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INFORMATION MEMORANDUM

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COMMON MARKET COMMISSION COMPLETES WORK ON EUROPEAN COMPANY LAW

WASHINGTON, D.C., July 23 -- The European Communities Council of Ministers is considering the draft of a new European law on corporations submitted to it by the Common Market Commission. The statute, if adopted, will be the first step creating a European type of company in the Six governed by a uniform law directly applicable throughout the Community which can be interpreted uniformly by the European Court of Justice.

The Commission adopted and sent to the Council the draft statute for a European company on June 24. A week earlier, on June 16, the Commission also completed and sent to the Council for approval its third directive to coordinate national company laws, dealing with corporate mergers.

The European company statute will not replace national rules regarding companies but complement them by facilitating certain operations involving companies from different member states, such as mergers and the formation of holding companies and joint subsidiaries.

European Company Statute

By facilitating cooperation between firms with headquarters in different member states, the draft European company statute would help to integrate them in a common market.

Companies can already cooperate, but in a limited way, across frontiers under national laws: they may acquire holdings in companies registered in other member states, form subsidiaries there either alone

or with other enterprises, and conclude cooperation agreements. This latitude is sufficient in relationships involving separate and independent national markets that are not to be fused into a single market. However, if a single economic area is to be created, all economic and legal barriers separating national markets must be removed.

One obstacle to the organization of multi-national enterprises has been that the national laws governing them end at the national frontiers. Despite attempts to remove disparities by "approximating," or making uniform, each country's legislation whenever necessary to protect companies and others involved, the Common Market remains divided into areas governed by separate national laws.

The reluctance of firms to place themselves under a foreign and "unknown" legal jurisdiction impedes economic integration. Firms of all sizes, but particularly those whose names and reputations are associated with one country, are psychologically reluctant to change their "nationality." Having one statutory type of European company for the whole Community, equally accessable to firms anywhere within the Six, will help remove these obstacles and promote integration by creating conditions similar to those in a domestic market.

Access

At first, this type of company will be available for specific economic operations that are to be given priority in creating conditions similar to those in a domestic market. Three operations are involved between companies with headquarters in different member states: mergers, formation of holding companies, and formation of joint subsidiaries under European law.

To keep the rules brief and simple, they will apply only to corporations. Firms registered under other legal forms can reconstitute as corporations to get the advantages provided by the European company statute.

Only companies choosing one of these three forms of cross-frontier combination will be entitled to benefit from the Community's company law. Automatic conversion of companies incorporated under national law into companies under European law is not envisaged. Even national companies with an international character (because of their personnel, capital,

type of operations, or branches or subsidiaries in other member states) are at present sufficiently covered in their economic and legal relations by national company law. The proposed European company law will, however, exist side by side with national laws filling a gap that cannot be filled by their "approximation."

Requirements

The minimum capital for a European company would be $500,000 for mergers or the establishment of a holding company, and $250,000 for establishment of a subsidiary, according to the Commission's proposal. The minimum capital has been set so that even medium-sized firms can use the new company form.

The European companies will be under the jurisdiction of the Community's Court of Justice and will be entered in a European register of companies kept by the Court, with a branch office for this register in each member state.

A choice can be made between bearer shares (so that European companies' shares can be traded on stock exchanges) and registered shares.

European companies will be free to set up their headquarters anywhere in the Community and may have several headquarters; their location is to be determined by the articles of association. For tax purposes, however, these companies will be considered to have their headquarters at the place from which they are actually managed.

The European company will have a board of management (the company's decision-making center), a supervisory board, and a general meeting of shareholders.

Workers' Participation

The proposed regulation contains independent rules on the workers' right of participation in management decisions. There would be a European works council and workers would be represented on the supervisory board. There would also be arrangements for the possible conclusion of European collective wage agreements.

A European works council will be set up in all European companies having establishments in different member states. It will deal with matters concerning the entire company or several of its establishments. The national works councils in the establishments of a European company

will be maintained to handle matters outside the responsibilities of the European works council.

The European works council will consist of representatives of workers at the European company's various establishments elected under the rules applying in the individual countries. It will have the right to be informed and consulted and also to give or withhold its agreement. Its agreement will be required for decisions by the board of management on: hiring, firing, seniority, vocational training, industrial health and safety, creation and management of social facilities, wages, working hours, and vacations.

On the supervisory board, workers will be entitled to one representative for every two representatives appointed at the general stockholders meeting. Beyond this statutory minimum, a European company's articles of association may provide for a larger number. The workers' representatives are to be elected by the members of the national works councils, from lists made up by the national works councils, the European works council, the trade unions represented in the European company, and the workers of the European company.

When appointing the board of management the supervisory board must make one member responsible for personnel and labor relations.

Working conditions of a European company's employees can be fixed by collective agreement between the company and the labor unions represented in its establishments. These conditions will apply to all workers of the European company who belong to one of the unions party to the agreement. For the other workers, employment contracts may stipulate that the conditions of work fixed by collective agreement are to apply directly to the job.

Taxation

For taxes, the European company will come under the law of the state which it is actually managed. There will be no tax preferences for the European company and it will be given the same treatment as companies under the law of the individual states. Any preferences would distort competition.

European companies will thus be governed by rules the Commission

proposed in 1969 for a common tax for mergers between companies and for parent companies and subsidiaries from different member states. Under these rules, the profits of an establishment would continue to be taxed exclusively in the state where the establishment is located. Companies, however, would be given the right to opt for the system of world profit, allowing them to deduct in the country of tax domicile the losses suffered by establishments abroad.

Law for Integrated Groups

Because combination of enterprises under a single management (to form an integrated group) has assumed such economic importance, the regulation provides protection of independent stockholders outside the group and the creditors of controlled enterprises associated with the group when a European company is a controlling or controlled enterprise in a group. A European company that becomes a member of a group is required to make the fact known immediately. Independent holders of stock in controlled enterprises may accept cash payment for their stock, demand that their stock be converted into stock in the controlling enterprise or, in certain circumstances, ask for an annual compensation to guarantee their dividend. If the controlling enterprise grants independent stockholders this guarantee, it has the right to give instructions to the managing board of the controlled enterprise. The managing board of the controlled enterprise has to follow these instructions even if they run counter to its interests. The creditors of controlled enterprises are protected by the rule that the controlling enterprise has joint liability for the commitments of the controlled enterprise.

THIRD DIRECTIVE ON THE HARMONIZATION OF COMPANY LAW

On June 16, 1970, the Commission sent to the Council its proposal for a third directive to coordinate company law, dealing with mergers between companies.

The first requirement is that member states lacking merger legislation should introduce it. Two types of mergers are dealt with and harmonized: mergers involving the absorption of one company by another (acquisition) and mergers where two or more companies combine into a new company (consolidation).

The main purpose of the directive is to ensure adequate information on the merger to all interested parties. The public would be informed

both of plans to merge and of the completion of mergers by entry in the register of companies.

In the interests of the stockholders, the boards of the companies involved are required to make reports explaining the merger plan. An opinion must be obtained from independent experts on the soundness of the stock-exchange ratio and the merger must be approved by a qualified majority vote at general meetings of the stockholders of the merging firm.

The interests of the workers must also be protected. As part of the transfer of rights and obligations accompanying any merger, those arising from employment with the acquired company pass on to the acquiring company too. The boards must also tell workers how the merger will affect them and must consult the works council.

Guarantees will have to be given to the creditors of the acquired company to protect them from loss of their claims.

Once a merger has been completed, it cannot be declared null and void.

Lastly, the directive provides that the member states are to apply the proposed safeguard rules to operations which, though not strictly mergers, are economically and legally akin to mergers.

HISTORICAL BACKGROUND TO THE EUROPEAN COMPANY LAW

1959-1961	Trade and industry representatives and academic experts discuss the case for a uniform type of company for the Common Market.
1964	The EEC Commission starts work to draw up a uniform type of company which would give Common Market firms the legal and organizational means of strengthening their cooperation across frontiers.
March 15, 1965	A note by the French Government proposes the creation of a European type of company by introducing a "uniform law" in the parliaments of the member states.
April 22, 1966	The Commission sends to the Council a memorandum devoted to the legal bases for a European company statute. The Commission prefers a company under European law.
November 15, 1966	First meeting of an ad hoc working party on the European company set up by the Council.
End of 1966	Professor Sanders, Rotterdam, submits preliminary draft of a European company statute, drawn up in collaboration with experts from all member countries at the Commission's request.
April 26, 1967	The Council working party on the European company unanimously supports the case for a uniform statute. It receives no mandate to draw up a statute.
May 29, 1968	The Commission proposes to the Council that a new working party should be given a mandate enabling it to proceed with the plans on the basis of the preliminary work already done.
March 5, 1969	The Commission decides to draw up its own draft.
October 1969	Professor Lyon-Caen, Paris, submits a study on provisions for the representation of workers' interests under the European company statute, at the request of the Commission. The Commission passes the report to the two sides of industry for discussion.
March 18, 1970	The Commission sends to the Council a memorandum on industrial policy, emphasizing the need to adopt as rapidly as possible a European company law.
April 1970	The Commission hears both sides of industry on possible ways of providing for the representation of workers' interests under the statute.

June 9, 1970 The Council discusses the report known as the Werner Plan for achieving economic and monetary union in stages. Enactment of the European company statute is part of the first stage.

The Statute, Conventions, and "Approximation"

In addition to providing authority to approximate national rules affecting the establishment of the Common Market, the Common Market Treaty provides for two sets of measures on company law, differentiated by their subject matter and legal form: conventions and directives. The first calls on member states to conclude conventions covering mutual recognition of companies, international mergers, and the transfer of company headquarters.

A convention on the mutual recognition of companies was signed on February 29, 1968, and one on mergers between joint-stock companies is being prepared. Such conventions, like other international conventions, come into force only after all parties have ratified them. Directives, unlike conventions, are adopted by the Council on the proposal of the Commission. In company law, unlike approximation of most other types of laws, the Council may make a decision by a qualified majority vote, rather than by unanimity.

On March 9, 1968, the Council adopted a directive coordinating the rules and regulations for the disclosure of important documents, the validity of commitments made for a company, and the nullity of limited liability companies. On March 9, 1970, a second directive was submitted to the Council on the founding and capital of companies. On June 16, the Commission submitted a third directive on "national" mergers between companies (see above), involving companies in only one member state.

Two other directives, on company structure and on ways of submitting and assessing the annual statements of accounts of limited liability companies, are being prepared. Work is also going ahead on arrangements for the law on integrated groups and the liquidation of companies.

Despite "approximation" of laws and conventions, any given company in the Community will legally still be a "national" company.

The statute for a European company will carry this a step further to create a common type of company that operate throughout the Common Market. Companies will be able to choose, depending on their economic needs, between a uniform European type of firm and the various national forms.

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