european community
BACKGROUND INFORMATION

EUROPEAN COMMUNITY INFORMATION SERVICE
2100 M Street NW, Washington DC 20037 Telephone (202) 872-8350
New York Office: 245 East 47th Street, New York NY 10017 Telephone (212) 371-3890

BACKGROUND NOTE

No. 57/1976

December 23, 1976

EC COUNCIL PASSES SECOND LAW DIRECTIVE

The Council of Ministers of the European Communities on December 14 passed its second directive on company law, on the formation of publicly-held companies and the maintenance and alteration of their capital.

This directive adds to the existing legal framework for Community-wide corporate activities by widening opportunities for establishment throughout the Community and, at the same time, aligning on a Community level guarantees to the public under national laws.

Because a limited liability company is solely liable for its debts, strict rules must be maintained on the formation and maintenance of capital to assure that such a company has adequate funds to meet its debts to the public. Accordingly, this directive sets a minimum capital subscription of 25,000 units of account (EUA)* and stipulates that shareholders must have paid at least 25 per cent of their stocks' nominal value when the company begins business. Where such payment is not in cash but in kind, stricter guarantees are required. No distribution of capital is allowed if it would reduce assets below the level of subscribed capital plus undistributed reserves. In general, the company cannot distribute capital in an amount greater than its net profits for the year plus any net profits carried forward from previous years.

In member states where companies are allowed to buy their own stock, no more than 10 per cent of the subscribed capital can be bought, except in special cases, such as mergers.

*One EUA was equivalent to $1.19 on December 10, 1976.

This is to prevent the artificial inflation of a company's stocks. Special rules have, however, been introduced to encourage employees to buy stock in their own companies.

The directive confirms the principle of equal treatment for stockholders in identical situations. Stockholders' rights are upheld, for example, by the provision that when capital is increased, any premium (any amount in excess of nominal value) on stock must be fully paid up immediately by new stockholders, so as to put them in the same position as existing ones. Existing shareholders cannot be deprived of their proportion of stock capital if it is increased against their will and must receive the first offer of new stock so far as necessary to maintain that proportion.

In the event of a reduction in capital, special guarantees must be offered to creditors.

For further information on company law, write or telephone the Washington office for Background Note No. 23/1976, "New Company Laws for Europe."