the provisions of the directive in respect of the involvement of employees in the SE and any rights of a minority of shareholders to appoint board members.

Paragraph 3 allows the Member States determine the number of members of supervisory boards of SEs registered on their territory.

Article 64

The rights and duties of the management and supervisory boards in respect of information have been clarified and simplified in particular by requiring information to pass directly between the two boards without passing via the chairman of the supervisory board.

Article 65

Following the opinion of the European Parliament paragraph 1 now embodies the principle that where there is employee involvement on the supervisory board the chairman must be chosen from among the shareholder-appointed members of the board.

Paragraph 2 requires that one - third of the members of the supervisory board (rather than one member) may require a meeting of the supervisory board be called. Such a request must give reasons.

Article 66

In paragraph 1 the right of the administrative board to represent the SE is referred to the relevant law of the Member State of the seat of SE under the First "Company Law" Directive (DIR 68/151/EEC).

Paragraph 1a requires the Statutes of the SE to fix the number of members. The minimum is three save where there is no employee involvement on the administrative board.

Paragraph 2 permits rather than requires the delegation of management to board members. Further it clarifies that certain management responsabilities may be conferred on non board members in accordance with the statutes or decisions of the general meeting.

Article 67

The Article requires the administrative board to meet once every three months to discuss the progress and affairs of the SE. The affairs of companies controlled by the SE must form part of the discussion if they significantly affect the SE. Finally paragraph 1A requires the board to meet and deliberate on the matters set out in Article 72.
Paragraph 3 is now to be found in Article 67A (2).

Article 67A

As Article 65, where there is employee involvement on the administrative board the chairman shall be chosen from among the shareholder-appointed members.

Paragraph 2 requires that one-third of the members of the administrative board may require a meeting. They must give reasons.

Article 68

Paragraph 2 makes it clear that board members may be reappointed more than once.

Article 69

Paragraph 1 has been modified so that a company may be a member of an SE board only where this is not prohibited for plcs under the law of the registered office of the SE.

In paragraph 2 a further disbarment from board office is added, namely any resulting from the under the law of the registered office of the SE.

Paragraph 4 has been clarified and referred to national law.

Article 70

This Article has been deleted in favour of national law which will apply by virtue of Article 7.

Article 71

The Article has been deleted. The power of representation is now dealt with in Articles 62, 63 and 66 and the legal effects are in any event determined by the First "Company Law" Directive (DIR 68/151/EEC).

Article 72

Paragraph 1 has been modified to follow the opinion of the European Parliament in particular by redefining the categories of decision by reference to financial criteria related to a percentage of subscribed capital or annual turnover. This is intended to reduce the scope for conflict in comparison with the former less precise list.

Paragraph 2 continues to allow the statutes to add to the list. Paragraph 3 allows a Member State to impose on SEs registered in its territory, the same categories of operation as those it applies by law in respect of decision making in national public limited companies. Further paragraph 4 permits a Member State that allows the board or boards of a national plc to set the list, to adopt this system for SEs registered on its territory.

Article 73

Conflicts of interest between board members and the SE are considered best left to national law in accordance with Article 7. The Article is therefore deleted.

Article 74

Paragraph 1 is clarified to make it clear that so far as their functions are set by the Regulation board members (on the same board) have the same rights and duties.

Article 75

Removal of board members is now covered in Article 62, 63 and 66. The Article is therefore deleted.

Article 76

Article 76 now allows the Statutes of the SE to determine the rules for the conduct of business in a board of an SE. Paragraph 3A provides that the chairman of an SE board shall have a casting vote in the event of a tie.

Paragraph 4 has been deleted in favour of national law.

Article 77

This Article has been clarified while not changing the intended legal results.

Article 78

In accordance with the opinion of the European Parliament paragraph 4 has been deleted.

Article 79

Waiver of actions and the compromise of actions being closely linked with national procedural rules this Article has been deleted to leave the whole area to national law.

Article 81

The competence of the general meeting has been redefined. Firstly, positively, the general meeting shall decide on all matters where the Regulation so provides. Secondly, it shall have a power to decide where the power of decision has not been given to an SE board, either by the Regulation, the complementary directive on employee involvement, the law of the registered office of the SE or the SE's Statutes.

Article 82

Paragraph 1 now refers the periodicity of general meetings to six months from the end of the financial year.

Paragraph 2 now permits the supervisory board to instigate the calling of a general meeting.

Paragraph 3 and 4 relate to the approval of the annual accounts and take account of different practice concerning the extent of involvement of the general meeting in the one-tier and two tier board systems, respectively.

Article 83

This provision concerning the right of a minority to instigate the calling of a general meeting now allows the Statutes to set a lower percentage than 10% of subscribed capital. The request must state reasons and set the items for the agenda.

Paragraph 4 provides that a general meeting may itself decide to call a further meeting at a later date.

Article 84

This Article has been deleted in favour of national law.

Article 85

The minority having the right to call for the addition of items to the agenda may be reduced by the Statutes of the SE.

Article 86

In accordance with the opinions of the European Parliament and the Economic and Social Committee, all shareholders shall have the right to attend the general meeting i.e. there is no possibility to exclude shareholders with non-voting shares.

Article 87

Pursuant to the opinions of the European Parliament and the Economic and Social Committee this Article has been modified to give every shareholders the right to appoint a person of his choice to represent him at the general meeting.

Article 88

This Article has been deleted partly in consequence of the new formulation of Article 87 and for the remainder to allow national provisions to apply.

Articles 89, 90, & 91

The conduct of the general meeting and the right of shareholders to information is now covered by national provisions under Article 81A.

Article 89 is therefore confined to a guarantee that shareholders have equal access to information. Article 90 and 91 have been deleted.

Article 92

Paragraph 1 makes it clear that voting rights are calculated by reference to subscribed capital in the form of shares with the right to vote.

Paragraph 2 is covered by Article 52 and is therefore deleted.

Paragraph 3 makes it clear that the right to vote may not be exercised where a call has not been paid in time nor in respect of shares of the SE held by the SE itself or by undertakings controlled by it.

Paragraph 4 is deleted since Article 7 achieves the result without the need for an express provision.

Article 93

Conflicts of interest situations in general are considered best left to national law. The Article has therefore been deleted.

Article 93A

This Article states in legal terms that decisions of the general meeting are to be determined by reference to votes validly cast.

Article 94

Paragraph 1 reiterates the principle that the decisions are usually taken by a majority of votes cast.

Article 95 & 96

Deleted : see Article 97.

Article 97

This Article is now limited to amendments of the Statutes. They shall require a decision of the general meeting taken by a qualified majority of two - thirds of the votes cast.
(Paragraph 2 remains unchanged and allows the statutes to permit a decision by a simple majority if a quorum of one half the subscribed capital is attained.)

Article 99

Conduct of the general meeting now being referred by Article 81A to national law this Article is redundant.

Article 100

The nullification of decisions of the general meeting as such is left to national law but Article 100 requires that any court or tribunal decision to this effect be published according to Article 9.

Article 114

This provision has been deleted in the light of the deliberations of the Council's ad hoc Working Party on Economic Questions.

Article 114 affords minority shareholders of the SE, where it is controlled by another undertaking, the same protection as is afforded by the law of the State in which the SE has its registered office to shareholders of a national public limited company in identical circumstances .

The ad hoc Working Party and the Commission consider this provision to be superfluous inasmuch as the matter is dealt with in Article 7.

Articles 115 to 119

These Articles have been clarified as far as the causes of the winding up of an SE are concerned. A number of technical improvements have been made to the text following the deliberations of the Ad hoc Working Party on Economic Questions.

A clearer distinction is now made between cases of voluntary winding up by the general meeting, cases of compulsory winding up by the general meeting and cases of winding up by the court.

A new cause of winding up by the court has been added to Article 117a. This cause has to do with the loss of the Community character of the SE, being linked to the transfer of the SE's registered office outside the Community.

Article 119 has been deleted, the provisions it contained being henceforth covered by Articles 115 and 116.

Articles 120 to 128

From among the options put forward by members of the Ad hoc Working Party on Economic Questions, the Commission has chosen, as far as the liquidation arrangements are concerned, a broad reference to the law of the Member State in which the SE has its registered office.

The approach adopted by Article 120 is that of Article 35 of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the EEIG.

Article 120 provides that the winding up of an SE entails its liquidation; it refers to national law as far as procedure is concerned and states that the SE is to continue to have legal personality until such time as its liquidation is concluded.

Article 126 is retained in part in so far as it contains rules to protect creditors.

The same applies to Article 128 in so far as it contains rules on publication of termination of liquidation and removal of the SE from the register and of the books and records relating to the liquidation.

Articles 129 and 130

The Commission has opted for a reference to national law as far as the provisions governing the insolvency and suspension of payments of the SE are concerned. The reference to national law rather than to the law of the State in which the SE has its registered office makes it possible to safeguard any other laws that might be applicable.

Article 130 is retained in view of the usefulness of the publication measure it contains.

Articles 131 and 132

These two provisions have been combined in the interests of simplicity.

Article 132(1) lays down the principle that an SE may merge with other SEs or with other public limited companies having their registered office in the same Member State. Such a merger will be governed by the law of the Member State in question in accordance with Directive 78/855/EEC.

Article 132(2), which applies to international mergers involving an SE, is unchanged.

Article 134

The Commission has altered the wording of this Article to reflect that of Article 39(3) of the Regulation on the EEIG.

Articles 135 and 136

These Articles no longer serve any purpose following the insertion of Articles 8(3) and 24a(3), which, in accordance with Parliament's request, ensure that no SE can be registered until a model for employee involvement has been chosen pursuant to Article 3 of the Directive.

Proposal for a Council Regulation on the Statute for a European company COM(89) 268 final _ SYN 218 (Submitted by the Commission to the Council on 25 August 1989) (89/C 263/07)	Amended Proposal for a Council Regulation on the Statute for a European company
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	Unchanged.
Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,	
Having regard to the proposal from the Commission, in cooperation with the European Parliament,	
Having regard to the opinion of the Economic and Social Committee.	
Whereas the completion of the internal market within the period set by Article 8a of the Treaty, and the improvement it must bring 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 this purpose it is essential that companies whose business is not limited to satisfying purely local needs should be able to plan and carry out the reorganization of their business on a Community scale;	

Whereas such reorganization presupposes that existing companies from different Member States have the option of combining their potential by means of mergers; whereas such operations can be carried out only with due regard to the competition rules of the Treaty;

Whereas restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems; whereas the approximation of Member States' company law by means of directives based on Article 54 of the Treaty can overcome some of these difficulties; whereas such approximation does not, however, remove the need for companies governed by different legal systems to choose a form of company governed by a particular national law;

Whereas the legal framework in which business still has to be carried on in Europe, being still based entirely on national laws, thus no longer corresponds to the economic framework in which it must develop if the objectives set out in Article 8a of the Treaty are to be

achieved; whereas this situation forms a considerable obstacle to the creation of groups consisting of companies from different Member States;

Whereas it is essential to ensure as far as possible that the economic unit and the legal unit of business in Europe coincide; whereas for this purpose provision should be made for creating, side by side with companies governed by a particular national law, companies formed and carrying on business under the law created by a Community regulation directly applicable in all Member States;

Whereas 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 laws;

Whereas such a regulation forms part of the national legal systems and contributes to their approximation, thus constituting a measure relating to the approximation of the laws of the Member States with a view to the establishment and functioning of the internal market;

Whereas the Statute for a European company (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 of June 1985 in Milan; whereas the European Council of 1987 in Brussels expressed the wish to see such a Statute created swiftly;

Whereas since the presentation by the Commission in 1970 of a proposal for a Regulation on the Statute for a European 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 a European company does not need uniform Community rules, reference may be made to the law governing public companies in the Member State where it has its registered office;

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

Whereas in the same context it should be possible for public limited companies with their registered office and central administration within the Community to transform into an SE without liquidation provided they have a subsidiary or a branch in a Member State other than that of their registered office.

Whereas the European company itself must take the form of a public company limited by shares, this 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; whereas in order to ensure that such companies are of reasonable size, a minimum capital should be set which will provide them with sufficient assets without making it difficult for small and medium_sized businesses to form a European company;

Whereas a European company must be efficiently managed and properly supervised; whereas it must be borne in mind that there are at present in the Community two different systems of administration of public companies; whereas, although a European company 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;

Whereas, without prejudice to the consequences of any later coordination of the law of the Member States, specific rules for the European company are not at present required in this field; whereas the rules and general principles of private international law should therefore be applied both in cases where the European company exercises control and in cases where it is the controlled company;

Whereas the rule thus applicable in the case where the European company is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public companies in the State where the European company has its registered office;

Whereas for purposes of taxation the SE must be made subject to the legislation of the State in which it is resident; whereas provision should be made for deduction of losses incurred by the SE's permanent establishments abroad; whereas in order to avoid any discrimination against other firms carrying on cross_border business, similar provisions will be proposed by means of a directive for all other legal forms of business;

Whereas for purposes of taxation the SE must be made subject to the legislation of the State in which it is resident; whereas provision should be made for deduction of losses incurred by the SE's permanent establishments abroad; whereas in order to avoid any discrimination against other firms carrying on cross_border business, similar provisions have been proposed(1) by means of a directive for all other legal forms of business;

(1) OJ N° C 53, 28.2.1991, p. 30

Whereas each Member State must be required to apply in respect of infringements of the provisions of this Regulation the sanction applicable to public limited companies governed by its law;

Whereas the rules on the involvement of employees in the European company are contained in Directive ... based on Article 54 of the Treaty, and its provisions thus form an indissociable complement to this Regulation and must be applied concomitantly;

Whereas, on matters not covered by this Regulation, the provisions of the law of the Member States and of Community law are applicable, for example on:
- social security and employment law,
- taxation and competition law,
- intellectual property law,
- insolvency law;

Whereas the application of this Regulation must be deferred so as to enable each Member State to incorporate into its national law the provisions of the above_mentioned Directive and to set up in advance the necessary machinery for the formation and operation of European companies having their registered office in its territory, so that the Regulation and the Directive may be applied concomitantly,

HAS ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS Article 1 [Form of the European company (SE)]	TITLE I GENERAL PROVISIONS Article 1
1. Companies may be formed throughout the Community in the form of a European public limited company (Societas Europea, "SE") on the conditions and in the manner set out in this Regulation.	Unchanged.
2. The capital of the SE shall be divided into shares. The liability of the shareholders for the debts and obligations of the company shall be limited to the amount subscribed by them.	Unchanged.
3. The SE shall be a commercial company whatever the object of its undertaking.	Deleted.
4. The SE shall have legal personality.	Unchanged.
Article 2 (Formation)	Article 2
1. Public limited companies formed under the law of a Member State and having their registered office and central administration within the Community may form an SE by merging or by forming a holding company, provided at least two of them have their central administration in different Member States.	1. Public limited companies having a share capital formed under the law of a Member State and having their registered office and central administration within the Community may form an SE by merging provided at least two of them have their central administration in different Member States.

	1A Public and private limited companies having a share capital formed under the law of a Member State and having their registered office and central administration within the Community may form an SE by forming a holding company provided at least two of them:
	have their central administration in different Member States, or;
	have a subsidiary company or a branch in a Member State other than that of their central administration.
2. 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 have their registered office and central administration in the Community may set up an SE by forming a joint subsidiary, provided that at least two of them have their central administration in different Member States.	2. 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 have their registered or statutory office and central administration in the Community may set up an SE by forming a joint subsidiary company provided at least two of them:
	have their central administration in different Member States, or;
	have a subsidiary company or a branch in a Member State other than that of their central administration.

3. A public limited company which has been formed in accordance with the law of a Member State and has its registered office and central administration in the Community may form an SE by transforming itself, if it has a subsidiary company or a branch in a Member State other than that of its central administration.

Article 3
(Formation with participation of an SE)

1. An SE together with one or more other SEs or together with one or more limited companies incorporated under the laws of a Member State and having their registered office and central administration within the Community may form an SE by merging or by forming a holding company.

Article 3

1. An SE together with one or more other SEs or together with one or more public limited companies having a share capital formed under the law of a Member State and having their registered office and central administration in the Community may form an SE by merging.

1A. An SE together with one or more other SEs or together with one or more companies within the meaning of Article 2(1A) may form an SE by forming a holding company.

2. An SE together with one or more other SEs, or together with one or more companies or legal bodies within the meaning of Article 2(2), may set up an SE by forming a joint subsidiary.

3. An SE may itself form one or more subsidiaries in the form of an SE. Such a subsidiary may not, however, itself establish a subsidiary in the form of an SE.

Article 4
(Minimum capital)

1. Subject to paragraphs 2 and 3, the capital of an SE shall amount to not less than ECU 100 000.

2. Where an SE carries on the business of a credit institution it shall be subject to the minimum capital requirements laid down by the laws of the Member State in which it has its registered office in accordance with Article ... of Council Directive ... (1).

3. Where an SE carries on the business of an insurance undertaking it shall be subject to the minimum capital requirements laid down by the laws of the Member State in which it has its registered office.

(1) Second Council Directive on the taking up and pursuit of the business of credit institutions.

2. An SE together with one or more other SEs, or together with one or more companies or legal bodies within the meaning of Article 2(2), may set up an SE by forming a joint subsidiary.

3. An SE may itself set up one or more subsidiaries in the form of an SE.

Article 4

1. The subscribed capital of an SE shall amount to not less than ECU 100 000.

2. The laws of a Member State requiring a greater subscribed capital for companies exercising certain types of activity shall apply to SEs with their registered office in that Member State.

Deleted.

	Article 4A
	For the purposes of this regulation the words "the statutes of the SE" cover both the instrument of incorporation and, where they are the object of a separate document, the statutes of the SE.
Article 5 (Registered office of SE)	Article 5
The registered office of an SE shall be situated at the place specified in its statutes. Such place shall be within the Community. It shall be the same as the place where the SE has its central administration.	Unchanged.
	Article 5A
	1. The registered office of an SE may be transferred within the Community. Such transfer shall not result in the SE being wound up or the creation of a new legal person.
	2. Where the transfer of the registered office results in a change of law applicable pursuant to Article 7(1)(b) the transfer proposal shall be published in accordance with Article 9.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision shall be taken under the conditions laid down for the amendment of the statutes.

The transfer of the registered office of the SE and the resulting amendment to its statutes shall take effect from the date of registration of the SE, in accordance with Article 8, in the register of the new registered office. That registration may not be effected until evidence has been produced that the proposed transfer of the registered office was published.

3. The termination of the SE's registration at the register of its previous registered office may not be effected until evidence has been produced that the SE has been registered in the register of its new registered office.

4. The new registration and the termination of the old registration shall both be published in the respective Member States in accordance with Article 9.

5. The new registration of the registered office of the SE may be relied on as against third persons from publication. Until such publication has been effected third parties may continue to rely on the old registered office unless the SE proves that such third parties were aware of the new registered office.

Article 6
(Controlled and controlling undertakings)

1. A "controlled undertaking" means any undertaking in which a natural or legal person:
a) has a majority of the shareholders' or members' voting rights; or

Article 6

Unchanged.

b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory board, and is at the same time a shareholder in, or member of, that undertaking; or

c) is a shareholder or member and alone controls, pursuant to an agreement entered into with other shareholders or members of the undertaking, a majority of the shareholders' or members' voting rights.

2. For the purposes of paragraph 1, the controlling undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

Article 7
(Scope of the Regulation)

1. Matters covered by this Regulation, but not expressly mentioned herein, shall be governed:

a) by the general principles upon which this Regulation is based;

Article 7

SEs shall be governed:

(a) - by the provisions of this regulation;

	- where expressly authorized by this regulation, by the provisions freely determined by the parties in the statutes of the SE;
b) if those general principles do not provide a solution to the problem, by the law applying to public limited companies in the State in which the SE has its registered office.	(b) failing this:
	- by the provisions of the law on public limited companies of the Member State in which the SE has its registered office;
	- by the provisions freely determined by the parties in the statutes, in accordance with the same conditions as for public limited companies governed by the law of the Member State in which the SE has its registered office.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under paragraph 1 (b).	Unchanged.
3. In matters which are not covered by this Regulation, Community law and the law of the Member States shall apply to the SE.	Deleted.
4. In each Member State and subject to the express provisions of this Regulation, an SE shall have the same rights, powers and obligations as a public limited company incorporated under national law.	Unchanged.
Article 8 (Registration)	Article 8
1. Every SE shall be registered in the State in which it has its registered office in a register designated by the law of that State in accordance with Article 3 of Directive 68/151/EEC (1).	Unchanged.

(1) OJ No L65, 14.3.1968, p.8; English Special Edition 1968(1), p.41.

2. Where an SE has a branch in a Member State other than in which it has its registered office, the branch shall be registered in that other Member State under the procedures laid down in the laws of that Member State in accordance with Article ... of Council Directive ... (2).	2. For the purposes of its registration the name of the SE must be preceded or followed by the abbreviation "SE".
	3. An SE shall not be registered until a model for employee involvement has been chosen pursuant to Article 3 of Directive .... complementing the Statute for a European company with regard to the involvement of employees in the European company.
Article 9 (Publication of documents)	Article 9
Publication of the documents and particulars concerning the SE which must be published under this Regulation shall be effected in the manner laid down in the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.	Unchanged.

(2) Eleventh Council Directive on company law concerning disclosure requirements in respect of branches opened in a Member State by certain types of companies governed by the law of another State.

Article 10 (Notice in the OJ)	Article 10
1. Notice that an SE has been formed, stating the number, date and place of registration and the date and place of publication and the title of the publication shall be published for information purposes in the Official Journal of the European Communities after the publication referred to in Article 9. The same shall be done where a liquidation is terminated.	1. Notice that the SE has been registered or that the liquidation of the SE has been concluded shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 9. That notice shall state the 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 a summary statement of its objects. Where the registered office of the SE is transferred in accordance with Article 5A a notice shall be published containing the same information together with that relating to the new registration.
2. The Member States shall ensure that the particulars referred to in paragraph 1 are forwarded to the Official Publications Office of the European Communities within one month of the disclosure referred to in Article 9.	Unchanged.

Article 11 (Documents of SE)	Article 11
Letters, order forms and similar documents shall state legibly:	Letters and business correspondence for third parties shall state legibly:
a) the name of the SE, preceded or followed by the initials "SE" unless those initials already form part of the name;	(a) the name of the SE, preceded or followed by the abbreviation "SE";
b) the place of the register in which the SE is registered in accordance with Article 8(1), and the number of the SE's entry in that register;	(b) unchanged;
c) the address of the SE's registered office;	(c) unchanged;
d) the amount of capital issued and paid up;	(d) deleted;
e) the SE's VAT number;	(e) deleted;
f) the fact that the SE is in liquidation if that is so.	(f) the fact that the SE is in liquidation or under the administration of the courts if that is so.
Any branch of the SE, when registered in accordance with Article 8(2), must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph emanating from that branch.	Deleted.

TITLE II FORMATION SECTION 1 GENERAL	TITLE II FORMATION SECTION 1 GENERAL
	Article11A
	1. Subject to the following provisions, the formation of an SE shall be governed by the law applicable to the formation of public limited companies in the Member State in which the SE establishes its registered office.
	2. The formation of an SE shall be published in accordance with Article 9.
Article 12 (Founder companies)	Article 12
The founder companies of an SE for the purposes of this Title are the companies, firms and other legal bodies which may form an SE by the means of formation provided for in Articles 2 and 3.	Unchanged.

Article 13 (Instrument of incorporation and statutes of the SE)	Article 13
The founder companies shall draw up the instrument of incorporation and the statutes, if the statutes are a separate instrument, in the forms required for the formation of public limited companies by the law of the State in which the SE is to have its registered office.	Deleted.
Article 14 (Experts; verification)	Article 14
The provisions of national law concerning the examination of consideration other than cash, adopted in the State in which the SE is to have its registered office, pursuant to Article 10 of Directive 77/91/EEC (1), shall apply.	Deleted.
Article 15 (Supervision of formation)	Article 15
The procedures for ensuring that the requirements of this Regulation and, where appropriate, of applicable national law, are complied with in regard to the formation of an SE and its statutes shall be those provided in respect of public limited companies under the law of the State	Deleted.

(1) OJ No L26, 31.1.1977, p.1.

in which the SE is to have its registered office. Member States shall take the measures necessary to ensure that such procedures are effective.	
Article 16 (Legal personality)	Article 16
The SE shall have legal personality as from the date set by the law of the State in which it is to have its registered office.	The SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 8.
SECTION 2 FORMATION BY MERGER Article 17 (Definition)	SECTION 2 FORMATION BY MERGER Article 17
1. In the formation of an SE by merger, the merging companies shall be wound up without going into liquidation and transfer to the SE all their assets and liabilities in exchange for the issue to their shareholders of shares in the SE and a cash payment, if any not, exceeding 10 % of the nominal value of the shares so issued or, where there is no nominal value, of their accounting par value.	1. An SE may be formed by the merger of public limited companies in accordance with Article 2(1). The merging companies shall be wound up without going into liquidation and transfer to the SE all their assets and liabilities in exchange for the issue to their shareholders of shares in the SE and a cash payment if any not exceeding 10% of the nominal value of the shares so issued.

2. A company may participate in the formation of an SE by merger even if it is in liquidation, provided it has not yet begun to distribute its assets to the shareholders.	2. Deleted.
3. The rights of the employees of each of the merging companies shall be protected in accordance with the provisions of national law giving effect to Directive 77/187/EEC (2).	3. Deleted.
Article 18 (Draft terms of merger)	Article 18
1. The administrative or management board of the founder companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:	1. The administrative or management boards of the founder companies shall draw up draft terms of merger. The draft terms of merger shall include <u>at least</u> the following particulars:
a) the type, name and registered office of each of the founder companies and of the SE;	(a) <u>the name and registered office of each of the founder companies together with those proposed for the SE,</u>
b) the share exchange ratio and, where appropriate, the amount of any cash payment;	(b) unchanged.
c) the terms relating to the allotment of shares of the SE;	(c) unchanged.

(2) OJ No L61, 5.3.1977, p.26.

d) the date from which the holding of shares of the SE entitles their holders to participate in profits and any special conditions affecting that entitlement;	(d) unchanged.
e) the date from which transactions by the founder companies will be treated for accounting purposes as being those of the SE;	(e) unchanged.
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;	(f) unchanged.
g) any special advantage granted to the experts appointed under Article 21(1) or to members of the administrative, management, supervisory or controlling bodies of the founder companies.	(g) unchanged.
2. The draft terms of merger shall be drawn up and certified in due legal form if the law of the Member State in which any of the founder companies has its registered office so requires.	Unchanged.

3. The law of the Member State requiring that the draft terms of merger be drawn up and certified in due legal form shall determine the person or authority competent to do so. Where the laws of several Member States in which the founder companies have their registered offices require the draft terms of merger to be drawn up and certified in due legal form, this may be done by any person or authority competent under the law of one of those Member States.	3. Deleted.
Article 19 (Publication of the draft terms of merger)	Article 19
1. For each of the founder companies, the draft terms of 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 at least one month before the date of the general meeting called to decide thereon.	1. Unchanged.

2. For each of the founder companies, the publication of the draft terms of merger referred to in paragraph 1, effected in accordance with Article 3(4) of Directive 68/151/EEC shall contain at least the following particulars:	2. For each of the founder companies, the publication of the draft terms of merger in accordance with paragraph 1, shall contain the following particulars:
a) the type, name and registered office of the founder companies;	(a) unchanged.
b) the register in which the documents and particulars referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each founder company, and the number of the entry in that register;	(b) unchanged.
c) the conditions which determine, in accordance with Article 25, the date on which the merger and formation shall take effect.	(c) deleted.
	(ca) the proposed name and proposed registered office of the SE.
3. The publication shall also specify the arrangements made in accordance with the provisions of national law giving effect to Articles 13, 14, and 15 of Directive 78/855/EEC(1) and with Article 23 of this Regulation for the exercise of the rights of the creditors of the founder companies.	3. The publication shall also specify the arrangements made in accordance with Article 23 of this regulation for the exercise of the rights of the creditors of the founder companies.

(1) OJ No L295, 20.10.1978, p.36.

Article 20 (Board's report)	Article 20
The administrative or management board of each of the merging companies shall draw up a detailed written report explaining and justifying the draft terms of merger from the legal and economic point of view and, in particular, the share exchange ratio.	The administrative or management board of each of the <u>founder</u> companies shall draw up a written report explaining and justifying the draft terms of merger from the legal and economic point of view and, in particular, the proposed share exchange ratio.
The report shall also indicate any special valuation difficulties which have arisen.	Unchanged.
Article 21 (Supervision of the conduct of the merger)	Article 21
1. One or more experts, acting on behalf of each founder company but independent of them, appointed or approved by a judicial or administrative authority in the Member State in which the company concerned has its registered office, shall examine the draft terms of merger and draw up a written report for the shareholders.	1. Unchanged.
	1A. <u>Such experts may, depending on the law of each Member State, be natural persons, legal persons or companies or firms.</u>
2. In the report referred to in paragraph 1 the experts must state whether, in their opinion, the share exchange ratio is fair and reasonable. The statement must at least:	2. Unchanged.

a) indicate the method(s) used in arriving at the proposed share exchange ratio;

b) state whether the method(s) used are adequate in the circumstances, the values arrived at using each method and an opinion on the relative importance attributed to such methods in arriving at the value decided on.

The report shall also indicate 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.

3. Unchanged.

4. Where the laws of all the Member States in which the founder companies have their registered office make provision for one or more independent experts to be appointed for all the founder companies such appointment may be made, at the joint request of those companies, by a judicial or administrative authority in any of the Member States. In such cases the law of the Member State of the appointing authority shall determine the content of the expert's report.

4. One or more independent experts, appointed or approved for such purposes by a judicial or administrative authority in the Member State of one of the founder companies or of the proposed SE, may, where the founder companies agree, examine the draft terms of merger and draw up one written report for the shareholders of the founder companies.

Article 22 (Approval of the merger by general meetings)	Article 22
1. The draft terms of merger and the instrument of incorporation of the SE and, if the statutes are a separate instrument, its statutes shall be approved by the general meeting of each of the founder companies. The resolution of the general meeting approving the merger shall be subject to the provisions giving effect to Article 7 of Directive 78/855/EEC in the case of domestic mergers.	1. Unchanged.
2. For each of the founder companies, the provisions of national law adopted in accordance with Article 11 of Directive 78/855/EEC shall apply to the information to be provided to shareholders before the date of the general meeting called to approve the merger.	2. For each of the merging companies, the provisions of national law in accordance with Article 11 of Directive 78/855/EEC shall apply <u>to the documents to be available to shareholders for inspection</u> before the date of the general meeting called to approve the merger.

Article 23 (Protection of creditors)	Article 23
The following provisions of the national law to which the founder companies are subject shall apply:	The provisions of the law of the Member State to which the founder company is subject shall apply as in the case of a merger of public limited companies with regard to the protection of the interests of:
a) the provisions relating to the protection of the interests of creditors and debenture holders of the companies in the case of a domestic merger;	creditors of the founder companies; holders of debt securities of the founder companies;
b) the provisions relating to the protection of the interests of holders of securities, other than shares, which carry special rights, provided that where the SE is being formed by the merger of public limited companies: _ the law of the State in which each of the companies has its registered office shall determine whether a meeting of the holders of such securities may approve a change in their rights,	holders of securities, other than shares, which carry special rights in the founder companies.

_ the law of the State in which the SE is to have its registered office shall determine whether the holders of such securities are entitled to require the SE to redeem their securities.

Article 24
(Supervision of the legality of mergers)

1. Where the laws of a Member State governing one or more founder companies provide for judicial or administrative preventative supervision of the legality of mergers those laws shall apply to those companies.

2. Where the laws of a Member State governing one or more founder companies do not provide for judicial or administrative preventative supervision of the legality of mergers, or where such supervision does not extend to all the legal acts required for a merger, the national provisions giving effect to Article 16 of Directive 78/855/EEC shall apply to the company or companies concerned. Where those laws provide for a merger contract to be concluded following the decisions of the general meeting held concerning the merger, that contract shall be concluded by all the companies involved in the operation. Article 18(3) shall apply.

Article 24

1. Supervision of the legality of the merger shall be carried out, for the part of the procedure concerning each founder company, in accordance with the law of the Member State governing the founder company which apply to mergers of public limited companies.

2. The competent authority in question shall issue a certificate attesting that the prior formalities for a merger have been completed in respect of the founder company.

3. Where the laws of the State in which the SE is to have its registered office and the laws governing one or more of the founder companies provide for judicial or administrative preventative supervision of the legality of mergers, such supervision shall be carried out first in respect of the SE. The supervision may be carried out in respect of the founder companies only when it can be shown that such supervision has been carried out in respect of the SE in accordance with Article 15.	Deleted.
4. Where the laws governing one or more of the founder companies taking part in the merger provide for judicial or administrative preventative supervision of the legality of mergers whereas the laws governing one or more of the other founder companies taking part in the merger do not, such supervision shall be carried out on the basis of the documents drawn up and certified in due legal form referred to in Article 16 of Directive 78/855/EEC.	Deleted.

Article 24A

1. The supervision of the legality of the merger shall be carried out, for the part of the procedure concerning the completion of the merger and the formation of the resulting SE, by the authority competent in the Member State of the proposed registered office of the SE to supervise the legality of mergers of public limited companies.

2. To this end each founder company shall submit to the competent authority the certificate referred to in Article 24(2).

3. That authority shall supervise in particular that the founder companies have approved the draft terms if merger in the same terms,together with the statutes of the proposed SE and the model of involvement to apply to it pursuant to Article 3 of Directive...complementing the Statute for a European Company with regard to the involvement of employees in the European Company.

4. That authority shall also supervise that the formation of the SE has taken place under the conditions determined by the law of the registered office in accordance with Article 11A.

Article 25
(Effective date)

The date on which the merger and the simultaneous formation of the SE takes effect shall be determined by the law of the State in which the SE has its registered office. That date must be after all necessary supervision has been carried out and, where appropriate, the certified documents referred to in Article 24 have been drawn up for each of the founder companies.

Article 25

The merger and the simultaneous formation of the SE shall take effect on the date on which the SE is registered in accordance with Article 8.
The SE shall not be registered until the formalities referred to in Articles 24 and 24A have been completed.

Article 26
(Publicity)

For each of the founder companies, the merger must be publicized in the manner prescribed by national law, in accordance with Article 3 of Directive 68/151/EEC.

Article 26

For each of the founder companies, the completion of merger shall be published in accordance with the provisions of national law in accordance with Article 3 of Directive 68/151/EEC.

Article 27
(Effects of the merger)

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

a) the transfer, both as between the founder companies and the SE and as regards third parties, of all the assets and liabilities of the founder companies to the SE;

Article 27

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

(a) the universal transfer of all the assets and liabilities of the founder companies to the SE, which can also be relied upon as against third parties;

b) the shareholders of the founder companies become shareholders of the SE;	(b) unchanged.
c) the founder companies cease to exist.	(c) unchanged.
	2. Where in the case of a merger of public limited 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 founder companies becomes effective against third parties those formalities shall apply and shall be completed either by the founder companies or by the SE following its registration.
Article 28 (Liability of board members)	Article 28
The liability of members of the administrative or the management board of founder companies and of such companies' experts shall be governed by the provisions of national law giving effect to Article 20 and 21 of Directive 78/855/EEC in the State in which the founder company concerned has its registered office or, where appropriate, by this Regulation. However, in the case of an appointment under Article 21(4), the liability of the expert or experts shall be governed by the law of the Member State of the judicial or administrative authority which appointed them.	The liability of members of the management or administrative board of founder companies and that of the experts referred to in Article 21 shall be governed respectively by the provisions of national law in accordance with Articles 20 and 21 of Directive 78/855/EEC of the Member State governing the founder company in question. Second paragraph deleted.

Article 29
(Nullity)

The question of the nullity of a merger that has taken effect pursuant to Article 25 shall be governed by the national law of the company concerned but a merger may be declared null and void only where there has been no judicial or administrative preventative supervision of its legality or where there is no certified documentation where such supervision or the drawing up of such documentation is laid down by the laws of the Member State governing the relevant company. However, where the laws of the State in which the SE has its registered office do not provide for a merger to be declared null and void on such grounds, no such nullity may be declared.

Article 29

1. A merger that has taken effect in accordance with Article 25 may only be declared null and void where there has been no supervision of its legality as stipulated in Articles 24 and 24A and where such grounds for nullity exist for the merger of public limited companies under the law of the Member State in which the SE has its registered office.

2. 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.

Article 30

(Merger: Shareholdings between fellow founder companies)

Articles 17-29 shall also apply where one of the founder companies holds all or part of the shares of another founder company. In such a case, shares in founder companies which come into the possession of the SE as part of the assets of a founder company shall be cancelled.

Article 30

Deleted.

Article 30A

1. Where a founder company holds 90% or more of the shares in any other founder company, the merger may be effected in accordance with the simplified arrangements provided by the law of the Member State to which the former founder company is subject in accordance with Chapter IV of Directive 78/855/EEC.

2. The merger may be effected in accordance with the simplified arrangements provided by the law of the Member State to which one of the founder companies is subject in accordance with Chapter IV of Directive 78/855/EEC where at least 90% of the shares of the founder companies are held by the same company or by undertakings controlled by it within the meaning of Article 6.

SECTION 3

FORMATION OF AN SE HOLDING COMPANY

Article 31

(Definition)

1. If an SE is formed as a holding company, all the shares of the founder companies shall be transferred to the SE in exchange for shares of the SE.

2. The founder companies shall continue to exist. Any provisions of the laws of the States in which the founder companies have their registered office, requiring that a company be wound up if all its shares come to be held by one person shall not apply.

SECTION 3

FORMATION OF AN SE HOLDING COMPANY

Article 31

1. An SE may be formed as a holding company pursuant to Article 2 (1A). Companies participating in the formation of an SE holding company shall continue to exist notwithstanding any laws of the Member States requiring companies to have more than one shareholder.

2. The management or administrative boards of the founder companies shall draw up draft terms for the formation of an SE holding company in the same terms. The draft terms shall contain the matters referred to in Article 18(1)(a), (b) and (c) together with the reasons for the formation. It shall fix the percentage of the shares of the founder companies to be exchanged upon which the formation of the SE is to be conditional. This percentage shall not be less than 51% of the shares having the right to vote.

3. The general meeting of each founder company shall approve the draft terms for the formation of the SE holding company together with the instrument of incorporation and, if they are contained in a separate document the statutes of the SE. The resolution of the general meeting shall be subject to the provisions of

national law in accordance with Article 7 of Directive 78/855/EEC applying to national mergers.

Article 31A

1. The shareholders of the founder companies shall have a period of three months from the general meeting approving the formation of the SE holding to assign their shares to the proposed SE.

2. The SE holding shall be formed if within the period set out in paragraph 1 sufficient shareholders have assigned their shares to the SE in accordance with the conditions determined by the draft terms of formation.

3. The SE holding shall not be registered until it is shown both that the formalities set out in Article 31 have been completed and that the condition set out in paragraph 2 has been fulfilled.

Article 32
(Draft terms of formation)

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

Article 32

Deleted.

2. The provisions of Article 21 shall apply to the supervision of the formation of the holding company in respect of each founder company.

3. The provisions of Article 22 shall apply to the approval of the formation of the holding company by the general meeting of each of the founder companies.

4. The provisions of Article 28 on the liability of board members shall apply.

5. The formation of an SE holding company may be declared null and void only for failure to supervise the formation of the holding company in accordance with Article 29.

6. For the purposes of applying the provisions of Section 2 on formation by merger, merger shall be read as formation of an SE holding company.

Article 33 (Matters affecting employees)	Article 33
The administrative or management board of each of the founder companies shall discuss with the representatives of its employees the legal, economic and employment implications of the formation of an SE holding company for the employees and any measures proposed to deal with them.	Deleted.
SECTION 4 FORMATION OF A JOINT SUBSIDIARY	SECTION 4
Article 34 (Draft terms of formation)	Article 34
If a joint subsidiary is formed in the form of an SE, the administrative or the management board of each of the founder companies shall draw up draft terms for the formation of the subsidiary including the following particulars:	<u>An SE may be formed as a joint subsidiary pursuant to Article 2(2).</u>
a) the type, name and registered office of the founder companies and of the proposed SE;	
b) the size of the shareholdings of the founder companies in the SE;	
c) the economic reasons for the formation.	

Article 35	Article 35
(Approval of the formation)	
1. The draft terms of formation and the instrument of incorporation of the SE and its statutes, if the statutes are a separate instrument, its statutes shall be approved by each of the founder companies in accordance with the law which governs it.	1. Deleted.
2. Founder companies incorporated under national law shall be subject to all the provisions governing their participation in the formation of a subsidiary in the form of a public limited company under national law.	2. Unchanged.
3. Where a founder company itself has the form of an SE, the following provisions shall apply:	3. Deleted.
a) the instrument of incorporation and the statutes shall be authorized in accordance with Article 72 of this Regulation;	
b) if the decision on the participation of the SE in the formation of the subsidiary falls within the matters to be decided by the general meeting, the instrument of incorporation and the statutes must also be approved by the general meeting.	

SECTION 5

FORMATION OF A SUBSIDIARY BY AN SE

Article 36

(Draft terms of formation)

If an SE forms a subsidiary in the form of an SE, the administrative or management board shall draw up draft terms for the formation of the subsidiary. Those draft terms shall include the following particulars:

a) the name and registered office of the founder company and the instrument of incorporation of the subsidiary or its statutes, if the statutes are a separate instrument;

b) the economic reasons for the formation.

Article 37

(Approval of the formation)

The instrument of incorporation of the subsidiary or its statutes, if the statutes are a separate instrument, shall be approved in accordance with Article 35 (3).

SECTION 5

FORMATION OF A SUBSIDIARY BY AN SE

Article 36

Deleted.

Article 37

Deleted.

SECTION 6

FORMATION OF AN SE BY CONVERSION OF AN EXISTING PUBLIC LIMITED COMPANY

Article 37A

An SE may be formed by the conversion of a public limited company in accordance with Article 2(3).

Without prejudice to Article 8, such conversion shall not give rise to the company being wound up nor to a new legal person being created.

The management or administrative board of the company in question shall draw up draft terms for the conversion covering the legal and economic aspects of the conversion.

The conversion together with the instrument of incorporation, if they are in a separate document and the statutes of the SE shall be approved by the general meeting of the company in question in accordance with the provisions of the law of the Member State of its registered office in respect of an amendment of its instrument of incorporation or the statutes.

The SE so formed shall comply with the conditions set out in this regulation.

TITLE III

CAPITAL - SHARES - DEBENTURES

Article 38

(Capital of the SE)

1. The capital of the SE shall be denominated in ECU.

2. The capital of the SE shall be divided into shares denominated in ECU. Shares issued for a consideration must be paid up at the time the company is registered in the Register referred to in Article 8(1) to the extent of not less than 25% of their nominal value. However, where shares are issued for a consideration other than cash at the time the company is registered, that consideration must be transferred to the company in full within five years of the date on which the company was incorporated or acquired legal personality.

TITLE III

CAPITAL - SHARES - DEBENTURES

Article 38

1. Unchanged.

2. The capital of the SE shall be divided into shares denominated in ECU.

2A. Shares issued for cash must be paid up at the time the SE is registered to the extent of not less than 25% of their nominal value.

2B. Where shares are issued for a consideration other than in cash <u>at the time the SE is incorporated</u>, that consideration must be transferred to the SE in full within <u>at most 5 years of the registration of the SE.</u>

	The provisions of the law of the Member State of the registered office of the SE concerning the valuation of consideration other than in cash in accordance with Article 10 of Directive 77/91/EEC shall apply.
3. The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or to supply services may not form part of these assets.	3. Unchanged.
Article 39	Article 39
1. Shares may not be issued at a price lower than their nominal value.	1. Unchanged.
2. Professional intermediaries who undertake to place shares may be charged less than the total price of the shares for which they subscribe in the course of such a transaction.	2. However, professional intermediaries who undertake to place shares may be charged less than the total price of the shares for which they subscribe in the course of such a transaction on condition that such reduction is provided for by the law of the Member State of the registered office of the SE and falls within the limits so authorized.

Article 40	Article 40
All shareholders in like circumstances shall be treated in a like manner.	Unchanged.
Article 41	Article 41
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.	Unchanged.
Article 42 (Increase in capital)	Article 42
1. The capital of the SE may be increased by the subscription of new capital. An increase in capital shall require amendment of the statutes. Shares issued for a consideration in the course of an increase in subscribed capital must be paid up to not less than 25% of their nominal value. Where provision is made for an issue premium, it must be paid in full.	1. Without prejudice to Article 43, an increase in capital shall be decided by the general meeting in accordance with pursuant to Article 97. The decision and the increase in subscribed capital shall be published in accordance with Article 9.

2. Where all or part of the consideration for the increase in capital is in a form other than cash, a report on the valuation of the consideration shall be submitted to the general meeting. The report shall be prepared and signed by one or more experts independent of the SE and appointed or approved by the court within whose jurisdiction the registered office of the SE is situated.	2. The SE may effect the increase of capital in any manner permitted in respect of public limited companies governed by the Member State where the SE has its registered office.
3. The expert's report shall be published in accordance with Article 9.	3. Shares issued for cash in the course of an increase in subscribed capital must be paid up to the extent of not less than 25% of their nominal value. Where provision is made for an issue premium, it must be paid in full.
4. Any increase in subscribed capital must be decided upon by the general meeting. Both this decision and the increase in the subscribed capital shall be published in accordance with Article 9.	4. Where shares are issued for a consideration other than in cash in the course of an increase in capital, the provisions of the law of the Member State of the registered office of the SE in accordance with Article 27 of Directive 77/91/EEC shall apply.
5. Where the capital is increased by the capitalization of available reserves, the new shares shall be distributed amongst the shareholders in proportion to their existing shareholdings.	Deleted.

However, in its decision on the increase in capital, the general meeting may decide that some or all of the new shares shall be distributed amongst the employees of the SE.

6. Where the increase in capital is not entirely subscribed, the capital shall be increased to the amount of the actual subscriptions only where the terms of the issue expressly so provide.

7. Where the general meeting decides on an increase in capital when the existing capital is not fully paid up, the management or administrative board shall inform subscribers of this before they have subscribed.

Article 43
(Authorization of future increase in capital)

1. The statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with Article 9, may authorize an increase in the subscribed capital, provided that such increase shall not exceed one_half of the capital already subscribed.

Article 43

1. The statutes or the general meeting, the decision of which must be published in accordance with Article 9, may authorize an increase in the subscribed capital not exceeding the limit fixed, if any, for public limited companies governed by the law of the Member State of the registered office of the SE.

A decision of the general meeting authorizing increases in capital shall be taken in accordance with Article 97.

2. Where appropriate, the increase in the subscribed capital up to the maximum authorized under paragraph 1 shall be decided by the administrative or the management board. The power of such body in this respect shall be for a maximum period of five years, and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.	Unchanged.
3. The administrative or the management board must register decisions authorizing a future increase in capital. The administrative or the management board must register, and publicize in accordance with Article 9, all issues of shares up to the maximum authorized capital limits and the consideration furnished for those shares. In addition, the board shall report each year in the notes on the accounts on the use it has made of the authorization.	3. <u>The decision referred to in paragraph 2 together with the completion of increases of capital shall be published in accordance with Article 9.</u>
4. Where the authorized capital has been fully subscribed or where the period referred to in paragraph 2 has elapsed with only part of the authorized capital having been subscribed, the administrative or the management board shall amend the statutes to indicate the new total capital.	First paragraph unchanged.

Where the authorization to increase capital has not been used, the administrative or the management board shall decide to delete the authorization clause referred to in paragraph 1. The board shall register such decisions.	Second paragraph deleted.
5. Where an increase in capital is not fully subscribed, the capital shall be increased by the amount of the subscriptions received only if the conditions of the issue so provide.	Deleted.
Article 44 (Subscription rights of shareholders)	Article 44
1. Whenever 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.	1. Unchanged.
	1A. <u>Where the increase in capital is limited to one class of shares the shareholders of other classes shall not have any right of pre-emption until the right has been exercised by the shareholders of the class to which the increase relates.</u>

2. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in accordance with Article 9. However, it may be provided that such publication is not required where all the shares of the SE are registered. In such case, all the 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.

2. Any offer of subscription on a pre-emptive basis and the period within which this right must be exercised shall be published in accordance with Article 9. However, it may be provided that such publication is not required where all the shares of the SE are registered. In such cases, all the shareholders shall be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than one month from the date of publication of the offer or from the date of dispatch of the letters to shareholders.

3. The right of pre-emption may not be restricted or withdrawn by the statutes or the instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or the management board 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 decision shall require at least a two-thirds majority of the votes attaching to the securities represented or to the subscribed capital represented. The decision shall be published in accordance with Article 9.

3. The right of pre-emption may not be restricted or withdrawn by the statutes or the instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative board or the management board shall be required to present to such a meeting a written report indicating the reasons <u>for authorizing</u> the restriction or withdrawal of pre-emption and justifying the proposed issue price. The decision shall be taken pursuant to Article 97 and shall be published in accordance with Article 9.

4. 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 3, may give the power to restrict or withdraw the right of pre-emption to the administrative or the management board 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 43 (2).

Deleted.

5. Shareholders may obtain copies of the reports referred to in paragraph 3 free of charge from the day on which notice of the general meeting is given. A statement to that effect shall be made in the notice convening the general meeting.	Unchanged.
	6. Paragraphs 1 to 5 shall apply to the issue of all securities which can be converted into shares or which carry the right to subscribe for shares, but not to the conversion of securities and the exercise of the right to subscribe.
	7. The right of preemption is not excluded 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 SE in accordance with paragraphs 1 and 2.
Article 45 (Reduction of capital)	Article 45
1. 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 44 (3). Such decision shall be published in accordance with Article 9.	1. Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting accordance with Article 97. The decision shall be published in accordance with Article 9.

The notice convening the general meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.	The notice convening the general meeting shall specify the purpose of the reduction and the way in which it is to be carried out.
2. Where there are several classes of shares, the decision of 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.	Deleted.
3. A reduction of capital shall be effected by reducing the nominal value of the shares. However, the nominal subscribed capital may not be reduced to an amount less than the minimum capital. Only where losses have been incurred may the general meeting decide to reduce the capital below the minimum capital, and in that case it shall at the same time decide to increase the capital to an amount equal to or higher than the minimum capital.	3. The SE may effect a reduction of capital in any manner permitted in respect of public limited companies governed by the Member State where the SE has its registered office. The nominal value of the subscribed capital may not be reduced to an amount less than the minimum capital. Where losses have been incurred may the general meeting may decide on such a reduction divided it proceeds with a corresponding increase of the capital to an amount at least equal to the minimum capital required.

4. Where the subscribed capital is reduced in order to adjust it to the diminished value of the company following losses, and, as a result of the reduction, assets exceed liabilities, the difference shall be entered in a reserve. This reserve may not be used for the distribution of dividends or for the granting of other benefits to shareholders.	4. Where the subscribed capital is reduced in the event of losses, and as a result of the reduction assets exceed liabilities, the difference shall be entered in a reserve. The amount of this reserve shall not exceed 10% of the reduced subscribed capital. This amount may not be used for payments or distributions to shareholders, nor to free shareholders from their obligation to pay the consideration for their shares.
	Article 45A
	Where there are several classes of shares the decisions by the general meeting concerning capital referred to in Articles 42(1), 43(1), 44(3) and 45 shall be subject to a separate vote for each class of shareholders whose rights are affected by the transaction.
Article 46 (Protection of creditors in the event of reduction of capital)	Article 46
1. In the event of a reduction in the subscribed capital, 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.	1. The law of the Member State of the registered office of the SE concerning the protection of creditors in respect of the reduction of capital of a public limited company shall apply to the SE.

The conditions for the exercise of this right shall be governed by the law of the State where the company has its registered office.	
2. The reduction shall be void or no payment may be made for the benefit of the shareholders until the creditors have obtained satisfaction or the court within whose jurisdiction the registered office of the SE is situated, has decided that their application should not be acceded to.	Deleted.
3. Paragraphs 1 and 2 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. They shall not apply to reductions in the subscribed capital for the purpose of adjusting it to the real value of the company following losses.	Deleted.

Article 47	Article 47
The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 4. However, such a reduction may be made if it is also provided 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.	Deleted.
Article 48 (Own shares)	Article 48
1. The subscription for shares of the SE by the SE itself, third parties acting on its behalf or undertakings controlled by it within the meaning of Article 6 or in which it holds a majority of the shares is prohibited.	1. The subscription for shares of the SE by the SE itself, by <u>a person</u> acting in his own name but on behalf of the SE, or by undertakings controlled by it within the meaning of Article 6 is prohibited.
2. If shares of the SE have been subscribed for by a person acting in his own name, but on behalf of the SE, the subscriber shall be deemed to have subscribed for them for his own account.	Unchanged.

3. The founder companies of the SE by which or in name of which the statutes or the instrument of incorporation of the SE were signed or in the case of an increase in the subscribed capital, the members of the administrative or the management board, shall be liable to pay for shares subscribed in contravention of this Article.	Unchanged.
Article 49	Article 49
1. The acquisition of shares of the SE by the SE itself, third parties acting on its behalf or undertakings controlled by it within the meaning of Article 6 or in which it holds a majority of the shares is prohibited.	1. An SE may acquire its shares under the conditions laid down for public limited companies by the law of the Member State of the registered office of the SE in accordance with Articles 19 to 22 of Directive 77/91/EEC. 1A. Paragraph 1 shall apply to acquisitions of shares of the SE by an undertaking controlled by it within the meaning of Article 6.
2. Paragraph 1 shall not apply to: a) the acquisition by the SE or third parties acting on its behalf of shares of the SE for the purpose of distributing them to the employees of the SE; b) shares acquired in carrying out a decision to reduce capital;	Deleted.

c) shares acquired as a result of a universal transfer of assets;

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

e) 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;

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

g) shares acquired in order to indemnity minority shareholders in controlled companies;

h) 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.

3. Shares acquired in the cases listed in paragraph 2(c) to (h) above must, however, be disposed of within not more than three years of their acquisition unless the nominal value of the shares acquired, including shares the SE may have acquired directly or indirectly, does not exceed 10% of the subscribed capital.	Deleted.
4. If the shares are not disposed of within the period laid down in paragraph 3 they must be cancelled.	Deleted.
5. The SE may not accept its own shares as security or acquire any rights of usufruct or other beneficial rights over them.	Unchanged.
6. An SE may not advance funds, nor make loans, nor provide security, with a view to the acquisition of its shares by a third party.	Unchanged.

7. Paragraph 6 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 employees of the SE or a controlled company. However, these transactions may not have the effect of reducing the net assets of the SE below the amount of its subscribed capital plus the reserves which by law or under the statutes may not be distributed.	7. Paragraphs 5 & 6 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 their acquisition by or on behalf of employees of the SE or undertakings controlled by it pursuant to Article 6. However, these transactions may not have the effect of reducing the net assets of the SE below the amount of its subscribed capital together with any reserves which under the law of the registered office or the statutes of the SE cannot be distributed.
8. Shares acquired in contravention of paragraph 1 shall be disposed of within six months of their acquisition.	Deleted.
9. If an undertaking comes under the control of the SE or if a majority of its shares are acquired by such an SE, and it holds shares in the SE, the undertaking shall dispose of the shares in the SE within 18 months from the date of its coming under the control of the SE or from the date when the SE acquired a majority of its shares.	Deleted.

If an SE acquires its own shares by way of universal transfer of assets or if an undertaking which is controlled by the SE or the majority of those shares are held by the SE acquires shares of the SE in this manner, such shares shall be disposed of within the same period.		
10. Shares acquired by the SE pursuant to paragraph 2(a) shall, if they have not been distributed to the employees within 12 months of being acquired, be disposed of within the following six months.	Deleted.	
11. No rights may be exercised in respect of the shares referred to in paragraphs 8, 9 and 10 until they have been disposed of or distributed to the employees.	Deleted.	
Article 50 (Disclosure of holdings)		Article 50
Holdings of the SE in other companies shall be disclosed in accordance with the provisions of national law giving effect to Directive 88/627/EEC (1).	Deleted.	

(1) OJ No L348, 17.12.1988, p.62.

Article 51 (Indivisibility of shares)	Article 51
The rights attached to a share shall be indivisible. Where a share is owned jointly by more than one person, the rights attached to it may be exercised only through a common representative.	Where more than one person has rights over a share, those rights may only be exercised by a common representative.
Article 52 (Rights conferred by shares)	Article 52
1. Shares may carry different rights in respect of the distribution of the profits and assets of the company. Payment of fixed interest may be neither made nor promised to shareholders.	Unchanged.
2. Non-voting shares shall be issued subject to the following conditions :	2. Shares with a restriction or exclusion of voting rights may be issued subject to the following conditions:
a) their total nominal value shall not exceed one half of the capital;	(a) their total nominal value shall not exceed one half of the subscribed capital;
b) they must carry all the rights of a shareholder other than the right to vote, except that the right to subscribe for new shares may be limited by the statutes or by resolution of the general meeting to non-voting shares. In addition they must confer special advantages;	(b) they must carry all the rights of a shareholder other than voting rights , except that the right to subscribe for new shares may be limited by the statutes or by resolution of the general meeting to shares with a restriction or exclusion of voting rights;

c) they shall not be included in computing a quorum or majority required by this Regulation or the statutes of the company.	(c) they must confer special advantages in respect of assets;
The above shall be without prejudice to paragraph 5.	(d) they shall not be included in computing a quorum or majority required by this Statute or the instrument of incorporation or the statutes of the company without prejudice to Article 98(2).
3. Any other restriction or extension of voting rights, such as shares carrying multiple voting rights, is prohibited.	Unchanged.
4. Shares carrying the same rights shall form a class.	Unchanged.
5. Where there are several classes of shares, any decision of the general meeting which adversely affects the rights of a particular class of shareholders shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction. The provisions governing an amendment of the statutes shall apply as regards the convening of meetings and the required quorum and majority to the holders of the shares of the class concerned.	Deleted.

Article 53 (Issue of bearer and registered shares)	Article 53
1. Shares shall be in either bearer or registered form. The statutes may entitle shareholders to request conversion of their bearer shares into registered shares or vice versa.	Unchanged.
	1A. Bearer shares must be fully paid up.
2. An SE which issues registered shares shall keep an alphabetical register of all shareholders, together with their addresses and the number and class of shares they hold. The register shall be open for public inspection on request at the registered office of the SE.	2. An SE which issues registered shares shall keep a register of all shareholders together with their names, addresses and the number and class of shares they hold. The register shall be kept in any manner ensuring appropriate guarantees of preservation and shall be open for inspection by any shareholder at the registered office of the SE.
Article 54 (Issue and transfer of shares)	Article 54
The laws of the State in which the SE has its registered office shall govern the issue, replacement and cancellation of share certificates, and the transfer of shares.	The law in respect of public limited companies of the Member State in which the SE has its registered office shall govern the issue, replacement and cancellation of share certificates.

Article 55 (Publication requirements for obtaining stock exchange listing and for offering securities to the public)	Article 55
1. The provisions of national law giving effect to Directive 80/390/EEC (1), shall apply to the listing particulars to be published for the admission of securities of the SE to official stock exchange listing.	Deleted.
2. The provisions of national law giving effect to Directive 89/298/EEC (2) shall apply to the prospectus to be published where securities are offered to the public.	
Article 56 (Issue of debentures)	Article 56
The SE may issue debentures.	The SE may make use of any financial instrument available to a public limited company under the law of the Member State of the registered office of the SE.
Article 57 (Body of debenture holders)	Article 57
The laws of the State in which the SE has its registered office shall apply to the body of debenture holders.	Deleted.

(1) OJ No L100,17.4.1980, p.1.

(2) OJ No L124, 5.5.1989, p.8.

Article 58 (Debentures convertible into shares)	Article 58
1. Articles 43 and 44 shall apply to the issue of debentures convertible into shares.	Deleted.
2. The laws of the State in which the SE has its registered office shall apply to the conditions and procedure for the exercise of conversion or subscription rights.	
3. As long as convertible debentures are outstanding, the SE may not decide on any amendment of the statutes affecting the rights of the holders of such debentures except where less than 5 % of the convertible debentures is still outstanding and their holders have the opportunity to exercise their conversion or subscription rights in good time before the amendment takes effect or if the body of convertible debenture holders has approved the proposed amendment. In the latter case, a higher percentage may be stipulated in the loan conditions.	

4.Where conversion or subscription rights attached to convertible debentures have been fully exercised or have been exercised only in part but the period in which they may be exercised has expired the management or the administrative board shall alter the statutes to show the new amount of capital. Where subscription or conversion rights are not exercised within the prescribed period, the management or the administrative board, shall delete from the statutes the clause concerning the issue of convertible debentures.

Such amendments to the statutes shall be published in accordance with Article 9.

Article 59

(Participating debentures)

1. The general meeting may, by a resolution which meets the requirements for altering the statutes, decide to issue debentures carrying the right to share in profits. Such debentures shall be issued for cash and shall carry rights determined wholly or partly by reference to the profits of the SE.

Article 59

Deleted.

2. Article 58(3) shall apply, mutatis mutandis, to participating debentures.	
Article 60 (Other securities)	Article 60
The SE shall not issue to persons who are not shareholders of the SE other securities carrying a right to participate in the profits or assets of the SE.	Deleted.

TITLE IV

GOVERNING BODIES

Article 61

The statutes of the SE shall provide for the company to have as its governing bodies the general meeting of shareholders and either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system).

TITLE IV

GOVERNING BODIES

Article 61

Under the conditions laid down by this Regulation,

- the statutes of the SE shall organize the structure of the SE either according to a two-tier system (management board and supervisory board) or according to the one-tier system (administrative board). A Member State may, however, require that SEs having their registered office on its territory adopt either the two tier or the one tier system.

- the statutes of the SE shall in addition provide for a general meeting of shareholders.

SECTION 1

TWO-TIER SYSTEM

Sub-section 1

Management board

Article 62

(Functions of the management board; Appointment of members)

1. The SE shall be managed and represented by a management board under the supervision of a supervisory board.

Article 62

1. The management board shall ensure the management of the SE. The member or members of the management board shall have the power to represent the company in dealings with third parties and in legal proceedings pursuant to the law of the Member State of the registered office of the SE in accordance with Directive 68/151/EEC.

2. The members of the management board shall be appointed by the supervisory board, which may remove them at any time.	2. The member or members of the management board shall be appointed and removed by the supervisory board.
3. No person may at the same time be a member of the management board and the supervisory board of the same SE.	3. No person may at the same time be a member of the management board and the supervisory board of the same SE. However, the supervisory board may nominate one of its members to exercise the function of a member of the management board in the event of a vacancy. During such a period the function of the person concerned as a member of the supervisory board shall be suspended.
4. The number of members of the management board shall be laid down in the statutes of the SE.	Unchanged.
5. The rules of procedure of the management board shall be adopted by the supervisory board, after obtaining the views of the management board.	Deleted.

Sub-section 2 Supervisory board Article 63 (Functions of the supervisory board; Appointment of members)	Article 63
1. The supervisory board may not participate in the management of the company nor represent it in dealings with third parties. However, it shall represent the company in its relations with members of the management board.	1. The supervisory board shall supervise the duties performed by the management board. It may not itself exercise the power to manage the SE. The supervisory board may not represent it in dealings with third parties. It shall represent the company in its relations with the members of the management board, or one of them, in respect of litigation or the conclusion of contracts.
2. Subject to the measures adopted to give effect to Article 4 of the Council Directive ... (completing the Statute in respect of the involvement of employees in SEs) members of the supervisory board shall be appointed by the general meeting.	2. The members of the supervisory board shall be appointed and removed by the general meeting. However, the members of the first supervisory board may be appointed by the statutes. This provision shall apply without prejudice to Article 69(4) and to the measures taken to implement Article 4 of the Council Directive .... completing the Statute in respect of the involvement of employees in the European Company.
	3. The number of members of the supervisory board shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory board for SEs registered in its territory.

Article 64 (Right to information)	Article 64
1. At least once every three months, the management board shall report to the supervisory board on the management and progress of the company's affairs, including undertakings controlled by it, and on the company's situation and prospects.	1. The management board shall report to the supervisory board at least once every three months on the progress and foreseeable prospects of the company's affairs, taking particular account of any information relating to undertakings controlled by the SE that may significantly affect the progress of the SE.
2. The management board shall inform the chairman of the supervisory board without delay of all matters of importance, including any event occurring in the company or in undertakings controlled by it which may have an appreciable effect on the SE.	2. The management board shall communicate to the supervisory board without delay any information which may have an appreciable effect on the SE.
3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the company or undertakings controlled by it.	3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the SE.
4. The supervisory board shall be entitled to undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to pursue such investigations on its behalf and may call in the help of experts.	4. The supervisory board may undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to carry out this task and may call in the help of experts.

5. Any member of the supervisory board may, through the chairman of that board, require the management board to provide the supervisory board with any information necessary for the performance of its duties.	Deleted.
6. Each member of the supervisory board shall be entitled to examine all reports, documents and information and the results of enquiries and inspections obtained under the preceding paragraphs.	6. Each member of the supervisory board shall be entitled to examine all information communicated by the management board to the supervisory board.
Article 65 (Rules of procedure, calling of meetings)	Article 65
1. The supervisory board shall adopt its rules of procedure and shall elect a chairman and one or more vice_chairmen from among its members.	1. The supervisory board shall elect a chairman from among its members. Where Article 4 of Directive... complementing the Statute for a European Company with regard to the involvement of employees in the European Company applies to the SE the chairman must be elected from among the members appointed by the general meeting.
2. The chairman may call a meeting of the supervisory board on his own initiative and shall do so at the request of a member of the supervisory board or of a member of the management board.	2. The chairman may call a meeting of the supervisory board under the conditions laid down in the statutes, either on his own initiative or at the request of at least one-third of the members of the supervisory board or at the request of the management board.

	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 supervisory board may be called by those who made the request.
SECTION 2 THE ONE-TIER SYSTEM Article 66 (The administrative board; Appointment of members)	Article 66
1. The SE shall be managed and represented by an administrative board. The board shall be composed of at least three members. It shall adopt its rules of procedure and shall elect a chairman and one or more vice-chairmen from among its members.	1. The administrative board shall ensure the management of the SE. The member or members of the administrative board shall have the power to represent the company in dealings with third parties and in legal proceedings pursuant to the law of the Member State of the registered office of the SE in accordance with Directive 68/151/EEC.
	1A. The administrative board shall have at least three members within limits fixed by the statutes. However the administrative board may have two, or only one, members where the involvement of employees in the SE is not organized pursuant to Article 4 of Directive...complementing the Statute for a European Company with regard to the involvement of employees in the European Company.

2. The management of the SE shall be delegated by the administrative board to one or more of it members. The executive members shall be fewer in number than the other members of the board. The delegation of management responsibilities to an executive member of the administrative board may be revoked by the board at any time.	2. The administrative board may delegate to one or more of its members only the power of management. It may also delegate certain management responsibilities to one or more natural persons not members of the board. Such delegation of management responsibilities may be revoked at any time. The statutes or in default the general meeting shall set the conditions within which such delegations shall operate.
3. Subject to the measures adopted to give effect to Article 4 of Council Directive ... (completing the Statute in respect of the involvement of employees in SEs) members of the administrative board shall be appointed by the general meeting.	3. The member or members of the administrative board shall be appointed and removed by the general meeting by the general meeting subject to the application to the SE of Article 4 of Directive ... completing the Statute in respect of the involvement of employees in SEs.

Article 67 (Right to information)	Article 67
1. The administrative board shall meet at least once every three months to discuss the management and progress of the company's affairs, including undertakings controlled by it and the company's situation and prospects.	1. The management board shall meet at least once every three months as fixed by the statutes to discuss the progress and foreseeable prospects of the company's affairs, taking particular account of any information relating to undertakings controlled by the SE that may significantly affect the progress of the SE.
	1A. The administrative board shall meet to deliberate on the operations referred to in Article 72.
2. Each member shall inform the chairman of the administrative board without delay of all matters of importance, including any event occuring in the company or in undertakings controlled by it which may have an appreciable effect on the SE.	Deleted.
3. Any member of the administrative board may request the chairman to call a meeting of that board to discuss particular aspects of the company. If the request has not been complied with within 15 days, a meeting of the administrative board may be called by one third of its members.	Deleted.

4. Each member of the administrative board shall be entitled to examine all reports, documents and information supplied to the board concerning the matters referred to in paragraphs 1 and 3.	Unchanged.
	Article 67A
	1. The administrative board shall elect a chairman from among its members. Where Article 4 of Directive... complementing the Statute for a European Company with regard to the involvement of employees in the European Company applies to the SE the chairman must be elected from among the members appointed by the general meeting.
	2. The chairman may call a meeting of the administrative board under the conditions laid down in the statutes, either on his own initiative or at the request of at least one-third of the 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 administartive board may be called by those who made the request.

SECTION 3

RULES COMMON TO THE ONE-TIER AND TWO-TIER BOARD SYSTEMS

Article 68

(Term of office)

1. Members of the governing bodies shall be appointed for a period laid down in the statutes not exceeding six years.	First paragraph unchanged.
However, the first members of the supervisory board or of the administrative board, who are to be appointed by the shareholders shall be appointed by the instrument of incorporation of the SE for a period not exceeding three years.	Second paragraph deleted.
2. Board members may be reappointed.	2. <u>Board members may be reappointed once or more for a period determined in accordance with paragraph 1.</u>

Article 68

Article 69 (Conditions of membership)	Article 69
1. Where the statutes of the SE allow a legal person or company to be a member of a board, that legal person or company shall designate a natural person to represent it in the performance of its duties on the board. The representative shall be subject to the same conditions and obligations as if he were personally a member. Publication under Article 9 shall refer both to the representative and to the legal person or company represented. The legal person or company shall be jointly and severally liable without limitation for obligations arising from the acts of its representative.	1. The statutes of the SE may permit a company or other legal person to be a member of a board, provided that the law of the registered office of the SE in respect of public limited companies does not provide otherwise. That company or other legal person shall designate a natural person to exercise its functions on the board in question. That representative shall be subject to the same conditions and obligations as if he were personally a member of that board.
2. No person may be a board member who: _ under the law applicable to him, or _ as a result of a judicial or administrative decision delivered or recognized in a Member State, is disqualified from serving on an administrative, supervisory or management board.	2. No person may be a board member nor a representative of a member within the meaning of paragraph 1, nor be the recipient of powers of management or representation, who - under the law applicable to him, or

	- under the law of the registered office of the SE, or - as a result of a judicial or administrative decision delivered or recognized in a Member State, is disqualified from serving on the administrative, supervisory or management board of a company.
3. The statutes may lay down special conditions of eligibility for members representing the shareholders.	Unchanged.
4. Notwithstanding the rule laid down in Article 94(2), the statutes of the SE may provide voting procedures for the appointment of members of the administrative or the supervisory board by the general meeting such that one or more members and their alternates may be appointed by a minority of the shareholders.	This regulation shall not affect national law permitting a minority of shareholders to appoint some of the members of a board.

Article 70 (Vacancies)	Article 70
The statutes of the SE may provide for the appointment of alternate members to vacancies. Such appointments may be terminated at any time by the appointment of a full member.	Deleted.
Article 71 (Power of representation)	Article 71
1. Where the management board is composed of more than one member, or where the management of the company is delegated to more than one member of the administrative board those members have authority to represent the company collectively only in dealings with third parties. However, the statutes of the SE may provide that a member of the relevant board shall have authority to represent the SE alone or together with one or more other members of the board or together with a person who has been given general authority to represent the company under paragraph 2.	Deleted.

2. The administrative board or, as the case may be, the management board with the approval of the supervisory board, may confer a general authority to represent the company on one or more persons. Such authority may be revoked at any time, in the same way, by the board which granted it.

3. Acts performed by those having authority to represent the company under paragraphs 1 and 2 shall bind the company vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the company, providing they do not exceed the powers conferred by this Regulation.

Article 72
(Operations requiring prior authorization)

1. The implementation of decisions on:
a) the closure or transfer of establishments or of substantial parts thereof;

Article 72

1. The following operations shall require the authorization of the supervisory board or the deliberation of the administrative board:

(a) any investment project requiring an amount more than the percentage of subscribed capital fixed in accordance with (e);

b) substantial reduction, extension or alteration of the activities of the SE;

(b) the setting up, acquisition, disposal or closing down of undertakings, businesses or parts of businesses where the purchase price or disposal proceeds account for more than the percentage of subscribed capital fixed in accordance with (e);

c) substantial organizational changes within the SE;

(c) the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or suretyship for a third party where the total money value in each case is more than the percentage of subscribed capital fixed in accordance with (e);

d) the establishment of cooperation with other undertakings which is both long-term and of importance to the activities of the SE, or the termination thereof;

(d) the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year fixed in accordance with (e);

e) the setting up of a subsidiary or of a holding company,

may be effected by the management board only following prior authorization of the supervisory board or by the administrative board as a whole.

(e) the percentage referred to in (a) to (d) shall be determined by the statutes of the SE. It shall not be less than 5% nor more than 25%.

implementation may not be delegated to the executive members of the administrative board.	
Acts done in breach of the above provisions may not be relied upon against third parties, unless the SE can prove that the third party was aware of the breach.	
2. The statutes of the SE may provide that paragraph 1 shall also apply to other types of decisions.	Unchanged.
	3. A Member State may determine the categories of operation referred to in paragraph 1 for SEs registered in its territory under the same conditions as those applying to public limited companies governed by the law of that state.
	4. A Member State may provide that the supervisory or administrative board of SEs registered in its territory may itself make certain categories of operation subject to authorization or discussion under the same conditions as those applying to public limited companies governed by the law of that state.

Article 73 (Conflicts of interest)	Article 73
1. Any transaction in which a board member has an interest conflicting with the interests of the SE shall require the prior authorization of the supervisory board or the administrative board.	Deleted.
2. The statutes of the SE may provide that paragraph 1 shall not apply to routine transactions concluded on normal terms and conditions.	
3. A member to whom paragraph 1 applies shall be entitled to be heard before a decision on the authorization is made but may not take part in the deliberations of the relevant board when it makes its decision.	
4. Authorizations given under paragraph 1 during any financial year shall be communicated to the shareholders not later than at the first general meeting following the end of the financial year in question.	

5. Failure to obtain authorization may not be relied upon against third parties, unless the SE can prove that the third party was aware of the need for, and lack of, such authorization.

Article 74
(Rights and obligations)

1. Each member of a board of the SE shall have the same rights and obligations, without prejudice to:

a) any internal allocation of responsibilities between the members of the board, and the provisions of the board's rules of procedure governing the taking of decisions in the event of a tied vote;

b) the provisions concerning the delegation of management responsibilities to executive members.

2. All board members shall carry out their functions in the interests of the SE, having regard in particular to the interests of the shareholders and the employees.

Article 74

1. Within the scope of the functions attributed to them by this Regulation each member of a board shall have the same rights and obligations as the other members of the board of which he is a member.

Unchanged.

3. All board members shall exercise a proper discretion in respect of information of a confidential nature concerning the SE. This duty shall continue to apply even after they have ceased to hold office.	3. All members shall exercise a proper discretion, even after they have ceased to hold office, in respect of information of a confidential nature concerning the SE .
Article 75 (Removal of members)	Article 75
1. Members of the supervisory board or the administrative board may be dismissed at any time by the same body, persons or groups of persons who under this Regulation or the statutes of the SE have the power to appoint them.	Deleted.
2. In addition, members of the supervisory board or the administrative board may be dismissed on proper grounds by the court within whose jurisdiction the registered office of the SE is situated in proceedings brought by the general meeting of the shareholders, the representatives of the employees, the supervisory board	

or the administrative board. Such proceedings may also be brought by one or more shareholders who together hold 10% of the capital of the SE.	
Article 76 (Quorum, majority)	Article 76
1. Unless the statutes of the SE require a higher quorum, a board shall not conduct business validly unless at least half of its members take part in the deliberations.	1. Boards of the SE shall conduct business under the conditions and in the manner set out in the statutes.
2. Members who are absent may take part in decisions by authorizing a member who is present to represent them. No member may represent more than one absent member.	2. In the absence of the provisions in the statutes referred to in paragraph 1 a company board shall not conduct business validly unless at least half its members are present at the discussions. Decisions shall be taken by a majority of the members present.
3. Unless the statutes of the SE provide for a larger majority, decisions shall be taken by a majority of the members present or represented.	Deleted.
	3A. The chairman of each board shall have a casting vote in the event of a tie.
4. Under terms laid down in the statutes of the SE a board may also take decisions by procedures under which the members vote in writing, by telex, telegram or telephone or by any other means of telecommunication, provided that all members are informed of the proposed voting procedure and no member objects to the use of that procedure.	Deleted.

Article 77 (Civil liability)	Article 77
1. Members of the administrative board, the management board or the supervisory board, shall be liable to the SE for any damage sustained by the company as a result of wrongful acts committed in carrying out their duties.	1. Members of the management board, the supervisory board and the administrative board shall be liable <u>for loss or damage sustained by the SE as a result of breach of the obligations attaching to their functions.</u>
2. Where the board concerned is composed of more than one member, all the members shall be jointly and severally liable without limit. However, a member may be relieved of liability if he can prove that no fault is attributable to him personally. Such relief may not be claimed by a member on the sole ground that the act giving rise to liability did not come within the sphere of responsibilities delegated to him.	2. Where the board concerned is composed of more than one member, all the members shall be jointly and severally liable <u>for loss or damage sustained by the SE.</u> However, a member may be relieved of liability <u>if he can prove that he is not in breach of the obligations attaching to his functions.</u>
Article 78 (Proceedings on behalf of the company)	Article 78
1. The administrative board or the supervisory board, may institute proceedings on the company's behalf to establish liability.	Deleted.

2. Such proceedings must be brought if the general meeting so decides. The general meeting may appoint a special representative for this purpose. For such a decision the statutes may not prescribe a majority greater than an absolute majority of the votes attached to the capital represented.	2. The general meeting shall take the decision to commence proceedings to establish liability in the name and on behalf of the SE pursuant to Article 77 by the majority required in accordance with Article 94. An action must be brought if the general meeting so decides. The general meeting shall appoint for this purpose a special representative to conduct the action.
3. Such proceedings on behalf of the company may also be brought by one or more shareholders who together hold 10 % of the capital of the SE.	3. One or more shareholders who together hold at least 10% of the subscribed capital may also decide to commence such proceedings in the name and on behalf of the SE. They shall appoint for this purpose a special representative to conduct the action.
4. Such proceedings may be brought by any creditor of the SE who can show that he cannot obtain satisfaction of his claim on the company.	Deleted.

Article 79 (Waiver of proceedings on behalf of the company)	Article 79
1. The SE may waive its right to institute proceedings on the company's behalf to establish liability. Such a waiver shall require an express resolution of the general meeting taken in the knowledge of the wrongful act giving rise to damage for the company. However, such a resolution may not be passed if it is opposed by shareholders whose holdings amount to the figure referred to in Article 75.	Deleted.
2. Paragraph 1 shall also apply to any compromise relating to such proceedings agreed between the company and a board member.	
Article 80 (Limitation of actions)	Article 80
No proceedings on the company's behalf to establish liability may be instituted more than five years after the act giving rise to damage.	Proceedings in the name and on behalf of the SE cannot be brought more than 5 years from the breach giving rise to loss or damage.

SECTION 4

GENERAL MEETING

Article 81

(Competence)

The following matters shall be resolved by the general meeting:

a) increases or reductions in subscribed or authorized capital;

b) issues of debentures convertible into shares or carrying subscription rights and of debentures carrying the right to share in the profits;

c) the appointment or removal of members of the administrative board or of the supervisory board, who represent the shareholders;

d) the institution of proceedings on the company's behalf for negligence or misconduct by board members;

e) the appointment or dismissal of auditors;

f) approval of the annual accounts;

g) appropriation of the profit or loss for the year;

h) amendment of the statutes;

i) winding up and appointment of liquidators;

j) transformation;

SECTION 4

GENERAL MEETING

Article 81

The general meeting shall decide on:

(a) matters for which it has sole responsibility under this Regulation;

(b) matters for which the management board, supervisory board or administrative board do not have sole responsibility as a result of:

- this Regulation;
- Directive...(complementing the Statute for a European Company with regard to the involvement of employees in the European Company;
- the law of the registered office of the SE;
- the statutes of the SE.

k) merger of the SE with another company;

l) transfers of assets.

Article 81A

Where not covered by rules in this section, the organization and the conduct of general meetings, in particular as regards the convening of the meeting, the possibility of taking decisions by writing, the participation and representation of shareholders at the meeting, establishing an attendance list, the information that must be given to shareholders, and the content of the agenda and the minutes of meetings, shall be governed by the law of the Member State of the registered office of the SE applicable to public limited companies.

Article 82
(Holding of general meeting)

1. A general meeting shall be held at least once a year. However, the first general meeting may be held at any time in the 18 months following the incorporation of the SE.

2. A general meeting may be called at any time by the management board or the administrative board.

Article 82

1. A general meeting shall be held at least once a year, not later than six months after the end of the financial year of the SE.

2. General meetings may be convened at any time by the management board or the administrative board. At the request of the supervisory board the management board shall convene the general meeting.

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 of the appropriation of the profit or treatment of the loss and the approval of the annual report referred to in Article 46 of Directive 78/660/EEC, submitted to the general meeting by the management or administrative organ.

4. The statutes of an SE containing a management board and a supervisory board may provide that a joint decision should be taken by the two boards on approval of the annual accounts, though in separate votes, and that the general meeting should not pass a resolution unless the boards are unable to reach agreement.

Article 83 (Meeting called by minority shareholders)	Article 83
1. It shall be provided that one or more shareholders who satisfy the conditions set out in Article 75 may request the SE to call the general meeting and to settle the agenda therefor.	1. One or more shareholders who together hold at least 10% of the subscribed capital may request the SE to convene the general meeting and to settle the agenda therefor. This percentage may be reduced by the statutes of the SE.
2. If, following a request made under paragraph 1, no action has been taken within a month, the court within whose juridiction the registered office of the SE is situated may order the calling of a general meeting or authorize either the shareholders who have requested it or their representative to call the meeting.	2. The request for a meeting shall give the reasons for convening it and the items to be included on the agenda.
	3. If, following a request made under paragraph 1, the necessary steps have not been taken within a month, the court or competent authority within the juridiction of which the registered office of the SE is situated may order the convening of a general meeting or authorize either the shareholders who have requested it or their representative to convene the meeting.

4. A general meeting may during a meeting decide that a further meeting be convened and set the date and the agenda.

Article 84

(Methods of calling meetings)

1. a) The general meeting shall be called by a notice published either in the national gazette specified in the legislation of the State of the registered office in accordance with Article 3 (4) of Directive 68/151/EEC or in one or more large-circulation newspapers.

b) However, where all the shares in an SE are registered or where all its shareholders are known, the general meeting may be called by any means of communication addressed to all the shareholders.

2. The notice calling the general meeting shall contain the following particulars, at least:

a) the name and the registered office of the SE;

b) the place and date of the meeting;

c) the type of general meeting (ordinary, extraordinary or special);

Article 84

Deleted.

d) a statement of the formalities, if any, prescribed by the statutes for attendance at the general meeting and for the exercice of the right to vote;

e) any provisions of the statutes which require the shareholder, where he appoints an agent, to appoint a person who falls within certain specified categories of persons;

f) the agenda showing the subjects to be discussed and the proposals for resolutions.

3. The period between the date of first publication of the notice in accordance with paragraph 1 (a), or the date of dispatch of the first communication as mentioned in paragraph 1 (b), and the date of the opening of the general meeting shall be not less than 30 days.

Article 85

1. One or more shareholders who satisfy the requirements laid down in Article 75 may request that one or more additional items be included on the agenda of a general meeting of which notice has already been given.

Article 85

1. One or more shareholders who together hold at least 10% of the subscribed capital may request that one or more additional items be included on the agenda of a general meeting of which notice has already been given. This percentage may be reduced by the statutes of the SE.

2. Requests for inclusion of additional agenda items shall be sent to the SE within seven days of the first publication of the notice calling the general meeting in accordance with Article 84 (1) (a) or the dispatch of the first communication calling the general meeting by the means mentioned in Article 84 (1) (b).	Deleted.
3. Items whose inclusion in the agenda has been requested under paragraph 2, shall be communicated or published in the same way as the notice of meeting, not less than seven days before the meeting.	Deleted.
Article 86 (Attendance at general meeting)	Article 86
Every shareholder who has complied with the formalities prescribed by the statutes shall be entitled to attend the general meeting. However, the statutes may prohibit shareholders having no voting rights from attending the meeting.	Every shareholder shall be entitled to attend the general meeting.
Article 87 (Proxies)	Article 87
1. Every shareholder shall be entitled to appoint a person to represent him at the general meeting.	1. Every shareholder shall be entitled to appoint a person of his choice to represent him at the general meeting.

2. The law of the Member State where the registered office of the SE is situated or the statutes may restrict the choice of representative to one or more specified categories of persons, but a shareholder may not be prevented from appointing another shareholder to represent him.	Deleted.
3. The appointment shall be made in writing and shall be retained for the period mentioned in Article 99 (4).	Deleted.
Article 88	Article 88
1. Where the proxies appointed are persons acting in a professional capacity, the provisions of Article 87 and the following provisions shall apply: a) the appointment shall relate to only one meeting, but it shall be valid for successive meetings with the same agenda, without prejudice to paragraph 2; b) the appointment shall be revocable; c) all the shareholders whose names and addresses are known shall be invited, either in writing or by publication in one or more large-circulation newspapers, to appoint the person in question as their proxy;	Deleted.

d) the invitation to appoint the person in question as a proxy shall contain at least the following information:

- the agenda showing the subjects for discussion and the proposals for resolutions,
- an indication that the documents mentioned in Article 89 are available to shareholders who ask for them,
- a request for instructions concerning the exercise of the right to vote in respect of each item on the agenda,
- a statement of the way in which the proxy will exercise the right to vote in the absence of any instructions from the shareholder;

e) the right to vote shall be exercised in accordance with the shareholders' instructions, or in the absence of such instructions in accordance with the statement made to the shareholder. However, the proxy may depart from the shareholders' instructions or the statement made to the shareholder by reason of circumstances unknown when the instructions were given or the invitation to appoint a proxy issued, where voting in accordance with instructions or the statement would be liable to prejudice the shareholder's interests. The proxy shall forthwith inform the shareholder and explain the reasons for this action.

2. Notwithstanding paragraph 1 (a), a proxy may be appointed for a specified period not exceeding 15 months. In this case the information indicated in paragraph 1 (d) shall be given to all the shareholders referred to in paragraph 1 (c) before any general meeting.

Article 89
(Availability of accounts)

The annual accounts and, where appropriate, the consolidated accounts, the proposed appropriation of profits or treatment of loss where it does not appear in the annual accounts, the annual report and the opinion of the persons responsible for auditing the accounts shall be available to every shareholder at the latest from the date of dispatch or publication of the notice of general meeting called to adopt the annual accounts and to decide on the appropriation of profits or treatment of loss. Every shareholder shall be able to obtain a copy of these documents free of charge upon request. From the same date, the report of the persons responsible for auditing the accounts shall be available to any shareholder whishing to consult it at the registered office of the SE.

Article 89

Every shareholder shall have equal access to information that must be given to them pursuant to Article 81A.

Article 90
(Right to information)

1. Every shareholder who so requests at a general meeting shall be entitled to obtain information on the affairs of the company arising from items on the agenda or concerning matters on which the general meeting may take a decision in accordance with Article 91 (2).

2. The management board or the executive members of the administrative board shall supply this information.

3. The communication of information may be refused only where:
a) it would be likely to be seriously prejudicial to the company or a controlled company; or
b) its disclosure would be incompatible with a legal obligation of confidentiality.

4. A shareholder to whom information is refused may require that his question and the grounds for refusal shall be entered in the minutes of the general meeting.

Article 90

Deleted.

5. A shareholder to whom information is refused may challenge the validity of the refusal in the court within whose jurisdiction the registered office of the SE is situated. Application to the court shall be made within two weeks of the closure of the general meeting.	
Article 91 (Decisions; Agenda)	Article 91
1. The general meeting shall not pass any resolution concerning items which have not been communicated or published in accordance with Article 84 (2) (f) or Article 85 (3).	Deleted.
2. Paragraph 1 shall not apply when all the shareholders are present in person or by proxy at the general meeting and no shareholder objects to the matter in question being discussed.	
Article 92 (Voting rights)	Article 92
1. A shareholder's voting rights shall be proportionate to the fraction of the subscribed capital which his shares represent.	1. A shareholder's voting rights shall be proportionate to the fraction of the subscribed capital which his shares <u>having the right to vote</u> represent.

2. The statutes may authorize: a) restriction or exclusion of voting rights in respect of shares which carry special advantages; b) restriction of votes in respect of shares allotted to the same shareholder, provided the restriction applies at least to all shareholders of the same class.	Deleted.
3. The right to vote may not be exercised: a) where a call made by the company has not been paid; b) on shares held by the SE itself or by one of its subsidiaries.	3. The right to vote may not be exercised: a) in respect of shares for which a call made by the SE has not been paid <u>within the prescribed period;</u> b) on shares held by the SE itself or by <u>an undertaking controlled by it under Article 6.</u>
4. The law of the State where the registered office of the SE is situated shall govern the exercise of voting rights in cases of succession, usufruct, pledge of shares, or failure to notify substantial holdings.	Deleted.
Article 93 (Conflict of interest)	Article 93
Neither a shareholder nor his representative shall exercise the right to vote attached to his shares or to shares belonging to third persons where the subject matter of the resolution relates to: a) the assertion of claims by the SE against that shareholder;	Deleted.

b) the commencement of legal proceedings to establish the liability of that shareholder to the company in accordance with Article 78;

c) waiver of the right to bring proceedings to establish the liability of that shareholder to the company in accordance with Article 79.

Article 93A

For the purposes of this section, the votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote, has returned a blank or spoilt ballot paper or has abstained.

Article 94
(Required majority)

1. Resolutions of the general meeting shall require at least an absolute majority of the votes attached to the subscribed capital present or represented unless a greater majority is prescribed by this Regulation.

2. However, as regards the appointment or dismissal of members of the administrative board, the management board or the supervisory board, the statutes may not require a majority greater than that mentioned in paragraph 1.

Article 94

1. Save where this Regulation requires otherwise, decisions of the general meeting shall be taken by a majority of the votes cast.

2. The appointment or removal of the board members appointed by the general meeting shall not require a majority greater than that referred to in paragraph 1.

Article 95
(Amendment of statutes)

1. A resolution of the general meeting shall be required for any amendment of the statutes of the instrument of incorporation.

2. However, the statutes may provide that the administrative board or the management board may amend the statutes or the instrument of incorporation where the amendment merely implements a resolution already passed by the general meeting, or by the board itself by virtue of an authorization given by the general meeting, by the statutes, or by the instrument of incorporation.

Article 95

Deleted.

Article 96

1. The complete text of the amendment of the statutes or of the instrument of incorporation which is to be put before the general meeting shall be set out in the notice of meeting.

2. However, the statutes may provide that the complete text of the amendment mentioned in paragraph 1 may be obtained by any shareholder free of charge upon request.

Article 96

Deleted.

Article 97	Article 97
1. A majority of not less than two thirds of votes attached to subscribed capital represented at the meeting shall be required for the passing by the general meeting of resolutions amending the statutes or the instrument of incorporation.	1. <u>Amendment of the statutes shall require a decision of the general meeting taken by a majority of two-thirds of the votes cast.</u>
2. However, the statutes may provide that where at least one-half of the subscribed capital is represented, a simple majority of the votes in paragraph 1 shall suffice.	Unchanged.
3. Resolutions of the general meeting which would have the effect of increasing the liabilities of the shareholders shall require in any event the approval of all the shareholders involved.	Unchanged.
4. A resolution amending the statutes or the instrument of incorporation shall be made public accordance with Article 9.	Unchanged.
Article 98 (Separate vote of each class of shareholder)	Article 98
1. Where there are several classes of shares, any resolution of the general meeting shall require a	Unchanged.

separate vote at least for each class of shareholders whose rights are affected by the resolution.

2. Where a resolution of the general meeting requires the majority of votes specified in Article 97 (1) and (2), that majority shall also be required for the separate vote of each class of shareholders whose rights are affected by the resolution.

Article 99
(Minutes)

1. Minutes shall be drawn up for every meeting of the general meeting.

2. The minutes shall contain the following particulars, at least:
a) the place and date of the meeting;
b) the resolutions passed;
c) the result of the voting.

3. There shall be annexed to the minutes:
a) the attendance list;
b) the documents relating to the calling of the general meeting.

Article 99

Deleted.

4. The minutes and the documents annexed thereto shall be retained for at least three years. A copy of the minutes and the documents annexed thereto may be obtained by any shareholder, free of charge, upon request.

Article 100
(Appeal against resolutions of general meeting)

1. Resolutions of the general meeting may be declared invalid as infringing the provisions of this Regulation or of the company's statutes, in the following manner.

2. An action for such a declaration may be brought by any shareholder or any person having a legitimate interest, provided he can show that he has an interest in having the infringed provision observed and that the resolution of the general meeting may have been altered or influenced by the infringement.

3. The action for such a declaration shall be brought within three months of the closure of the general meeting, before the court within whose jurisdiction the registered office of the SE is situated. It shall be taken against the SE.

Article 100

Decisions of a court or competent authority declaring void or inexistant a decision of the general meeting of the SE shall be published in accordance with Article 9.

4. The procedure in the action for such a declaration shall be governed by the law of the place where the SE has its registered office.

5. The decision declaring the resolution void shall be published in accordance with Article 9.

6. The declaration that a resolution is void may no longer be made by the court if that resolution has been replaced by another taken in conformity with this Regulation and the statutes of the SE. The court may, on its own initiative, grant the time necessary to enable the general meeting to pass such a new resolution.

TITLE V ANNUAL ACOUNTS AND CONSOLIDATED ACCOUNTS SECTION 1 ANNUAL ACCOUNTS Sub-section 1 Preparation of annual accounts Article 101	TITLE V ANNUAL ACOUNTS AND CONSOLIDATED ACCOUNTS Article 101
1. The SE shall draw up annual accounts comprising the balance sheet, the profit and loss account and the notes on the accounts. These documents shall constitute a composite whole.	Unchanged.
	1A. The SE may draw up and publish its annual accounts in ecus. In this event the bases of conversion used to express in ecus those items included in the accounts which are or were originally expressed in national currency must be disclosed in the notes to the accounts.
2. The annual accounts of the SE shall be drawn up in accordance with the provisions of Directive 78/660/EEC subject to paragraph 3 of this Article.	Unchanged.
	2A. Where reference is made in Directive 78/660/EEC to national legislation such a reference is to be considered as a reference to the legislation of the Member State of the registered office of the SE.

3. a) Articles 1, 2(5), final sentence, 2(6), 4(1), final sentence, 4(2), final sentence, 4 (3)(b), final sentence, 4(4), final sentence, 5, 43(2), 45(1)(b), final sentence, 54, 55 and 62 of Directive 78/660/EEC shall not apply.	3. a) Articles 1, 2(1), 2(5)(final sentence), 2(6), 4(1)(final sentence), 4(2)(final sentence), (3)(b)(final sentence), 4(4)(final sentence), 5, 33(5), 43(2), 45(1)(b)(final sentence), 54, 55 and 62 of Directive 78/660/EEC shall not apply.
b) For the purpose of drawing up the annual accounts, the provisions of Articles 2, 3, 4, 6 and 7 of Directive 78/660/EEC shall apply. The SE may avail itself of the option provided for in Article 6 of that Directive.	(b) Unchanged.
c) For the presentation of the balance sheet, the SE may choose between the layouts prescribed by Articles 9 and 10 of Directive 78/660/EEC. It may avail itself of the options provided for in Articles 9, 10, 11, 18, final sentence, 20(2) and 21, final sentence, of that Directive.	(c) Unchanged.
d) For the presentation of the profit and loss account, the SE may choose between the layouts prescribed by Articles 23 to 26 of Directive 78/660/EEC. It may avail itself of the options provided for in Articles 27 and 30 of that Directive.	(d) Unchanged.

e) The items shown in the annual accounts shall be valued in accordance with the principles laid down in Article 31 of Directive 78/660/EEC. They shall be valued on the basis of the principle of purchase price or production cost according to the provisions of Articles 34 to 42 of that Directive.	(e) Unchanged.
However, the SE may choose to apply one of the three alternative valuation methods provided for in Article 33 of that Directive. If the SE avails itself of that possibility, it shall ensure that the method applied is consistent with the principles laid down in that Article. Details of the method applied shall be given in the annex thereto.	Unchanged.
The SE may avail itself of the options provided for in Articles 34(1), 36, 37(1) and (2), 39(1)(c) and (2) and 40(1) of that Directive.	The SE may avail itself of the options provided for in Articles 33(3)(second sentence), 34(1), 36, 37(1), 37(2), 39(1)(c), 39(2) and 40(1) of that directive.
f) In addition to the information required under other provisions of Directive 78/660/EEC, the notes on the accounts must include the information provided for in Article 43 of that Directive at least. The SE may avail itself of the options provided for in Articles 44 and 45(1) and (2) of that Directive.	(f) Unchanged.

Sub-section 2

Preparation of the annual rapport

Article 102

1. The SE shall draw up an annual report which must include at least a fair review of the development of the company's business and of its position.

2. The annual report shall also include the information provided for in Article 46 of Directive 78/660/EEC.

Article 102

Unchanged.

Sub-section 3

Auditing

Article 103

1. The annual accounts of the SE shall be audited by one or more persons authorized to do so in a Member State in accordance with the provisions of Directive 84/253/EEC (1). Those persons shall also verify that the annual report is consistent with the annual accounts for the same financial year.

2. If the SE meets the criteria laid down in Article 11 of Directive 78/660/EEC, it shall not be required to have its accounts audited. In such cases, members of administrative board or the management board shall be subject to the sanctions applicable to public limited liability companies in the State in which the SE has its registered office where the annual accounts or annual reports are not drawn up in accordance with the provisions of this section.

(1) OJ No L126, 12.5.1984, p. 20

Article 103

1. The annual accounts of the SE shall be audited by one or more persons authorized to do so in a Member State in accordance with the provisions of Directives 84/253/EEC(1) and 89/48/EEC(2). Those persons shall also verify that the annual report is consistent with the annual accounts for the same financial year.

Unchanged.

(1) OJ N° L 126, 12.5.84, p 20

(2) OJ N° L 19, 24.1.89, p 16

Sub-section 4 Publication Article 104	Article 104
1. The annual accounts, duly approved, and the annual report and audit report shall be published as laid down in accordance with Article 3 of Directive 68/151/EEC by the laws of the Member State in which the SE has its registered office.	Unchanged.
2. The SE may avail itself of the options provided for in Article 47 of Directive 78/660/EEC.	
3. Articles 48, 49 and 50 of Directive 78/660/EEC shall apply to the SE.	
Sub-section 5 Final provisions Article 105	Article 105
Articles 56 to 61 of Directive 78/660/EEC shall apply to the SE. The SE may avail itself of the options provided for in those Articles.	Articles 53(1), 56(2) and 57 to 61 of Directive 78/660/EEC shall apply to the SE. The SE may avail itself of the options provided for in those Articles.

SECTION 2

CONSOLIDATED ACCOUNTS

Sub-section 1

Conditions for the preparation of consolidated accounts

Article 106	Article 106
1. Where the SE is a parent undertaking within the meaning of Article 1(1) and (2) of Directive 83/349/EEC, it shall be required to draw up consolidated accounts and a consolidated annual report in accordance with the provisions of that Directive.	Unchanged.
	1A. The SE may draw up and publish its consolidated accounts in ecus. In this event the bases of conversion used to express in ecus those items included in the accounts and the financial statements which are or were originally expressed in other national currency must be disclosed in the notes to the accounts.
2. Articles 1(1)(c) last sentence, 1(d)(bb), last sentence, 1(d), second and third subparagraphs, 4 and 5 of Directive 83/349/EEC shall not apply.	2. Article 1 (1)(c)(last sentence), 1(1)(d)(bb)(last sentence), 1(1)(d) second subparagraph and Articles 4 and 5 of Directive 83/349/EEC shall not apply.
3. The SE may avail itself of the options provided for in Articles 1, 6, 12 and 15 of Directive 83/349/EEC.	Unchanged.

Article 107	Article 107
1. Where the SE is a parent undertaking within the meaning of Article 1(1) and (2) of Directive 83/349/EEC and is at the same time a subsidiary undertaking of a parent undertaking governed by the law of a Member State, it shall be exempt from the obligation to draw up consolidated accounts subject to the conditions laid down in Articles 7 and 8 of that Directive. Article 10 of that Directive shall apply.	Unchanged.
2. Articles 7(1)(b), second subparagraph, 8(1), last sentence, 8(2) and (3), and 9 of that Directive shall not apply.	2. Articles 7(1)(b)(second subparagraph), 8(2) and 8(3) and 9 shall not apply.
3. The exemption provided for in paragraph 1 shall not apply where the securities of the SE have been admitted to official listing on a stock exchange established in a Member State.	Unchanged.

Article 108	Article 108
1. Where the SE is undertaking within the meaning of Article 1(1) and (2) of Directive 83/349/EEC and is at the same time a subsidiary undertaking of a parent undertaking which is not governed by the law of a Member State, it shall be exempt from the obligation to draw up consolidated accounts subject to the conditions laid down in Article 11 of that Directive.	Unchanged.
2. Articles 8(1), second sentence, 8(2) and (3), and 10 of that Directive shall not apply.	2. Articles 8 (1) (second sentence), 8(2), 8(3) and 9 of Directive 83/349/EEC shall not apply.
3. The exemption provided for in paragraph 1 shall not apply where the securities of the SE have been admitted to official listing on a stock exchange established in a Member State.	Unchanged.
Sub-section 2 The preparation of consolidated accounts	
Article 109	Article 109
1. The 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.	Unchanged.

2. The consolidated accounts shall be drawn up in accordance with the provisions of Directive 83/349/EEC subject to paragraph 3 of this Article.

3. a) Articles 16(5), final sentence, 16(6), 33(2)(c), first sentence, 33(3), final sentence, 34, point 12, final sentence, and point 13, final sentence, 35(1)(b), second sentence, 40, 41(5) and 48 of Directive 83/349/EEC shall not apply.

b) The SE may avail itself of the options provided for in Articles 17(2), 19(1)(b), 20, 26(1)(c), final sentence, 26(2), 27(2), 28, second sentence, 29(2)(a), second sentence, 29(5), final sentence, 30(2), 32, 33(2) (d) and 35(1) of Directive 83/349/EEC.

Sub-section 3

Preparation of the consolidated annual report

Article 110

Article 110

1. The consolidated annual report shall include at least a fair review of the development of the company's business and the position of the undertakings included in the consolidation taken as a whole.

Unchanged.

2. The consolidated annual report shall also include the information provided for in Article 36 of Directive 83/349/EEC. The SE may avail itself of the option provided for in the final sentence of paragraph 2(d) of that Article.

Sub_section 4

Auditing of the consolidated accounts

Article 111

The consolidated accounts shall be audited by one or more persons authorized to do so in a Member State in accordance with the provisions of Directive 84/253/EEC. Those persons shall also verify that the consolidated annual report is consistent with the consolidated accounts for the financial year in question.

Article 111

The consolidated accounts shall be audited by one or more persons authorized to do so in a Member State in accordance with the provisions of Directives 84/253/EEC(1) and 89/48/EEC(2). Those persons shall also verify that the consolidated annual report is consistent with the consolidated accounts for the financial year in question.

Sub-section 5

Publication

Article 112

1. The consolidated accounts, duly approved, and the consolidated annual report, together with the audit report, shall be published as laid down in accordance with Article 3 of Directive 68/151/EEC by the laws of the Member State in which the SE has its registered office.

Article 112

Unchanged.

(1) OJ N° L 126, 12.5.84, p 20

(2) OJ N° L 19, 24.1.89, p 16

2. Article 38(3), (4) and (6) of Directive 83/349/EEC shall not apply.

3. The management board and the executive members of the administrative board shall be liable to the sanctions provided for (...) if the consolidated accounts and consolidated annual report are not published.

SECTION 3

BANKS AND INSURANCE COMPANIES

Article 113

Article 113

1. SEs which are credit or financial institutions shall comply, as regards the drawing up, auditing and publication of annual accounts and consolidated accounts, with the rules laid down pursuant to Directive 86/635/EEC [1] by the national law of the State in which the SE has its registered office.

Unchanged.

2. SEs which are insurance companies shall comply, as regards the drawing up, auditing and publication of annual accounts and consolidated accounts, with the rules laid down, pursuant to Directive ... (which, supplementing Directive 78/660/EEC,

(1) OJ No L372, 31.12.1986, p. 1.

harmonizes the provisions governing the annual accounts and the consolidaded accounts of insurance companies, by the national law of the State in which the company has its registered office).

(11)

TITLE VI

GROUPS OF COMPANIES

Article 114

1. Where an undertaking controls an SE, that undertaking's consequent rights and obligations relating to the protection of minority shareholders and third parties shall be those defined by the law governing public limited companies in the State where the SE has its registered office.

2. Paragraph 1 shall not affect the obligations imposed on the controlling undertaking by the legal system which governs it.

TITLE VI

GROUPS OF COMPANIES

Article 114

Deleted.

TITLE VII

WINDING UP, LIQUIDATION, INSOLVENCY AND SUSPENSION OF PAYMENTS

SECTION 1

WINDING UP

Article 115

An SE may be wound up:

1. upon the expiry of the duration laid down for it in the statutes or the instrument of incorporation;

2. by resolution of the general meeting of shareholders; or

3. by decision of the court of the place where the SE has its registered office:

a) where the subscribed capital of the company has been reduced below the minimum capital provided for in Article 4;

b) where the disclosure of annual accounts has not taken place in the SE's last three financial years;

TITLE VII

WINDING UP, LIQUIDATION, INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 115

The SE may be wound up by a decision of the general meeting ordering its winding up taken in accordance with Article 97.

However, the general meeting may decide, in accordance with the same rules, to annul the decision to wind up as long as there has been no distribution on the basis of the liquidation.

c) on any ground laid down in the law of the place where the SE has its registered office or provided for in the statutes or the instrument of incorporation.

Article 116
(Winding up by resolution of the general meeting)

1. A resolution of the general meeting of shareholders to wind up the SE on any ground laid down by the statutes or instrument of incorporation shall require at least a simple majority of the votes attached to the subscribed capital represented.

Article 116

1. The management or administrative board shall convene a general meeting to take a decision in the event of:

- the expiry of the period fixed in the instrument of incorporation or the statutes; or,

- the existence of any other cause for winding up provided for therein.

The general meeting may then at its option:

- decide, in accordance with Article 94, to wind up the SE;
- decide, in accordance with Article 97, that the SE is to continue its activities.

2. In all other cases a resolution of the general meeting of shareholders to wind up the SE shall require at least a two-thirds majority of the votes attached to the subscribed capital represented. The statutes may, however, lay down that, when at least half the subscribed capital is represented, the simple majority referred to in paragraph 1 is sufficient.	2. The management or administrative board shall convene a general meeting in the event of the existence of any cause for the winding up of a public limited company provided for by the law of the Member State in which the SE has its registered office.The general meeting shall decide whether the SE should be wound up or any other measures taken.
Article 117 (Winding up by the court)	Article 117
1. Winding-up proceedings may be brought in the court of the place where the SE has its registered office by the administrative board, the management board or the supervisory board of the SE, by any shareholder, or by any person with a legitimate interest.	Deleted.
2. Where the SE is able to remove the ground for winding up, the court may grant it a period of time sufficient to allow it to do so.	
	Article 117A
	On an application by any person concerned or any competent authority, the court where the SE has its registered office must order it to be wound up where it finds that the registered office, as defined in Article 5, has been transferred outside the Community. However the court may grant the SE a period of time to rectify the situation.

Article 118	Article 118
(Publication of winding up)	
The winding up shall be published in the manner referred to in Article 9.	The winding up of an SE shall be published in accordance with Article 9. The same shall apply to decisions that the SE is to continue its activities under Article 115 second paragraph and Article 116.
Article 119 (Wound-up SE to continue in existence)	Article 119
1. Where an SE is to be wound up as a result of a resolution to that effect of the general meeting of shareholders or upon the expiry of its prescribed duration, the general meeting of shareholders may resolve that it is to continue in existence as long as there has been no distribution on the basis of liquidation in accordance with Article 126.	Deleted.
2. The resolution that the company is to continue in existence shall be passed in accordance with Article 116(2), and published in the manner referred to in Article 9.	

SECTION 2 LIQUIDATION Article 120 (Appointment of liquidators)	SECTION 2 LIQUIDATION Article 120
1. The winding up of an SE shall entail the liquidation of its assets. The liquidation shall be carried out by one or more liquidators.	1. The winding up of an SE shall entail its liquidation.
2. Liquidators shall be appointed: a) by the statutes or instrument of incorporation, or in the manner laid down therein; or	2. The liquidation of an SE and the conclusion of its liquidation shall be governed by national law.
b) by a resolution of the general meeting of shareholders acting by the simple majority of the votes specified in Article 116(1); or	
c) failing an appointment pursuant to a) or b), by the court in whose jurisdiction the registered office of the SE is situated on the application of any shareholder or of the administrative board, the management board or the supervisory board.	
3. In the absence of an appointment pursuant to paragraph 2, the duties of liquidator shall be performed by the administrative board or the management board.	3. An SE in liquidation shall continue to have legal personality until the conclusion of the liquidation.

4. The general meeting shall determine the remuneration of the liquidators. Where the liquidators are appointed by a court in whose jurisdiction the registered office of the SE is situated, the court shall determine their remuneration.	4. Deleted.
Article 121 (Removal of liquidators)	Article 121
The liquidators may be removed before the termination of the liquidation:	Deleted.
a) where they were appointed in accordance with Article 120(2), (a) and (b) or where Article 120(3) applies, by a decision of the general meeting acting by the simple majority of the votes specified in Article 116(1);	
b) irrespective of the manner of appointment, by a court in whose jurisdiction the registered office of the SE is situated, on petition of any person having a legitimate interest in the matter and showing a proper ground.	

Article 122 (Powers of liquidators)	Article 122
1. The liquidators may take all appropriate steps to liquidate the SE and, in particular, shall terminate transactions pending, collect debts, convert remaining assets into cash where this is necessary for their realisation and to pay the sums owing to creditors. The liquidators may undertake new transactions to the extent necessary for the purposes of the liquidation.	Deleted.
2. The liquidators shall have the power to bind the SE in dealings with third parties and to take legal proceedings on its behalf. The appointment, termination of office and identity of liquidators shall be published in the manner referred to in Article 9. It must appear from the disclosure whether the liquidators may represent the company alone or must act jointly.	
Article 123 (Liability of liquidators)	Article 123
The rules on the civil liability of members of the administrative board or of the management board of an SE shall also apply to the civil liability of liquidators for wrongful acts committed in carrying out their duties.	Deleted.

Article 124 (Accounting documents)	Article 124
1. The liquidators shall draw up a statement of the assets and liabilities of the SE on the date the winding up commenced. Any shareholder or creditor of the SE shall be entitled to obtain a copy of this statement free of charge, upon request.	Deleted.
2. The liquidators shall report on their activities to the general meeting each year.	
3. The rules concerning the drawing up, auditing and publication of annual accounts or consolidated accounts and the approval of persons responsible for carrying out the statutory audits of those accounts shall apply mutatis mutandis.	
Article 125 (Information supplied to creditors)	Article 125
The notice of the winding up of the company provided for in Article 118 shall invite creditors to lodge their claims, and shall indicate the date after which distributions on the basis of liquidation will be made. An invitation to lodge claims shall also be sent in writing to any creditor known to the company.	Deleted..

Article 126 (Distribution)	Article 126
1. No distribution on the basis of liquidation may be made to the beneficiaries designated in the statutes or the instrument of incorporation, or failing any such designation to the shareholders, until all creditors of the company have been paid in full and the time-limits indicated in Articles 125 and 127(2) have expired.	1. No distribution on the basis of liquidation may be effected as between the shareholders or the beneficiaries designated in the instrument of incorporation or the statutes until all creditors of the company have been paid in full.
2. After the creditors have been paid in full, and anything due to the beneficiaries referred to in paragraph 1 has been distributed, the net assets of the SE shall, except where otherwise stated in the statutes or the instrument of incorporation, be distributed among the shareholders in proportion to the nominal value of their shares.	Deleted.
3. Where the shares issued by the SE have not all been paid up in the same proportion, the amounts paid up shall be repaid. In that case only the remaining net assets shall be distributed in accordance with paragraph 2. If the net assets are not sufficient to repay the amounts paid up, the shareholders shall bear the loss in proportion to the nominal value of their shares.	Deleted.

4. Where a claim on an SE has not yet fallen due or is in dispute or where the creditor is not known, the net assets may be distributed only if adequate security is set aside for the creditor or if the assets remaining after a partial distribution represent sufficient security.	Unchanged.
Article 127 (Distribution plan)	Article 127
1. The liquidator or liquidators shall draw up a plan for the distribution of the net assets of the company pursuant to Article 126 after the date indicated in Article 125.	Deleted.
2. This plan shall be brought to the attention of the general meeting and of any beneficiary designated in the statutes or instrument of incorporation. Any shareholder and any beneficiary may challenge the plan in the court of the place where the SE has its registered office within three months of the date on which it was brought to the attention of the general meeting or of that beneficiary. No distribution may be made until that period has expired.	

3. Where there is a challenge it shall be for the court to decide whether and to what extent any partial distribution may be made in the course of the proceedings before the court takes its decision.	
Article 128 (Termination of liquidation)	Article 128
1. The liquidation shall be terminated when the distribution is complete.	Deleted.
2. Where, after the liquidation is terminated, further assets or liabilities of the SE come to light which were previously unknown, or further liquidation measures prove necessary, a court in whose jurisdiction the registered office of the SE is situated shall, on the application of any shareholder or creditor, renew the mandate of the former liquidators or appoint other liquidators.	Deleted.
3. Termination of liquidation and removal of the SE from the register referred to in Article 8(1) shall be published in the manner referred to in Article 9.	Unchanged.

4. Following the liquidation, the books and records relating to the liquidation shall be lodged at the register referred to in paragraph 3. Any interested party may examine such books and records.	Unchanged.
SECTION 3 INSOLVENCY AND SUSPENSION OF PAYMENTS Article 129	SECTION 3 INSOLVENCY AND SUSPENSION OF PAYMENTS Article 129
In respect of insolvency and suspension of payments the SE shall be subject to the law of the place where it has its registered office.	The SE shall be subject to national laws in respect of insolvency and suspension of payments.
Article 130	Article 130
1. The opening of insolvency or suspension of payments proceedings shall be notified for entry in the register by the person appointed to conduct the proceedings. The entry in the register shall show the following:	Unchanged.
a) the nature of the proceedings, the date of the order, and the court making it;	
b) the date on which payments were suspended, if the court order provides for this;	

c) the name and address of the administrator, trustee, receiver, liquidator or any other person having power to conduct the proceedings, or of each of them where there are more than one;

d) any other information considered necessary.

2. Where a court finally dismisses an application for the opening of the proceedings referred to in paragraph 1 owing to want of sufficient assets, it shall, either of its own motion or on application by any interested party, order its decision to be noted in the register.

3. Particulars registered pursuant to paragraphs 1 and 2 shall be published in the manner referred to in Article 9.

TITLE VIII MERGERS Article 131 (Types of merger)	TITLE VIII MERGERS Article 131
An SE may merge with other SEs or with other public limited companies incorporated under the law of one of the Member States in the following ways: a) by forming a new SE; b) by the SE taking over one or more public limited companies; c) by a public limited company taking over the SE; d) by forming a new public limited company.	Deleted.
Article 132 (Applicable law)	Article 132
1. Where the companies participating in the merger have their registered offices in the same Member State, the provisions of national law giving effect to Directive 78/855/EEC shall apply.	An SE may merge with other SEs or with other public limited companies having their registered office in the same Member State. Such a merger shall be governed by the law of the Member State in question in accordance with Directive 78/855/EEC.
2. Where the companies participating in the merger have their registered offices in different Member States, the provisions of Title II shall apply mutatis mutandis.	Unchanged.

TITLE IX

PERMANENT ESTABLISHMENTS

Article 133

1. Where an SE has one or more permanent establishments in a Member State or a non-member State, and the aggregation of the profits and losses for tax purposes of all such permanent establishments results in a net loss, that loss may be set against the profits of the SE in the State where it is resident for tax purposes.

2. Subsequent profits of the permanent establishments of the SE in another State shall constitute taxable income of the SE in the State in which it is resident for tax purposes, up to the amount of the losses imputed in accordance with paragraph 1.

3. Where a permanent establishment is situated in a Member State, the imputable losses under paragraph 1 and the taxable profits under paragraph 2 shall be determined by the laws of that Member State.

TITLE IX

PERMANENT ESTABLISHMENTS

Article 133

Unchanged.

4. Member States shall be free not to apply the provisions of this Article if they avoid double taxation by allowing the SE to set the tax already paid by its permanent establishments against the tax due from it in respect of the profits realised by those permanent establishments.	
TITLE X SANCTIONS Article 134	TITLE X SANCTIONS Article 134
The provisions of national law applicable to the infringement of the rules relating to public limited companies shall apply to the infringement of any of the provisions of this Regulation.	Without prejudice to the sanctions prescribed by this Regulation, the Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of this Regulation.
TITLE XI FINAL PROVISIONS Article 135	TITLE XI FINAL PROVISIONS Article 135
The involvement of employees in the SE shall be defined in accordance with the provisions adopted to give effect to Directive ... by the Member State where the SE has its registered office.	Deleted.

Article 136	Article 136
An SE may be formed in any Member State which has implemented in national law the provisions of Directive ... (on the involvement of employees in the SE).	Deleted.
Article 137	Article 137
This regulation shall enter into force on 1 January 1992. This regulation shall be binding in its entirety and directly applicable in all Member States.	This regulation shall enter into force on 1 January 1993. This regulation shall be binding in its entirety and directly applicable in all Member States.