

EUROPEAN PARLIAMENT

Working Documents

1974-1975

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DOCUMENT 67/74

SUPPLEMENTARY REPORT

drawn up on behalf of the Legal Affairs Committee

on the proposal from the Commission of the European Communities to the Council (Doc. 98/70) for a regulation embodying a Statute for European companies

Rapporteur: Mr P. BRUGGER

At its sitting of 12 December 1972 the European Parliament referred to the Legal Affairs Committee the amendments tabled in plenary sitting to the resolution contained in the report drawn up by Mr Pintus on behalf of the Legal Affairs Committee on the proposal from the Commission of the European Communities to the Council for a regulation embodying a statute for European companies.

On 25 January 1973 the Legal Affairs Committee appointed Mr Brugger rapporteur.

It considered the amendments at its meetings of 26 January, 8 March, 13 April, 3 May, 23 May, 18 and 19 June, 28 and 29 June, 13 July, 6 September, 27 September, 11 October, 25 October, 6 November, 22 November, 28, 29 and 30 November 1973, 24 and 25 January, 8 March and 9 April 1974.

At the last of those meetings the committee adopted the following motion for a resolution which replaces that contained in Mr Pintus' report, by 10 votes to 1 and instructed the rapporteur to make the necessary formal changes to the text and to describe the results of the votes on the various amendments briefly in a written explanatory statement.

The following were present: Mr Schuijt, chairman, Mr Brugger, rapporteur; Mr Adams (deputizing for Mr Caillavet), Mr Brewis, Mr Brooksz, Mr Cousté (deputizing for Mr Yeats), Lord Mansfield, Mr Scelba, Mr Schwabe (deputizing for Mr Bermani), Mr Vermeulen and Sir Derek Walker-Smith.

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement¹.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation embodying a Statute for European companies.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council,²
- having been consulted by the Council pursuant to Article 235 of the Treaty establishing the EEC (Doc. 98/70),
- having regard to the report of the Legal Affairs Committee and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Budgets and the Committee on Social Affairs and Employment (Doc. 178/72), as well as to the supplementary report of the Legal Affairs Committee (Doc. 67/74),

1. Is of the opinion that the divergences presented by the legislation of Member States in the matter of company law are an obstacle to transnational cooperation between undertakings within the common market and consequently stand in the way of economic and monetary union;
2. Considers that coordination of national legislation in this matter, however valuable, is not enough to solve all the legal and organizational problems facing undertakings, particularly small and medium-sized undertakings, which desire to cooperate transnationally within the Community;
3. Therefore welcomes the fact that the Commission has proposed a statute for European companies, in the form of an original legal mechanism, to deal with the problems raised by the divergences in national legislation and hence facilitate international cooperation between Community undertakings;

¹ See also explanatory statement contained in the report by Mr Pintus (Doc. 178/72)

² OJ No. C124, 10 October 1970

4. Nevertheless considers that the regulation needs to be brought into line with the other proposals in the field of company law which have meanwhile been drawn up at Community level, in order to avoid objectively unwarranted divergences between national provisions and Community rules;
5. Considers it necessary to speed up the work on harmonizing taxes payable by companies and shareholders, so that the choice of a registered office for tax purposes is not determined by considerations relating to the taxation to which companies and their shareholders would be subject;
6. Draws attention to the importance of this regulation, whose effects will be felt in the political as well as the economic sphere;
7. Is furthermore convinced that the concentration and strengthening of Community industries - especially advanced technology industries - and will not only lend considerably more weight to the Community's position on the world market, but will also help it to play a more important political role;
8. Firmly believes that the institution of the European company will facilitate international business relations, often hampered by prejudice against foreign companies, and encourage the conduct in common of major research and application projects by companies of different nationalities, with all the favourable consequences of such cooperation for the economy of the Community, the strengthening of ties between its peoples and the further development of Community law;
9. Points out that the institution of the European company will provide undertakings with a useful instrument of access to the capital market, but that the national rules governing such access should be approximated without delay;
10. Affirms its conviction that the proposed statute will afford Community undertakings an adequate instrument for adjusting to the economic dimensions of the Community through the necessary development of technology and productivity, made possible by the enlarged dimensions of the undertakings and by the exchange of technology and capital;
11. Draws attention to the fact that the institution of the European company will strengthen the competitiveness of European undertakings on the world market;
12. Considers that the formation of European companies will be a major factor in a common industrial policy and, as such, an essential element in the contemplated economic union;

13. Recognizes, in the light of the foregoing, that the institution of the European company is necessary to attain the objectives of the Treaty of Rome and to create conditions within the Community similar to those in a national market;
14. Further notes that the powers of action specified in the Treaty are not sufficient for the introduction of this new legal mechanism, and therefore considers that the conditions for the application of Article 235 of the Treaty, on which the Commission has based its proposal, are satisfied;
15. Welcomes the fact that the Commission has based its proposal on Article 235, since this means that Community objectives will be attained with the instruments available within the Community legal system and with the effective participation of the European Parliament;
16. Is of the opinion that, at any rate in a first stage, access to the European company should be limited;
17. Nevertheless invites the Commission to consider the desirability of extending such access, particularly to cooperative societies and limited liability companies;
18. Deems it essential, in view of the legal and practical difficulties which would be raised by the existence of more than one registered office, that the European company should have a single registered office only;
19. Approves the principle that, in order to avoid distortions of competition, European companies should not be accorded privileged tax treatment in comparison with companies governed by national law;
20. Also agrees that European companies should be entitled to issue both registered shares and bearer shares;
21. Is convinced that the economic, social and political solidarity of Europe is inconceivable without satisfactory participation by employees in the life of the undertaking;
22. Therefore welcomes the fact that the Statute for European companies gives employees the opportunity of actively participating in the life of the undertaking and enables them to make their voice heard on questions affecting security of employment and working conditions;
23. Considers that contacts between employees in the establishments of European companies located in different countries will encourage the emergence of a sound European trade union movement and assist in fixing working conditions and pay in the context of European companies;

24. Considers it desirable, in order to ensure efficient representation of shareholders and employees of the European company, that the Supervisory Board should consist as to one third of representatives of the holders of capital, as to one third of representatives of employees and as to the remaining third of members co-opted by these two categories;
25. Emphasizes that the formation of a European Works Council should not only provide an institutional basis for the fullest possible information of employees' representatives on all major questions affecting the European company and its establishments, but should also give those representatives an equitable right of codecision;
26. Recommends the adoption of uniform provisions for the election of members of the European Works Council and of employees' representatives on the Supervisory Board in order to ensure that they are elected in a uniform manner in all the Member States;
27. Welcomes the fact that the agreements provided for between the European company and the trade unions represented in it will make it possible to conclude European collective agreements and thus eliminate undesirable differences in working conditions and pay in the context of the European company;
28. Invites the Commission to review the provisions of Title VI of the proposed regulation on the presentation of accounts in the light of the opinion delivered by the European Parliament in October 1972 on the corresponding provisions of the proposal for a fourth directive on the approximation of the legislation of Member States in the matter of company law;
29. Recognizes the value of incorporating provisions defining the concept of a group of undertakings in this regulation on the European company, and welcomes the fact that the Commission proposes to introduce a uniform comprehensive system for groups of undertakings that include a European company;
30. Notes that the rules proposed for such groups broadly meet the economic and functional requirements of the grouping of undertakings;
31. Nevertheless invites the Commission to adapt its proposal to the suggestions put forward on the subject of groups of undertakings in the attached explanatory statement.
32. Further hopes that a similar set of rules will be introduced in the legislation of Member States to avoid discrimination between groups of undertakings including European companies and groups consisting entirely of national companies;

33. Invites the Commission to exercise vigilance to ensure that the Community rules on competition are observed by companies and groups of companies which avail themselves of the present regulation;
34. Considers that, with regard to the penal provisions, the nature of unlawful acts and the corresponding penalties should be defined in a Community directive, in order to ensure uniformity of penalties;
35. Deems it essential that this directive should include a provision ruling out the cumulation of penalties specified for infringements of the proposed regulation with those specified in the special provisions in force in Member States for national companies;
36. Deems it equally essential that this directive should be issued by the Council in good time, so that the resulting national laws do not come into force later than the date of application of the proposed regulation;
37. Approves the Commission's proposal, but invites it to adopt the following amendments, pursuant to the second paragraph of Article 149 of the EEC Treaty, and, in drafting the final text of the regulation, to take account of the observations contained in the explanatory statement;
38. Invites the Council, taking account also of the final communiqué of the Paris Conference of Heads of State or Government of the countries of the enlarged Community in October 1972, to adopt the proposed regulation with all possible speed;
39. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

Proposal for a Council Regulation (EEC)
embodying a Statute for
European Companies

Preamble and recitals unchanged

TITLE I

GENERAL PROVISIONS

Articles 1, 2 and 3 unchanged

Article 4

The capital of an S.E. shall amount to not less than :

- 500,000 units of account in the case of merger or formation of a holding company,
- 250,000 units of account in the case of formation of a joint subsidiary,
- 100,000 units of account in the case of formation of a subsidiary by an S.E.

Article 4

The capital of an S.E. shall amount to not less than :

- unchanged
- 100,000 units of account in the case of formation of a joint subsidiary,
- unchanged

Article 5

1. The registered office of an S.E. shall be situate at the place specified in its Statutes. Such place shall be within the European Community.

2. The Statutes may designate a number of registered offices.

Article 5

1. unchanged

2. deleted

Article 6

1. For the purposes of this Statute, a dependent undertaking is one which is legally autonomous and on which another undertaking (hereinafter referred to as the 'controlling company') is able, directly or indirectly, to exercise a controlling influence, one of the two being an S.E.

2. An undertaking shall in any event be considered dependent on another when that other has the power, in relation to the first :

- (a) to control more than half the votes attached to the whole of the issued share capital;
- (b) to appoint more than half of its board of management or of its supervisory body;

Article 6

1. unchanged

2. An undertaking shall be juris et de jure dependent on another when that other has the power, in relation to the first :

- (a) unchanged
- (b) or to appoint more than half of its board of management or of its supervisory body.

¹ For full text see OJ No. C 124, 10.10.1970

(c) to exert, pursuant to contracts, a decisive influence on its management.

3. A controlling influence shall be presumed to exist where one undertaking has a majority shareholding in the capital of another.

4. In calculating the extent of the shareholding of a controlling company there shall be included the shares belonging to a dependent undertaking thereof. The same shall apply to the shareholding of an undertaking acting on behalf of the controlling company or of an undertaking dependent thereon.

Article 7 unchanged

Article 8

1. Every S.E. shall be registered in the European Commercial Register at the Court of Justice of the European Communities.

2. The formalities concerning the opening and maintaining of the European Commercial Register shall be laid down in rules prescribed by the Council on a proposal from the Commission.

3. Each Member State shall, in its own country, maintain a register supplementary to the European Commercial Register in which European companies, having their registered office in the territory of that State, shall also be registered. Entries appearing in the European Commercial Register and documents filed therein shall in case of conflict prevail over entries made in or copies issued out of the supplementary register.

4. The European Commercial Register, its supplementary registers and the documents filed therein shall be open to public inspection.

(c) deleted

3. A controlling influence shall be presumed to exist :

(a) where one undertaking has a majority shareholding in the capital of another;

(b) or where it exerts, through contracts or otherwise, a decisive influence on its management.

4. unchanged

Article 8

1. unchanged

2. unchanged

3. Each Member State shall, in its own country, maintain a register supplementary to the European Commercial Register in which European companies, having their registered office in the territory of that State, shall also be registered. Entries appearing in the European Commercial Register and documents filed therein shall, in case of conflict, prevail over entries made in or copies issued out of the supplementary register.

A copy of the documents of the S.E. filed in the European Register shall be filed in the various supplementary registers.

4. unchanged

Article 9

1. All notices concerning the S.E. shall be published in the Official Journal of the European Communities, in the official bulletins of company publications in the Member State in which the S.E. has its registered office, and in a daily newspaper circulating in that State.
2. The publications referred to in the preceding paragraph are hereinafter called 'company journals'.
3. Where this Statute prescribes a time-limit computed from the date of publication in the company journals, such time-limit shall be computed from the date of publication of whichever of the relevant journals shall last be published.

Article 9

1. unchanged
2. The official publications referred to in the preceding paragraph are hereinafter called 'company journals'.
3. unchanged

Article 10 unchanged

TITLE II

FORMATION

Articles 11 to 18 unchanged

Article 19

1. The S.E. shall have legal personality from the date of publication of its registration in the Official Journal of the European Communities. As from that date, it shall be treated as having been properly formed in all respects.
2. Any persons acting in the name of the S.E., prior to the date of publication, shall be personally liable in respect of his acts; where several persons have acted together, they shall be jointly and severally liable.

Article 19

1. unchanged
2. Any person acting in the name of the S.E., prior to the date of publication, shall be personally liable in respect of his acts; where several persons have acted together, they shall be jointly and severally liable.

The S.E. may assume responsibility for commitments entered into prior to the aforementioned date of publication, in which case they shall be deemed to have been originally entered into by the S.E.

Articles 20 to 26 unchanged

Article 27

1. The creditors and third parties mentioned in Article 22, paragraph 1, subparagraphs (e) and (f) may, if they consider that their rights are curtailed by the merger, oppose the same in the Court of Justice of the European Communities within the two months following the filing of the Minutes, as provided for in Article 24, paragraph 6, stating the reasons on which they base their opposition. Until this period has expired, the Court of Justice shall not direct registration of the S.E. in the European Commercial Register.

2. If the Court of Justice of the European Communities, after hearing the founder companies, considers the opposition justified, it may require the founder company concerned to provide suitable sureties.

Articles 28 to 39 unchanged

TITLE III

CAPITAL - SHARES - DEBENTURES

Articles 40 and 41 unchanged

Article 42

1. Where the capital is increased by subscription of new capital, the shareholders shall be entitled to subscribe for new shares in proportion to their existing shareholdings. The Board of Management shall give notice in the company journals of the amount of the issue and of the period within which the right to subscribe shall be exercised. This period shall be not less than one month from the date of publication.

2. In the resolution for increase of capital by subscription of new capital, the General Meeting may exclude, in whole or in part, the right of members to subscribe. This may be agreed upon only where the Meeting has first received a report from the Board of Management giving reasons for exclusion, in whole or in part, of the right to subscribe and for the proposed price of issue. As from the date of notice of the General Meeting, the shareholders shall be entitled forthwith to obtain free copies of this report. A note to this effect shall appear in the notice of Meeting.

Article 27

1. The creditors and third parties mentioned in Article 22, paragraph 1, subparagraphs (e) and (f), including debenture holders, may, if they consider that their rights are curtailed by the merger, oppose the same in the Court of Justice of the European Communities within the two months following the filing of the Minutes, as provided for in Article 24, paragraph 6, stating the reasons on which they base their objection. Until this period has expired, the Court of Justice shall not direct registration of the S.E. in the European Commercial Register.

2. unchanged

Article 42

1. Where the capital is increased by subscription of new capital in cash, the shareholders shall be entitled to subscribe for new shares in proportion to their existing shareholding. The Board of Management shall give notice in the company journals of the amount of the issue and of the period in which the right to subscribe shall be exercised. This period shall be not less than one month from the date of publication.

2. unchanged

3. Where new capital is subscribed wholly or partly in kind, a report as to the value thereof, signed by at least two independent and qualified accountants appointed by the court within whose jurisdiction the registered office of the S.E. is situate, shall be submitted to the General Meeting. As from the date of notice of the General Meeting, the shareholders shall be entitled forthwith to obtain free copies of this report. A note to this effect shall appear in the notice of General Meeting. The provisions of Article 15, paragraph 2, and of Article 203 shall apply to such accountants.

4. Where the capital is increased by capitalization of available reserves, the new shares shall be distributed amongst the shareholders in proportion to their existing shareholding.

Articles 43 to 45 unchanged

Article 46

1. The acquisition of shares in the S.E. by the S.E. itself, by third parties on behalf of the S.E. or by undertakings controlled by the S.E. is prohibited. This prohibition extends to the taking of any pledge of shares of the S.E.

Article 46

1. The acquisition or subscription of shares in the S.E. by the S.E. itself, by third parties on behalf of the S.E., by undertakings controlled by the S.E. or in which the S.E. has a majority holding, is prohibited. (14 words deleted).

2. An exception to this prohibition shall be made for the acquisition of shares in the S.E. by the S.E. itself or by third parties on behalf of the S.E. for the purpose of distributing them to employees of the S.E. or of other undertakings belonging to the same group as the S.E., with funds drawn from available reserves.

Such acquisition shall be subject to the approval of the Supervisory Board.

The amount of shares in the S.E. owned by the S.E. itself shall not exceed 10% of the capital.

2. When an undertaking passes into the control of an S.E. in which it holds shares, it shall dispose of them within one year from the date upon which it passes into such control. In the meantime, the shares shall confer no rights on the controlled undertakings. The same rule shall apply in the case of merger.

3. The S.E. may not, either directly or through third parties acting on its behalf or through undertakings controlled by it or in which it has a majority holding, take any pledge of shares of the S.E. or acquire a right to use or enjoy them in any way.

4. When an undertaking passes into the control of an S.E. in which it holds shares or when an S.E. acquires a majority interest in it, it shall dispose of them within 18 months from the date on which it passes into such control or on which the S.E. acquires a majority interest in it (23 words deleted).

5. Shares acquired, pursuant to paragraph 2, by the S.E. for the purpose of distributing them to employees, if not distributed to them within 12 months from the date on which they were acquired, shall be disposed of within a further 6 months at the latest.

6. The shares referred to in paragraphs 4 and 5 shall confer no rights until they have been disposed of or distributed to employees.

Articles 47 to 54 unchanged

Article 55

Not less than fourteen days' notice of any public issue of debentures shall be given in the company journals. The notice shall specify the number, nominal amount, issue price and rate of interest of the debentures to be issued, and the date and conditions of redemption.

Article 55

Notice of any public issue of debentures shall be given in the company journals. (5 words deleted). The notice shall specify the number, nominal amount, issue price and rate of interest of the debentures to be issued, and the date and conditions of redemption. It shall also indicate the amount of the debentures convertible into shares already issued by the S.E., the unredeemed amount of other debentures previously issued by the S.E. and the guarantees given with them, the amount of loans guaranteed by the S.E. and, where applicable, the fraction of such loans guaranteed.

Article 56 unchanged

Article 57

1. Upon a public issue of debentures, the company shall appoint a person who is independent of the company to be the representative of the body of debenture holders. A meeting of the said body may at any time dismiss the representative and appoint another person in his place. In an emergency,

Article 57

1. unchanged

any debenture holder may apply to the court in whose jurisdiction the registered office of the S.E. is situated for appointment of a representative.

2. The representative of the body of debenture holders shall represent the latter vis-a-vis the S.E. in any judicial or other proceedings. He is entitled to attend General Meetings of the company and to exercise at such meetings all the rights, excepting the right to vote, of a shareholder, and in particular the right to request and receive information. The company shall make available to the representatives all documents which shareholders are entitled to see, or of which they are entitled to obtain a copy.

Article 58

1. A meeting of the body of debenture holders shall be convened by the representative or by the Board of Management of the S.E. One or more debenture holders holding 5% of the debentures in circulation or a nominal value of 250,000 units of account may, in writing, request the representative or the Board of Management to convene such a meeting.

2. A meeting shall be validly held if three quarters of the debenture holders are present or are represented. Failing this quorum the meeting shall be reconvened. The second meeting shall be validly held whatever the number of debenture holders present or represented.

3. A majority of three quarters of the votes validly cast shall be required for the passing of resolutions.

4. Voting rights shall be proportional to the nominal amount of debentures held. The minimum nominal amount shall carry the right to one vote.

5. The representative or, in his absence, a member of the Board of Management of the company shall take the chair.

6. The provisions governing the convening and holding of meetings shall apply.

2. The representative of the body of debenture holders shall represent the latter vis-a-vis the S.E. in any judicial or other proceedings. He is entitled to attend General Meetings of the company and to exercise at such meetings all the rights, excepting the right to vote, of a shareholder, and in particular the right to request and receive information. The company shall make available to the representative in every case, and to the debenture holders on request, all documents which shareholders are entitled to see, or of which they are entitled to obtain a copy.

Article 58

1. unchanged

2. A meeting shall be validly held if the holders of 50 per cent of the debentures are present or are represented. Failing this quorum the meeting shall be reconvened. No quorum shall be required for the second meeting.

3. unchanged

4. unchanged

5. unchanged

6. unchanged

Article 59 unchanged

Article 60

1. A decision to issue convertible debentures to persons who shall thereby have a vested right to exchange or subscribe for shares may be taken only at General Meeting, and shall be by resolution altering the Statutes. The meeting shall simultaneously create approved capital, in respect of which the shareholders shall waive their right of subscription. The amount of approved capital shall be equal to the amount which would be attained if the right to exchange or subscribe for shares were exercised in full.

2. Shareholders shall be entitled to apply for convertible debentures issued unless otherwise resolved in General Meeting.

3. So long as convertible debentures are in circulation, the company shall not alter its Statutes so as to reduce the rights of the holders of convertible debentures unless, not less than three months before the alteration, they be given the opportunity, by notice published in the company journals, of exercising their right of subscription or exchange, or unless approval be given by the body of debenture holders for alteration of the Statutes.

Article 60

1. unchanged

2. Shareholders shall be entitled to apply for convertible debentures issued unless otherwise resolved in General Meeting, according to the procedure laid down in Article 42, paragraph 2.

3. unchanged

Article 61 unchanged

TITLE IV

ADMINISTRATIVE ORGANS

Articles 62 and 63 unchanged

Article 64

1. The Board of Management shall have full power to act in the interests of the company, save as expressly reserved to other bodies by this Statute.

2. Where the Board of Management comprises more than one member, the members act collectively. Subject to the provisions of Article 63, paragraph 6, members of the Board of Management may divide their powers among themselves; division so made shall be for internal purposes only. The Supervisory Board may at any time make regulations for the internal operation of the Board of Management.

Article 64

1. unchanged

2. Where the Board of Management comprises more than one member, the members act collectively. Subject to the provisions of Article 63, paragraph 6, members of the Board of Management may divide their powers among themselves; division so made shall be for internal purposes only. The Supervisory Board may (three words deleted) make regulations for the internal operation of the Board of Management, after consulting the Board of Management.

Article 65 unchanged

Article 66

1. The following acts of the Board of Management shall be subject to prior authorization by the Supervisory Board:

- (a) closure or transfer of the undertaking or of substantial parts thereof;
- (b) substantial curtailment or extension of the activities of the undertaking;
- (c) substantial organizational changes within the undertaking;
- (d) establishment of long-term co-operation with other undertakings or the termination thereof.

2. Apart from the cases mentioned in paragraph 1, the Statutes may specify that certain acts of the Board of Management shall be subject to prior authorization by the Supervisory Board. In the case of paragraph 1 and of this present paragraph, absence of prior authorization may not be relied on to defeat claims by third parties.

Article 66

1. The following acts of the Board of Management shall be subject to prior authorization by the Supervisory Board:

- (a) closure or transfer of the undertaking or of (one word deleted) parts thereof;
- (b) (one word deleted) curtailment of (one word deleted) extension of, or changes in, the activities of the undertaking;
- (c) (one word deleted) organizational changes within the undertaking;
- (d) unchanged

The powers of the General Meeting pursuant to Article 83 paragraphs 2 and 3 and of the European Works Council pursuant to Articles 123 and 125 remain unchanged.

2. Apart from the cases mentioned in paragraph 1 and elsewhere in this Statute the Statutes may specify that certain individually specified decisions of the Board of Management shall be subject to prior authorization by the Supervisory Board.

3. The absence of prior authorization of decisions of the Board of Management by the Supervisory Board may not be relied upon to defeat claims by third parties either in those cases in which such authorization is laid down by this Statute or in those cases in which it is laid down in the Statutes.

Articles 67 to 73 unchanged

Article 74

1. The number of members of the Supervisory Board shall be divisible by three. Where an S.E. has permanent establishments in several Member States, the Supervisory Board shall comprise not less than twelve members.

Article 74

1. The number of members of the Supervisory Board shall be divisible by three. Where an S.E. has establishments in several Member States, the Supervisory Board shall comprise not less than twelve members.

2. Only natural persons may be members of the Supervisory Board. Their maximum number shall be laid down by the Statutes. Article 63, paragraph 4, shall apply to them.

2. unchanged

3. Subject to the provisions of Article 137, the members of the Supervisory Board shall be appointed by the General Meeting for a period, prescribed by the Statutes, of not more than five years.

3. Subject to the provisions of Article 137, the members of the Supervisory Board shall be appointed by the General Meeting for a period, prescribed by the Statutes, of not more than four years.

Articles 75 and 76 unchanged

Article 77

Article 77

1. The Board of Management shall supply information in writing on each item on the agenda, which shall be settled by the chairman of the Supervisory Board. The agenda and the information in writing aforesaid shall be sent by the Board of Management to each member of the Supervisory Board.

1. unchanged

2. Meetings of the Supervisory Board shall not be validly held unless at least one half of its members is present.

2. unchanged

3. Unless a greater majority is specified in the Statutes, decisions shall be made by majority vote of members present.

3. Unless a greater majority is specified in the Statutes, decisions shall be made by majority vote of members present and represented.

4. Members not present may take part in decisions either by authorizing a member present to represent them, or by sending a written vote through him.

4. Members not present may take part in decisions by authorizing a member present to represent them. (9 words deleted).

5. In the conditions mentioned in the Statutes, decisions on any specific matter may be made in writing, in particular by exchange of telegrams or telex messages, provided that no objection is raised to such procedure by any member.

6. Minutes of Supervisory Board decisions shall be prepared under supervision of the Board of Management; they shall be examined and signed by the chairman of the Supervisory Board. If no member of the Board of Management is present at a meeting of the Supervisory Board, or if the latter makes a decision in writing, the chairman shall appoint a member of the Supervisory Board to prepare the Minutes.

5. unchanged

6. Decisions of the Supervisory Board shall be recorded in Minutes which shall be signed by the chairman of the Supervisory Board.

Articles 78 to 82 unchanged

Article 83

Subject to the limitations prescribed by this Statute, the General Meeting may pass resolutions concerning the following matters:

- (a) increase or reduction of capital;
- (b) issue of debentures convertible into shares;
- (c) appointment or removal of members of the Supervisory Board;
- (d) legal proceedings on behalf of the company;
- (e) appointment of auditors;
- (f) appropriation of annual profits;
- (g) alteration of the Statutes;
- (h) winding-up of the company and appointment of liquidators;

Article 83

1. The General Meeting (8 words deleted) shall pass resolutions concerning the following matters:

- (a) increase or reduction of capital;
- (b) issue of debentures convertible to shares;
- (c) appointment or removal of members of the Supervisory Board provided they are not appointed by the employees in pursuance of Article 137;
- (d) legal proceedings on behalf of the company;
- (e) appointment of auditors;
- (f) adoption of the annual statement of accounts in the case provided for in Article 214.
- (g) appropriation of annual profits;
- (h) discharging of the members of the Board of Management and the Supervisory Board;
- (i) alteration of the Statutes;
- (j) winding-up of the company and appointment of liquidators

(i) conversion of the company;

(j) merger or transfer of all or of a substantial part of the company's assets;

(k) approval of contracts committing the S.E. in the following respects:

- to pool the whole or a part of its profits or of the profits of one or more of its establishments with the profits of other undertakings or of one or more of the establishments thereof, or to share the profit pooled;
- to lease its undertaking to another undertaking or otherwise grant possession thereof to another undertaking.
- to carry on its business on behalf of another undertaking.

(k) conversion of the company

2. The approval of the General Meeting shall be required for decisions of the Board of Management concerning

- closure of the undertaking;

- merger of the company with another company;

- (two words deleted) transfer of (seven words deleted) the company's assets.

3. The approval of the General Meeting shall be similarly required for contracts committing the S.E. in the following respects;

- to pool the whole or part of its ~~profits~~ or of the profits of one or more of its establishments with the profits of other undertakings or of one or more of the establishments thereof, or to share the profit pooled;

- to lease its undertaking to another undertaking or otherwise grant possession thereof to another undertaking.

- to carry on its business on behalf of another undertaking.

4. In the case of paragraphs 2 and 3 the absence of approval by the General Meeting may not be relied upon to defeat claims by third parties.

5. The powers of the Supervisory Board pursuant to Article 66 and of the European Works Council pursuant to Article 123 remain unchanged.

Articles 84 and 85 unchanged

Article 86

1. A General Meeting shall be convened by notice published in the company journals not less than four weeks before the date of the meeting.

Article 86

1. A General Meeting shall be convened (seven words deleted) not less than thirty days before the date of the meeting.

It shall be convened by notice published in the company journals. Holders of registered shares shall receive personal written invitations to attend the meeting.

2. The notice shall set out the agenda and the proposals concerning each item thereon.

3. The shareholder or shareholders referred to in paragraph 1 of Article 85 shall be entitled, within one week of publication of the notice provided for in the preceding paragraph, to require counter-proposals confined strictly to items on the agenda, to be published in like manner to the agenda not later than ten days prior to the meeting, unless such counter-proposals would involve a resolution inconsistent with this Statute or the Statutes of the company, or an identical counter-proposal has been rejected by a General Meeting during the previous five years.

4. The general Meeting may pass resolutions upon items not included in the duly published agenda only by unanimous vote of all the shareholders of the company. The meeting may, however, remove one or more members of the Supervisory Board appointed by the General Meeting, and may replace them without the matter appearing on the agenda, provided that one half of the capital is present or represented.

Article 87

1. The members of the Board of Management and of the Supervisory Board shall attend General Meetings in a consultative capacity.

2. Every shareholder and every holder of a share certificate or of debentures convertible into shares is entitled to attend the General Meeting.

2. unchanged

3. The shareholder or shareholders referred to in paragraph 1 of Article 85 shall be entitled, within one week of publication of the notice provided for in the preceding paragraph, to require counter-proposals confined strictly to items on the agenda, to be published in like manner to the agenda not later than ten days prior to the meeting (33 words deleted).

4. The General Meeting may pass resolutions upon items not included in the duly published agenda only by unanimous vote of all the shareholders of the company (40 words deleted).

Failing unanimity, it may resolve only to convene a new General Meeting with a new agenda.

Article 87

1. The members of the Board of Management and the Supervisory Board shall attend General Meetings in a consultative capacity.

However, if they are themselves shareholders in the company, they shall be entitled to attend General Meetings with voting rights, but such rights shall not extend to the decision of discharge.

2. Every shareholder and every holder of a share certificate or of debentures convertible into shares is entitled to attend the General Meeting.

Holders of share certificates or of debentures convertible into shares shall not, however, be entitled to vote.

3. The Statutes may make attendance at a General Meeting conditional upon the lodging of the scrip certificates with a bank at least fifteen days prior to the meeting and until the conclusion thereof. In such case, the banks shall forthwith give notice of such deposit to the company, indicating the nature and nominal value of the certificates and the names and addresses of the persons lodging the same.

3. unchanged

4. In lieu of the lodging of certificates provided for by paragraph 3, the Statutes may require that notice of intention to attend the meeting be given in writing or by telegram at least eight days prior to the holding thereof. If so, the information required under paragraph 3 shall be communicated to the company.

4. unchanged

5. Where the Statutes contain such provisions as are mentioned in paragraphs 3 and 4, a note to this effect shall appear in the notice convening the meeting.

5. unchanged

Article 88 unchanged

Article 89

Article 89

1. Unless otherwise provided by the Statutes, the chairman of the Supervisory Board shall preside at General Meetings, or, in his absence, the vice-chairman of that Board, and in the absence of the vice-chairman, the oldest member thereof. In the absence of any member of the Supervisory Board, the meeting shall elect its own chairman.

1. unchanged

2. A list of persons present shall be prepared by a notary. Before opening the meeting, the said list shall be made available in the assembly hall for perusal by those attending the meeting. It shall record the name and place of residence of all certificate holders present and represented, and also the number, description and nominal value of their shares and, if there is more than one class of shares, the class to which the certificates relate. Where a proxy is also attending in his own right as a shareholder, separate entries should be made.

2. (11 words deleted) Before opening the meeting, a list of persons present shall be made available in the assembly hall for (two words deleted) those attending the meeting. It shall record the name and place of residence of all certificate holders present and represented, and also the number, description and nominal value of their shares and, if there is more than one class of shares, the class to which the certificates relate. Where a proxy is also attending in his own right as a shareholder, separate entries should be made.

3. Any person attending a General Meeting is entitled to speak upon matters appearing on the agenda and which the chairman has opened to debate. Any shareholder may make counter-proposals on any item on the agenda. The chairman shall regulate the discussion and may take any steps which he considers appropriate for the orderly conduct of business.

3. unchanged

4. The chairman shall determine the order of voting if there is more than one proposition on the same item. The Statutes may provide for a secret vote in respect of the appointment or removal of members of the Supervisory Board; a General Meeting may at any time, by majority vote, decide to the contrary. Voting in respect of appointments may be by acclamation provided that no objection be raised by any shareholder entitled to vote.

4. unchanged

Articles 90 to 92 unchanged

Article 93

Article 93

1. Shareholders may, gratuitously, agree to entrust to one of their number, or to a third party, the decision as to the manner in which their right of vote is to be exercised. All agreements pursuant to which shareholders bind themselves to vote in accordance with the directions of the Board of Management or of the Supervisory Board, or in support of proposals of those organs, shall be void.

1. unchanged

2. Notice of the agreement shall be given to the company. The agreement shall not take effect, vis-à-vis the company, until such notice has been given. Votes cast in pursuance of such agreement, prior to the notice, shall be void.

2. Notice of the agreement shall be given to the company. (17 words deleted). Votes cast in pursuance of such agreement, prior to the notice, shall be void.

3. The names of the parties to the agreement and the total nominal value of their shares shall be set out in the management report. The date of expiry of the agreement shall also be specified in the said report.

3. unchanged

Article 94 unchanged

Article 95

1. Subject to the special procedures and provisions set out in this Statute, resolutions of the General Meeting may, in accordance with the conditions hereinafter contained, be cancelled on the grounds of violation of the provisions hereof, or of the Statutes of the company.

2. Proceedings for cancellation may be brought by any shareholder or by any other interested person who shows that the observance of the provisions is a matter in which he has a proper interest.

3. The proceedings for cancellation shall be brought before the court within whose jurisdiction the registered office of the S.E. is situate, within three months of filing of the Minutes of the Meeting in the European Commercial Register, and shall be against the company. If the proceedings are based on grounds which have been concealed, they may be pleaded within the three months following discovery thereof.

4. On the application of the plaintiff and after hearing the company, the judge may suspend implementation of the resolution in question. He may, likewise, on the application of the company, and after hearing the plaintiff, order that the plaintiff provide security to cover any damage caused by the proceedings or by suspension of implementation of the resolution in the event of dismissal of the proceedings as being unfounded.

5. A judgment ordering cancellation or suspension of a resolution shall have effect in respect of all parties, subject to the rights acquired vis-à-vis the company by third parties acting in good faith. The Board of Management shall forthwith file two authenticated copies of the judgment or order in the European Commercial Register.

6. The judge may not order cancellation of a resolution where the resolution has been replaced by another passed in accordance with this Statute and the Statutes of the company. The judge may, if he thinks fit, allow such time as may be necessary for the meeting to pass such resolution.

Article 95

1. unchanged

2. Proceedings for cancellation may be brought by any shareholder or by any other person who has an interest in the observance of the provisions.

3. unchanged

4. unchanged

5. unchanged

6. unchanged

Articles 96 and 97 unchanged

Article 98

1. The court shall deal with the application in chambers and shall hear both parties.
2. If, in the opinion of the court, the application is valid, it shall, at the expense of the company, appoint one or more special commissioners and specify the matters which they are to investigate. Their duties may, on their own application, be enlarged by the court, subject to hearing the company.
3. There shall be no appeal against a decision to appoint special commissioners or, where applicable, to enlarge their duties. Such decisions shall be published in the company journals.
4. The court may require the company to deposit a sum of money or procure a banker's guarantee to be given in respect of payment of fees of the special commissioners. The amount of their remuneration shall be determined by the court on completion of their investigations and after they have been heard by the court. The court may, during the course of the investigation, increase the amount required to be deposited.
5. Special commissioners shall have the same powers as the auditors of the annual accounts.
6. On completion of their investigations the special commissioners shall submit their report to the court which appointed them.

Article 99

1. The registrar shall notify the parties immediately after the special commissioner's report has been filed. The parties shall be entitled to obtain a copy thereof. The court shall act upon the application of the first party to apply.

Article 98

1. unchanged
2. If, in the opinion of the court, the application is prima facie valid, it shall, at the expense of the company, appoint one or more special commissioners and specify the matters which they are to investigate. Their duties may, on their own application, be enlarged by the court, subject to hearing the company.
3. unchanged
4. unchanged
5. unchanged
6. unchanged

Article 99

1. Each party may apply to the court within two months of the filing of the report. If no such application has been made, the court shall declare the matter closed.

2. Having full regard to the contents of the report and after hearing the parties, the court may:

- (i) suspend from office one or more members of the Board of Management or of the Supervisory Board;
- (ii) dismiss them;
- (iii) appoint new members to these bodies on a temporary basis.

3. The court shall have power of control over action initiated by it. On application by the company it may curtail or extend the period of suspension. It shall determine the fees to be paid by the company to persons appointed on a temporary basis.

4. The court may make orders for giving interim effect to decisions which it has made under paragraphs 2 and 3. These shall apply in relation to third parties from the date of their publication in the company journals. They shall, further, be registered in the European Commercial Register.

2. The court shall pronounce judgment on the basis of the facts before it, after hearing the parties. It shall not be bound by applications made by the parties. It shall order the submission of any evidence it considers necessary.

3. The court shall decide measures appropriate to the circumstances. It may:

- (i) temporarily suspend from office one or more members of the Board of Management or of the Supervisory Board;
- (ii) dismiss them;
- (iii) appoint new members to these bodies on a temporary basis;
- (iv) suspend or rescind decisions and resolutions of the Board of Management, Supervisory Board or General Meeting;
- (v) dissolve the company.

The court may defer the adoption of measures, provided that the company itself puts an end, within a period of time fixed by the court, to the irregularities which are the subject of the action.

4. The court shall have power of control over action initiated by it. On application by the company it may curtail or extend the duration of temporary measures. It shall determine the fees to be paid by the company to persons appointed on a temporary basis.

5. The court may make orders for giving interim effect to decisions which it has made under paragraphs 3 and 4, with the exception of dissolution of the company. The court's decisions under paragraphs 1, 3 and 4 shall be registered in the European Commercial Register and published in the company journals. Orders of the court shall apply in relation to third parties from the date of their publication in the company journals.

TITLE V

REPRESENTATION OF EMPLOYEES IN THE EUROPEAN COMPANY

Article 100

A European Works Council shall be formed in every European company having establishments in more than one of the Member States.

Article 100

A European Works Council shall be formed in every European company having at least two establishments in different Member States, each with at least 50 employees.

Article 101 unchanged

Article 102

For establishments situate in the countries hereinafter specified in this Article, the following shall constitute employees' representative bodies within the meaning of Section One of this Title:

- (i) The Federal Republic of Germany: the 'Betriebsräte' established under the decree of 11 October 1952;
- (ii) Belgium: the 'ondernemingsraden' or 'conseils d'entreprise' established under the law of 20 September 1948;
- (iii) France: the 'comités d'entreprise' established by the decree of 22 February 1945;
- (iv) Italy: the 'commissioni interne d'azienda' established in pursuance of the collective agreement of 18 April 1966;
- (v) Luxembourg: the 'délégations ouvrières principales' established under the law of 20 November 1962 and the 'délégations d'employés' established under the law of 20 April 1962;
- (vi) The Netherlands: the 'ondernemingsraden' established under the law of 4 May 1950.

Article 102a

Article 102

- 1. The employees' representative bodies in the individual Member States, to which reference is made in the provisions of this Title, are listed in Annex I to this Statute
- 2. The Commission of the European Communities will amend this annex on the basis of changes in the statutory or collective agreement provisions governing employee representation, as soon as a Member State notifies it of such changes.

Article 102a

For the purposes of the provisions of this Title, the question whether a trade union is represented in an establishment of the European company shall be determined in accordance with the arrangements in force in the country in which the establishment is situate.

Article 103

1. The members of the European Works Council shall be elected by the employees in each establishment of the European company.

2. Where all the assets and liabilities of a European company having establishments in more than one of the Member States are transferred to another European company, the members of the European Works Council of the European company by which the transfer is made shall become members of the European Works Council of the European company to which the transfer is made.

3. Where all the assets and liabilities of a company incorporated under a national law, or of a European company having establishments only in one of the Member States, are transferred to a European company, the European Works Council of the European company to which the transfer is made shall be enlarged in order to accommodate those members who are elected by the representative bodies of the company by which the transfer is made.

Article 103

1. The members of the European Works Council shall be elected by the employees in establishments of the European Company which have at least 50 employees.

2. Each establishment of the European company shall elect:

- for 50 to 199 employees:
1 representative

- for 200 to 499 employees:
2 representatives

- for 500 to 999 employees:
3 representatives

- for 1,000 to 2,999 employees:
4 representatives

- for 3,000 to 4,999 employees:
5 representatives

- for each additional 5,000 employees:
1 representative

The same number of alternates shall also be elected.

2. deleted

3. deleted

Article 103a

Article 103a

1. Where all the assets and liabilities of a European company (~~10 words deleted~~) are transferred to another European company, and a European Works Council has been formed in both companies, the members of the European Works Council of the European company by which the transfer is made shall become members of the European Works Council of the European company to which the transfer is made.

2. If a European company in which a European Works Council has been formed acquires one or more establishments with a minimum of 50 employees under conditions other than those specified in paragraph 1, or if it opens one or more new establishments with a minimum of 50 employees, the European Works Council of the European company shall be enlarged to accommodate members elected in those establishments in accordance with Art. 103(2), unless those establishments are acquired or opened less than 15 months before the end of the period of office of the European Works Council.

Article 104

The election of members to the European Works Council shall be subject to the rules which apply to the election of employee members of the representative bodies referred to in Article 102.

Article 104

The election of members to the European Works Council shall be subject to the rules contained in Annex II to this Statute. The said rules are an integral part of the Statute.

Article 105

Each establishment of the S.E. shall elect to the European Works Council:

from 200 to 99 employees: 2 representatives

from 1,000 to 2,999 employees:
3 representatives

from 3,000 to 4,999 employees:
4 representatives

Where there are more than 5,000 employees, 1 representative for each additional 5,000 employees.

The same number of alternates shall be elected.

Article 105

deleted

Article 106

Voting shall take place within the two months following the formation of the S.E.

Article 107

1. The European Works Council shall be elected for a period of three years.
2. The election of an employee to the European Works Council shall in no way affect his position as a member of the representative bodies referred to in Article 102.

Article 108

The term of office of the members of the European Works Council shall cease upon the expiration of the mandate of the European Works Council, or by their resignation, or by termination of their contract of employment or by their ceasing to be eligible for membership.

Article 106

1. The first elected European Works Council shall, within 100 days of the formation of the S.E. or of the date on which the conditions of Article 100 are met, be summoned to a constituent meeting by the Board of Management of the S.E., provided that at least half the members of the European Works Council have been elected.

2. At least 15 days shall elapse between such summons and the date of the constituent meeting.

Article 107

1. The European Works Council shall be elected for a period of four years.
2. The election of an employee to the European Works Council shall in no way affect his position as a member of the representative bodies listed in Annex I to this Statute.

Article 108

The term of office of the members of the European Works Council shall cease upon the expiration of the mandate of the European Works Council, or in the cases specified in Article 103a, on the expiration of the mandate of the European Works Council of the European company to which the transfer is made, or by their resignation, or by termination of their contract of employment or by their ceasing to fulfil the conditions for membership laid down in Annex II to this Statute.

Application for the exclusion of a member of a European Works Council or for the dissolution of the Council on the grounds of serious breach of obligations under the present Statute may be made to the court competent under national law by not less than one fourth of the elector employees, by the S.E. or by a trade union represented in the establishment of the S.E.

In the event of the dissolution of the European Works Council, the court competent under national law shall forthwith constitute an electoral commission to organize new elections.

In the event of serious breach of the obligations incumbent on the Board of Management under the present Statute, the European Works Council or a trade union represented in the company may bring proceedings to terminate the breach before the court competent under national law. Where the Board of Management disregards a judicial decision which has acquired binding force, the court, after hearing submissions and upon summons to the Board of Management, shall impose a fine not exceeding 5,000 u.a. for each offence.

Article 109

1. Two months before the date of expiration of the mandate of the European Works Council, elections shall be held to choose the members of the European Works Council for the following term.
2. The first meeting of the new European Works Council shall be convened by the chairman of the old Council not later than one month before expiration of the mandate thereof.
3. The old Council shall continue to deal with current business until the first meeting of the new European Works Council is held.

Article 110

Any member of the European Works Council whose mandate expires before its normal term or who is temporarily unable to carry out his mandate shall be replaced by an alternate member.

Article 109

1. deleted.

1. The newly elected European Works Council shall hold its first meeting not later than thirty days after expiry of the mandate of the old Council. The meeting shall be convened by the chairman of the old Council.

2. unchanged

3. If no representatives have yet been elected in an establishment on the date of the first meeting of the European Works Council, the representatives of that establishment on the old Council shall continue in office until the election has been held.

Article 110

Any member of the European Works Council whose mandate expires before its normal term or who is temporarily or permanently unable to carry out his mandate shall be replaced by the corresponding alternate member.

Article 111

1. After the European company has been formed, the first meeting of the European Works Council shall be convened by the Board of Management within one month from the date of the election.
2. The members present at that meeting shall elect a chairman and draw up its internal rules of procedure.
3. The mandate of the European Works Council within the meaning of Article 107 shall have effect as from the day of the first meeting.

Article 112

No employee who is an actual or alternate member of the European Works Council shall be dismissed from his employment during his term of office on the European Works Council nor during the three years following the period thereof, save upon grounds which, in accordance with the national law applicable, entitle the European company to terminate the contract of employment without notice.

Article 113

1. During their term of office, the members of the European Works Council shall be exempt from the obligation to carry out the duties of their employment to the extent to which they consider it necessary for the performance of their duties on the Council.
2. The members of the European Works Council shall continue to receive the wages and salaries and all allowances and bonuses which were payable to them before their election to the European Works Council. They shall be entitled to all benefits and increases in wages, salaries, allowances and bonuses.

Article 111

1. The members present at the first meeting of the European Works Council shall elect a chairman and vice-chairman and shall draw up rules of procedure.
2. The European Works Council may take decisions at its first meeting if all the members have been invited to the meeting and at least half of them are present.
3. unchanged

Article 112

1. No employee who is an actual or alternate member of the European Works Council shall be dismissed from his employment during his term of office on the European Works Council nor during the two years following the period thereof, save upon grounds which, in accordance with the national law applicable, entitle the European company to terminate the contract of employment without notice.

The said form of dismissal, which shall be exceptional only, shall not, however, be applied without prior consultation with the European Works Council.

2. Candidates for election to the European Works Council shall be entitled to the same protection.

Article 113

1. During their term of office, the members of the European Works Council shall be exempt from the obligation to carry out the duties of their employment to the extent to which the European Works Council considers it necessary for the performance of their duties on the Council.
2. unchanged

Article 114

Present and former members of the European Works Council shall be bound particularly to keep the secrets of the undertaking and its affairs which come to their knowledge by virtue of their membership of the European Works Council and which have been declared secret by the Board of Management. This provision shall apply also to alternate members.

Article 114

Present and former members of the European Works Council shall be bound particularly to keep the secrets of the undertaking and its affairs which come to their knowledge by virtue of their membership of the European Works Council and which have been declared secret by the Board of Management. This provision shall also apply to alternate members and to the trade union delegates and experts referred to in Articles 116 and 117.

Article 115 unchanged

Article 116

1. At the request of one sixth of its members, the European Works Council may decide, by majority vote, that the delegate of a trade union represented in an establishment of the European company shall be entitled to attend certain meetings of the Council in an advisory capacity.

2. The question whether a trade union is represented in an establishment of the S.E. shall be determined in accordance with the law of the country in which the establishment is situate.

Article 116

1. (9 words deleted) The European Works Council may decide, by majority vote, that the delegate of a trade union represented in an establishment of the European company shall be entitled to attend certain meetings of the Council in an advisory capacity.

2. deleted

Article 117

The European Works Council may, for clarification of certain questions, consult one or more experts if it considers this to be necessary for the proper discharge of its duties. The Board of Management shall make available to the experts, free of charge, all documentation necessary for their work, save where this would be seriously inimical to the interests of the company. The costs incurred in consulting experts shall be borne by the S.E.

Article 117

The European Works Council may, for clarification of certain questions, consult one or more experts if this is warranted by the difficulty of the questions. The Board of Management shall make available to the experts, free of charge, all documentation necessary for their work, save where this would be seriously inimical to the interests of the company. The costs incurred in consulting experts shall be borne by the S.E.

Article 118 unchanged

Article 119

1. The European Works Council shall be responsible for representing the interests of the employees of the S.E.

Article 119

1. unchanged

2. The European Works Council shall confine itself to dealing with those matters which concern the S.E. as a whole or several of its establishments. It shall not be competent in matters which are the subject of a collective agreement within the meaning of Section Four of this Title.

3. The European Works Council shall ensure that effect be given to provisions of law existing for the benefit of the employees of the S.E., collective agreements made in accordance with Section Four, and agreements concluded within the company as a result of its efforts.

Article 120

1. The Board of Management and the European Works Council shall meet at regular intervals for joint discussion.

2. The Board of Management of the S.E. shall keep the European Works Council regularly informed of the general economic position of the S.E. and of its future development. To this end it shall send to it every quarter a report on the preceding quarter. This report shall contain at least:

- a general survey of developments in the sectors of the economy in which the S.E. operates;
- a survey of the development of the business of the S.E.;
- an exposé of likely developments and of their repercussions on the employment situation;
- a survey of investment resolved to be made.

2. The competence of the European Works Council shall extend to matters which concern more than one establishment not located in the same Member State and which cannot be settled by national works councils acting within their own establishment. Its competence shall not extend to the negotiation or conclusion of conventions or collective agreements concerning the working conditions of employees, unless a collective agreement expressly authorizes the conclusion of supplementary agreements at establishment level.

3. unchanged

Article 120

1. The Board of Management and the European Works Council shall meet at regular intervals and in any event not less than four times a year.

2. The Board of Management of the S.E. shall inform the European Works Council not less than once a quarter of the general economic position of the S.E. and of its future development. To this end, it shall send to it every quarter a report on the preceding quarter. This report shall give full and up-to-date information on:

- the economic and financial position of the S.E.
- the state of production and marketing
- the production and investment programme
- rationalization projects
- production and working methods, especially the introduction of new working methods
- any other fact or project which may have an appreciable effect on the interests of the employees of the European company.

3. The Board of Management shall inform the European Works Council of every event of importance.

Article 121

1. The European Works Council shall receive the same communications and documents as the shareholders.

2. The annual accounts shall after adoption be sent to the European Works Council together with the management report.

Article 122 unchanged

Article 123

1. Decisions concerning the following matters may be made by the Board of Management only with the agreement of the European Works Council:

- (a) rules relating to recruitment, promotion and dismissal of employees;
- (b) implementation of vocational training;
- (c) fixing of terms of remuneration and introduction of new methods of computing remuneration;
- (d) measures relating to industrial safety, health and hygiene;
- (e) introduction and management of social facilities;
- (f) daily time of commencement and termination of work;
- (g) preparation of the holiday schedule.

3. unchanged

Article 121

1. unchanged

2. In particular, the annual accounts shall after adoption be sent to the European Works Council together with the management report, and shall be duly commented on.

Article 123

1. Decisions concerning the following matters may be made by the Board of Management only with the agreement of the European Works Council:

- (a) unchanged
- (b) unchanged
- (c) unchanged
- (d) unchanged
- (e) unchanged
- (f) the establishment of basic criteria for the daily time of commencement and termination of work;
- (g) the establishment of basic criteria for preparing holiday schedules;
- (h) permanent closure, or closure for an indefinite period of time, of the undertaking or of parts thereof.
- (i) the establishment of a social plan in the event of closure following liquidation or for other reasons, or transfer of the undertaking or of parts thereof.

2. Any decision taken by the Board of Management in respect of the matters specified in paragraph 1 without the agreement of the European Works Council shall be void.

2. unchanged

3. If the European Works Council withholds its agreement or does not express its opinion within a reasonable period, agreement may be given by the court of arbitration mentioned in Article 128.

3. unchanged

4. In respect of the decisions referred to in paragraph 1 above, employees' representative bodies set up in the various establishments shall exercise the right to participate, accorded by national law, only when the European Works Council is not competent to do so under Article 119, paragraph 2, first sentence.

4. unchanged

Article 124

Article 124

1. The Board of Management shall consult the European Works Council before making any decision concerning:

1. The Board of Management shall consult the European Works Council before making any decision concerning:

- (a) job evaluation
- (b) rates of wages per job or for piecework.

- (a) unchanged
- (b) unchanged

- (c) the introduction and application of any technical device intended to check the conduct and performance of employees.

2. Article 123, paragraph 2 shall apply.

2. unchanged

3. The Board of Management may make a decision without the opinion of the European Works Council where the latter does not inform the Board of its opinion within a reasonable time.

3. unchanged

Article 125

Article 125

1. The Board of Management shall also consult the European Works Council before making any decision relating to:

1. The Board of Management shall also consult the European Works Council before making any decision relating to:

- (a) the closure or transfer of the undertaking or of substantial parts thereof;

- (a) the closure for a definite period or the transfer of the undertaking or of parts thereof; (one word deleted)

- (b) substantial curtailment or extension of the activities of the undertaking;
- (c) substantial organizational changes within the undertaking;
- establishment of long-term cooperation with other undertakings or the termination thereof.

2. In the cases specified in paragraph 1, the Supervisory Board shall not give the approval required under Article 66, paragraph 1 until the European Works Council has expressed its opinion, save where the European Works Council has not done so within a reasonable time.

Article 126

1. Consultation by the Board of Management with the European Works Council shall be in writing, setting out the reasons underlying a decision and the likely consequences of the decision from the point of view of the business and of the employees.

2. If the Board of Management disregards the recommendations contained in the European Works Council's opinion, it shall state its reasons for so doing.

Article 127

1. The European Works Council may, to the extent that it is competent, make collective agreements with the Board of Management of the S.E. in respect of the matters specified in Articles 123 and 124.

2. Collective agreements made by the European Works Council shall have priority over agreements made by the representative bodies referred to in Article 102.

- (b) curtailment or extension of the activities of the undertaking; (one word deleted)
- (c) organizational changes within the undertaking; (one word deleted)
- (d) unchanged

2. unchanged

Article 126

1. Consultation by the Board of Management with the European Works Council, which shall be given full information in good time, shall be in writing, setting out the reasons underlying a decision and the likely consequences of the decision from the point of view of the business and of the employees.

2. unchanged

Article 127

1. unchanged

2. Collective agreements made by the European Works Council shall have priority over agreements made by the representative bodies listed in Annex I to this Statute, without prejudice to any provisions more favourable to the employees contained in national collective agreements.

Article 128

1. A court of arbitration shall be established for the settlement of disputes between the European Works Council and the Board of Management of the S.E.

2. The court of arbitration shall be composed of assessors, half of whom shall be appointed by the European Works Council and half by the Board of Management of the S.E., and an impartial chairman appointed by mutual agreement between the parties. In default of agreement as to appointment of the chairman or as to the assessors in general, they shall be appointed by the court within whose jurisdiction the registered office of the company is situate.

3. The members of the court of arbitration shall be subject to special obligations in the matter of professional secrecy.

4. Decisions of the court of arbitration shall be binding on both parties.

Article 129 unchanged

Article 130

1. A Group Works Council shall be informed in every S.E. which is the controlling company in a group having establishments in a number of Member States or whose dependent undertakings have establishments in a number of Member States, notwithstanding that such controlling S.E. is itself dependent on another company.

Article 128

3. The provisions of collective agreements shall not be altered to the disadvantage of employees by individual agreements.

1. A court of arbitration shall be established for the settlement of disputes between the European Works Council and the Board of Management of the S.E. In matters requiring consultation with the European Works Council, the court of arbitration shall be competent in questions of procedure. In matters requiring the agreement of the European Works Council by virtue of Article 123, it shall be competent to decide the issue.

2. unchanged

3. unchanged

4. unchanged

Article 130

1. A Group Works Council shall be formed in every S.E. which is the controlling company in a group, where the group comprises at least two undertakings with at least 50 employees each, notwithstanding that such controlling S.E. is itself dependent on another company.

2. Other bodies which represent the common interests of employees vis-à-vis the Board of Management of the controlling S.E. may be formed in place of the Group Works Council. Such bodies shall have, in relation to the Board of Management of the controlling S.E., the same rights and obligations as the Group Works Council.

Article 131

The members of the Group Works Council shall be appointed by:

- (a) the European Works Councils in the companies within the group, where these are European companies in which a European Works Council must be formed pursuant to Article 100;
- (b) the employees' representative bodies referred to in Article 102 in undertakings within the group, where these are companies incorporated under national law or are European companies in which it is not necessary to form a European Works Council.

Article 132

The representative bodies referred to in Article 131 shall appoint delegates to the Group Works Council from amongst their own members, in accordance with the following scale:

1 representative for each undertaking with less than 1,000 employees,

2 representatives for each undertaking with from 1,000 to 4,999 employees,

2. deleted

Article 131

The members of the Group Works Council shall be appointed by:

- the European Works Council in (8 words deleted) European companies in which a European Works Council must be formed pursuant to Article 100;
- in undertakings within the group (4 words deleted) incorporated under national law or in European companies in which it is not necessary to form a European Works Council:
 - (a) the central employees' representative bodies in the undertakings within the group; if there is no central employees' representative body, jointly by the employees' representative bodies set up at works level in these undertakings and referred to in Annex I to this Statute;
 - (b) the recognized representatives of employees in undertakings within the group in Member States where there are no employees' representative bodies within the meaning of Annex I to this Statute.

Article 132

The representative bodies referred to in Article 131 shall appoint delegates to the Group Works Council from amongst their own members, in accordance with the following scale:

1 representative for each undertaking with 50 to 999 employees,

2 representatives for each undertaking with from 1,000 to 4,999 employees,

3 representatives for each undertaking with from 5,000 to 9,999 employees,

4 representatives for each undertaking with from 10,000 to 19,999 employees,

and an additional representative for every further 10,000 employees.

3 representatives for each undertaking with from 5,000 to 9,999 employees,

4 representatives for each undertaking with from 10,000 to 19,999 employees,

and an additional representative for every further 10,000 employees. An equal number of alternates shall also be appointed.

Articles 133 to 136 unchanged

Article 137

1. The employees of the S.E. shall be represented on the Supervisory Board of the company. They shall appoint one member for every two appointed by the General Meeting. The Statutes may provide for a higher number of employees' representatives.

2. Where the number of employees' representatives on the Supervisory Board does not exceed three, at least one of them shall be a person who is not employed in an establishment of the S.E. Where the number of employees' representatives is four or more, at least two of them shall be persons who are not employed in an establishment of the S.E.

Article 138

1. Employees shall not be represented on the Supervisory Board if not less than two thirds of the employees of the S.E. so decide.

2. A decision to this effect may be taken only once during the term of office of the Supervisory Board.

Article 137

1. The Supervisory Board of the S.E. shall consist as to one third of representatives of the shareholders, as to one third of representatives of the employees and as to one third of members co-opted by these two groups.

2. The employees' representatives shall be persons employed in an establishment of the S.E. or in an undertaking controlled by it.

However, where the number of employees' representatives on the Supervisory Board is three, one of them shall be a person who is not in the above-mentioned employment relationship.

Where the number of employees' representatives is four or more, two of them shall satisfy this requirement.

Article 137a

The election of employees' representatives to the Supervisory Board shall be governed by the rules laid down in Annex III to this Statute. The said rules are an integral part of this Statute.

Article 138

1. unchanged

2. A decision to this effect shall be valid for the remainder of the term of office of the Supervisory Board in the course of which it was taken.

Article 139

1. The members of the representative bodies referred to in Article 102 shall elect representatives of the employees to the Supervisory Board. They shall not be bound by the decisions and instructions of the bodies of which they are members.

2. Each member shall have a number of votes equal to the number of employees in his establishment divided by the number of members of the representative body in that establishment. A fraction of a vote greater than one half shall be counted as a whole vote.

3. Election shall be by list.

4. The list of nominations must contain the names of as many candidates as there are posts to be filled on the Supervisory Board. An alternate shall be elected for each candidate.

5. The list of nominations shall take account of the matters specified in Article 137, paragraph 2. It shall include candidates of different nationalities in proportion to the number of employees in each of the Member States.

6. The list adopted shall be that which receives the most votes and at least one half of the votes polled.

7. If the majority required is not obtained on the first poll, a second poll shall be held. In this poll, voting shall take place only on the two lists which gained most votes during the first poll. The list adopted shall be that which receives the most votes.

Article 140

1. Lists of candidates may be submitted by the representative bodies referred to in Article 102, by the European Works Council, by the trade unions represented in the establishments of the S.E. and by the employees of the S.E. The Group Works Council may also submit lists of candidates for election to the Supervisory Board of an S.E. which is the controlling company of a group within the meaning of Article 223.

Article 139

1. deleted

2. deleted

3. deleted

4. deleted

5. deleted

6. deleted

7. deleted

Article 140

1. deleted

2. The lists of candidates submitted by employees shall be signed by not less than one tenth of the total number of employees in the S.E. or by not less than 100 employees of the S.E.

Article 141

1. The election shall be held during the two months following formation of the S.E.

2. Two months before expiration of the term of office of the Supervisory Board, elections shall be held to choose the employees' representatives for the following term.

Article 142

The Supervisory Board shall, notwithstanding that election of the employees' representatives shall not have taken place within the two months following formation of the S.E. or prior to commencement of a new term of office of the Supervisory Board, be entitled to exercise its powers through the members elected by the General Meeting, until such time as the employees' representatives shall be elected.

Article 143

1. Before the election, an electoral commission shall be appointed.

2. The electoral commission shall be responsible for preparing and holding the election and also for voting in pursuance of Article 138.

3. The electoral commission shall be composed of members of the representative bodies referred to in Article 102 in proportion to the number of employees whom they represent. The number of such members shall not exceed twenty-five.

4. The members of the electoral commission shall not be bound by the decisions or instructions of the representative bodies of which they are members.

2. deleted

Article 141

1. deleted

2. deleted

Article 142

deleted

Article 143

1. After the formation of the S.E., the members of the Supervisory Board representing the shareholders shall perform the Board's duties alone until the election of the employees' representatives.

2. If new representatives have not been elected to the Supervisory Board before the term of office of employees' representatives expires, the previous representatives shall remain in office until an election is held.

3. deleted

4. deleted

Article 144

The members of the Supervisory Board elected by the employees shall hold office for the same period as those appointed by the General Meeting. Articles 108 and 110 shall apply.

Article 144

The members of the Supervisory Board elected by the employees shall hold office for four years. Articles 108, paragraph 1, and 110 shall apply.

Article 144a

1. The court within whose jurisdiction the S.E. has its head office may, upon application or on its own initiative, dismiss an employees' representative on the Supervisory Board of the S.E. who has committed a serious breach of his legal obligations.
2. The application referred to in paragraph 1 may be made by one fourth of the employees, by a trade union represented in the establishments of the S.E. or in undertakings controlled by it, or by the European Works Council. Application to the court may also be made by the Supervisory Board of the S.E.

Article 145

Employees' representatives on the Supervisory Board shall have the same rights and duties as the other members of the Supervisory Board. They shall enjoy the same protection in the matter of dismissal as members of the European Works Council.

Article 145

Employees' representatives on the Supervisory Board shall have the same rights and duties as the other members of the Supervisory Board. They shall enjoy the same protection in the matter of dismissal as members of the European Works Council.

Any dismissal effected in breach of this provision shall be null and void.

Articles 146 to 246 unchanged

TITLE IX

WINDING UP, LIQUIDATION, INSOLVENCY AND SIMILAR PROCEDURES

Article 247

Article 247

An S.E. shall be wound up:

An S.E. shall be wound up:

- (a) by resolution of the General Meeting;
- (b) on expiration of the period for which the company was formed as specified in its Statutes;
- (c) in the circumstances referred to in Article 249, paragraph 4; or
- (d) on declaration of insolvency of the S.E.

- (a) unchanged
- (b) unchanged
- (c) by way of legal sanction as specified in the present regulation
- (d) unchanged

Article 248 unchanged

Article 249

1. If losses shown in the books reduce a company's net assets below half its share capital, the General Meeting convened for the purpose of considering the annual accounts pursuant to Article 84 shall decide whether the company should be wound up. Where this item is included in the agenda, the Board of Management shall expressly make known its opinion on the question of winding up in a special report approved by the Supervisory Board and referred to in the agenda. Any persons entitled to attend the General Meeting may apply for a copy of this report to be sent to him free of charge fifteen days before the date of the meeting.

2. If it is decided not to wind up the company, its share capital shall be reduced within not more than two years from the date of the General Meeting referred to in paragraph 1 by an amount at least equal to the loss incurred, unless its net assets have in the meantime increased to an amount equal to not less than half of the capital. A reduction of the capital below the minimum level prescribed by Article 4 may be effected, however, only where an increase in the capital to the level prescribed by that Article is effected simultaneously. The Board of Management shall forthwith notify the European Commercial Register of the date on which the said two-year period will expire.

3. In each case the General Meeting shall pass its resolutions in accordance with the provisions which apply to alteration of the Statutes.

4. If a General Meeting has not been held, or if it has been unable within the period prescribed by paragraph 2 to pass valid resolutions either for winding up the company or for reducing its capital under the conditions hereinbefore contained, the company shall at the end of the two-year period prescribed by paragraph 2 automatically be dissolved.

Article 249

1. If losses shown in the books reduce a company's net assets below half its share capital, the General Meeting convened for the purpose of considering the annual accounts pursuant to Article 84 shall decide whether the company should be wound up. Where this item is included in the agenda, the Board of Management shall expressly make known its opinion in a special report in which the Supervisory Board shall express a reasoned opinion and which shall be referred to in the agenda. Any person entitled to attend the General Meeting may apply for a copy of this report to be sent to him free of charge fifteen days before the date of the meeting.

2. unchanged

3. unchanged

4. If a General Meeting (seven words deleted) has been unable within the period prescribed by paragraph 2 to pass valid resolutions either for winding up the company or for reducing its capital under the conditions hereinbefore contained, the company shall, at the end of the two-year period prescribed by paragraph 2, automatically be dissolved.

Articles 250 to 254 unchanged

Article 255

Article 255

1. Making specific reference to the winding up of the company, the liquidators shall invite the creditors to submit their claims. Notice for this purpose shall be published in the company journals on three occasions, with an interval of not less than two weeks between each.

1. unchanged

2. Every creditor known to the company who has failed to present his claim within three months of the date of the final notice shall, in manner required by his national law, be invited in writing to do so.

2. unchanged

3. Claims which are not presented within one year of the date of the final notice shall be extinguished. Express notice to this effect shall be given in the notices published pursuant to paragraph 1 and in the written invitation pursuant to paragraph 2.

3. Creditors who have failed to present their claims within one year of the date of the final notice shall forfeit the right to do so. Express notice to this effect shall be given in the notices published pursuant to paragraph 1 and in the written invitation pursuant to paragraph 2.

Articles 256-263 unchanged

TITLE X

CONVERSION

Article 264

Article 264

1. By resolution of the General meeting passed in like manner to a resolution for alteration of the Statutes, an S.E. may be converted into a société anonyme constituted under the laws of one of the Member States.

1. unchanged

2. Conversion shall not be effected until three years after formation of the S.E.

2. unchanged

3. The S.E. shall be converted into a company under the laws of the Member State in which its effective management is located.

3. The S.E. shall be converted into a company under the laws of the Member State in which its registered office and effective management have been located for not less than three years.

Articles 265 to 268 unchanged

TITLE XI

MERGER

Article 269

Article 269

1. An S.E. may, without being put into liquidation, merge with another S.E.:

1. An S.E. may, without being put into liquidation, merge with another S.E.:

- (a) by formation of a new S.E. to which the whole of the assets and liabilities of the merging companies shall be transferred in exchange for shares in the new S.E.;
- (b) by transfer to the acquiring S.E. in exchange for share therein of the whole of the assets and liabilities of the S.E. acquired.

2. An S.E. in liquidation may be party to a merger by formation of a new S.E. or by acquisition of an S.E., provided that distribution of the assets amongst the shareholders of the S.E. in liquidation has not begun.

- (a) unchanged
- (b) by transfer to the acquiring S.E. in exchange for share therein of the whole of the assets and liabilities of the S.E. or S.E.'s acquired.

2. An S.E. in liquidation may be party to a merger by formation of a new S.E. or by incorporation in an S.E. provided that distribution of the assets amongst the shareholders of the S.E. in liquidation has not begun.

Article 270 unchanged

Article 271

1. Merger by take-over shall require a resolution of the General Meeting of each S.E. passed in like manner to a resolution for alteration of the Statutes.
2. Sections One and Two of Title II of this Statute shall apply by analogy save where this Article and the following Articles otherwise provide. For purposes of application of those Sections, references to the 'auditors' shall be deleted and there shall be substituted therefor in each case a reference to the 'auditors of the annual accounts'.
3. A merger by take-over shall be notified by the acquiring S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.
4. Notice of registration shall be published in the company journals of the merging companies.
5. The S.E. acquired shall cease to exist on the date of publication in the Official Journal of the European Communities. With effect from that date the liability of the acquiring S.E. shall be substituted for that of the S.E. acquired.

Article 271

1. unchanged
2. unchanged
3. unchanged
4. unchanged
5. The S.E.'s acquired shall cease to exist on the date of publication in the Official Journal of the European Communities. With effect from that date, the liability of the acquiring S.E. shall be substituted for that of the S.E.'s acquired.

Articles 272 and 273 unchanged

Article 274

1. Article 271 shall apply to merger by takeover of a société anonyme incorporated under the law of one of the Member States.
2. The merger shall be notified by the acquiring S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.
3. Notice of registration shall be published by the S.E. in its company journals. The société anonyme acquired shall procure notice of merger to be given in like manner to notice of dissolution of a company as prescribed by the law under which the société anonyme was incorporated.
4. The S.E. taken over shall cease to exist on the date of publication in the Official Journal of the European Communities. With effect from that date the liability of the acquiring S.E. shall be substituted for that of the société anonyme acquired.

Article 274

1. Article 271 shall apply to merger by takeover of (one word omitted) sociétés anonymes incorporated under the law of (three words omitted) Member States.
2. unchanged
3. Notice of registration shall be published by the S.E. in its company journals. The sociétés anonymes acquired shall procure notice of merger to be given in like manner to notice of dissolution of companies as prescribed by the law under which they were incorporated.
4. The S.E.'s taken over shall cease to exist on the date of publication in the Official Journal of the European Communities. With effect from that date, the liability of the acquiring S.E. shall be substituted for that of the sociétés anonymes acquired.

TITLE XII

TAXATION

Article 275

1. Where a European holding company within the meaning of Articles 2 and 3 is formed by sociétés anonymes incorporated under the law of one of the Member States or by European companies, allotment to the shareholders of those companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any charge to tax.
2. Where such shares form part of the assets of an undertaking, the Member States may waive this rule if the shares in the European holding company are not shown in the balance sheet for tax purposes of that undertaking at the same value at which the shares in the sociétés anonymes or in the European companies were shown.

Article 275

1. unchanged
2. unchanged
3. The provisions of the foregoing paragraphs shall be without prejudice to any benefits to which the shareholders may be entitled under conventions on double taxation.

Articles 276 and 277 unchanged

Article 278

1. Where an S.E. whose domicile for tax purposes is in a Member State has a permanent establishment in another Member State, only the latter Member State shall have the right to charge to tax the profits of that establishment.

2. If during any tax period the overall result of the operations of an S.E.'s permanent establishments in that State shows a loss, that loss shall be deductible from the taxable profits of the S.E. in the State in which it is resident for tax purposes.

3. Subsequent profits made by those permanent establishments shall constitute taxable income of the S.E. in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction under paragraph 2 above.

4. The amount of the loss deductible under paragraph 2 above and the amount of profit chargeable to tax under paragraph 3 above shall be determined in accordance with the law of the State in which the permanent establishment or establishments are located.

Article 278

1. unchanged

2. unchanged

3. unchanged

4. unchanged

5. The deduction specified in paragraph 2 shall be final if the legislation applicable to the permanent establishment does not authorize the carry-forward of losses.

Articles 279 to 281 unchanged

TITLE XIII
OFFENCES

Article 282

1. The Member States shall introduce into their law appropriate provisions for creating the offences set out in the annex hereto.

2. Provisions of national law applicable to breach of regulations relating to companies shall not apply to breach of any of the provisions of this Statute.

Article 282

1. For the purpose of introducing into the legislation of Member States uniform provisions for penalizing offences in connection with the present statute, a Community directive shall establish the nature of offences and the appropriate penalties.

2. deleted

TITLE XIV

FINAL PROVISIONS

Article 283

The Member States shall implement the requirements of Article 282 within six months of the making of this regulation.

Article 284

This regulation shall be binding in its entirety and directly applicable in each Member State.

It shall enter into force six months after publication in the Official Journal of the European Communities.

ANNEX

Article 283

The Member States shall implement the requirements of Article 282 within twelve months of the making of this regulation.

Article 284

This regulation shall be binding in its entirety and directly applicable in each Member State.

It shall enter into force twelve months after publication in the Official Journal of the European Communities.

d e l e t e d

ANNEX I

National employees' representative bodies in the establishments
of the S.E. referred to in Article 102 (1) of this regulation

<u>Belgium</u> :	The 'ondernemingsraden' or 'conseils d'entreprise', established under the Law on the Organization of the Economy of 20 September 1948.
<u>Denmark</u> :	The 'samarbejdsudvalg' established under the agreement concerning cooperation and works councils, concluded between the Danish Employers' Confederation and the Danish Trade Union Federation on 2 October 1970.
<u>France</u> :	The 'comités d'entreprise' established pursuant to the decree of 22 February 1945.
<u>Germany</u> :	The 'Betriebsräte' established under the company law of 15 January 1972.
<u>Ireland</u> :	1
<u>Italy</u> :	The 'commissioni interne d'azienda' established in pursuance of the national agreement on the establishment and operation of works committees of 18 April 1966 ²
<u>Luxembourg</u> :	The 'délégations ouvrières principales' established under the Grand-ducal decree of 30 October 1958 as amended by the law of 20 November 1962 and the 'délégations d'employés' established under the law of 20 April 1962 ³
<u>Netherlands</u> :	The 'ondernemingsraden' established under the law on works councils of 28 January 1973
<u>United Kingdom</u> :	1

¹In Ireland and the United Kingdom institutional representation of employees does not yet exist under law or by virtue of collective agreements.

²In the meantime, in many firms 'consigli de fabbrica' have been set up alongside or instead of the 'commissioni interne'. The Commission is therefore requested to modify the text concerning Italy accordingly, possibly in agreement with the Italian government.

³On 6 May 1974 a law was published in the Grand Duchy of Luxembourg instituting joint committees in private sector undertakings and organizing wage-earners' representation in limited companies. The Commission is therefore requested to amend the text concerning Luxembourg accordingly, possibly in agreement with the Luxembourg government

ANNEX 11

Rules for the election of members of the European Works Council

Section I : General provisions

Article 1

Employees of the S.E. who have reached the age of 16 years on the date of the election and have been employed in or have carried out their principal duties in an establishment of the S.E. for at least four months shall be entitled to vote.

Article 2

1. All persons entitled to vote in an establishment who on the date of the election

- have reached the age of 18 years
- have been employed for a total of more than six months in the establishment of the S.E. or one of its founder companies

shall be eligible for election as representatives of the establishment.

2. Persons debarred from public office by judicial decision under the law of the Member States shall not be eligible.

Article 3

1. Representatives shall be elected to the European Works Council by secret direct ballot.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 25 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. The number of candidates on a list shall not exceed twice the number of seats for employees' representatives on the European Works Council. An alternate shall be named for each candidate. No candidate or alternate shall appear on more than one list of candidates at the same time.

Article 4

1. Where only one representative is to be elected to the European Works Council, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, the seat shall be allocated by lot.

Article 5

1. Where more than one representative is to be elected to the European Works Council and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.

2. Each person entitled to vote may vote for one list of candidates. In addition, he may cast a preference vote for a candidate whose name appears on the list for which he has voted.

3. If an elector votes for a candidate, his vote shall count as a vote for the list on which the candidate appears and as a preference vote for the candidate concerned.

Article 6

1. The seats on the European Works Council which are to be attributed to the lists of candidates in proportion to the numbers of votes cast for the latter shall be allocated as follows. The numbers of valid votes cast for each list shall be successively divided by one, two, three, four, and so on, until the number of quotients computed for each list corresponds to the number of seats for allocation. The number of seats allocated to each list shall be equal to the number of qualifying quotients it obtains when the quotients are taken in descending order.

2. Where more than one list has the last quotient to qualify for a seat, the seat shall be allocated to the list which has so far received none. If all the lists have already received a seat, the last seat shall be allocated by lot.

3. The seats allocated to a list shall be filled by the candidates nominated therein in the order in which they appear on that list, unless the number of preference votes cast for the individual candidates results in a different sequence.

4. If a list does not contain enough candidates to fill all the seats allocated to it, the remaining seats shall be allocated to the other lists on the basis of the number of qualifying quotients obtained pursuant to paragraph 1.

Article 7

Where only one list of candidates is submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes. Each elector has one vote. In the event of a tie, the decision shall be taken by lot.

Article 8

1. Votes shall be cast on ballot papers.

2. Ballot papers not marked in accordance with these election rules shall be null and void.

Section II: Preparation and conduct of elections

(a): Composition of electoral commissions

Article 9

1. No later than ten days after the formation of the S.E. or after the conditions set out in Article 100 of this statute for the formation of a European Works Council have been met, the Board of Management of the S.E. shall, for the purposes of the election of the European Works Council, publish in each installation of the S.E. in which staff are employed a list of all the establishments in which representatives are to be

elected to the European Works Council. Where a European Works Council has already been formed, a list fulfilling the same requirements shall be published at least 100 days before the expiry of the Council's term of office.

2. This list shall be decisive in regard to the composition of the electoral commissions and their areas of responsibility, unless its completeness or accuracy is contested within twenty days pursuant to Article 10. The Board of Management shall draw attention to this provision in the list.

3. If the Board of Management fails to publish the list, electoral commissions may nevertheless be formed pursuant to Article 11 of this annex in order to conduct the elections. The Board of Management shall have eight days from receipt of the notification referred to in Article 13(4) of this annex in which to contest the formation of electoral commissions or their proposed areas of responsibility, pursuant to Article 10.

Article 10

1. The court within whose jurisdiction the establishment is situate shall rule on any contestation of the list referred to in Article 9.

2. Application for such a ruling may be made by:

- (a) the Board of Management of the S.E.
- (b) not less than three persons employed in an establishment of the S.E. or a union with members employed therein.

3. Contestation of a list or decision shall not have suspensive effect.

4. If the court rules that the conditions for the proper conduct of an election which has already taken place were not fulfilled, the election shall be null and void. If the election has not yet taken place, it shall be held in those establishments in respect of which a court decision has established that the necessary conditions are met.

Article 11

1. An electoral commission shall be responsible for arranging and conducting the election.

2. An electoral commission shall be set up in every establishment which is to elect representatives to the European Works Council, no later than thirty days after the conditions set out in Article 100 of this statute have been met. Where a European Works Council has already been elected, the electoral commissions shall be formed at least 75 days before the expiry of its term of office.

3. The electoral commission shall be appointed by the bodies representing the employees in the establishments, referred to in Annex I to this Statute.

In Member States in which no such body exists, the electoral commission shall be appointed by the recognized employees' representatives in the establishment, in agreement with the Board of Management of the S.E. In the absence of any representative body referred to in Annex I of this Statute or any recognized employees' representatives in the establishment, the Board of Management of the S.E. shall in good time convene a staff meeting to elect the members of the electoral commission.

4. The electoral commission shall have three members in establishments with fewer than 1,000 employees, five members in those with fewer than 5,000 employees and seven members in those with 5,000 or more employees.

5. Members of the electoral commission must satisfy the conditions for membership of the European Works Council laid down in Article 2. They shall not stand for election to the European Works Council. From their appointment until 30 days after the election results have been announced, they shall enjoy the protection in the matter of dismissal afforded by Article 112 and shall be covered by the provisions of Article 113 of this Statute.

Article 12

1. If, within the period specified in Article 11(2), an electoral commission has not been formed in an establishment which is to elect representatives

to the European Works Council, the court within whose jurisdiction the establishment is situate may, upon application, take the necessary action for its formation.

The court may dismiss members of an electoral commission for breach of their obligations and, in urgent cases, appoint new members.

The court may also appoint persons not employed by the S.E. to serve on an electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishment, by three persons entitled to vote or by the Board of Management of the S.E. The court shall hear the Board of Management of the S.E. and the trade unions represented in the establishment before reaching its decision.

Article 13

1. The members of the electoral commission shall appoint a chairman from their midst. If no chairman is appointed, the oldest member shall take the chair.

2. The chairman shall convene the electoral commission on his own initiative or at the request of one of its members and shall preside over its meetings.

3. Decisions of the electoral commission shall be taken by majority vote of the members present. Its acts shall be valid if all its members have been convened and more than half are present.

4. The electoral commission shall immediately notify the Board of Management of the S.E. and the chairman of the European Works Council, if one has already been set up, of its formation and membership.

(b): Preparation of elections

Article 14

1. The electoral commission shall fix, in agreement with the Board of Management, the date and duration of the election, which shall be held during the establishment's normal working

hours, and the place within the establishment where polling shall take place. The election shall take place within 75 days of the formation of the S.E. or of the date on which the conditions of Article 100 are met. Where a European Works Council has already been elected, the new election shall take place at least thirty days before the expiry of its term of office.

2. The electoral commission shall, in accordance with the provisions of this Statute, make arrangements for conducting the election and shall announce the number of representatives to be elected to the European Works Council from the establishment. Employees entitled to vote who are absent on the day of the election shall be granted a postal vote under arrangements to be established by the electoral commission.

3. At least 30 days before the election, the electoral commission shall publish an election notice stating the date and place of the election. This notice shall include the following information:

- (a) the names of the chairman and other members of the electoral commission,
- (b) the address in the establishment to which communications to the commission should be sent,
- (c) the number of representatives which the establishment is to elect to the European Works Council,
- (d) the place at which the electoral roll referred to in Article 15 will be displayed and the period during which it may be inspected,
- (e) the closing date for the submission of lists of candidates, pursuant to Article 16.

4. The election notice shall also set out in full the provisions of this Statute which are applicable to the election and the rules for conducting the poll laid down by the electoral commission, particularly the arrangements concerning postal votes.

5. The electoral commission shall take steps to enable employees not familiar with the language or languages in which the election notice appears to acquaint themselves with its contents.

Article 15

1. The electoral commission shall draw up an electoral roll and display it in the establishment together with the election notice until the date of the election, so that it can be seen by persons entitled to vote. The Board of Management of the S.E. shall make available the documents required for drawing up the electoral roll.

2. Any objections concerning the accuracy or completeness of the roll shall be lodged with the electoral commission within ten days of its display. The electoral commission shall rule on such objections within five days. If the electoral commission fails to make a ruling within this period, the objection shall be deemed to be overruled.

If the electoral commission does not grant the objection, an appeal may be made within five days to the court within whose jurisdiction the establishment is situate. The court shall give a final ruling within three days.

An appeal to the court shall not have the effect of suspending the election proceedings.

3. Only persons registered on the electoral roll at least one day before the election shall be entitled to vote.

Article 16

1. The lists of candidates shall be submitted to the electoral commission within ten days of the publication of the election notice. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.
2. The electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the trade unions or persons who have submitted lists of candidates to amend them so that they conform to the rules.
3. If no lists of candidates are received within the period stipulated in paragraph 1, the electoral commission shall immediately announce the fact in the same manner as that followed in announcing the election and shall call for the submission of lists of candidates within a stipulated period of at least five days.
4. A notice showing the lists of candidates which comply with the rules, in the order in which they were received, shall be put on display at least ten days before the election. Any objections to the lists on legal grounds shall be lodged with the electoral commission within three days of their publication. The right to lodge objections shall be mentioned in the notice.
5. At least three days before the election, the electoral commission shall notify the electors of the lists finally approved and of the manner in which they may exercise their voting rights. Article 14(5) of this annex shall apply.

(c) : Conduct of elections

Article 17

1. The electoral commission may appoint election officials, under its own responsibility, to assist in conducting the election.
2. Throughout the period fixed for the election at least one member of the

electoral commission shall be in constant attendance at the polling station and, with the aid of the electoral roll, ensure that voting is properly conducted.

3. The electoral commission shall be responsible for counting votes and allocating seats, and shall notify candidates, the Board of Management of the S.E. and the chairman of the European Works Council, if it has already been set up, of the results of the election. It shall also announce the results to the electors.

4. Each trade union and group of employees who have submitted lists of candidates may appoint up to three observers to be present during the election procedures and the counting of the votes.

Article 18

1. All decisions of the electoral commission, the result of the ballot and the allocation of seats shall be recorded in an election report signed by the chairman of the electoral commission.

2. The electoral commission shall answer any objections immediately in writing.

3. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period for contesting the validity of the election.

4. A copy of the election report shall be forwarded to the Board of Management of the S.E. or, if a European Works Council already exists, to its chairman. The report shall be handed over to the chairman of the newly elected European Works Council.

Article 19

1. The court within whose jurisdiction the establishment is situated may, upon application or at its own initiative, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court pursuant to paragraph 1 may be made by the electoral commission, a trade union represented in the establishment, a group of employees entitled to submit lists of candidates under Article 3, or the Board of Management of the S.E.

3. The period originally set for the election shall remain valid for the purposes of determining employees' voting rights and the eligibility of candidates.

Section III: Contestation of validity of elections

Article 20

1. The validity of the election of representatives to the European Works Council may be contested in the court within whose jurisdiction the establishment is situate if the election regulations have been infringed and if such infringement may have altered or influenced the results of the election.

2. The validity of the election may be contested by a trade union represented in the establishment, by the Board of Management of the S.E., by one tenth of the persons entitled to vote in the establishment or 25 such persons.

3. Any such contestation must be made within 15 days of the announcement of the results.

4. The elected members of the European Works Council shall remain in office until and unless the court declares the election null and void.

ANNEX III

Rules for the election of employees' representatives to
the Supervisory Board

Section I: General provisions

Article 1

1. The employees' representatives on the Supervisory Board of the S.E. shall be elected by electoral delegates where an S.E. and its dependent undertakings situated within the Member States comprise more than one establishment.

2. In each establishment of the S.E. and its dependent undertakings situated within the Member States the employees entitled to vote shall elect two electoral delegates. Where the number of employees entitled to vote in an establishment exceeds 100, one further delegate shall be elected for each 100 employees or fraction thereof.

3. Where an S.E. comprises only one establishment, the employees' representatives on the Supervisory Board shall be elected directly by the employees entitled to vote in that establishment.

Article 2

Employees of the S.E. and its dependent undertakings who have reached the age of 16 years on the date of the election and have been employed in or assigned to the establishment concerned for at least four months shall be entitled to vote pursuant to Article 1(2) and (3).

Section II: Election of employees' representatives by electoral delegates

(a) Election of delegates

Article 3

1. The delegates charged with electing the employees' representatives to the Supervisory Board of the S.E. shall be elected in the establishments of the S.E. and its dependent undertakings

situated in the Member States by secret direct ballot in accordance with the provisions of Articles 3, 4, 5, 6, 7 and 8 of Annex II to this Statute.

2. They must satisfy the conditions of eligibility laid down in Article 2 of the abovementioned annex.

3. Electoral delegates and their alternates shall enjoy the protection in the matter of dismissal afforded by Article 112 of this Statute until the conclusion of the procedure for the election of employees' representatives to the Supervisory Board of the S.E. The provisions of Article 113 shall apply mutatis mutandis.

Article 4

1. No later than ten days after the formation of the S.E. or, if employees' representatives have already been elected to the Supervisory Board of the S.E., at least 100 days before the expiry of their term of office, the Board of Management shall, for the purposes of the election of delegates charged with the election of employees' representatives to the Supervisory Board of the S.E., publish in each installation of the S.E. a list of all the S.E. establishments for which delegates are to be elected.

2. The Board of Management shall publish a list of all undertakings controlled by the S.E. in whose establishments delegates charged with the election of employees' representatives to the Supervisory Board are to be elected.

3. The management bodies of group undertakings shall compile the list referred to in paragraph 1 for their establishments and shall publish it by the date fixed in paragraph 1. For this purpose the Board of Management of the S.E. shall notify the management bodies of its dependent undertakings of the forthcoming election at least seven days before that date.

4. Articles 9(2) and (3) and 10 of Annex II to this Statute shall apply to the lists referred to in paragraphs 1 and 3.

5. Where there is disagreement as to whether an undertaking is dependent on an S.E., the undertaking in question shall take part in elections to the Supervisory Board of the S.E. only after the Court of Justice of the European Communities has ruled that it is a member of the group within the meaning of Article 225 of this Statute.

Article 5

1. Electoral commissions shall be set up in every establishment of the S.E. and its dependent undertakings no later than 30 days after the formation of the S.E., to arrange and conduct the election of electoral delegates. Where employees' representatives have already been elected to the Supervisory Board of the S.E., an electoral commission shall be formed no later than 75 days before the expiry of their term of office.

2. The electoral commissions shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute.

In the case of dependent undertakings, the management body shall take the place of the Board of Management of the S.E., provided that the relevant provisions so permit.

Articles 12 and 13 of Annex II shall apply mutatis mutandis to the electoral commissions.

Article 6

1. The electoral commissions shall fix, in agreement with the Board of Management of the S.E. or the management bodies of its dependent undertakings, the date and duration of the elections to be held in their establishments. Elections shall take place within 75 days of the formation of the S.E. or, where employees' representatives

have already been elected to the Supervisory Board of the S.E., at least 30 days before the expiry of their term of office.

2. Articles 14, 15, 16, 17 and 18 of Annex II to this Statute shall also apply to the arrangement and conduct of these elections.

3. Notwithstanding Article 18(4) of Annex II, the report shall be forwarded to the central electoral commission referred to in Article 14 below after the election results have been announced.

(b) Election of employees' representatives

Article 7

1. The electoral delegates shall elect employees' representatives to the Supervisory Board of the S.E. jointly, by means of a secret ballot. They shall exercise their voting rights freely and shall not be bound by any instructions.

2. Lists of candidates for election as employees' representatives may be submitted by the European Works Council, by trade unions represented in the establishments of the S.E., by one twentieth of the electoral delegates or by at least one tenth of the employees of the S.E. who are entitled to vote.

3. The Group Works Council, trade unions represented in the establishments of dependent undertakings, or at least one tenth of the employees of a group undertaking who are entitled to vote, may submit lists of candidates for election to the Supervisory Board of an S.E. which is the controlling company of a group within the meaning of Article 223.

4. Lists of candidates submitted by employees or electoral delegates shall be signed by all persons supporting them. No person shall sign more than one list of candidates.

Article 8

1. The number of candidates on each list shall be at least equal to the number of seats for employees' representatives on the Supervisory Board and not greater than twice the number of such seats. An alternate shall be named for each candidate.

2. The list of candidates shall include a number of persons not employed in an establishment of the S.E. at least equal to the number specified in Article 137(2). These candidates shall be placed first on the list, separately from the other candidates.

3. The name of a candidate or alternate shall not appear on more than one list of candidates at the same time.

Article 9

1. Where only one employees' representative is to be elected to the Supervisory Board, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, there shall be a second ballot between these candidates. If no candidate receives a majority in the second ballot, the seat shall be allocated by lot.

Article 10

1. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.

2. Each electoral delegate participating in the election may vote for one list only.

3. In addition, each delegate may cast a preference vote
- for a candidate for a seat reserved for persons not employed by the S.E. within the meaning of Article 137(2), whose name

appears on the list which he has chosen, and

- for a candidate for the other seats whose name appears on the list for which he has voted.

4. If an elector votes for a candidate or, under the provisions of paragraph 3, for two candidates for different seats on the same list, his vote shall count as a vote for the list on which those candidates appear and as a preference vote for the candidate or candidates concerned.

Article 11

1. Where an election is subject to the principle of proportional representation, the seats on the Supervisory Board shall be allocated to the lists of candidates in accordance with the procedure laid down in Article 6(1) of Annex II to this Statute.

The seats reserved for persons not employed by the S.E. pursuant to Article 137(2) shall be allocated first.

2. Where more than one list has the last quotient to qualify for a seat, Article 6(2) of Annex II shall apply.

3. Seats shall be allocated to the individual candidates in accordance with Article 6(3) of Annex II.

Article 12

1. Where only one list of candidates has been submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes. Each elector may cast a preference vote

- for a candidate on the list for a seat reserved for persons not employed by the S.E. within the meaning of Article 137(2)
- for a candidate for the other seats on the list.

2. The candidates elected for seats reserved for persons not employed by the S.E. pursuant to Article 137(2) shall be those who receive the most votes. The candidates elected for the remaining seats shall be those on the list who receive the most votes.

3. In the event of a tie between one or more candidates when there are more candidates than seats available, the allocation of the seat or seats concerned shall be decided by a second ballot. If no majority is obtained at the second ballot, the seat or seats shall be allocated by lot.

Article 13

1. Votes shall be cast on ballot papers.
2. A ballot paper not marked in accordance with these election rules shall be null and void.

Article 14

1. A central electoral commission shall be responsible for arranging and conducting the election of employees' representatives to the Supervisory Board of the S.E. by the electoral college.
2. The central electoral commission shall consist of the chairmen of the electoral commissions responsible for conducting the election of electoral delegates in the three establishments with the largest number of employees. Where delegates are elected in only two establishments, the central electoral commission shall consist of the chairmen of the electoral commissions of these two establishments and the oldest member of the electoral commission of the establishment with the largest number of employees.
3. The central electoral commission shall hold its first meeting within 80 days of the formation of the S.E. or, where employees' representatives have already been elected to the Supervisory Board of the S.E., at least 25 days before the expiry of their term of office, at the place at which the S.E. has its effective seat of management. It may decide to hold its meeting elsewhere if this is more convenient for the conduct of the election.
4. In all other respects, Article 13 of Annex II to this Statute shall apply.

Article 15

1. If the central electoral commission is not formed within the period laid down in Article 14(3) above, the court of jurisdiction may, upon application, take the necessary action for its formation. The court may dismiss members

of an electoral commission for breach of their obligations and, in urgent cases, appoint new members. It may appoint persons not employed by the S.E. to serve on the electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishments of the S.E. or its dependent undertakings, by three electoral delegates or by the Board of Management of the S.E.

3. The court competent to take the action referred to in paragraph 1 shall be the court within whose jurisdiction the central electoral commission meets.

Article 16

1. In agreement with the Board of Management, the central electoral commission shall fix the date and place of the meeting of the electoral college. The electoral college shall meet to elect the employees' representatives to the Supervisory Board within 100 days of the formation of the S.E. Where employees' representatives have already been elected to the Supervisory Board of the S.E., the electoral college shall meet at least 10 days before expiry of their term of office.

2. The central electoral commission shall summon the electors in writing to the meeting of the electoral college at least 10 days before the date set for the meeting pursuant to paragraph 1.

The summons shall contain the following information:

- (a) the date and place of the meeting of the electoral college determined in accordance with paragraph 1 above;
- (b) the names of the chairman and other members of the central electoral commission and their addresses at their place of meeting;
- (c) the number of employees' representatives to be elected

and the number of representa-
tives who, pursuant to Article
137(2), shall be persons not
employed by the S.E.

A copy of the list of electoral
delegates, drawn up in accordance
with Article 17 below, shall also
be attached to the summons.

3. The information specified in
paragraphs 1 and 2 above, together
with copies of the list of electoral
delegates, shall at the same time
be forwarded to the electoral com-
missions formed in the different
establishments, which shall publish
them in those establishments
together with an invitation for the
submission of lists of candidates.
The said invitation shall contain
the statutory provisions which apply
to the submission of candidates.
Article 14(5) of Annex II to this
statute shall apply to the electoral
commissions formed in the establish-
ments.

Article 17

1. The central electoral commission
shall compile a list of all electoral
delegates and their alternates, giving
their addresses in the establishments
at which they were elected.

2. Any objection to this list on the
grounds of inaccuracy or incomplete-
ness shall be lodged with the central
electoral commission no later than
at the beginning of the meeting of
the electoral college. The central
electoral commission shall rule on
the objection immediately.

3. Only persons whose names appear
on the list of electoral delegates
shall be entitled to vote at the
meeting of the electoral college.

Article 18

1. Lists of candidates nominated by
the electoral delegates shall be
submitted to the central electoral
commission by a deadline which the
commission shall announce at the
beginning of the meeting of the
electoral college. The deadline
shall allow at least three hours
for the submission of lists of
candidates. The delegates may, by

a unanimous decision, agree to ignore this deadline.

2. Any other lists of candidates must reach the central electoral commission no later than the day before the meeting of the electoral college.

3. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.

4. A list of candidates not submitted by electoral delegates shall also state the name of the person authorized to submit it to the electoral college and, in particular, to alter it, combine it with other lists or withdraw it.

5. If a list of candidates does not name the person authorized to submit it to the electoral college, or if the person so named fails to attend the meeting of the electoral college, the said list shall be null and void, unless an electoral delegate undertakes to sponsor it.

6. The central electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the electoral delegates or the persons so authorized by the trade unions or persons who have submitted lists of candidates to amend them.

Article 19

1. The central electoral commission shall direct the proceedings of the meeting of the electoral college.

2. Acts of the electoral college shall be valid if all the electoral delegates have been summoned and half of them are present or represented by alternates.

3. After expiry of the deadline referred to in Article 18, the central electoral commission shall put the lists of candidates complying with the election rules to the vote and inform the

delegates of the manner in which they may exercise their voting rights.

4. The central electoral commission shall make the necessary arrangements to ensure that the voting proceeds in accordance with the rules.

5. The electoral commission shall count the votes cast, allocate the seats for employees' representatives on the Supervisory Board of the S.E. and notify the electoral college, the candidates, the Supervisory Board, the Board of Management of the S.E. and the employees entitled to vote of the results of the election.

Article 20

1. All decisions of the central electoral commission, the result of the ballot, the allocation of seats and the proceedings of the electoral college shall be recorded in an election report signed by the chairman of the central electoral commission. The list of electoral delegates shall be attached to the report as an integral part thereof.

2. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period within which the validity of the election may be contested.

3. A copy of the election report shall be forwarded to the chairman of the Supervisory Board of the S.E.

Article 21

1. The court of jurisdiction may, upon application, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court of jurisdiction pursuant to paragraph 1 may be made by the central electoral commission, a trade union or group

of electoral delegates or of employees entitled to submit lists of candidates under Article 7, or the Board of Management of the S.E.

3. The court of jurisdiction shall be the court within whose jurisdiction the central electoral commission meets.

(c) Contestation of validity of elections

Article 22

1. The validity of an election of employees' representatives to the Supervisory Board of the S.E. may be contested in the court within whose jurisdiction the electoral commission meets if the election rules have been infringed and if such infringement may have altered or influenced the results of the election.

2. The validity of an election may be contested by trade unions, groups of electoral delegates or of employees entitled to submit lists of candidates, or the Board of Management of the S.E.

3. Any such contestation shall be made within 15 days of the announcement of the election results.

4. The elected employees' representatives shall remain in office unless and until the court pronounces the election null and void.

Section III: Direct election of employees' representatives

Article 23

1. Where a direct election is held pursuant to Article 1(3) of this Annex, the employees' representatives on the Supervisory Board of the S.E. shall be elected in their respective establishments by secret ballot of all employees entitled to vote.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 25 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. Lists of candidates shall comply with the provisions of Article 8 of this Annex.

Article 24

1. Where only one employees' representative is to be elected to the Supervisory Board, Article 9 of this annex shall apply.

2. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates has been submitted, Articles 10 and 11, shall apply.

3. Where only one list of candidates is submitted for election, Article 12(1) and (2) shall apply. If two or more candidates receive the same number of votes and seats are not available for all candidates, the seat or seats in question shall be allocated by lot.

4. Article 13 shall apply to the voting procedure.

Article 25

1. No later than 30 days after the formation of the S.E., an electoral commission shall be formed in the establishment in which employees' representatives are to be elected to the Supervisory Board of the S.E., in order to arrange and conduct the election. Where employees' representatives have already been elected to the Supervisory Board of the S.E., the electoral commission shall be formed at least 75 days before expiry of their term of office.

2. The electoral commission shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute. Articles 12 and 13 of Annex II shall apply mutatis mutandis to the electoral commission.

Article 26

1. In agreement with the Board of Management of the S.E. or the management bodies of its dependent undertakings, the electoral commission shall fix the date and duration of the election to be held in its establishment. The election shall be held within 75 days of the formation of the S.E. or, where employees' representatives have already been elected to the Supervisory Board of the S.E., at least 30 days before expiry of their term of office.

2. In all other respects the arrangement and conduct of elections shall be governed by Articles 14, 15, 16, 17, 18 and 19 of Annex II to this Statute.

3. Contestation of the validity of elections shall be governed by Article 22 of the present Annex.

EXPLANATORY STATEMENTI. Introduction

1. Before considering the various amendments, a brief chronological account of the committee's work on this matter is called for.

The European Parliament was scheduled to discuss the report by Mr Pintus on behalf of the Legal Affairs Committee on the proposed regulation embodying a statute for the European company on 12 December 1972. However, in view of the large number of amendments - 155 in all - tabled to the motion for a resolution contained in the report, it decided not to proceed with the debate but instead to refer the amendments to the Legal Affairs Committee.

In the meantime, Mr Pintus left the European Parliament and the Legal Affairs Committee was not able to appoint Mr Brugger as the new rapporteur until its meeting of 25 January 1973, because of the Christmas holidays. For technical reasons connected with the enlargement of the Community - i.e. the need to have the Pintus report in English and Danish and to give the new British, Danish and Irish members of the committee time to study it and the text of the proposed regulation - the committee could not begin effective study of the amendments until 13 April 1973. At its meetings of 26 January and 8 March 1973, however, the committee had discussed the general and procedural problems raised by the rather difficult task assigned to it by the European Parliament. It had unanimously agreed that the representatives of the new Member States should be given the opportunity of tabling in committee any amendments which they considered necessary in view of the situation in their own countries regarding labour legislation and company law. The committee had further decided that other members also could submit new amendments, thus avoiding the loss of time for the Assembly which would result if the amendments were tabled in plenary sitting.

These factors, together with the complexity of the subject matter, explain why the Legal Affairs Committee was unable to complete its work more rapidly. Nevertheless, the seriousness and accuracy of the work has largely made up for the time taken.

2. The authors of the various amendments, especially the late Mr Armengaud, stressed in committee that their sole concern was for Parliament to deliver a prudent opinion on the proposed regulation. In their view, the regulation, in its present form, takes insufficient account of the legal and factual situation in the various Member States and is therefore unlikely to encourage undertakings to adopt the form of a European company. In

particular, the policy pursued by the French and Italian trade unions in breaking off relations with the holders of capital seems incompatible with fruitful and sincere cooperation in European companies according to the model proposed by the Commission.

3. The Legal Affairs Committee has, in examining the text before it, taken full account of the views expressed by the Committee on Social Affairs and Employment, especially as regards the provisions relating to employees in the European company.

4. Finally, in regard to the election of employees' representatives to the organs of the European Company, the Legal Affairs Committee thought it advisable to lay down a detailed set of rules in order to ensure that elections follow a uniform procedure. However, to avoid overburdening the text of the regulation, the technical provisions governing the election of employees' representatives were placed together in two annexes, forming an integral part of the regulation.

The participation of the Committee on Social Affairs and Employment - in the person of its rapporteur, Mr Adams - in the elaboration of the electoral rules was a valuable contribution to the Legal Affairs Committee's work.

5. The committee would also point out that, in general, the explanatory statement contained in the basic report by Mr Pintus is still valid.

As a result of the amendments made to the text of the proposed statute, especially Title V (representation of employees in the European company), the numbering of articles in the amended text does not always correspond to the numbering in the Commission's text. The Commission will therefore have to make the necessary adjustments when drafting the final text of the regulation.

II. Consideration of amendments to the proposed regulation¹

(a) TITLE I: General provisions (Articles 1 - 10)

6. On Article 6, the committee first examined in detail Amendment No. 95, tabled by Mr Triboulet and Mr Cousté, deleting the Article.

¹ Amendments attributed to Mr Triboulet and Mr Cousté were in each case tabled on behalf of the Group of European Progressive Democrats, and those attributed to Mr Hougardy on behalf of the Liberal and Allies Group. Certain amendments attributed to Mr Armengaud were also tabled on behalf of the Liberal and Allies Group.

The authors of this amendment considered that, since Article 6 referred particularly to groups of undertakings, it should, apart from any considerations as to its substance, be more properly located in Title VII of the proposed regulation.

The majority of the committee was in favour of leaving the article where it was, since it had a bearing on other articles of the proposed regulation, especially Articles 15, 46 and 203.

The amendment was rejected by 11 votes to 3.

7. The Committee then considered Amendment No. 34 tabled by Mr Armengaud to Article 6.

The purpose of the amendment was to make certain conditions for determining whether one undertaking was controlled by another cumulative and to add to those conditions.

The amendment was rejected by 9 votes to 3.

The majority of the committee considered that cumulative conditions would make it more difficult to establish that one company was controlled by another. It was also against adding to the conditions for establishing the existence of a controlling influence.

The committee then considered a last amendment to Article 6. This amendment, No. 12, which was tabled by Mr Hougardy, aimed at removing the *juris et de jure* presumption of dependence. In other words, the aim was to give companies the opportunity of bringing proof to the contrary.

This amendment was also rejected, with only two votes in favour and eleven members of the committee voting against.

In the light of the detailed discussion of these amendments and the new factors which had emerged, Mr Brugger and Mr Bangemann tabled two more amendments to the Commission's text.

The purpose of Mr Brugger's amendment was to standardize the expression '*juris et de jure*' in the different languages and to specify that the conditions referred to in points (a) and (b) of Article 6(2) were not cumulative. This amendment was adopted by 10 votes to 1.

Mr Bangemann's amendment transferred point (c) of paragraph 2 to paragraph 3 of Article 6, so that the condition it contained would be considered as a simple presumption susceptible to proof to the contrary by companies concerned. The amendment thus integrated the condition set out in paragraph 3 with that contained in point (c). It was adopted by 12 votes to 1. The text of Article 6 as proposed by the committee is contained in the resolution.

(b) TITLE II: Formation (Articles 11 - 39)

8. On Article 16, Mr Cousté tabled Amendment No. 96, deleting the article.

Article 16 stipulates that if, within two years of formation, an S.E. acquires property owned by a founder company, or by a shareholder of the founder company or of the S.E., and the price exceeds one tenth of the capital of the S.E., the purchase shall be the subject of an audit.

The amendment abolished the requirement for an audit.

It was rejected unanimously by the committee, which considered that the provision in question should be retained so that the S.E. could not evade a check on its purchases within the two years following its formation.

Moreover, Article 16 was directly linked to Article 14(3), which stipulated that the explanatory notes accompanying the opening balance sheet of the S.E. should, in addition, contain particulars of the capital subscribed in kind and state its value. A similar provision was contained in Article 19 of the second directive on the approximation of national legislation in the matter of company law.

9. On Article 19, Mr Cousté submitted Amendment No. 97, adding the following sentence to paragraph 2:

'The Company may assume responsibility for prior commitments, in which case they shall be deemed to have been originally entered into by the company.'

This referred to commitments entered into on behalf of the company by persons acting in its name prior to publication in the Official Journal of the European Communities of the registration of the company in the commercial register.

The committee thought this sentence was a useful addition and adopted the amendment by 7 votes to 1, with 4 abstentions.

10. On Article 20(3), it then considered an amendment tabled by Mr Brewis and Sir Derek Walker-Smith.

The paragraph in question stipulates that, for a period of three years from the date of registration in the European Commercial Register, the auditors shall be jointly and severally liable to the S.E. and to third parties for any omission or inaccuracy in their report, unless they show that they have exercised the standard of care required in the practice of their profession.

The purpose of the amendment tabled by Mr Brewis and Sit Derek Walker-Smith was to exempt the auditors from the obligation of proving that due care had been exercised. The authors of the amendment considered that the burden of proof should lie with the plaintiff.

However, the majority of the committee was not of this opinion. It considered that the auditors should be required to prove that they were not at fault.

Some members of the committee nevertheless pointed out that the Commission's text was susceptible to different interpretations because of the vagueness of the concept of 'care', and that it would be better to use the word 'responsibility'. The Commission was therefore requested to have another look at this provision.

In the light of the various views expressed, and bearing in mind the request to the Commission, the amendment was withdrawn.

11. On Article 22(1), Mr Cousté tabled Amendment No. 98 relating to share exchange ratios and possible merger premiums.

The amendment was unanimously rejected by the committee, which, nevertheless, asked the commission to align the provisions of Article 22, which were of a purely technical nature, with the corresponding provisions of the third directive on company law.

12. On Article 24, Mr Cousté tabled Amendment No. 99 deleting paragraph 5.

This paragraph stipulates that, in the event of a merger, minutes of the General Meetings of each of the founder companies shall be drawn up by notarial act.

The amendment was unanimously rejected.

The committee considered that the minutes in question were of undoubted importance and consequently required a notarial act, since, by virtue of paragraph 2 of Article 24, only shareholders who voted against the merger resolution at the General Meeting and caused their dissent to be recorded in the minutes were entitled to challenge it.

13. On Article 25, Mr Cousté submitted Amendment No. 100, altering paragraph 1 so that any shareholder would have the right to challenge resolutions of general meetings.

The committee rejected this amendment, with 14 votes against and 2 abstentions, for the following reasons.

The amendment was incompatible with the last sentence of Article 24(2), according to which resolutions of General Meetings could be challenged only by shareholders who were present. This provision had already been adopted by the Legal Affairs Committee and the committee could not now adopt a conflicting provision.

Furthermore, Article 25(2) gave shareholders not present at the General Meeting the possibility of challenging resolutions passed, since it stipulated that shareholders who were unable to take the action referred to in paragraph 1 could apply to the Court of Justice of the European Communities for an extension of time in which to commence proceedings in the competent national court for cancellation or declaration of nullity.

14. On Article 30(1), Mr Cousté tabled Amendment No. 101, deleting the sentence 'This draft (document of constitution) shall be authenticated.'

This amendment was also rejected, with 17 votes against and 5 abstentions.

The amendment gave rise to a detailed discussion in the committee, since several members pointed out that a notarial act was not absolutely necessary for authenticating a draft merger.

The majority, however, thought that a draft document of constitution should also be authenticated, since, as an important document whose object was the formation of an S.E., it was highly desirable for it to be surrounded by every guarantee of authenticity and publicity.

Sir Derek Walker-Smith pointed out that the practice of notarial authentication was unknown to English company law and it would therefore be advisable to make the proposed regulation as flexible as possible if it was to have any practical application.

In view of this last point, the committee considered that, when drafting the final text, the Commission should also take account of the situation in the new Member States.

15. On Article 32, Mr Cousté tabled Amendment No. 102, deleting the last sentence of paragraph 1 and paragraph 5.

The last sentence of paragraph 1 stipulates that, if the national law does not provide for a quorum, it shall not be permissible to require for the passing of a resolution of approval a majority exceeding three quarters of the votes cast and four fifths of the share capital represented.

Paragraph 5 provides that, in the case of the formation of a European holding company, the minutes of General Meetings of the founder companies shall be drawn up by notarial act.

Amendment No. 102 was rejected, with 16 votes against and 4 abstentions, on the grounds that the deletion of paragraph 1 would be prejudicial to the interests of minority shareholders. Nor could the committee agree to delete paragraph 5, since a majority had already pronounced in favour of a notarial act for the minutes of General Meetings¹.

16. On Article 33, with the same voting result and for the same reasons, as those which led it to reject Mr Cousté's Amendment No. 100 to Article 25², the committee rejected Mr Cousté's Amendment No. 103 to Article 33 in order to entitle any shareholder to challenge resolutions of General Meetings relating to the formation of a European holding company.

(c) TITLE III: Capital - Shares - Debentures (Articles 40 - 61)

17. Article 40(2) includes the provision that the capital of an S.E. shall be fully paid up, either in cash or in kind.

Mr Brewis and Sir Derek Walker-Smith tabled an amendment to this paragraph deleting the stipulation that the capital should be fully paid up. While accepting that the capital was needed to ensure the financial stability of the company and its independence of the founder members, the authors of the amendment pointed out that it was nevertheless common practice that capital need not be fully paid up.

The Commission representative replied that, although the laws of the Member States stipulated that the capital of a company should be fully paid up only in the case of specific sectors such as insurance, a rigid arrangement had been chosen for the S.E. primarily to avoid overburdening the Statute, in view of the common criticism that proposed regulations were too detailed and unwieldy. If partial payment of capital were allowed, provisions would have to be included to cover cases in which the outstanding capital was not subsequently paid.

In the second place, full payment of capital raised few practical difficulties in this instance.

In the light of the explanation given by the Commission representative, the committee rejected the amendment by 18 votes to 2, with 1 abstention.

¹See point 12

²See point 13.

The committee nevertheless expressed its hope that the Commission would make any adjustments which experience showed to be necessary.

It should be pointed out that the committee had not previously neglected this problem and had in fact held a detailed discussion on the matter. Finally, however, it had decided not to amend the Commission's text, but to invite the latter to consider the advisability of allowing derogations for certain sectors.¹

18. On Article 43(3), Mr Cousté tabled Amendment No. 104.

The practical purpose of this amendment was to avoid fixing a maximum for approved capital, in contrast with the text proposed by the Commission. In other words, in the opinion of the author of the amendment, the amount of a capital increase by means of approved capital should be fixed by the General Meeting.

The Commission representative pointed out that the Commission's object in fixing a limit for the increase of approved capital was to restrict the powers of decision of the Board of Management with regard to the increase of capital to a certain extent so as to avoid any abuse.

The amendment was unanimously rejected.

19. On Article 42, Mr Cousté tabled Amendment No. 105, rewording paragraphs 1 and 2.

Mr Cousté's proposed amendment to Article 42(1) corresponded to the change which the committee had already made to the text of the proposed regulation in the Pintus report.²

As the committee now unanimously confirmed its previous position, Mr Cousté's amendment was no longer applicable.

This applied also to Amendment No. 13, tabled by Mr Hougardy, restoring the Commission's wording of paragraph 1.

The amendment tabled by Mr Cousté to Article 42(2) calls for the following comments.

¹ See point 73, Pintus report

² See point 74, Pintus report

According to the Commission's text, the right of shareholders to subscribe to new capital may be excluded in whole or in part. The General Meeting shall decide exclusion only on the basis of a report submitted to it by the Board of Management. Mr Cousté wanted the General Meeting also to receive a report from the auditors.

This point of view was shared by other members of the committee, who considered that, since exclusion of the right of subscription was a decision of a certain importance, it would be advisable for the General Meeting also to hear an outside opinion.

This was met with the argument that the auditors had no powers to check on the allocation of shares. A decision of that nature was a matter for the company organs alone. The auditors could check only whether the calculations pertaining to the allocation were correct; but this had nothing to do with the provision in question.

Mr Cousté's amendment to Article 42(2) was rejected by 13 votes to 2.

On Article 42(3), Mr Brewis and Sir Derek Walker-Smith tabled the following amendment:

delete: 'by the court within whose jurisdiction the registered office of the S.E. is situated';
substitute: 'by the Court of Justice of the European Communities.'

The authors explained that the changes proposed were alternatives and should therefore be considered together.

Paragraph 3 stipulates that, where new capital is subscribed wholly or partly in kind, a report as to the value thereof shall be submitted to the General Meeting. This report shall be signed by at least two independent and qualified accountants appointed by the court within whose jurisdiction the registered office of the S.E. is situated.

The purpose of the first of these changes was to avoid involving the court, on the argument that the accountants were bound to observe professional etiquette and that it was not fair that a court should, as it were, serve as a guarantee of their integrity and competence. In short, this would simply be another bureaucratic obstacle making the formation of a European company less attractive.

The second change, which - as has been pointed out - was intended as an alternative, entailed replacement of the national court by the Court of Justice of the European Communities. Briefly, the point of this amendment was to ensure uniform jurisprudence. Such uniformity was all the more

necessary since the legal arrangements in certain Member States were widely divergent.

The first change was not favourably received. It was pointed out that the assessment of contributions in kind was not without danger for the public, since it allowed a wide margin of freedom, especially where non-material goods, such as patents, know-how, and so on, were concerned. Therefore, certain guarantees were necessary. While accountants were indeed advised by a code of ethics, the fact that they had been appointed by the company might lead them to assess contributions at a value which did not objectively correspond to their intrinsic worth. It was therefore advisable for the accountants to be appointed by an outside body.

Opinions differed as to the substitution of the Court of Justice of the European Communities for the national courts. Some members stressed the desirability of a single jurisdiction, while others pointed out that centralization in the Court of Justice would raise difficulties of various kinds with regard to both procedure and costs.

The Commission representative observed that, as regards the appointment of accountants in connection with an increase in the company's capital, it would perhaps be preferable to allow the company to choose between its own auditor and accountants appointed by the court, as in the case of the formation of the company.

As regards the proposal to assign the appointment of accountants to the Court of Justice, the Commission representative reminded the committee that the main task of the Court of Justice was to ensure uniformity in the interpretation of Community law. Although the regulation under consideration provided for a number of derogations, for example, in regard to the formation of an S.E. and the establishment of a group of companies, it would be well to observe this general principle.

Following this detailed discussion, the amendment was withdrawn on the understanding that the Commission would consider the matter further.

The committee nevertheless thought it advisable to draft a final text immediately and, with 19 votes in favour and 1 abstention, adopted a new text for Article 42(3) submitted by the rapporteur, which is included in the resolution.

The committee considered that the arrangement proposed would make it easier to check contributions in kind. The auditor was clearly competent to fulfil the task assigned to him, since his mandate was based on the confidence of the General Meeting, by whom he was appointed.

On the other hand, the possibility of the appointment of independent accountants by the court was not excluded. The choice between these two possibilities was left to the Board of Management of the S.E. To avoid any abuse, authorization by the Supervisory Board was also required.

The qualities required of accountants appointed by the court were settled by the last sentence of the committee's text. An important additional stipulation, in regard to the provisions of Article 15(2), which specifies the qualifications required of the auditors, is to be found in Article 203(3). Where the verification of contributions is entrusted to the auditors of the S.E., they are bound by the provisions of the latter article.

20. On Article 46, Mr Cousté tabled Amendment No. 106 and Mr Hougardy Amendment No. 14. The first amendment concerned both paragraphs of this article, the second only the first paragraph.

Following a detailed discussion of these amendments, the committee reached agreement, though only in principle, on the advisability of allowing the S.E. to acquire its own shares for the purpose of distributing them to its own employees. Opinions differed, however, on the other points raised in the amendments. In an attempt to find agreement, the rapporteur tabled a new amendment designed to alleviate the strict prohibition of the S.E.'s acquisition of its own shares and to allow distribution of a part of those shares to employees of the company.

In order to avoid any abuse, this amendment included a number of safeguards:

- (a) Acquisition was allowed only within specific limits, i.e. by means of funds derived from available reserves and amounting to no more than 10 per cent of the S.E.'s capital;
- (b) Acquisition was subject to the approval of the Supervisory Board of the S.E.;
- (c) Shares so acquired had to be distributed to the employees within 12 months.

The prohibition on the acquisition of its own shares was designed to prevent distortion of the decision-making process within the S.E. and to avoid reductions of the company's capital.

The proposed text also provided for legal machinery to counter circumvention of this prohibition via dependent undertakings.

There was a similar danger of circumvention via undertakings in which the S.E. had a majority holding, but in such cases, Article 6(3) could be invoked to establish the existence of a controlling influence.

These were the alterations and additions to the original text of Article 46.

The rapporteur's amendment further stipulated that:

- subscription, as well as acquisition, was prohibited;
- the S.E. could not take any pledge of shares of the S.E. or acquire a right to use or enjoy them in any way; in fact, pursuant to Article 92(1), the voting rights attached to a share are to be exercised by the person entitled in possession to a life interest therein;
- shares owned by a dependent undertaking which were to be disposed of would confer no rights on that undertaking in the period preceding their disposal. The words 'in the meantime', included in the Commission's text of paragraph 2, were not entirely unequivocal.

The time-limit of one year for disposing of such shares was increased to 18 months in order to further reduce any effects on their ultimate selling price and avoid the consequent indirect prejudice to shareholders' interests.

The amendment was adopted by 20 votes to 1, with 1 abstention. As a result of this vote, Mr Cousté's Amendment No. 46 and Mr Hougardy's Amendment No. 14 were no longer applicable.

21. On Article 53(4), Mr Cousté submitted Amendment No. 107, fixing a deadline of five days before the General Meeting for registration in the share register of shareholders intending to attend the Meeting.

Most members of the committee thought this deadline was too tight, and the amendment was rejected by 18 votes to 1, with 2 abstentions.

22. On Article 55, Mr Cousté tabled Amendment No. 108. Mr Brewis and Sir Derek Walker-Smith tabled an amendment reducing the minimum period of notice to be given in the company journals of any public issue of debentures from 14 to 8 days.

Sir Derek pointed out that the period specified in Article 55 was rather long as a minimum. Moreover, a period of 8 days was stipulated in Article 15 of the proposed directive on the prospectus to be published upon application for official quotation of securities on the stock exchange.¹

¹See Doc. 186/72 and report by Mr Armengaud on behalf of the Legal Affairs Committee (Doc. 186/73). See also resolution of the European Parliament, OJ No. C11, 7.2.1974.

The Commission representative explained that the proposed directive to which Sir Derek had referred was concerned only with applications for quotation on a stock exchange, and was therefore not applicable to the issue of securities by an existing company.

Mention of the period in question could, of course, simply be deleted, since the rate of interest on a debenture loan could, in any event, be determined only at the last moment. This being so, any fixed period would be too long.

Bearing this in mind, the committee adopted Mr Cousté's Amendment No. 108, which deleted the period of notice, by 17 votes to 1. This implicitly met the requirements of the amendment tabled by Mr Brewis and Sir Derek Walker-Smith, which therefore was now formally no longer applicable.

23. On Article 57(2), Mr Brewis and Sir Derek Walker-Smith tabled an amendment obliging the company to send each debenture-holder, upon request, all documents which were sent to shareholders, as well as to make them available to the representative of the body of debenture-holders.

While recognizing the advantage of this amendment, some members of the committee considered that only the debenture-holders' representative should be entitled to receive these documents.

The amendment was adopted by 9 votes to 7, with 1 abstention.

24. On Article 58(1), Mr Brewis and Sir Derek Walker-Smith tabled an amendment increasing the holding required for requesting a meeting of the body of debenture-holders from 5 to 10 per cent, so as to prevent any abuse on the part of small groups of debenture-holders.

The majority of the committee, however, considered that priority should be given to the protection of minorities.

The amendment was rejected by 12 votes to 2, with 1 abstention.

On Article 58(2), Mr Cousté tabled Amendment No. 109.

This amendment was voted item by item. A first vote was taken on the quorum required at the first meeting of the body of debenture-holders. The Commission's text stipulates a quorum of three quarters of the debenture-holders present or represented.

Mr Cousté was asking for the quorum to be lowered to one quarter.

This item of the amendment was rejected with 16 votes against and 1 abstention.

However, with 16 votes in favour and 1 abstention, the committee decided to fix the quorum at 50 per cent, which was thought to be a fair balance.

The second item of the amendment fixed a quorum for the second meeting.

The committee rejected this item by 11 votes to 2, with 4 abstentions, on the grounds that it would impede the normal operation of the meeting of debenture-holders.

25. On Article 59(2), Mr Brewis and Sir Derek Walker-Smith tabled an amendment replacing the national courts by the Court of Justice of the European Communities.

The authors explained that the purpose of the amendment was to prevent legal conflicts and avoid different interpretations by the national courts.

It was replied that, as a rule, the implementation of Community legislation was a matter for the national courts. Application could be made to the Court of Justice only in matters of construction. Although the proposed regulation already contained two derogations from this principle (examination of the formation of an S.E. and establishment of the existence of a group of undertakings), it did not seem advisable to add to them.

After hearing this argument, the authors withdrew the amendment.

26. On Article 60, Mr Cousté tabled Amendment No. 110, which added to paragraph 2 the stipulation that, in the case of the issue of convertible debentures, the General Meeting could decide to restrict the right of subscription solely according to the procedure laid down in Article 42(2).

The committee welcomed this addition and adopted the amendment by 10 votes to 1.

(d) TITLE IV: Administrative organs (Articles 62 - 99)

27. On Article 63, Mr Brewis and Sir Derek Walker-Smith tabled an amendment deleting paragraph 3, which stipulates that the majority of members of the Board of Management shall be nationals of Member States. The authors felt that such discrimination on the grounds of nationality should be avoided since it might discourage capital investment from third countries.

A majority of the committee was unable to accept this amendment, in view of the need to avoid a situation in which the Board of Management of a European company might be composed entirely of nationals of third countries.

The amendment was rejected by 10 votes to 1, with 2 abstentions.

28. On Article 64, Mr Armengaud tabled Amendment No. 35 deleting the last sentence of paragraph 2, worded as follows: 'The Supervisory Board may, at any time, make regulations for the internal operation of the Board of Management.'

According to the author of the amendment, a dualistic system had been chosen for the S.E. In other words, responsibility for management and responsibility for supervision were entrusted to the Board of Management and the Supervisory Board respectively. It was therefore inappropriate for the Supervisory Board to define the internal operating methods of the Board of Management. The Board of Management was entrusted with the task of management. The sole task of the Supervisory Board was to check whether management was properly conducted; it had no right to interfere with the operations of the management body itself.

The majority of the committee, however, considered that the division of powers between the two bodies should not be so strictly defined and that the Supervisory Board should be allowed to exercise effective supervision. Moreover, the latter had already been fully discussed by the Legal Affairs Committee, which had tabled a formal amendment to Article 64.¹

Amendment No. 35 was rejected by 11 votes to 4.

Following this vote, Mr Armengaud withdrew Amendments Nos. 36, 37, 38 and 39, which were more or less directly connected with the amendment just rejected.

Sir Derek Walker-Smith then proposed a compromise text, worded as follows: 'The Supervisory Board may at any time put forward suggestions concerning the internal operation of the management board; the latter shall consider such suggestions and, where it does not accept them, give its reasons.'

In the author's opinion, the Supervisory Board should exercise control over management, but it should not intervene in the operations of the Board of Management, especially as Article 73(3) prohibited such intervention.

This amendment too was rejected by 11 votes to 4.

The majority of the committee was of the opinion that, if the Supervisory Board was empowered to appoint and dismiss members of the Board of Management, there was all the more reason for giving it the power to determine the latter's operational methods. Article 73(3) concerned the daily business of the Board of Management, whereas Article 64 referred to the division of powers.

¹See paragraph 89, Pintus Report.

Mr Bangemann in turn tabled a further amendment to the last sentence of Article 64(2), worded as follows:

'The Supervisory Board may, after hearing the Board of Management, fix this division of powers by means of a regulation.'

In Mr Bangemann's view, the Supervisory Board's tasks could not be limited to general supervision. A certain link between the two administrative organs was necessary.

The majority of the committee did not accept this argument. Mr Bangemann's amendment was rejected by 11 votes to 2, with 2 abstentions.

The result of these votes was thus to confirm the text contained in the Pintus Report.

29. On Article 65, Mr Cousté tabled Amendment No. 111 deleting paragraph 2, which concerned the appointment of agents with power of procuration.

On this point the committee had a long and exhaustive discussion which revealed that the provisions of paragraph 2 could give rise to ambiguity for reasons of both wording and substance. The paragraph should be retained, but it needed amendment.

In order to remove the difficulties, the rapporteur proposed the following text:

'The conferment of a general and unlimited power of procuration on one or more persons by the Board of Management shall be subject to approval by the Supervisory Board.'

This amendment was, however, not accepted - there being 7 votes in favour, 7 votes against, and one abstention - since certain members still had some doubts.

The committee finally decided to leave the Commission's original text. The Commission was however requested to re-examine the provisions of paragraph 2 in the light of the arguments put forward in the committee.

Mr Cousté's Amendment No. 111 was consequently no longer applicable.

30. On Article 66, Mr Armengaud had originally tabled Amendment No. 36.

As stated in paragraph 28, the author subsequently withdrew the amendment. He nevertheless requested the Commission representative to elucidate a technical point in connection with this article.

Article 66 lists a number of acts of the Board of Management which are subject to prior authorization by the Supervisory Board. Mr Armengaud thought that such authorization should be replaced by notification to the Supervisory Board in the quarterly report. The Supervisory Board could then take a position on the matter. The first requirement was to clearly separate the responsibilities of the two organs. Secondly, the division of powers between the Supervisory Board and the General Meeting was sometimes not clearly defined, for example in regard to closure or transfer of the undertaking or of parts thereof and to cooperation with other undertakings [items(a) and (d) of Article 66(1)] and in regard to winding-up or conversion of all or part of the company's assets and to certain contracts committing the S.E. [items(j) and (k) of Article 83].

Mr Armengaud accordingly asked whether Article 66 ought not to be amended to take account of these factors.

The Commission representative replied that, in national legislation which contained such a provision, prior authorization by the Supervisory Board was stipulated for specific acts in a number of different ways. In the case of the S.E., authorization for such acts was stipulated only in Article 66. However, this Article was not restrictive, and its provisions could be extended in the statutes of individual European countries.

The acts listed in Article 66 could have far-reaching effects on the situation of shareholders and employees. The article had therefore been linked with Article 125(2), which stated that the Supervisory Board could not give or refuse its approval for the specific acts of the Board of Management in question until the European Work Council had expressed its opinion. Decisions should be left to the Board of Management, but the Supervisory Board should participate in their formation.

In respect to the hypothetical overlap of powers of the Supervisory Board and the General Meeting, the Commission representative pointed out that the ambiguity arose from the fault in the French version of the text proposed by the Commission of the European Communities.

There was no complete overlap between Article 66(d) and Article 83(k) since the Acts referred to in Article 66(d) were more extensive. Article 83(k) dealt with transfer of profits, whereas Article 66 concerned acts whose effects were not necessarily financial.

While noting that Mr Armengaud had withdrawn his amendment, Sir Derek Walker-Smith did not consider that the Commission's text of Article 66 was at all satisfactory. He therefore tabled the following compromise amendment:

'The following acts of the Board of Management shall be ~~subject to~~ prior authorization by the Supervisory Board; the Board of Management shall, even if not been expressly requested to do so by the Supervisory Board pursuant to Article 73, submit a special report on its intentions with regard to the implementation of all or some of these acts' (rest unchanged).

The amendment was rejected by 13 votes to 4.

Still on Article 66, Mr Triboulet and Mr Cousté tabled Amendment No. 112. The main point of this amendment was to make any plans concerning closure of the company and its consequences subject to the prior authorization of the Supervisory Board, without prejudice to the powers of the General Meeting. During the discussion on this amendment, the rapporteur, Mr Brugger, as well as Mr Jozeau-Marigné and Mr Lautenschlager, also tabled compromise amendments.

After a full discussion the committee adopted, by 13 votes in favour and 2 abstentions, the text proposed by Mr Jozeau-Marigné and Mr Lautenschlager. However, it subsequently proved necessary to align the text of Article 66 with the provisions of Articles 83 and 123. The text of Article 66, so aligned, was adopted, with 12 votes in favour and 2 abstentions, and is contained in the resolution.

In aligning the three abovementioned articles, the committee took account of the following considerations:

Final closure of the undertaking was to be subject to the following conditions:

- a decision of the Board of Management,
- the agreement of the European Works' Council (Article 123 of the Statute in the new version proposed by the Legal Affairs Committee),
- authorization by the Supervisory Board (Article 66),
- approval of the General Meeting (Article 83 in the new version proposed by the Legal Affairs Committee).

Temporary closure was to be decided by the Board of Management after hearing the European Works' Council pursuant to Article 125 and after obtaining the approval of the Supervisory Board pursuant to Article 66.

Compliance with this system was obtained simply by stipulating in Article 66 that the provisions of Article 83 and 123 remained in force.

Article 83(5) implies that the closure of the undertaking cannot be decided by the shareholders without the intervention of the Board of Management and without the prescribed approval of the Supervisory Board and the European Works' Council.

In the cases referred to in paragraphs 2 and 3 of Article 83, the obligations of the Board of Management laid down in Articles 66 and 123 were unchanged.

A similar provision was inserted in Article 123, so that the provisions of Articles 66 and 83 continue to apply in this case also.

Following adoption of this text, Amendment No. 112, tabled by Mr Triboulet and Mr Cousté, was no longer applicable.

31. On Article 68, Mr Armengaud had tabled Amendment No. 37 deleting paragraph 3.

This amendment was withdrawn.¹

¹ See paragraph 28 above.

32. On Article 69, paragraphs 3 and 4, Mr Cousté tabled Amendment No. 113.

Paragraph 3 prohibits members of the Board of Management from obtaining loans or similar concessions from the company.

Paragraph 4 stipulates authorization by the Supervisory Board for the conclusion of any agreement to which the company is a party and in which a member of the Board of Management has a direct or indirect interest.

The purpose of Mr Cousté's double amendment was to provide for derogations to these two provisions.

The change proposed in paragraph 3 was rejected by 8 votes to 3, with 2 abstentions. The majority of the committee considered that the provision forbidding directors to contract loans was a principle consolidated in the legislation of the Member States. Furthermore, the terms 'banking or financial institute' and 'current operations' in the proposed amendment were too vague and lent themselves to abusive interpretation.

The change in paragraph 4 was rejected unanimously. Here, too, the committee was primarily concerned to prevent abuse by directors.

Mr Bangemann, however, pointed out that there was some contradiction between paragraphs 3 and 4. While the first of these prohibited members of the Board of Management from borrowing from the company or its dependent companies, the second permitted the conclusion of certain agreements. The conclusion of such agreements might entail financial advantage for the members of the Board of Management and disadvantage for the company. For example, paragraph 3 might prevent a member of the Board of Management from obtaining a certain loan from the company. However, pursuant to paragraph 4, the same sum could be paid to him as a gift.

For these reasons Mr Bangemann proposed the simple deletion of paragraph 3 of Article 69 and the inclusion of a provision that any agreement entailing an advantage for a director should be subject to authorization by the Supervisory Board.

Mr Bangemann's amendment was, however, rejected by 12 votes to 1.

It should be noted that the committee had previously discussed the contents of Article 69 in depth and had reached the conclusion that the Commission's text should not be changed.¹

¹ See point 94, Pintus report.

33. On Article 70(1), Mr Hougardy tabled Amendment No. 15, worded as follows: 'In carrying out their duties of management, members of the Board of Management shall exercise the standard of care befitting a conscientious manager and promote the interests of the company, including its personnel.'

The committee had a long and detailed debate on the difficult problem of reconciling the generally divergent interests of the company and its personnel, as can be seen from the various compromise amendments discussed below. It finally decided with 10 votes in favour and 2 abstentions, to retain the Commission's text on the grounds that it was up to the administrative organs of the company to find common ground between the contending interests.

In the general discussion on Article 70 some members maintained that the amendment was not acceptable because it subordinated employees' interests to those of the company.

Others pointed out that, from a legal point of view, the directors were bound to give priority to the interests of the company. From a social point of view, however, they had to take account of employees' interests.

The commission representative observed that the regulation did not aim at establishing a priority between these interests. Any conflicts which arose should be resolved by the Board of Management, which was fully responsible to the company under Article 71, and by the Supervisory Board.

In order to avoid any difficulties, Mr Scelba proposed that the phrase 'and promote the interests of the company and of its personnel', which was at the origin of the debate, should be deleted.

In his opinion this phrase was irrelevant, since the task it described was obviously part of the responsibility of the directors.

The majority of the committee, however, considered that the solution proposed by Mr Scelba would be acceptable only if the tasks of the Board of Management were clearly specified.

Mr Scelba's amendment was rejected by 7 votes to 2, with 2 abstentions.

Again with a view to avoiding difficulties and conflicts, and also to the fact that the directors had to consider other interests such as protection of the environment, Mr Héger proposed that the phrase 'and of its personnel' should be deleted.

This amendment too was rejected, by 8 votes to 1, with 2 abstentions.

Sir Derek Walker-Smith maintained that, from a legal point of view, the directors could not do otherwise than defend the interests of the company. From a social point of view, it was obvious that they should also take account of employees' interests.

With this in mind he proposed that the paragraph in question should be amended as follows:

'In carrying out their duties of management, members of the Board of Management shall exercise the standard of care befitting a conscientious manager and promote the interests of the company, while taking the interests of its personnel into account.'

This amendment was also rejected, by 9 votes to 2, since a majority of the committee considered that the interests of the company and those of the employees should be placed on the same level.

In conclusion, a vote was taken on Mr Hougardy's Amendment No. 15, which was rejected with 9 votes against and 2 abstentions.

34. On Article 72(2), Mr Brewis and Sir Derek Walker-Smith had tabled an amendment raising the share of the capital required for bringing an action in respect of liability of the Board of Management from 5 to 10 per cent.

This amendment was withdrawn.

35. On Article 73, Mr Armengaud had tabled Amendment No. 38.

This amendment was also withdrawn.¹

Still on Article 73, Mr Cousté tabled Amendment No. 114 deleting paragraph 4, which concerns the appointment of alternates in the event of a vacancy on the Board of Management.

The amendment was unanimously rejected by the committee, which considered it advisable to retain paragraph 4 to ensure that vacancies were filled as quickly as possible.

36. On paragraphs 1 and 2 of Article 74, Mr Hougardy tabled Amendment No. 16.

¹ See point 28.

The amendment to paragraph 1 replaced the term 'permanent establishment' by 'undertakings'. This amendment was rejected unanimously since in the Pintus report the committee had already decided simply to use the term 'establishment'.

The amendment to paragraph 2 was designed to allow legal persons also as members of the Supervisory Board. This amendment, too, was unanimously rejected, as the committee confirmed its previous view that only natural persons should be members of the Supervisory Board, mainly for reasons of personal responsibility.

The committee also decided to reduce the term of office of members of the Supervisory Board, laid down in Article 74(3), in order to bring it into line with the provisions of Article 107 concerning the term of office of members of the European Works' Council. This would allow members of the European Works' Council and employees' representatives on the Supervisory Board to be elected at the same time.

37. The committee then considered several amendments to Article 77.

The first of these, Amendment No. 115 (first part) tabled by Mr Cousté, supplemented the text of paragraph 3 as follows: 'Unless a greater majority is specified in the statutes, decisions shall be made by majority vote of members present or represented.'

This amendment was rejected unanimously, for the sole reason that the conjunction 'or' was ambiguous.

By 11 votes to 1 the committee then adopted an amendment tabled by Mr Schuijt, adding the words 'and represented'.

The committee then considered an amendment to paragraph 4 tabled by Sir Derek Walker-Smith, worded as follows:

'Members not present may take part in decisions by authorizing a member present, orally or in writing, to represent them, but without restricting their freedom of vote'.

This met with a number of objections. Some members of the committee considered that the provision was too loose and that only written proxies should be allowed. It would also be better for the votes to be tied in accordance with the wishes of the absent members.

Others thought that mandatory instructions might prevent compromise solutions within the Supervisory Board.

In the light of this discussion the rapporteur submitted a compromise text, worded as follows: 'Members not present may take part in decisions by authorizing a member present to represent them.'

This amendment was adopted by 8 votes to 2, with 1 abstention.

As a result of this vote Sir Derek Walker-Smith's amendment was no longer applicable.

The committee unanimously rejected the second part of Mr Cousté's Amendment No. 115 to paragraph 6, which stipulated that minutes of Supervisory Board decisions should be prepared by one or more of its members or by a secretariat of the Board itself.

The committee decided to reject this amendment because the rapporteur, Mr Brugger, had meanwhile submitted a more flexible text, worded as follows: 'Decisions of the Supervisory Board shall be recorded in Minutes which shall be signed by the chairman of the Supervisory Board.' This compromise between the Commission's text and the text proposed by Mr Cousté was adopted by 9 votes in favour and 1 abstention.

38. On Article 79, paragraphs 2 and 3, Mr Cousté tabled Amendment No. 116.

This amendment similar to Mr Cousté's Amendment No. 113 to Article 69,¹ was rejected unanimously.

39. On Article 82, Mr Cousté's Amendment No. 117 was for the deletion of the article, which dealt with certain specific obligations of members of the Board of Management and Supervisory Board, as well as of the auditors and principal shareholders.

¹ See point 32.

The committee was of the unanimous opinion that this amendment could not be accepted, since the provisions of Article 82 were particularly important for states which did not welcome the idea of bearer shares. Moreover, this amendment did not take account of the most recent developments in company law and of the situation in the United Kingdom.

Still on Article 82, Mr Armengaud had tabled Amendment No. 39, deleting the second sentence of paragraph 1. The purpose of this amendment was to exempt persons holding more than 10 per cent of the capital of the company from the specific obligations already referred to.

The amendment was withdrawn.¹

40. On Article 83(c), Mr Müller tabled Amendment No. 3 on behalf of the Committee on Social Affairs and Employment.

The amendment was adopted unanimously as a useful addition to the Commission's text.

The committee also decided to make a stylistic change to the first sentence of Article 83, which would read as follows:

'The General Meeting shall pass resolutions concerning the following matters:.....'.

Still on Article 83, Mr Broeks had tabled an amendment to include permanent or temporary closure of the undertakings in the matters on which the General Meeting could pass resolutions.

The amendment was withdrawn in view of the fact that the committee already decided to coordinate the text of Article 83 with that of Articles 66 and 123, in order to align the powers of the administrative organs of the company and the European Works' Council.²

The full text of Article 83, approved by the committee by 14 votes to 1 with 6 abstentions, is contained in the resolution.

41. On Article 84, paragraphs 1 and 3, Mr Cousté tabled Amendment No. 118.

The change proposed in paragraph 1 was to extend the time-limit for holding the General Meeting, devoted principally to reviewing the annual accounts and the management report, from 6 to 7 months after the end of the financial year. This change was rejected with 13 votes against and 1 abstention. There appeared to be no justification for prolongation by one month, especially as the same paragraph provided for extension of the

¹ See point 28.

² See point 30.

period of six months in exceptional circumstances.

Still on paragraph 1 of Article 84, Mr Brewis and Sir Derek Walker-Smith had tabled an amendment according to which the decision to extend the period in question, in exceptional circumstances, would lie with the Court of Justice of the European Communities instead of the court within whose jurisdiction the registered office of the company was situate.

This amendment was withdrawn since a corresponding amendment to Article 42 had already been rejected.¹

The change proposed by Mr Cousté in paragraph 3 of Article 83 was conferment of the right to convene a General Meeting on the auditors also.

The committee rejected this amendment by 13 votes against and 1 abstention. It considered that the convening of a General Meeting was a matter for the administrative organs of the company, and the auditors were not in this category. Moreover, the regulation protected the interests of shareholders and third parties by stipulating that a General Meeting could be convened at the request of the shareholders or by order of the court.

42. On Article 85(1), Mr Brewis and Sir Derek Walker-Smith had tabled an amendment increasing the holding required for one or more shareholders to convene a general meeting from 5 to 10 per cent.

This amendment was designed to prevent the use of vexations tactics by minority groups.

The majority of the committee, however, thought that priority should go to defending the rights of minorities. The amendment was rejected, with 14 votes against and 1 abstention.

43. On Article 86(1), Mr Brewis tabled an amendment according to which all registered shareholders should receive written notice of a General Meeting.

This amendment was adopted unanimously.

On Article 86, paragraphs 3 and 4, Mr Cousté tabled Amendment No. 119.

The change proposed in paragraph 3 was the deletion of the last sentence.

¹ See point 19.

The amendment was adopted by 14 votes in favour and 1 abstention.

The proposed amendment to paragraph 4 gave rise to a long and detailed discussion.

The paragraph in question stipulates that the general meeting may pass resolutions upon items not included in the duly published agenda only by unanimous vote of all the shareholders of the company.

The meeting may, however, remove one or more members of the Supervisory Board nominated by the General Meeting, and may replace them without the matter appearing on the agenda, provided that one half of the capital is present or represented.

Mr Cousté's amendment stipulated that a unanimous vote of all the shareholders was also required for the removal or replacement of members of the Supervisory Board appointed by the General Meeting when that item was not on the agenda.

Some members of the committee saw nothing wrong with the Commission's text. The General Meeting should be allowed to remove or replace the persons in question during the course of a meeting, where necessary, even if the matter was not on the agenda.

Others, while sharing this view, thought it dangerous that the decision could be taken by shareholders' representatives, since powers of representation were usually given with regard to the agenda.

The majority of the committee reached the conclusion that, where there was no unanimous vote of all the shareholders, the General Meeting should be able only to convene another meeting at which the removal or replacement in question would appear on the agenda.

Finally, on a proposal from Mr Jozeau-Marigné, the committee unanimously decided to amend the second sentence of paragraph 4 of Article 86 as follows: 'Failing unanimity, it may resolve only to convene a new General Meeting with a new agenda.'

Following this decision Mr Cousté withdrew his amendment.

44. On Article 87(3), Mr Cousté tabled Amendment No. 120, reducing from 15 to 5 days prior to a general meeting the period within which scrip certificates must be lodged in order to attend the meeting.

The committee considered that a period of 5 days was too short for the preparation of a General Meeting and therefore rejected the amendment unanimously.

During the discussion on Article 87 it appeared that the wording of paragraph 1, especially in the French and German texts, could lead to wrong interpretations. The Commission was therefore asked to align the texts in all the official languages.

45. On Article 89(2), Mr Cousté tabled Amendment No. 121, altering the beginning of the paragraph.

The amendment was adopted unanimously.

46. On Article 92, Mr Cousté tabled Amendment No. 122, reducing from 15 to 5 days prior to the general meeting the period for lodging shares held in pledge.

This amendment corresponded to Amendment No. 120 to Article 87.¹ It, too, was unanimously rejected.

47. On Article 93, Mr Cousté tabled Amendment No. 123, deleting the article.

This article concerns the gratuitous cessation of voting rights by shareholders and the nullity of certain voting agreements.

The amendment was rejected, with 12 votes against and 1 abstention.

Still on Article 93, Mr Hougardy tabled Amendment No. 17, deleting paragraphs 2 and 3.

The amendment was rejected with 9 votes against and 4 abstentions.

On a proposal from the rapporteur the committee nevertheless decided unanimously to delete the second sentence to paragraph 2, since it was substantially identical with the sentence which followed it.

48. On Article 94(1), Mr Brewis and Sir Derek Walker-Smith tabled an amendment designed to remove the need for the minutes of General Meetings to be drawn up by a notary. The aim was to avoid additional costs for the company and a number of practical difficulties, for example in the United Kingdom.

By 10 votes to 2, however, the committee rejected the amendment on the grounds that, since the minutes had the force of evidence in case of dispute, it was preferable to have them drawn up by a notary. Furthermore, the notarial costs were certainly insignificant for a European company and the practical difficulties which might arise in such cases were not insuperable.

¹ See point 44.

Mr Brewis mentioned in passing that Article 41 of the proposed fifth directive on the harmonization of company law did not require a notarial act.

The representative of the Commission's legal department replied that the fifth directive concerned harmonization of legislation and should be seen in a different context. It had not seemed appropriate to impose this obligation on all limited companies in all the Member States.

49. On Article 95, Mr Hougardy tabled Amendment No. 18, changing the wording of paragraph 2.

Article 95 deals with proceedings for the cancellation of resolutions of the General Meeting. Under paragraph 2 such proceedings may be brought by any shareholder or other interested person. The proposed amendment restricted this right to shareholders.

The committee was unanimously against accepting the restriction.

With 10 votes in favour and 1 abstention, the committee then approved a proposal from Mr Jozeau-Marigné to delete the adjective 'proper' in order to avoid any difficulties of interpretation.

50. On Article 96, Mr Brewis and Sir Derek Walker-Smith tabled an amendment deleting the whole article, which deals with the invalidity of resolutions of the General Meeting which, by reason of their content, are contrary to public policy or morality (paragraph 1) and with the period within which proceedings for invalidity may be brought (paragraph 2).

In the authors' view the concept of public order and morality could be interpreted differently in the different Member States. Moreover, the period of three years during which proceedings for invalidity could be brought was too long.

The committee voted separately on the two paragraphs of Article 96, after a long discussion which brought to light a number of conceptual and legal difficulties.

The deletion of paragraph 1 was rejected by 10 votes to 2, with 1 abstention.

The deletion of paragraph 2 was rejected by 9 votes to 4.

These majority decisions were based on the view that the provisions in question, while not perfect, were necessary. When drawing up the final text, the Commission could make any necessary changes.

51. On Article 97, Mr Hougardy tabled Amendment No. 19.

This article, like Articles 98 and 99, deals with the special supervision of the administrative organs.

Article 97 stipulates, in particular, that where there are firm grounds for believing that the Board of Management or the Supervisory Board has committed a serious breach of its obligations or is no longer in a position to perform its functions, a specified group of shareholders or debenture-holders, or the European Works Council, may apply for a special commissioner to be appointed by the court.

Mr Hougardy's amendment extended the right of application to the court to any interested party. As a counterweight, Mr Hougardy proposed that the company should be allowed to sue for damages.

The committee did not accept the proposal that any interested party should be able to apply for the appointment of a special commissioner, since the concept of 'any interested party' was too vague and lent itself to abuse. The proposal was rejected unanimously.

The second proposal was also rejected unanimously, since the committee considered that introduction of the principle of damages would be dangerous both for parties intending to bring an action and for the company itself.

52. On Article 98(2), Mr Brewis and Sir Derek Walker-Smith tabled the following amendment:

- after 'the application is', insert 'prima facie'
- replace 'at the expense of the company' by 'partly at the expense of the company and partly by way of such contributions from the applicants as the court deems appropriate.'

On paragraph 4, the same members proposed the following amendment: insert at the end: 'the court may make any order against the applicants which it deems appropriate for the security of costs.'

The purpose of these amendments, according to the authors, was to prevent abuse and ensure fair distribution of legal costs. They were therefore concerned not with an award of damages, as in the case of Mr Hougardy's amendment, but with the legal costs.

Under Article 98(2) these costs were to be borne by the company. The proposed amendment was designed to distribute them between the parties, to the extent which the court considered appropriate.

Following a full discussion the committee adopted the inclusion in paragraph 2 of the words 'prima facie' with 9 votes in favour and 3 abstentions.

The other amendments were withdrawn, with the reservation that the Commission, when drafting the final text, should make it clearer that the costs of the proceedings would be borne by a party who had made an unjustified application.

53. On Article 99(2), Mr Brewis and Sir Derek Walker-Smith tabled an amendment adding the following: 'or dismiss the application with an order for payment of costs against the applicants or any of them.'

This amendment was aimed at preventing vexatious actions against the Board of Management, the Supervisory Board, or their members, and at apportioning the legal costs fairly if actions proved to be unjustified.

In the course of the discussion on this amendment, Mr D'Angelosante pointed out that Article 99 contained no clause safeguarding the right of parties to defend themselves. He consequently proposed the following text for paragraphs 1 and 2:

- '1. The registrar shall notify the parties immediately after the special commissioner's report has been filed. The parties shall be entitled to obtain a copy thereof. (13 words deleted). The first party to apply may put its requests to the court, which, in such case, shall hear the case according to the normal procedure.
2. On the basis of the facts before it, the court may:
 - (i) suspend from office one or more members of the Board of Management or of the Supervisory Board;
 - (ii) dismiss them;
 - (iii) appoint new members to these bodies on a temporary basis.'

Mr Bangemann had also proposed a new text for Article 99. However, he withdrew his proposal during the discussion since he was satisfied with a text submitted meanwhile by the rapporteur in the light of the observations made by various members and by the Commission representatives.

The text proposed by the rapporteur for the whole of Article 99 was adopted, with 13 votes in favour and 2 abstentions.

Mr D'Angelosante's amendment was then unanimously rejected, since it was substantially included in the rapporteur's text.

For the same reason, by 10 votes to 2 and 3 abstentions, the committee rejected the amendment to paragraph 2 tabled by Mr Brewis and Sir Derek Walker-Smith.

(e) TITLE V: Representation of employees in the European Company
(Articles 100 - 147)

54. On Article 100, which lays down the general principles for the formation of the European Works Council, Mr Cousté tabled Amendment No. 124, worded as follows: 'A European Works Council shall be formed in every European company having establishments in more than one of the Member States, with at least 200 employees.'

This amendment was no longer applicable as the committee had unanimously approved a text proposed by the rapporteur which had been coordinated with the provisions of Article 105. The rapporteur's text differed from the text proposed by the Commission in making it clear that a European Works Council was to be formed if the company had at least two establishments in different Member States, each with at least 50 employees. It also differed from the text proposed by Mr Cousté. Mr Cousté's amendment did not make it quite clear whether the number of employees in question was cumulative or referred to each establishment.

By 7 votes to 3, with 1 abstention, the committee then decided not to include in Article 100 a definition of the term 'establishment', in view of the conceptual difficulties involved.

The approved text of Article 100 is contained in the resolution.

The new wording of Article 100 was the result of the committee's joint discussion of Articles 100 and 105.

It should be pointed out that the concept of the establishment in labour and company law is distinguished by its objectives from the similar concept in tax law. The tax concept of the establishment, used in Article 280, is linked to the business results of the European company and its establishments, i.e. to the taxable profits.

The concept of the establishment used in labour and company law, however, is based on the organization of the business, i.e. on the employees.

The rules for the representation of employees of the European Company should therefore, in contrast to the practice at national level, not be based on the tax concept of the establishment.

55. Article 102 of the draft Statute lists the employees' representative bodies in the establishments of the European company on the basis of the corresponding national provisions. These bodies will continue to enjoy the powers and attributes conferred on them under the national arrangements.

However, the provisions of this article do not correspond to the present situation in certain Member States.

The committee therefore decided, by 15 votes to 2, with 1 abstention, to amend the article on the basis of a proposal from the rapporteur and in the light of a clarification by Mr Jozeau-Marigné, by listing the national employees' representative bodies in an annex to the Statute and authorizing the Commission to amend the list if necessary, thus simplifying the procedure.¹

56. The committee thought it advisable to insert, after Article 102, a new Article 102a specifying the conditions under which a trade union should be considered to be represented in an establishment of the European company.

The wording of this article, which was proposed by the rapporteur after a long and detailed discussion, was adopted by 10 votes to 1, with 1 abstention.

The purpose of this article is to specify that a trade union may be represented in an establishment in accordance with the arrangements in force in the Member State in which the establishment is situated, i.e. in accordance with the law and the rules of collective or works agreements, and in accordance with the usual practice or custom. This is how it is to be interpreted. The majority of the committee therefore considered that the concern expressed by certain members, especially Mr D'Angelosante, that account should be taken of the trade union presence in the individual establishments of the S.E. was satisfied.

As a result of the vote on this article, a number of amendments tabled by Mr Ballardini, Mr Schmidt and Mr D'Angelosante were no longer applicable.

¹See Annex I.

Adoption of this article also entailed the deletion of paragraph 2 of Article 116 of the text proposed by the Commission, which contained a similar, though more restrictive provision.

57. On Article 103, Mr Hougardy tabled Amendment No. 20 and Mr Triboulet and Mr Cousté Amendment No. 125. Both of these amendments provided for the election of members of the European Works Council via the National Works Councils, in other words by means of indirect elections.

The two amendments were rejected in turn by 14 votes to 4, with 1 abstention, since the majority of the committee was in favour of the direct elections of members of the European Works Council by the employees of the European Company.

The committee then unanimously adopted a new wording for Article 103 in its entirety. The first paragraph of the new text corresponds to the first paragraph of Article 103 in the Commission's text, but it has been brought into line with the new wording of Article 100. Paragraph 2 corresponds to Article 105 of the text proposed by the Commission. The number of employees' representatives on the European Works Council was increased in order to ensure a certain numerical balance between employees and representatives of the individual establishments of the S.E. on the European Works Council. These increases also make it possible to obtain fair representation for the different groups of employees, at least in the larger establishments.

Paragraph 1 of the new Article 103a was adopted unanimously. As was pointed out above, this paragraph corresponds to the old Article 103 (2) except for a few practical details.

Paragraph 2 was adopted by 10 votes to 4 with 3 abstentions. This paragraph extends the circumstances under which supplementary elections shall be held, which the old Article 103 (3) only provided for in cases of mergers, to all cases where establishments with at least 50 employees are acquired or opened after the elections to the European Works Council. The elections are not held if new general elections for the European Works Council are due to be held within 15 months of the acquisition or opening of the establishment. This limit seems justified in the light of the fact that preparation of supplementary or general elections requires about three months.

An amendment by Mr D'Angelosante deleting the last sentence of paragraph 2 was rejected by 12 votes to 2, with 2 abstentions. Another amendment by Mr D'Angelosante reducing the term of 15 months referred to in this paragraph to six months was rejected by the same majority.

58. On Article 104, Mr Cousté tabled Amendment No. 126 rewording it as follows: 'Where the representative bodies referred to in Article 102 are composed of a number of groups, the number of seats on the European Works Council allocated to each group shall be in proportion to its numerical strength.'

This amendment, which is based on the principle of indirect election of the European Works Council, was put to the vote together with Amendment No. 125 by the same author and rejected by 14 votes to 4, with 1 abstention.¹

It should be pointed out that Article 104 stipulates that the election of members to the European Works Council shall be subject to the rules which apply to the election of the members of the national employees' representative bodies listed in Annex 1 to this Statute.

The committee discussed the system to be used in electing members to the European Works Council very thoroughly. It emerged that election of employees' representatives to works councils did not exist in two of the Member States. For this reason, considering that it was advisable to retain the system of direct elections, the committee decided, by a large majority, to instruct its rapporteur to draw up a complete system of rules for the election of members to the European Works Council and the election of employees' representatives to the Supervisory Board.

Some of these provisions are included in the body of the Statute and the practical provisions governing the election of members to the European Works Council are contained in Annex II.

For this reason, Article 104 was worded as follows: 'The election of members to the European Works Council shall be subject to the rules contained in Annex II to this Statute. The said rules are an integral part of the Statute'.

59. Article 105 was deleted since its contents had been transferred to paragraph 2 of the new Article 103.²

Mr Cousté, however, tabled Amendment No. 127 to the original Article 105 which: (a) reintroduced the Commission's text; (b) under certain circumstances, provided for representation of various categories of employees on the European Works Council; (c) stipulated that the

¹See point 57.

²See point 57.

European Works Council should not have more than 40 members.

Item (a) of the amendment was rejected by 10 votes to 2, with 1 abstention. Items (b) and (c) of the amendment were rejected with 10 votes against and 1 abstention.

A further amendment tabled by Mr Bertrand on behalf of the Committee on Social Affairs and Employment, stipulating that every establishment, including those with less than 50 employees, should be represented on the European Works Council, was rejected by 9 votes to 6, with 1 abstention.

60. On Article 106, the committee unanimously adopted a new wording combining the texts of the previous Articles 106 and 111(1). It governs the procedure to be followed in elections for the European Works Council and stipulates that the European Works Council must meet within 100 days of the formation of the S.E. It is advisable to prevent all action by the European Works Council being blocked if elections have not been concluded in all establishments by this time.

61. On Article 107, Mr Cousté had tabled Amendment No. 128 which: (a) established a three-year term of office for members of the European Works Council; (b) stipulated that any person who was debarred from representing employees at the national level should not be eligible to sit on the European Works Council; (c) laid down the circumstances in which the term of office of members of the European Works Council would cease.

It was pointed out that the first part of this amendment corresponded to the Commission's text and therefore served no purpose. The second part was no longer applicable since it referred to a system of indirect elections which the committee had already rejected, and the third part was already covered in detail by Article 108.

Under these circumstances, the amendment was withdrawn.

The committee nevertheless unanimously decided to amend Article 107(1) and fix the term of office of members of the European Works Council at four rather than three years. This term thus corresponds with the term of office of members of the Supervisory Board laid down in Articles 74 and 144. Whenever possible, elections for the European Works Council and of employees' representatives to the Supervisory Board should be held simultaneously - this makes it easier for employees to understand the different obligations which the representatives to be elected must meet and also helps to reduce costs. It is therefore advisable to give members of the two bodies the same term of office.

62. On Article 108, Mr Cousté tabled Amendment No. 129 deleting the article, which lays down the conditions under which the term of office of the members of the European Works Council shall cease.

The amendment was withdrawn in view of the rejection of Amendment No. 128.

Mr Hougardy tabled Amendment No. 28 to Article 108 altering the conditions under which the term of the office of the members of the European Works Council shall cease.

This amendment was no longer applicable, being based on the supposition that the members of the European Works Council were to be indirectly elected.¹

The committee unanimously endorsed the amended version of Article 108 which appears in the Pintus report, with a slight change to bring it into line with the new wording of Article 103a.

63. On Article 109, a new text was unanimously adopted. It should be pointed out that the first paragraph of the original Article 109 was transferred to Article 14 of Annex II to the Statute. Paragraphs two and three of the previous text became paragraphs one and two in the new one. A new final paragraph was added stipulating that if the election should be delayed, the representatives from an Establishment should continue to sit on the newly elected European Works Council until their replacements were elected.

64. On Article 110, it was unanimously decided to slightly change the Commission's text in order to make it clearer. The new text stipulates that an alternate shall be elected together with every member of the European Works Council and that an alternate shall be submitted with every candidate. It seems advisable that if different categories of employees are to be represented on the European Works Council, the individual members should, where necessary, be replaced by the corresponding alternate members.

65. On Article 111, the committee unanimously adopted a new text. This text differs from the original in that the paragraph 1 of the original version is transferred to Article 14 of Annex II. An extra provision was added to prevent irregularities in convening the European Works Council.

66. On Article 12, Mr Cousté's Amendment No. 130 deleting the article, was deemed no longer applicable since it was based on the principle of indirect election.²

¹See paragraph 57 above.

²See point 57.

On behalf of the Committee on Social Affairs and Employment, Mr Müller tabled Amendment No. 4 to Article 112 rewording the beginning of the article as follows: 'No actual or alternate member of the European Works Council shall be dismissed from his employment during his term of office on the European Works Council nor during the three years following the period thereof.'

The amendment was rejected by 7 votes to 7. The amended text contained in the Pintus report was accordingly endorsed.

67. On Article 113 (1) Mr Müller tabled Amendment No. 5 on behalf of the Committee on Social Affairs and Employment and Mr Hougardy tabled Amendment No. 22.

The first amendment restored the text of the Commission which had been amended by your committee during its first consideration of this Statute. The second read as follows: '1. During their term of office the members of the European Works Council shall be exempt from the obligation to carry out the duties of their employment to the extent to which this is necessary for the performance of their duties on the Council'.

The second amendment was withdrawn by the author since it was similar to the text previously amended by the committee. Mr Müller's amendment was rejected with 9 votes in favour and 7 abstentions.

After a long discussion in which substantial differences of opinion emerged, a text proposed by the rapporteur was adopted by 10 votes to 9. Some members stressed the possibility of abuse by members of the European Works Council if the obligations of membership gave each one complete freedom to absent himself from work at his own discretion. On the other hand, other members expressed their opposition to rigid control of the activities of members of the European Works Council.

The text which the committee finally adopted represents a compromise, in that the decision as to whether members of the European Works Council should be exempt from their professional obligations is entrusted solely to the European Works Council as a collective body. Under these arrangements, the European Works Council will certainly take pains to prevent abuse in the interests of its proper working.

68. On Article 114, Mr Müller, on behalf of the Committee on Social Affairs and Employment, tabled Amendment No.6 restoring the text proposed by the Commission.

It should be pointed out that the committee had already amended this Article in its previous discussions to extend the obligation

of professional secrecy to experts and persons not employed by the company who attended meetings of the European Works Council.

Mr Müller's amendment was rejected by 12 votes to 3.

Mr D'Angelosante tabled an amendment deleting the term 'special', since it was not sufficiently clear and might prevent certain persons from attending meetings of the European Works Council, for example if they were members of a particular political party. This amendment was rejected by 14 votes to 2.

69. In the text proposed by the Commission, Article 116(1) stipulates that at the request of one-sixth of its members, the European Works Council may decide, by majority vote, that the delegate of a trade union represented in an establishment of the European company shall be entitled to attend certain meetings of the Council in an advisory capacity. During its previous deliberations,¹ the committee had increased the number of members of the European Works Council entitled to request the presence of a trade union delegate to one-quarter.

Various amendments - No. 23 by Mr Hougardy, No. 40 by Mr Armengaud, No. 131 by Mr Triboulet and Mr Cousté and No.7 by Mr Müller on behalf of the Committee on Social Affairs and Employment - were tabled to this article.

The first two amendments deleted the entire article. The third added the following text to paragraph 1: 'This delegate shall be chosen from amongst the members of the staff of the establishment and shall meet the conditions of eligibility applying to the representative bodies referred to in Article 102'. Mr Müller's amendment restored the Commission's original text.

The authors of the first two amendments wished to avoid allowing persons not employed by the company to participate in the deliberations of the European Works Council. The majority of the committee was, however, opposed to restricting the freedom of action of the European Works Council to this extent. Amendments No. 23 and 40 were put to the vote jointly and rejected by 12 votes to 3.

Amendment No. 131 by Mr Triboulet and Mr Cousté was rejected for the same reason by 9 votes to 5.

In considering Mr Müller's Amendment No.7, a lively discussion arose about whether it was advisable to lay down the minimum number of members entitled to request that trade union delegates should be allowed to attend meetings of the European Works Council. At the close of the discussion your committee decided, by 9 votes to 3 with 1 abstention, to remove this condition of a minimum number.

¹See point 123, Pintus report

Mr Müller's Amendment No.7 was accordingly no longer applicable.

An amendment tabled by the rapporteur fixing the minimum number at two thirds of the members of the European Works Council had previously been rejected by 9 votes to 4.

In this context, the committee would like to point out that the decision to admit trade union representatives must be taken by the majority of the European Works Council. Here, majority should be taken to mean a majority of the members present.

Paragraph 2 of Article 116 was deleted since it had been transferred to Article 102(a).

70. Article 117 allows the European Works Council to call upon outside experts. Mr Hougardy tabled Amendment No.24 to this Article making such recourse subject to the approval of the Supervisory Board

This amendment was unanimously rejected. The committee, however, approved with 13 votes in favour and 1 abstention an amendment tabled by the rapporteur which made recourse to experts permissible only when justified by the difficulty of the problems.

71. Article 118(1) stipulates that the European Works Council shall keep the employees regularly informed of its work by such means as it shall deem most suitable for this purpose.

Mr Cousté tabled Amendment No. 132 replacing the expression 'by such means as it shall deem most suitable for this purpose' by the phrase 'by the most suitable means'. In other words, the subjective criterion was to be replaced by an objective criterion.

The committee did not, however, accept this proposal, since it considered that the objective criterion might lend itself to abuse and allow unjustified attacks on the workings of the European Works Council. The amendment was rejected with 13 votes against and 1 abstention.

72. Article 123 lists the cases in which the Board of Management may take decisions only with the agreement of the European Works Council.

A whole series of amendments were tabled to this most important article. They were in detail: Amendment No. 133 by Mr Triboulet deleting the article; Amendment No. 25 by Mr Hougardy deleting items (c), (f) and (g); Amendment No. 41 by Mr Armengaud reducing the extent of the requirement of agreement by the European Works Council and partially transforming the right of approval into a consultative right; Amendment No. 42 by Mr Jozeau-Marigné, having the same purpose as Mr Armengaud's Amendment No.41; Amendment No.8 by Mr Müller and the revised version of Amendment No.8 by Mr Bertrand, both tabled on behalf of the Committee on Social Affairs and Employment, extending

the powers of the European Works Council.

After a thorough and detailed discussion on the responsibilities to be given the European Works Council, from which it emerged that the majority was in favour of strengthening its powers, the various amendments were put to the vote. Mr Triboulet's Amendment No. 133 was rejected unanimously; Mr Hougardy's Amendment No. 25 was rejected by 10 votes to 2, Mr Armengaud's Amendment No. 41 was rejected by 10 votes to 2, Mr Jozeau-Marigné's Amendment No. 42 was also rejected by 10 votes to 2.

In conclusion the committee adopted, by 14 votes to 2 with 2 abstentions, a new text for Article 123 proposed by Mr Lautenschlager to bring it in line with the provisions of Articles 66 and 83. As a result of this decision, Mr Müller's Amendment No.8 and Mr Bertrand's Amendment No.8 rev. were no longer applicable to Article 123. It was nevertheless decided to take account of them in connection with Article 124, since their adoption in respect of Article 123 might cause interference with the provisions of collective agreements.

In this context it should be pointed out that the following fields remain the responsibility of national works councils:

- (a) problems concerning the organization of the undertaking and the conduct of employees;
- (b) daily time of commencement and termination of work, including breaks, and the division of the working week into working days;
- (c) reduction or temporary increase in the normal working week;
- (d) date, place and means of payment of wages.

73. Article 124 lists the cases in which the Board of Management must consult the European Works Council before taking a decision.

Mr Triboulet tabled Amendment No. 134, requiring that the European Works Council be simply consulted by the Board of Management on a whole series of decisions. This amendment was connected with his proposal to eliminate the veto power of the European Works Council provided for in Article 123.

The amendment was unanimously rejected since Mr Triboulet's Amendment No. 133 deleting Article 123 had been rejected.

On behalf of the Committee on Social Affairs and Employment, Mr Müller had tabled Amendment No. 9 deleting Article 124. This amendment was no longer applicable since it was directly linked to Amendment No. 8 to Article 123 by the same author, also taken up by Mr Bertrand.¹

¹See point 72.

On the other hand, the committee unanimously adopted an amendment tabled by Mr Lautenschlager making an addition to Article 124(1).

74. Article 125 refers to another series of decisions subject to the approval of the Supervisory Board on which the Board of Management must consult the European Works Council.

Mr Triboulet tabled Amendment No.135 to this article, requiring the Board of Management simply to inform the European Works Council of certain of its decisions.

The amendment was unanimously rejected.

75. On Article 125(1), Mr Müller, on behalf of the Committee on Social Affairs and Employment, tabled Amendment No. 10, slightly altering the Commission's text. The amendment was adopted by 8 votes to 6, with 1 abstention. It should be noted that the text of the amendment was changed by the committee on the basis of a sub-amendment tabled by Mr Broeks to item (a) of paragraph 1.

76. On Article 127, Mr Hougardy tabled Amendment No.26 deleting the article. Paragraph 1 of this article allows the European Works Council to conclude collective agreements with the Board of Management of the S.E. in respect of the matters specified in Articles 123 and 124. Paragraph 2 stipulates that such agreements shall have priority over agreements made by the national employees' representative bodies listed in Annex I to the Statute. The amendment was rejected with 14 votes against and 1 abstention.

On Mr D'Angelosante's suggestion, the committee unanimously decided to incorporate a clarification suggested by Mr Schmidt, adding the following phrase to Article 127(2): 'Without prejudice to any provision more favourable to the employees contained in national collective agreements.' The purpose was to prevent employees of a S.E. being forced to accept a European collective agreement which was less advantageous than an agreement concluded by their respective national representative bodies.

77. Article 128 deals with intervention by a court of arbitration established for the settlement of disputes between the European Works Council and the Board of Management. Article 129 deals with intervention by a court of arbitration established for the settlement of disputes between the European Works Council and the national employees' representative bodies listed in Annex I to the Statute.

Mr Hougardy and Mr Cousté tabled Amendments Nos. 27 and 136 deleting these articles.

The two amendments were put to the vote jointly and were rejected with 12 votes against and 1 abstention. The committee felt it was advisable to provide for intervention by a court of arbitration especially set up for the settlement of any disputes which might arise between the European Works Council and the Board of Management in the context of Article 123 which, as has been pointed out, stipulates that the Board of Management must obtain the agreement of the European Works Council before taking certain decisions.

The committee, however, unanimously decided to clarify the wording of Article 128(1) contained in the Pintus report.

78. Articles 130 to 136 deal with the formation and operation of works councils in European companies which belong to a group of undertakings.

It should be noted, that, in addition to providing for a European Works Council to be formed in European companies with establishments in more than one Member State, the Statute provides for the formation of a Group Works Council in an S.E. which is the controlling company in a group. The Group Works Council is to concern itself with the interests of all employees of the Group in matters concerning more than one group undertaking (Article 134).

The Group Works Council, unlike the European Works Council, is to be set up through indirect elections. Its members are to be elected by the European Works Council of companies in the group which adopt the legal form of an S.E. and, in other cases, by the employees' representative bodies formed in the group undertakings pursuant to national rules. The Group Works Council is thus closely linked to the central employees' representative bodies. Where such bodies do not exist, the bodies which represent the employees at the level of the firm referred to in Annex I of this Statute will jointly elect the members of the Group Works Council. In states in which the employees' representative bodies referred to in Annex I do not yet exist (United Kingdom and Ireland), the organizations recognized as representing the employees' interests shall take part in the election.

Direct election of the members of the Group Works Council is not advisable since its members do not represent individual establishments - like the members of the European Works Council - but firms which may have several establishments.

A member of the Group Works Council will be called upon to represent such a large number of employees that he could not possibly present himself to all employees in the various establishments of a group undertaking in order to seek their confidence. It is therefore more

advisable to send to the Groups Works Council employees' representatives who have already worked in the employees' representative bodies set up at the level of the firm and are therefore aware of the problems in the individual undertakings.

Mr Hougardy and Mr Cousté tabled Amendments Nos. 28 and 137, deleting Articles 130 to 136 inclusive. In other words, the authors did not think that a Group Works Council was desirable.

These amendments were put to the vote jointly and were unanimously rejected. The committee felt it was advisable, by setting up employees' representative bodies, to encourage the search for cooperation between employees and the managing bodies of companies belonging to a group.

The committee adopted Amendment No. 155, tabled by Mr Müller on behalf of the Committee on Social Affairs and Employment, deleting Article 130(2) which provided the possibility of setting up other employees' representative bodies in place of the Group Works Council. In deciding, by 11 votes to 1 with 1 abstention, to adopt this amendment, the committee wished to indicate that it did not favour a proliferation of employees' representative bodies.

The committee unanimously adopted a final text for Article 130 which also deleted the reference to undertakings belonging to a group. The Group Works Council was, after all, a body which represented the employees of the undertakings belonging to the whole group rather than an establishment.

In the view of the committee, the Group Works Council should be seen in the context of the provisions governing the groups of undertakings of the S.E. and of the opportunities of the S.E. to pursue a unified company policy (Articles 223, 224, 240). Since there are no such rules governing groups of undertakings in any Member State even, as regards the type of S.E. proposed, in Federal Germany, there is no need to bring the composition of the Group Works Council - unlike that of the European Works Council - into line with the type of employees' representative bodies in dependent group undertakings which already exist at the level of the firm.

In view of the possibilities open to the S.E. as the controlling company, a Group Works Council should be set up whenever the group, consists of at least two undertakings, including the S.E. itself, each with at least 50 employees.

This last change was rendered necessary by the amendments to Articles 100 and 105 of the Commission's text.¹

¹The former Article 105 becomes Article 103 in the amended text.

79. The committee also unanimously adopted a new text for Article 131, for the following reasons:

Direct election of members of the European Works Council was not advisable. Since each member of the Group Works Council was to represent a very large number of employees, he would hardly be able to make himself known to all the employees in the various establishments of an undertaking to obtain their confidence. It was therefore preferable that employees' representatives who already had experience in the representative bodies on the same level should be sent to the Group Works Council.

The number of representatives on the Group Works Council could be considerably increased. But this might make the Group Works Council inefficient and excessively complicate objective dialogue with the management.

The election should be carried out by the central employees' representative bodies in the undertakings of the group and, where such bodies did not exist, by the employees' representative bodies referred to in Annex I to this Statute.

In states in which such representative bodies did not exist, the election should be carried out by the bodies recognized as employees' representatives.

80. The committee then unanimously decided to amend Article 132 in order to bring it into line with the provisions of Articles 100 and 103 (as amended).

81. Before considering the amendments tabled to the section of the Statute dealing with employees' representatives on the Supervisory Board, it seems advisable to explain the principles underlying the Commission's proposal and the system now proposed by the committee, in agreement with the draftsman of the opinion of the Committee on Social Affairs and Employment, Mr Adams, for appointing employees' representatives to the Supervisory Board.

Under the arrangements proposed by the Commission, the employees' representatives on the Supervisory Board are elected by the employees' representative bodies referred to in Article 102. This procedure is now inadequate since representative bodies of this type do not exist in two Member States.

A system of indirect elections is therefore more appropriate for European companies with more than one establishment. Direct elections would make it very difficult for candidates to meet all the employees' in the various establishments and obtain their confidence.

If, however, employees entitled to vote are employed in only one establishment, the two-tier procedure would be unnecessarily cumbersome. In that case, employees entitled to vote should elect their representatives to the Supervisory Board directly.

Employees of undertakings dependent on the S.E. should also be entitled to elect employees' representatives, since such undertakings form an economic unit with the S.E.

The practical procedure for electing the electoral delegates and the employees' representatives to the Supervisory Board is based largely on the procedure for electing members to the European Works Council.

Lists of candidates may, however, still be changed or combined with others during the meeting of the electoral college. The purpose is to ensure that all employees affected by the decisions of the S.E. are represented as seems best in the light of the findings of the electoral college.

82. These general observations are followed by an account of the committee's deliberations on the various amendments tabled to the text of the Pintus report.

Many amendments were tabled to Article 137, which is the cornerstone of the section dealing with employees' representation on the Supervisory Board. For the sake of clarity it should be pointed out that the Commission's text stipulated in paragraph 1 that the employees of the S.E. should be represented on the Supervisory Board according to a ratio of one employee's representative to every two appointed by the General Meeting. The company statutes might nevertheless provide for a higher number of employees' representatives. The committee decided by a majority to amend the composition of the Supervisory Board to one third employees' representatives, one third shareholders' representatives and one third members co-opted by these two groups.¹

The amendments to this article were as follows:

- Mr Hougardy's Amendment No.29, deleting the whole section on employees' representatives on the Supervisory Board (Articles 137-145);
- Mr Armengaud's Amendment No.43, which proposed two alternative changes. The first was that employees should only be represented on the Supervisory Board if the statutes of the individual European companies so provided; where such representation was provided for, the staff of the S.E. should appoint one member representing the managerial staff, and one representing the clerical and manual workers. The alternative

¹ See points 133 et seq., Pintus report.

proposal was for employee representation under all circumstances, with representation limited to the two members indicated above;

- Mr Jozeau-Marigné's Amendment No.44, rewording Article 137 as follows: 'The staff of the S.E. shall be represented on the Supervisory Board of the company under the conditions laid down in the Statute.' In other words, this amendment was similar to the first part of the first change proposed by Mr Armengaud;
- Mr Triboulet's Amendment No.138, which restored paragraph 1 of the text proposed by the Commission and deleted paragraph 2 of Article 137, which stipulates that at least one employees' representative on the Supervisory Board has to be a person not employed in an establishment of the S.E.;
- Amendment No.11 by Mr Müller, on behalf of the Committee on Social Affairs and Employment, which restored paragraph 1 of the Commission's text;
- Lastly, Mr Meister's Amendment No.1, which also restored paragraph 1 of the text proposed by the Commission.

There is no need to describe the various points of view expressed in connection with employees' representation on the Supervisory Board, since they are substantially identical to those described in paragraphs 133 et seq. of the Pintus report.

The position taken by some representatives of the new Member States was essentially that - above all for practical reasons - it was not advisable to introduce compulsory representation of employees on the company's organs and, in particular, that this requirement would certainly discourage the formation of European companies.

In reply to this argument it was pointed out that in the Federal German Republic worker participation in the company's body had produced positive results and had raised no insurmountable practical difficulties.

The Commissioner responsible, Mr Gundelach, wished to explain the text proposed by the Commission. In particular, the Commission attributed great political, economic and social importance to active and responsible participation by employees in the life of the European company. When faced with their own responsibilities, employees' representatives would certainly not try to ruin the undertaking which guaranteed employment for them and those they represented.

After a further thorough exchange of views, the committee put the various amendments to the vote, with the following results:

- Mr Hougardy's Amendment No. 29 deleting Article 137 was rejected by 11 votes to 1 with 1 abstention;

- Mr Armengaud's Amendment No. 43 (first part) was rejected by 13 votes to 3;
- Mr Jozeau-Marigné's Amendment No. 44 was rejected by 13 votes to 2;
- Mr Armengaud's Amendment No. 43 (second part) was rejected by 13 votes to 3;
- The first part of Mr Triboulet's Amendment No. 138 was rejected by 10 votes to 7 with 1 abstention and the second part by 11 votes to 7;
- Mr Müller's Amendment No. 11 was deemed rejected as a result of the rejection of Mr Triboulet's Amendment No. 138;
- The same applied to Mr Meister's Amendment No. 1.

Taking account of the observations made during the discussion, the committee then proposed a new text for Article 137.

Paragraph 1 is the result of a decision by the committee on the ratio of the various representatives on the Supervisory Board.

Paragraph 2 reflects the following considerations:

The requirement to appoint persons not employed by the undertaking as employees' representatives is designed to allow the participation of persons better qualified to assess the position of the undertaking in relation to the general economic situation and the situation in the particular sector in which the undertaking operates. For this reason, Mr Triboulet's amendment (second part) was rejected.

It is not possible to arrive at an objective assessment of the establishment's position if the person involved, though not belonging to the undertaking itself, belongs to another undertaking which is part of the same economic unit.

It must therefore be ensured that the persons not employed by the undertaking, referred to in Article 137(2), do not belong to a dependent undertaking either.

The original text did not expressly state that there must be persons belonging to the undertaking amongst the employees' representatives. This principle must, however, be established so that the situation of employees within the undertaking is not ignored.

In order to facilitate allocation of seats on the Supervisory Board to persons belonging to the undertaking and persons not employed by it, a fixed ratio between the two categories of seats has been laid down.

83. After Article 137, the committee inserted a new Article 137a worded as follows: 'The election of employees' representatives to the Supervisory Board shall be governed by the rules laid down in Annex III to this Statute. The said rules are an integral part of this Statute.'

This new provision was necessary because the system for electing employees' representatives to the Supervisory Board based on the existence of works councils is not applicable to the United Kingdom and Ireland, where such councils do not exist.

84. The committee then decided to reword Article 138(2), dealing with the period of validity of a decision by the employees not to appoint representatives to the Supervisory Board¹.

¹ See point 137, Pintus report.

85. On Article 139, Mr Armengaud had tabled Amendment No. 45, Mr Jozeau-Marigné Amendment No. 46, and Mr Triboulet Amendment No. 139.

These amendments concerned the principles and methods for electing employees' representatives to the Supervisory Board.

These amendments were rendered inapplicable by the committee's decision to propose a whole uniform electoral system.

86. The same applied to Mr Armengaud's Amendment No. 47 to Article 140, designed to exclude the presence of persons not employed by the company on the Supervisory Board.

87. The committee unanimously adopted a new text for Article 143. The new text corresponds to the former Article 142.

The text of paragraph 1 was made more precise. The previous wording could have been taken to mean that the Supervisory Board had to wait for two months before being able to perform its duties.

Paragraph 2 fills any gap which might result on the expiry of the term of office of the employees' representatives and, as far as possible, rules out continued operation of the Supervisory Board in the absence of employees' representatives.

88. On Article 144, a new text was unanimously adopted. The change made the term of office of employees' representatives on the Supervisory Board equal to that of members of the European Works Council.

It is advisable, as far as possible, to hold the elections of members to the European Works Council and of members of the Supervisory Board jointly. In all establishments employing at least 50 employees, the electoral commission should certainly be able to conduct both elections simultaneously.

As already indicated, simultaneous elections will make it easier for employees to understand the different obligations which their representatives are to meet and also helps to reduce costs.

The term of office of the other members of the Supervisory Board shall be, pursuant to Article 74, that stipulated in the statutes of the company and may not exceed four years.

89. A new Article 144a was adopted by 8 votes to 1 with 1 abstention. The text corresponds to the second indent of Article 144 as amended in the Pintus report. The right to apply to the court is extended to the European Works Council, whereas the Board of Management - in contrast to the provisions of the Pintus report - does not have this right.

90. Article 146 stipulates that the conditions of employment of the employees of the S;E; may be regulated by collective agreements made between the S;E; and the trade unions represented in the establishments.

Mr Hougardy tabled Amendment No. 30 deleting this article. Mr Cousté's Amendment No. 104 had the same aim.

Both amendments were unanimously rejected. In reaching this decision, the committee wished to stress the useful function performed by European collective agreements.

91. On Article 147, which is a corollary to Article 146, Mr Hougardy and Mr Cousté tabled Amendments Nos. 30 and No. 141 respectively, deleting the article.

Both amendments were unanimously rejected.

(f) TITLE VI: Preparation of the annual accounts (Articles 148 - 222)

92. On Article 153, which lists the items to be shown on the balance sheet of the S.E., Mr Hougardy tabled Amendment No. 31, adding the item 'reserves for replacement' to heading E II (Reserves) on the liabilities side.

This amendment was unanimously rejected, since funds reserved for replacement are included in the item 'reserves arising on revaluation' of the same heading, as specified in Article 181(2)a.

93. Article 148 provides that the annual accounts, comprising the balance sheet and the profit and loss account, shall be accompanied by an explanatory annex designed to give as clear an idea as possible of the economic and financial position of the company.

Article 191 lists the information which the annex must contain.

Mr Hougardy tabled Amendment No. 32 deleting paragraphs 5, 6 and 7 of this article.

The committee unanimously rejected this amendment, since it considered that deleting the above paragraph would make the balance sheet less clear.

94. In connection with Title VI, it should be noted that the Pintus Report (see point 154) already invited the Commission, when drafting the final text of the statute, to harmonize the provisions of this title with those of the proposed fourth directive on company law, on which Parliament has in the meantime delivered an opinion.¹

(g) TITLE VII: Groups of companies (Articles 223 - 240)

95. The committee first considered Mr Hougardy's Amendment No. 33 deleting Articles 223 to 240 inclusive. In other words, this amendment deleted all the provisions relating to the regulation of groups.

The committee confirmed its previous position in favour of regulating groups² and rejected the amendment unanimously.

It should be noted at this point that the Committee on Economic and Monetary Affairs also expressed its agreement on regulating groups.

¹ See Mr Meister's report on behalf of the Legal Affairs Committee (Doc. 159/72) and the European Parliament's resolution of 16 November 1972 (OJ No. C129, 11 December, 1972)

² See points 155 et seq., Pintus Report.

96. On Article 223, which gives a definition of groups of undertakings, Mr Cousté and Mr Armengaud tabled Amendments Nos. 142 and 48 respectively. The first of these introduced the principle that the controlling company should indemnify shareholders of the dependent company for any damage which they might suffer. The text proposed by the Commission, on the contrary, is based on the principle of the protection of shareholders' interests. The second amendment gave a different definition of a group of undertakings.

Both these amendments were unanimously rejected.

97. On Article 224, Mr Armengaud tabled Amendment No. 49 deleting the article, which defines the sphere of application of the Statute in relation to groups of undertakings.

The amendment was unanimously rejected.

98. On Article 225, which refers to the establishment by the Court of Justice of the European Communities of whether a group of undertakings exists, Mr Cousté tabled Amendment No. 143 deleting the article.

This amendment was unanimously rejected.

The committee also unanimously rejected Mr Armengaud's Amendment No. 50 rewording paragraph 2 of Article 225 as follows: 'The Court of Justice shall issue a declaration on actions instituted by those shareholders who, if the undertaking were held to be dependent would be outside shareholders or by creditors where the formation of a group would be contrary to their interests.' In short, this amendment was based on the principle of compensation.

99. Article 227 extends the requirement to present a balance sheet in accordance with the provisions of Title VI to companies belonging to a group.

In his Amendment No. 144, Mr Cousté proposed that this article be deleted. His proposal was rejected with 12 votes against and 1 abstention.

100. On Articles 228 to 231, Mr Cousté tabled Amendment No. 145 deleting these articles. The amendment was rejected unanimously.

101. The committee then held an exhaustive exchange of views on Article 228, to which Mr Jozeau-Marigné and Mr Armengaud had tabled Amendments Nos. 51 and 52 respectively.

Article 228 gives the outside shareholders of a dependent undertaking a chance to choose between a cash payment (the details of which are covered in Article 229), an exchange of shares (pursuant to Article 230) and, possibly, compensation (pursuant to Article 231).

Mr Jozeau-Marigné's Amendment No. 51 effectively transferred the right to choose from the shareholders to the controlling company of the group. Mr Armengaud's amendment had a similar aim.

The Commission representative explained that the purpose of Article 228 was to safeguard the interests of outside shareholders. It stipulates that the controlling company is bound to grant the shareholders either a cash payment or exchange of shares for those it keeps, as they prefer. The company may grant an annual compensation. After consultation with experts, however, it emerged that this provision bore too heavily on the controlling company, since, not knowing the shareholder's choice in advance, it would have to keep a total amount of the indemnity available, as well as a sufficient number of shares to offer in exchange. Article 228 should, therefore, be reconsidered.

In reply, it was argued that keeping such a number of shares and a sufficient sum for the indemnity available should not involve any difficulty for the controlling company.

The Commission representative replied that, in practice, the controlling company would have to acquire such shares. This was usually achieved by means of a capital increase. The amount of the cash payment would also sometimes have to be found, because the available funds were not always sufficient. If the choice were left to the shareholders, the company could not know in advance what form of compensation would be chosen, and it would, therefore, need to have both shares and liquid assets available in large enough quantities for possible needs at the same time. In certain circumstances, this could render the whole operation impossible.

At the close of the discussion, the committee decided, by 9 votes to 4 with 1 abstention, not to amend the Commission's text. The majority considered that the shareholders should be left to choose the means of compensation in order to ensure that their interests were protected. The takeover decision was freely reached by the controlling company, and the latter should, therefore, accept the economic consequences of its decision.

Amendments Nos. 51 and 52 were rejected by 10 votes to 3.

102. On Articles 229 and 230, Mr Armengaud tabled Amendment No. 53 and Mr Jozeau-Marigné Amendment No. 54, both for the deletion of these articles.

As already indicated, the articles concern payments to outside shareholders and the exchange of shares.

The amendments were jointly rejected with 11 votes against and 1 abstention.

103. Article 232 stipulates that the dependent undertaking shall appoint independent experts and instruct them to prepare a report concerning the amount of the payment in cash and the share exchange ratio that are appropriate.

Mr Cousté tabled Amendment No. 146 which, in particular, confined the above report to the payment in cash.

The amendment was rejected with 9 votes against and 3 abstentions.

Mr Armengaud's Amendment No. 55, stipulating that the expert instructed to prepare the report should be appointed by the Court of Justice of the European Communities, was rejected with the same majority. The committee felt that the amendment would make the procedure more complex.

104. Article 233 deals with the action to be taken after the report has been prepared by the independent experts.

On this article, Mr Cousté tabled Amendment No. 147, limiting it to three paragraphs and providing only a payment for the shareholders.

The amendment was rejected with 9 votes against and 3 abstentions.

Mr Armengaud tabled Amendment No. 56 deleting paragraph 4 of Article 233.

This amendment was also rejected, with 11 votes against and 1 abstention.

105. Article 234 concerns the summoning of a General Meeting of the controlling company to decide on the amount of the payment in cash and, where appropriate, the share exchange ratio.

Mr Cousté tabled Amendment No. 148 confining the decision to be taken by the General Meeting to the amount of the payment in cash.

The committee rejected the amendment, with 10 votes against and 2 abstentions, thus confirming the fact that it was not in favour of the principle of compensation on which both this amendment and the previous changes proposed by Mr Cousté were based.

106. Article 235 governs the organization of voting in the General Assembly on the cash payment and share exchange ratio.

On this article, Mr Armengaud tabled Amendment No. 149 rewording paragraph 1 as follows: 'Shares belonging to the promoting undertaking shall not give the right to vote on the cash payment.'

The committee rejected this proposal with 11 votes against and 1 abstention for the same reason which led it to reject the above amendment by Mr Cousté.

107. Article 236 lays down the procedure to be followed if the General Meeting rejects the proposals of the controlling company or if the resolution of the General Meeting to accept the controlling company's proposals is challenged. Mr Cousté tabled Amendment No. 150 rewording this article as follows: 'If the General Meeting rejects the proposals of the controlling company, the latter shall not impose decisions which are not in the interest of the dependent undertaking.'

This amendment was also rejected with 11 votes against and 1 abstention.

108. Article 237 provides in particular for the publication of the decision reached on the amount of the payment in cash and the share exchange ratio..

Mr Cousté tabled Amendment No. 151 deleting this article.

The amendment was rejected with 11 votes against and 1 abstention.

On Article 237, Mr Armengaud tabled Amendment No. 57 rewording paragraph 3 as follows: 'The controlling undertaking shall alone be liable in respect of the payment in cash and the exchange of shares.'

The committee rejected this amendment unanimously on the grounds that the original text of the Statute better protected the rights of minority shareholders.

109. On Article 238, Mr Cousté tabled Amendment No. 152 replacing the term 'dependent undertakings' by 'affiliated undertakings.'

The amendment was rejected with 11 votes against and 1 abstention, since the former expression was used throughout the Statute.

110. Article 239 concerns the protection of creditors' rights. On this article Mr Cousté tabled Amendment No. 153 and Mr Armengaud Amendment No. 58.

Again, Mr Cousté's amendment was based on the principle of indemnification. It was rejected with 11 votes against and 1 abstention.

Mr Armengaud's amendment reworded the article as follows: 'A creditor of the dependent undertaking may bring proceedings against the controlling company if he proves that he has endeavoured in vain to obtain payment of his debt from the dependent undertaking.' This amendment was rejected unanimously as less clear than the Commission's text.

ANNEX I: National employees' representative bodies in the establishment of the S.E.

111. Article 102 of the proposed Statute lists the employees' representative bodies established by law or collective agreements in the six original Member States of the Community. Certain changes in some States had subsequently rendered this list obsolete, and it had to be brought up to date. The enlargement of the Community also made it necessary to extend the list.

Since further revision may become necessary in the future and require formal amendment of the Statute, with the attendant procedural difficulties, the committee felt it advisable to present the list of national employees' representative bodies as Annex I to the Statute and authorize the Commission to amend it whenever necessary. The aim was to simplify the amendment procedure. Article 102 was therefore amended accordingly¹.

ANNEX II: Rules for the election of members of the European Works Council

112. As pointed out above², the committee thought it useful to establish a complete set of rules in this field and entrusted this task to its rapporteur.

In agreement with Mr Adams, draftsman of the opinion of the Committee on Social Affairs and Employment, and with the technical assistance of the appropriate Commission officials, an overall system was drawn up.

For practical reasons, a few of the provisions dealing with the election of members of the European Works Council - Articles 100, 101, 102, 102a, 103, 103a, 104, 106, 107, 108, 109, 110 and 111 - were incorporated in the Statute. The remaining articles are presented in Annex II, which is an integral part of the Statute (see Article 104).

113. The articles incorporated in the Statute have already been discussed above³.

Before considering the provisions of Annex II, it would be useful to briefly outline the principles underlying the proposed electoral system.

The system is based on the direct election of employees' representatives for each establishment by all employees, irrespective of nationality.

No differentiation is made between manual workers, office staff and managers, contrary to the practice in some Member States for the election of works councils.

¹See point 55.

²See point 58.

³See Title V, points 54 et seq.

Since the European Works Council has a special role as a broad representative body at the level of the firm, each establishment elects far fewer representatives to the European Works Council than to national works councils.

This makes it impractical, in drawing up these electoral rules, to treat the various groups of employees in the same way as in national electoral rules and organize the employees of the S.E. into separate electoral groups. Furthermore, there are no uniform criteria in the Community by which to make such differentiation. In some countries (Netherlands, United Kingdom and Ireland) there is no division into separate electoral groups; in others, a distinction is made between wage and salary earners, or between manual workers, office staff and managers. In Germany, individual groups of employees may choose between voting together and voting separately.

The criteria for classifying employees in the different electoral groups differ from country to country. In some, they are statutory while in others they are freely agreed. Under these circumstances, it does not seem possible to divide the employees of all S.E. establishments into the same electoral groups. The legal classification of employees in a particular electoral group under the arrangements of the Member States concerned will not be affected by the fact that an establishment belongs to a European company.

On the other hand, because of the special function and structure of the European Works Council, it is not possible or even desirable to lay down at European level the divisions between employees used at the national level as would be required if the rules for election were based on the national method of dividing employees into electoral groups. The division of employees into different electoral groups is based on the particular characteristics of the respective national systems of employees' representation. These characteristics certainly do not apply to employee representation at the international level which operates in an entirely different context; neither its functions nor its composition are the same. If the various groups of employees of an establishment are to be properly represented in the European Works Council at European level, the only method is to give the employees the chance to organize themselves into groups within each establishment and to ensure that such groups are duly represented in the European Works Council in accordance with the principles of proportional representation.

Candidates may be nominated by trade unions in the establishment which are recognized under national rules.

They may also be nominated by a group consisting of at least 10 per cent of the employees or by 25 employees of the establishment. There is no justification for restricting the right of nominating candidates to trade unions. The membership of trade unions varies from one Member State to another, and even from one company to another within a given Member State.

If more than one candidate is to be elected in an establishment, the seats in the European Works Council must be distributed between the various lists of candidates in accordance with the rules of proportional representation.

Each elector may vote for one of the candidates on the list which he has chosen.

The d'Hondt system of proportional representation which has been adopted in many Member States, for both political elections and elections to works councils, is proposed.

The election will be organized by an electoral commission. This commission will be elected by the national works councils of the individual establishments.

In the United Kingdom and Ireland, where works councils do not exist, the normal practice will be followed and it will be appointed by the recognized trade unions and the management. If there is no employee representation at all, the electoral commission will be appointed by an employees' meeting.

There is provision for action by the courts if an electoral commission is not formed or does not function in a proper manner.

The election may be declared null and void if it has been conducted illegally. The European Works Council is, however, allowed to meet even if the election has been declared null and void in an establishment.

114. Article 1 of Annex II lays down the conditions which an employee of the S.E. must meet in order to be entitled to vote.

The elector must be an employee of the S.E. This concept is basically common to the law of all the Member States. The question of whether partly self-employed workers (home workers, commercial agents) are included must be decided by reference to the law applicable to their contract of employment.

Persons who exercise the function of the employer in the S.E., i.e. members of the board, are not entitled to vote.

Some legal systems also withhold entitlement to vote in works councils elections from persons to whom the board of the undertaking has given duties similar to those of an employer (in Belgium, persons 'chargées d'un poste de direction', in Germany senior executives with general power of attorney or authority to appoint and dismiss employees or to carry out important duties on their own responsibility). This provision has not been adopted because of the difficulty of drawing a clear distinction between such persons and other employees.

An elector must be a member of the establishment or carry out his principal duties in it. This provision is designed to identify as clearly as possible the establishment in which the individual employee of the S.E. can elect his representatives.

Electors must be sixteen years old. There is an age requirement for the right to vote in Belgium (16 years), Italy (16 years), France (18 years) and Germany (18 years). There is no age limit in the Netherlands but this has little practical importance since an employee has to belong to an establishment for one year before he is entitled to vote.

On the date of the election the elector must have been employed in the establishment concerned for at least four months.

A specific length of employment is required in Belgium (3 months), France (6 months), the Netherlands (one year) and in Italy employees on probation are not entitled to vote. In Germany there is no restriction.

Requiring a specific length of employment serves the purpose of excluding staff on short-term contracts (casual workers). This requirement also makes it easier for the electoral commission to draw up the lists of persons entitled to vote in the elections.

The right to vote in elections for the European Works Council in no way depends on nationality or period of residence in the Community Member States.

This article was adopted by 10 votes to 4, with 4 abstentions.

115. Article 2 deals with the right to stand for election. It should be pointed out that the right to stand for election is directly or indirectly linked to the entitlement to vote in Belgium, Germany, France, Italy and the Netherlands.

An age limit is laid down in Germany (18 years), Italy (18 years), Belgium (21 years as a rule) and France (21 years). In the Netherlands there is no need for a limit because a three-year period of membership of the establishment is required.

A specified period of membership of the establishment is required in Belgium and Germany (6 months), France (one year) and the Netherlands (3 years).

An excessively long period would severely restrict the number of candidates. In view of the functions of the European Works Council, membership of the undertaking should be taken as the basic requirement.

In Germany and France, express reference is made to loss of eligibility as a result of a judicial decision.

The right to stand for election, like the entitlement to vote, should in no way depend on nationality or period of residence in the Member States.

This article was adopted by 11 votes to 1 with 1 abstention after your committee had rejected, by 7 votes to 2 with 4 abstentions, an amendment tabled by Mr Schmidt deleting the phrase 'by a judicial decision' in paragraph 2.

The committee also rejected, by 7 votes to 3 with 2 abstentions, Mr D'Angelosante's amendment to paragraph 2 which read as follows: '2, Persons who under the law of the Member States, are debarred from exercising such functions by virtue of a judicial decision are not eligible'.

116. Article 3 reflects the principles of election to works councils generally accepted in the Member States.

Trade unions represented in the establishment and groups of employees entitled to vote have the right to submit lists of candidates for the European Works Council.

In Belgium only the representative trade unions have the right to submit lists; the same applies in France for the first ballot (if the turnout is less than 50 per cent, a second poll is held with a free list of candidates).

In Germany, the Netherlands and Italy, employees are also entitled to nominate candidates. The Statute has adopted this method for elections to the Supervisory Board (Article 140, (2)). This arrangement should be retained.

The organization of employees into trade unions varies greatly from country to country. Unions cannot therefore be given a monopoly on the presentation of candidates, as in Belgium.

In addition, no provision is made for group elections to the European Works Council. Employees should be able to organize themselves into groups of their own accord if they think their interests are better represented in this way.

Consequently, any reasonably large group of employees in an establishment must be given the chance to promote the election of its own candidate.

This article was adopted by 10 votes to 1 with 1 abstention.

A proposal presented by Mr Brewis and Sir Derek Walker-Smith fixing the number of persons entitled to vote who have the right to submit a list of candidates at 25 was adopted by 6 votes to 4 with 1 abstention.

117. Article 4 stipulates that, where a single representative is to be elected, election shall be by a relative majority.

118. In accordance with the laws of most states in which works councils exist, Articles 5 and 6 provide that, in cases where more than one representative is to be elected from more than one list of candidates, the election shall be according to the principle of proportional representation, in order to prevent one group of employees in a establishment from acquiring a monopoly of seats on the councils (proportional representation exists in Germany, France, Italy, Luxembourg and Belgium).

Whenever elections to the works council are based on proportional representation, one or other of the systems of election by list has been adopted.

In Germany strict adherence to the list is required; employees may not depart from it. In France and Italy, on the other hand, electors may alter the order of candidates on the list.

Belgium and Luxembourg allow freedom of choice from the list, whereby voters may split the ticket (choose candidates from more than one list).

In order to give electors the greatest possible influence over the establishment's representation without making the election procedure too unmanageable, it seems desirable to choose the list system whereby an elector may cast a preference vote for the candidate of his choice and the candidate's final ranking is determined by the number of preference votes cast for him rather than his original position on the list.

The following methods may be used to allocate seats to the different lists;

- (a) Allocation by means of an electoral quotient. The electoral quotient is calculated by dividing the number of votes cast by the number of seats to be filled. The number of seats allocated to each list is equal to the number of times the number of votes cast for that list can be divided by the electoral quotient.

This system is used in Italy. Provision must be made for distribution of the remaining votes, i.e. numbers of votes falling below a full electoral quotient.

It is comparatively straightforward to operate. However, for electing a small number of representatives it is mathematically very imprecise (a high electoral quotient results in a large number of remaining votes, which cannot be allocated according to the principles of proportional representation). In France and Luxembourg the Hagenbach-Bischoff system is used in an attempt to solve this problem.

A distribution coefficient is calculated for each list; by dividing the number of votes cast for it which remain by one plus the number of seats already allocated.

The remaining seat is awarded to the list which obtains the highest distribution coefficient.

(b) The maximum quotient method, proposed by d'Hondt in 1882, is used in Germany and Belgium and functions as follows:

Example:

4 members are to be elected to the European Works Council. There are 3 lists.

List 1 obtains 1,130 votes

List 2 obtains 570 votes

List 3 obtains 500 votes

These figures are divided as follows:

<u>List 1</u>	<u>List 2</u>	<u>List 3</u>
1,130 : 1 = 1,130 ¹	570 : 1 = 570 ²	500 : 1 = 500 ⁴
1,130 : 2 = 565 ³	570 : 2 = 285	500 : 2 = 250
1,130 : 3 = 376.66	570 : 3 = 190	500 : 3 = 166.66
1,130 : 4 = 282.5		

The four highest quotients are taken, i.e. those from 1,130 to 500. Seats are allocated to the lists accordingly; thus the first seat goes to the first list (with 1,130), the second seat to the second list (with 570), the third seat to the first list (565) and the fourth seat to the third list (with 500). If only three seats were to be filled, the third list would not receive any; if five seats were to be filled, the first list would receive the third one (with 376.66).

To avoid abuse, the choice of method must not be left to the electoral commission. It would be equally unsatisfactory to prescribe the method used in the individual countries since this arrangement would not work for countries which do not have works councils or proportional representation.

The d'Hondt method has proved quite satisfactory in the countries employing it so that its use for elections to the European Works Council is to be recommended. It requires no special division of remaining votes

and can help to solve the problems arising in connection with the election by proportional representation for the Supervisory Board of the S.E. (election from the various lists of candidates not employed by the S.E.).

Article 5 was adopted with 12 votes in favour and 1 abstention.

Article 6 was adopted by the same majority.

The committee had previously, by 9 votes to 4 with 1 abstention, rejected an amendment by Mr D'Angelosante changing the text of the first part of Article 6(2) to read as follows:

'If more than one list has the last quotient to qualify for a seat, the seat shall be allocated by lot.'

119. Article 7 is intended to give electors a chance to determine the composition of the European Works Council when only one list of candidates has been submitted.

120. Article 8 was unanimously adopted. This article stipulates that a vote shall be valid only if the ballot paper is marked in accordance with the provisions of the Statute.

121. It is important to the meaning of Article 9 that elections to the European Works Council are carried out in the individual establishment of the S.E. A special provision is proposed to settle possible arguments as to whether a particular installation constitutes an establishment and representatives to the European Works Council should accordingly be elected in it so that a decision may be reached within the period set for formation of the electoral commissions. If no such provision were made, there would be a risk of the validity of the election being contested after the event in one or more establishments.

The Article stipulates that the Board of Management, as the body most conversant with the structure of the S.E., shall publish a list of establishments and that this list shall serve as the basis for conducting the election and determining the areas of responsibility of the electoral commissions, provided that the completeness and accuracy of the list is not contested pursuant to Article 10 of Annex II.

Compilation of this list is not, however, a pre-condition for conducting the election. Failure by the Board of Management of the S.E. to publish the list does not entail postponement of the election. The electoral commissions can be set up under the procedure laid down for this purpose.

The Board of Management must lodge any objections to the formation of the electoral commission within eight days.

Taken together, these rules should prevent any dispute as to the internal organization of the S.E. from influencing the conduct of the election.

The article was unanimously adopted.

122. Proper application of the election rules may in some cases depend on a prompt ruling as to whether an institution of the SE constitutes an establishment within the meaning of this Statute and therefore has the right to elect representatives to the European Works Council. Article 10 provides for a special procedure in the event of such disputes, so that the conduct of the election is not affected.

The court within whose jurisdiction the establishment is situated shall be required to give a ruling.

Paragraph 3 makes it clear that the court ruling is binding even if it is the subject of an appeal. It is only null and void when and if a higher court quashes or amends it.

Paragraph 4 indicates the procedure to be followed if the court of final jurisdiction issues a ruling which conflicts with the original one.

This article gave rise to a heated discussion, but the text presented in the Annex was finally adopted unanimously, taking account, in particular, of a proposal made by Mr Héger relating to paragraph 4.

An amendment by Mr D'Angelosante wording paragraph 3 as follows: 'The verdict shall be immediately applicable. An appeal shall not have suspensive effect' was rejected by 8 votes to 1 with 3 abstention.

123. With reference to Article 11, it should be noted that in Germany and Italy electoral commissions responsible for the conduct of elections already exist. It is in keeping with the role of the European Works Council as an independent body representing the employees' interests that the election should be run by the employees themselves and not, as in Belgium, France and Luxembourg, by the employers. In addition, the proposed regulation gives the electoral commission a certain freedom of action in fixing the practical details of the election. If the employer were made responsible for the conduct of the election, many more precautions guaranteeing tighter legal control, would be required than where the election is run by employees.

The electoral commission for each establishment which is to elect representatives to the European Works Council must be appointed by the employees' representative bodies referred to in Annex I. In Member States in which no such body exists (United Kingdom and Ireland), the electoral commission will be set up under the normal procedure for settling problems in the organization, i.e. by an agreement between the board of management and the recognized trade unions in the establishment.

A decision as to which unions are recognized as representing the employees' interests in an establishment will be reached by collective bargaining according to traditional practice under British or Irish law.

Should there be no body of any kind representing the employees' interests, the Board of Management of the S.E. must summon a meeting of the employees to elect the members of the electoral commission.

Article 12 sets out the legal procedure to be followed where problems arise in conforming to these provisions, e.g. if the Board of Management of the S.E. and the recognized trade unions cannot reach agreement on the formation of the electoral commission.

Article 11 was unanimously adopted, taking account of two suggestions by Mr Broeksz and Mr Vernaschi respectively.

124. Article 12 provides that an external authority (the court of jurisdiction) should help to ensure that the election is conducted in cases where difficulties arise in forming the electoral commission or the electoral commission is in breach of its obligations and, for instance, rejects valid lists of candidates.

The court may take the measures it considers most appropriate to ensure a proper election. It may, for example, convene a general meeting of the establishment or, in Member States (such as the United Kingdom) in which public bodies are responsible for organizing the election, instruct those bodies to arrange the election.

This article was unanimously adopted.

125. Article 13 which lays down the working procedure of the electoral commission was unanimously adopted without discussion.

126. Article 14 provides that an election notice shall inform voters of the election and the main rules for its conduct. After the publication of this notice, the electoral commission must adhere to a strict timetable:

- lists of candidates must be received within ten days of the publication of the election notice (Article 16 (1)),
- after publication of the election notice, the electoral role must be displayed until the date of the election (Article 15 (1)),
- the list of candidates, scrutinized and, if necessary, amended by the electoral commission must be announced at least ten days before the election to give electors time to lodge objections,
- the final version of the lists of candidates must be announced at least three days before the election.

The election calendar has been fixed with reference to Articles 106 and 109(1). However, for the ballot to be properly conducted, the period stipulated in Article 106 appears too short and the period in Article 109(1) too long.

The result is, however, that the European Works Council will hold its first meeting 100 days after the formation of the S.E. (see Article 106), i.e. only 10 days later than in the original Commission proposal (see Article 109(1)).

Article 14 was unanimously adopted in its entirety.

The committee rejected by 9 votes to 3 with 1 abstention an amendment by Mr D'Angelosante eliminating the postal vote. On the other hand, it adopted by 5 votes to 4 with 1 abstention an amendment by Mr D'Angelosante changing the last sentence of paragraph 2.

127. Article 15 deals with the compilation of the electoral role by the electoral commission and the lodging of any objections to the role on the grounds of inaccuracy or incompleteness.

The committee discussed this article very thoroughly, with particular attention to paragraph 2, and finally established the following principles:

- no reaction from the electoral commission is equivalent to a rejection of the objection (unanimously adopted);
- it should be possible to appeal to the court of jurisdiction against an implicit or formal decision of the electoral commission (adopted with 8 votes in favour and 3 abstentions);
- the court must issue the final ruling (adopted with 10 votes in favour and 2 abstentions);
- the court must issue a ruling within a short space of time (adopted by 7 votes to 1 with 2 abstentions);
- application to the court shall not have suspensive effect (adopted by 7 votes to 3).

Article 15 as a whole was adopted with 9 votes in favour and 1 abstention.

128. Article 16 deals with the submission of lists of candidates to the electoral commission.

The electoral commission must scrutinize the list of candidates submitted in time for them to be displayed as stipulated in Article 16 (4) and make any necessary alterations.

The period for scrutinization is to be reduced if no list of candidates have been submitted within the ten-day period specified in paragraph 1 and the electoral commission has to extend the period pursuant to paragraph 3. It is however, most unlikely that, if the normal period has elapsed without any lists of candidates being submitted, the electoral commission will receive a large number of lists in the additional five days.

The lists of candidates scrutinized by the electoral commission are brought to the elector's attention in the same way as the election notices in order to make it possible to lodge objections. As the lists have already been scrutinized by the electoral commission, it is probable that objections will normally be lodged only against individual candidates on the lists. Such objections can usually be settled by those concerned in a relatively short time,

The final lists of candidates must be published three days before the election to enable electors to decide on their choice.

This article was adopted with 10 votes in favour and 1 abstention.

129. Article 17, 18 and 19 deal with the conduct of the election.

The only point which arises here is that an outside authority (a court of law) may extend the time-limit set for the election in order to avoid conducting a ballot which is likely to be contested later.

The three articles were unanimously adopted.

130. Article 20 sets out the possible grounds for contesting the validity of the election of the European Works Council.

A necessary condition is an infringement of the electoral rules such as to affect the result. Failure by the electoral commission to meet a deadline would not generally constitute a valid reason for contesting the result.

Apart from the right of contestation and the other legal remedies provided in the electoral rules, there is no possibility of recourse to the law (e.g. under general national legislation) during preparations for the election and the ballot itself. There is no need to make such provision. A decision as to whether the election should be held in a given establishment can be reached before the election pursuant to Article 10 of Annex II. The election itself is conducted not by the employers - as in some countries with a complex system of legal controls - but by an electoral commission elected by the employees. This commission enjoys the confidence of the employees in the performance of its duties.

An electoral commission persistently in breach of its obligations may be dismissed by the court of jurisdiction. Irregularities in the preparations for an election may either constitute an abuse and lead to the dismissal of the electoral commission or may give rise to complex legal questions which must be settled in proceedings after the election through an injunction but cannot be settled before the election by urgent procedure.

The validity of the results of the election may be contested only by organizations or persons who have an interest in altering the representation of the establishment on the European Works Council i.e. the Board of Management of the S.E. and organizations or persons entitled to submit lists of candidates for new elections if the contestation is successful.

To prevent abuse of the right to contest the validity of elections, it is stipulated that the elected members of the European Works Council shall remain in office until proceedings have been completed.

This article was unanimously adopted.

ANNEX III: Rules for the election of employees' representatives
to the Supervisory Board

131. Contrary to the provisions of the Statute proposed by the Commission, this annex lays down the procedure for the election of employees' representatives pursuant to the decisions made by the committee on the basis of the following principles.

The Statute proposed by the Commission stipulates that employees' representatives on the Supervisory Board should be appointed by the employees' representative bodies referred to in Article 102. Moreover, this method is not viable because such bodies do not exist in two Member States.

It therefore seems advisable to employ the system of indirect election for European companies with several establishments. Direct election would make it very difficult for candidates for election to the Supervisory Board to meet all the employees in the various establishments and seek to gain their confidence.

The lack of contact between the employees in different establishments might well lead to piecemeal voting if separate elections were held in each establishment, particularly where a large number of establishments are located in different Member States. In the various establishments which are to appoint employees' representatives to the Supervisory Board, the employees entitled to vote should therefore elect electoral delegates who then jointly elect the employees' representatives to the Supervisory Board of the S.E.

The two tier procedure is, however, unnecessarily complicated if employees entitled to vote are employed in only one establishment, and the employees entitled to vote should then directly elect their representatives to the Supervisory Board.

Employees of undertakings controlled by the S.E. should also be entitled to elect employees' representatives to the S.E. since these undertakings are economically integrated with the S.E.

The provisions should be extended in this way so that the rules of co-management proposed for the S.E. are not rendered inapplicable when a holding company is formed at the head of the group of undertakings.

This does not apply, however, if an undertaking is dependent on the S.E. but not under its sole management. In that case, a group of undertakings within the meaning of Articles 223, 224 and 240 does not exist, and the undertakings concerned do not constitute an economic unit justifying extension of the electoral provisions.

The practical procedure for electing the electoral delegates and the employees' representatives to the Supervisory Board generally corresponds to the procedure proposed for the election of members of the European Works Council.

During the meeting of the electoral college, lists of candidates may be altered or combined with others.

It is hoped that this procedure will ensure that all employees affected by the decisions of the S.E. are represented as seems best in the light of the findings of the electoral college.

132. It should be stressed that all the provisions in this Annex were adopted unanimously.

In the interests of brevity, the rapporteur has therefore confined himself to commenting on the most important provisions.

(a) Notes on Articles 1 and 2

133. If the S.E. and the group undertakings under its sole management (Articles 223, 224, 240) have more than one establishment, the employees' representatives on the Supervisory Board of the S.E. shall be appointed by an electoral college elected by the employees of these establishments. The subsequent provisions provide that the electoral delegates shall be elected in accordance with the provisions for electing members to the European Works Council and, if possible, at the same time.

The Commission's proposal provided for a system of indirect elections. Its proposals that the electoral delegates should be members of the employees' representative bodies formed at undertaking level referred to in Article 102 is not, however, feasible because in two of the Member States no such representative bodies exist.

The system of indirect elections seems more suitable since it would be difficult to introduce a system of direct elections in an undertaking with several establishments or to hold an election in several different group undertakings. As has been pointed out under a system of direct elections it would also be very difficult for candidates for election to the Supervisory Board to make contact with and gain the confidence of all the employees of the various establishments of the S.E. and its dependent undertakings.

The lack of contact between employees of different establishments, especially if they were situated in various Member States, might well lead to piecemeal voting if employees' representatives on the Supervisory Board were elected separately in each establishment.

Electoral delegates appointed in the various establishments, on the other hand, can meet one another and the candidates put forward for election to the Supervisory Board at the electoral college in order to learn more about them.

Where, however, employees are all employed in a single establishment of the S.E. or of a dependent undertaking, it seems unnecessary to provide a two-tier system for electing the employees' representatives to the Supervisory Board of the S.E. In this case, there is no reason why they should not be directly elected, following by analogy the rules for the election of members to the European Works Council.

Employees of group undertakings dependent on the S.E. must also be entitled to elect employees' representatives to the Supervisory Board, since such undertakings constitute a single economic unit with the S.E. It is necessary to intervene in this way in relations between undertakings formed under national law and their employees so that the rules on co-management laid down for the S.E. are not rendered inapplicable when a holding company is formed at the head of a group of undertakings by making these regulations applicable only to the employees of the holding company. The decisions of the Supervisory Board of the holding company concern all the employees of the group as a whole if the controlling holding company pursues a consistent economic policy. All employees directly affected by these decisions should therefore have a say in the composition of the Supervisory Board of the controlling company.

This does not, however, apply if an undertaking is dependent on an S.E. but not under its sole management. In that case, a group of undertakings within the meaning of Articles 223, 224 and 240 does not exist, and the undertakings concerned do not constitute an economic unit justifying an extension of the right to vote.

Employees of the S.E. and its dependent undertakings are entitled to elect the electoral delegates, or directly elect their representatives to the Supervisory Board (if the election is only held in one establishment), under the same conditions as those under which they are entitled to vote in elections for the European Works Council.

There is no need to draw up provisions concerning the right to stand for election, since the conditions are laid down in Article 47 of the Statute, which applies to all members of the Supervisory Board.

(b) Notes on Articles 3, 4, 5 and 6

134. Articles 3, 4, 5 and 6 lay down the procedure by which employees elect the electoral delegates in the establishments of the S.E. and its dependent

undertakings.

These provisions are analogous to those governing the election of members of the European Works Council.

The delegates must be protected against dismissal until the election of the employees' representatives on the Supervisory Board (Article 3(3)).

(c) Notes on Article 7

135. Paragraph 1 lays down the general procedure for the election of employees' representatives to the Supervisory Board.

The European Works Council, trade unions and groups of employees' represented in the establishments of the S.E. and the electoral delegates have the right to put forward candidates.

For the reasons given in relation to the similar provision on lists of candidates for the European Works Council (Article 3 of Annex II), there seem to be no grounds for giving the trade unions a monopoly on submission of lists of candidates.

Where the S.E. is the controlling undertaking of a group the trade unions represented in the dependent undertakings and the staff employed therein are also entitled to submit lists of candidates, thus ensuring adequate representation of the interests of the employees of dependent undertakings.

(d) Notes on Article 8

136. The purpose of this Article is to ensure that the number of candidates whose names appear on the respective lists complies with Article 137.

(e) Notes on Article 9

137. The provision stipulates that, where a single representative is to be elected, election shall be by relative majority (see Article 4 of Annex II on election of the European Works Council).

Since voting is held in a small electoral college, there are few practical obstacles to holding a second ballot before allocating the seat by lot.

(f) Notes on Articles 10 and 11

138. As in the election to the European Works Council, where more than one representative is to be elected from more than one list of candidates, election to the Supervisory Board shall be governed by the principles of proportional representation, to prevent one group of employees in an

undertaking or group from acquiring a monopoly of seats. This is particularly important in supranational undertakings. If a majority system was chosen in the case, for instance, of a Franco-German company with a majority of French employees, there would be a risk that only the French employees might be represented on the Supervisory Board. As in the elections for the European Works Council, election shall be by proportional representation using a list system in which each elector may cast a preference vote for a candidate of his choice and the candidate's final ranking depends on the number of preference votes he obtains rather than his original position on the list. Each electoral delegate may cast two preference votes; one for a candidate for a seat reserved for persons not employed by the S.E. and one for one of the other candidates. As in elections for the European Works Council, seats are allocated according to the d'Hondt system.

Example: Four employees' representatives are to be elected to the Supervisory Board of the S.E. Pursuant to Article 137 (2), two of these representatives shall be persons not employed by the S.E. Pursuant to Article 8 of Annex II, each list must therefore name at least two outside candidates. The 'A' candidates, for seats reserved for outside persons, must appear at the head of the list, separately from the 'B' candidates. There are three lists.

List 1 obtains 113 votes,
 List 2 obtains 57 votes,
 List 3 obtains 50 votes

These figures are divided as follows:

List 1	List 2	List 3
113 : 1 = 113 (1)	57 : 1 = 57 (2)	50 : 1 = 50 (4)
113 : 2 = 56.5 (3)	57 : 2 = 28.5	50 : 2 = 25
113 : 3 = 37.66	57 : 3 = 19	50 : 3 = 16.66
113 : 4 = 28.25	57 : 4 = 14	50 : 4 = 12.5

(a) Allocation of seats 'A'

	List 1	List 2	List 3
Candidates A ₁	<u>113</u> (1)	<u>57</u> (2)	50
Candidates A ₂	56.5	28.5	25

(b) Allocation of seats 'B'

Seats 'B' are allocated on the basis of the quotients not yet

used for the allocation of seats 'A'.

	List 1	List 2	List 3
Candidates B ₁	<u>56.5</u> (3)	28.5	<u>50</u> (4)
Candidates B ₂	37.66	19	25

The first seat goes to candidate A₁ from the first list (with 113); the second seat goes to candidate A₁ from the second list (with 57); the third seat goes to candidate B₁ from the first list (with 56.5); and the fourth seat goes to candidate B₁ from the third list (with 50).

Another method of allocation would be to use the same quotients for allocating seats 'A' and 'B':

	List 1	List 2	List 3
A ₁	<u>113</u> (1)	<u>57</u> (2)	50
A ₂	56.5	28.5	25
B ₁	<u>113</u> (3)	<u>57</u> (4)	50
B ₂	56.5	28.5	25

List 3 would then not obtain any seats and list 2 would have a disproportionate advantage. With the first system, each list is represented on the Supervisory Board in proportion to the votes obtained. Thus, the list receiving most votes then appoints the outside candidates to the Supervisory Board.

(g) Notes on Article 14

139. Preparations must be made for the meeting of the electoral college held to elect the employees' representatives: the date of the meeting has to be decided; the electoral delegates must be summoned; the lists of candidates submitted by the trade unions and employees must be submitted and presented to the electoral college.

It seems advisable to make a special central electoral commission responsible for these tasks and for arranging the meeting of the electoral college.

This central electoral commission may be composed of the chairmen of the electoral commissions already formed, since its activities do not begin until the electoral delegates have been appointed.

The procedure for preparing and conducting the meeting of the electoral college is based on the regulation implementing the German supplementary law on employee participation in supervisory boards and boards of management in the mining and iron and steel industries of 26 November 1956 (Official Gazette of the FRG, I, p.885).

Article 6 of the law on employee participation of 7 August 1956 (Mitbestimmungsergänzungsgesetz - Federal Law Gazette, p. 507) provides for the election of employees' representatives to the Supervisory Board by electoral delegates (in addition, representatives are appointed by the trade union in the undertakings).

The regulation implementing this law includes a detailed electoral statute.

The 1952 company law (Betriebsverfassungsgesetz) also provides the option of election of employees' representatives to the Supervisory Board of controlling companies by electoral delegates (Article 76(4) sentence two of the company law of 11 October 1952 - (Official Gazette of the FRG, I, p.68, which still applies in this field).

Although the German law provides for a general election by all employees under normal circumstances, there have in practice been many departures from this procedure.

(h) Notes on Article 18

140. The purpose of the provisions of Article 18 is to keep lists of candidates as open as possible so that they can be combined if the electoral college so decides at its meeting.

(i) Notes on Articles 23-26

141. The direct election of employees' representatives to the Supervisory Board is governed mutatis mutandis by the rules laid down for the election of members to the European Works Council (see Annex II).

III. Consideration of the amendments to the motion for a resolution contained in Mr Pintus' report

142. Before summarizing the results of the vote on the amendments referring to the paragraphs of the motion for a resolution in the Pintus report it should be pointed out that the committee rejected almost all the amendments tabled for two main reasons:

- in general, the amendments were the corollary of amendments to the draft Statute and, since the latter mostly reflected principles which the

committee had rejected, the amendments to the motion for a resolution were also clearly bound to be rejected;

- wherever possible, the rapporteur suggested compromise amendments which the committee was generally able to adopt unanimously.

A brief summary of the voting results follows.

143. On paragraph 1 of the motion for a resolution, Mr Armengaud tabled amendment No. 66.

This amendment was no longer applicable since the committee adopted, with 11 votes in favour and 1 abstention, a compromise text submitted by the rapporteur.

144. On paragraph 2, Mr Armengaud tabled Amendment No. 67.

Since the committee unanimously adopted a compromise text submitted by the rapporteur this amendment was also no longer applicable.

145. The same applied to Mr Armengaud's Amendment No. 68.

146. Mr Armengaud also tabled Amendment No. 69 introducing a new paragraph 3a.

This amendment was rejected with 11 votes against and 1 abstention.

147. Mr. Hougardy tabled Amendment No. 59 also introducing a new paragraph 3a.

This amendment was unanimously rejected.

148. On paragraph 4, Mr Hougardy's Amendment No. 60 deleting the paragraph was adopted with 11 votes in favour and 1 abstention.

The committee unanimously agreed to replace paragraph 4 by a new text submitted by the rapporteur.

149. On paragraph 5, Mr Armengaud tabled Amendment No. 70.

This amendment was no longer applicable since a compromise text submitted by the rapporteur was adopted with 11 votes in favour and 1 abstention.

150. On paragraph 6, the committee unanimously rejected Mr Armengaud's Amendment No. 71 since it referred to the situation before the enlargement of the Communities.

For the same reason, paragraph 6 of the motion for a resolution contained in the Pintus report no longer served any purpose. As a result of the deletion of paragraph 6, the numbering of the paragraphs of the resolution up to paragraph 26 was changed accordingly.

151. Mr Armengaud's amendment No. 72 introducing a new paragraph 6a was also unanimously rejected, since it was based on the situation prior to the Community's enlargement.

152. On paragraph 7, Mr Armengaud tabled Amendment No. 73.

This amendment no longer served any purpose since the committee unanimously adopted a compromise text submitted by the rapporteur.

153. The same applied to Mr Armengaud's Amendment No. 74 to paragraph 8. The compromise text submitted by the rapporteur was adopted by 12 votes to 1.

154. On paragraph 10, the committee adopted a compromise text suggested by the rapporteur with 12 votes in favour and 1 abstention.

Mr Armengaud's Amendment No. 75 was therefore no longer applicable.

155. On paragraph 11, Mr Armengaud tabled amendment No. 76.

This amendment was unanimously rejected.

156. On paragraph 12, the committee unanimously adopted the rapporteur's amendment deleting the word 'undoubtedly', which was superfluous.

Mr Armengaud's Amendment No. 77 therefore no longer served any purpose.

157. On paragraph 13, Mr Armengaud tabled Amendment No. 78 deleting the paragraph.

This amendment was rejected with 11 votes against and 1 abstention.

158. On paragraph 14, Mr Armengaud's Amendment No. 79 deleting the paragraph was rejected unanimously.

Mr Hougardy's Amendment No. 61 adding to the original text was also rejected, with 10 votes against and 1 abstention.

159. On paragraph 16, the rapporteur submitted a new, more explicit text which was unanimously adopted.

160. On paragraph 17, Mr Armengaud's Amendment No. 80 adding to the original text was unanimously rejected.

161. On paragraph 18, the committee unanimously adopted a change suggested by the rapporteur and accordingly declared that Mr Armengaud's Amendment No. 81 to this paragraph was no long applicable.

162. On paragraph 20, Mr Armengaud's Amendment No. 82 adding to the original text was also unanimously rejected.

163. On paragraph 22, Mr Armengaud tabled Amendment No. 82 which was rejected by the same majority.

164. On paragraph 23, Mr Hougardy tabled Amendment No. 62.

This amendment was rejected with 14 votes against and 1 abstention.

Mr Armengaud's Amendment No. 84 to this paragraph was also rejected by 11 votes to 4.

165. On paragraph 24, Mr Armengaud's Amendment No. 85 slightly changing the text was also rejected by 9 votes to 3 with 4 abstentions.

166. On paragraph 25, Mr Armengaud's Amendment No. 86 deleting the paragraph was rejected by 9 votes to 4 with 4 abstentions.

By 8 votes to 6 with 4 abstentions, the committee adopted an amended version of this paragraph submitted by the rapporteur.

Amendment No. 154 to paragraph 25 tabled by Mr Müller on behalf of the Committee on Social Affairs and Employment was no longer applicable as a result of the Legal Affairs Committee's previous decision relating to this paragraph.

167. For the same reason, Amendment No. 2 tabled by Mr Müller on behalf of The Committee on Social Affairs and Employment, introducing a new paragraph 25a was no longer applicable.

168. On paragraph 26, Mr Hougardy tabled Amendment No. 64 deleting the paragraph.

This amendment was rejected by 7 votes to 7 with 3 abstentions.

Mr Armengaud's Amendment No. 87 deleting paragraph 26 was therefore deemed rejected.

169. The committee unanimously adopted an amendment tabled by the rapporteur introducing a new paragraph 26a on the advisability of making uniform provisions for the election of members to the European Works Council and employees' representatives on the Supervisory Board of the S.E.

170. On paragraph 27, Mr Hougardy's Amendment No. 64 deleting the paragraph was rejected with 15 votes against and 2 abstention.

171. On paragraph 28, Mr Hougardy's Amendment No. 64 deleting the paragraph was also rejected with 16 votes against and 1 abstention.

172. On paragraph 29, a compromise text submitted by the rapporteur was adopted with 15 votes in favour and 1 abstention.

Mr Hougardy's Amendment No. 63, which erroneously referred to paragraph 25, and Mr Armengaud's Amendment No. 88 were therefore no longer applicable.

173. On paragraph 30, the committee deemed Mr Armengaud's Amendment No. 89, proposing a different wording, to be rejected.

174. On Article 31, the same decision was taken in relation to Mr Armengaud's amendment No. 90.

175. On paragraph 32, a change suggested by the rapporteur clarifying the original text was unanimously adopted.

Mr Armengaud's Amendment No. 91 to the same paragraph was therefore no longer applicable.

176. On paragraph 33, the committee also unanimously adopted an amendment tabled by the rapporteur clarifying the original text.

Mr Armengaud's Amendment No. 92 deleting this paragraph was therefore no longer applicable.

177. On paragraphs 37 and 38, an amendment tabled by Mr Brugger combining the two paragraphs was also unanimously adopted.

On paragraph 37, Mr Hougardy's Amendment No. 65 and Mr Armengaud's Amendment No. 93, both proposing a new wording, were therefore no longer applicable.

178. On paragraph 39, the committee unanimously adopted a change suggested by the rapporteur bringing the text up to date.

Mr Armengaud's Amendment No. 94 to this paragraph was therefore no longer applicable.

IV Conclusion

179. The committee thereby concluded the consideration of all the amendments tabled in the part-sessions.

As can be clearly seen in the explanatory statement which accompanies the motion for a resolution many further amendments were added during the discussion.

The committee therefore feels that it has submitted the Statute for a European company to a complete and thorough examination.

180 . Since only limited time was available and some practical difficulties arose, in the explanatory statement the rapporteur could not reproduce the text of all the amendments or fully detail the contributions made by the authors of the amendments and the members of the committee. The overall character of this supplementary report is in any case unsuited to such treatment.

181 . The committee hereby submits to the European Parliament a motion
a resolution which takes account as widely as possible of all the points of view expressed during the last years. Further references are made in the conclusions to its basic report.

Parliament must now make the political choices which arise in relation to some particular points of the Statute which, since they represent a departure from national laws, may give rise to some perplexity but are essential if the European company is to operate in a supranational context.

These points made, the committee invites the European Parliament to adopt this motion for a resolution.



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