european community
BACKGROUND INFORMATION
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BACKGROUND NOTE

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NEW COMPANY LAWS FOR EUROPE

The European Community hopes that companies in its nine member countries will be able to do business as easily in all of them as American companies now do in the United States. This is one goal of the Community's development of a growing body of company law, designed, on the one hand, to make it easier for companies to operate under one set of company laws instead of nine separate codes, and therefore to encourage the formation of a Community-wide capital market, and, on the other hand, to protect investors by setting strict standards for disclosure.

This company law reform complements work being done in other fields affecting companies, such as job safety standards, pollution controls, taxation, and competition policy.

For Americans, the development of a European company law will simplify their operations within the Common Market. A company legally registered in one member country will be recognized by the others. Neither should the more stringent disclosure standards proposed bother Americans who have long been accustomed to meeting the Security and Exchange Commission's requirements.

Annual Group Accounting Reports

The latest company law proposal, made in April, would require limited liability companies belonging to a group to file annual accounting reports covering the entire group to give prospective investors a "true and fair" picture of the company's position.

Multinationals with registered offices in a Community country would have to publish group accounts covering all their subsidiaries throughout the world and making clear the relationships and activities within the group. Multinationals registered outside the Community would have to file group accounts only for their dealings with branches and other wholly or partly owned companies inside the Community. The draft directive applies to vertical groups, the kind dominated by a single company, and to horizontal groups (consortia) in which two or more companies manage the group.

The proposed directive, released in April, defines two criteria for a "group."

. A company must be able to control another company.

. Potential control must be exercised so that the companies involved are centrally managed.

Group accounts are to comprise the group consolidated balance sheet, the group consolidated profit and loss account and notes to the accounts. They must give a "true and fair" picture of the group's assets, liabilities, financial position, and performance. The draft directive specifies that transactions within each group are to be excluded from the annual account so that it will not give a misleading impression of the groups assets, liabilities, and performance. Each item in the group account must be valued according to identical methods so that potential investors in any Community country can do comparison shopping before buying stocks.

Community Company Law to Date

In its attempt to rationalize member countries' company laws and devise a law applicable throughout Europe, the Community uses three main types of legislation: the directive, the regulation, and the convention. The directive binds each member state to the result to be achieved but allows them to choose the means. The regulation is Community law and binds the member states to both the end and the means. The convention is based on the Common Market Treaty's Article 220 requiring member countries to negotiate with each other on laws affecting companies including those on mutual recognition of companies, retention of legal personality in the event of a transfer of the corporate seat from one country to another, and mergers between companies of different Community nationalities.

The legislative process is a lengthy one. Before the Commission drafts a directive, for instance, it often consults with and obtains reports from one or more independent experts and experts from the national administrations. The draft directive then goes to the Council of Ministers for initial discussion and to the Committee of Permanent Representatives (the member countries' ambassadors to the Community) for a working over. At the same time, the Economic and Social Committee (representatives of management, labor, and consumer organizations) and the European Parliament study the draft and suggest changes. Often the draft must be revised and resubmitted to the Council for a decision. After the Council's decision, member countries must then pass laws to put it into effect.

Partly because of the slowness of the legislative process, only one company law directive is in force and six are pending, together with two draft regulations and three draft conventions, and one convention that the original six members have accepted but which has to be adapted to take account of the United Kingdom, Ireland, and Denmark, the three new members.

The first directive was adopted by the Council March 9, 1968, and was accepted by the three new members on joining the Community. It stipulates that companies must show their place of registration, address, and registration number on letterheads and order forms. It also sets disclosure requirements for information to be sent to the registrar of companies and to be published in official notices.

The second draft directive, proposed on March 9, 1970, deals with the formation of public limited liability companies and the maintenance of or changes in share capital.

The third draft directive, proposed on June 16, 1970, deals with mergers of public limited liability companies incorporated under the same national law. The type of merger covered by this proposal is one in which one company's assets and liabilities are transferred to another company and the acquired company is then dissolved.

The fourth directive, proposed November 16, 1971, deals with limited liability companies' annual accounts and sets requirements for the content and format of the balance sheet and profit and loss statement, valuation procedure, content of the director's report, the auditor's report, and the filing and publication of these documents.

The fifth draft directive, proposed October 9, 1972, deals with the structure of public limited liability companies and contains a controversial requirement for any company employing more than 500 workers to have a management board and a supervisory board where workers are represented. The provision for workers' participation in management reflects the growing conviction in Europe that employees' interests in the health of their companies are as vital as those of stockholders.

The sixth draft directive, proposed October 5, 1972, deals with the minimum information to be given in the prospectus published when securities are admitted to stock exchange quotation. This proposal was designed to give potential investors the same minimum safeguards throughout the Community and thus to stimulate investment in securities.

The conventions now pending cover mutual recognition of companies, firms, and legal persons; international mergers, and bankruptcy.

One draft regulation would create a new legal entity in Community law, the "European Cooperation Grouping." This type of legal organization would allow companies to conclude temporary cooperation arrangements, for instance opening a joint buying or sales office or an office to coordinate research.

The other draft regulation would put into effect the European Company Statute. The statute would create a new type of European company which would exist side by side with nationally constituted companies. It was designed to encourage industrial cooperation across state borders. Any company incorporated in a member state that meets the minimum capital requirement prescribed could form a "European Company" by merger or by forming a joint holding or subsidiary. Any "European company" would have to have a two-tier management consisting of a supervisory board and a management board. The supervisory board would consist of a third employees' representatives, one third stockholders' representatives, and one third members chosen by the employees' and stockholders' representatives. The statute would provide for arbitration in disputes between labor and management. This statute was designed to free business from the legal, practical, and psychological constraints caused by the existence of nine separate company laws, thus encouraging the formation of multinational companies.