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Proposal for a Council regulation on the Statute for European companies

(Amended proposal presented by the Commission to the Council on 13 May 1975, pursuant to the second paragraph of Article 149 of the EEC Treaty)

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Parts I & II

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EUROPEAN COMMUNITIES
Commission

contents

Amended proposal for a regulation

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235,

Having regard to the proposal from the Commission,[1]

Having regard to the Opinion of the Assembly,[2]

Having regard to the Opinion of the Economic and Social Committee,[3]

Whereas a harmonious development of economic activities and a continous and balanced expansion within the Comunity as a whole call for transition from the stage of customs union to that of economic union; whereas achievement of the latter presupposes, in addition to the elimination of obstacles to trade, a reorganization of the factors of production and distribution on a Community scale in order to ensure that the enlarged market will operate similarly to a domestic market;

Whereas to this end it is essential that undertakings whose activity is not confined to meeting purely local requirements should be able to plan and carry out the reorganization of their activities at Community level and improve their means of action and their competitiveness directly at this level; and whereas, if such improvement were to occur in the main at national level, it might tend to fragment markets and so constitute an impediment to economic integration;

Whereas structural reorganization at Community level presupposes the possibility of combining the potential of existing undertakings in a number of Member States by rationalization and merger, but these processes can only be conducted subject to the rules on competition;

Whereas the establishment of European undertakings is clearly the obvious and normal means of achieving these aims under the most satisfactory conditions;

Whereas this is therefore a necessary instrument for attaining the said objectives of the Community;

Whereas, however, the establishment of such undertakings meets with legal, fiscal and psychological difficulties; and whereas the measures provided for in the Treaty by way of harmonization of legislation and the conclusion of conventions to enable the movement of companies to be effected by transfer of the registered office and by merger are calculated to alleviate some of these difficulties, they do not dispense with the necessity of adopting a specific national legal system to invest an economically European undertaking with the legal status essential to a commercial company; still less do they eliminate the obstacle which a change of nationality constitutes for undertakings linked by name and tradition to a given country;

Whereas, therefore, the legal framework within which European undertakings must still operate, and which remains national in character, no longer corresponds to the economic framework within which they are to develop if the Community is to achieve its purpose; and whereas this situation, especially because of the psychological effects it produces, may seriously impede the regrouping of companies incorporated in different countries;

Whereas the only solution capable of effecting both economic and legal unity of the European undertaking is, accordingly, to permit the formation, side by side with companies governed by one or other national law, of companies wholly subject only to a specific legal system that is directly applicable in all the Member States, thereby freeing this form of company from any legal tie to this or that particular country;

Whereas the introduction of this uniform legal status effective throughout the Community thus appears necessary for the unimpeded formation and management of undertakings of European dimensions produced by regrouping the forces of national companies;

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[1] The original proposal of 30 June 1970 was published in OJ C124 of 10.10.1970. It was issued, with explanatory notes, as Supplement to Bull. EC 8-1970.

[2] OJ C93 of 7.8.1974, p. 22.

[3] OJ C131 of 13.12.1972, p. 32.

Whereas the requisite powers to formulate this legal status have not been provided for in the Treaty;

Whereas the purpose underlying the legal provisions for a European company demands in any event, without prejudicing any future economic requirements, that a European company may be formed, to allow companies in different Member States to merge, to form a holding company and to allow companies and other corporations pursuing commercial aims and incorporated in different Member States to form joint subsidiary companies; and whereas it is sufficient, in order to attain the desired economic objectives, at the same time as the process of founding a European company is simplified, to accept as founders of a European company through merger and the establishment of holding companies, apart from other European companies, only companies incorporated under national law in the form of a company limited by shares;

Whereas the form of a European company should itself be that of a company limited by shares, which is best suited, from both the financial and management points of view, to the needs of companies operating at European level; and whereas, in order to ensure that such undertakings may operate on an acceptable scale, a minimum paid-up capital must be stipulated such that these companies have adequate resources at their disposal, but not such as thereby to restrict the formation of European companies by national undertakings of medium size; and whereas the amount of capital must none the less be smaller in the case of formation of subsidiaries;

Whereas to obtain maximum benefit from such uniformity of status, none of the regulations governing the founding, structure, operation and winding up of the European company must be subject to national laws; and whereas it is necessary for this purpose to formulate a statute for the European company containing a full set of standard provisions and to refer back to the general principles common to the laws of the Member States for solution of problems relating to matters governed by this Statute but which have not expressly been dealt with herein;

Whereas in order to ensure uniformity of status it is imperative that the founding of the European company be subject to a system of registration at a central registry, under legal control, to eliminate any possibility of invalidity of the company after incorporation; and whereas one specific European legal body should be seised of this control in order to avoid discrepancies of judgment in the scrutiny of deeds and documents prepared by the founders; and whereas the requisite authority should naturally be vested in the judicial body of the Communities, the Court of Justice of the European Communities;

Whereas, in order to afford the European company every possibility of efficient management but at the same time to ensure effective supervision thereof, it is necessary to introduce a system whereunder a clear separation of responsibility is obtained and to provide the European company with a Board of Management administering the company's affairs under the supervision of a Supervisory Board by whom it is appointed;

Whereas, in order to promote throughout the Community a harmonious development of economic activities, an increase in stability and an improvement of working conditions and of the standard of living for workers, it is necessary to involve the employees in the life of the European company; whereas in all the Member States concrete consequences follow from the special legal and factual relationship between employees and undertakings; whereas though all these arrangements differ in content, they are based on the common conviction that the employees of an undertaking must be able to have a common representation of their interests within the undertaking and to share in the making of certain decisions;

Whereas the wide differences between the laws in force in the Member States as regards the representation of employees on the governing bodies of undertakings and the means whereby they participate in the decision-making process do not allow of such matters being left to the

jurisdiction of national laws insofar as the governing bodies of European companies are concerned, for the uniformity of the provisions applying to the administration of the European company would then be disrupted;

Whereas employees must be represented in like manner to shareholders on the Supervisory Board of the European company so that account may be taken of the interests of both groups concerned in the undertaking of the European company when important economic decisions are made in respect of the administration of the company and of the appointment of members of the Board of Management;

Whereas, further, in order to enable interests to be represented in the European company broader than those of the shareholders and employees directly affected, it is requisite that the Supervisory Board of the European company shall include as members persons representing general interests and independent of both shareholders and employees;

Whereas national legislation concerning representation of workers at works level may continue to apply, it is nevertheless necessary, in the case of European companies with establishments in several Member States, to provide for the formation of a European Works Council as the body representing the interests of employees of the European company, possessing its own rights of information, consultation and co-determination and competent to deal with matters affecting a number of establishments;

Whereas, in order to ensure that in all Member States members of the Supervisory Board appointed by the employees and members of the European Works Council are elected by employees in a uniform manner and in accordance with democratic principles uniform electoral rules must be introduced;

Whereas the European company must be subject to uniform rules regarding the presentation of accounts which reflect a true and fair view of the company's assets, financial position and operating results;

Whereas the grouping of undertakings under sole management has acquired such economic importance that a Statute for the European company must contain rules which take account of the economic and operational characteristics of ties between undertakings; whereas the rules providing for a flexible operating policy must be available to the European company in a framework laid down by law; and whereas shareholders independent of the group, and employees and creditors of undertakings within the group must at the same time be afforded adequate safeguards;

Whereas the Court of Justice must have jurisdiction, to the exclusion of national courts, to decide whether a European company and another undertaking constitute a group of companies within the meaning of this expression in Title VII of this Regulation; and whereas, indeed, the existence of a group, which has important legal implications for the management, the shareholders and the employees of a company, being a member thereof often cannot be established, in case of doubt, except by analysis of actual relationships between companies in different countries and hence of the *de facto* situations in these various countries, which require appraisal; and whereas an examination of this kind would be very difficult for a national tribunal whose powers of inquiry would not extend beyond the country concerned;

Whereas the European company must retain the capacity to transform itself according to its economic needs into a company incorporated under national law or to merge with other European companies or with limited companies incorporated under national law;

Whereas the European company must remain subject to national fiscal requirements, since formulation of a fiscal system solely for the European company might be the source of discrimination, favourable or otherwise, in relation to *sociétés anonymes* subject to national law; whereas, however, allowance should be made in the calculation of the taxable profits of the European company for losses incurred by their permanent branches or subsidiaries in other

countries, until taxation of the revenue of the companies can be brought under the exclusive control of their country of domicile for fiscal purposes; whereas it is necessary, moreover, to lay down a procedure for the settlement of possible disputes upon the determination of the domicile of the European company for fiscal purposes and to settle the terms and consequences of transfer of fiscal domicile from one country to another; and whereas, further, the European company is to benefit, on the same basis as companies incorporated under national law, from the provisions of the directive concerning the common fiscal system applicable to parent and subsidiary companies in different Member States[1] and the directive on the common system applicable to mergers, scission and the contribution of assets effected between companies in different Member States,[1] issued by the Council on ...;

Whereas, in order to ensure that breaches of obligations under the Statute for the European company shall not go unpenalized, it is essential that Member States introduce appropriate provisions to punish such breaches; and whereas it is necessary that all Member States should prescribe penalties under criminal law or fines for the same offences and only for those offences, in order to avoid disparities prejudicial to uniformity of status,

Has adopted this Regulation:

Title I

General provisions

Article 1

[Form of European Company (SE)]

1. Commercial companies may be incorporated throughout the European Economic Community as European companies (Societas Europaea 'SE') on the conditions and in the manner set out in this Regulation.

2. The capital of the European company shall be divided into shares. The liability of the shareholders for the debts and obligations of the company shall be limited to the amount subscribed by them.

3. The SE is a commercial company whatever the object of its undertaking.

4. The SE has legal personality. In each Member State and subject to the express provisions of this Statute it shall have in all respects the same rights and powers as a company limited by shares incorporated under national law.

Article 2

[Formation]

1. Companies limited by shares incorporated under the law of a Member State may form an SE by merging or by forming a holding company, provided at least two of the companies are subject to different national laws.

[1] Proposal presented by the Commission to the Council on 16 January 1969, OJ C39 of 22.3.1969.

2. Companies having legal personality, including cooperative societies, incorporated under the law of a Member State, and other corporations governed by the public or private law of a Member State, which have as their object the carrying on of economic activity, may form an SE by forming a joint subsidiary company, provided that at least two of those companies or corporations are subject to different national laws.

3. A company or other corporation which participates in forming an SE must be one which is recognized under the Convention on the mutual recognition of companies and bodies corporate, signed on 29 February 1968 in each Member State[1] whose law applies to any of the participating companies or corporations.

Article 3

[Formation with participation of an SE]

1. An SE together with one more other European companies or together with one or more limited companies incorporated under the laws of Member States may establish an SE by merging or by forming a holding company.

2. An SE together with one or more other SE's, or together with one or more companies or other corporations within the meaning of Article 2(2) constituted under the laws of Member States may establish an SE by forming a joint subsidiary.

3. An SE may establish a subsidiary in the form of an SE.

4. Article 2(3) shall apply to companies and other corporations which participate in establishing an SE under paragraph 1 or 2 of the Article, if such companies and other corporations are constituted under the laws of one or more Member States.

Article 4

[Minimum capital]

The capital of an SE shall amount to not less than:

— 250000 u.a. in the case of a merger or formation of a holding company,

— 100000 u.a. in the case of formation of a joint subsidiary,

— 100000 u.a. in the case of formation of a subsidiary by an SE.

Article 5

[Registered office of SE]

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

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

Article 6

[Dependent and controlling undertakings]

1. For the purpose of this Statute, a dependent undertaking is one which has separate legal personality and over 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 SE.

2. An undertaking shall be conclusively presumed to be dependent on another, when that other has the power, directly or indirectly in relation to the first:

(a) to control more than half the votes exercisable in respect of the whole of the issued share capital;

[1] Supplement to Bull. EC 2-1969.

(*b*) to appoint more than half of the Board of Management or of the supervisory body of the first undertaking.

3. A controlling influence shall be presumed to be exercisable if one undertaking has, directly or indirectly, a majority shareholding in the capital of another.

4. In calculating the extent of the shareholding of a controlling company in a dependent company there shall be taken into account shares in it which belong to an undertaking acting on behalf of the controlling company or to an undertaking dependent thereon.

Article 7

[Scope of the Statute]

1. Save as otherwise provided, matters governed by this Statute, including those not expressly mentioned herein, shall not be subject to the national laws of the Member States. A matter not expressly dealt with herein shall be governed:

(*a*) by the general principles upon which this Statute is based;

(*b*) if those general principles do not provide a solution to the problem, by the rules or general principles common to the laws of the Member States.

For the purposes of the application of this Regulation the rules and general principles of law of the Member States referred to in subparagraph (b) shall be deemed to be incorporated herein.

2. Matters which are not governed by this Statute shall be subject to the national law applicable in the circumstances.

Article 8

[European Commercial Register]

1. Every SE shall be registered in the European Commercial Register at the Court of Justice of the European Communities. The documents to be published under this Statute shall be filed therein.

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 maintain in its own country, a register supplementary to the European Commercial Register in which European companies, which have their registered office in the territory in that State, shall also be registered. Duplicates of all documents filed in the European Commercial Register shall also be filed in the supplementary register. Entries appearing in the European Commercial Register and documents filed therein shall be deemed authentic in the event of discrepancies.

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

Article 9

[Notices concerning SE]

1. All notices in respect of the SE shall be published in the Official Journal of the European Communities and in the official publication for company notices in the Member State in which the SE has its registered office. The text in the original language of a notice published in the Official Journal of the European Communities shall alone be authentic.

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 9a

[Effects of Notices]

1. Documents required to be filed in the Commercial Registry and particulars required to be registered therein may only be relied on against a third party after notice thereof has been published in accordance with Article 9, unless the company proves that at the relevant time the third party had knowledge of the contents of the documents or of particulars in question. In the case of transactions completed before the sixteenth day following that on which notice is published under Article 9, the documents and particulars may only be relied on against a third party who proves that it was impossible for him to have knowledge of those documents or particulars.

2. Third parties may nevertheless rely upon any documents or particulars referred to in paragraph 1 above even though the required publication has not yet been completed, unless the documents or particulars relate to the formation of the SE.

3. If the publication in the company journals of a document which is required to be filed, or of particulars which are required to be registered, is incorrect or incomplete, a third party may rely on the contents of the publication thereof, unless the SE proves that at the relevant time he had knowledge of the particulars registered in the Registry or the contents of the document filed therein.

Article 10

[Documents of SE]

In all documents sent out by it the SE shall state the number under which it is registered in the European Commercial Registry, the address of its registered office and the amount of its issued capital. If the company is in liquidation, that fact also shall be stated.

Article 10a

[Jurisdiction]

For the purposes of the application of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments of 27 September 1968[1] and in particular of Articles 16(2) and 53 first sentence thereof, and for the purposes of the application of the provisions of this Statute which provide that the court of the place where the company has its registered office shall have jurisdiction, the registered office of an SE shall exclusively be deemed to be the office or offices described as such in the statutes of the company pursuant to Article 5.

Article 10b

[Related Applications]

Where related applications concerning an SE are brought before the courts of different Member States, each of which has exclusive jurisdiction, the courts other than that before which the action is first brought, shall, so long as the application has not become *res judicata*, stay proceedings of their own motion, unless they decline jurisdiction in accordance with Article 22(2) of the Convention on Jurisdiction and the

[1] Supplement to Bull. EC 2-1969.

Enforcement of Civil and Legal Judgments of 27 September 1968.

Article 10c

[Recognition and execution of judgments]

Where there is more than one registered office, recognition and execution of a judgment rendered by the court of a Member State which is competent by virtue of a registered office of the SE being situate in such State may not be repudiated in the State of recognition or execution on the ground that there is another registered office of the SE established in the latter State.

Title II

Formation

SECTION ONE

General

Article 11

[Application for registration of SE]

1. Application shall be made to the Court of Justice of the European Communities by the founder companies for registration of the SE in the European Commercial Register.

2. The application shall be accompanied by the document of constitution and the statutes of the SE, and the additional particulars prescribed under the subsequent Sections of this Title with regard to the individual methods of formation.

3. The expression 'founder companies' in this Title means those companies and other Corporations which under Articles 2 and 3 may participate in forming an SE in one of the ways herein provided.

Article 12

[Document of constitution]

The document of constitution of the SE shall be drawn up by the founder companies in the manner provided under one of the subsequent Sections of this Title. It shall be authenticated by notarial deed.

Article 13

[Statutes of SE]

1. The Statutes of the SE must be approved by the founder companies in the manner provided under one of the subsequent Sections of this Title. They shall be authenticated by notarial deed.

2. The Statutes shall contain not less than the following:

(a) the name of the company which shall include the abbreviation 'SE';

(b) the address of the company's registered office;

(c) the object of the undertaking;

(d) the amount of the capital, the nominal value and number of the shares; specifying whether they are in bearer or registered form; where there are different classes of shares the nominal value and the number of shares and the rights attaching thereto shall be stated in respect of each class;

(e) the period for which the company is formed, if its duration is limited;

(f) the names of the first members of the Board of Management;

(g) the names of those first members of the Supervisory Board who are to be appointed by the shareholders.

Article 14

(deleted)

Article 15

[Auditors]

1. The governing body of each founder company shall appoint one or more auditors who shall examine the draft document of constitution. The same person may be appointed as an auditor for only one company.

2. Only persons who are suitably qualified and experienced may be appointed as auditors. They shall have obtained their professional qualification by satisfying the requirements imposed or recognized by law for admission to their profession including the passing of a specialized examination, and shall be persons who may in any one or more Member States lawfully act as auditors of the annual accounts of public companies whose shares are quoted on a stock exchange. The auditors shall in no way be dependent on any of the founder companies, nor have been so dependent at any time during the three years preceding the preparation of the auditors' report. The auditors may be persons appointed to audit the accounts of any of the founder companies.

3. An auditor shall be fully liable to the SE, to its shareholders and to third parties for all loss or damage resulting from his failure to observe the provisions of this Statute or from any other breach of the obligations imposed on him in carrying out his duties.

If the founder company shall have appointed more than one auditor, all auditors shall be liable jointly and severally. An auditor shall not, however, be liable if he can prove that no fault is attributable to him.

Such liability shall continue for a period of three years as from the day on which the SE is registered in the European Commercial Register or, in the event of harmful acts or omissions having been concealed, as from time of their discovery.

4. As regards any action brought by the SE in respect of such liability, Article 72 shall be of corresponding application.

Article 16

(deleted)

Article 17

[Examination by the Court of Justice of the European Communities]

1. The Court of Justice of the European Communities shall examine whether the formalities required for the formation of the SE have been complied with. A procedural regulation shall prescribe the scope and form of this examination.

2. The Court of Justice shall refuse to register a company as an SE in the European Commercial Register, if the provisions of this Regulation relating to its formation have not been complied with, or if the Statutes of the SE do not conform to the provisions of this Regulation.

3. The Court of Justice may require the founder companies to provide all the information it may desire. It may allow them to supplement or correct their applications and the documents relating to formation which they have filed.

4. If the Court of Justice finds no reason to refuse or to defer registration, it shall order registration of the SE in the European Commercial Register and shall forward the application thereto, together with the particulars filed pursuant to Article 11.

Article 18

[Registration of formation]

1. There shall be registered in the European Commercial Register:

(a) the name of the company;

(b) the address of the registered office;

(c) the object of the undertaking;

(d) the amount of the capital;

(e) the names of the members of the Board of Management, and of the members of the Supervisory Board appointed by the shareholders;

(f) a statement of the manner in which the company is formed pursuant to Article 2 or 3;

(g) particulars of the founder companies;

(h) a statement that each member of the Board of Management is authorized to represent the company in dealings with third parties.

2. The fact of registration and the particulars required by paragraph 1 shall be published in the company journals.

Article 19

[Acquisition of legal personality by SE]

1. The SE shall have legal personality from the day following the 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 person who acts in the name of the SE before this date shall be personally liable to third parties in respect of any obligation intended to be thereby incurred; if several persons have acted together they shall be jointly and severally liable.

3. The SE may itself assume liability for such obligations. In that case persons who have acted in the name of the SE shall cease to be liable under paragraph 2.

Article 20

[Liability in connection with formation]

1. For a period of three years from the date on which the SE is registered in the European Commercial Register the founder companies and the members of their governing bodies shall be jointly and severally liable to the SE and to third parties for loss resulting from any omission or

error in the particulars included in the application for registration.

2. The founder companies and the members of their governing bodies shall be similarly liable if the capital of the SE is not fully paid up in cash or in kind.

3. No liability shall be imposed under this Article on those members of the governing bodies of a founder company who at the material time was unaware of circumstances giving rise to liability under either of the foregoing paragraphs, nor could have become aware there of by exercising the care incumbent on a prudent businessman.

SECTION TWO

Formation by merger

Article 21

[Definition]

1. If an SE is formed by a merger of limited companies the whole of the assets and liabilities of the founder companies shall vest in the SE and the founder companies shall thereupon be dissolved without being wound up. The shareholders of the merging companies shall be allotted shares in the SE and, if appropriate, an equalization payment in cash not exceeding 10% of the nominal value of the shares so issued.

2. A limited company in liquidation may be a party to the formation of an SE by merger, if the distribution of its assets among its shareholders has not begun.

Article 22

[Preparation of draft document of constitution]

1. The governing body of the founder companies shall prepare a draft document of constitution setting out:

(a) the names of the founder companies and the addresses of their registered office;

(b) an opening balance sheet of the SE made out as at the date of its formation together with any necessary explanatory notes;

(c) the ratio of the exchange of shares in the SE for shares of the founder companies and the amount of any equalization payments in cash;

(d) the manner in which shares of the SE may be transferred;

(e) the rights to be conferred by the SE on shareholders of the founder companies who are entitled to special rights, and on the holders of securities other than shares, and measures proposed for the benefit of such persons;

(f) the auditors' reports under Article 23;

(g) the reports of the governing bodies of the founder companies under Article 23a.

2. The following shall be annexed to the draft document of constitution:

(a) the draft Statutes of the SE;

(b) the Statutes of the founder companies in their current form;

(c) the balance sheets, profit and loss accounts, and directors' reports of the founder companies for the last three respective financial years, or, if a company has been in existence for less than three years, for each complete financial year since its formation;

(d) an interim balance sheet made out as at the first day of the second month preceding the drawing up of the draft instrument of constitution, in respect of each founder company whose most recent annual balance sheet relates to a financial year which ended more than six

months before the drawing up of the draft instrument of constitution;

(e) if a founder company has not been in existence for a complete financial year, its opening balance sheet or, if no such opening balance sheet has been drawn up or was made out at a date more than six months before the draft instrument of constitution, an interim balance sheet in respect of that company made out as at the first day of the second month preceding the month in which the draft instrument of constitution is drawn up.

Article 22a

[Opening balance]

1. The opening balance sheet of the SE and the accompanying explanatory notes shall comply with the provisions of this Regulation relating to the annual balance sheet of an SE and the accompanying explanatory notes. The explanatory notes shall set out:

(a) the estimated total expenses to be borne by the SE in connection with its formation and matters incidental thereto;

(b) any special benefits and remuneration promised in connection with the formation of the SE.

2. An interim balance sheet provided for in Article 22(2)d, shall be in the same form and adopt the same classification as the most recent annual balance sheet of the company concerned. The following rules shall, however, apply:

(a) it shall not be necessary to draw up a fresh inventory of the company's assets;

(b) the values of assets contained in the most recent annual balance sheet shall merely be amended to agree with alterations of those values entered in the company's books of account; however, the following shall be taken into account;

— amounts which should be written off for depreciation, corrections in values, and transfers to reserve for the interim period;

— material changes in the real value of assets not shown in the books of account.

3. An interim balance sheet provided for by Article 22(2)e, shall be in the same form and shall adopt the same classification as an annual balance sheet of the company concerned.

Article 23

[Audit]

1. One or more auditors appointed for each founder company shall examine the draft document of constitution and shall draw up a report for the shareholders.

2. In their report the auditors must state in particular whether in their opinion the ratio for the exchange of shares of the SE for those of the founder companies, is fair or not. Their opinion must take into account the following matters at least:

(a) the ratio between the assets of the founder companies less their respective liabilities taken at their actual values;

(b) the relationship between the respective earning capacities of the founder companies, with particular regard to future prospects;

(c) the criteria adopted for assessing the values of the assets, liabilities and earning capacities of the founder companies.

3. If any special difficulties have arisen in making an assessment or valuation, they must be mentioned in the auditors' report.

4. Each auditor is empowered to obtain from the founder companies all relevant information and documents and to carry out all necessary inspections and investigations.

Article 23a

[Reports by governing bodies of founder companies]

1. The governing bodies of the founder companies shall draw up a report explaining and justifying the draft document of constitution from both the economic and the legal aspects, and in particular they shall deal with the ratio for the exchange of shares.

2. The report shall also deal with the legal, economic and social effects of the merger on the employees of the founder companies over a period of at least two years and indicate the measures to be taken regarding them.

Article 23b

[Convening of General Meeting of founder companies]

1. The governing bodies of the founder companies shall supply copies of the draft document of constitution and of the documents annexed to it free of charge on request to any interested party after the General Meeting of a founder company to decide upon the merger has been called.

2. A period of at least two months must elapse between the calling of a general meeting of a founder company and the date when the meeting is held.

3. The notice of the general meeting shall set out the rights conferred by paragraph 1 above. The notice shall also state that only those shareholders who vote against the draft instrument of constitution and have their dissent recorded in the minutes of the meeting, may apply to the court to invalidate the proceedings of the general meeting.

Article 23c

[Handling of implications of merger for employees]

1. The governing bodies of the founder companies shall within two weeks after the publication of the draft document of constitution discuss with the representatives of the employees of their companies the legal, economic and social implications of the merger for the employees, and the measures to be taken concerning them as shown in the report provided for in Article 23(a).

2. *(a)* For the purposes of this Article, 'employees' representatives' means the institutions, organizations or persons who under the statutory or contractual provisions applicable to the founder companies must be consulted on the occasion of a merger.

(b) Where a European company participating in the merger as a founder company has a European Works Council, the latter shall be considered to be the representative of its employees within the meaning of this provision.

3. If the representatives of the employees consider that the employees' interests are adversely affected by the merger, the governing body of the company concerned shall, before the General Meeting resolves to proceed with the merger, open negotiations with such representatives in order to reach agreement on the steps to be taken with regard to employees. Any such agreement reached shall be recorded in writing.

4. If no agreement is achieved as a result of negotiations, the representatives of the employees may set out in writing their views on the implications of the merger for the employees and on the results of the consultations and negotiations with the governing bodies.

5. The governing bodies of the founder companies shall submit to the general meeting called to decide on the merger a report on the results of the discussions and negotiations with the representatives of the employees. The report shall contain the terms of any agreement reached under paragraph 3 or a statement of the views of the representatives of the employees as provided for in paragraph 4, as the case may be. The governing bodies of the founder companies shall upon request make copies of this report available to any interested party free of charge at least eight days before the general meeting.

Article 23d

[Arbitration Board]

1. If no agreement is achieved as a result of negotiations under Article 23c(3) and the merger has been approved by the general meeting of the company concerned, any party to the negotiations may within one month refer the matter to an Arbitration Board.

2. The Arbitration Board shall be composed of equal numbers of persons appointed by the governing body and of persons appointed by the representatives of the employees of the company concerned, and shall be presided over by an independent chairman, who shall be appointed by agreement between both sides. If there is disagreement as to the appointment of a chairman, or as to the number of persons who shall compose the Arbitration Board, the question in dispute shall be decided by the court within whose jurisdiction the registered office of the company concerned is situated.

3. The Arbitration Board shall after hearing the parties specify the steps to be taken by the founder company or by the SE with regard to employees in the event of a merger. The decision shall be communicated to the parties in writing.

4. Where the SE comes into existence during the arbitration proceedings, it shall take the place of the founder company in those proceedings.

Article 24

[Approval of merger by General Meetings]

1. The document of constitution and the Statutes of the SE must be approved by a resolution passed by a General Meeting of each founder company. The resolution must conform to the provisions governing the founder company as regards mergers, or in the absence of such provisions, as regards dissolution.

2. In so far as the national law governing a company does not require more extensive information to be given to shareholders, each of them shall be entitled to receive such information as he may request at the General Meeting in respect of matters which are essential to enable him to make an assessment of the merger, including information concerning the other founder companies.

3. The proceedings of the General Meeting of each founder company shall be recorded in a notarial deed.

4. The minutes of the General Meeting of each founder company shall be filed without delay and in any event not later than two weeks following the General Meeting, at the office where the company's statutes are filed under the applicable law. Copies of the minutes shall on request be supplied free of charge to any interested party.

Article 25

[Proceedings for invalidation of resolutions of General Meetings]

1. The resolutions passed by General Meetings of the merging companies may be declared invalid by the court only on the application of one or more shareholders who voted against the resolution at the General Meeting and caused their dissent to be recorded in the minutes of the

meeting. Whatever the grounds, proceedings for the invalidation of resolutions shall be commenced in the competent national court within 45 days after the resolution is passed.

2. If a shareholder who did not exercise his right to apply for the invalidation of resolutions as provided for in paragraph 1 above makes an application to the European Court of Justice before the SE is registered in the European Commercial Register, that Court may, after giving the founder companies an opportunity to be heard, allow the shareholder an extension of time in which to commence proceedings in the competent national court for the invalidation of any resolution, provided prima facie evidence is produced to the Court of Justice that the shareholder, through no fault of his own, was prevented from complying with the provisions of paragraph 1 above and that there has been a breach of one or more essential provisions of the statutes of the founder company in which he holds shares or of the national law governing that company.

3. The European Court of Justice shall not order registration of the SE in the European Commercial Register until the expiration of the period specified in paragraph 1 and of any extension of time for commencement of proceedings for invalidation allowed granted under paragraph 2 or, where such proceedings have been commenced, before final judgment has been given therein.

4. An application to the Court to declare any resolution of a General Meeting invalid shall not be made after the date on which registration of the SE in the European Commercial Register was published in the Official Journal of the European Communities.

Article 26

[Application for registration of SE and dissolution of founder companies]

1. Minutes of the General Meetings of the founder companies together with proof that they have been properly filed or registered shall be annexed to the application for registration of the SE by the Court of Justice of the European Communities.

The governing bodies of the founder companies shall inform the court whether any applications have been made to the court to declare invalid the resolution passed by its General Meeting and if so, to which court the application has been made.

2. As from the day when the registration of the SE is published in the Official Journal of the European Communities the founder companies shall be dissolved. As from that date, the SE shall be liable for the debts and obligations of the founder companies in their place and the shareholders of the founder companies shall become shareholders of the SE.

3. When they have been officially notified of the registration of the SE, the commercial registers or courts within whose jurisdiction the registered offices of the founder companies are situated shall forward the instruments of constitution and other documents relating to the founder companies in their possession to the supplementary register of the European Commercial Register in the country in which those companies had their registered office.

Article 27

[Protection of creditors of founder companies]

1. Creditors of the founder companies may within three months after those companies have been dissolved require the SE to lodge a security for their claims against it.

2. If no agreement has been reached as to the security to be given within two weeks after the SE receives a creditor's demand, the court within

whose jurisdiction the registered office of the SE is situate may on the application of the creditor order security to be given for his claim. If the SE does not give the security ordered within one month after the order of the court is made, the debt or other obligation shall immediately become due and payable. The court shall dismiss the creditor's application if the creditor already has adeguate security for his claim, or if the SE is obviously able to meet all claims against it.

3. The SE shall not be required to provide any security if the obligation is satisfied, whether before or at maturity, either prior to the decision of the court or within one month thereafter.

4. The provisions of this Article shall not apply in respect of debenture holders of a founder company if a meeting of such debenture holders has power under the national law governing the founder company to approve a merger and such a meeting gives that approval, or if the debenture holders unanimously approve the merger.

Article 28

[Holding of one founder company in another founder company]

1. Articles 21 to 27 shall apply even though some or all of the shares of a founder company belong to one of the other founder companies. In this event, the shares of founder companies which an SE acquires as successor to another founder company shall cease to exist.

2. Where one of the founder companies holds all the shares of another founder company the same person may notwithstanding the provisions of Article 15(1) be appointed as auditor for both companies.

SECTION THREE

Formation of an SE as holding company

Article 29

[Definition]

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

2. The founder companies shall continue to exist. Any provision of national law by which a founder company must be wound up if the whole of its capital is held by a single shareholder shall not apply.

Article 30

[Preparation of draft document of constitution]

1. The governing bodies of the founder companies shall prepare a draft document of constitution. This draft shall contain the information required by Article 22(1)(a) to (e), and reports of the auditors and the governing bodies of the founder companies as provided for in Article 31 and 31a.

2. The documents specified in Article 22(2) shall be annexed to the draft document of constitution.

3. Article 22a shall apply as regards the opening balance sheet of the SE and the accompanying explanatory notes and, where appropriate, the interim statements of account of the founder companies.

Article 31

[Audit]

One or more auditors appointed for each founder company shall examine the draft document of constitution and shall draw up a report for the shareholders. Article 23(2) to (4) shall apply to the report.

Article 31a

[Reports by governing bodies of founder companies]

1. The governing bodies of the founder companies shall draw up a report explaining and justifying the draft document of constitution from both the economic and the legal aspects and in particular they shall deal with the ratio for the exchange of shares.

2. The report shall also deal with the legal, economic, and social effects of the formation of the SE holding company on the employees of the founder companies over a period of at least two years and indicate the measures to be taken regarding them.

Article 31b

[Covening of General Meeting of founder companies]

1. The governing bodies of the founder companies shall supply copies of the draft document of constitution and of the documents annexed to it free of charge on request to any interested party after the General Meeting of a founder company to decide upon the formation of the SE holding company has been called.

2. Article 23b(2) and (3) shall apply to the convening of the General Meeting of the founder companies.

Article 31c

[Handling of implications of formation for employees]

1. The governing bodies of the founder companies shall within two weeks after the publication of the draft document of constitution discuss with the representatives of the employees of their companies the legal, economic and social implications of the formation of the SE holding company for the employees, and the measures to be taken concerning them as shown in the report provided for in Article 31a.

2. The provisions of Article 23c(2) to (5) and Article 23d(1) to (3) shall be applicable.

In such application the expression 'merger' refers to the formation of the SE holding company.

Article 32

[Approval of formation by General Meetings]

The document of constitution and the Statutes of the SE shall be approved by a general meeting of each of the founder companies. The resolution of approval shall be passed in the manner provided by Article 24.

Article 33

[Proceedings for invalidation of resolutions of General Meetings]

Resolution of the General Meeting may be declared invalid by the court only in the circumstances and conditions provided by Article 25.

Article 34

[Application for registration of SE and conversion of shares of founder companies]

1. An application to the Court of Justice of the European Communities for registration of the SE shall be governed by Article 26(1).

2. As from the day when the registration of the SE is published in the Official Journal of the European Communities, the shareholders of the founder companies shall become shareholders of the SE.

SECTION FOUR

Formation of a joint subsidiary

Article 35

[Preparation of draft document of constitution]

1. If a joint subsidiary company is to be established in the form of an SE the governing bodies of the founder companies shall prepare the draft document of constitution setting out:

(a) the name, the address of the registered office and legal character of the founder companies;

(b) an opening balance sheet of the SE made out as at the date of its formation together with any necessary explanatory notes;

(c) the number of shares of the SE to be taken by each founder company;

(d) the auditors' reports under Article 35b;

(e) a statement of the economic reasons for the formation of the SE.

2. The following shall be annexed to the draft instrument of constitution:

(a) the draft statutes of the SE;

(b) the statutes of the founder companies in their current form.

Article 35a

[Opening balance]

1. The opening balance sheet of the SE and the accompanying explanatory notes shall comply with the provisions of this Regulation relating to the annual balance sheet of an SE and the accompanying explanatory notes.

2. The explanatory notes shall set out:

(a) the estimated total expenses to be borne by the SE in connection with its formation and matters incidental thereto;

(b) any special benefits and remuneration promised in connection with the formation of the SE;

(c) details of any subscriptions for shares of the SE for a consideration in kind, including the value thereof, the names of the subscribers and the nominal value and the classes of shares to be issued to such subscribers.

Article 35b

[Audit]

1. One or more auditors appointed for each founder company shall examine the draft documents of constitution and shall draw up a report for the governing bodies of the founder companies.

2. The auditors' report shall contain, in particular, their opinion together with supporting reasons as to:

(a) the opening balance sheet of the SE and the explanatory notes annexed thereto;

(b) the valuation of subscriptions for the shares of the SE for a consideration in kind.

3. Article 23(3) and (4) shall apply to the auditors' report.

Article 35c

[Subsequent acquisition of assets]

1. If within two years after its formation an SE acquires assets which belong to a founder company, or to a shareholder of such a company or to a shareholder of the SE itself, and the consideration to be given for those assets exceeds one tenth of the capital of the SE, the acquisition shall be the subject of an auditors' report. The report shall be prepared by the auditors of the annual accounts of the SE, or, where such auditors have not yet been appointed, by the auditors who prepared the report prepared in connection with the formation of the SE. The acquisition shall further be subject to the approval of a general meeting of the SE. The conclusions set out in the auditors' report shall be published in the company journals.

2. Paragraph 1 shall not apply where the acquisition has already been approved by the founder companies on the formation of the SE, and was dealt with in the explanatory notes to the opening balance sheet.

Article 36

[Approval of formation]

1. The document of constitution and the statutes shall be approved by all the founder companies in the manner provided by the law applicable to them.

2. In the case of founder companies incorporated under national law, the provisions of national law governing their participation in forming a subsidiary in the form of a public company shall apply.

3. The following provisions shall apply to founder companies which are themselves SEs:

(*a*) the document of constitution and the statutes shall be approved by the Supervisory Board;

(*b*) the Board of Management shall consult the European Works Council before seeking the approval of the Supervisory Board;

(*c*) the Supervisory Board may give its approval only after the European Works Council has stated its views, unless it does not do so within a reasonable time;

(*d*) if the participation of the SE in forming the new company falls within the scope of one of the items listed in Article 83(1) to (3), the document of constitution and the statutes of the new company shall be subject to the approval of the General Meeting of the SE;

(*e*) if the interests of the employees are adversely affected by the formation of a joint subsidiary company, the Board of Management shall prepare a social plan within the meaning of Article 126a setting out the measures to be taken in respect of the employees.

Article 37

[Application for registration of SE]

The resolutions of the Supervisory Board and, where appropriate, of the General Meeting shall be annexed to the application to the Court of Justice of the European Communities for the registration of a joint subsidiary company.

SECTION FIVE

Formation of a subsidiary by an SE

Article 38

[Document of constitution, audit, subsequent acquisition of assets]

1. If an SE forms a subsidiary company which is also an SE, the board of management of the

founder company shall prepare the draft document of constitution. The draft shall set out:

(*a*) the name and the address of the registered office of the founder company;

(*b*) an opening balance sheet of the subsidiary company made out as at the date of its formation together with any necessary explanatory notes;

(*c*) an auditors' report;

(*d*) an explanation of the economic reasons for the formation of the subsidiary company.

2. The following shall be annexed to the draft document of constitution:

(*a*) the draft Statutes of the subsidiary company;

(*b*) the statutes of the founder company in the present form.

3. Article 35a shall apply to the opening balance sheet and the accompanying explanatory notes.

4. Article 35b shall apply correspondingly to the auditors' report.

5. Article 35c shall apply correspondingly.

Article 39

[Approval of formation and application for registration of SE]

1. The document of constitution and the Statutes of the SE shall be approved in the manner provided by Article 36(3).

2. Article 37 shall apply correspondingly to the application to the Court of Justice of the European Communities for registration of the SE.

Title III

Capital — Shares — Debentures

SECTION ONE

Capital

Article 40

[Capital of SE]

1. The capital of the SE shall be expressed in European Community units of account or in the currency of one of the Member States.

2. The capital of the SE shall be divided into shares. It shall be fully paid up, either in cash or in kind. No capital may be returned, except in the event of a reduction of capital.

3. Capital subscribed otherwise than in cash shall be considered as subscribed in kind. Intangible assets shall be treated as capital subscribed in kind only if they are saleable.

Article 41

[Increase of capital]

1. Capital may be increased either by the subscription of new capital paid up in full or by the capitalization of disposable reserves. An increase of capital shall require an alteration of the Statutes.

2. If new capital is subscribed wholly or partly in kind, a report as to the value of the assets contributed shall be submitted to the General

Meeting. The report shall be prepared and signed either by one or more qualified experts appointed by the court within whose jurisdiction the registered office of the SE is situated, or by the auditor of the SE. The Board of Management shall choose between these two alternatives subject to the approval of the Supervisory Board. The provisions of Article 15(2) and (3) shall apply to such experts appointed by the Court.

3. Copies of the report referred to in the preceding paragraph shall be made available to the shareholders free of charge as from the date on which the notice of the General Meeting is published. A note to this effect shall appear in the notice of the General Meeting.

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

By the resolution for an increase of capital, the General Meeting may nevertheless provide that all or some of the new shares be distributed amongst the employees of the SE.

Article 42

[Approval of future increase of capital]

1. The General Meeting may also approve a future increase of capital by altering the Statutes. The Statutes shall specify the amount of the approved capital and the period for which approval is given.

2. Such approval may be given for a period of not more than five years and the total approved capital may not exceed one half of the capital subscribed.

3. The Board of Management shall with the consent of the Supervisory Board decide how such approval shall be utilized.

4. Any issue of shares by virtue of approval granted shall be notified to the European Commercial Register and published in the company journals by the Board of Management. Each year the Board of Management shall, in the notes on the annual accounts, report on the manner in which approval has been utilized.

5. Where the approved capital has been fully subscribed or has been subscribed only in part but the period specified in paragraph 2 has expired, the Board of Management shall alter the Statutes to show the new amount of capital.

Where no avail has been made of approval to increase the capital, the Board of Management shall have the provisions regarding approval incorporated into the Statutes pursuant to Article 1 removed therefrom.

Such alterations shall be published in the company journals.

Article 43

[Entitlement of shareholders to subscribe for new shares]

1. If capital is increased by cash subscription, 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 official journals of the issue price and of the period within which the right to subscribe shall be exercised. This period shall not be less than one month as from the date of publication.

2. The General Meeting may, when resolving to increase capital by new subscriptions, wholly or partly suspend shareholders' subscription rights, provided that it shall have received a report from the Board of Management stating the reasons for such suspension or restriction of subscription rights and for the proposed issue price.

3. The General Meeting may also suspend shareholders' subscription rights in whole or in

part where a future increase of capital is approved. It may, further, empower the Board of Management to restrict or suspend subscription rights with the Supervisory Board's consent. The General Meeting may so resolve only after having received a report from the Board of Management stating the reasons why such action is required.

4. Copies of the reports referred to in the preceding paragraph shall be made available to the shareholders free of charge as from the date on which notice of the General Meeting is given. A note to this effect shall appear in the convening notice.

Article 43a

[Liability of Board of Management in connection with increases of capital]

1. For a period of three years from the date on which an increase of capital is entered in the European Commercial Register, members of the Board of Management of the SE shall be jointly and severally liable to the SE and to third parties for loss resulting from any omission or error in the particulars included in the application for registration.

2. They shall be similarly liable for any failure of payment in full of new capital contributed.

3. No member of the Board of Management shall be liable under paragraphs 1 or 2 if he was unaware of circumstances giving rise to such liability, nor could have become aware thereof by exercising the care incumbent on a prudent businessman.

Article 44

[Reduction of capital]

1. A reduction of capital shall be effected by altering the Statutes. The reasons for the reduction shall be specified in the notice of General Meeting.

2. The reduction of capital shall be effected by decreasing the nominal value of the shares. The amount of nominal capital shall not, however, be reduced below the amount of minimum capital. Only when losses have been incurred may the General Meeting resolve to reduce the capital to an amount below that of the minimum capital; the General Meeting shall, at the same time, resolve to increase the capital so that it be raised to an amount equal to or exceeding the minimum capital. This provision shall not be treated as inconsistent with Article 249.

3. If capital is reduced for the purpose of reconciling it with the capital of the company as diminished by losses and, in consequence of the reduction the company's assets exceed its liabilities, the amount of the difference shall be credited to a reserve. This reserve shall not be used for the purpose of distributing dividends or in any other way for the benefit of shareholders.

Article 45

[Protection of creditors when capital is reduced]

1. Creditors the origin of whose claims predates the reduction of capital may, within two months after the Minutes of the General Meeting are filed, require the SE to lodge a security for their claims against it.

2. If no agreement has been reached as to the security to be given within two weeks after the SE receives a creditor's demand, the court within whose jurisdiction the registered office of the SE is situate may on the application of the creditor order security to be given for this claim. If the SE does not give the security ordered within one month after the order of the court is made, the debt or other obligation shall immediately become due and payable. The court shall dismiss the creditor's application if the creditor

already has adequate security for his claim, or if the SE is obviously able to meet all claims against it.

3. The SE shall not be required to provide any security if the obligation is satisfied, whether before or at maturity, either prior to the decision of the court or within one month thereafter.

4. No payments may be made to shareholders until the court has reached a decision, or until any security ordered by the court has been provided, or until the creditors have been paid as provided for in paragraph 3.

5. The provisions of this Article shall not apply in the event of a reduction of capital which has as its object the reconciliation of capital with the assets of the company as diminished by losses.

Article 46

[Own shares]

1. The acquisition of and subscription for shares in the SE by the SE itself, by third parties on behalf of the SE, or by undertakings which are controlled by the SE or in which the SE holds a majority of shares, is prohibited.

2. The foregoing provisions shall not affect the application by the SE of its disposable reserves to the acquisition of its own shares, either by itself or by third parties on its behalf, for distribution to its employees or to employees of undertakings belonging to the same group as the SE. Such acquisition shall require the approval of the Supervisory Board of the SE. The SE's own holding of shares in itself including such acquired by third parties on its behalf may not exceed 10% of its capital.

3. The SE may not take any pledge of its own shares or acquire any right of usufruct or other beneficial rights over them.

4a. If an undertaking comes under the control of an SE in which it holds shares or if a majority of its shares are acquired by such an SE, the undertaking shall dispose of the shares in the SE within eighteen months from the date of its coming under the control of the SE or from the date when the SE acquires the majority of its shares.

If an SE acquires its own shares by way of universal succession, or if an undertaking which is controlled by the SE or the majority of whose shares are held by the SE acquires shares in the SE in this manner, such shares shall be disposed of within the period stated.

4b. If shares acquired by the SE pursuant to paragraph 2 for distribution to employees have not been distributed to them within twelve months from the date upon which they were acquired, they must be disposed of within a further six months at the latest.

5. No rights may be exercised in respect of the shares referred to in paragraphs 4a and b until they have been disposed of or distributed to employees.

Article 46a

[Obligations to notify shareholdings]

1. Any shareholder possessing more than 10% of the capital of an SE either

— directly or through his spouse, his minor children or an intermediary, or

— through a company controlled by him or through third parties acting on his behalf,

shall within eight days notify the SE of such shareholding and of any change therein, stating the amount of shares held.

2. Any SE which directly or through a company controlled by it or through a third party acting on its behalf, holds altogether more than

10% of the capital of another company shall be obliged to notify such other company likewise.

3. An SE shall forthwith after notification notify the European Commercial Register of every

— shareholding exceeding 10% of its capital;

— change which causes such a shareholding to rise above or fall below each 5% stage above the initial 10% of the capital of the SE;

— reduction of such a shareholding to 10% or less.

4. No rights may be exercised under a shareholding subject to a duty of notification pursuant to paragraph 1 as long as such duty remains undischarged.

Article 47

[Reciprocal shareholdings]

1. A reciprocal shareholding arises between an SE and another company when either company directly or through a dependent undertaking or through a third party acting on its behalf holds altogether more than 10% of the capital of the other company.

2. Where there is a reciprocal shareholding within the meaning of paragraph 1, the company which first receives a notification under Article 46a shall reduce its holding to 10% of the capital of the other company within 18 months of receipt of the notification. If both companies received notification at the same time, they shall both be bound by this obligation.

However, the companies may, within the specified period, agree on a different procedure for reducing the reciprocal shareholding.

3. Rights under a shareholding of a company which is obliged to dispose thereof may up to the time of disposal be exercised only to the extent of 10% of the capital of the other company.

4. Paragraph 2 shall not apply in the case of a reciprocal shareholding, if the SE holds the majority of the shares of another company, or if the other company is controlled by the SE. The other company shall then dispose of its shares in the SE within eighteen months of its coming under the control of the SE or of acquisition by the SE of a majority of its shares. No rights vested in the other company in respect of the shares may be exercised before their disposal.

5. If the SE comes under the control of another company, or if such company holds a majority of the shares of the SE, the SE must dispose of its shares in the company within the period specified in paragraph 4. No rights vested in the SE in respect of the shares may be exercised before their disposal.

6. If in the event of a reciprocal shareholding each company either controls the other or holds a majority of the other's shares, they shall each reduce their shareholding in the other to not more than 10% in accordance with paragraphs 4 and 5 unless within the period stated in paragraph 4 they agree on a different procedure for reducing the reciprocal shareholding.

SECTION TWO

Shares and shareholders' rights

Article 48

[Form of shares]

1. The nominal value of shares shall be expressed in the same currency as the capital and shall be divisible by ten.

2. Shares of different nominal value may be issued.

3. Shares are indivisible. Where more than one person holds a share, the rights deriving therefrom may be exercised only by one common representative.

Article 49

[Rights conferred]

1. Shares may carry different rights in respect of the distribution of the profits and assets of the company. Payment of fixed interest may be neither made nor promised to shareholders.

2. Non-voting shares may be issued, subject to the following conditions:

(a) their total nominal value shall not exceed one-half of the capital;

(b) they shall confer all the rights of a shareholder, except the right to vote; on an increase of capital they shall carry the right to subscribe only for non-voting shares;

(c) they shall not be included in computing a quorum or a majority required by this Statute or by the Statutes.

The foregoing provisions of this Article are without prejudice to paragraph 5 of this Article or to paragraph 2 of Article 235.

3. No other shares limiting or extending voting rights, such as shares carrying multiple rights, may be issued.

4. Shares carrying the same rights shall constitute one class of shares.

5. If the holders of a class of shares are adversely affected by a resolution of the General Meeting, such resolution shall be valid only if approved by the holders of the shares of the class concerned. In such case, holders of non-voting shares shall be entitled to vote. The provisions of Title VIII shall apply correspondingly with regard to the convening of the meeting, the quorum required thereat and the majority required for approval by the holders of the shares of the class concerned.

Article 50

[Issue of bearer or registered shares]

1. Shares may be issued either in bearer or in registered form. The Statutes may entitle the shareholders to request conversion of their bearer shares into registered shares or vice versa.

2. An SE issuing registered shares shall keep an alphabetical register of all shareholders, together with their addresses and the registered shares held by them. Any interested person may on request inspect the information contained in the register of shareholders at the registered office of the company.

Article 51

[Issue of share certificate]

1. Every shareholder shall be entitled without charge to receive a certificate in respect of each of his shares.

2. Where, in consequence of any change in the legal position, certificates issued have become inaccurate, the Board of Management may, following a request to the holders to this effect, declare void any such certificates that are not submitted for rectification or exhange. Certificates declared void shall be replaced by new certificates.

3. If a certificate has so deteriorated that it is no longer suitable for circulation, the shareholder shall be entitled to have a new certificate issued to him by the company in exchange for the old, provided that the material content of the certificate remains legible. The shareholder shall pay the costs in advance.

4. When a share certificate is lost or destroyed, the shareholder may apply to the court within whose jurisdiction the registered office of the company is situate to cancel the certificate. The applicant shall have a notice published in the official newspapers requesting any interested person to notify to the court within three months his vested or contingent rights in respect of the certificate. If the court declares the certificate void, the holder shall be entitled to request the company to issue a new certificate to him upon payment of the costs in advance. After a certificate is cancelled the holder may no longer enforce any rights embodied in the share certificate against the company.

Article 52

[Transfer of bearer shares]

Transfer of a bearer share by simple delivery shall be effective as against the SE.

Article 53

[Transfer of registered shares]

1. A transfer of a registered share shall be effective against the SE only when entered in the register of shareholders.

2. Registration shall be effected upon production of an instrument of transfer, dated and signed by the transferor and by the transferee.

3. The Statutes may restrict the right of transfer. The restrictions shall be clearly stated in the Statutes. They shall not be such as to amount to a complete discretion, on the part of the company, in the matter of approval of a transfer, or such as to render the shares non-transferable in practice.

4. Instruments of transfer presented to the SE after the convening of a General Meeting shall not be entered in the register of shareholders until after the meeting has been held.

SECTION THREE

Debentures

Article 54

[Issue of debentures]

Subject to the provisions of Articles 60 and 60a, the Board of Management may issue debentures with the consent of the Supervisory Board.

Article 55

[Public issue of debentures]

Notice of any public issue of debentures shall be given in the official 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. It shall also state the nominal amount of the convertible debentures already issued by the company, the unredeemed amount of other debentures already issued, the guarantees attaching thereto, and the amount of loans guaranteed by the SE or, where applicable, the fraction of such loans guaranteed.

Article 56

[Body of debenture holders]

1. Holders of debentures of the same public issue shall automatically constitute a body whose resolutions, subject to their being passed in accordance with the provisions of this Section, shall be binding on each of them.

2. A meeting of such a body shall be competent to decide on any proposal of the company relating to the debentures and, in particular, on any proposal to vary the condition on which they were issued, or to vary or cancel any security for them.

Article 57

[Representatives of body of debenture holders]

1. Upon a public issue of debentures, the Board of Management of the SE shall, with the consent of the Supervisory Board, appoint a person who is independent of the company to represent the body of debenture holders. A meeting of the said body may at any time dismiss the representative and appoint another in his place. In an emergency, any debenture holder may apply to the court in whose jurisdiction the registered office of the SE is situate for appointment of a representative.

2. The representative of the body of debenture holders shall represent the latter *vis-à-vis* the SE in any judicial or other proceedings. He may enforce the rights of the debenture holders against the company, and may accept guarantees for their debentures on their behalf. He is entitled to attend General Meetings of the company, to speak at such meetings upon matters appearing on the agenda and to exercise the same right as shareholders to request and receive information in accordance with Article 90. The SE shall pass to the representative all documents that shareholders are entitled to inspect or of which they may obtain copies. These documents shall be made accessible to debenture holders on request.

Article 58

[Meeting of body of debenture holders]

1. A meeting of the body of debenture holders may be convened by the representative or by the Board of Management of the SE. One or more debenture holders holding 10% of the debentures issued and outstanding, or debentures with a nominal value of 250000 u.a., may in writing request the representative or the Board of Management to convene such a meeting.

2. A meeting shall be validly held if the holders of at least 50% of the debentures issued and outstanding are present or are represented. Failing this quorum, the meeting shall be reconvened. The second meeting may be validly held irrespective of the number of holders present or represented. A note to this effect shall appear in the convening notice.

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

4. Voting rights shall attach to debentures in proportion to their nominal amount; 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 general meetings shall apply to meetings of debenture holders.

Article 59

[Expenses in respect of measures taken in interests of body of debenture holders and legal venue in case of dispute]

1. The expenses incurred in convening and holding meetings of debenture holders, in remunerating the representative and in carrying out measures taken in the interests of the body of debenture holders and in the preservation of their rights shall be borne by the company.

2. Any dispute between the company and the body of debenture holders shall be decided by the court within whose jurisdiction the registered office of the SE is situated.

Article 60

[Convertible debentures]

1. The General Meeting may by altering the statutes decide to issue convertible debentures which shall confer a vested right to exchange them or subscribe for shares. The Meeting shall at the same time create approved capital, in respect of which the shareholders shall waive their right of subscription, the amount and duration of which shall correspond to the maximum exercise of such exchange or subscription rights.

2. The amount of capital created for the issue of convertible debentures may altogether be equal to not more than half the subscribed capital.

3. Shareholders shall be entitled to apply for convertible debentures in proportion to their existing shareholdings, unless the General Meeting decides otherwise by due application of the provisions of Article 43.

4. As long as convertible debentures are outstanding the SE shall not alter its statutes in such a way that the rights of holders of convertible debentures are reduced, unless at least three months before the proposed alteration they are given the opportunity, by notice published in the company journals, of exercising their rights of subscription or exchange, or the body of debentures has declared its agreement with the proposed alteration.

5. Where rights of subscription or exchange deriving from convertible debentures issued have been fully exercised or have been exercised only in part, but the period within which they may be exercised has expired, the Board of Management shall alter the Statutes to show the new amount of capital. Where rights of subscription or exchange are not exercised within the prescribed period, the Board of Management shall have the provision concerning the issue of convertible debentures removed from the Statutes.

Article 60a

[Participating debentures]

1. The General Meeting may, by a resolution which meets the requirements for altering the Statutes, resolve to issue debentures conferring rights on their holders which depend in whole or in part on the company's profits.

2. Such debentures shall be subject to the terms of Article 60(4).

SECTION FOUR

Other securities

Article 61

The company shall not issue to persons who are not shareholders of the company other securities conferring a right to participate in the profits or assets of the company.

Title IV

Governing bodies

SECTION ONE

Board of Management

Article 62

[Function of Board of Management]

The company shall be managed by a Board of Management exercising its functions under the supervision of a Supervisory Board.

Article 63

[Appointment of Board of Management]

1. Members of the Board of Management shall be appointed by the Supervisory Board. The Supervisory Board, on behalf of the company, shall enter into a contract with each member of the Board of Management setting out the nature and amount of his remuneration. The members of the first Board of Management shall be designated by the Statute of the SE.

2. Members of the Board of Management shall be appointed for a period not exceeding six years. They may be reappointed.

3. Only natural persons shall be appointed members of the Board of Management.

4. Persons may not be members of the Board of Management if:

— by virtue of the law applicable to them, or

— as the result of a court decision under the law of a Member State,

they may not exercise the functions of such an office.

5. The maximum number of members of the Board of Management shall be specified in the Statutes.

6. If the Board of Management comprises more than one member, the Supervisory Board may appoint one of its members as chairman.

7. The Supervisory Board may dismiss members of the Board of Management, including the chairman, if there are serious grounds justifying such action. The resolution for dismissal shall in every case entail immediate and definitive termination of office, even where it is successfully contested in court. The other effects of dismissal shall be determined in accordance with the contract concluded with the member of the Board of Management and the law applicable thereto.

Article 64

[Powers of Board of Management]

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

2. If the Board of Management comprises more than one member, the members shall act collectively. Members of the Board of Management may divide their powers among themselves; such a division shall be for internal purposes only. The Supervisory Board shall determine responsibility within the Board of Management for personnel and industrial relations.

3. The Supervisory Board may, after consulting the Board of Management, make regulations for the latter's internal functioning.

Article 65

[Representation of SE *vis-à-vis* third parties]

1. Where the Board of Management comprise more than one member, each of them shall have authority to represent the company in its dealings with third parties, unless otherwise provided by the Statutes. Provisions of the Statutes to this latter effect may not be relied on to defeat claims by third parties.

2. The Board of Management may, subject to the approval of the Supervisory Board, confer general and unlimited powers to represent the company on one or more persons. The Board of Management may revoke such powers of representation at any time.

3. In its dealings with third parties, the company shall be bound by the acts of members of the Board of Management and persons with general powers to represent the company, notwithstanding that such acts are unconnected with the objects of the company, unless the acts are outside the functions of the Board of Management as provided by this Statute.

4. Notice of change in membership of the Board of Management or of the appointment or dismissal of a representative having general powers to represent the company shall be given by the Board of Management to the European Commercial Register for registration and publication in the company journals.

5. The appointment and dismissal of members of the Board of Management or of representatives having general powers to represent the company shall be effective *vis-à-vis* third parties in accordance with Article 9a. After entry in the European Commercial Register defects in the appointment of members of the Board of Management or of persons having general powers to represent the company may be relied on in order to defeat a claim by a third party only if the company proves that the third party had knowledge thereof.

Article 66

[Authorization by Supervisory Board of acts of Board of Management]

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

(a) closure or transfer of establishments of the company or of appreciable parts thereof;

(b) substantial curtailment, extension or modification of the activities of the undertaking;

(c) substantial organizational changes within the undertaking;

(d) establishment or termination of long-term cooperation with other undertakings;

Such authorization shall be required even if such acts affect a group undertaking controlled by the SE.

2. In applying the provisions of paragraph 1 account shall be taken of the consequences with regard both to the nature and extent of the activities of the undertaking and to employment within the SE and the group undertakings dependent upon it.

3. In addition to the matters mentioned in paragraph 1 and elsewhere in this Statute, the Statutes may provide that specified decisions of the Board of Management shall require prior authorization by the Supervisory Board.

4. The absence of or irregularity in prior authorization by the Supervisory Board of decisions of the Board of Management may not be relied on to defeat claims by a third party unless the company shall prove that the third party was aware of the absence of or irregularity in such authorization or could not have been unaware thereof in view of the circumstances.

5. The powers of the General Meeting, the Group Works Council and of the European Works Council shall remain unaffected.

Article 67

(deleted)

Article 68

(deleted)

Article 69

[Other activities of members of Board of Management, borrowing from SE, agreements with SE]

1. A member of the Board of Management may not also be a member of the Supervisory Board.

2. Members of the Board of Management may not engage in other professional activities, nor accept appointment to the Supervisory Board of another company, unless specifically authorized so to do by the Supervisory Board.

3. Members of the Board of Management may not borrow, in any form whatever, from the company or from its dependent companies, nor obtain from them any overdraft, whether on current or other account, nor procure them to guarantee or overdraft their commitments towards third parties. This prohibition shall extend to the spouse, ascendants and descendants of each member of the Board of Management, and to any intermediary.

4. Prior authorization of the Supervisory Board shall be required for the making 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 Member concerned shall not take part in the discussion or decision of the Board of Management relating to such an agreement.

Any member of the Board of Management or Supervisory Board learning of the existence of such an agreement shall forthwith notify both bodies thereof.

The Supervisory Board shall each year inform the General Meeting of the authorization which it has given.

The provisions of Article 66(4) regarding such authorization shall apply correspondingly in respect of third parties.

Article 70

[Obligations of members of Board of Management]

1. In carrying out their duties of management, members of the Board of Management shall exercise the standard of care expected of a prudent administrator and shall promote the interests of the company and of its personnel.

2. They shall exercise proper discretion in respect of information of a confidential nature concerning the company or its dependent undertakings, and shall continue to do so after they have ceased to hold office.

Article 71

[Liability to SE]

1. Members of the Board of Management shall be liable to the company for any loss resulting from their failure to observe the provisions of this Statute or of the Statutes of the company, or from any other breach of their obligations.

2. Each member of the Board of Management shall be jointly and severally liable for such loss without limitation. Nevertheless, no member shall be held liable if he proves that no fault is attributable to him and if he notified the Supervisory Board in writing of the act or ommission in question as soon as possible after it came to his knowledge.

3. Authorization given by the Supervisory Board shall not absolve the members of the Board of Management from liability.

4. The members of the Board of Management shall not be relieved of liability by the fact that the General Meeting has resolved to relieve them or has approved their action.

5. The right of action in respect of liability of the members of the Board of Management shall be barred at the end of three years from the date of the act complained of or, if such act was concealed, from the date of its discovery.

Article 72

[Liability proceedings]

1. The Supervisory Board or the General Meeting may resolve that proceedings shall be brought on behalf of the company in respect of the liability of members of the Board of Management or of any member thereof. No greater majority shall be required for the resolution of the General Meeting than an ordinary majority of the votes validly cast.

2. The action shall be brought by the Supervisory Board. If the General Meeting resolves to bring an action, it may do so through a representative appointed by it.

3. An action may also be brought on behalf of the company by one or more shareholders holding 5% of the capital of the company or shares of a total nominal value of not less than 100000 u.a. For this purpose the shareholders, if there are more than one, shall appoint a special representative to bring the action.

4. An action may also be brought against the members of the Board of Management by a creditor of the company who proves that he is unable to obtain satisfaction from the latter.

5. If bankruptcy proceedings are instituted against the company, an action in respect of the liability of members of the Board of Management may also be brought by the company's trustee in bankruptcy.

6. The plaintiffs may sue for the full amount of the loss sustained by the company. If their action is successful, the damages awarded shall be paid to the company, which shall indemnify the plaintiffs for the costs incurred by them in so far as these are not paid by the defendant(s).

Article 72a

[Liability to shareholders and third parties]

1. The members of the Board of Management of the SE shall be liable to the shareholders of the SE and to third parties for any loss or damage that the latter may personally sustain through breach of the provisions of this Statute or of the statutes of the company or through any other failure by members of the Board of Management to fulfil their obligations in the pursuit of their duties.

2. Article 71(2) to (5) shall be of corresponding application.

SECTION TWO

The Supervisory Board

Article 73

[Functions of Supervisory Board]

1. The Supervisory Board shall exercise continuous supervision over the administration of the company's affairs by the Board of Management.

2. The Supervisory Board shall advise the Board of Management, either upon request thereof or on its own initiative, on any matter of importance to the company.

3. The Supervisory Board shall not participate directly in the management of the company, nor represent it in dealings with third parties. The Supervisory Board shall represent the company at law in legal proceedings brought by or against the Board of Management or members thereof and in concluding agreements between the company and any member of the Board of Management.

Article 73a

[Rights of Supervisory Board and its members to information]

1. At least once every quarter, the Board of Management shall submit to the Supervisory Board a report on the management and progress of the company and of the undertakings controlled by it. Quarterly accounts shall be attached to the report.

2. The Board of Management shall immediately communicate all matters of importance to the chairman of the Supervisory Board. Any matter concerning a dependent undertaking which may appreciably affect the SE shall be deemed to be a matter of importance. Matters so referred to the chairman of the Supervisory Board shall be incorporated in the next following quarterly report.

3. The Supervisory Board may at any time require the Board of Management to submit a special report on any matter concerning the company or the undertakings controlled by it.

4. The Supervisory Board or one third of its members may require the Board of Management to provide it with information and to submit documents relating to matters affecting the company or the undertakings controlled by it. The Board of Management shall make such information and documents available to all members of the Supervisory Board simultaneously.

5. The Supervisory Board or one-third of its members shall have right of access to the company's books of account, correspondence, minutes and documents. The Supervisory Board or one third of its members may appoint one or more of its members to exercise this right.

The Supervisory Board or one-third of its members may appoint one or more experts to carry out such inspection as it may consider necessary.

All members of the Supervisory Board shall be informed simultaneously and without delay of the results of the inspection.

6. Each member of the Supervisory Board shall have access to all documents and information supplied by the Board of Management to the Supervisory Board.

Article 74

[Conditions of membership; Number of members]

1. Only natural persons may be members of the Supervisory Board.

No member may sit on the supervisory body of more than ten companies. Where a member of a Supervisory Board has a seat on several Supervisory Boards within a group, these shall be counted as not more than two. No member of the Supervisory Board of an SE may have a seat on the management body of an undertaking controlled by the SE.

2. Persons may not be members of the Supervisory Board if:

— by virtue of the law applicable to them; or

— as a result of a court decision under the law of a Member State,

they may not exercise the functions of such an office.

3. The number of members of the Supervisory Board shall be prescribed by the Statutes of the company; it shall be uneven and divisible by three.

Where an SE has establishments in several Member States the number shall be not less than nine.

If an SE is the controlling undertaking of a group, establishments of group undertakings controlled by the SE shall be deemed to be establishments of the SE for the purposes of this paragraph.

4. In the event of it proving necessary to increase the number of members of the Supervisory Board in order to comply with the provisions of the preceding paragraph, the said Board shall continue to act without changes in its composition until the next General Meeting convened to adopt the annual accounts.

Article 74a

[Composition of Supervisory Board]

1. The Supervisory Board 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. Shareholders' representatives shall be appointed in accordance with Article 75.

3. Employees' representatives shall be appointed in accordance with Article 137.

4. The remaining third to be co-opted to membership of the Supervisory Booard shall be appointed in accordance with Articles 75a and 75b.

5. The Board of Management shall immediately notify the European Commercial Register of the composition of the composition of the Supervisory Board and of any change therein.

Article 74b

[Carrying out of duties of Supervisory Board before its membership is complete]

1. After the formation of the SE, the members of the Supervisory Board representing the shareholders shall perform the Board's duties alone until employees' representatives have been elected.

2. As from the date of formation the duties of the Supervisory Board shall be carried out solely by the shareholders' and employees' representatives in the absence of those members of the co-opted third who have not yet been appointed.

Article 74c

[Term of office]

1. The Supervisory Board shall hold office for four years. Members of the Board may offer themselves for re-election.

2. If upon expiry of the Supervisory Board's term of office no new elections to membership thereof shall have been held, the members appointed for the preceding term shall continue in office until new elections are held, provided that such further period shall not exceed six months.

3. The term of office of the members initially elected or appointed shall end four years after the formation of the SE.

Article 74d

[Termination of membership Replacement by and appointment of alternates]

1. Membership of the Supervisory Board shall also end by resignation, or upon loss of the preconditions of eligibility for membership.

2. Upon premature determination of membership or expulsion from the Supervisory Board by court order or in the event of continuing incapacity, the member of the Board concerned shall be replaced by an alternate.

3. If no alternate has been elected to deputize for a member, or if an alternate is prevented from assuming office, a new member shall be elected for the remaining period of office in accordance with the following provisions.

Members replacing shareholders' or employees' representatives shall in such cases be elected by the appropriate group of Supervisory Board members. Alternates in respect of the jointly co-opted third shall be elected by all the remaining members of the Supervisory Board.

Article 74e

[Dismissal of members by court]

1. The court within whose jurisdiction the registered office of the SE is situated may upon application dismiss a member of the Supervisory Board who has committed a serious breach of his obligations under this Statute.

Application may be made by the General Meeting, the employees' representative body and the Supervisory Board.

Application may also be made by:

— shareholders jointly holding either 10% of the capital or shares of a nominal value of 200000 u.a., or

— one quarter of the employees entitled to elect members of the Supervisory Board pursuant to Article 2 of Annex III.

2. The employees' representative body within the meaning of paragraph 1 shall be:

(a) the European Works Council;

(b) if no European Works Council is formed:

(aa) the central employees' representative body of the SE at undertaking level; if there is no central employees' representative body, on a joint basis the employees' representative bodies set up at works level and referred to in Annex I to this Statute;

(bb) the recognized representatives of employees in undertakings of the SE in Member States in which there are no employees' representative bodies within the meaning of Annex I.

(c) where an SE forms a Group Works Council, this too shall be deemed to be an employees' representative body for the purposes of this provision.

Article 75

[Appointment of shareholders' representatives]

1. Shareholders' representatives on the Supervisory Board shall be elected by the General Meeting, which may elect a like number of persons as alternates. Shareholders' representatives on the initial Supervisory Board shall be appointed by the statutes of the SE.

2. Notwithstanding the provisions of Article 91(2), the statutes may lay down a procedure whereby one or more members of the Supervisory Board shall be elected by a minority of the shareholders.

3. Members of the Supervisory Board appointed by the General Meeting or by the statutes may be replaced by the General Meeting at any time.

4. An age limit may be imposed under the statutes in respect of members who represent the shareholders. A member of the Supervisory Board who reaches this age limit shall remain in office until the end of the next General Meeting called to consider the annual accounts.

Article 75a

[Proposal of candidates for co-optation]

1. The following may put forward candidates for co-option to the Supervisory Board:

— the General Meeting;
— the employees' representative body;
— the Board of Management.

2. The employees' representative body within the meaning of paragraph 1 shall be

(a) the European Works Council,

(b) if no European Works Council is formed:

(aa) the central employees' representative body of the SE at undertaking level; if there is no central employees' representative body, on a joint basis, the employees' representative bodies set up at works level and referred to in Annex I to this Statute;

(bb) the recognized representatives of employees in undertakings of the SE in Member States in which there are no employees' representative bodies within the meaning of Annex I;

(cc) employees' representatives on the Supervisory Board of the SE if there is no representative body as provided under (aa) or (bb).

(c) Where an SE forms a Group Works Council, this too shall be deemed to be an employees' representative body for the purposes of this provision.

3. Only persons representing general interests, possessing the necessary knowledge and experience, and not directly dependent on the shareholders, the employees or their respective organizations may be nominated.

4. When an SE is being formed, the bodies of the founder companies competent for approving the constitution of the SE are entitled to put forward candidates instead of the General Meeting of the SE.

Article 75b

[Election of such members]

1. Those candidates proposed for co-option from the appropriate third shall be elected, who obtain most votes, but not less than two-thirds of the votes. One alternate may further be elected for each co-opted member.

2. If the requisite majority for the co-option of one or more members is not achieved in the first ballot, the election of such members shall be repeated on the basis of new nominations.

3. The General Meeting and the employees' representative body within the meaning of Article 75a may appoint one or more persons as proxies to submit new nominations on their behalf. Failing the appointment of a proxy, the representatives on the supervisory Board of the shareholders on the one hand and of the employees on the other shall be authorized to submit new nominations on behalf of the General Meeting and of the employees' representative body respectively.

4. If the requisite majority for the co-option of one or more members be not reached after an election has been twice repeated, an arbitration board shall decide as to their appointment.

5. The arbitration board shall comprise two assessors and a chairman; the representatives of the shareholders and of the employees on the Supervisory Boards shall each appoint one assessor. The chairman shall be appointed by the two assessors by mutual agreement. In the absence of agreement as to the choice of a chairman, the latter shall be appointed by the court within whose jurisdiction the registered office of the SE is situate.

Article 76

[Election of Chairman; convening of Supervisory Board]

1. The Supervisory Board shall elect a chairman and one or more vice-chairmen from among its members.

2. The chairman may call a meeting of the Supervisory Board on his own initiative or at the

request of a member of the Supervisory Board or at the request of the board of Management. Such a request shall state the reasons for calling the meeting. If the request has not been complied with within 15 days after it is made, the applicant may call a meeting of the Supervisory Board himself.

3. Members of the Board of management shall attend meetings of the Supervisory Board unless the latter shall otherwise decide. They shall attend in an advisory capacity.

Article 77

[Preparation of meetings and decisions]

1. The agenda for meetings of the Supervisory Board shall be settled by the chairman. The Board of Management shall in good time provide written information in respect of each item of the agenda. The agenda and the written information so provided shall be sent in good time to each member of the Supervisory Board. Every member of the Supervisory Board or the Board of management may require additions to be made to the agenda.

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

3. Members of the Supervisory Board not present may take part in decisions by authorizing a member who is present to represent them.

4. Unless a greater majority is required in the Statutes, decisions of the Supervisory Board shall be taken by majority vote of the members present or represented.

5. Subject to any conditions contained in the Statutes of the company decisions of the Supervisory Board on any particular matter may be made in writing, in particular by an exchange of telegrams or telex messages, provided that no objection is raised to such procedure by any member.

6. Minutes shall be kept of decisions of the Supervisory Board, and shall be signed by the chairman of the said Board. Copies of the Minutes shall be sent to the members of the Supervisory Board immediately after they have been signed.

Article 78

(deleted)

Article 79

[Remuneration of members; borrowing from SE; agreements with SE]

1. The remuneration of members of the Supervisory Board may be determined by the Statutes or, in default, by the General Meeting.

2. Members of the Supervisory Board may not borrow, in any form whatever, from the company or from its dependent companies, nor obtain from them any overdraft, whether on current or other account, nor procure them to guarantee or underwrite their commitments towards third parties. This prohibition shall extend to the spouse, ascendants and descendants of each member of the Supervisory Board, and to any intermediary.

3. Prior authorization by the Supervisory Board shall be required for the making of any agreement to which the company is a party and in which a member of the Supervisory Board has a direct or indirect interest.

The member concerned shall not take part in the discussions or the resolution regarding authorization.

Any member of the Board of Management or the Supervisory Board learning of the existence of such an agreement shall forthwith notify both bodies thereof.

The Supervisory Board shall each year inform the General Meeting of the authorizations which it has given.

The provisions of Article 66(4) regarding such authorization shall apply correspondingly in respect of third parties.

Article 80

[Obligations of members of Supervisory Board]

1. In carrying out their duties, members of the Supervisory Board shall have regard to the interests of the company and of its personnel.

2. They shall exercise proper discretion in respect of information of a confidential nature concerning the company or its dependent undertakings, and shall continue to do so after they have ceased to hold office.

Article 81

[Liability to SE]

1. The members of the Supervisory Board shall be liable to the company for any loss resulting from their failure to observe the provisions of this Statute or of the Statutes of the company, or from any other breach of their obligations.

2. Each member of the Supervisory Board shall be jointly and severally liable for such loss without limitation. Nevertheless, no member shall be held liable if he proves that no fault is attributable to him, and if he notified the chairman of the Supervisory Board in writing of the act or omission in question as soon as possible after it came to his knowledge.

3. Members of the Supervisory Board shall not be relieved of liability by the fact that the General Meeting has resolved to relieve them or has approved their action.

4. The right of action in respect of liability of the members of the Supervisory Board shall be barred at the end of three years from the date of the act complained of or, if such act was concealed, from the date of its discovery.

5. By analogy with the provisions of Article 72, the General Meeting, shareholders, creditors of the company and, where the company becomes insolvent, its trustee in bankruptcy may bring an action to enforce the liability of the members of the Supervisory Board.

Article 81a

[Liability to shareholders and third parties]

1. Members of the Supervisory Board shall be liable to the shareholders of the SE and to third parties for any loss or damage that the latter may personally sustain through breach of the provisions of this Statute or of the statutes of the company or through any other failure by Members of the Supervisory Board to fulfil their obligations in the pursuit of their duties.

2. Article 81(2), (3) and (4) shall be of corresponding application.

SECTION THREE

Special obligations applicable to members of the Board of Management, the Supervisory Board, the auditors and principal shareholders

Article 82

1. Where the company's shares are quoted on a Stock Exchange, members of the Management

and Supervisory Boards and the persons responsible for auditing the accounts of the company shall, within twenty days of acquisition, either cause to be converted into registered shares or lodge with a bank, shares in the capital of the SE which are owned directly, or through an intermediary, by them, their spouse or their infant children.

Subject to Article 46a the same obligation shall apply to any person who holds, directly or through an intermediary, solely or jointly with his spouse or infant children, more than 10% of the capital of the company.

2. Persons who acquire any of the capacities mentioned in paragraph 1 shall forthwith give notice to the European Commercial Register for the purpose of entry therein, of the number, nominal value and, where appropriate, the class, of the shares to which the said paragraph applies, together with the name and status of the owner thereof. An extract applies, together with the name and status of the owner thereof. An extract from the register of registered shares, or a certificate issued by the bank with which they are lodged, shall be attached in support of the notice.

3. The like persons shall, further, give notice to the European Commercial Register within fifteen days of the end of each quarter of the financial year, for the purpose of registration, of any sale or purchase of shares, to which paragraph 1 applies, effected during that quarter, specifiying the price paid or received.

4. In respect of each person mentioned in paragraph 1, the European Commercial Register shall keep an up-to-date record of the number, nominal value and, where appropriate, the class of shares held by him, together with a record of transactions of which notice has been given pursuant to paragraph 3. Any person having an interest may inspect the entries in the register and, on payment of the expenses, obtain a copy thereof.

5. Any profit made by a person mentioned in paragraph 1 on purchase and resale of shares, or vice versa, within six months, for his own account or that of his spouse or infant children shall automatically be the property of the SE. The amount thereof shall be paid to the company within eight days from completion of the transaction from which the profit arose.

SECTION FOUR

The General Meeting

Article 83

[Duties]

1. The General Meeting shall pass resolutions concerning:

(a) increase or reduction of capital;

(b) issue of debentures convertible into shares and debentures carrying the right to share in profits;

(c) appointment and removal of members of the Supervisory Board who represent the shareholders;

(d) institution of legal proceedings on behalf of the company;

(e) appointment of auditors;

(f) approval of the annual accounts, where this is not done by the Board of Management and the Supervisory Board under Article 214;

(g) appropriation of annual profits under Article 217;

(h) alteration of the Statutes;

(i) winding-up of the company and appointment of liquidators;

(j) transformation of the company;

(k) merger of the company with another company;

(l) transfer of the assets of the company.

2. The approval of the General Meeting shall also be required for contracts by which the SE agrees:

— to pool the whole or a part of its profits with the profits of other undertakings, or parts thereof;

— 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.

The absence of or irregularity in the granting of approval by the General Meeting may not be relied on to defeat claims by a third party unless the company shall prove that the third party was aware of the absence of or irregularity in such authorization or could not have been unaware thereof in view of the circumstances.

3. The powers of the Supervisory Board and of the European Works Council shall remain unaffected.

Article 84

[Convening]

1. The General Meeting shall be convened by the Board of Management. It shall be held at least once each calendar year, not later than six months after the end of the company's financial year, principally to review the annual accounts and the annual report. Upon application by the Board of Management this period may, in exceptional circumstances, be extended by order of the court within whose jurisdiction the registered office of the company is situate, from which there shall be no right of appeal.

2. The Board of Management may convene a General Meeting at any time, and shall do so if the Supervisory Board so requires.

3. If the Board of Management shall fail to convene a General Meeting prescribed by this Statute or by the Statutes or as required by the Supervisory Board, the latter may convene the same.

Article 85

[Convening by shareholders]

1. One or more shareholders holding between them not less than 5% of the capital or a nominal value of at least 100000 u.a. may by requisition in writing setting out their reasons and the items on the agenda, require that a General Meeting be convened. The Statutes may specify a lesser percentage and number of units.

2. If within one month after it has been lodged the requisition mentioned in paragraph 1 has not been complied with, the requisitionist or requisitionists may apply to the court for an order that the meeting be convened. The application shall be heard by the court within whose jurisdiction the registered office of the SE is situate and there shall be no right of appeal against its decision. If, after hearing the company, the court shall consider the application justified, it shall authorize the requisitionist or requisitionists to convene the General Meeting at the expense of the company, and shall determine the agenda and appoint the chairman.

Article 86

[Convening procedure]

1. A General Meeting shall be convened not less than one month before the date of the meeting.

It shall be convened by a notice published in the company journals. If the company has issued shares in registered form, holders thereof shall receive personal written invitations to attend the meeting.

2. The convening notice shall state the agenda and the proposals of the Board of Management concerning each item thereon.

3. Shareholders who individually or collectively fulfil the conditions laid down in Article 85(1) may, within ten days of a meeting being convened, by registered letter require the Board of Management to extend the agenda by one or more items or to put up for discussion their amendments regarding items of the agenda.

Such new items of the agenda and amendments shall be published not later than 10 days before the General Meeting in like manner to the convening notice.

4. The General Meeting may pass resolutions on items not included in a duly published agenda only by the unanimous vote of all the shareholders of the company.

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

Article 87

[Attendance at General Meeting]

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 representative of a body of debenture holders appointed in accordance with Article 57 shall be entitled to attend the General Meeting.

3. The Statutes of the company may make attendance at a General Meeting conditional upon the lodging of the certificates with a bank at least fifteen days before the meeting for retention 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.

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

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.

Article 88

[Representation of shareholders at General Meeting]

1. Shareholders who are entitled to vote may be represented by proxies at General Meetings. Members of the Board of Management, members of the Supervisory Board and salaried employees of the company, or of its dependent undertakings, may not act as proxies. The statutes may impose additional restrictions on the appointment of proxies, provided that a shareholder shall at all times be entitled to appoint another shareholder to represent him. Reference to such restrictions shall be made in the convening notice.

2. The appointment of a proxy shall be made in writing, and the person appointed shall act without payment. The document of appointment shall specify the number and nominal value of the shares in respect of which the right to vote may be exercised. It shall be lodged with the company before the meeting, and the company must retain it for at least three years.

3. The appointment of a proxy shall be valid for only one General Meeting and, where necessary, for one subsequent General Meeting with the same agenda as the meeting for which it was given. A proxy may delegate his powers to another person. The appointment of a proxy may be revoked at any time.

Article 88a

[Public proxy solicitations]

1. If any person publicly invites shareholders to send their forms of proxy to him and offers to represent them at the General Meeting, either in person or through a third party, the following provisions shall apply in addition to Article 88:

(a) all shareholders whose names and addresses are known to the person making the offer shall be invited in writing to appoint the person nominated as proxy;

(b) the invitation shall contain at least the following particulars:

(aa) the agenda of the General Meeting;

(bb) the text of proposed resolutions concerning each of the items on the agenda;

(cc) a statement to the effect that the documents referred to in Article 216 are available to shareholders on request;

(dd) a request to the shareholder for instructions concerning the exercise of the right to vote in respect of each item on the agenda;

(ee) a statement of the way in which the proxy will exercise the right to vote if the shareholder gives no instructions.

(c) the shareholder's right to vote shall be exercised in accordance with his instructions, or, if none are given by him, in accordance with the statement made to him;

(d) the proxy may, however, depart from the instructions given by the shareholder or from the statement made to him if circumstances arise that were not known at the time the instructions or invitation were sent and the interests of the shareholder might be detrimentally affected if his instructions were carried out;

(e) if the right to vote has been exercised in a manner contrary to the shareholder's instructions or to the statement made to him, the proxy shall forthwith inform the shareholder and explain the reasons therefor.

2. The provisions of paragraph 1 shall also apply if a bank seeks to act as the proxy of persons who have deposited share certificates with it. Notwithstanding paragraph 1(a), only those shareholders with share certificates in the bank's custody shall be invited to appoint it as proxy.

Article 88b

[Illicit voting]

No person may vote in his own name in respect of shares belonging to another person, unless a deed of appointment of a proxy has been duly lodged.

Article 89

[Procedure at General Meeting]

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.

2. For every General Meeting, a list of persons present shall be prepared before the proceedings are opened. It must contain the following information:

(a) the names and permanent addresses of the shareholders present;

(b) the names and permanent addresses of the shareholders represented by proxies and the names and addresses of their proxies;

(c) in respect of each shareholder present or represented by a proxy, the number, class and nominal value of his shares.

3. Any person attending a General Meeting shall be entitled to speak upon matters appearing in the agenda which the chairman has opened to

debate. Any shareholder may make counter-proposals on any item in the agenda. The chairman shall regulate the discussion, and may take any steps which he considers appropriate for the orderly conduct of business.

4. The chairman shall determine the order of voting if there is more than one proposition on the same item. The Statutes of the company 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 a majority vote decide to the contrary. Voting in respect of appointments may be by acclamation, if no objection is raised by any shareholder entitled to vote.

Article 90

[Right of shareholders to information]

1. During the course of a General Meeting, any shareholder shall be entitled to require information on request from the Board of Management concerning the affairs of the company, if such information is necessary for the proper discussion of items in the agenda. The obligation to give information shall extend to legal and business affairs concerning the SE and its dependent or controlling undertakings or affiliated undertakings within the same group.

2. The information supplied shall be accurate and complete in all respects.

3. The Board of Management may refuse to give information where:

(a) in the opinion of a prudent businessman, the information requested would be such as to cause substantial harm to the SE or to any of its dependent or controlling undertakings or affiliated undertakings within the same group; or

(b) by divulging the same the Board of Management would commit a criminal offence.

4. Where information is refused to a shareholder, he shall be entitled to require that his question and the grounds relied on for refusing it shall be entered in the Minutes of the General Meeting.

5. A shareholder to whom information is refused may challenge the validity of the refusal by applying to the court within whose jurisdiction the registered office of the SE is situate, whose decision shall be final and without right of appeal. Application to the court shall be made within 2 weeks from the conclusion of the General Meeting. The oral proceedings on the application shall be held in chambers.

6. If the applicant's right to be given the information is upheld, the Board of Management shall publish the question and the relevant information in the company journals within four weeks of the judgment.

Article 91

[Voting]

1. Subject to Article 49(2), each share shall carry voting rights in proportion to the share of the company's capital which it represents; each share shall carry at least one vote.

2. A simple majority of the votes validly cast shall be required for a General Meeting to pass resolutions except where this Statute requires a larger majority. The Statutes of the company may require a larger majority for any resolution provided that it does not exceed four-fifths of the votes validly cast.

3. A shareholder or his representative may not vote in respect of his own shares or the shares of a third party on a resolution of the General Meeting concerning:

(a) the institution of legal proceedings by the company against the shareholders;

(b) the release of the shareholder from an obligation to the company;

(c) the approval of contracts between the company and the shareholder.

Article 92

[Exercise of voting rights]

1. The voting rights attached to a share may be exercised by a usufructuary. In the event of a resolution for the alteration of the Statutes of the company, however, the right to vote shall be exercised by the legal owner of the share.

2. Voting rights in respect of shares in pledge shall be exercised by the legal owner. For this purpose, for a period of fifteen days before a General Meeting and until the conclusion thereof, the pledgee shall at the request of the legal owner lodge the shares held by him in pledge with a bank appointed by the company at the legal owner's request.

Article 93

[Agreements on voting rights]

1. Shareholders may gratuitously agree to leave to one of their number or to a third party the decision as to the manner in which their voting rights shall be exercised. All agreements by which shareholders undertake to vote in accordance with the directions or in support of proposals of the Board of Management or Supervisory Board of the SE or of the governing bodies of an undertaking dependent thereon shall be void.

2. The terms of the agreement shall be set down in writing and notified to the company. Votes cast in pursuance of such an agreement, before notice of it is given, shall be void. The termination of the agreement shall also be notified to the company.

3. When a company has been notified of the conclusion of an agreement, the names of the parties thereto and the total nominal value of their shares shall be set out in the annual report. This shall also be done where the company has been notified of the termination of an agreement.

Article 94

[Minutes of General Meeting]

1. The Minutes of the General Meeting shall be drawn up by a notary. They shall include the matters discussed, the comments which speakers have asked to be placed on record and the resolutions passed by the General Meeting.

2. The list of persons present and the documents relating to the convening of the meeting shall be annexed to the Minutes, together with the reports to shareholders on items placed on the agenda.

3. Immediately after the General Meeting the Board of Management shall file two authenticated copies of the Minutes and of the annexes thereto in the European Commercial Register.

Article 95

[Proceedings for cancellation of resolutions of General Meetings]

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

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, and if failure to observe those provisions may alter or influence the resolution of the General Meeting.

3. The proceedings for cancellation shall be brought before the court within whose jurisdiction the registered office of the SE 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 SE, the court may suspend implementation of the resolution in question. The court may likewise, on the application of the SE and after hearing the plaintiff, order the plaintiff to provide security to cover any loss 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 court shall not order cancellation of a resolution where the latter has been replaced by another passed in accordance with this Statute and the Statutes of the company. The court may if it sees fit allow such time as may be necessary for the meeting to pass such resolution.

Article 96

(deleted)

SECTION FIVE

Special supervision of the governing bodies

Article 97

[Conditions for special supervision]

1. Where there is good reason for believing that the Board of Management or the Supervisory Board has committed a serious breach of its obligations, or that a member of either has committed such breach of his obligations, or that either of these Boards is no longer in a position properly to fulfil its functions, with the consequent risk that the company may thereby suffer substantial prejudice:

— shareholders owning between them either 10% of the capital or shares to the value of 200000 u.a.;

— the European Works Council; or

— the representative of a body of debenture holders

may apply to the competent court for the appointment of one or more special commissioners.

2. The competent court shall be that within whose jurisdiction the registered office of the SE is situate, provided that the Member State concerned shall not have granted exclusive competence to decide on the appointment of special commissioners to another court.

Article 98

[Appointment and activities of special commissioners]

1. The court shall notify the company and the parties immediately concerned that an application has been made. The court shall deal with the application and hear the parties in chambers.

2. If in the opinion of the court the application is *prima facie* founded, it shall at the expense of the company appoint one or more special commissioners. It shall specify the matters that they are to investigate. Their duties may at their own moving be enlarged by the court, subject to the company being heard.

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 required amount of deposit or guarantee.

5. Special commissiomers 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 that appointed them. An official of the court shall forthwith notify the parties that the special commissioners' report has been submitted. The parties shall be entitled to a copy thereof.

Article 99

[Adoption of measures by court]

1. Any party may apply to the court within two months of the submission of the report. If no application is made within this period the court shall declare the proceedings closed.

2. The court shall decide on the basis of the facts disclosed after hearing the parties. It shall not be bound by their applications and shall order the submission of any evidence it considers necessary.

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

— temporarily suspend from office one or more members of the Board of Management or of the Supervisory Board;

— dismiss them;

— appoint new members to these bodies on a temporary basis;

— suspend or rescind decisions and resolutions of the Board of Management, the Supervisory Board or the General Meeting;

— 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 measures ordered 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 measures which it has ordered under paragraphs 3 and 4, except as to 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. Measures which the court has ordered shall affect third parties only from the date of their publication in the company journals.

Title V

Representation of employees in the European company

SECTION ONE

The European Works Council

Sub-section one

General

Article 100

[Formation of a European Works Council]

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

Article 101

[Employees' representative bodies in Member States]

Unless otherwise expressly provided for in this Statute, organs of employee representation formed in the establishments of a European company pursuant to national laws shall continue in existence with the same functions and powers as are conferred upon them under that law.

Article 102

[References to employees' representative bodies in individual Member States]

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 otherwise agreed provisions governing employee representation, as soon as a Member State notifies it of such changes.

Article 102a

[Representation of trade unions in establishments of SE]

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

Sub-section two

Composition and election

Article 103

[Number of representatives of establishments of SE on European Works Council]

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

2. Each establishment of the SE shall elect:

(*a*) for 50 to 199 employees: one representative;

(*b*) for 200 to 499 employees: two representatives;

(*c*) for 500 to 999 employees: three representatives;

(*d*) for 1000 to 2999 employees: four representatives;

(*e*) for 3000 to 4999 employees: five representatives;

(*f*) for each additional 5000 employees: one representative.

The same number of alternates shall also be elected.

Article 103a

[Enlargement of European Works Council]

1. Where all the assets and liabilities of an SE are transferred to another SE and a European Works Council has been formed in both companies, the members of the European Works Council of the SE by which the transfer is made shall become members of the European Works Council of the SE to which the transfer is made.

2. If an SE 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 SE shall be enlarged to accommodate members elected in those establishments in accordance with Article 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

[Election of members of European Works Council]

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

(deleted)

Article 106

(deleted)

Sub-section three

Term of office

Article 107

[Period of office of European Works Council; membership of national employees' representative bodies]

1. The European Works Council shall be elected for a period of four years commencing on the date of its constituent meeting. The members of the European Works Council may be re-elected.

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

[Termination of membership]

1. 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, upon its dissolution or, in the cases specified in Article 103a, upon the expiration of the mandate of the European Works Council of the SE to which the transfer is made, or by members' resignation, termination of their contract of employment, or by their ceasing to fulfil the conditions for membership laid down in Annex II to this Statute.

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

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

Article 108a

[Expulsion of a member; dissolution of European Works Council]

1. Application for the expulsion 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 within whose jurisdiction the SE has its registered office by not less than one fourth of the elector employees, by the SE's Board of Management or by a trade union represented in an establishment of the SE.

The European Works Council may also request the expulsion of a member.

2. In the event of the dissolution of the European Works Council the court within whose jurisdiction the SE has its registered office shall forthwith constitute an electoral commission to conduct new elections.

Article 109

[Constituent meeting of European Works Council]

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

2. The European Works Council elected to a new term of office shall hold its constituent meeting not later than 30 days after expiry of the mandate of the former Council. It shall be convened by the chairman of the former Council.

3. The old Council shall continue to deal with current business until the first meeting of the new European Works Council is held.

4. At least 15 days shall elapse between the date on which the first meeting of the European Works Council is convened and the date on which it takes place.

Article 110

(deleted)

Sub-section four

Operation

Article 111

[Election of Chairman; decision-making; formation of committees]

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. Except in the case of the first meeting of the European Works Council, members not attending may take part in the decisions by authorizing a member present to represent them.

4. Decisions of the European Works Council shall be made by majority vote of the members present and represented.

5. The European Works Council may form committees to which it may delegate certain of its tasks.

Article 112

[Protection against dismissal]

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 thereafter, save upon grounds which, in accordance with the national law applicable, entitle the SE to terminate the contract of employment without notice. The European Works Council shall, however, be consulted before such dismissal is made.

2. Candidates for election to the European Works Council shall be entitled to the same protection from the date of their nomination until three months have elapsed since the declaration of the result of the election.

3. Dismissal in violation of these provisions shall be void.

Article 113

[Release of members of European Works Council from obligations arising from employment; prohibition of discrimination in matters relating to employment]

1. During their term of office, the members of the European Works Council shall be dispensed 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. Members of the European Works Council shall not be jeopardized in any way, especially with regard to remuneration and promotion, as a result of their activities. They shall participate in all increases in wages and salaries, allowances, bonuses and other benefits.

Article 114

[Obligation of members of European Works Council to maintain secrecy]

1. Present and former members of the European Works Council and their alternates shall maintain secrecy on such matters of the undertaking and its affairs as have been expressly declared secret by the Board of Management, and which have come to their knowledge by

virtue of their membership of the European Works Council. This obligation shall continue for such time as the Board of Management may prescribe.

The trade union delegates referred to in Article 116 and the experts referred to in Article 117 shall be under the same obligation.

2. This obligation shall not apply to dealings with members of the Supervisory Board or of the Group Works Council.

3. The European Works Council may refer the question of whether the Board of Management has correctly designated information as secret to the court within whose jurisdiction the registered office of the SE is situate. The court shall hear the matter in chambers, and no appeal shall lie from its decision.

Article 115

[Expenses of European Works Council]

The election and operating expenses of the European Works Council shall be borne by the SE

Article 116

[Attendance of trade union delegates at meetings of European Works Council]

The European Works Council may decide by majority vote that a delegate of a trade union represented in an establishment of the SE shall be entitled to attend certain meetings of the Council in an advisory capacity.

Article 117

[Appointment of experts]

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 seriously prejudice the interests of the company. The costs incurred in consulting experts shall be borne by the SE.

Article 118

[Supply of information to employees on work of European Works Council]

1. The European Works Council shall keep the employees and their representatives in the establishments of the SE regularly informed of its work by such means as it shall deem most suitable for this purpose.

2. The information supplied shall have regard to the interests of the SE and shall in particular not disclose secrets appertaining to operating processes and the conduct of the business.

Sub-section five

Functions and powers

Article 119

[Competence of European Works Council]

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

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 the national employees' representative bodies acting within their own establishment. Matters

shall not fall within the competence of the European Works Council in so far as they are settled by collective agreement.

The European Works Council may not conclude agreements nor conduct negotiations regarding the working conditions of employees unless a European collective agreement expressly authorizes the conclusion of supplementary agreements by the European Works Council.

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

Article 120

[Rights of European Works Council to information]

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 shall not less than once quarterly submit a report to the European Works Council on the general position of the SE and its future development. This report shall give full and up-to-date information on:

— general developments in the sectors of the economy in which the SE and undertakings controlled by it operate;

— the economic and financial position of the SE taking account of its relationships, if any, with other undertakings belonging with it to the same group or which control the SE or are controlled by it;

— the development of the business of the SE and its state of production and marketing;

— the employment situation of employees of the SE and of group undertakings controlled by it and its future development;

— 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 SE.

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

Article 121

[Right to receive same communications as shareholders]

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

2. In particular, the annual accounts and the annual report and the consolidated or part-consolidated accounts and consolidated annual report prepared by the SE shall after adoption be passed to the European Works Council for information and comment.

Article 122

[Right to require information]

1. The Board of Management shall provide written information on any matter which, in the opinion of the European Works Council, affects the fundamental interests of the SE or of its employees. The European Works Council may give its opinion thereon.

2. The European Works Council may invite any member of the Board of Management to its meetings and request him to provide information on or explanations of certain business operations.

Article 123

[Right of European Works Council to participate in decision-making]

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*) the establishment of general criteria for the daily times of commencement and termination of work;

(*g*) the establishment of general criteria for preparing holiday schedules.

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.

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.

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(2), first sentence.

Article 124

[Right of European Works Council to be consulted]

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.

(*c*) the introduction and application of any technical device intended to control the conduct or performance of employees.

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

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.

Article 125

[Right of European Works Council to be consulted]

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

(*a*) the closure or transfer of an establishment or of substantial parts thereof;

(*b*) Substantial curtailment, extension or alteration of the activities of the undertaking;

(*c*) substantial organizational changes within the undertaking;

(*d*) establishment of long-term cooperation with other undertakings or the termination thereof.

In applying these provisions account shall be taken of the consequences as regards the nature

and extent of the activities of the undertaking and as regards employment.

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

[Procedure for consultation]

1. The consultation referred to in Articles 124 and 125 shall be carried out on the basis of a report from the Board of Management setting out and explaining the reasons for the decision which the Board of Management intends to make and the legal, economic and social consequences that the decision is likely to have.

In the cases specified in Article 125, a social plan relating to measures to be adopted in respect of employees shall be included in the report, if necessary, and it shall serve as a basis for the negotiations referred to in Article 126a.

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 126a

[Social plan]

1. If, in the cases specified in Article 125(1), the European Works Council considers that the employees' interests will be adversely affected by the proposed decision of the Board of Management, the latter shall, before the Supervisory Board takes a decision on the prior authorization required of it pursuant to Article 66, open negotiations with the European Works Council in order to reach agreement on the steps to be taken with regard to employees.

2. Any such agreement reached shall be recorded in writing and shall have the effect of an agreement at establishment level pursuant to Article 127.

3. The Board of Management shall advise the Supervisory Board of the outcome of negotiations. The European Works Council may similarly put forward its opinion thereon.

4. If no agreement is achieved as a result of negotiations and if the Supervisory Board has previously approved the decision that the Board of Management intends to make, either party may within one month invoke the arbitration board referred to in Article 128. The arbitration board shall specify the steps to be taken with regard to employees in implementing the decision of the Board of Management.

5. Referral to the arbitration board shall not postpone implementation of the decision of the Board of Management.

Article 127

[Agreements]

1. The European Works Council may, to the extent that it is competent, make agreements with the Board of Management of the SE in respect of the matters specified in Article 123.

2. Agreements made by the European Works Council shall take precedence over those made by the representative bodies listed in Annex 1 to this Statute, without prejudice to any more favourable provisions contained in national agreements.

3. The provisions of agreements made by the European Works Council may not be altered to the disadvantage of employees by individual agreements.

Sub-section six

Arbitration procedure

Article 128

[Disputes between European Works Council and Board of Management]

1. An arbitration board shall be established for the settlement of disputes between the European Works Council and the Board of Management of the SE. It shall be competent to settle all questions of procedure in matters requiring consultation with or the provision of information to the European Works Council. In matters requiring the European Works Council's approval by virtue of Article 123, it shall decide on the merits of the case.

2. The arbitration board 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 SE, 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 arbitration board shall maintain secrecy as to operating processes and the conduct of the business.

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

Article 129

[Disputes between European Works Council and national employees' representative bodies]

1. An arbitration board shall be established for the settlement of disputes between the European Works Council and the representative bodies referred to in Annex I.

2. Article 128(2), (3) and (4) shall apply correspondingly.

SECTION TWO

The Group Works Council

Article 130

[Formation of Group Works Council]

A Group Works Council shall be formed in every SE which is the controlling company in a group within the meaning of Article 223, where the group comprises at least two undertakings with registered offices in the Member States and having at least 50 employees each. This shall apply even if such SE is itself controlled by another undertaking within a group, unless the employees of the SE and of group undertakings controlled by it are represented in such undertaking by a body equivalent to the Group Works Council of the SE.

Article 131

[Appointment of members]

The members of the Group Works Council shall be appointed:

— in European companies in which a European Works Council must be formed pursuant to Article 100, by the European Works Councils;

— in group undertakings incorporated under national law or in European companies in which the formation of a European Works Council is not required:

(*a*) by the central employees' representative bodies at undertaking level within the group; if there is no central employees' representative body, on a joint basis by the employees' representative bodies set up at works level in these undertakings and referred to in Annex I to this Statute,

(*b*) by 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;

(*c*) by the body of employees in undertakings in which there are neither employees' representative bodies within the meaning of Annex I nor recognized persons representing employees.

Article 132

[Number of members and appointment procedure]

1. 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 1000 to 4999 employees,

— 3 representatives for each undertaking with from 5000 to 9999 employees,

— 4 representatives for each undertaking with from 10000 to 19999 employees,

and an additional representative for every further 10000 employees. An equal number of alternates shall also be appointed.

2. If in an undertaking, representatives are to be appointed to the Group Works Council, the Board of Management of the controlling SE shall immediately notify the chairman of the central employees' representative body or, where no such body exists, the management body of the undertaking. The latter shall ensure that representatives are appointed in accordance with Article 131; they shall notify the names and addresses of the representatives appointed and of their alternates to the Board of Management of the controlling SE and to the chairman of the Group Works Council, if already appointed.

3. If it is disputed whether an undertaking is a group undertaking controlled by an SE, it shall appoint representatives to the Group Works Council only after the Court of Justice of the European Communities shall have given its ruling on the matter in accordance with Article 225.

Article 133

[Term of office and operation]

Articles 107 to 118 shall be of corresponding application to the term of office and to the operation of the Group Works Council.

Article 134

[Competence]

1. The Group Works Council shall be responsible for representing the interests of employees of the undertakings within the group controlled by the SE.

2. The competence of the Group Works Council shall extend only to matters concerning the group, or a number of undertakings within the group, which cannot be settled by the central employees' representative bodies in the group undertaking. Matters shall not fall within the

competence of the Group Works Council in so far as they are settled by collective agreement.

The Group Works Council may not conclude agreements nor conduct negotiations regarding the working conditions of employees unless a European collective agreement expressly authorizes the conclusion of supplementary agreements by the Group Works Council.

Article 135

[Rights to information, consultation and co-determination]

1. The Board of Management of the SE shall inform the Group Works Council of all facts or projects appreciably affecting the interests of employees of the group controlled by the SE or of a number of undertakings within the group. Articles 120 to 122 shall apply correspondingly.

2. If decisions by the Board of Management of the SE on matters referred to in Articles 123 to 125 affect several undertakings within a group, the Group Works Council shall act in place of the European Works Council.

3. The agreement required under Article 123a shall be sought from the Group Works Council where it is competent and not from the European Works Council. Article 123(4) shall apply correspondingly in respect to the co-determination rights of national representative bodies within the meaning of Annex I.

4. Agreements made by the Group Works Council shall take precedence over those made by the European Works Councils or by the representative bodies referred to in Annex I to this Statute, without prejudice to any more favourable provisions contained in such agreements.

5. The provisions of agreements made by the Group Works Council may not be altered to the disadvantage of the employees by individual agreements.

Article 136

[Disputes with Board of Management of SE or with employees' representative bodies at employer level]

1. An arbitration board shall be established for the settlement of disputes between the Group Works Council and the Board of Management of the controlling SE. It shall be competent to settle questions of procedure in matters requiring consultation with or the provision of information to the Group Works Council. In matters where the Group Works Council's approval is necessary, it shall decide on the merits of the case.

2. An arbitration board shall also be established for the settlement of disputes between the Group Works Council and the European Works Council or the employees' representative bodies in group undertakings controlled by the SE and referred to in Annex I.

3. Article 128(2), (3) and (4) shall apply correspondingly in respect of both arbitration boards. Which of the Courts shall be competent to exercise the power conferred by Article 128(2), 2nd phrase, shall be determined by the law of the place where the registered office of the controlling SE is situated.

SECTION THREE

Representation of employees on the Supervisory Board

Article 137

[Election of employees' representatives on Supervisory Board of SE]

1. Employees' representatives on the Supervisory Board of the SE shall be elected by the employees of the SE and of group undertakings

controlled by it. The election shall be governed by the rules laid down in Annex III to this Statute, of which they form an integral part.

2. The employees' representatives shall be persons employed in an establishment of the SE or in a group undertaking controlled by it. However, where the number of employees' representatives on the Supervisory Board is three, one of them may be a person who is not in the above-mentioned employment relationship. Where the number of employees' representatives is more than three, this shall apply to two of them.

3. The provisions of this section and of Annex III shall also apply to group undertakings controlled by the SE even if the SE is itself a subsidiary of another undertaking within a group unless such other undertaking is an entity on whose governing bodies the employees of the SE and of the group undertakings controlled by it are represented in a manner equivalent to that applicable to the SE.

4. Only those undertakings whose registered office is situate within the Community shall be deemed to be group undertakings controlled by the SE within the meaning of this Section.

Article 138

[Refusal of employees to be represented on the Supervisory Board]

1. Employees shall not be represented on the Supervisory Board if the majority of the employees eligible to vote pursuant to Article 2 of Annex III to this Statute so decide.

2. A decision to this effect shall be valid for the current term of office of the Supervisory Board.

Articles 139 to 144

(deleted)

Article 145

[Rights and obligations of employees' representatives]

1. Employees' representatives on the Supervisory Board shall have the same rights and duties as the other members of the Supervisory Board. The election of an employee representative shall in no way affect his position as a member of the Group Works Council, the European Works Council or the representative bodies listed in Annex I.

2. Representatives of employees of the SE or its dependent enterprises and their alternates shall be entitled to the same protection in the matter of dismissal as members of the European Works Council. During their term of office, the members of the Supervisory Board shall be dispensed from the obligation to carry out the duties of their employment to the extent to which the Supervisory Board considers it necessary for the performance of their duties on the Board. Article 113(2) shall apply correspondingly.

SECTION FOUR

Regulation of Terms of Employment

Article 146

[Conclusion of collective agreements with trade unions represented in establishments of SE]

1. The conditions of employment which shall apply to the employees of the SE may be regulated by collective agreement made between the SE and the trade unions represented in its establishments.

2. More favourable terms applicable in one or more establishments of the SE shall remain unaffected.

Article 147

[Effects of collective agreements]

1. The conditions of employment governed by a collective agreement shall apply directly to and be binding on all employees of the SE who are members of a trades union which is party to that collective agreement.

2. It may be made a term of the contract of employment concluded between an SE and an employee to whom a collective agreement does not directly apply under the foregoing paragraph, that the conditions of employment contained in the collective agreement shall be incorporated in the contract.

Title VI

Preparation of the annual accounts

SECTION ONE

General provisions

Article 148

[General principles for drawing up annual accounts of SE]

1. The annual accounts shall comprise the balance sheet, the profit and loss account, the notes on the accounts and a statement of source and application of funds. These documents shall constitute a composite whole.

2. The annual accounts shall give a true fair view of the company's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the presentation of accounts.

Article 149

[Exception for banks and insurance companies]

The provisions of Sections One to Six of this Title shall not apply to SEs the object of whose business is the making of loans (banks) or of contracts of insurance (insurance companies). The law of the Member State from which such companies are actually managed shall apply in place of those provisions.

SECTION TWO

Classification of the annual accounts

Sub-section one

General provisions

Article 149a

[Constant use of same presentation]

The lay-out of the balance sheet, the profit and loss account and the statement of source and application of funds, particularly as regards the form adopted for their presentation, shall not be changed from one year to the next. This principle may be departed from in exceptional cases. Where it is departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor.

Article 150

[Principles of lay-out]

1. In both the balance sheet and the profit and loss account, the items referred to in Articles 153, 154 and 168 to 171 shall be shown separately. A more detailed subdivision of the items preceded by Arabic numerals is authorized.

2. A different lay-out for balance sheet and profit and loss account items preceded by Arabic numerals shall be permitted only where the special nature of the undertaking so requires. Any such different lay-out shall, however, present an equivalent view and be explained in the notes on the accounts.

3. Balance sheet and profit and loss account items preceded by Arabic numerals may be grouped together:

(a) where, in relation to the object of Article 148(2), they are of minor importance, or

(b) if the accounts would thereby be rendered clearer. Items which are grouped together must, however, be shown separately in the notes on the accounts.

4. Comparative figures for the previous financial year shall be shown in respect of each item in the balance sheet and the profit and loss account.

Article 150a

[Adaptation of lay-out]

The lay-out of the balance sheet may be adapted in order to bring out the allocation of the results.

Article 151

[Compensation]

Assets shall not be shown net of liabilities, nor income net of charges, or vice versa.

Sub-section two

Balance sheet

Article 152

[Structure of balance sheet]

The balance sheet shall be drawn up either in the horizontal (Article 153) or in the narrative (Article 154) form of presentation.

Article 153

[Horizontal form of presentation]

Balance sheet in horizontal form

Assets:

A — Costs of formation

B — Fixed assets

I — Intangible assets:

1. Research and development costs;

2. Concessions, patents, licences, trade-marks and similar rights which:

(a) were acquired for consideration and are not to be included under 3; or

(b) were created by the company itself;

3. Goodwill, to the extent that it was acquired for valuable consideration;

4. Payments on account.

II — Tangible assets:

1. Land and buildings;

2. Industrial plant and machinery;

3. Other plant and industrial and commercial equipment;

4. Payments on account and tangible assets in process of construction.

III — Participating interests and other financial assets:

1. Holdings in associated undertakings;

2. Claims on associated undertakings;

3. Participating interests;

4. Claims on undertakings with which the company is associated by virtue of a participating interest;

5. Securities ranking as fixed assets;

6. Other claims.

C — Current assets

I — Stocks:

1. Raw materials and auxiliary materials including fuel;

2. Products in course of manufacture, including rejects;

3. Finished products and goods for resale;

4. Payments on account.

II — Debtors:

(Amounts becoming due and payable within one year shall be shown separately in each case.)

1. Debtors (trade);

2. Claims on associated undertakings;

3. Claims on undertakings in which the company has a participating interest;

4. Other claims.

III — Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings;

2. Bills of exchange;

3. Balances with banks and on post office current accounts, cheques and cash;

4. Other securities.

D — Prepayments

E — Loss per balance sheet (where not shown on the liabilities side)

Liabilities:

A — Subscribed capital

(Different classes of shares, if any, shall be shown separately, stating the nominal amount of each share.)

B — Reserves

1. Legal reserve;

2. Share premium account;

3. Revaluation reserve;

4. Statutory reserves;

5. Optional reserves.

C — Total of subscribed capital and reserves less loss per balance sheet where latter not shown on the assets side. (The loss per balance sheet must be shown separately.)

D — Provisions for contingencies and charges

1. Provisions for pensions and similar obligations;

2. Taxation (provision for future taxation being shown separately);

3. Other provisions.

E — Creditors

(Amounts becoming due and payable within one year, amounts becoming due and payable after more than five years and amounts covered by valuable security, must be shown separately for each item.)

1. Loans (convertible loans being shown separately);

2. Bank borrowings;

3. Prepayments received on account of orders;

4. Suppliers of goods and services;

5. Bills of exchange;

6. Debts to associated undertakings;

7. Debts to undertakings with which the company is associated by virtue of a participating interest;

8. Miscellaneous.

F — Accruals

G — Profit per balance sheet

Article 154

[Narrative form of presentation]

Balance sheet in narrative form

A — Costs of formation

B — Fixed assets

I — Intangible assets:

1. Research and development costs;

2. Concessions, patents, licences, trade-marks and similar rights and values, if they were:

(a) acquired for valuable consideration and are not to be shown under B-I-3;

(b) created by the undertaking itself;

3. Goodwill, to the extent that it was acquired for valuable consideration;

4. Payments on account.

II — Tangible assets:

1. Land and buildings;

2. Plant and machinery;

3. Other fixtures, tools and equipment;

4. Payments on account and tangible assets in process of construction.

III — Participating interests and other financial assets:

1. Holdings in associated undertakings;

2. Claims on associated undertakings;

3. Participating interests;

4. Claims on undertakings with which the company is associated by virtue of a participating interest;

5. Securities ranking as fixed assets;

6. Other claims.

C — Current assets

I — Stocks:

1. Raw and auxiliary materials;

2. Goods in course of production and waste products;

3. Finished products and stock in hand;

4. Payments on account.

II — Debtors:

(Amounts becoming due and payable within one year must be shown separately in each case.)

1. Claims in respect of sales and services rendered;

2. Claims on associated undertakings;

3. Claims on undertakings with which the company is associated by virtue of a participating interest;

4. Other claims.

III — Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings;

2. Bills of exchange;

3. Bank balances, postal cheque account balances, cheques and cash in hand;

4. Other securities.

D — Prepayments

E — Debts becoming due and payable within one year

(Amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately;

2. Debts to credit institutions;

3. Payments received on account of orders;

4. Debts in respect of purchases and services received;

5. Debts represented by bills of exchange;

6. Debts to associated undertakings;

7. Debts to undertakings with which the company is associated by virtue of a participating interest;

8. Other debts.

F — Current assets in excess of debts becoming due and payable within one year

G — Total amount of asset items after deduction of debts becoming due and payable within one year

H — Creditors for amounts becoming due and payable after more than one year

(Amounts becoming due and payable after more than five years and amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately;

2. Debts to credit institutions;

3. Payments received on account of orders;

4. Debts in respect of purchases and services received;

5. Debts represented by bills of exchange;

6. Debts to associated undertakings;

7. Debts to undertakings with which the company is associated by virtue of a participating interest;

8. Other creditors.

I — Provisions for contingencies and charges

1. Provisions for pensions and similar obligations;

2. Provisions for taxation, provisions for future taxation being shown separately;

3. Other provisions.

J — Accruals

K — Subscribed capital

(The shares must be shown by classes, indicating their nominal value.)

L — Reserves

1. Legal reserve;
2. Share premium account;
3. Revaluation reserve;
4. Statutory reserves;
5. Optional reserves.

M — Profit/loss per balance sheet

Article 155

[Relationship to several items in balance sheet]

1. Where a component of the assets or liabilities pertains to several items in the balance sheet, its relationship to other items shall be indicated either under the item where it appears or in the notes on the accounts, unless such indication is not essential for purposes of presentation of clear and accurate annual accounts.

2. Investments in associated companies shall be shown only under the item which relates thereto.

Article 156

[Setting out of contingent liabilities and long-term financial obligations]

1. The following shall, if there is no obligation to show them under liabilities, be set out separately below the balance sheet or in the notes on the accounts:

(a) contingent liabilities on bills of exchange issued and negotiated, indemnities, guarantees and similar obligations, distinguishing between the various types of guarantee and specifying what valuable security, if any, has been provided;

(b) any financial obligations incurred for an amount exceeding 100000 u.a. and for a term exceeding one year.

2. Liabilities or obligations incurred towards associated undertakings shall be shown separately.

Sub-section three

Particulars concerning certain items in the balance sheet

Article 157

[Costs of formation]

Costs of formation shall include, in particular, costs of incorporation and of issue of capital, expenses incurred on inauguration, expansion or reconstitution of the undertaking.

Article 158

[Classification as fixed or current asset]

1. Whether a particular asset is to be classified as fixed or current shall depend upon its purpose.

2. Fixed assets shall comprise those which are permanently used to enable the company to operate.

3. *(a)* Movements in the various items of fixed assets shall be shown in the balance sheet or in

the notes on the accounts. To this end there shall be shown, starting with the initial purchase price or production cost, separately for each of the items of fixed assets, on the one hand the additions, disposals, transfers and upward corrections during the year, and on the other hand the depreciation and provisions for depreciation as at the date of the balance sheet. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

(b) Where, at the time the first annual accounts are drawn up in accordance with the provisions of this Title, the purchase price or production cost of an element of fixed assets cannot be determined without untoward expense or delay, the residual value at the beginning of the year may be treated as the purchase price or production cost. If use is made of the provisions contained in this subparagraph the fact must be mentioned in the notes on the accounts.

(c) In the case of application of Article 181, the presentation of the movements in the various items of fixed assets referred to under *(a)* shall be supplemented by showing separately for each of the various items the cumulative amounts, at the date of the balance sheet, of the differences referred to in Article 181(2) and of all additional depreciation and provisions for depreciation.

4. *(a)* Movements in the various items of current assets shall be presented in the balance sheet or in the notes on the accounts. To this end there shall be shown, separately for each of the items of current assets, the purchase price or production cost and depreciation and provisions for depreciation. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

(b) Paragraph 3(c) shall apply for purposes of the presentation of the item 'Stocks'.

5. Paragraph 3(a) and (b) shall apply for purposes of the presentation of the item 'Costs of formation'.

Article 159

[Research and development costs]

Under research and development costs there shall be included only the research and development costs relating to particular products and processes.

Article 160

[Land and buildings]

Under 'Land and buildings' shall be included land, whether built on or not, and any buildings erected thereon including their fixtures.

Article 161

[Participating interests]

1. The term 'participating interests' as used in this Title means rights in the capital of other undertakings, whether or not represented by certificates, which by creating a durable link with them, are intended to contribute to the activities of the company. The holding of 10% of the subscribed capital of another undertaking shall be presumed to constitute a participating interest.

2. The term 'associated undertakings' means legally autonomous undertakings existing inside or outside the Member States in which the SE owns a majority interest, or which own a majority interest in the SE, dependent or controlling undertakings (Article 6), or undertakings forming part of the same group (Article 223) or undertakings under the same management as the SE but in such manner that none of them is a dependent or controlling undertaking.

Article 162

[Prepayments on assets side]

Under 'Prepayments' on the assets side shall be shown expenditure incurred during the year but relating to a subsequent year together with earnings relating to the year to the extent that they will not be received until after the close of the year. The latter, however, may also be shown under debtors. If they are substantial in amount an explanation must be given in the notes on the accounts.

Article 163

(deleted)

Article 164

[Depreciation and provisions for depreciation]

Depreciation and provisions for depreciation are adjustment items relating to elements of assets and are intended to take account of depreciation of those elements as at the date of the balance sheet, whether the depreciation is definitive or not.

Article 165

[Provisions for contingencies and charges]

The provisions for contingencies and charges are intended to cover either the certain cost of major maintenance work or of major repairs which will be incurred in the course of subsequent years, or losses or charges the nature of which is clearly defined but which at the date of the balance sheet are either likely to be incurred, or are certain to be incurred but are indeterminate as to amount or as to the date on which they will arise.

The provisions for contingencies and charges shall not be used to adjust the value of elements of assets.

Article 166

[Accruals on liabilities side]

Under 'Accruals' on the liabilities side shall be shown income received before the date of the balance sheet but attributable to a subsequent year together with charges which, though relating to the year in question, will only be paid in the course of a subsequent year. The latter, however, may also be shown under creditors. If they are substantial in amount an explanation must be given in the notes on the accounts.

Sub-section four

Classification of the profit and loss account

Article 167

The profit and loss account shall be prepared in accordance with one of the following methods.

Article 168

I — Trading results (excluding income and expenditure, if any, included under II):

1. Net turnover;

2. Changes in stocks of finished and semi-finished products;

3. Other goods and services supplied by the undertaking to itself;

4. Other trading income arising out of the operations of the undertaking;

5. Raw materials and auxiliary materials including fuel;

6. Staff costs:

(*a*) Wages and salaries,

(*b*) Social security contributions prescribed by law,

(*c*) Other social security contributions, those for old age benefits being shown separately,

7. Depreciation and provisions for depreciation in respect of:

(*a*) Costs of formation, tangible and intangible fixed assets,

(*b*) Elements of current assets,

8. Other operating expenses;

9. Operating result.

II — Financial result:

10. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

11. Income from participating interests, other than income shown under II-10, income from associated undertakings being shown separately;

12. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

13. Other interest and similar income, that from associated undertakings being shown separately;

14. Expenditure arising from absorption of losses;

15. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets;

16. Interest and similar charges, those arising in respect of associated undertakings being shown separately;

17. Financial profit or loss.

III — Exceptional result:

18. Non-recurring income;

19. Non-recurring expenditure;

20. Balance of non-recurring items.

IV — Subtotal.

V — Taxes:

21. Taxation of profits:

(*a*) current;

(*b*) future;

22. Other taxes not included under I, II or III above.

VI — Subtotal.

VII — Set-off or transfer of profit or loss:

23. Income arising as a result of set-off of losses;

24. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.

VIII — Profit for the year/loss for the year.

IX — Profit or loss brought forward from the previous year.

X — Subtotal.

XI — Changes in reserves:

25. Withdrawals from reserves;

26. Appropriation of profit for the year to reserves.

XII — Profit/loss to balance sheet.

Article 169

A — Charges

I — Trading costs (excluding those, if any, included under II):

1. Reduction in stocks of finished and semi-finished products;

2. Raw materials and auxiliary materials including fuel;

3. Staff costs:

(a) Salaries and wages;

(b) Social security contributions prescribed by law;

(c) Other social security contributions, those for old age benefits being shown separately;

4. Depreciation and provisions for depreciation in respect of:

(a) Costs of formation, tangible and intangible fixed assets;

(b) Elements of current assets;

5. Other trading costs.

II — Financial expenditure:

1. Expenditure arising from absorption of losses;

2. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets;

3. Interest and similar charges, those arising in respect of associated undertakings being shown separately.

III — Non-recurring expenditure

IV — Taxes:

1. Taxation of profits:

(a) current;

(b) future;

2. Other taxes not included under I, II or III above.

V — Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits

VI — Profit:

1. Loss brought forward from the previous year;

2. Appropriation of profit for the year to reserves;

3. Profit to balance sheet.

B — Income

I — Trading income (excluding income, if any, included under II):

1. Net turnover;

2. Increase in stocks of finished and semi-finished products;

3. Other goods and services supplied by the undertaking to itself;

4. Other trading income.

II — Financial earnings:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately;

3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

4. Other interest and similar income, that from associated undertakings being shown separately.

III — Exceptional earnings

IV — Income arising as a result of set-off of losses

V — Losses:

1. Profit brought forward from the previous year;

2. Withdrawals from reserves;

3. Loss to balance sheet.

Article 170

I — Trading results (excluding any income and expenditure, if any, shown under II):

1. Net turnover;

2. Production costs of goods and services supplied (including depreciation and provisions for depreciation);

3. Gross trading profit;

4. Distribution costs (including depreciation and provisions for depreciation);

5. General administration expenses (including depreciation and provisions for depreciation);

6. Other trading income;

7. Trading profit or loss.

II — Financial result:

8. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

9. Income from trade investments, other than income shown under II-8, income from associated undertakings being shown separately;

10. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

11. Other interest and similar income, that from associated undertakings being shown separately:

12. Expenditure arising from absorption of losses;

13. Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets;

14. Interest and similar charges, those arising in respect of associated undertaking being shown separately;

15. Financial profit or loss.

III — Exceptional result:

16. Non-recurring income;

17. Non-recurring expenditure;

18. Balance of non-recurring items.

IV — Subtotal

V — Taxes:

19. Taxation of profits:

(a) current;

(b) future;

20. Other taxes not included under I, II or III above.

VI — Subtotal

VII — Set-off or transfer of profit or loss:

21. Income arising as a result of set-off losses;

22. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.

VIII — Profit for the year/loss for the year

IX — Profit or loss brought forward from the previous year

X — Subtotal

XI — Changes in reserves:

23. Withdrawals from reserves;

24. Appropriation of profit for the year to reserves.

XII — Profit/loss to balance sheet.

Article 171

A — Charges

I — Trading costs (excluding those, if any, included under II):

1. Production costs of output supplied (including depreciation and provisions for depreciation);

2. Distribution costs (including depreciation and provisions for depreciation);

3. General administration expenses (including depreciation and provisions for depreciation).

II — Financial charges:

1. Expenditure arising from absorption of losses;

2. Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets;

3. Interest and similar charges, those arising in respect of associated undertakings being shown separately.

III — Exceptional charges

IV — Taxes:

1. Taxation of profits,

(a) current;

(b) future;

2. Other taxes not included under I, II or III above.

V — Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits

VI — Profit:

1. Loss brought forward from the previous year;

2. Appropriation of profit for the year to reserves;

3. Profit to balance sheet.

B — Income

I — Trading income (excluding income, if any, included under II):

1. Net turnover;

2. Other trading income.

II — Financial earnings:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately;

2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately;

3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately;

4. Other interest and similar income, that from associated undertakings being shown separately.

III — Exceptional earnings

IV — Income arising as a result of set-off of losses

V — Losses:

1. Profit brought forward from the previous year;

2. Withdrawals from reserves;

3. Loss to balance sheet.

Sub-section five

Particulars concerning certain items in the profit and loss account

Article 172

[Net amount of turnover]

The net amount of turnover includes receipts from sales of products, goods and services falling within the usual operations of the company,

after allowing for any price reduction in respect of those sales, and for value-added tax and other taxes directly related to turnover.

Article 173

(deleted)

Article 174

[Expenditure arising as a result of absorption of losses]

Under 'Expenditure arising as a result of absorption of losses' shall be shown losses incurred by other companies which the SE is committed to absorb.

Article 175

[Exceptional earnings or charges]

1. Under the items Exceptional earnings and Exceptional charges, shall be shown earnings and charges that are attributable to another year, together with any earnings and charges that do not arise out of the usual operations of the undertaking.

2. Unless such earnings and charges are of no importance in the assessment of the results, explanations of their amount and nature shall be given in the notes on the accounts.

Article 176

[Taxes]

Under the item Taxes on the Result shall be shown the actual amount of taxes payable for the year, and separately, the amount of the future liability to tax.

Article 177

[Income arising from absorption of losses]

Under 'Income arising from absorption of losses' shall be shown expenditure repayable by third parties pursuant to agreements for pooling of losses.

Article 178

[Appropriation of profit for the year to reserves]

Under 'Appropriation of profit for the year to reserves' shall be shown the amount of profit for the year which the Board of Management and the Supervisory Board decide to appropriate to reserves in accordance with Article 217(1)(a).

SECTION THREE

Valuation rules

Article 179

[General principles]

1. The following general principles shall be applied in evaluating items for purposes of the annual accounts:

(a) it shall be assumed that the company will continue its activities;

(b) the methods of valuation shall not be changed from one year to another;

(c) in all cases the principle of prudence shall be observed. This shall mean, in particular:

(aa) only profits earned as at the date of the balance sheet shall be included in it; account shall nevertheless be taken of all contingencies foreseeable at that date;

(*bb*) account shall be taken of any deficiencies that do not become apparent until after the date of the balance sheet, but before it is drawn up, if they arose in the course of the year to which the annual accounts relate;

(*cc*) account shall be taken of any depreciation, whether the year closes with a profit or with a loss;

(*d*) account shall be taken of charges and receipts appertaining to the financial year to which the annual accounts relate, irrespective of the date on which such charges or receipts are paid or received;

(*e*) items shown on the assets and on the liabilities side shall be valued separately;

(*f*) the opening balance sheet of one financial year must correspond with the closing balance sheet for the previous financial year.

2. Departures from these general principles shall be permitted in exceptional cases. Where they are departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor and an assessment of the effect on the assets, liabilities, financial position and result.

Article 180

[Valuation in accordance with principle of purchase price]

The valuation of items shown in the annual accounts shall be made in accordance with Articles 182 to 189, based on purchase price.

Article 181

[Valuation on basis of replacement value or other methods which take account of present value]

1. Notwithstanding the provisions of Article 180, valuation may be effected:

(*a*) on the basis of replacement value for tangible fixed assets with a limited useful life, and for stocks;

(*b*) on the basis of methods other than that provided for under (a), to take account of the present value for tangible fixed assets, participating interests and other financial assets, and for stocks.

Where one of these methods is employed, an indication thereof shall be given in the notes on the accounts, specifying the relevant items in the balance sheet and in the profit and loss account, and the method employed in valuing them.

2. Where paragraph 1 is applied, the amount of the difference between the valuation on the basis of replacement value or any other of the above-mentioned methods and the valuation on the basis of the general rule contained in Article 180 shall be shown under liabilities in the item Revaluation Reserve, after separate deduction of future taxes, if any. This item shall be subdivided into:

— Reserve for tangible fixed assets;

— Reserve for participating interests and other financial assets;

— Reserve for stocks.

3. Revaluation reserves may be capitalized as provided in Article 41.

4. The Revaluation reserve shall be reduced to the extent that the amounts transferred thereto are no longer required for the purpose of maintaining the substance of the undertaking. The amounts in question shall be added to the result for the year. They shall be shown separately in the profit and loss account.

5. Save as provided in paragraphs 3 and 4 the Revaluation reserve shall not be reduced.

6. Depreciation and provisions for depreciation shall be calculated each year on the basis of the values arrived at for the financial year in question.

Article 181a

[Costs of formation]

1. *(a)* Costs of formation shall be written off over a maximum period of five years;

(b) In so far as costs of formation have not been completely written off, no distribution of profits shall take place unless the amount of the optional reserves is at least equal to the amount of such expenditure not written off.

2. The amounts entered under this item shall be explained in the notes on the accounts.

Article 182

[Items of fixed assets]

1. *(a)* The items of fixed assets shall, without prejudice to the provisions of (b) and (c) below, be valued at purchase price or production cost;

(b) the purchase price or production cost of fixed assets having a working life limited in time shall be depreciated at rates which are in keeping with regular and proper accounting principles;

(c) (aa) provisions for depreciation may be made in respect of participating interests and other financial assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet;

(bb) items of fixed assets shall be depreciated whether or not their useful life is limited so that they are valued at the lowest figure attributable to them at the date of the balance sheet, if it is anticipated that the reduction in value will be permanent;

(cc) the depreciation and provisions for depreciation referred to in (aa) and (bb) shall be shown separately in the profit and loss account or in the notes on the accounts;

(dd) valuation at the lowest value provided for in (aa) and (bb) shall be discontinued if the reasons for which the value adjustments were made have ceased to apply;

(d) if the items of fixed assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. *(a)* The production cost shall be calculated by adding to the purchase price of raw and auxiliary materials including fuel the manufacturing costs directly attributable to the product in question;

(b) a reasonable proportion of the manufacturing costs which are only indirectly attributable to the product in question may be added to the production cost to the extent that they relate to the period of manufacture;

(c) costs of distribution shall not be included in production cost.

4. Interest on capital borrowed to finance the manufacture of fixed assets may be included in production costs to the extent that it relates to the period of such manufacture. The inclusion of this interest element in the assets shall be mentioned in the notes on the accounts.

Article 183

[Intangible assets]

1. Where intangibles are brought in as assets, they shall be depreciated over the period of their useful economic life assessed with proper commercial caution.

2. *(a)* Article 181a shall apply to the item 'Cost of research and development';

(b) Article 181a(1)(a) shall apply to the item 'Goodwill to the extent that it was acquired for valuable consideration'.

Article 184

[Tangible fixed assets]

Tangible fixed assets, raw and auxiliary materials, which are constantly being replaced and whose overall value is of small importance to the undertaking may, notwithstanding Article 179(1)(e), be shown at a fixed quantity and value if the quantity, value and composition thereof do not vary appreciably.

Article 185

[Majority holdings]

Where an SE holds an investment, within the meaning of Article 161, in excess of 50%, that holding shall be shown at its true value.

Article 186

[Current assets]

1. *(a)* Items of current assets shall be valued at purchase price or production cost, without prejudice to the provisions of (b) and (c) below;

(b) depreciation or provisions for depreciation shall be allowed for or made in respect of the items of current assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet;

(c) exceptional provisions for depreciation may be made if, on the basis of a reasonable commercial assessment, those are necessary so that the valuation of those items does not have to be modified in the near future because of fluctuations in value. The amount of such provisions for depreciation shall be shown separately in the profit and loss account or in the notes on the accounts;

(d) valuation at the lowest value provided for in (b) and (c) shall be discontinued if the reasons for which the depreciation and provisions for depreciation were allowed for or made have ceased to apply;

(e) if the items of current assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The definitions of purchase price and of production cost contained in Article 182(2) to (4), shall apply.

Article 187

[Stocks of goods]

1. The purchase price or production cost of stocks of goods in the same category may also be calculated either on the basis of weighted average prices or by the 'First in—first out' (Fifo) method or 'Last in—first out' (Lifo) method, or some similar method.

2. Where, because of the method employed, the valuation of balance sheet items is considerably different from their valuation on the basis of purchase price, the amount of the difference shall be shown in the notes on the accounts.

Article 188

[Discount]

1. Where the amount of any debt repayable is greater than the amount received, the difference may be shown as an asset. It shall be shown

separately in the balance sheet or in the notes on the accounts.

2. The amount of the difference shall be written off not later than the time when the debt is paid.

Article 189

[Provisions for contingencies and charges]

Provisions for contingencies and charges shall not exceed in amount the sums which a reasonable businessman would consider necessary.

The provisions shown in the balance sheet under the item 'Other provisions' shall be specified in the notes on the accounts if they are at all substantial.

SECTION FOUR

Contents of the notes on the accounts

Article 190

[General principles]

The notes on the accounts shall contain commentary on the balance sheet, profit and loss account and statement of source and application of funds in such manner as to give a true and fair view of the company's assets, liabilities, financial position and results.

Article 191

[Individual items in notes on accounts]

In addition to the information required under other Articles in this Statute, the notes on the accounts shall set out information in respect of the following matters in any event:

1. The valuation methods applied to the various items in the annual accounts, and the methods employed in calculating depreciation and provisions for depreciation. In the case of claims and debts in foreign currencies, the method employed in calculating the rate of exchange shall be indicated.

2. The name and registered office address of each of the undertakings in which the SE holds at least 10% of the capital, showing the proportion of capital held and the amount of the subscribed capital, the amount of the reserves and the results for the latest business year of the undertaking concerned.

3. Any investments in the capital of the SE of which it has been notified in accordance with Article 46a(1) together with the amount of investment and the names of the owners thereof.

4. Any reciprocal shareholding within the meaning of Article 47, specifying the amount of the holding of each party.

5. Any group of companies to which the SE belongs either as a controlling company or as a dependent undertaking, or to which it has ceased to belong, together with an explanation of the circumstances; the SE must also state whether it is under common management with other companies without any of them being controlling companies or dependent undertakings.

6. The names of associated companies (Article 161(2)), the legal and business relationship with each of them, and any events that have taken place in any of them which might materially affect the position of the SE.

7. Whether there are any convertible debentures, specifying the number thereof and what rights they confer.

8. Net revenue from sales broken down according to categories of product, activity and specific geographical markets. The amount contributed by each of these categories and markets to the annual results shall be indicated.

9. The composition of the labour force split up as to categories, showing their age-groups and places of employment and, unless they are shown separately in the profit and loss account, the whole of the personnel costs relating to the financial year, broken down as indicated in Article 168(1)(6).

10. Total emoluments paid to the members of the Board of Management and the Supervisory Board for their work together with pension obligations which have arisen or have been assumed in respect of former members of these bodies or of their dependants. The above information shall be given in full in respect of each of these groups of persons. The like information shall be given regarding emoluments received by members of the abovementioned bodies in their capacity as members of the administrative, managerial or supervisory bodies of an undertaking dependent on or controlling the company.

11. Taxes comprised in the trading results, financial results or non-recurring income and expenditure.

12. The amount of the changes in the result for the year due to the application of fiscal laws.

13. The overall amount of capital and reserves and the result for the year calculated on the basis of one of the valuation methods specified in Article 181(1), if the items in the annual accounts have been valued in accordance with Article 180.

Article 192

[Exception for certain items]

The particulars required under Article 191(2), (3), (4) and (6) may be omitted if in the view of a reasonable businessman they would be prejudicial to an undertaking to which they relate. The omission of the particulars shall be mentioned in the notes on the accounts or in the statement drawn up pursuant to Article 193.

Article 193

The particulars required under Article 191(2), (3), (4) and (6) may be given in a statement filed with the European Commercial Register. If any such statement is filed, the fact shall be mentioned in the notes on the accounts.

Article 194

[Proposal for appropriation of profit for the year]

The notes on the accounts shall contain a proposal for appropriation of profit for the year.

SECTION FIVE

Contents of the annual report

Article 195

1. The annual report shall contain a detailed review of the development of the company's business and of its position.

2. In addition to the information required under other Articles in this Statute, the annual report shall set out information in respect of the following matters in any event:

(a) important events that have taken place since the end of the financial year;

(b) the company's likely future developments;

(c) proposed capital expenditure, the scale thereof and the amount of the expenses likely to be incurred in connection therewith, in particular in the field of research and development.

SECTION SIX

Preparation of group accounts

Article 196

[Group accounts and part-group accounts]

1. If the SE is the controlling undertaking within a group of undertakings, it shall, in respect of the group, draw up a consolidated balance sheet, a consolidated profit and loss account, notes on the group accounts, a statement of source and application of funds for the group (group accounts) and a group annual report.

The group accounts, prepared as at the same date as the annual accounts of the SE, shall relate to every undertaking which, in accordance with Article 223, is a member of the group.

2. If the SE is a dependent undertaking and if other undertakings within a group are controlled through it, it shall, in respect of its own part of the group, draw up a part-consolidated balance sheet, part-consolidated profit and loss account, notes on the part-group accounts, a part-group statement of source and application of funds (part-group accounts) and a part-group annual report, unless the controlling undertaking within the group prepares group accounts in accordance with the provisions of this Title. Such accounts, which shall be prepared as at the same date as the annual accounts of the SE, shall relate to the undertakings controlled through the SE. Articles 197 to 202 shall apply to part-group accounts and reports.

Article 197

[Non-consolidation of accounts of an undertaking within group]

1. *(a)* Consolidated accounts shall not relate to undertakings within the group where the effect would be to make the information contained in the consolidated accounts less meaningful;

(b) consolidated accounts need not relate to undertakings within the group which are so small that the view reflected of the assets, liabilities, financial position and results of the group is not affected by omitting them.

2. *(a)* The reason for non consolidation of the accounts of any undertaking within the group shall be stated in the notes on the accounts;

(b) the annual accounts of undertakings such as are referred to in paragraph 1(a) shall be drawn up as at the date of the consolidated accounts and shall be annexed to the notes thereon.

Article 198

[Drawing up of group accounts]

1. The group accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account, the notes on the group accounts and a statement of source and application of funds for the group. These documents shall constitute a composite whole.

2. The group accounts shall give a true and fair view of the group's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the lay-out of accounts.

Article 199

[Presentation of group accounts]

The provisions of Section Two of this Title shall apply to the presentation of consolidated accounts, subject to the following exceptions:

1. In the group balance sheet:

(a) the amount of any differences as between the book value at the date of first consolidation of investment holdings in the capital of under-

takings in the group, and the value thereof including reserves and profits, on subsequent valuation, shall be shown separately under one item entitled 'Consolidation equalization account';

(*b*) interests held by companies outside the group in the capital, reserves and profits of undertakings within the group shall be shown as a separate item;

(*c*) stocks may be grouped together under one global item.

2. In the group profit and loss account the following items may be lumped together:

(*a*) Article 168, items I-2 to 9,

(*b*) Article 169, items A-I-1 to 5 and B-I-2 to 4,

(*c*) Article 170, items I-2 to 6,

(*d*) Article 171, items A-I-1 to 3 and B-I-2.

Article 200

[Valuation]

1. As the undertakings in a group constitute one economic unit, all assets and liabilities shall be incorporated in the group consolidated balance sheet at the values shown in the balance sheets of the undertakings within the group.

2. The annual accounts of undertakings to which consolidated accounts relate shall be prepared so far as possible in accordance with the same rules of valuation.

Article 201

[Information contained in notes on consolidated accounts]

1. In so far as the information contained in the notes on the consolidated accounts is important for the purpose of assessment thereof, Articles 191 to 193 shall apply.

2. The methods of consolidation and, in particular, the sources and composition of the consolidation equalization account and the non-elimination, if any, of profits on transactions between undertakings within the group shall be explained.

Article 202

Article 195 shall apply to the consolidated annual report.

SECTION SEVEN

Audit

Article 203

[Audit by auditors]

1. The annual accounts and, in so far as it reviews developments in the company's business and position during the past financial year, the annual report shall be audited by an independent auditor acting on his own responsibility.

2. Only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing an examination, both of which must be legally established or recognized and shall be persons authorized in a Member State to act as auditors of the annual accounts of companies limited by shares whose shares are quoted on a stock exchange.

Article 203a

[Independence of auditor]

1. The audit may not be carried out by persons who are, or who within the last three years prior to their appointment have been, members of the

Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it.

2. Further, the audit may not be carried out by:

(a) companies, whose members, whose members of the management or supervisory body, or whose duly authorized representatives are or, in the last three years prior to their appointment were, members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it;

(b) a firm of auditors which is dependent on or which controls the SE, or which is dependent on the undertaking controlling the SE.

Article 203b

[Independence of auditor]

1. Persons who have carried out the audit may not become members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it for at least three years after expiry of their term of office.

2. Further, members of the management or supervisory bodies, or duly authorized representatives or members of companies which have carried out the audit, may not for at least 3 years after completion of their duties, become members of the Board of Management or of the Supervisory Board or employees of the SE or of an undertaking dependent on it or controlling it.

Article 204

[Appointment and removal of auditor]

1. The auditor shall be appointed annually by the General Meeting. In respect of the first financial year, the auditor may be appointed by the General Meetings of the founder companies.

2. If the appointment is not made by the General Meeting in due time or should an appointed person be unable to carry out his task, the court within whose jurisdiction the registered office is situated shall, upon application by the Board of Management, the Supervisory Board or a shareholder, appoint an auditor.

3. Upon application by the Board of Management, the Supervisory Board or one or more shareholders whose shares represent in total at least 5% of the share capital or a nominal value of at least 100000 u.a., the court within whose jurisdiction the registered office is situated may remove an auditor appointed by the General Meeting and appoint another person in his place if there are serious grounds for so doing. Such application shall be made within 2 weeks of the appointment by the General Meeting.

4. Notwithstanding paragraph 3, the auditor may not be removed by the General Meeting before expiry of his term of office save where there are serious grounds for so doing. He shall be entitled to take part in any discussions concerning his removal.

5. The auditor shall be entitled to withdraw from his contract where there are serious grounds for so doing.

Article 204a

[Remuneration]

1. The auditor's remuneration shall be fixed by the General Meeting or, if he is appointed by the court, by the latter, before commencement of his duties.

2. No remuneration or benefits may be granted to him for auditing the accounts other than the remuneration fixed in pursuance of paragraph 1.

Article 205

[Object of audit]

The auditor shall ascertain whether the accounting system, the annual accounts and the annual report, insofar as the latter reviews developments in the company's business and position during the previous financial year, comply with this Statute, the Statutes of the company and the principles of regular and proper accounting.

Article 206

[Auditor's right to examine and check documents and assets]

1. In carrying out his duties, the auditor shall be completely free to examine and check any documents and assets of the SE.

2. He shall be entitled to require any explanation or information that he may consider necessary for the proper execution of his duties.

3. If the carrying out of his duties shall so require, he shall have the like rights in respect of associated undertakings.

4. The auditor may be assisted in his work by colleagues or specialists. They shall have the same rights as the auditor himself and shall act under his responsibility. The auditor and those who assist him shall keep secret all matters of professional confidence.

Article 207

[Auditor's certificate]

1. If, on completion of his audit, the auditor has no objection to make in respect of the annual accounts or annual report, he shall issue a written certificate to this effect.

2. If he has any objection to make in respect of the annual accounts, he shall qualify his certificate as appropriate or withhold it altogether.

Article 208

[Auditor's report]

The auditor shall, within three months following the end of the financial year, draw up a written report on the results of his audit. The report must contain at least the following information:

(a) whether he has carried out the audit in accordance with Article 205;

(b) any infringements of this Statute, the Statutes of the company or the principles of regular and proper accounting which he has discovered in the accounting system, the annual accounts or the annual report;

(c) any matters which he has discovered which might jeopardize the financial position of the SE, or substantially impair its future prospects or which indicate serious infringements by the Board of Management otherwise than in respect of preparation of the accounts, of any of the provisions of this Statute or of the Statutes of the company;

(d) the complete text of the certificate issued under Article 207. If the certificate is qualified or a certificate has been withheld, the reasons therefor shall be given.

Article 209

[Liability of auditor]

1. An auditor shall be fully liable to the SE, to its shareholders and to third parties for all loss or damage resulting from his failure to observe the provisions of this Statute or from any other breach of the obligations imposed on him in carrying out his duties.

If more than one auditor shall have been appointed, all auditors shall be liable jointly and severally. An auditor shall not, however, be liable if he can prove that no fault is attributable to him.

Such liability shall continue for a period of three years as from the day of publication in the Official Journal of the European Communities pursuant to Article 219, or, in the event of harmful acts or omissions having been concealed, as from the time of their discovery.

2. As regards any action brought by the SE in respect of such liability Article 72 shall be of corresponding application.

Article 210

[Audit of consolidated accounts]

The provisions of this Section shall apply to the audit of the consolidated accounts and report of a group of companies or of part of a group of companies.

SECTION EIGHT

Approval of the accounts and report, appropriation of profits and publication

Article 211

[Drawing up of annual accounts and report]

The Board of Management shall, before the end of the first three months of each financial year, draw up the annual accounts and report for the previous financial year.

Article 212

[Discussion of annual accounts and report]

1. The annual accounts and report shall be submitted by the Board of Management to the Supervisory Board. The auditor's report shall be annexed thereto.

2. The annual accounts and report shall be discussed by the Board of Management and the Supervisory Board in joint meeting. At the request of the Supervisory Board, the auditors shall attend this meeting in an advisory capacity.

Article 213

[Approval of annual accounts and report]

1. The annual accounts shall be approved by the Board of Management and by the Supervisory Board in joint meeting but voting separately.

2. The annual report shall be approved by the Board of Management.

Article 214

[Approval of annual accounts and report]

1. Failing agreement by the Supervisory Board and the Board of Management in the matter of approval of the annual accounts, the annual accounts shall be approved by the General Meeting.

2. The annual accounts prepared by the Board of Management together with the Supervisory Board's comments which shall be contained in a document to be appended to the notes on the accounts, shall be laid before the General Meeting for its decision.

Article 215

[Approval of consolidated accounts and report of a group of companies]

Articles 211 to 214 shall apply to the approval of the consolidated accounts and report of a group of companies and of a part of a group of companies.

Article 216

[Submission of annual documents to General Meeting]

1. At the General Meeting, duly convened in accordance with Article 84, there shall be presented in one document:

(a) the annual accounts;

(b) the auditor's report provided for in Article 208;

(c) the annual report.

2. As from the date of the notice convening the General Meeting, the documents referred to in the preceding paragraph (annual documents) may forthwith be obtained from the company by any person free of charge. A statement to this effect shall appear in the notice.

3. Paragraphs 1 and 2 of this Article shall apply to the consolidated accounts and report of a group of companies and of a part of a group of companies.

Article 216a

[Transfers from profit for the year to legal reserves]

1. Five per cent of the profit for the year less any losses carried forward shall be transferred to the legal reserves until the latter are equal to at least ten per cent of the subscribed capital.

2. Insofar as the legal reserves do not exceed the amount specified in paragraph 1, they may only be used to offset losses to the extent that other reserves are insufficient for this purpose.

Article 217

[Appropriation of profit for the year]

1. *(a)* If the accounts are approved by the Board of Management and the Supervisory Board, they may appropriate part of the profit for the year, but not more than one half thereof, to reserves. When they do so, the profit for the year shall be reduced, first, by the amount required to be transferred to the legal reserves pursuant to Article 216a and, secondly, by any losses carried forward. The General Meeting shall decide as to the appropriation of the profit per balance sheet upon a joint proposal from the Board of Management and the Supervisory Board;

(b) failing agreement by the Board of Management and the Supervisory Board as to the appropriation of profits, as entrusted to them in accordance with paragraph 1(a), the General Meeting shall decide as to the appropriation of the total profit for the year;

(c) in the event of such disagreement, the Supervisory Board shall set out its views in a document to be appended to the notes on the accounts. The same shall apply if the Board of Management and the Supervisory Board fail to agree on a proposal as to the appropriation of the profit per balance sheet to be submitted in accordance with paragraph 1(a).

2. If the accounts are approved by the General Meeting pursuant to Article 214(1), the latter shall decide as to the appropriation of the total profit.

Article 218

(deleted)

Article 219

[Publication of annual accounts and appropriation of profit per balance sheet]

1. Immediately after the General Meeting two copies of the document laid before it in accordance with Article 216, and of the Minutes of the meeting, shall be filed in the European Commercial Register.

2. Immediately after such filing, the accounts and the auditor's report provided for in Article 208 shall be published in full by the Board of Management in the company journals. At the same time, notice shall also be given of the filing of the annual report. Unless shown in the annual accounts, the appropriation of the profit per balance sheet or the treatment of the loss per balance sheet shall be published in the company journals together with the annual accounts.

Article 219a

[From of publication]

1. If the accounts and the annual report are published in full by the SE, other than in the case specified in Article 219, they shall be reproduced in the form and text on the basis of which the auditor drew up his report. They shall be accompanied by the full text of the certificate. If the auditor made any qualifications or refused to certify the accounts, the fact shall be stated and the reasons given.

2. If the annual accounts are not published in full by the SE, the fact that the version published is abridged shall be stated, and reference shall be made to the Official Journal of the European Communities in which they were published. The auditor's certificate shall not accompany this publication, but it shall be stated whether the certificate was made with or without qualification, or was refused.

Article 219b

[Form of publication of consolidated accounts]

Articles 219 to 219a shall apply to the publication of group or part-group accounts.

SECTION NINE

Legal proceedings in respect of the annual accounts and report

Article 220

[Limitation periods and procedures]

1. One or more shareholders whose shares represent in total five per cent of the share capital or a nominal value of 100000 u.a., or the representative of a body of debenture holders, may apply, setting out their reasons, to the court within whose jurisdiction the registered office is situated, if they consider that the presentation of the annual accounts or of the report, in so far as it reviews developments in the company's business and position during the previous financial year, does not comply with the requirements of this Statute, provided that their objections have been recorded in the Minutes of the General Meeting.

2. The application shall be made within three months, calculated from the date of publication in the Official Journal of the European Communities provided for in Article 219(2).

3. The court may call on one or more experts to assist it in reaching its decision. Articles 15(3), 203, 203a, 203b and 206 shall apply to these experts. The period referred to in Article 15(3) shall run from the date on which the judgment becomes final.

4. Evidence shall be heard in chambers in the presence of both parties. The judgment of the court shall be published.

Article 221

[Orders of the court]

1. Where the court upholds the application, it shall order precisely how the company is to rectify its annual accounts or its annual report. Such order may be of future application only.

2. Where the order of the court relates to the balance sheet or the profit and loss account for the year in respect of which the application is made, these shall be deemed to be invalid. The company shall then draw up a new balance sheet or profit and loss account, with due regard to the terms of the order, and shall submit the same to the General Meeting within the time limit prescribed. The court may limit the consequences of the invalidity.

3. Where the order is of future application only, the court may subsequently, on application by the company, rescind the order if the circumstances have changed.

Article 222

[Consolidated accounts]

The provisions of this Section shall apply to the consolidated accounts and report of a group of companies and of a part of a group of companies.

Title VII

Groups of companies

SECTION ONE

Definition and scope

Article 223

[Group membership]

1. A controlling undertaking and one or more companies dependent on it shall constitute a group within the meaning of this Statute if all of them are under the unified management of the controlling undertaking and if one of them is an SE.

Each undertaking within the group is known as a group undertaking.

2. If a company is controlled by another undertaking within the meaning of Article 6, there shall be a presumption that the controlling undertaking and the controlled company constitute a group.

3. For the purposes of this Title, 'dependent group companies' are group undertakings which take the legal form of an SE or a company limited by shares, or a limited partnership.

4. In the following provisions of this Title, outside shareholders and the general meeting of a dependent company shall, if it is a company limited by shares, be outside holders of shares and the general meeting of the company.

5. If all the shares of a dependent group company which has been formed under the law of a Member State, are held by an SE, any provisions of national law which require the company to be wound up for that reason shall not apply.

Article 224

[Scope]

1. If the controlling undertaking of a group is an SE, Sections 3 to 6 of this Title shall apply to dependent companies in the group which have been formed under the laws of Member States, and to their relationship with the controlling SE.

2. If an SE is a dependent group company, Sections 3 to 6 of this Title shall without prejudice to paragraph 3 apply to the SE and to its relationship with the controlling undertaking without regard to where its registered office is situated.

3. If an SE is a dependent group company and other group companies which have been formed under the laws of Member States or as an SE are controlled through it (sub-group), Sections 3 to 6 of this Title shall apply also to those companies and their relationship with the SE. The SE shall be considered as a controlling undertaking of a group with regard to the application of the provisions of this Title.

Article 225

[Decision on group membership by Court of Justice of the European Communities]

1. An SE may apply to the Court of Justice of the European Communities for a decision whether it is a group undertaking within the meaning of this Statute.

A company formed under the law of a Member State may likewise apply for a decision whether it is a dependent group company controlled by an SE, and an undertaking formed under national law may apply for a decision whether it is a controlling undertaking of a group within the meaning of this Statute.

2. If the SE or the company formed under national law does not make an application for a decision under paragraph 1, the following persons shall be entitled to apply for such a decision to be made:

(a) shareholders of a company who, if it were held to be a dependent group company, would be outside shareholders of the company, and who between them hold at least 5% of the capital of the company (after deducting shares which belong directly or indirectly to any undertaking which may be held to be the controlling undertaking of the group, or which are attributable to such an undertaking under Article 6(4)); or

(b) creditors of such a company if any undertaking which may be held to be a controlling company does not comply with the requirements of Article 239.

3. The question whether a company is a dependent group company may also be brought before the Court by institutions, organizations or persons connected with this company who if this question were answered positively would be entitled to propose candidates for election to the Supervisory Board of an SE or to appoint members to the Group Works Council of an SE.

4. The Court of Justice shall give judgment after hearing evidence from the undertakings within the group. It shall, where appropriate, determine the date with effect from which the undertaking becomes an undertaking within the group.

5. Costs shall be a matter for decision by the Court of Justice.

SECTION TWO

Publicity

Article 226

[Publication of group membership]

1. If an SE becomes a controlling or dependent undertaking within a group, it shall forthwith cause that fact with, where appropriate, the name of the controlling undertaking of the group to be registered in the European Commercial Register and to be published in the company journals.

2. The same shall apply where an SE ceases to form part of a group.

Article 227

(deleted)

SECTION THREE

Protection of outside shareholders

Article 228

[Form of guarantees]

1. Within a reasonable time after a group of companies comes into existence or after a company is declared to be a dependent company within such a group by the Court of Justice of the European Communities, the controlling undertaking of the group shall make an offer to the outside shareholders of each dependent company:

(a) where the controlling undertaking is an SE or a company limited by shares formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment or, in place of such a cash payment, to acquire such shares in exchange for shares or (convertible) debentures of the controlling company of the group. The offer may also give the outside shareholders the choice between a cash payment and an exchange of their shares.

(b) where the controlling undertaking of the group is a company limited by shares not formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment. The offer can also give the outside shareholders the choice between a cash payment and an exchange of their shares for shares or (convertible) debentures of the controlling company of the group.

2. In addition to making an offer under paragraph 1, the controlling undertaking of a group shall offer the outside shareholders the alternative option of annual equalization payments calculated in proportion to the nominal value of their shares in accordance with Article 231.

Article 229

(deleted)

Article 230

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Article 231

[Equalization]

1. The controlling undertaking of the group shall, by its offer of an annual equalization payment according to Article 228(2), undertake

to make yearly payments of an amount which, having regard to the previous earnings and the future prospects of the dependent group company, may be calculated as representing the average prospective earnings per share.

2. *(a)* If the controlling undertaking of a group is an SE or a company limited by shares formed under national law, it may without prejudice to sub-paragraph (b) alternatively calculate such an annual equalization payment by reference to the earnings per share of the controlling company of the group. The ratio between the shares of the two companies shall for this purpose be calculated in the same way as for a share exchange in the case of a merger.

(b) If the SE is the parent company of a sub-group, it can calculate the annual equalization payment according to paragraph 2(a) only by reference to the earnings per share of the group company that finally controls it provided that this company is an SE or a company limited by shares formed under national law. Paragraph 2(a) last sentence applies.

Article 232

[Examination of offers]

1. Immediately after the controlling undertaking of a group has made an offer under Article 228, the Board of Management of the dependent group company in the group shall appoint one or more independent experts and instruct them to prepare a report for the outside shareholders on the appropriateness of the offer.

Article 15(2) and (3) shall apply in respect of the experts. The time limit referred to in Article 15(3) shall run from the date of the notice under Article 234(2).

2. Upon an application by one or more outside shareholders of the dependent group company who alone or together hold either 5% of its capital (after deducting shares which belong directly or indirectly to the controlling company of the group or are attributable to it under Article 6(4)), the court in whose jurisdiction the registered office of the dependent group company is situate may appoint one or more experts if it appears that the independence of the experts has not been sufficiently established.

3. In their report the experts shall in particular state whether, in their opinion, the offer is fair or not. The statement of their opinion shall set out on the following matters at least:

(a) where a cash offer is made under Article 228(1), the amount of the net assets of the company, based on their current values; the earnings of the company, having regard to its future prospects; and the criteria employed for valuing such net assets and determining such earnings;

(b) where an exchange is proposed under Article 228(1), the ratio between the net assets of the companies concerned, based on their current values; the ratio of the respective earnings of the companies, having regard to their future prospects; and the criteria employed for valuing such net assets and determining such earnings;

(c) where an annual equalization payment under Article 231(1) is proposed, the factors entering into the calculation of the average earnings per share;

(d) where an equalization payment under Article 231(2) is proposed, the same information as under (b) of this paragraph.

4. Attention shall also be drawn in the report to any difficulties encountered in the course of valuation.

5. The experts shall be entitled to obtain any relevant information from the dependent and controlling undertakings in the group and to undertake any investigations that may be necessary.

Article 233

[Report of Board of Management of dependent group company]

The Board of Management of the dependent group company shall draw up a report in which it shall comment on the report made by the experts under Article 232 and its conclusions. The Board of Management may make its own proposals, stating its reasons as to the amount of the payment in cash or the share exchange ratio and as to the amount of the annual equalization payment that they consider appropriate.

Article 234

[Convening of General Meeting of dependent group company]

1. The Board of Management of the dependent group company shall convene a General Meeting of the company to decide whether the offer made by the controlling undertaking of the group should be accepted. At least one month's notice shall be given of the meeting.

2. The notice convening the meeting shall be accompanied by the proposals of the controlling undertaking of the group. Any proposals made by the Board of Management of the dependent company shall also be sent with the notice.

3. There shall be included in the notice convening the meeting a note to the effect that shareholders are entitled to obtain on request and free of charge copies of the experts' report, the report thereon of the Board of Management of the dependent company. Attention shall at the same time be drawn to the fact that resolution concerning the offer may be challenged under the conditions set out in Article 236, only by shareholders who vote against the resolution at the General Meeting and cause their opposition to be recorded in the minutes.

Article 235

[Voting on offers]

1. When the offer made under Article 228 is put to the vote, no votes shall be cast in respect of shares which are held directly or indirectly by the controlling undertaking of the group, or which are attributable to it in accordance with Article 6(4).

2. A resolution in respect of the offer shall be effective only if supported by the holders of three-quarters of the shares whose holders are entitled to vote pursuant to paragraph 1. Non-voting shares shall carry the right to vote, and shall be counted in calculating the majority.

3. The provisions of Article 24(3) and (4) shall apply.

Article 236

[Court decision on offers]

1. If the General Meeting wholly or partly rejects the proposals made under the mandatory provisions of Article 228, the terms of the offer to which such rejection relates shall be determined, without right of appeal, by the court within whose jurisdiction the registered office is situated. An application for such a determination shall be made by the controlling undertaking of the group within one month after the decision of the General Meeting. If an application is not made within that period by the controlling undertaking of the group, an application may be made within a further month by any shareholder of the dependent group company at the expense of that company.

2. If the General Meeting accepts the proposals of the controlling undertaking of the group, the resolution passed by it may only be challenged on the ground that the cash payment, the share exchange ratio or the annual equalization pay-

ments are not fair and reasonable. Such application shall be made within one month of the decision of the General Meeting of the Court within whose jurisdiction the registered office is situated. An action challenging the resolution on this ground may be brought only by any outside shareholders who voted against a resolution at the General Meeting and caused their opposition to be recorded in the Minutes, and who together hold not less than 20% of the shares whose holders are entitled to vote pursuant to Article 235. If the offer is not fair and reasonable, its terms shall be determined by the Court without right of appeal.

3. The court may appoint independent experts at the expense of the dependent group company. The provisions of Article 15(2) and (3) and Article 232(5) shall apply to such experts. The period referred to in Article 15(3) shall run from the date on which the decision of the court takes effect.

Article 237

[Publication of guarantees to be given]

1. The Board of Management of the dependent group company shall, within two months after the passing of the resolution by the general meeting, or, where Article 236 applies, within one month of the judgment of the court, publish in the company journals the amount of the payment in cash, the amount of the annual equalization payments and the terms of such payments and, where appropriate, the share exchange ratio. Where the dependent group company is a company formed under the law of a Member State, company journals within the meaning of this Title refer to the Official Journal for the publication of matters relating to companies of the Member State concerned.

2. Every outside shareholder of the dependent group company shall be entitled to require payment in cash or, if appropriate, the exchange of his shares within three months of publication of the latest notice in the company journals.

3. The undertakings within the group shall be jointly and severally liable in respect of payment in cash. The controlling company shall be liable in respect of exchange of shares.

4. Outside shareholders who do not exercise their rights under paragraph 2 shall be entitled to receive annual equalization payments.

5. The group undertakings concerned shall be jointly and severally responsible for payment of the annual equalization payments.

Article 238

(deleted)

SECTION FOUR

Buying-out of outside shareholders

Article 238a

[Conditions and procedure]

1. If the controlling undertaking of a group, taking into account shares attributable to it under Article 6(4), directly or indirectly acquires 90% or more of the capital of a dependent group company, it may, without prejudice to Article 238b and in accordance with the provisions of Article 228(1), require the outside shareholders to transfer their shares to it for a cash payment or by way of exchange. The provisions of Articles 232 to 236 and Article 237(1) shall then apply. Upon the latest notice in the company journals being given under Article 237(1), the shares of the outside shareholders shall become the property of the controlling undertaking of

the group. The certificates relating to such shares shall, until they have been delivered to the controlling undertaking, entitle their holders only to receive the cash payment or share exchange.

2. The controlling undertaking of the group shall forthwith notify its acquisition of the percentage, referred to in paragraph 1 of the capital of the dependent group company to that company. The Board of Management of the dependent group company shall publish such notification in the company journals.

3. When a notification has been published under paragraph 2, every outside shareholder of the dependent group company shall be entitled to require that his shares shall be acquired by the controlling undertaking of the group. That undertaking shall, except in cases governed by Article 238b, make an offer in accordance with Article 228(1). In so doing, the controlling undertaking shall state whether and on what terms the shares of other outside shareholders have been bought by it in application of this paragraph during the year preceding the offer. If the outside shareholder rejects the offer, the amount of the cash payment or the ratio for the exchange of shares shall, upon an application being made by the outside shareholder, be determined by the court within whose jurisdiction the registered office of the dependent company is situated. Such an application shall be made within one month after the receipt of the offer. Article 236(3) shall apply. The decision of the court shall be published by the Board of Management of the dependent group company in the company journals.

Article 238b

[Procedure]

1. Where, at the expiration of the period referred to in Article 237(2), the controlling undertaking of a group (taking into account shares attributable to it under Article 6(4)), has directly or indirectly acquired 90% or more of the capital of a dependent group company, it may require the outside shareholders of the dependent company to transfer their shares to it in consideration of cash or by way of an exchange of shares upon the terms which have been published pursuant to Article 237(1). It shall, within one week after the expiration of the period referred to in Article 237(2), notify the dependent group company whether it intends to exercise this right or not.

2. The Board of Management of the dependent group company shall forthwith cause the notification to be published in the company journals, with details of the amount of the cash payment or the ratio for the exchange of shares.

3. If the controlling undertaking of the group notifies its desire to acquire the shares of the outside shareholders, those shares shall, upon the latest publication of its notification in the company journals under paragraph 2, become the property of the controlling undertaking. The last sentence of Article 238a(1) shall apply.

4. If the controlling undertaking of the group notifies its intention not to exercise the right to acquire the shares of outside shareholders, every outside shareholder shall be entitled during the period of one month following publication under paragraph 2 to require that his shares shall be acquired by it for cash or by way of an exchange of shares upon the terms published.

SECTION FIVE

Protection of creditors

Article 239

1. The controlling undertaking of a group shall be liable for the debts and liabilities of dependent group companies.

2. Nevertheless, proceedings may be brought against the controlling undertaking of a group only where the creditor has first made a written demand for payment from the dependent group company and failed to obtain satisfaction.

SECTION SIX

Instructions and liability

Article 240

[Instructions from controlling undertaking of group]

1. From the time of the publication of the latest notice in the company journals of the dependent group company as provided under Article 237(1), the controlling undertaking of a group may issue instructions to the Board of Management of a dependent group company and these instructions shall be complied with by the Board of Management.

2. If the controlling undertaking in the group is an SE and issues instructions to the Board of Management of a dependent group company in respect of a transaction, and the latter may by law or under its statutes only enter into such transaction with the consent of its Supervisory Board, the instructions, if such consent is refused, may only be complied with by the Board of Management of the dependent company, if consent to the instruction is obtained from the Supervisory Board of the SE.

3. If the controlling undertaking of a group is an undertaking formed under national law, the powers vested in the Supervisory Board of a dependent group undertaking which is an SE under Article 66, shall remain unaffected, unless the employees of the SE and of the other group companies controlled through the SE are represented on the governing bodies of the controlling undertaking of the group in a manner equivalent to that in which they are represented under the rules governing the SE.

Article 240a

[Obligations of members of Board of Management of controlling undertaking of group]

In exercising their right to issue instructions under Article 240, members of the Board of Management of a controlling undertaking of a group shall exercise the standard of care required of a conscientious manager and shall promote the interests of the group and of its personnel.

Article 240b

[Liability]

1. In exercising their rights to issue instructions under Article 240, the members of the Board of Management of a controlling company in a group shall be liable to the dependent group company for any damage resulting from failure by them to carry out their obligations under Article 240a. Articles 71(2) to (5) and 81(2) to (4) shall apply accordingly.

2. Proceedings in respect of any such liability may be brought in the name and on behalf of the dependent group company by:

(a) one or more outside shareholders of the dependent group company who alone or together hold 5% of the capital of the company, after deducting capital belonging directly or indirectly to the controlling undertaking of the group or attributable to it under Article 6(4). For these purposes the shareholders, if there is more than one of them, shall appoint a special representative who shall be empowered to conduct the proceedings;

(b) any liquidator or trustee in bankruptcy of the dependent group company.

3. Article 72(6) shall apply accordingly.

Article 240c

[Freedom from liability of members of Board of Management of dependent group company]

The members of the Board of Management of a dependent group company shall not be liable to that company for damages arising from acts or omissions by them consequent on the instructions of the controlling undertaking of the group given in accordance with Article 240. They shall have the burden of proving that any such acts or omissions were consequent on the instructions of the controlling undertaking of the group.

SECTION SEVEN

Special rules regarding group relationships in existence prior to the formation of the SE

Article 240d

1. If a company which is a dependent group company of one of the founder companies of the SE becomes, after the formation of the SE, a dependent group company of the SE, the SE shall cause that fact, with the name of the company concerned, to be registered in the European Commercial Register and shall publish those matters in the company journals together with the notification to be given under Article 226.

2. The SE need not apply the provisions of Sections 3 and 5 where the existence of a dependent group company is notified by it in accordance with paragraph 1. It shall, however, within 18 months after the formation of the SE offer to the outside shareholders of that company an annual equalization payment in accordance with Article 231. The provisions of Articles 232 to 237 shall then apply.

3. The SE shall not later than 6 years after its formation offer to the outside shareholders of a dependent company whose existence is notified by it under paragraph 1, an appropriate cash payment or an exchange of shares under Article 228(1). The provisions of Articles 232 to 237 shall then apply.

4. The provisions of Section 4 shall not apply until the proceedings referred to in paragraph 3 of this Article have been completed.

5. Liability in accordance with Article 239 shall apply in respect of all debts and liabilities of a dependent group company whose existence is notified under paragraph 1 if such debts and liabilities arise after the formation of the SE.

6. The right to issue instructions under Article 240 may be exercised after the annual equalization payment referred to in paragraph 2 of this article has been ascertained in accordance with the procedure therein prescribed. From this time, the rules as to liability contained in Articles 240a, 240b and 240c shall also apply.

Title VIII

Alteration of the Statutes

Article 241

[Conditions for alteration of Statutes]

1. Any alteration of the Statutes shall require a resolution of the General Meeting.

2. Proposals by the Board of Management for alterations of the statutes require the approval of the Supervisory Board. The Board of Management shall state the reasons for its proposals in a report to the General Meeting.

Article 242

[Convening of General Meeting]

1. The agenda of the meeting shall state the proposed alteration of the Statutes.

2. As soon as the convening notice of the General Meeting has been given, any shareholder may require the company to provide him with a copy of the complete text of the proposed alteration, and of any report thereon by the Board of Management, free of charge. A note to this effect shall be included in the convening notice.

Article 243

[Resolutions of General Meeting]

1. The General Meeting may be duly held only if not less than one-half of the capital is represented. If the first convening notice fails to produce such quorum a second notice shall be issued. The General Meeting may then be duly held irrespective of the amount of capital represented. A note to this effect shall appear in the convening notice.

2. Resolutions shall be duly passed only if at least three-quarters of the votes validly cast are in favour thereof. The Statutes may require a greater majority.

Article 244

[Notification of alteration of Statutes]

1. The alteration of the Statutes shall be notified by the Board of Management to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The notification shall be accompanied by two authenticated copies of:

(a) the minutes of the General Meeting and of the annexes prescribed by Article 94, relating to the alteration of the Statutes;

(b) the complete text of the Statutes as altered.

Article 245

[Examination by Court of Justice of the European Communities and publication]

1. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolutions for the alternation of the Statutes were properly held and validly passed.

2. The Court of Justice shall refuse to register an alteration of the Statutes in the European Commercial Register if the resolution for the alteration was not in accordance with the provisions of this Statute or of the Statutes of the company.

3. The Court of Justice may allow the SE to supplement or correct its application and the supporting documents.

4. If the Court of Justice finds no reason to refuse or to defer registration, it shall order the alteration of the Statutes to be registered in the European Commercial Register, to which office it shall duly pass the application and supporting documents.

5. Notice of registration of the alteration shall be published in the company journals.

Article 246

(deleted)

Title IX

Dissolution, liquidation, bankruptcy and related proceedings

SECTION ONE

Dissolution

Article 247

[Cases of dissolution]

An SE is dissolved:

(a) by resolution of the General Meeting;

(b) on expiry of the period for which the company was formed as specified in the Statutes;

(c) on the occurrence of the ground for dissolution referred to in Article 249(4);

(d) on the institution of bankruptcy or similar proceedings in respect of the SE, or where an adjudication of bankruptcy is refused by a court owing to insufficiency of assets;

(e) on a court order being made under Article 99 of this Statute.

Article 248

[Dissolution by resolution of General Meeting]

1. A resolution of the General Meeting to dissolve the SE shall fulfil the requirements for alteration of the statutes.

2. The Board of Management shall consult the European Works Council before the General Meeting resolves on dissolution.

3. The General Meeting may resolve on dissolution only if the views of the European Works Council have been made known, unless the Council shall have failed to express any views within a reasonable period of its being consulted by the Board of Management.

Article 248a

[Handling of implications for employees]

1. If the European Works Council considers that employees' interests will be adversely affected by dissolution of the SE, the Board of Management shall open negotiations with the Council before the General Meeting resolves, in order to reach agreement on the steps to be taken with regard to employees (social plan).

2. Agreement reached on a social plan shall be recorded in writing and shall have the effect of an agreement pursuant to Article 127.

3. The Board of Management shall advise the General Meeting and the Supervisory Board of the outcome of negotiations on the social plan. The European Works Council may similarly put forward its opinion thereon.

4. If no agreement is achieved on the social plan and if the General Meeting resolves in favour of dissolution, the European Works Council or the SE's liquidators may within one month invoke the arbitration board referred to in Article 128. The arbitration board shall specify the steps to be taken with regard to employees upon liquidation.

Article 249

[Loss of half of capital]

1. If losses entered in its books of account result in the value of the company's net assets being shown as less than half the amount of its capital, the General Meeting convened for the purpose of considering the annual accounts under Article 84 shall decide whether the company shall be dissolved. This matter shall be included in the agenda; the Board of Management shall state its opinion on the matter explicitly in a special report, on which the Supervisory Board shall give a reasoned opinion.

Any interested person may apply for a copy of this report to be sent to him free of charge not later than 15 days before the date of the meeting. A note to this effect shall appear in the convening notice.

2. If it is decided not to dissolve the company, its capital shall, not later than two years after the date of the General Meeting referred to in paragraph 1, be reduced 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 its capital. The capital may be reduced to less than the minimum amount prescribed under Article 4, however, only if an increase in the capital to the amount prescribed under the said 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 shall expire.

3. The General Meeting shall in each case pass its resolutions in accordance with the provisions applying to alteration of the statutes.

4. If a General Meeting has failed to decide within the period prescribed under paragraph 2 either to dissolve the company or to reduce its capital in the manner prescribed in paragraph 2, the company shall at the end of such period automatically be dissolved.

Article 250

[Notification, supervision of dissolution resolution, publication of dissolution]

1. A resolution passed by a General Meeting to dissolve the company shall immediately be notified by the Board of Management to the Court of Justice of the European Communities for

registration in the European Commercial Register. Article 244(2)(a) and 245 shall apply correspondingly.

2. In the cases referred to in Article 247(b) and (c), the liquidators shall immediately notify the European Commercial Register of the dissolution for registration thereof. If such notification is not made within 2 weeks, any interested person may apply to the court in whose jurisdiction the registered office of the company is situate for an order that the dissolution be registered in the European Commercial Register.

Notice of the registration of the dissolution shall be published in the company journals.

SECTION TWO

Liquidation

Article 251

[General principles relating to liquidation]

1. Except in the event of the institution of bankruptcy proceedings, the dissolution of a company shall be followed by its liquidation, which shall be carried out in accordance with the provisions of this Section.

2. Unless otherwise required by the provisions of this Section and in so far as such provisions are not inconsistent with the purpose of the liquidation, SE's which are in liquidation shall, until the liquidation is completed, continue to be subject to the same provisions as SE's which are not in liquidation.

3. The provisions relating to the powers and duties of the members of the Board of Management shall, for the purpose of the liquidation, apply to the liquidators. The liquidators shall be subject to supervision by the Supervisory Board.

Article 252

[Appointment of liquidators]

1. On the dissolution of an SE the powers of the Board of Management shall cease. The members of the Board of Management holding office at that time shall carry out the liquidation, unless other persons are appointed as liquidators by the General Meeting.

2. On the application of shareholders who individually or together hold either 5% of the capital of the company or shares of a nominal of 100000 u.a., the court in whose jurisdiction the registered office of the company is situate may, if there are serious reasons for doing so, appoint one or more additional liquidators, or replace one or more existing liquidators.

Where the court orders the dissolution of the company under Article 99 or orders that its dissolution be registered under Article 250(2), it shall itself appoint the liquidators.

3. The General Meeting may at any time remove liquidators not appointed by the court and appoint others in their place.

4. The General Meeting shall determine the amount of the liquidators' remuneration. If the liquidators are appointed by the court under paragraph 2, the amount of their remuneration shall be determined by the court.

Article 253

[Notice of appointment]

Notice of the appointment or removal of liquidators shall be given by them to the European Commercial Register for the purpose of registration, and shall be published in the company journals. Article 65 shall apply correspondingly.

Article 254

[Duties of liquidators]

The liquidators shall terminate transactions pending, collect debts, convert remaining assets into cash, where this is necessary for their realization, and pay the sums owing to creditors. The liquidators may undertake new transactions to the extent necessary for the purposes of liquidation.

Article 255

[Duties of liquidators]

1. The liquidators shall invite the creditors of the company to submit their claims and shall make specific reference to the fact that the company is in liquidation. 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.

2. Every creditor known to the company who fails to present his claim within three months of the date of the final publication of the notice shall be invited by registered letter to do so.

3. Claims that creditors fail to present within one year after the date of the last publication of the notice in the company journals shall cease to be enforceable against the company. Express notice to this effect shall be given in the last notice published in accordance with paragraph 1 and in the written invitations issued in accordance with paragraph 2.

Article 256

[Duties of liquidators]

1. The liquidators shall lay annual accounts in respect of the liquidation before the General Meeting.

2. The provisions of the first seven sections of Title VI concerning the preparation of accounts, and of Article 219 concerning the publication of annual accounts shall apply to the annual accounts of the liquidators.

Article 257

[Distribution of company assets]

1. Assets of the company remaining after discharge of its liabilities shall be distributed amongst the shareholders in proportion to the nominal value of their shares unless the statutes confer different rights in a distribution.

2. Where a liability cannot be discharged for the time being, or is disputed, a distribution of assets may be made only if security is given in favour of the creditor or if the assets remaining after a partial distribution constitute adequate security.

Article 258

[Scheme of distribution]

1. No complete or partial distribution of assets of the company shall be made until accounts prepared in accordance with Article 256, together with a scheme of distribution drawn up after the end of the one-year period prescribed under Article 255 have been laid before the General Meeting, and until a further three months have elapsed after filing of such annual accounts and the scheme of distribution with the European Commercial Register without proceedings in respect of the distribution having been commenced in the court within whose jurisdiction the registered office is situate or having been dismissed by such court.

2. Any shareholder or creditor of the company may bring proceedings under the foregoing paragraph provided that they relate to the scheme of distribution.

Article 259

[Completion of liquidation]

1. Upon completion of the liquidation the liquidators shall forthwith give notice thereof to the European Commercial Register for the purpose of registration and publish it in the company journals.

2. If further steps in connection with the liquidation thereafter become necessary, the court within whose jurisdiction the company's registered office is situate shall, on the application of any shareholder or creditor, renew the mandate of the former liquidators or appoint other liquidators.

Article 260

[Retention of books and records]

1. Following the liquidation, the books and records of the SE shall be lodged within the European Commercial Register for retention there for ten years.

2. The Court of Justice of the European Communities may authorize shareholders and creditors to examine such books and records.

Article 260a

[Continuation of SE]

1. Where an SE is dissolved by a resolution of the General Meeting, the General Meeting may, at any time before the distribution of assets among the shareholders has begun, resolve that the company shall continue in existence. Such a resolution must fulfil the requirements for alterations to the Statutes.

2. The liquidators shall notify the continuation of the company to the Court of Justice of the European Communities for registration in the European Commercial Register.

Articles 244(2) and 245 shall be of corresponding application.

Article 260b

[Continuation of SE]

Where an SE is dissolved by reason of the expiration of the period for which it was formed, the company may, at any time before the distribution of assets among the shareholders has begun, be continued in existence by means of an alteration of the Statutes.

SECTION THREE

Bankruptcy, winding-up arrangements, composition and similar proceedings

Article 261

An SE shall be subject to the Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings to be concluded among the Member States.

Article 262

(deleted)

Article 263

1. The opening of bankruptcy proceedings or proceedings for arrangement or composition or similar proceedings in respect of the assets of the SE shall be notified for registration in the European Commercial Register by the administrator

in bankruptcy or other person appointed to conduct the proceedings.

Registration shall comprise:

(a) the nature of the proceedings, the date of the order, and the court making it;

(b) the date on which payments were suspended, if included the court order;

(c) the name and address of the administrator, trustee, receiver, liquidator or any other person vested with the powers of an administrator in bankruptcy or of each of them where there are more than one;

(d) any other information considered necessary.

2. The administrator shall further notify the European Commercial Register of the judgments and acts referred to in Article IV of the Protocol annexed to the said convention.

3. Where a court dismisses a final application for the institution of bankruptcy proceedings owing to want of sufficient assets, it shall, either on its own motion or on application by any interested party, order its decision to be registered in the European Commercial Register.

4. Particulars registered pursuant to paragraphs 1 and 3 above shall be published in the company journals.

Title X

Transformation

Article 264

[Conditions for transformation]

1. Upon a proposal by the Board of Management with the approval of the Supervisory Board, an SE may by means of an alteration of its statutes, be transformed into a limited company incorporated under the law of one of the Member States.

2. Transformation shall not be undertaken until three years after formation of the SE.

3. The SE shall be transformed into a limited company under the law of the Member State in which its effective management is located.

4. If employees are not represented on the governing bodies of the limited company into which the SE is to be transformed in a manner equivalent to that in which they are represented under the rules governing the SE, the approval of the Supervisory Board to the transformation shall be effective only if a majority of the employees' representatives on the Supervisory Board vote in favour thereof.

Article 265

[Report of Board of Management; consultation of European Works Council]

1. The Board of Management shall prepare a report stating its reasons for the proposed transformation. Copies of the report shall be available free of charge to any interested person from

the day on which the meeting is called. A note to this effect shall appear in the convening notice.

2. The Board of Management shall consult the European Works Council with regard to the proposed transformation, in accordance with the provisions of Article 125.

Article 266

[Notification; examination by Court of Justice of the European Communities]

1. The resolution of transformation shall be notified by the Board of Management to the Court of Justice of the European Communities.

2. The notification shall be accompanied by:

(a) two authenticated copies of the Minutes of the General Meeting and, in so far as they relate to the resolution for transformation, the annexes specified in Articles 94 and 265;

(b) the authenticated text of the Statutes as altered by the General Meeting.

3. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolution of transformation were validly held and passed.

4. If the resolution of transformation was passed in accordance with the provision of this Statute and of the Statutes of the SE, the Court of Justice of the European Communities shall return the documents mentioned in paragraph 2 to the SE together with a certificate that the resolution of transformation was validly passed.

Article 267

(deleted)

Article 268

[Procedures after examination of transformation]

1. Upon receipt of the certificate referred to in Article 266(4), the Board of Management of the SE shall carry out the procedures for verification and publicity prescribed in connection with the formation of a limited company in the Member State to whose law the company is to be subject.

2. Transformation shall become effective as soon as the company acquires legal personality under the national law applicable to it. The company shall continue in existence as a limited company under national law.

3. Upon completion of the procedures referred to in paragraph 1, the governing body of the company shall send to the European Commercial register:

(a) one of the copies referred to in Article 266(2) a;

(b) one copy of the documents and supporting papers required under the national law for formation of a limited company, including the certificate that the requisite notices have been duly published.

4. The European Commercial Register shall register the transformation and publish a notice thereof in the Official Journal of the European Communities, making reference to the registration that has been effected, the filing of documents and the giving of notices under national law insofar as such matters are set out in the documents and supporting papers filed in the European Commercial Register.

Title XI

Merger

SECTION ONE

General provisions

Article 269

[Cases of mergers and definitions]

1. An SE may merge with other European limited companies or with other limited companies formed under the laws of the Member States:

(a) by formation of a new SE in accordance with the provisions of this Statute concerning formation;

(b) by the acquisition of one or more limited companies in accordance with Section 2 of this Title;

(c) by the acquisition of the SE, in accordance with Section 3 of this Title, by a limited company formed under national law;

(d) by the formation of a new limited company under the law of one of the Member States, in accordance with Section 4 of this Title.

2. In the case of a merger by acquisition, one or more limited companies shall transfer the whole of their assets and liabilities to the acquiring company and shall be dissolved without being wound up. Shareholders of the transferring companies shall receive shares in the acquiring company.

In the case of a merger by formation of a new company, two or more limited companies shall transfer the whole of their assets and liabilities to a limited company formed by them and shall themselves be dissolved without being wound up. Their shareholders shall receive shares in the new company.

In either case, cash equilization payments may be made not exceeding 10% of the nominal value or, (in the absence of a nominal value), the book value of the shares transferred.

3. An SE in liquidation may be a party to a merger provided that the distribution of its assets amongst its shareholders has not begun. The same rule shall apply to a limited company formed under national law upon its acquisition by an SE.

Article 270

[Provisions applicable to an SE taking part in a merger]

1. Where an SE is a party to a merger of any kind, the following provisions of this Article shall apply.

2. The draft of the document of formation required for the merger where an SE is formed, or, in the case of mergers within the meaning of the following Sections, the draft of the document containing the terms of the merger shall be drawn up by the Board of Management of the SE. The draft shall be approved by the Supervisory Board.

3. The Board of Management shall appoint the auditor or auditors of the SE to examine the draft document of formation or the draft document contraining the terms of merger.

4. The merger shall be approved by a resolution of the General Meeting, which must satisfy the requirements for an alteration of the Statutes.

Article 270a

[References to provisions of Title II]

Where reference is made in the provisions of Sections 2 and 3 of the Title to the provisions of Title II, the term 'founder companies' shall mean merging companies, the term 'SE' shall mean an acquiring company, the term 'formation' shall mean a merger and the term 'document of constitution' shall mean the terms of merger.

SECTION TWO

Acquisition by an SE

Article 271

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed, and include:

(a) the name, legal form and the registered office of the merging companies;

(b) the ratio of the exchange of shares and the amount of any equalization payments in cash;

(c) details of the manner in which shares of the acquiring SE may be transferred and the time from which such shares will carry the right to participate in its profits;

(d) the time from which the business of the transferring companies will be deemed to be carried on on behalf of the acquiring SE;

(e) the rights to be conferred by the acquiring SE on shareholders of the transferring companies who are entitled to special rights and on the holders of securities other than shares, and measures proposed for the benefit of such persons;

(f) the experts' reports provided for in Article 271a;

(g) the reports of the governing bodies of the merging companies under Article 271b.

2. The following documents shall be annexed to the document containing the terms of the merger:

(a) the statutes of the merging companies in their current form;

(b) the balance sheets, interim balance sheets, profit and loss accounts and directors' reports of the merging companies, as required by Article 22(2)(c), (d) and (e).

Article 271a

[Examination of terms of merger by experts]

1. The governing body of each of the merging companies shall appoint one or more experts. The same persons may be appointed for only one company. The provisions of Article 15(2) and (3) shall be of corresponding application to such experts.

2. The experts shall examine the terms of the merger and prepare a report thereon for the shareholders. The provisions of Article 23(2) to (4) shall apply correspondingly.

Article 271b

[Reports by governing bodies of merging companies]

1. The governing bodies of the merging companies shall draw up a report explaining and justifying the terms of merger, in particular the ratio for the exchange of shares, from both the legal and economic aspects.

2. The report shall also deal with the legal, economic and social effects of the merger on the employees over a period of at least two years, and indicate the measures to be taken regarding them.

Article 271c

[Convening of General Meeting of merging companies]

1. The governing bodies of the merging companies shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of a merging company deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of each of the merging companies.

Article 271d

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees and of Article 23d shall apply correspondingly.

Article 271e

[Approval of merger and challenge of resolution of approval]

1. The terms of merger shall be approved by each of the merging companies in General Meeting. The provisions of Article 24 shall apply in respect of the resolutions of approval.

2. The resolutions of the General Meeting may be challenged or declared invalid only in the circumstances set out in Article 25.

Article 271f

[Notification of merger]

1. The merger shall be notified by the Board of Management of the acquiring SE to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The terms of merger and the annexes thereto, the Minutes of the General Meeting and a certificate that the minutes were duly filed shall be lodged with such notification. The governing bodies of the merging companies shall inform the court whether the resolution of the General Meeting has been challenged by proceedings in any court, and if so in which court.

Article 271g

[Examination by Court of Justice of the European Communities; publication and effect of merger]

1. The Court of Justice of the European Communities shall satisfy itself that the merger has been properly carried out. Article 17 shall apply correspondingly.

2. The registration of the merger shall include the name, registered office, and legal form of the merging companies, and the amount of the capital of the transferring company. It shall be published in the company journals.

3. As from the day when notice of the merger is published in the Official Journal of the European Communities, the transferring companies shall be dissolved. As from that date the SE shall assume the liabilities of the latter and the shareholders of the transferring companies shall become shareholders of the acquiring SE.

Article 271h

[Protection of creditors of transferring companies]

Creditors of the transferring companies may require the acquiring SE to give them security. Article 27 shall apply correspondingly.

Article 271i

[Shareholding of the SE in one of the transferring companies]

1. The provisions of this Section shall further apply where the acquiring SE holds all or part of the shares of one of the other merging companies. In this event, such shares shall lapse.

2. Where the acquiring SE holds all the shares of one of the merging companies, the same person may, notwithstanding the provisions of Article 271a, be appointed as the expert for both companies. In this event, the particulars to be furnished in accordance with Article 271(1)(b) and (c), shall not be required.

SECTION THREE

Acquisition of an SE by a company incorporated under national law

Article 272

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed.

2. The provisions of Article 271 to Article 271b shall apply in respect of the terms of merger. The term 'transferring company' in Article 271 shall mean the transferring SE and the term 'acquiring SE' shall mean an acquiring company incorporated under national law.

Article 272a

[Representation of employees on governing bodies of acquiring company]

If employees are not represented on the governing bodies of the acquiring company in a manner equivalent to that in which they are represented under the rules governing the transferring SE, the approval of the Supervisory Board required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the SE.

Article 272b

[Convening of General Meeting of SE]

1. The Board of Management of the SE shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the SE deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of the SE.

Article 272c

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees and of Article 23d, shall apply correspondingly with regard to the SE.

Article 272d

[Approval of merger and challenge of resolution of approval]

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the SE and in respect of any challenge to the resolution of approval.

Article 272e

[Notification of merger and examination by Court of Justice of the European Communities]

1. Upon the approval of the merger by the General Meeting of the SE and by the acquiring company, the resolutions of approval shall be notified by the Board of Management of the SE to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The following shall be annexed to the notification:

(a) the terms of merger and the annexes thereto;

(b) the statutes of the acquiring company;

(c) the minutes of the General Meeting of the SE and a certificate that such minutes were duly filed.

3. The European Court shall satisfy itself that the merger has been properly carried out.

4. If the merger complies with the provisions of this Statute and the statutes of the SE the court shall return the documents referred to in paragraph 2 to the SE duly authenticated to the effect that the resolution for the merger has been validly passed by the SE. Copies of the documents shall be filed with the European Commercial Register.

Article 272f

[Publication of merger]

1. The merger shall be registered in the European Commercial Register only when the relevant formalities required of the acquiring company by its national law have been fulfilled.

2. An application for registration of the merger may be made to the European Commercial Register by the Board of Management of the SE or by the governing body of the acquiring company. Such application shall be accompanied by the authentication of the European Court and by documents and other evidence indicationg that there is no obstacle to the merger under the law governing the acquiring company.

3. The registration of the merger in the European Commercial Register shall include the name, registered office, and objects of the acquiring company and a statement of the amount of its capital. The registration shall further include the names of the members of its Management and Supervisory Boards, and indicate the journals in which announcements concerning the company are published.

4. The registration together with the information referred to in paragraph 3, shall be published in the company journals of the SE.

Article 272g

[Effect of merger]

The SE shall cease to exist as from the day on which the registration of the merger is published in the Official Journal of the European Communities. As from that date the acquiring company shall assume the liabilities of the SE and the shareholders of the SE shall become shareholders of the acquiring company.

Article 272h

[Protection of creditors of SE]

Except in so far as more stringent provision is made by the law applicable to the acquiring company, creditors of the SE may require the acquiring company to give them security. Article 27 shall apply correspondingly.

Article 272i

[Shareholding of acquiring company in SE]

The provisions of this Section shall further apply where the acquiring company holds all or part of the shares of the SE.

2. Where the acquiring company holds all the shares of the SE the same person may, notwithstanding the provisions of Article 271a, be appointed as the expert for both companies. In this event the particulars to be furnished in accordance with Article 271(1)(b) and (c) shall not be required.

SECTION FOUR

Merger by formation of a new limited liability company under national law

Article 273

[Preparation of terms of merger]

1. The governing bodies of the merging companies shall prepare the draft terms of merger, which shall be set out in a notarial deed.

2. The terms of merger shall include the name, legal form and registered office of the merging companies and of the new company, and the particulars and reports referred to in Article 22(1)(c) to (g).

The provisions of Articles 22, 22a(2) and (3), 23 and 23a shall be of corresponding application.

The term 'founder companies' shall mean the merging companies, the term 'SE' shall mean the new company, and the term 'document of formation' shall mean the terms of merger.

3. The terms of merger or the statutes of the new company shall include the name of each member of the governing bodies of the new company whom it falls under the law of the State in which the registered office of the company is situated, within the competence of either the General Meeting or of the merging companies to appoint.

4. Article 15 shall apply to the auditors.

Article 273a

[Representation of employees on governing bodies of new company]

If employers are not represented on the governing bodies of the new company in a manner equivalent to that in which they are represented under the rules governing the transferring SE, the approval of the Supervisory Board for the merger required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the SE.

Article 273b

[Convening of General Meeting of SE]

1. The Board of Management of the SE shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the SE deciding upon the merger has been called.

2. Article 23b(2) and (3) shall apply in respect of the convening of the General Meeting of the SE.

Article 273c

[Handling of implications of merger for employees]

The provisions of Article 23c as to discussion of the effects of the merger on the employees, and of Article 23d, shall apply correspondingly with regard to the SE.

Article 273d

[Approval of merger and challenge of resolution of approval]

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the SE and in respect of any challenge to the resolution for approval.

Article 273e

[Formation of new company]

The formation of the new company and the publication thereof shall be effected in accordance with the provisions of the law of the State in which the registered office of the new company is situate governing the formation of companies in consequence of a merger or, in the absence of such provisions, in accordance with the law of the said State on the formation of companies.

Article 273f

[Examination of merger by Court of Justice of the European Communities and publication]

1. The provisions of Articles 272e and 272f shall apply with regard to the examination of the regularity of the merger resolution passed by the SE, to the registration of the merger in the European Commercial Register and to publication of the merger in the company journals of the SE.

The term 'acquiring company' shall mean the new company.

2. The registration of the merger shall state the date when the new company acquired legal personality.

Article 273g

[Expiry of SE]

The SE shall cease to exist from the day on which the new company acquires legal personality. As from that date the new company shall assume the liabilities of the SE and the shareholders of the SE shall become shareholders of the new company.

Article 273h

[Protection of creditors of SE]

Except in so far as more stringent provision is made by the law applicable to the new company, creditors of the SE may require the new company to give them security. Article 27 shall apply correspondingly.

Article 273i

[Shareholding of one of the merging companies in one of the other merging companies]

1. The provisions of this Section shall further apply where one of the merging companies holds all or part of the shares of the SE.

2. Where one of the merging companies holds all the shares of one of the other merging

companies the same person may, notwithstanding the provisions of Article 15(1), be appointed as an auditor for both companies.

Article 274

(deleted)

Title XII

Taxation

SECTION ONE

Formation

Article 275

1. Where a European holding company within the meaning of Articles 2 and 3 is formed by companies limited by shares incorporated under the law of one of the Member States or by SE's 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 tax liability.

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 companies limited by shares or in the SE's were shown.

SECTION TWO

Tax domicile

Article 276

[Determination of tax domicile]

1. For purposes of taxation, the SE shall be treated as resident in the Member State in which the centre of its effective management is located.

2. Action to remove any difficulties or doubts which arise in connection with the application of paragraph 1 shall be taken by Member States if a

competent authority in a Member State shall consider it necessary or if the SE shall request it to do so.

3. The competent authorities in Member States may communicate with each other direct with a view to reaching an agreement for purposes of the preceding paragraph. The SE interested in or affected by such action, or its representative, shall at its request be allowed to present its case.

4. In default of agreement in pursuance of paragraphs 2 and 3, each State concerned may refer the matter to the Court of Justice, whose decision shall be final. The SE shall be entitled to be heard.

5. For so long as the centre of effective management shall not definitively have been determined by such actions as aforesaid, the liability of the SE for payment of tax shall at its request be suspended.

Article 277

[Transfer of tax residence]

Where an SE, which for purposes of taxation has been resident in a Member State for not less than five years, transfers its effective management to another Member State, the State in which the centre of effective management was located prior to the transfer:

(a) shall not impose any charge to tax on any increase in value of the assets of the SE, i.e. on the amount of the difference between the real value of such assets and their value as shown in the balance sheet of the SE for tax purposes, to the extent that such assets are from an accounting point of view attributed at the same value to a permanent establishment of the SE in that State and contribute towards the taxable income of the establishment concerned;

(b) shall authorize any such permanent establishment as is referred to in (a) above to take over and continue free from liability to tax under general law any provisions and reserves created by the SE in that State and which are exempt in whole or in part from liability to tax;

(c) shall permit such permanent establishment to take over and set off, in accordance with general law, losses incurred by the SE which have not yet been set off for tax purposes in that State;

(d) shall from the date of transfer relinquish all right to impose any charge to tax in respect of the activities of the SE carried on outside its territory, in so far as for tax purposes, the SE includes such activities with those that it carries on in the State to which it transfers its centre of effective management. Where they are so included, paragraphs (b) and (c) above shall not apply to the extent that the provisions, reserves or losses therein referred to relate to activities carried on outside the territory of the State in which the centre of effective management was located prior to the transfer.

SECTION THREE

Permanent establishments and subsidiaries

Article 278

[Principles regarding the taxation of permanent establishments in Member States]

1. Where an SE 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 SE's permanent establishment in that State shows a loss, that loss shall be deductible from the taxable profits of the SE 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 SE in the State in which it is resident for tax purposes up to an amount not exeeding 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 profits chargeable to tax under paragraph 3 above shall be determined in accordance with the law of the State in which the permanent establishments are located.

Article 279

[Tax procedure]

The tax treatment of a permanent establishment which an SE resident for tax purposes in one Member State maintains in another Member State shall not result in a greater charge to tax for that permanent establishment than would arise in the case of a company which carries on a business of the same nature and is resident for tax purposes in that other State.

Article 280

[Term 'permanent establishment']

1. The term 'permanent establishment' means a fixed place of business in which the business of an SE is wholly or partly carried on.

2. The term 'permanent establishment' shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, quarry or other place of extraction of natural resources;

(*g*) a building site or construction or assembly project which exists for more than twelve months.

3. Permanent establishments shall not be deemed to include facilities and maintenance meeting the conditions listed in sub-paragraphs (a) to (e) below whether these conditions are fulfilled singly or severally:

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to a company;

(*b*) the maintenance of a stock of goods or merchandise belonging to a company solely for the purpose of storage, display or delivery;

(*c*) the maintenance of a stock of goods or merchandise belonging to a company solely for the purposes of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for a company;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for a company.

4. A person acting in one Member State on behalf of an SE of another Member State, other than an agent of an independant status to whom paragraph 5 applies, shall be deemed to be a 'permanent establishment' in the first-mentioned State if he has and habitually exercises in that state an authority to conclude contracts in the name of the SE, unless his activities are limited to the purchase of goods or merchandise for the SE.

5. An SE of one Member State shall not be deemed to have a permanent establishment in another Member State merely because it carries on business in the other Member State through a

broker, general commissions agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.

6. The fact that an SE of one Member State controls or is controlled by a company that is subject to the law of another Member State or which carries on business in the other Member State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 281

[Taxable subsidiaries]

1. Where an SE holds not less than 50% of the capital of another company liable to a tax on profits and whose operations in any tax period result in a loss, that loss shall be deductible, in proportion to the holding, from the profits chargeable to tax of the SE in the State in which the SE is resident for tax purposes.

2. A deduction made pursuant to paragraph 1 above shall be final if, under the law applicable to the company whose capital is held as aforesaid, the loss referred to in the said paragraph cannot be carried forward to other tax periods. Where this is not the case, the subsequent profits of that company shall constitute taxable income of the SE 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 and *pro rata* to the capital held at the time those profits were earned.

3. Where the holding falls below 50%, any loss deducted from the profits of the SE under paragraph 1 above during the preceeding five tax periods shall, notwithstanding the provisions of paragraph 2, be added back to the taxable profits of that SE.

4. Where such holding as is referred to in paragraph 1 above is in the capital of a company resident in a Member State, the amount of the loss deductible under paragraph 1 above and the amount of the subsequent profits taxable under paragraph 2 above shall be determined in accordance with the law of that Member State.

Title XIII

Offences

Article 282

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

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.

Title XIV

Final provisions

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.

Annex I

National employees' representative bodies pursuant to Article 102(1) of this Regulation

(1) at establishment level

Belgium: The 'ondernemingsraden' or 'conseils d'entreprise', established under the Act on the organization of the economy, of 20 September 1948

Denmark: The 'samarbejdsudvalg' established under the Agreement on cooperation and cooperation committees, concluded between the Danish Employers' Confederation and the Danish Federation of Trade Unions on 2 October 1970

Federal Republic of Germany: The 'Betriebsräte' established under the Works Constitution Act of 15 January 1972

France: The 'comités d'entreprise' established pursuant to the Decree of 22 February 1945

Ireland:[1]

Italy: The 'rappresentanze dei lavoratori' within the meaning of Act No 300 of 30 May 1970; i.e. the 'commissioni interne d'azienda' established pursuant to the Wages Agreement between Employers and the Employee organizations of 18 April 1966, or the 'consigli di fabbrica'

Luxembourg: The 'délégations ouvrières principales' established under the Grand-Ducal Decree of 30 October 1958 as amended by the Act of 20 November 1962, and the 'délégations d'employés' established under the Act of 20 April 1962

Netherlands: The 'ondernemingsraden' established under the Works Councils Act of 28 January 1971

United Kingdom:[1]

(2) at undertaking level

Belgium:[2]

Denmark:[2]

Federal Republic of Germany: The 'Gesamtbetriebsräte' established under the Works Constitution Act of 15 January 1972

France: The 'comités centraux d'entreprise' under the Decree of 22 February 1945

Ireland:[1]

Italy: The 'rappresentanze dei lavoratori' within the meaning of Act No 300 of 30 May 1970, in so far as they exist at undertaking level

Luxembourg: The The 'comités mixtes d'entreprise' under the Act instituting joint committees in private sector undertakings and establishing employee representation in limited liability companies, of 6 May 1974

Netherlands: The 'centrale ondernemingsraden' under the Works Councils Act of 28 January 1971

United Kingdom:[1]

[1] In neither Ireland nor the United Kingdom does institutional representation of employees on a statutory or negotiated basis exist as yet.

[2] In neither Belgium nor Denmark does statutory representation of employees exist as yet at undertakings level.

Annex II

Rules for the election of members of the European Works Council

SECTION I

General provisions

Article 1

Employees of the SE 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 SE 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 SE 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 100 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 SE 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 SE shall, for the purposes of the election of the European Works Council, publish in each installation of the SE 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 15 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 norification 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 SE;

(b) not less than three persons employed in an establishment of the SE 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 SE. 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 SE 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 SE 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 SE. The court shall hear the Board of Management of the SE 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 SE 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 SE 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 SE 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 SE 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 SE 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 situate 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 SE.

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, 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 SE, by one tenth of the persons entitled to vote in the establishment or 100 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 SE shall be elected by electoral delegates where an SE and its dependent group undertakings situated within the Member States comprise more than one establishment.

2. In each establishment of the SE and its dependent group 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 SE 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 SE and its dependent group undertakings having their registered offices within the Member States 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 SE shall be elected in the establishments of the SE and its dependent group 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 SE. The provisions of Article 113 shall apply *mutatis mutandis*.

Article 4

1. No later than ten days after the formation of the SE or, if employees' representatives have already been elected to the Supervisory Board of the SE, 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 SE, publish in each installation of the SE a list of all the SE establishments for which delegates are to be elected.

2. The Board of Management shall publish a list of all undertakings controlled by the SE 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 SE shall notify the management bodies of its dependent group 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 controlled by an SE, the undertaking in question shall take part in elections to the Supervisory Board of the SE only after the Court of Justice of the European Communities has ruled according to Article 225 that it is a member of the group within the meaning of this Statute.

Article 5

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

In the case of dependent group undertakings, the management body shall take the place of the Board of Management of the SE, 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 SE or the management bodies of its dependent group 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 SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, 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 SE 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 SE, by one

twentieth of the electoral delegates or by at least one tenth of the employees of the SE who are entitled to vote.

3. The Group Works Council, trade unions represented in the establishments of dependent group undertakings having their registered offices within the Member States, 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 SE which is the controlling company of a group.

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 not exceed twice the number of seats for employees' representatives on the Supervisory Board. An alternate shall be named for each candidate.

2. The list of candidates may include a number of persons not employed in an establishment of the SE not exceeding twice the number of employees' representatives not belonging to the SE permitted under Article 137(2). Such candidates shall be specially indicated on the lists.

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 whose name appears on the list that he has chosen.

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

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

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

However, if a seat should be allotted to a candidate not employed in an establishment of the SE or of a group undertaking controlled by it, and if the seats already allocated to the individual lists of candidates have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, to the candidate so employed who is next upon the same list.

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 qualifiying quotients obtained pursuant to paragraph 1.

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.

However, if a seat should be allotted in this case to a candidate not employed in an establishment of the SE or of a group undertaking controlled by it, and if seats have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, upon the allotting of the seat, to the candidate who has obtained the highest number of votes.

2. 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 SE 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 SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, at least 25 days before the expiry of their term of office, at the place at which the SE 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 SE 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 SE or its dependent undertakings, having their registered offices within the Member States, by three electoral delegates or by the Board of Management of the SE.

3. The court competent to take the action referred to in paragraph I 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 SE. Where employees' representatives have already been elected to the Supervisory Board of the SE, 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 representatives who, pursuant to Article 137(2), may be persons not employed by the SE or its controlled group undertaking.

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 commissions 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 establishments.

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 incompleteness 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 SE and notify the electoral college, the candidates, the Supervisory Board, the Board of Management of the SE 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 SE.

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 SE.

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 SE 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 SE.

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 SE 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 100 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 SE, an electoral commission shall be formed in the establishment in which employees' representatives are to be elected to the Supervisory Board of the SE, in order to arrange and conduct the election. Where employees' representatives have already been elected to the Supervisory Board of the SE, 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 SE, 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 SE or, where employees' representatives have already been elected to the Supervisory Board of the SE, 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.

Annex IV

Penalties for infringements of the Statute

The following persons shall be liable to payment of fines or other penalty:

I. Any member, as such, of the Board of Management, of the Supervisory Board or of any other governing body of a founder company who wilfully makes any false statement in or omits material facts from the report on formation, or the annexes thereto, in respect of:

(a) the amount of the share capital or the nominal value and number of the shares;

(b) the valuation of capital subscribed in kind or the source of such capital;

(c) the expenses incurred in connection with formation;

(d) the privileges and benefits granted to persons who took part in the formation of the company.

II. Any member, as such, of the Board of Management or of the Supervisory Board of an SE who wilfully makes any false statement or omits material facts with a view to registration of an increase or reduction in the share capital of an SE.

III. Any person who wilfully issues any share before the nominal amount thereof has been fully paid up.

IV. Any person who, in order to exercise a right of vote at a General Meeting, wilfully makes use of shares of another person which he has obtained for that purpose by granting or promising special benefits or who, for that same purpose, transfers shares to another person in return for or in consideration of the promise of special benefits.

V. Any member of the Board of Management or of the Supervisory Board who wilfully makes any false statement in or omits material facts from the annual accounts, consolidated annual accounts, part-consolidated annual accounts or in the report, consolidated report or part-consolidated report.

VI. Any member of the Board of Management or of the Supervisory Board who, by deliberate act or omission, causes false or incomplete information to be used in the preparation of the auditor's report.

VII. Any auditor who, as such auditor, wilfully prepares a false or incomplete auditor's report.

VIII. Any person who wilfully fails to fulfil the obligations imposed upon him under Articles 46a or 82.

IX. Any person who wilfully fails to observe the obligation of secrecy laid upon him by the Statute.

X. Any person who wilfully obstructs or falsifies the election of employees' representatives to the Supervisory Board of the SE or of members of the European Works Council or of the Group Works Council and any person who, by causing or by threatening disadvantages or by granting or by promising benefits, influences such elections.

XI. Any person who unlawfully uses the term 'European Company' or the abbreviation 'SE' or any other term or abbreviation that might be confused with this term or abbreviation.

XII. Any person who, on behalf of the SE, issues written matter not conforming with the conditions laid down in Article 10 of the Statute.

Explanatory notes

Introduction

The European Parliament[1] and the Economic and Social Committee[2] have issued Opinions on the proposal for a Council Regulation on the Statute for European Companies. In the light of these Opinions, the Commission has altered its original proposal[3] under the Article 149(2) of the Treaty establishing a European Economic Community.

At the same time, it has carried out the adjustments made necessary by the accession of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland.

At the express request of the European Parliament and the Economic and Social Committee, the provisions of the proposal have been further aligned on the proposals put forward in the meantime by the Commission concerning the coordination of the safeguards under national company law and on the alterations made by the Commission to its earlier proposals on this subject. The provisions of the proposal were also brought into line with the work on the creation of European law by means of conventions, and in particular with the draft Convention on the international merger of limited companies, which was drawn up by Government experts from the six original Member States in accordance with the third paragraph of Article 220 of the EEC Treaty.

This alignment is necessary in order to prevent comparable matters being regulated in the coordinated laws of Member States or in the Conventions concluded between Member States, otherwise than in the Statute for European Companies unless there is good reason.

Lastly, account was taken of the view of numerous business associations and trade union organizations and of the theoretical considerations regarding the Commission's proposal of a European Company Statute.

The changes are explained below. Attention is drawn in the notes on individual Articles to any adjustment or rearrangement of provisions.

[1] OJ C93 of 7.8.1974.
[2] OJ C131 of 13.12.1972.
[3] OJ C124 of 10.10.1970; Supplement to Bull. EC 8-1970.

Notes on the individual provisions

Title I

General provisions

At the request of the European Parliament and the Economic and Social Committee, access to the legal form of a European Company has been extended.

The minimum capital required for three types of constitution has been appreciably lowered.

In addition, undertakings established in a legal form other than that of a company limited by shares may also form a joint subsidiary.

Article 2

1. The right to form a joint subsidiary is to be granted not only to public limited companies and to the private limited companies and cooperative societies specifically mentioned by the Parliament and by the Economic and Social Committee but also to other companies having legal personality and other corporations engaging in economic activity in the Community.

2. It does not at present appear possible to extend the right of access to the SE further.

The right to form an SE by merger or by forming a holding company must continue to be reserved for undertakings established in the legal form of a company limited by shares. The exchange of shares associated with these types of constitution (Articles 21 and 29) is practicable only where the founder companies have this legal form.

In the Republic of Ireland and in the United Kingdom any undertaking having the legal form of a 'company limited by shares', i.e. including 'private companies', may participate in the formation of an SE by merger or by setting up a holding company. The difference between 'private companies' and other kinds of 'limited company' is not such as to make special treatment appear justified.

3. The request was made that the right to be incorporated as a European company be extended not only to undertakings established in a different legal

form from that of a company limited by shares but also to undertakings which had already merged at European level before the effective date of the Statute.

A change of this sort would necessitate a special procedure for examining whether the economic characteristics required for the formation of a European company were satisfied. This would make it necessary for the original proposal to be radically altered and would lead to great technical difficulties. For these reasons the criteria for forming an SE will continue to be legal characteristics only.

4. The Economic Committee of the European Parliament expressly requested that access to the form of a European company be even further extended. In its view, natural persons should also be able to form a European company.

However, the objective of the SE which formed the basis of the Commission proposal and which has been approved is to act as a means of integrating existing undertakings. It is designed to stop a loophole occasioned by the fact that the machinery for cooperation between undertakings is rooted in national legal systems. Because of the restricted scope of these national systems, which end at the intra-Community frontiers, there is no suitable instrument for cross-frontier cooperation. The European company is intended to facilitate such cooperation by means of established machinery appropriate to the scale of the common market and independent of national law.

There is an urgent economic need for this in the Community.

For the formation of new undertakings, on the other hand, the national instruments provide an adequate formal solution for the present.

5. Paragraph 3 deals with the extent to which the founder companies and corporations participating in the formation of an SE must be recognized pursuant to the Convention on the mutual recognition of companies and bodies corporate of 29 February 1968.[1]

The consequences for an SE which flow from non-recognition of a founder company by a Member State must be kept within the tightest possible limits. The proposal therefore aims at ensuring that only those Member States to whose laws one of the companies or corporations participating in the formation is subject must have recognized the founder companies, and other corporations participating in the formation pursuant to the Convention on recognition of 29 February 1968.

Article 3

Paragraph 1 lays down rules concerning the participation of an existing SE in the establishment of an SE by merger or the formation of a holding company. Paragraph 2 concerns the formation of a joint subsidiary. This change follows from the new version of Article 2.

Paragraph 4 covers those cases where, in addition to an SE, founder companies from various Member States participate in the formation of another SE. In such cases, recognition of the founder companies incorporated under national law is accorded by analogy with Article 2(3).

Article 4

The European Parliament and the Economic and Social Committee were in favour of lowering the minimum capital. The Commission has complied with the Opinion of the European Parliament. In so doing and in order that the minimum capital required for the various types of constitution should not vary too greatly, it has also lowered the capital required in the case of a merger or the formation of a holding company.

Article 5

The Commission is holding by its proposal to allow the European company to have several registered offices. In the Commission's view, the legal considerations which led the European Parliament to oppose this proposal are not sufficient to outweigh the advantages connected with the possession of a number of registered offices.

The Commission provided an opportunity of opting for possession of a number of registered offices to combat the psychological difficulties which may arise as a result of companies participating in the formation of an SE being closely connected by name and tradition with the country in which their own registered office is situated. The European character of the new legal form would be severely circumscribed if this opportunity were not available.

[1] Supplement to Bull. EC 2-1969.

Problems arise from the admissibility of possessing several registered offices only in legal disputes concerning the internal affairs of the companies (repeal of resolutions of the General Meeting, for example), where conflicting decisions by several competent courts must be avoided.

Under Article 16 of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments of 27 September 1968,[1] the court where the company's registered office is situated has exclusive jurisdiction in such internal disputes. However, the jurisdictional conflicts arising herefrom will be settled by recourse to the provision contained in Article 23 of the Convention, under which the court last appealed to declines jurisdiction in favour of the court first appealed to.

In order to avoid any difficulty or uncertainty in applying the above Convention, and its Articles 16 and 53 in particular, to the European Company, Articles 10a, 10b and 10c have been added and reference should be made to the explanatory notes thereon.

Article 6

1. In accordance with the wishes of the European Parliament but contrary to the opinion of the Economic and Social Committee, the irrebuttable character of the presumptions arising under paragraph 2, which enable the existence of a controlling influence within the meaning of paragraph 1 to be deduced from circumstances alone, has been retained.

2. The grounds for presumption contained in paragraph 2 will in future also include 'indirect' power to exert influence. The grounds have consequently been extended to cover cases where undertakings can dispose of the power to exert influence referred to in paragraph 2 through other dependent undertakings or intermediaries.

3. At the request of the European Parliament, the irrebutable presumption of dependence arising under the original paragraph 2(c) when a controlling influence is exerted under a contract has been dropped. However, contrary to the Parliament's wish, it has not been incorporated in paragraph 3 as a rebuttable presumption, since contrary to what is the case with the other presumptions, it only reiterates the criterion for 'controlling influence' within the meaning of paragraph 1 and consequently can in no way facilitate determination as to whether it exists.

The wording of the presumption in paragraph 3 and of the provision in paragraph 4 on calculating the extent of the shareholding has been changed.

Paragraph 3 is extended, by analogy with the rule in paragraph 2, to include cases where influence is exercised indirectly through shares held by another dependent undertaking.

4. The extension of the rule in paragraph 3 to include indirect influence has made the sentence in paragraph 4 governing this situation redundant, and therefore only the provision contained in the second sentence of this paragraph need be retained.

Article 7

This provision has been retained against the wishes of the Economic and Social Committee. It is important as regards drawing the line between the Statute and the national laws under which the SE must operate.

For clarification it was expressly emphasized that, for purposes of applying the Statute, the common rules and general principles of the laws of the Member States as referred to in Article 7(1)(b) are regarded as being incorporated therein. It is in no way unusual for common principles of national law to be incorporated in Community law in this way. An example is the ruling on the non-contractual liability of the Community in Article 215 of the EEC Treaty.

Article 8

Paragraph 1 has been supplemented by a reference to the documents to be filed in the European Commercial Register. This appeared desirable in view of the provisions of paragraphs 3 and 4 concerning the filed documents.

In accordance with the wishes of the European Parliament, a requirement to file duplicates of the documents filed in the European Commercial Register in the supplementary register in the Member State where the SE has its registered office has been added to paragraph 3.

[1] Supplement to Bull. EC 2-1969.

Article 9

At the request of the European Parliament and to prevent incorrect details being published, the daily newspaper has been deleted from the list in paragraph 1 of official journals whose published contents entail legal consequences (Article 9a(3)).

In addition, it has been laid down that only the text in the original language of a notice published in the Official Journal is to be authentic. A similar provision also applies, for example, to the offering of public construction contracts for tender. This is necessary in order to avoid legal uncertainty caused by ambiguous translations.

Article 9a

The provisions of Article 9a are based closely on Article 3 of the first Directive on the coordination of safeguards in company law. They originate in a proposal by the Economic and Social Committee's Section for Economic Questions. In its report the latter recommended drawing up, for the SE, a coherent set of rules on publication.

Article 10

This Article has merely been reworded.

Articles 10a, 10b and 10c

1. The Convention on jurisdiction and the enforcement of civil and commercial judgments (27 September 1968) will normally apply to lawsuits to which an SE is a party. This is particularly the case as to Article 16(2) of the Convention, which awards sole competence to the courts of the State in which the companies or other corporate bodies have their registered office in all matters regarding validity, nullity or dissolution and the decisions taken by their governing bodies. The case is again the same under Article 53, which assimilates the registered office of companies and other corporate bodies to their permanent residence for the purposes of the Convention.

However, where there is more than one registered office and several courts in different States may therefore have sole jurisdiction, some doubt may arise as to the recognition, in the State of execution where another registered office lies, of a judgment given by a court that likewise has sole jurisdiction.

2. In order to avoid any difficulty or uncertainty, there is good reason for stating in express terms, even though this point is in fact covered by Article 7(1), that only the registered office specified in the statutes and not any other *de facto* office should be taken into account for the purposes of the above Convention (Article 10a).

3. Further, where there is more than one registered office, giving rise to exclusive jurisdiction on the part of courts of several Member States, it is desirable that the provisions as to interrelated actions should be strengthened as against those of Article 22 of the above Convention.

Two alterations are necessary: the one requiring the court seised in second place to stay proceedings, the other applying the interrelationship rule so similarly to have proceedings halted even where interrelated actions are not pending at the same level of jurisdiction. Contrary to abandonment of proceedings, suspension does not in fact have the effect of depriving the parties of any resort of jurisdiction, and it is moreover imperative for an SE that has registered offices in more than one country that conflicting decisions should be avoided (Article 10b).

For the rest, Article 22 of the Convention of 27 September 1968 applies in full, particularly as regards the definition of interrelationship. Article 23 of this Convention, which relates to litispendence in the case of an application falling within the sole jurisdiction of more than one court, will naturally apply without there being any need for special provision to be made in respect of the SE.

4. It also seems right for express provision to be made to eliminate any likelihood of non-recognition in a State of execution due to the exclusive jurisdiction of its courts being repudiated by a court having similar sole jurisdiction in another Member State (Article 10c).

Title II

Formation

Title II, particularly the first two Sections, has been aligned to a considerable extent on the provision of the amended proposal for a third Directive on the coordination of safeguards in connection with mergers between limited companies[1] and on the draft Convention on the International Merger of limited companies[2] drawn up on the basis of Article 220 of the EEC Treaty (published as Supplement 13/73 to the Bulletin of the European Communities). This applies in particular to the first two Sections.

This met the wishes of the European Parliament and of the Economic and Social Committee. A legal act such as the merger of limited companies should, as far as possible, take place under the same conditions throughout the Community, irrespective of whether national or Community law applies.

In the new version, an attempt has been made under the provisions applicable to the formation of each type of company to give a coherent picture of all the formalities that must be completed.

In the section, entitled 'General' only those provisions have been retained which are applicable without additions or restrictions to all methods of formation. These are, in particular, the provisions concerning the Statutes, the supervision of formation by the European Court of Justice and the requirements which the auditors must satisfy.

The provisions of Section 2 on formation by merger have been complemented in particular by rules concerning the effects of mergers on employees (Articles 23a to 23d; see Article 6 of the proposal for a third Directive concerning companies).

It proved possible to consolidate the provisions of Section 3 on formation by establishment of a holding company by making greater use of the possibility of referring to parallel provisions on mergers.

As to the rules in Section 4 on formation of a joint subsidiary and in Section 5 on formation of a subsidiary, it was necessary to ensure that the requisite protection guarantees were afforded also on the formation of this type of company in the event of all or a considerable part of the assets of the founder companies being transferred to a joint subsidiary.

SECTION ONE

General

Article 11

1. Paragraph 1 now makes clear that the founder companies are responsible for applying for registration of the SE.

2. Paragraph 2 contains provisions concerning the documents relating to formation which must be appended to the application, and at the same time indicates the contents of Title II.

3. Paragraph 3 gives a definition of the expression 'founder companies' for the purposes of Title II. This provision has become necessary because corporations other than limited companies have been authorized to participate in forming an SE. It would be too unwieldy if reference had to be made to the provisions of Articles 2 and 3 each time the founders of the SE were mentioned.

Article 12

1. Article 12 now contains only the provisions of Article 12(3) of the old version concerning the authentication by notarial act of the document of constitution and refers in respect of the other requirements as to this instrument to the provisions relating to each mode of formation.

2. The Commission has maintained the notarial form for the document of constitution and the Statutes of the SE (Article 13).

It is of great importance for the formation of the SE that the documents relating to formation should not contain any errors. In an international procedure such as the formation of an SE, authentication by notarial deed appears to offer the best guarantee against the inaccuracy of the formation documents and the resulting dangers for the parties to the

[1] COM (72) 1668 of 4 January 1973.
[2] Supplement 13/73 — Bull. EC.

formation. The Commission considers that notaries in all Member States will be able to prepare themselves for the new tasks imposed on them by the Statute.

Article 13

1. The provisions of this Article consolidate the requirements as to the form and substance of the Statues of the SE.

2. Paragraph 2(a) on the name of the SE has been changed, in accordance with the proposal contained in the report of the Economic and Social Committee's Section for Economic Questions, so as to include the abbreviation SE in the name of the company and thus to extend legal protection to it.

Moreover, provision is made in the Annex to the Statute for Member States to penalize unlawful use of the description 'European company' and of the abbreviation 'SE'.

Subparagraph c on the object of the undertaking has been aligned on Article 18(c) of the original proposal.

The changes to subparagraph d on the particulars concerning the shares issued are solely aimed at achieving greater clarity.

Subparagraph e of the original proposal concerning the accounting currency has been deleted because the relevant provisions of Article 40 make it reduntant.

Subparagraphs f and g in the new version set out the particulars required concerning the Supervisory Board and the Board of Management of the SE which formerly appeared in Article 12(2)(d).

Article 14

The rules contained in Article 14 have been incorporated in the provisions on the various modes of formation.

Article 15

1. The provision consolidates the rules on the appointment of auditors (paragraph 1), the qualifications required of them (paragraph 2) and their liability (paragraph 3).

The requirements as to the auditors' report have, on the other hand, been incorporated in the provisions on the various modes of formation.

2. Paragraph 1 on the appointment of auditors corresponds to Article 12(1) of the draft Convention on the International Merger of limited companies.

3. The provisions of paragraph 2 on the requirements as to auditors have been changed to meet the wishes of the European Parliament so as to take account of the admission and examination procedures in the new Member States.

In addition — in order to avert any encroachment upon the independence of auditors as far as may be possible — ineligibility on the grounds of dependence on a founder company has been made retroactive.

The last sentence of paragraph 2, which provides that the auditors may be the persons responsible for examining the annual accounts, corresponds to the second sentence of Article 5(2) of the amended proposal for a third Directive concerning companies and to the second sentence of Article 12(3) of the draft Convention on the International Merger of limited companies.

4. Paragraph 3 regarding the liability of auditors replaces the earlier Article 20(3). The rules as to liability correspond to those applying to auditors examining the annual accounts (Article 209), to Members of the Board of Management (articles 71 and 72a), and to the Supervisory Board of the SE (Articles 81 and 81a).

It stands to reason that all these persons, who in one way or another are responsible for safeguarding the assets of the SE, should bear liability on a common basis.

5. Paragraph 4 been added in order to regulate proceedings in connection with the liability of the SE.

Article 16

Article 16 has been included among the provisions for the formation of subsidiary companies, to which it is of material importance (Articles 35c and 38(5)).

Article 17

1. On a proposal from the Economic and Social Committee, paragraph 2 of the original version has been deleted. Its subject — the calling in of accountants to assist the European Court of Justice — should be dealt with in the procedural regulation of the court, together with any other assistance required by the latter in reaching its decisions. In the Statute this provision can give rise to misunderstandings as to the purpose of the audit, which is purely a means of legal check.

2. In paragraph 2 the grounds on which registration may be refused have been reduced in number. The Court of Justice may refuse registration only where the provisions of the Statute relating to formation have not been complied with (paragraph 3(a) of the original version) or where the Statutes of the SE do not comply with the Statute (paragraph 3(c) of the original version).

Paragraph 3(b) of the original version (incompleteness of the formation documents) is redundant; it is replaced by paragraph 3 of the new version (supplementing of the documents relating to formation which have been filed).

Paragraph 3(d) of the original version has been deleted because it is ambiguous. This reason for refusal could have given the impression that the Court of Justice was required to carry out an assessment of the auditors' report from a financial point of view. This is not the case, especially since the new provision in Article 20(2) effectively ensures that capital is fully paid up.

3. Paragraph 3 corresponds to paragraph 4 of the original version but has been broadened in scope by the addition of the words 'and the documents relating to formation which they have filed'.

4. The substance of paragraph 4 corresponds to that of paragraph 5 of the old version.

Article 18

1. The provisions of Article 18(1) have been aligned on Article 13. The new version of Article 8 and 9 has made subparagraph h of the original version redundant, since the company journals no longer include daily newspapers designated by the company.

2. In paragraph 2 the provision concerning publication in the company journals of the conclusions contained in the auditor's report has been deleted. Auditors' reports are now fully incorporated in the document of constitution (Articles 22, 30, 35 and 38). The document of constitution may be inspected at the European Commercial Register and its branches by all interested persons (Articles 17(4) and 8(4)). Consequently, there is no need for special publication of it.

In line with the underlying thinking behind Article 2(1) of the First Directive it must be immediately evident to any third party what arrangements have been made as regards the limits of the powers of individual members of the Board of Management to represent the company, even if the company's Board is limited to one member.[1]

Article 19

Paragraph 1 stipulates the date from which the SE has legal personality (see Article 26(2)).

Paragraph 2 makes clear that the liability dealt with therein exists only in respect of obligations entered into *vis-à-vis* third parties.

At the request of the European Parliament, paragraph 3 provides for the newly-formed SE to assume liability for such obligations.

Article 20

1. At the request of the Economic and Social Committee, paragraph 1 no longer refers to the 'persons responsible' for the founder companies but to the 'governing bodies' of the latter.

2. Paragraph 2 now expressly extends the liability of the founder companies and the members of their governing bodies to ensuring that the capital is fully paid up. This is to make certain that the SE can have access to its capital from the moment it acquires legal personality.

[1] European Court of Justice, case 32/74 'Haaga'; Rec. 1974-7, p. 1201.

3. Under paragraph 3 of the new version only the members of the governing bodies of the founder companies may be relieved of liability. The founder companies themselves are in all cases liable for any breach of duty.

SECTION TWO

Formation by merger

Article 21

1. As regards the definition of the merger procedure, the wording of paragraph 1 has been aligned on Article 2(3) of the amended proposal for a third Directive concerning companies and on Article 4 of the draft Convention on international mergers.

2. Paragraph 2 corresponds to Article 2(5) of the proposal for a Directive and to Article 6 of the draft Convention.

Article 22

1. This Article concerning the requirements as to the draft document of constitution has been modelled on Articles 3 and 5(3) of the amended proposal for a third Directive and on Articles 8 and 9 of the draft Convention on mergers.

2. It further covers the case where a founder company has been in existence for less than three complete financial years (Article 22(2)(c) and (e) of the new version). Such companies should be able to participate in the formation.

3. The provisions of Article 22 of the old version concerning the preparation of a balance sheet are contained in Article 22a, while the provisions on auditing have been consolidated in Article 23.

Care has been taken to ensure that all particulars and reports relevant to an assessment of the formation are incorporated in the draft document of constitution itself.

Article 22a

1. This Article contains the balance sheet regulations applicable in the event of formation by merger. Paragraph 1 corresponds to Article 14(1), (2) end (4) of the old version. Article 14(3) applies only to the formation of a subsidiary and consequently has been retained solely in that connection. Article 14(4) of the old version has been amended so as to cover, in particular, benefits and allowances granted to persons who, in order to make possible the formation of an SE, resign from a founder company or from its governing bodies.

2. Paragraph 2 corresponds to Article 22(2)(b) of the original proposal. It has been aligned on Article 5(4) of the amended proposal for a third Directive and on Article 10 of the draft Convention on mergers.

Article 23

This Article now contains a comprehensive set of rules concerning the formation audit in the event of formation by merger.

It has been drawn up on the basis of Article 5(2) of the amended proposal for a third Directive and of Article 12(5) and (6) of the Convention on mergers. This amendment to the original proposal also takes account of a request of the Economic and Social Committee in connection with Article 22 of the old version.

Article 23a

Under this Article the governing bodies of the founder companies must explain the draft document of constitution and specify the consequences of the merger on the employees affected by it.

It appears proper that the remarks of the governing bodies should be consolidated into a single report rather than as laid down in Article 5 and 6 of the third Directive and to incorporate this in the draft document of constitution (as was laid down in the first paragraph in the original Commission proposal).

The wording of this Article has been aligned on Articles 5(1) and 6(1) of the amended proposal for a third Directive.

Article 23b

This Article ensures that the draft document of constitution is made public in an appropriate manner. Previously this was dealt with in Article 24 in connection with approval of the merger by the General Meeting (Article 24(2) and (3)). Logically, it is preferable that these provisions should precede the Articles dealing with the — newly-introduced — discussion of the effects of the merger with the employees' representatives (Article 23c) and the approval of the merger by the shareholders (Article 24).

The new version recognizes that shareholders should not have to pay for copies of the documents relating to formation (see Article 5(5) of the amended proposal for a third Directive). Since this also applies to employees of the founder companies and to other persons whose interests are affected by the merger (debenture holders), provision has been made for the draft document of constitution to be supplied free of charge.

Article 23c

1. By analogy with the rule contained in Article 6 of the amended proposal for a third Directive, provision has been made for the effects of the merger to be discussed with the employees' representatives (paragraph 1).

2. In addition, paragraph 2 refers to those organizations or representatives who under the law applicable to the founder companies must be consulted in the event of a merger.

In the case of companies incorporated under national law, this means those persons or organizations which the Member States will designate for the purpose, under Article 6 of the third Directive concerning companies or which they have already designated.

If one the founder companies is an SE, the European Works Council must be consulted (where establishment of the latter is required under Article 100).

3. By analogy with Article 6 of the proposal for a third Directive, paragraph 3 lays down that the governing bodies and the employees' representatives must open negotiations with a view to reaching an agreement on measures to be taken in respect of the employees in the event of a merger (paragraph 3). The governing bodies of the founder companies must always open such negotiations where the employees' representatives consider that the interests of the employees might be affected. Any agreement reached on the measures to be taken in respect of the employees must be set down in writing.

4. If no agreement is reached as a result of the negotiations, paragraph 4 enables the employees' representatives to put forward in writing their views on the effects of the merger on the employees and on the results of the consultations and negotiations. Under paragraph 5 these views are notified to the General Meeting by the governing body of the company concerned. Thus, the General Meeting reaches its decision in full awareness of the views of the governing body and of the employees.

5. In any case, under paragraph 5 the General Meeting receives a report by the governing body on the results of the discussions and negotiations with the employees' representatives, if the latter have requested such negotiations under paragraph 3.

Reference must be made in the report either to agreement reached or to failure of the negotiations, or the reasons for the likely continuation of negotiations must otherwise be stated. The working of the General Meeting is not dependent, under these provisions, on the outcome of the negotiations.

The report must also contain any agreement reached (paragraph 3) or the written views of the employees (paragraph 4).

Article 23d

1. Where no agreement is reached on the measures to be taken in respect of the employees in the event of a merger, the question may be referred to an arbitration board. Arbitration proccedings are necessary in such a case to prevent the management deciding unilaterally in the last resort on the measures to be taken in respect of the employees, for failure to reach agreement does not prevent the merger.[1]

[1] See also Article 8 of the Proposal for a Directive on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations (OJ C104 of 13.9.1974).

2. In such a case therefore, the arbitration board, after hearing the parties, decides on the measures to be taken by the particular founder company or, later, by the SE where latter acquires legal personality during the proccedings. The provisions concerning arbitration proceedings contained in Article 23d(2) and (3) are modelled on the corresponding provisions in Articles 128 and 129.

3. Paragraph 4 consists solely of a procedural provision intended to ensure the continuity of arbitration proceedings where the SE acquires legal personality during such proccedings (Article 19).

Article 24

1. As regards approval of the merger by the General Meeting, paragraph 1 no longer refers to the rules applicable to the winding up of the founder company but, as a general rule, to the provisions applicable in respect of mergers. Where an SE is a founder company, the provisions which apply are contained in Title XI.

2. Paragraphs 2 and 3 of Article 24 of the old version are incorporated in Article 23b.

3. Paragraph 2 of the new version takes account of the fact that another SE may participate in the formation of an SE. The former reference to 'national law' was imprecise.

4. The last sentence of paragraph 4 of the new version takes account of the fact that non-shareholders are also interested in obtaining copies of the minutes of the General Meeting (see the notes to Article 23b).

Article 25

1. The changed wording of paragraph 1 defines more clearly the scope of the rules concerning the right of shareholders to challenge resolutions of General Meetings. The period within which application may be made to the Court has been extended.

2. Paragraph 2 sets out more succintly than before the conditions under which the European Court of Justice may exercise the right to grant shareholders a special extension of time in which to challenge resolutions. *Prima facie* evidence must be produced to the Court of Justice that:

(i) the shareholder making the application was unable, through no fault of his own, to comply with the conditions of paragraph 1, and

(ii) the resolution of approval is invalid.

Under the previous version of this paragraph, the production of *prima facie* evidence was required only in respect of the invalidity of the resolution. However, the Court of Justice should also be relieved of the necessity for a protracted examination of the matter with regard to the first condition and it would thus seem proper to allow the production of *prima facie* evidence to suffice here also.

3. Paragraph 3 ensures that the SE is not registered before the expiration of the periods for commencement of proccedings for cancellation or declaration of nullity. This addition would appear necessary to ensure that the shareholders' interest in protecting their legal rights does not become unenforceable due to the SE having acquired legal personality.

Article 26

1. Article 26 of the previous version has been supplemented by the requirement in paragraph 1 of the new version that the governing bodies of the founder companies inform the European Court of Justice whether the resolution of the General Meeting has been challenged. This may enable the Court under Article 25(3) to postpone registration where appropriate.

2. Paragraph 2 corresponds to Article 28(2) and (3) of the old version. To avoid legal uncertainty provision has been made for the founder companies to cease to exist on the day following the date of publication of the notice of formation of the SE (in this connection, see also Article 19(1)).

Article 27

1. The system for protecting creditors contained in the original Article has been replaced by a system

which no longer makes it possible for creditors to delay the merger until the founder companies have given security. However, creditors receive the right to require the SE to provide sureties in respect of their debts.

A similar system is contained in Article 19 of the draft Convention on the International Merger of limited companies. It is an improvement on the previous system since, on the one hand, it affords creditors sufficient protection but, on the other hand, does not delay the merger and thereby endanger other interests.

2. Paragraph 1 extends the scope of the system of protection — and in this it goes further than Article 19(1) of the draft Convention on mergers — to cover all creditors whose claims stem from the period before the founder companies ceased to exist (Article 26(2)).

3. Paragraph 2 is based on Article 19(2) of the above-mentioned draft. However, the time limit for negotiations concerning the security has been extended to 14 days to give the parties concerned greater room for manœuvre.

4. The contents of paragraph 3 corresponds to that of Article 19(3) of the abovementioned draft.

5. Paragraph 4 incorporates the rules in respect of loan creditors contained in Article 20 of the draft Convention on mergers in the rules governing protection of creditors so as to achieve a coherent system.

Accordingly, loan creditors may apply for security if they have not, under the terms of paragraph 4, approved the merger, i.e. the rights and measures proposed in respect of themselves in the draft document of constitution (Article 22(1)(c)).

This amended version of paragraph 4 takes account of the wishes of the European Parliament.

6. The rules in Article 27 appear sufficiently flexible to deal with individual cases involving the protection of creditors. In particular, it appears possible with their help to extend to the SE as a whole any special security existing in respect of one founder company or to create an equivalent substitute.

This applies, for example, to the floating charges existing in the United Kingdom and in Ireland for the benefit of debenture holders or other creditors. The board of directors of the British or Irish company concerned will in the draft document of constitution propose the rights or measures envisaged in respect of such persons. If the latter are not satisfied they may require the SE to provide securities of equivalent financial value to a floating charge.

Article 28

1. This Article regulates situations where one of the merging companies owns shares in another. The rules contained in Article 28 in the old version have been incorporated in Article 26 and Article 26(1) has been dropped as being redundant.

2. Paragraph 1 corresponds in part to Article 42(1) of the draft Convention on the International Merger of limited companies.

It lays down rules governing the consequences which flow from ownership by one of the founder companies of shares in an other founder company. Under the draft Convention on mergers, this situation was governed by the national law applicable to the company concerned.[1]

The Statute must lay down rules on this subject. Under the law of universal succession the shares become part of the assets of the SE. Consequently, the shares and the assets to which they relate merge in the legal person of the SE. As is usual in cases where such a merger of claims and obligations occurs, provision can be made for the shares received by the SE to cease to exist.

3. In the event of one company owning all the shares in another, paragraph 2 waives the requirement contained in Article 15(1) to appoint an auditor for both companies. Although, in order to ascertain the share exchange ratio the audit must extend to both companies it is only necessary to appoint auditors for both companies where outside shareholders whose intersts must be protected are affected. This is not the case here.

[1] See the Goldman Report as regards Articles 5 and 42 of the draft; Supplement 13/73 — Bull. EC, Nos 26 and 125 of the Report.

SECTION THREE

Formation of an SE as holding company

Article 29

1. Against the wishes of the Economic and Social Committee but with the approval of the European Parliament, the rule in paragraph 1 remains unchanged.

The Economic and Social Committee is opposed to the exchange of all the shares in all cases and would like shareholders of founder companies to be able to retain their shares.

However, the financial objective of forming a holding company is to enable shareholders of the founder companies to share not in the respective individual profits of the latter but in the profits of the holding company. In this case, the exchange of the shares helps to clarify the relationship.

2. Paragraph 2 has been supplemented by a rule similar to that contained in Article 223(3) of the Commission's original proposal. On the formation of an SE as holding company, when the latter owns all shares in the founder companies, it appears desirable to specify expressly that any national provisions under which the founder companies must be wound up in such cases do not apply.

Articles 30 to 34

1. The rules on formation of an SE as holding company have been strengthened by alignment on the like provisions concerning formation by merger.

2. The interests of shareholders are similar in both cases, since they lose membership of their former companies and through the exchange of shares become shareholders in a new company.

3. The employees of the founder companies have a direct interest in being informed on the effects of the formation of the holding company and on any measures envisaged in respect of them — such as proposed rationalization projects.

Where employees' representatives consider that formation of the holding company will adversely affect the interests of employees' provisions protecting the interests of employees applicable to mergers and contained in Articles 23c and 23d must be applied by analogy.[1] In this case account must of course be taken of the fact that the founder companies continue to exist following formation of the holding company and are not replaced by the SE.

4. The interests of creditors of the founder companies, however, are not the same as in the case of a merger.

Since the founder companies continue to exist following formation of the holding company, formation of the SE has no direct legal consequences requiring special regulation.

In the event of the formation of a purely financial holding company the founder companies in fact remain financially independent. However, where the founder companies are managed in a uniform manner by the holding company following the latter's formation, the safeguards of Article 239 applying to undertakings within a group take effect.

5. The new provisions take account of this situation and also regulate the formation of an SE as holding company as regards the position in law of shareholders and employees from the point of view of form, by making more frequent reference to the like provisions concerning formation by merger.

By such reference, account is taken of the comments of the European Parliament and of the Economic and Social Committee on Articles 30 to 34 and the corresponding Articles 22 to 26.

SECTION FOUR

Formation of a joint subsidiary

Articles 35 to 37

1. It has been necessary to recast and to add to the provisions on the formation of a joint subsidiary because in this type of constitution not only may parts of the founder companies be combined but restructur-

[1] See also Article 8 of the Proposal for a Directive on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations; (OJ C 104 of 13.9.1974).

ing having a financial effect very similar to other forms of constitution can be carried out. This is especially important in the case of undertakings which, although unable to participate in other types of constitution, may take part in the formation of a joint subsudiary.

2. Article 35 accordingly refers to the same particulars as Article 22, with the exception of those relating to the exchange of shares or to the legal status of holders of securities other than shares.

3. Article 35a(1) and (2)(a) and (b) corresponds to Article 22a(1) (see the explanatory note to the latter).

Article 35a(2)(c) contains the provision in Article 14(3) of the original Commission draft, which applies only to the formation of a subsidiary.

4. Article 35b corresponds to Article 23. However, the provisions concerning the contents of the auditors' report have been taken from Article 15(3) of the old version. The verification provided for in subparagraph (c) of this article regarding payment in full of the whole of the capital has been deleted as redundant, since this is already effected by the security referred to in subparagraphs (b) (valuation of contributions in kind) and (a) (opening balance sheet).

5. Article 35c on auditing in the event of reformation corresponds to Article 16 of the original proposal. However, a simplified procedure was proposed for the appointment of auditors.

6. Article 36 specifies which laws apply to approval of the document of constitution and the Statutes.

As regards companies incorporated under national law, paragraph 2 refers to their respective national laws.

Provisions of national law which protect the shareholder, employees and creditors of a company in the event of its participation in the formation of another company are wholly applicable. This applies in particular to provisions such as those intended to be introduced pursuant to the Proposal for a Directive on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations.[1] Should the formation of the joint subsidiary result in the transfer of an establishment the provision of national law adopted in implementation of that Directive or the provisions of national law which are already in existence apply.

Paragraph 3 contains special provisions which apply where an SE participates in the formation of a joint subsidiary. The requirement, already contained in Article 36 of the original version, that the Supervisory Board give its approval is insufficient to afford adequate protection of the interests of the parties. In particular, the employees of the SE must have the opportunity to state their views on the formation of the joint subsidiary and the consequences thereof (subparagraph c).

Where the total assets of the SE are transferred to the joint subsidiary or where its formation affects the competence of the General Meeting under Article 83 in any other way, the formation of the joint subsidiary must be approved by the shareholders of the SE (subparagraph d).

Where the interests of the employees are adversely affected by the formation of a joint subsidiary the Board of Management of the founder SE must prepare a social plan, which is subject to approval by the European Works Council (Article 36(3)(e)).

7. Article 37 has been supplemented.

SECTION FIVE

Formation of a subsidiary by an SE

Articles 38 and 39

As before, the rules make frequent reference to the provisions of Section four.

[1] OJ C104 of 13.9.1974.

Title III

Capital — Shares and debentures

The changes in this Title relate to the rules on the increase of capital (Articles 41 to 43), acquisition by the SE of its own shares (Article 46), and reciprocal shareholding (Article 47). Further, the rules on disclosure of shareholdings, formerly contained in Article 47(5), have been extended and are now incorporated in a special provision (Article 46a).

There have been no fundamental changes to the other provisions of this Title. The requirement that the capital of the SE must be fully paid continues, in particular, to apply (Article 40(2)).

The provisions regarding the increase of capital have been transposed. The distinction between an increase of capital and approval of a future increase of capital is now clear. The rules on shareholders' preferential subscription rights have been consolidated.

The rules on possession and acquisition of its own shares by the SE have been extended. As requested by the European Parliament, such acquisition is now possible if the shares are to be issued to employees.

In accordance with the general wishes of the European Parliament, the new text of the rules on reciprocal shareholding takes account of the work on the preliminary draft for a Directive on the harmonization of law on groups of companies.

The more stringent rules on disclosure of shareholdings in Article 46a, take account of recent trends towards greater clarity in the company law of Member States.

Certain adaptations have, further, been made, particularly to conform with the amended Proposal for a second Directive concerning the formation of public limited liability companies and the maintenance and alteration of their capital.[1]

SECTION ONE

Capital

Article 40

1. Although it was requested to do so by the Economic and Social Committee, the Commission is unable to delete from its proposal the requirement in paragraph 2 that the capital of the SE must be fully paid up. The Commission has also examined the request of the Legal Affairs Committee of the European Parliament and of the Economic and Social Committee as to whether at least certain companies such as insurance undertakings might not be exempted from the requirement that capital must be fully paid up.

This requirement is one of the fundamental features of the rules governing the SE and it has been introduced quite specifically to ensure that the SE enjoys maximum credit-worthiness and that its registered capital is fully at the disposal of its management.

Any exemption from the requirement that capital must be fully paid up prejudices these goals. Moreover, formation procedures which involve an exchange of shares, such as mergers or formation of a holding company, can in practice only be carried out by companies with a fully paid capital. On the other hand, where a joint subsidiary is formed, the minimum capital has now been reduced to such an extent that there would no longer appear to be any real need for an exempting provision, especially since only companies already in existence are allowed to form an SE.

Moreover, if only partly paid shares were allowed, comprehensive rules would be needed to cover situations where full payment of shares was not effected subsequently. It must therefore be ensured that the declared risk capital is in fact available, eg, by means of rules on the compulsory withdrawal and transfer of such shares.

2. In paragraph 3 the definition of capital subscribed in kind has been slightly altered. As before, it relates to intangible assets, but it is tied not to the concept of 'value' but to the concept developed in private law of the 'article'.

The deciding factor is not whether the article is transferable but whether it is economically saleable.[2] Unsaleable contributions, such as obligation to carry out work or provide services in particular, would be impermissible under paragraph 3.

3. The special rules on transfers of land requested by the Economic and Social Committee in view of national provisions which exclude such transfers (as

[1] COM (72) 1310 of 30 October 1972.
[2] Cf. e.g. Article 10 of the Proposal for a second Directive.

they do the transfer of other rights in immoveable property) to companies not yet formed, appear unnecessary. The concept of 'subscription' or the 'contribution of capital subscribed in kind' may be interpreted as covering the legal position in which there is nothing further to prevent the company that has been formed from acquiring the article contributed.

4. In Article 48(1) account has been taken of the amendment requested by the Economic and Social Committee that the share capital should be divisible.

Article 41

1. This provision now contains a comprehensive set of rules for increasing capital by scrip issues or by the capitalization of reserves. In substance it corresponds to the original rules contained in paragraphs 1 and 2 of Article 41 and in paragraphs 3 and 4 of Article 42.

The creation of approved capital is now dealt with comprehensively in Article 42.

2. Article 41(1) in the new version consolidates the provisions previously contained in paragraphs 1 and 2; at the same time, the wording has been redrafted and two points have been clarified.

Increase of capital by capitalization, as an alternative to increase of capital by new issues, no longer relates to available reserves but to disposable reserves. This dovetails into the terminology used in the model balance sheet in Article 153 (item II on the liabilities side). At the same time, on a point made by the Section for Economic and Financial Questions of the Economic and Social Committee, it has been made clear that not all available reserves may be capitalized but only those specifically disposable for conversion.[1]

Further, the new wording makes it clearer than the original Commission proposal did that an increase of capital requires an alteration of the Statutes.

3. Paragraph 2 contains the rules previously contained in Article 42(3) on the examination by experts of the value of assets subscribed in kind. At the request of the European Parliament, more flexible rules now govern the appointment of these experts.

The examination may, as previously laid down, be carried out either by experts appointed by the court or, alternatively by the SE's annual auditor. Which alternative is adopted will depend on the merits of each particular case, the final choice being made jointly by the Board of Management and the Supervisory Board.

As regards the professional qualifications of experts appointed by the court, reference is no longer made to the rules in Article 203, which apply to the annual auditors, but only to Article 15(2). This makes no fundamental difference since, according to the new version of Article 15(2), the requirements of the former Article 203(3) as to the independence of annual auditors now also apply to experts.

The experts are now also subject to the same rules regarding liability (Article 15(3)) as formation auditors. (Article 209 contains the rules in respect of annual auditors.)

4. Paragraph 3 corresponds with the second and third sentences of the former Article 42(3). These provisions ensure that the general public are made aware of the report on the assets subscribed in kind and that shareholders can acquaint themselves of its contents (re calling of a General Meeting, cf. Article 86).

Under Article 94(2), this report must further be deposited, *qua annex* to the minutes of the General Meeting deciding on the capital increase, with the European Commercial Register.

To this extent the provision equates in substance with Article 8(3) of the amended proposal for a Second Directive.

5. Paragraph 4 contains the rules formerly contained in Article 42(4) which govern the increase of capital by capitalization of reserves.

In accordance with the request of the European Parliament the rules have been added to in order that the SE may distribute shares to its employees in respect of the capital created by capitalizing reserves.

Article 42

1. This provision contains all the rules which apply to the legal concept of 'approved capital'. This aspect was previously governed by Articles 42(3) and 43(1) and (3).

[1] This paragraph concerns the English text.

2. Paragraphs 1 and 2 of the new version correspond to a considerable extent with the rules previously contained in Article 41(3).

However, it has been made clear in paragraph 1 that approval of a future increase of capital constitutes an alteration of the Statutes, to which all the provisions of Title VIII apply. Thus, directly after the General Meeting has adopted the resolution, the approval is examined by the European Court of Justice, and the amount of the approved capital and the period for which approval is given are then recorded in the European Commercial Register. This ensures that the approval is used and the new shares are issued on a firm legal basis.

This change, which serves to facilitate financing of the SE by improving this means of procuring capital, is based on financial considerations, in line with suggestions made in financial circles.

3. Paragraph 2 lays down the limits set to the approval of a future increase of capital. These were previously contained in Article 41(3) of the original proposal. It has not been necessary to include in the new text the exception then made where the creation of approved capital was linked to an issue of convertible debentures, since the latter is now dealt with comprehensively in Article 60, quite separately from Article 42.

4. Paragraphs 3 to 5 govern the utilization by the Board of Management of the SE of the approval obtained. In contrast to the provisions of Article 43(1) and (3), a decision on the manner of utilization by the Board of Management requires the agreement of the Supervisory Board. Further, the disclosure formalities incumbent upon the Board of Management have been made more specific.

Article 43

1. This provision now deals comprehensively with shareholders' subscription rights.

Paragraph 1 contains the rules formerly contained in Article 41(1) of the original proposal on shareholders' rights to scrip on a capital increase by a new issue. It has been made clear that this right exists in the case of cash subscriptions.

2. Paragraph 2 contains the rules on the withdrawal of subscription rights and corresponds in substance, with the first and second sentences of Article 42(2) of the original proposal. Paragraph 3 contains special rules for the withdrawal of such rights when a future increase of capital is approved. In accordance with a suggestion made in the report of the Section for Economic and Financial Questions of the Economic and Social Committee it is now possible to authorize the Board of Management to withhold the right to subscribe in order to provide the SE with greater flexibility in seeking potential sources of finance. The right to give such authorization is also provided for in Article 25(3) of the amended proposal for a Second Directive. However, a condition of granting the authorization is that the Board of Management justifies the need therefore in writing.

Article 43a

This provision contains rules concerning the liability of the Board of Management of the SE. They are modelled on those in Article 20 relating to founder companies and the members of their governing bodies.

Rules of this sort relating to liability are necessary not only in connection with the formation of the SE but also when its capital is increased, to ensure that its declared capital is at its disposal.

Article 44

1. It is now made clear in paragraph 1 that a reduction of capital requires an alteration of the Statutes, subject to all the relevant conditions in Title VIII.

2. By comparison with the original proposal, paragraph 3 extends the prohibition on using the amount of the difference between the assets and liabilities of the SE, resulting from a reduction of capital, for the benefit of shareholders. The rules correspond to Article 30 of the proposal for a Second Directive.

Article 45

Paragraphs 1 to 3 contain the rules under which creditors are protected if the capital is reduced; they are similar to those in Article 27 relating to the

formation of the SE, to the explanatory notes on which Article reference may be made.

Paragraphs 4 and 5 correspond to Articles 29(2) and 30(1) respectively of the amended proposal for a Second Directive on company law.

Article 46

1. At the request of the European Parliament and the Economic and Social Committee, the prohibition in Article 46 on the acquisition and possession of its own shares by the SE has been relaxed so as to give the SE the additional right to distribute its own shares to its employees.

The Economic and Social Committee has asked for further relaxation of this prohibition in that it wishes the SE to be allowed to acquire its own shares to prevent the company suffering heavy losses. The limits to such an exception are difficult to define; they may render the prohibition meaningless and thus endanger the financial basis of the company. There would, moreover, appear to be no overriding need for such a rule on financial grounds. In the United Kingdom, companies do not have the tight to acquire their own shares and this would not appear to have created any difficulties.

Neither is any exception justified in the case of an exchange of shares in connection with the giving of guarantees to the minotity shareholders of a dependent company within a group. In such cases the shares may be acquired through the more straightforward solution of an increase of capital.

Lastly, by Article 44(2), a reduction of capital may be effected by reducing the nominal value of the shares so that here, too, an exception is unnecessary.

For these reasons and especially considering the fact that the European Parliament has expressed its opposition to any such exception, the Commission has not complied with the Economic and Social Committee's request.

2. At the wish of the European Parliament, paragraph 1 prohibits acquisition of shares in the SE not only by undertakings controlled by it, as previously laid down, but also by undertakings in which the SE holds a majority of shares. By Article 6 there is only a presumption of dependence in the latter situation. It must, however, be included within the prohibition, to prevent a major part of the shares in the SE held by the other undertaking from flowing back into the assets of the SE through the medium of its majority holding in the assets of that undertaking. This would indirectly reduce the capital of the SE.

3. Paragraph 2 contains the substance of the exemption requested by the European Parliament enabling distribution of shares in the SE to its employees or to employees of undertakings belonging to the group.

At the request of the Parliament, paragraph 3 extends the prohibition, previously contained in the second sentence of Article 46(1), against pledging the shares of the SE, to acquiring any right of usufruct or any other beneficial rights over them. Having regard to Article 92(1) whereby the usufructuary is entitled to exercise the voting rights attached to a share, such an extension is necessary to remove the danger of abuse through the exercise by the SE of voting rights attached to its own shares. This prohibition is aimed only at the SE since, other than where shares are acquired, there should, in practice, be little scope for nominee transactions using third parties or dependent undertakings acting on behalf of the SE.

4. Paragraph 4 a corresponds to paragraph 2 of the original proposal. At the request of the European Parliament, the duty to dispose of shares within one year has been extended to eighteen months. In future, in accordance with the rules in paragraph 1, an undertaking in which the SE is a majority shareholder will also in future be obliged to dispose of its shares in the SE.

Further, at the request of the Economic and Social Committee, it has been made clear that although the SE is not under the prohibition contained in paragraph 1 where it acquires its own shares by way of universal succession, such shares must be disposed of within the eighteen month period. In addition to mergers, already referred to in the previous Article 46(2), universal succession covers other forms of transfer of assets, such as inheritance.

5. Paragraph 4(b) contains special rules for the transfer of shares acquired for distribution to employees. Care has been taken to ensure that such shares are also disposed of by the SE within eighteen months at the latest.

6. At the request of the European Parliament, paragraph 5 contains a rule to prevent the shares to

which paragraphs 4(a) and 4(b) relate from being wrongfully dealt with before they are disposed of and, at the same time, to secure compliance with the duty to dispose of them under paragraph 4.

Article 46a

1. Article 46a imposes a duty to disclose all holdings of more than 10% of the capital of an SE and all holdings of an SE of more than 10% of the capital of another company. The essential aspects of this obligation were previously contained in Article 47(5).

The obligation has been incorparated in a separate provision since it is important not only as a basis for the rules in Article 47 governing reciprocal shareholdings. It is rather the expression of a desire which has developed increasingly in the legal policy of all the Member States that dominant relationships in an undertaking should be clearly revealed. In aiming towards this, the provision is also an important part of the system by which the Commission wishes to prosecute the stockmarket policy goal pursued in Italy through registration of shares. This goal is to identify every shareholder who is in a position to exert influence in a public limited company.[1] Article 82 forms another part of this system, as regards shares quoted on a Stock Exchange.

2. Paragraph 1 extends the duty to provide the required information to every shareholder who directly or indirectly holds more than 10% of the capital of an SE. The previous rules in Article 57(5) of the original proposal—in the context of reciprocal shareholdings—covered only companies. In addition, the period within which notice must be given of the shareholding has been fixed at eight days. This period commences when the person required to make notification is in a position to do so, i.e. as soon as he has acquired a holding or has received knowledge of an acquisition attributable to him.

3. Paragraph 2 retains unchanged the rule previously contained in the first sentence of Article 47(5) under which an SE holding more than 10% of the capital of another company must give that company notice of the shareholding. Such a rule is necessary to enable the system laid down in Article 47(2) for dismantling cross-holdings to function.

4. Paragraph 3 provides for a system, in line with the above-mentioned goals, for disclosure of shareholdings notified to the SE in accordance with paragraph 1. Previously, under Article 191(4), such shareholdings were published only in the notes on the annual accounts of the SE. However, this does not adequately provide the general public with a sufficiently clear picture of the various interests held. The new rules seek to achieve this by requiring the SE to give notice to the European Commercial Register of all shareholdings of more than 10% of its capital and of any relevant change in such shareholdings. Any increase in a shareholding in the SE which causes it to pass steps of 15%, 20%, 25%, etc. of the SE's capital is regarded as of relevance to the general public. The same applies where a reduction in the shareholdings causes it to fall below one of these 5% steps. Thus, for example, notice must be given to the European Commercial Register of an increase which causes a shareholding of 29% of the capital to rise to 31% or a reduction in a shareholding causing it to fall from 18% to 14%.

Steps taken to publish notice given by an SE of its shareholdings in another company (paragraph 2) must be governed by the law to which the latter company is subject.

5. Paragraph 4 contains the provisions previously contained in the third sentence of Article 47(5) guaranteeing implementation of the duty of notification, though with two alterations.

The suspension of rights provided for now affects only those shareholders of the SE who have failed to discharge their duty of notification under paragraph 1.

If on the other hand, the Board of Management neglects to make the notification that the SE is obliged to give under paragraph 2, suspension of the rights attaching to the shareholdings in other companies affected thereby is not a suitable sanction, as the SE is not immediately protected in this way.

Protection of the company, for its part, is a matter for its local legislation.

The Board of Management of the SE will however, also be obliged to discharge their duty of notification under paragraph 2 by the threat of criminal proceedings that has been provided (see explanatory notes, paragraph 6), lest the SE suffer harm due to their failure to act.

[1] Cf. the explanatory notes to Article 50.

Suspension of rights now applies in respect of the entire holding in the SE subject to notification under paragraph 1, in so far as it may not have been notified.

Under Article 47(5)(3) of the original version, however, the provision affected only that part of a holding which exceeded 10% of the SE's capital. With a restriction of this kind, the effective scope of this provision would have remained too circumscribed.

6. To ensure compliance with the obligations laid down in Article 46a, the Annex to the Statute provides (in addition to the sanctions under civil law of paragraph 4) that Member States must penalize a wilful breach of Article 46a by criminal proceedings or in some other way.

Article 47

1. The prohibition on reciprocal shareholdings in excess of 10% between an SE and another company has been retained. Although approved by the European Parliament it has been rejected by the Economic and Social Committee as being too wide in its scope.

The Commission takes the view that the usefulness of crossholdings as a means of cooperation between undertakings, which the Economic and Social Committee has cited, cannot outweigh the dangers inherent in such holdings in excess of 10%, of concealment of the proportions of capital held and distortion of the decisions of the General Meeting.

2. Paragraph 1 determines the yardsticks for cross-holdings for the purposes of the ensuing provisions.

3. Paragraph 2 governs the dismantling of cross-holding in excess of 10%. An effort has been made to make these simpler and fairer than the previous rules in paragraph 3 of the original proposal. In principle, the company which first fulfils its obligation under Article 46 a may retain its shareholding. This means that the company which first receives a notification under Article 46a of the existence of a shareholding must reduce its holding.

Where both companies receive such notification simultaneously, each must reduce its holding to 10%.

However, as previously provided, the companies may still reach agreement on an alternative method of dismantling the cross-holding.

At the request of the Economic and Social Committee, the period within which the cross-holding must be dismantled has been extended to eighteen months, in line with the period laid down in Article 46(4), to reduce the danger of outside shareholders suffering losses due to a fall in share prices.

4. Paragraph 3 states that rights attaching to a holding that is to be dismantled will hold good as from the creation of the obligation to transfer and not merely as from its expiry, as was originally provided under paragraph 4.

In this way the risk inherent in a cross-holding of the decisionmaking process of the General Meeting being distorted is mitigated actually before the period during which this holding is to be dismantled expires.

5. In contrast to paragraph 2 of the original proposal, the rules on dismantling the reciprocal shareholding no longer take account of the extent of each holding.

However, an exception must be made in cases of reciprocal shareholding where one company holds the majority of the shares of another company or the other company is controlled by the first company. The rules contained in paragraphs 4 to 6 make this exception.

It appears unrealistic that the rules on dismantling a cross-holding permanently deprive a controlling company of the chance of possessing a majority shareholding and thus to exercise sole management as provided under the rules governing groups in Title VII even though the amount of the holding acquired would, in certain circumstances, enable economically justified sole management to be exercised.

6. With this in mind, the rules in paragraph 4, which are in line with those in Article 46(4)(a) and (5), apply where an SE has such a majority holding. The rules in paragraph 4 have been expanded to avoid uncertainty of interpretation since a stipulation that the rules in Article 46(4)(a) and (5) take precedence over those in Article 47(2) and (3) would result in a technically complicated solution and, in view of paragraphs 5 and 6, one difficult to understand.

7. In contrast to paragraph 4, paragraph 5 contains rules which apply where another company is able to control the SE. In line with the rules in paragraph 4, it is provided that the SE must dispose of all its shares in that company. In this way the cross-holding is

dismantled and the other company retains the right to form a group—in the same way that the SE does in the case governed by paragraph 4.

8. Paragraph 6 contains rules which apply where, exceptionally, each of the two companies with cross-holding controls the other or holds a majority of the other's shares.

Such a situation may perhaps arise where a company controlled by another company merges with a third company and thereby acquires a majority of the shares of the controlling company. Both companies must reduce their shareholdings to 10% wtin the period specif teen months from the date on which the dependent relationship commences or the majority shareholding is acquired unless they acquired agreement on a different procedure for reducing the cross-holding.

SECTION TWO

Shares

Article 48

In paragraph 1 the request of the Economic and Social Committee that the nominal value of the shares of an SE should be divisible by ten has been met.

Article 49

1. Paragraph 3 makes it clear that no shares carrying restricted or extended voting rights other than the non-voting shares provided for in paragraph 2 are permitted. This applies not only to shares carrying multiple voting rights which were expressly prohibited previously but, in particular, to shares carrying the right to nominate candidates for appointment to the Supervisory Board.

2. Paragraph 5 regarding changes in the relationships between several classes of shares had been adapted to Articles 22(3) and 28 of the amended proposal for a Second Directive. Holders of a particular class of shares must be protected not only against alteration of the relationship of one class to another, but also against any other adverse effects.

Article 50

1. The rule under which the European company may issue shares either in bearer or in registered form has been approved by the European Parliament and the Economic and Social Committee.

The Commission is aware that this rule causes difficulties in Italy because only registered shares are allowed there. However, it believes that it is possible to achieve the stockmarket policy goal of clear revelation of the controlling interests in a company, pursued in Italy by the share registration requirement, by other means in the case of the SE. The rules in Article 46a and 82 of the new version lay down even more strictly than was the case in the original proposal that every shareholder able to exert influence in an SE must be identified. These rules are supplemented by the requirement in Article 89(2) that a list must be kept of persons present at General Meetings and by the prohibition in Articles 88 and 88a of the exercise of voting rights by secret proxy.

The other goal pursued in Italy through registration of shares, that of proper taxation of shareholders, can likewise be achieved in other ways (deduction at source, bordereau accounting).

It is therefore unnecessary to require the shares of the SE to be registered, thus making it more difficult for them to be dealt with on the securities markets of most Member States.

2. Paragraph 2 requires an alphabetical register to be kept of the legal holders of registered shares, accessible to all persons. This appears to be a more practical way of listing such shareholders than the keeping of a share register, as previously provided.

Article 51

1. The rules in paragraphs 2 and 6 of the original proposal concerning the issue of provisional certificates prior to the preparation of share certificates have been deleted since they cause uncertainty and because there appears to be no compelling need for them in practice.

2. Paragraph 4, which corresponds to paragraph 5 of the previous version, now contains all the rules which apply to cancellation of share certificates by the court and to their effect as against the SE, so that the former reference to national law is redundant.

Article 52

The scope of the previous rule has been cut down so that it now governs only the effectiveness of a transfer of bearer shares as against the SE. The law applicable to the relationship between the transferor and the transferee of the share is not thereby anticipated. Such law may, as in Germany, lay down that certain further requirements, such as consensus on the transfer, must be met in addition to simple delivery of the share, for acquisition to take effect as against the transferor.

Article 53

1. The amendments to paragraph 1 are the result of amendments to Article 50(2) and 52. The reader is referred to the explanatory notes to these Articles.

2. Paragraph 4 has been redrafted so as to establish more clearly the significance of the prohibition on registering transfers shortly before General Meetings. Cf. the new version of Article 86(1) on the covering of the General Meeting.

SECTION THREE

Debentures

Article 54

This Article has been reworded so as to take account of the new Article 60a, regarding the issue of profit-sharing debentures.

Article 55

At the requiest of the European Parliament, the details to be included in the notice of a public issue of debentures have been expanded.

Article 56

The text of paragraph 2 has been revised.

Article 57

1. Paragraph 1 now makes it clear that upon a public issue of debentures the Board of Management of the SE will as a general rule appoint the representative of the body of debenture holders.

2. In paragraph 2 it is made clear that surety in respect of the issue in question may be transferred by the company to the representative of the body of debenture holders in his capacity as their 'trustee'. In addition, the rights which may be exercised by the representative of the body of debenture holders at General Meetings have been more precisely defined.

Lastly, at the request of the European Parliament, debenture holders may have access to the documents to which shareholders have access.

Article 58

1. In paragraph 1 the percentage of debenture holders who may have a meeting of the body convened has been increased from 5 to 10. This is to avoid the risk of abuse of this right by debenture holders who, in general, are adequately protected by the representative of the body.

2. At the request of the European Parliament, the quorum laid down for a meeting to be validly held has been reduced to fifty percent of the holders of debentures issued and outstanding. Further, the original text of paragraph 2 has been retained in order to avoid misunderstandings regarding validity of the meeting.

3. The text of paragraph 4 has been revised.

Article 59

The text of paragraph 2 has been revised in its wording.

Article 60

1. The rules concerning questions connected with the issue of convertible debentures have now been consolidated.

2. Paragraph 1 makes it clear that the issue of convertible debentures requires an alteration of the Statutes. This, in particular, ensures, to the benefit of subsequent holders of such convertible debentures, that the European Court of Justice will duly and in accordance with the relevant provisions of Title IX examine whether the formal conditions for issue have been satisfied and, especially, whether sufficient approved capital is available to cover the subsequent exchange of debentures. The convertible debentures may then be acquired on a legally secure basis.

The amendment is based on economic considerations similar to those underlying the corresponding situation governed by Article 42, where shares are issued consequent upon the creation of approved capital.

3. Paragraph 2 of the new version limits the amount of approved capital which may be made available for the issue of convertible debentures and makes it independent of the amount of approved capital created in pursuance of Article 42.

In both cases, the Commission still considers it necessary that the creation of approved capital should be restricted in order to protect shareholders. However, the issue of convertible debentures is governed by different rules and serves different purposes from an increase of capital effected in accordance with the new version of Article 42, so that a common limit for both methods of financing does not appear justified.

4. Paragraph 3 of the new version corresponds to paragraph 2 of the previous version. At the request of the European Parliament, the rules governing shareholders' subscription rights have been extended and restriction of such rights has been made subject to the guarantees contained in Article 43.

Paragraph 4 corresponds to paragraph 3 of the previous version, the wording of which has been revised.

Paragraph 5 lays down the publication formalities to be carried out by the Board of Management; these correspond with those in Article 42(5).

Article 60a

The Commission has complied with the request of the Economic and Social Committee that the SE should be able to issue profit-sharing debentures.

In order to protect shareholders, it appears appropriate that the issue should be based on a resolution which meets the requirements for altering the Statutes and that shareholders should be accorded subscription rights, as is the case where convertible debentures are issued.

Article 61

The issue of profit-sharing debentures is now permitted under Article 60a, so that it is clear that these do not fall within the prohibition in Article 61.

There appears to be no compelling need for any further exemption from the prohibition in Article 61.

Title IV

Governing bodies

The provisions regarding the governing bodies of the SE and the distribution of their powers among the SE's General Meeting, Supervisory Board and Board of Management have been approved in principle both by the European Parliament and by the Economic and Social Committee. It was recognised, in particular, that a division was desirable between the functions of the Supervisory Board and those of the Board of Management in order to afford the SE every opportunity of conducting its affairs effectively and at the same time ensure that these were efficiently supervised. The basic principles of title IV have therefore been left unaltered.

Substantial changes have, however, been made in the provisions in the second section of this title regarding the composition of the Supervisory Board.

The question as to whether and how employees should participate in the composition of the Supervisory Board lay at the centre of discussions on the European Company right from the start.

Since the Commission submitted its proposal in 1970 there has been a certain convergence of attitudes as regards the general viewpoint on employee participation on the governing bodies of their company.[1] Evidence of this may be found not only in the deliberations of the European Parliament but also in those of the Economic and Social Committee. Approval has in the mean time been unanimously given to the principle of representation on the Supervisory Boards of the SE; unanimous, too, was the demand for a uniform European solution that would not be forced to rely upon different domestic legislations nor permit of divergent models.

As regards its composition in detail, there as agreement in the European Parliament that the Supervisory Board should comprise an equal number of shareholders' and employees' representatives who will in turn jointly co-opt independent persons representing general interests.

Views differed on this point in the Economic and Social Committee, so that no recommendation was produced.

The Commission's revised proposal is based on the Opinion of the European Parliament. The Commission feels that equal weighting of shareholder and employee representation on the Supervisory Board cannot but contribute towards the creation within the SE of a new relationship between the SE and its employees. Employees are given the opportunity of active participation in an undertaking of a type new in Europe not only in that they may safeguard their rights and status but also in that they contribute towards shaping a corporate policy duly evaluated to take the interests of all parties concerned into account.

The provisions requested by the European Parliament ensure that deadlock in the decision-making process within the SE is avoided. The Commission further regards the fact that interests wider than those of the shareholders and employees directly affected are represented on the Supervisory Board of a European undertaking under these provisions as a positive element.

The comprehensive provisions sought by the European Parliament regarding the composition of the Supervisory Board in fact, in logical sequence, fit better among those of Title IV and not in Article 137, which forms part of Title V regarding employee representation within the SE. They have therefore been included among the provisions of section two of Title IV without this signifying any material change. The new provisions of Articles 74a, 75a and 75b serve this purpose.

In line with the tenor of the European Parliament's Opinion, the same conditions have also been granted to members of the Supervisory Board in the regulations concerning the term of office and premature expiry thereof. In this connection reference should be made to Articles 74c and d, and the corresponding explanatory notes. With further regard to this Opinion, a provision for removal from office by court order has been introduced, to apply to all members (Article 74e).

The other changes to the provisions of Title IV are more technical in nature. By re-grouping a number of provisions, the first section, on the Board of Management, was made more succinct; the information to be passed on by this Board to the Supervisory Board is now governed comprehensively by the new Article 73a.

[1] The Commission enters into detail in its document on Employee Participation and Company Structure in the European Communities.

At the request of the European Parliament, the instances in which the court may intervene under Article 99 have been expanded in section five, which deals with special controls.

The provisions of Title IV in general have been adapted in accordance with the European Parliament's wishes to the Commission's proposal for a fifth Directive of 9 October 1972[1] regarding the structure of limited companies. This particularly concerns the liability of members of the Board of Management and Supervisory Board and the exercise of voting rights in the General Meeting.

SECTION ONE

Board of Management

Article 63

1. Paragraph 1 regarding the appointment of members of the Board of management has been extended to include a clarificatory comment (cf Article 13).

2. The new paragraph 2 specifies that members of the Board of Management must be appointed for a restricted period. This seems necessary to the Commission in order to give the Supervisory Board a means of renewing the Board of Management in all circumstances in the company's interests, without resort to the process of dismissal under paragraph 7, which could be personally distasteful to the parties and possibly costly for the company.

The period of appointment can be fixed in a flexible manner within the prescribed maximum period of six years.

3. The requirements as to the nationality of members of the Board of Management previously contained in paragraph 3 have been deleted.

While the European Parliament had not in fact questioned this provision, its Legal Affairs Committee having expressly rejected a proposed amendment, the Economic and Social Committee nevertheless raised objections which the Commission feels are justified.

The provision runs counter to the possibility existing under the Statute for shares in an SE to be held by non-Community shareholders. The work force of the SE may originate as well from non-Member countries. The provision is therefore a dead letter without real effect on the structure of the European Company, and merely gives the unjustified impression of a restrictive or discriminatory posture.

4. Paragraph 4 regarding the circumstances in which the office of member of the Board of Management may not be exercised has been redrafted. Particular account was taken of discussions within the Economic and Social Committee.

The first ground for disqualification covers every kind of incapacity of legal origin affecting the Board member concerned. The lack of legal capacity referred to previously is included in this category.

The second category covers disqualification by the court. What is required is a decision of the court, irrespective whether the proceedings were civil, criminal or procedural in nature and brought within or beyond the Community, as a result of which, under the law of a Member State, the person affected thereby is temporarily or permanently prevented from holding office as member of the Board of Management or in some similar capacity. The instances of bankrupty and criminal conviction referred to previously are included in this category.

5. In paragraph 6 the provision regarding responsibility for personal matters has been deleted and has been transferred in amended form to Article 64(2), to the explanatory note to which reference may be made.

6. Paragraph 7 has been reworded and has had an elucidatory sentence added. The intention set out in paragraph 3 of the explanatory notes to the first draft of giving definitive effect to dismissal in all circumstances received inadequate expression in the earlier text.

Article 64

1. For the sake of greater clarity paragraph 2 now deals comprehensively with the distribution of responsibilities within the Board of Management. Responsibilities were previously dealt with in Articles 63(6)(2) and 64(2).

[1] OJ C131 of 13.12.1972; issued with explanatory notes as Supplement to Bull. EC 10-1972.

The functioning of the Board, earlier also covered by Article 64(2), is now dealt with separately in paragraph 3.

According to Article 63(6)(2) of the original proposal a member of the Board of Management was to be entrusted with personnel matters. This provision has been amended to cater for the fact that, in holding companies in particular, Board duties are frequently delegated not on departmental but on divisional lines.

Each member of the Board of Management accordingly becomes responsible for all matters relating to a specific group undertaking or for all matters within a division of an undertaking. An arrangement of this kind should not be ruled out through any statutory provision for competence in personnel matters.

Determination of responsibilities in personnel matters remains as before, a matter for the Supervisory Board. This will ensure that the solutions found will be those doing justice to all interests.

The only statutory requirement is that competence in personnel matters should be clearly defined within the Board of Management.

3. Paragraph 3 contains a redrafting of the previous provision for the internal functioning of the Board of Management, as it stood in Paragraph 2(2) of the original proposals, as desired by the European Parliament.

Article 65

1. Representation of the company in dealings with third parties, formerly governed by Articles 65 and 67, is now dealt with comprehensively in Article 65, with due regard to the new provisions on publicity of Article 9a.

2. The principle of individual representation laid down in paragraph 1 was approved by the Economic and Social Committee and was not questioned in debate in the European Parliament. Industrial representation makes for clear-cut relationships in formal transactions and is therefore retained unchanged.

3. Paragraph 2 has been criticised, both by the European Parliament's Legal Affairs Committee and by the Economic and Social Committee, particularly for its use of the concept of 'agents with power of procuration', which has no standard meaning within the Community.

The new wording takes account of discussions held by both bodies.

4. It is intended that the Board of Management retain the capacity, previously provided, to delegate specific duties and powers to persons having its confidence, who will act on its responsibility. There is no need to make special provision for the delegation of powers within the company.

Under Article 62, there is no restriction on the range of functions of the Board of Mangement. For this reason, too, there is no call within the scope of the Statute for the introduction of the Company Secretary, whose appointment is governed by law in Great Britain and Ireland. There is, however, certainly no bar to the Board of Management delegating specific duties to persons acting on its responsibility. This also applies to the duties performed by company secretaries in companies in Britain and Ireland.

Where persons entrusted by the Board of Management with the performance of specific tasks shall represent the company generally and unrestrictedly in dealings with third parties, however, there is a case for their powers of representation to be regulated under the Statute. Such powers conferred under the ordinary law are insufficient for this purpose, as their content would have in general to be verified from one case to the next. General representatives of this kind cannot therefore enjoy the confidence in their powers in the normal course of business that is due under Article 65(2) to persons having general powers of representation without limitation *vis-à-vis* outsiders.

The appointment of persons with general representative powers is dependent upon the consent of the Supervisory Board, as was the case in the original proposal. The Board of Management may revoke the appointment at any time without regard to the contract of service that such persons may have with the SE.

The effects of the appointment and revocation *vis-à-vis* third parties are dealt with in paragraph 5.

5. Paragraph 3 contains the provision previously made in Article 67 regarding acts of the Board of Management falling outside the company's objects. The last sentence of Article 67 has, however, been deleted as superfluous (cf. Article 65(1) supra). The rule now applies to representatives with general powers. In accordance with the aims of the provisions of paragraph 2, the effects of the represen-

tative powers of such persons *vis-à-vis* third parties will be similar in every respect to those of members of the Board of Mangement.

6. Paragraph 4 is substantially equivalent to the former paragraph 3.

7. The first sentence of paragraph 5 of the new version replaces paragraph 4 of the old with a reference to the general rules of Article 9a regarding publicity. The second sentence corresponds substantially to the earlier paragraph 5.

Article 66

1. The acts enumerated in Article 66(1) continue to be subject to approval by the Supervisory Board, with the agreement of the European Parliament and, in essence, that of the Economic and Social Committee.

In sub-paragraph a the concept of the 'establishment' as a technical institution has, at the request of the European Parliament, been used instead of the less concrete term 'undertaking'.

Sub-paragraph b will in future unmistakably include modifications in the functions of the undertaking.

Provisions for an SE that controls a group have been added to the former paragraph 1. Decisions of the SE's Board of Management in their capacity as management of the group will accordingly require Supervisory Board consent in the cases set out in Article 66 where they affect a dependent group undertaking. This is an implicit consequence of managing the group as an economic unit. Stipulation of a duty of consent limited to the sphere of the SE would hardly be expedient if the SE is formed as a holding company. The addition makes for clearer interpretation in this case.

2. Paragraph 2 has been added at the request of the European Parliament in order to set up criteria for determining the cases referred to in the first paragraph and, in particular, for interpreting the unqualified terms 'appreciable' and 'substantial' used in the text.

3. Paragraph 3 corresponds with the first sentence of the previous paragraph 2. In order to avoid any misunderstanding it has been made clear that paragraph 1 does not list exhaustively the statutorily prescribed instances where consent is required. Supervisory Board approval is also mandatorily prescribed in other parts of the Statute.[1]

4. Paragraph 4 corresponds with the second sentence of the previous paragraph 2. The provisions relate to paragraph 1 and 3 and have therefore been given separate status. The paragraph has been adapted to Articles 12(3) and 10(4) of the proposal for a fifth Directive.

5. Paragraph 5 includes an explanatory comment, at the request of the European Parliament. There is no need in this instance for an exact description of the powers concerned.

Article 67

The provisions of Article 67 have been assumed into Article 65(3).

Article 68

1. The content of paragraph 1 corresponds to that of Article 211 and the former can therefore be deleted.

2. The Board of Management's duty of informing the Supervisory Board has been dealt with comprehensively in the new Article 73a.

The earlier provisions of Articles 68(2) and (3) and 73(1) led to overlapping.

Article 69

1. The Economic and Social Committee recommended that the embargoes on taking up credit contained in paragraph 3 be split up. The European Parliament's Legal Affairs Committee, however, expressly supported retention of the Commission's version and this was accepted by the plenum. The Commission consequently made no alterations in this respect.

[1] (E.g. upon the formation of a joint subsidiary—Article 36(3)(b)); utilization of approved capital (Article 43); issue of convertible debentures (Article 60); confirmation of the Annual Accounts (Article 213); and transformation and merger (Articles 264(1) and 270(2)).

2. Paragraph 4, regarding agreements affecting the interests of members of the Board of Management, has been adapted to the proposal for a fifth Directive.

Article 70

The Economic and Social Committee considered that it was up to the Board of Management to promote the company's well-being, including that of its employees, in the general interest. After careful discussion in the Legal Affairs Committee, the European Parliament, however, approved the Commission version. Therefore this point was not changed.

The principle that the company's activities may be pursued only within the limits of the constitutional law of the Member States and of the Community Treaties does not, in the Commission's view, require particular mention.

Article 71

1. The liability provisions for members of the Board of Management have been approved in outline by both the European Parliament and the Economic and Social Committee. They have therefore been retained but have been duly adapted, at the request of the European Parliament, to the proposal for a fifth Directive.[1]

Article 71 now deals only with the preconditions for liability and Article 72, in conjunction, with the bringing of liability proceedings.

2. Paragraph 1, regarding the criteria on which liability is based, is no longer aligned on 'wrongful acts' of Board of Management members 'in the course of their administration'. The intention is, rather, to encompass the whole range of obligations that Board members must discharge in the course of their duties.

The concept of breach of duty seems to serve adequately as a general criterion on which liability may be based within the scope of the Statute for the SE. It is given further shape by the provisions of the SE, and of Article 70 in particular, the statutes of the SE and the contract of service for members of the Board of Management.

Failure to observe the provisions of the Statute or the statutes of the SE, already alluded to previously, appear, in this light, as particularly prominent cases of breach of obligations.

3. The first sentence of paragraph 2 governs the ways in which members of the Board of Management may be held liable. The second sentence contains the provisions formerly found in paragraph 2 as to proof of innocence in the absence of fault or negligence. At the request of the European Parliament it was made clear that any member of the Board of Management may relieve himself of his individual liability.[2]

4. Paragraph 3 has been adapted to Article 14(4) of the proposal for a fifth Directive.

5. The new paragraph 4 substantially incorporates Article 14(5) of the proposed Directive.

6. The former paragraph 4 becomes paragraph 5 without change.

7. The former paragraph 5 has been taken in as Article 72(5) as it concerns actions in respect of liability and therefore has its logical place there.

Article 72

1. Paragraph 1 now deals only with the decision whether proceedings should be brought in respect of liability. It contains the first sentence of the previous paragraph 1 and a provision on the majority required in the General Meeting for such a resolution, which substantially corresponds with Article 15(2) of the proposal for a fifth Directive, and contains a limitation of Article 91(2) of the Statute.

2. Paragraph 2 deals in redrafted form with the prosecution of an action resolved by the Supervisory Board or General Meeting, formerly governed by the second and third sentences of paragraph 1.

3. Paragraph 3 retains unchanged the provisions of the previous paragraph 2 regarding the institution of liability proceedings by shareholders. These provisions have been approved by the European Parliament. They correspond to Article 16 of the proposal for a fifth Directive.

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[1] Articles 14 to 20 of the Proposal.
[2] Cf. also, Article 14(2) of the proposal for a fifth Directive.

4. Paragraph 4 regarding liability proceedings brought by creditors is substantially equivalent to Article 19 of the proposal for a fifth Directive.

5. Paragraph 5 corresponds with Article 71(5).

6. Paragraph 6 is a revised version of the former paragraph 3.

7. The earlier paragraph 7 is deleted; it encroaches upon the procedural law of Member States, which can lead to unnecessary complications.

Article 72a

While Articles 71 and 72 deal with compensation claims brought on behalf of the company, the new Article 72a governs the injury that can be done to shareholders and third parties as a direct result of a breach of obligations by the Board of Management in the course of administering the company. This provision corresponds with Article 20 of the proposal for a fifth Directive.

SECTION TWO

Supervisory Board

Article 73

1. There has, with the agreement of the European Parliament and the Economic and Social Committee, been little substantial change in the powers of the Supervisory Board.

The Board of Management's duty to provide information and the corresponding rights of the Supervisory Board have been taken out of the original version of Article 73(1). As a simplification measure, they have been incorporated into the new Article 73a together with the provisions of Articles 68 and 78.

2. Paragraph 3 has been corrected. The Statute provides no instance where the Supervisory Board can intervene directly in the administration of the company. Refusal of the consent required under the Statute for a proposed 'act of Management' (Article 66) constitutes only indirect intervention.

3. Paragraph 4 has been deleted as there are many other ways of temporarily filling vacancies on the Board of Management. It is still perfectly possible for members of the Supervisory Board to resign from membership and become members of the Board of Management. Representation *pro rata temporis* of a Supervisory Board member does not, however, seem the ideal solution for this new concept in European law, having regard to the associated suspension of the separation of powers as between the Management Board and the management.

4. The suggestion of the Economic and Social Committee that the Supervisory Board be required to draw up detailed rules of procedure regarding its supervisory activities in order to avoid conflict with other governing bodies of the company has not been adopted.

The powers of the governing bodies have been statutorily determined and can—except in the case of the freedom in drawing up the statutes allowed under Article 66—be neither extended nor reduced by internal rules. The Supervisory Board may, however, regulate its internal functioning by such a set of rules without the need for specific provision in this respect.

Article 73a

1. Paragraph 1 combines the provisions of Article 73(1)(2) and those of Article 68(2) concerning the quarterly report by the Board of Management to the Supervisory Board. It is oriented towards the conduct and progress of the affairs of the company and undertakings controlled by it (Article 73(1); Article 68(2)). The terms 'subsidiaries' and 'divisions' used in Article 73(1) were superfluous and could be deleted. The present wording substantially corresponds with Article 11(1) of the proposal for a fifth Directive.

2. Paragraph 2 contains the provisions of Article 68(3) of the original proposal. As a result, it was possible to eliminate sub-paragraph 3 of the previous Article 73(1) which had a similar content. It is for the chairman of the Supervisory Board to decide whether the information given to him should be passed on to Supervisory members before the actual quarterly report is made and whether there is any need for a meeting of the Board to be called.

3. Paragraph 3 in essence corresponds to the former Article 73(1)(2)(1). The duty of providing a report has been extended to controlled untertakings in parallel with the general provisions of paragraph 1 (Article 68(2) of the original draft).

4. Paragraph 4 contains the substance of the former Article 73(1)(2)(2). The duty of providing information has been extended beyond the terms of the latter to apply to all dependent undertakings in accordance with the general intentions of Article 73a, irrespective whether they are uniformly subject to the group management or not.

The limitation, previously imposed on the right to obtain information, to events that might have a 'substantial influence upon the position of the company' ran counter, in its intrinsic intent, to the unlimited rights of inspection and suspension accorded to the Supervisory Board under the earlier Article 78(1), these rights having been expressly approved by the European Parliament. The limitation has therefore been deleted.

5. At the general wish of the European Parliament, paragraph 4 has been aligned on Article 11(4) of the proposal for a fifth Directive, so that not only the supervisory Board but also one third of its members may make the request for information referred to. These members may avail of the right to information of the Supervisory Board as a whole and it is therefore meet that the information and particulars requested should in any event be passed to all members of the Board for information simultaneously.

6. Paragraph 5 deals with the Supervisory Board's right of access to the documents of the business. It contains the substance of Article 78(2) of the original proposal. By way of adjustment to Article 11(4) of the proposed fifth Directive, provision is now made for both this right and that to information under paragraph 4 to be exercised by one third of the members of the Supervisory Board on the latter's behalf. On practical considerations, delegation of the right of access to a small number of members has to be permitted.

Provision is further made for the Supervisory Board or one third of its members to retain the services of a confidential expert to examine technically complex matters. Similar provision made in Article 11(4) of the proposal for a fifth Directive.

7. Having regard to the joint responsibility of the Supervisory Board, paragraph 6 prevents any unequal treatment of its members in the provision of information to the Board. It corresponds with Article 11(5) of the proposal for a fifth Directive.

Article 74

1. Paragraphs 1 and 2 of Article 74 now govern the conditions of Supervisory Board membership. Paragraphs 3 and 4 regulate the number of members.

2. Paragraph 1 contains the previous provisions of paragraph 2 according to which only natural persons could be members of the Supervisory Board. This has been approved by the European Parliament and the Economic and Social Committee. The Second sub-paragraph of paragraph 1 limits the number of Supervisory Board appointments that may be held simultaneously, in line with Article 9(3) of the proposal for a fifth Directive, by members of the Supervisory Board of an SE.

An exception has, however, been made in the case of Supervisory Board appointments within a group. The special conditions obtaining within groups justify the number of such appointments counting as only two within the total.

Article 69(1) provides that a member of the Board of Management may not serve on the SE's Supervisory Board. This prohibition must be extended to membership of the Supervisory Board by members of the mangement body of an undertaking on which the SE's Board of Management can exercise a controlling influence, as the latter could otherwise influence the SE's Supervisory Board through the managing body of the dependant undertaking. This is not now possible.

3. Paragraph 2 repeats the provisions of Article 74(2)(2) without specific reference, for the sake of clarity.

4. Paragraph 3(1) contains the principle previously enshrined in paragraph 2(2) that the number of Supervisory Board members shall be specified in the statutes. As previously provided in paragraph 1(1) of Article 74, however, their number must be divisible by 3. At the request of the European Parliament, the number must, additionally, be an odd one, so that majority decisions can be reached not only within the Supervisory Board as a whole but also within the

individual groups of members. This is important, having regard both to the appointment of Supervisory Board members representing neither the shareholders nor the employees (Articles 74a, 75a and 75b and to employees' rights on transformation and merger (Articles 268(4), 272a and 273a).

The minimum figure, previously stated in Article 74(1)(2) has consequently been fixed at 9 at the request of the European Parliament.

This provision has been extended, having regard to the participation of employees of group undertakings dependent on the SE in electing employee representatives to the SE's Supervisory Board, by a stipulation including establishments of group undertakings for the purpose of assessing the minimum figure.

5. Paragraph 4 contains a transitional arrangement whereby the convening of the General Meeting merely to elect members to the Supervisory Board is avoided.

The Economic and Social Committee rightly criticised the necessity of calling a General Meeting in the comparable instance of the former Article 75(4).

Article 74a

1. This provision concerns the composition of the Supervisory Board. Paragraph 1 corresponds to the wording proposed by the European Parliament for Article 137(1). The Commission supports the Parliament's view on the composition of the Supervisory Board for the reasons set out in the introduction to this Title. The text proposed by the European Parliament governs the composition of the Supervisory Board in Article 137 as a whole. A logically better place for this is among the provisions of this section and not in Article 137, which forms part of the Title on 'Representation of Employees'. Article 137 will accordingly in future contain only the rules applying specifically to the representation of employees within the scope of the general provisions of Article 74a (Article 74a(3)). These rules are in context with the electoral provisions applying to the European Works Council, and the general provisions of Title V, and should therefore remain in Title V.

3. Provision for electing or appointing shareholders' representatives can still be made in Article 75 within the tenets of Article 74a(1). As regards the cooptive third; the provisions of Articles 75a and 75b have been introduced and these materially correspond with Article 137(3) as proposed by the European Parliament.

4. Paragraph 5 contains a procedural provision previously in Article 75(5).

Article 74b

This provision ensures that the SE's Supervisory Board can fulfil its tasks even if not all its members have been elected.

Paragraph 1 corresponds to the wording proposed by the European Parliament for Article 143(1) which relates back to Article 142 of the original proposal. Paragraph 2 contains analogous provisions for the time leading up to the election of the third third of the membership.

Article 74c

1. Stipulations as to the Supervisory Board's term of office were originally left to the statutes (Article 74(3). In order to facilitate simultaneous holding of elections for the European Works Council and for employee representatives on the Supervisory Board, the European Parliament has, however, asked for the maximum period under Article 74(3) to be reduced from five years to four and fixed the employees' representatives' term of office at four years (Article 144 of the text proposed by the European Parliament).

Supervisory Board elections shall take as simple a form as possible in respect of all categories of members of Board, with due regard to this proposed text; at the same time, however, all members of the Supervisory Board shall rank equally on the Board. Differential terms of office would be incompatible with this and it therefore seems opportune to specify a standard period of four years.

Re-election was already permitted previously, under Article 75(1).

2. Paragraph 2 matches up with a proposal made by the European Parliament in order to prevent a vacancy arising when an employee representative's term of office expires (Article 143(2) of the Parliament's text).

In view of the pursuit of equality amongst members of the Supervisory Board, there is justification for extending this provision to apply generally to all its members.

In order to avoid any abuse, it will be possible to bridge over a vacancy arising from delayed elections only for a limited period of time.

3. Paragraph 3 is a simplification. The terms of office of all members of the Supervisory Board should end at the same time.

Article 74d

1. This provision contains a standard provision for the premature termination of a member's term of office. Formerly, such a provision applied only to employees' representatives, to which the provisions of Articles 108 and 110 were to apply, in accordance with Article 144(2). It seems desirable, however, that the provision should also apply to the other categories of Supervisory Board members.

2. Paragraph 1 has been drafted on Article 108(1).

3. Paragraph 2 corresponds with Article 108(3) which in turn replaces Article 110, though in distinction to the latter, it has been decided not to have alternates stept in in the event of only temporary incapacity; the provision regarding representation of absent members by those present (Article 77(3)) seems more appropriate here.

Dismissal by the court, which the European Parliament has provided for in respect of employees' representatives (Article 144a of the Parliament text), is intended under Article 74e to apply to all members of the Supervisory Board and to be available on the same legal grounds.

4. Paragraph 3 contains provisions for the event of no alternate being able to step in. This may arise because no alternate has been elected or because the alternates elected have become unavailable in the meantime.

The Economic and Social Committee rightly pointed out in connection with the provisions of Article 75(4) of the original proposal that it would be inordinately expensive to carry out the normal voting procedure for the remainder of the term of office. On the other hand, the Supervisory Board's viability depends decisively on its having a balanced composition.

Article 74e

1. This Article introduces a legal expulsion procedure for all members of the Supervisory Board in respect of gross dereliction of duty. The European Parliament had sought a procedure of this kind for employees' representatives in Article 144a of its Opinion. The concept underlying the Statute, according to which all members of the Supervisory Board have equal rights and obligations (Article 80), is in fact answered by the fact that all members can be relieved of their office by the court in the same circumstances upon gross dereliction of their duties.

2. The substantive ground for dismissal—serious breach of obligations—corresponds with the European Parliament's Opinion on Article 144a. The court may, however, intervene only on application. *Ex officio* intervention as requested by the European Parliament is foreign to the procedures of many Member States.

In accordance with the intentions underlying Article 74e, the right to make application has been granted both to the General Meeting and to the representative body of employees in the SE.

In defining the employees' representative body it proved possible to turn to the provisions of Article 75a(2) regarding the nomination rights in respect of the co-optive third. These provisions for their part relate back to Article 131 of the European Parliament's Opinion.

The employees' representatives on the Supervisory Board who in certain circumstances have subsidiary nomination rights under Article 75a(2)(b)(cc) have however been excepted in this case. Where neither a European Works Council nor an employee representative body within the meaning of Article 75(2)(b)(aa) and (bb) exists within the SE, employee interests will be sufficiently protected in this case by one quarter of elector employees being granted, under the subsequent provisions, a right to apply to the court for an expulsion order. This right to apply on the part of

the employees and that of the Supervisory Board itself relates back to the European Parliament's Opinion on Article 144a.

Pari passu to the employees' right of application, this has also been granted to shareholders. In view of the complex nature of such a procedure, more particularly stringent conditions have been laid down, worded analogously to those for special supervision, than e.g., in connection with bringing a liability action.

Article 75

1. The appointment of shareholders' representatives to the Supervisory Board is, under paragraph 1(1), a matter for the General Meeting, as before.

The second sentence includes an elucidatory reference to an exception in the case of the Supervisory Board of a newly formed SE.[1] The reference to alternates was added at the suggestion of the Economic and Social Committee so as to give the General Meeting a simple means for dealing with vacancies on the Supervisory Board. Where the General Meeting has not elected alternates, Article 74d(3) will apply in the event of a vacancy.

2. Paragraph 2 has been introduced to enable a minority of shareholders to be represented on the Supervisory Board.

It can be important for a founder company with a minority holding in the SE to have representation on the Supervisory Board guaranteed, particularly where an SE is formed as a joint subsidiary. There would be no such guarantee under the general application of the rule in Article 91(2) to the election of Supervisory Board members. According to this, resolutions will be adopted by the General Meeting by a majority vote. If, on the other hand, the opportunity under Article 91(2) is availed of and a larger majority is prescribed under the statutes, the majority would then encounter too great a difficulty in electing their own representatives.

Under Article 75(2), therefore, the possibility exists for the statutes to specify an electoral procedure that would do justice to all interests in such a case. Introduction of the practice of 'cumulative voting' current in the US for example might be contemplated.

3. Article 75(3) regarding dismissal of shareholders' representatives corresponds substantially with paragraph 2 of the original proposal. This right of dismissal guarantees that the majority shareholders at any particular time can be represented on the Supervisory Board on a sudden change in share ownership.

4. Article 75(1) of the original proposal is henceforth Article 74c(1), second sentence.

Paragraph 3 of the original proposal has been retained in altered form in Article 75(4).

An age limit may in future be specified only for the shareholders' representatives. Such a provision does not seem particularly necessary for other members of the Supervisory Board owing to the proposed election procedure. It would moreover be improper for an age limit in respect of the latter to be imposed by the shareholders alone.

The provisions of the former paragraph 4 have been deleted as superfluous in view of the new Article 74d.

The earlier paragraph 5 has now become Article 74(5).

Article 75a

1. Article 75a and 75b contain without substantial change the conditions put forward by the European Parliament for the appointment of the third of the Supervisory Board to be co-opted jointly by the representatives of shareholders and employees. Article 75a covers the nomination procedure. The elections themselves are covered by Article 75b.

2. Article 75 a corresponds substantially with Article 137(3)(1) of the text proposed by the European Parliament. The right of nomination could not, however, be restricted to the European Works Council (in addition to the General Meeting and the Board of Management), as proposed under the European Parliament's Opinion, since a European Works Council need be formed only when the terms of Article 100 apply. It is in line with the basic thinking behind the European Parliament's text that nominations could be made on the part of employees even where no European Works Council has to be formed.

Article 75a(1) takes account of this fact and extends the right of nomination to 'the employees' representative body'. This body is defined in the subsequent

[1] Cf. Article 13.

provisions of paragraph 2 analogously to the wording of Article 131 as proposed by the European Parliament.

As regards the cases that could quite conceivably arise in an SE with a small establishment where neither a European Works Council nor an employee representative body exists pursuant to sub-paragraphs (aa) and (bb), reference is made in sub-paragraph (cc) back to the employees' representatives on the Supervisory Board in order not to over-complicate the issue.

If the SE is the controlling company of a group and is required to form a Group Works Council under Article 130, the latter too will be an employee representative body entitled to make nominations for the purposes of Article 75a. The employees of the group as a whole have an immediate interest in the composition of the Supervisory Board; under Article 137 they also participate in electing employees' representatives to the Supervisory Board.

When an SE is being formed, it would be too burdensome to convene a General Meeting for the purpose only of preparing a list of candidates. Therefore paragraph 4 in such a case gives the right to put forward candidates to the bodies of the founder companies which decide upon the formation of the SE (Articles 24, 32, 36 and 39).

3. Paragraph 3 states the qualifications for nominated candidates. It corresponds with Article 137(3)(2) of the European Parliament's proposal.

The approach has been kept very general. The requirements are intended to facilitate the election of suitable, independent members. Too strict a formalization of the rules would, on the other hand, militate against the desired consensus amongst the parties.

On the positive side it is provided that wider interests than those of the shareholders and employees most closely concerned in the decision-making process in the SE should be given a hearing.

The co-optive members are expected, because of their personal and professional qualifications, to be able to contribute towards solutions satisfying all interests in situations of conflict in the enterprise.

Furthermore the requirements set out to establish a quasi-trustee rôle on the part of the co-optive members towards the undertaking as a whole by making them independent of the interests represented by the other two thirds of the membership. Additional guarantees on this score are given by the voting procedure of Article 75b.

Article 75b

1. This provision governs the appointment of co-optive members of the Supervisory Board.

Paragraph 1 contains the essential provision made by the European Parliament in Article 137(3)(3)(1). Under it, a candidate is elected only if he receives two-thirds of the votes cast.

2. Paragraph 2 substantially contains Article 137(3)(2)(2) of the European Parliament's proposal.

3. Paragraph 3 contains provisions for the new nominations required under paragraph 2 in the event of inconslusive voting. They are intended to avoid the necessity of convening a General Meeting and the employees' representative body referred to in Article 75a for the sole purpose of submitting new nominations. In order to simplify the procedure it appears fitting that both bodies be given the opportunity of entrusting to a smaller circle of persons the work of seeking fresh nominations that will have some likelihood of success.

The General Meeting and the employees' representative body may reject this course, in which case the elected representatives of the shareholders and employees on the Supervisory Board shall be considered as authorized to submit new nominations of their own accord.

4. Paragraph 4 makes provision for the European Parliament's wishes regarding a decision by an arbitration board when the election fails to take place.

5. Paragraph 5 governs the composition of the arbitration board on essentially the same lines as Article 137(3)(3) as proposed by the European Parliament.

Article 76

1. Paragraph 1 has been extended at the request of the Economic and Social Committee.

2. The wording of paragraph 2 has been changed to avoid the impression that the Supervisory Board chairman is required to verify whether the application to convene the Board is justified. It has, further, been

made clear that the application can be made only by the Board of Management and not by its individual members.

Article 77

1. The wording of paragraph 1 has been revised and a provision concerning additions to the agenda was attached.

2. The sequence of paragraphs 3 and 4 has been reversed, as the provisions of the earlier paragraph 3 logically develop from those of the earlier paragraph 4.

3. The authority given under paragraph 3 of the new version has been provided in accordance with a proposed amendment of the European Parliament to paragraph 4 of the original draft.

4. At the request of the European Parliament, paragraph 4 now takes account of the possibility of proxy voting in accordance with the preceding paragraph.

5. Paragraph 6 has been simplified at the request of the European Parliament.

Article 78

This provision has been assumed into Article 73a(5).

Article 79

Paragraph 3, regarding agreements affecting the interests of a member of the Supervisory Board, has—like Article 69(4)—been adapted to Article 10 of the proposal for a fifth Directive.

Articles 81 and 81a

The liability of members of the Supervisory Board continues to take a form parallel to that of members of the Board of Management. The changes to Article 81 take account of those to Articles 71 and 72.

Article 81 a corresponds with Article 72a, to the explanatory notes to which reference should be made.

SECTION THREE

(Special obligations applicable to members of the Board of Management, the Supervisory board, the auditors and principal shareholders)

Article 82

1. The incorporation of provisions regarding priviledged access to information on the SE into the Statute for European Companies has been approved by the European Parliament and by the Economic and Social Committee.

The Economic and Social Committee wishes, however, to delete principal shareholders from the group of persons concerned. The European Parliament, has, however, approved paragraph 1. The desired amendment would run counter to present-day trends in company law, particularly in Great Britain and the Netherlands. No material changes have therefore been made.

2. The formal provisions of paragraphs 2 to 4 have been considered as oversubtle, particularly by the Economic and Social Committee. If the provisions are to bring insider dealing out into the open, however, no deletions may be made from them. Practical difficulties should not be over-emphasised, given modern methods of information retrieval.

3. The provisions regarding transfer profits under paragraph 5 have been generally criticized as too inflexible. The Economic and Social Committee would like to see the legal effect of paragraph 5 restricted to speculative profits. The European Parliament's Legal Affairs Committee, on the other hand, considers the provisions do not go far enough and has asked the Commission to investigate the setting up of a vetting committee. This approach is, however, on the institutional grounds already put forward by the Legal Affairs Committee, hardly a viable one, at least for the limited purposes of the European Limited Company.

The problems surrounding the utilization of inside knowledge are at present under keen discussion in the Member States. For this reason, and in view of the

wide ranging opinions expressed, the Commission has, for the time being, decided against altering its original proposals.

SECTION FOUR

The General Meeting

Article 83

1. The list of attributes falling to the General Meeting in paragraph 1 has been improved upon at the request of the European Parliament and of the Economic and Social Committee.

The discharge of members of the Board of Management proposed by the European Parliament has not been included in the list as it has no legal effect under the system adopted by the Statute[1] and will not therefore in future be covered under Article 218(2) and (3).

2. The contracts referred to in item k on the list in paragraph 1 have been expressly made subject to approval by the General Meeting at the request of the European Parliament. It has been emphasized that such approval is essentially effective *vis-à-vis* third parties, as is the case under Article 66(4).

This provision regarding third parties cannot apply to merger or transformation of the SE leading to alteration in its structure. Such cases must therefore be retained in the list under paragraph 1, contrary to Parliament's wish.

3. Paragraph 3 has been added by way of clarification, at the request of the European Parliament. A detailed description of the powers is unneccessary in this context.

Article 85

Paragraph 3 has been deleted. Extension of the agenda has been incorporated into Article 86(3) which previously dealt only with the publication of amendments.

In the case of extensions to the agenda, there in fact seems no justification contrary to the position as regards convening of the General Meeting under paragraphs 1 and 2, for subjecting exercise of minority shareholders' rights to supervision by the court. For this reason, no limitation of this kind was provided either under Article 25(2) of the proposal for a fifth Directive.

Article 86

1. Paragraph 1 regarding the calling of a General Meeting has been extended, at the request of the European Parliament, by a provision concerning holders of registered shares.

2. Paragraph 2 has been reworded.

3. Paragraph 3 now covers extensions to the agenda in the same way as it does the introduction of amendments.[1] The limitation on the publication of amendments has, further, been deleted at the request of the uropean Parliament, The provisions correspond substantially with those of Article 25(2) and (3) of the proposal for a fifth Directive.

4. Paragraph 4 has been changed at the request of the European Parliament.

Article 87

1. In accordance with the European Parliament's Opinion, paragraph 1 now states clearly that shareholders do not lose their voting rights when, eg, they become members of the Board of Management of the Supervisory Board. The provisions of paragraph 1 apply only to members who are not shareholders.

Where members of these bodies are shareholders, they will *Ipso facto* fall within the restrictions on voting rights of Article 91(3) (formerly Article 92(3)). This is why the provision additionally proposed by the European Parliament on this point is unnecessary.

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[1] Cf. Article 71(4) of the new version.
[2] Cf. the explanatory notes to Article 85(3).

2. Holders of convertible debentures will not in future, at the request of the European Parliament, be admitted to the General Meeting. This group will be kept adequately informed by their representative, who has participation rights under Article 57(2). Nor are holders of deposited shares now entitled to participate. They may deal through the person exercising the rights attaching to their shares.

Article 88

1. The provisions regarding the exercise of voting rights by proxies have been adapted to Articles 27 and 28 of the proposal for a fifth Directive on the structure of limited liability companies, in accordance with the general wishes of the European Parliament.

2. The persons referred to in paragraph 1 continue to be ineligible as proxies. The Economic and Social Committee asked that an exception be made in the case of salaried employees of the company. In the cases that it mentions, however, there are sufficient alternative modes of representation not likely to lead to the kind of conflict referred to in the explanatory notes to Article 88 of the original proposal. The addition to paragraph 1 relates back to Articles 27 and 24(e) of the proposal for a fifth Directive.

3. Paragraph 2 has been revised and extended in accordance with Article 27(3) of the abovementioned proposal for a directive.

4. Paragraph 3(1) has been amended by analogy with Article 28(1)a of the proposed Directive. Delegated proxies have been permitted at the request of the Economic and Social Committee.

5. Paragraph 4 has, in view of its general purport, been incorporated as an independant provision in Article 88b.

Article 88a

1. By analogy with Article 28 of the proposal for a fifth Directive, this Article contains provisions, additional to those of Article 88, regarding cases where shareholders are publicly invited to grant a proxy.

2. Paragraph 1 contains the particulars required in the circumstances referred to in Article 28(1)(c) to (g) of the abovementioned proposal. The provisions contained in sub-paragraphs (a) and (b) have already been generally covered in Article 88.

Paragraph 2 makes it clear that financial institutions are also included under the provisions of paragraph 1 if they seek proxies only from customers having deposited share certificates. In this way any doubts will be avoided as to whether an invitation directed towards a specific and distinct group of persons is public within the meaning of paragraph 1. The general provisions of paragraph 1 must however conform with those of paragraph 2 to the extent that an invitation to act as proxy may be addressed only to the depositor customers of the financial institution.

Article 88b

In view of its general application, the prohibition under Article 88(4) has been incorporated into an independent provision following after those regarding exercise of voting rights.

Article 89

Having regard to the European Parliament's Opinion, the attendance list required under paragraph 2 need no longer be prepared by a notary. The numerous practical objections against the attendance list have consequently been largely removed. In the case of large companies with many shareholders, preparation of such a list can indeed lead to some difficulty, but this does not justify abandoning this requirement, which makes for open dealing and legal caution. Large companies of this kind can as a rule avail themselves of data processing equipment to overcome this problem.

Article 90

1. Paragraphs 1 and 3a have been redrafted. In doing so, paragraph 3a has been aligned on paragraph 1 at the request of the Economic and Social Committee.

2. In the company's interests, proceedings regarding a refusal of information shall be heard in private. This is now expressly stated in paragraph 1, in the same way as in Article 220(4) where similar considerations apply.

Article 91

1. Paragraphs 2 and 3 regarding the passing of resolutions by the company have been combined for drafting reasons.

2. The former paragraph 3 of Article 92, relating to suspension of voting rights, has become paragraph 3 of Article 91 as it is closely linked with the provisions of the latter. The wording of this provision has been adapted to Article 34 of the proposal for a fifth Directive, thereby also taking account of the Economic and Social Committee's objections. Discharge of shareholders is no longer dealt with in the new version as the General Meeting no longer grants this under Article 218, as redrafted.

Article 93

1. Under the new version of paragraph 1, no agreements regarding the exercise of voting rights as directed by the governing bodies of an undertaking controlled by the SE shall be permitted. If such agreements were to be allowed, the prohibition as to the exercise of voting rights on the directions of the SE's governing bodies could be easily circumvented.

2. The procedural provisions of paragraphs 2 and 3 applying to voting agreements have been criticized by the Economic and Social Committee but approved, in substance, by the European Parliament. Having regard to the European Parliament's Opinion, only drafting alterations were therefore undertaken.

Article 94

Paragraph 1 continues to require that the minutes of the General Meeting shall be kept by a notary. This has been supported by the Legal Affairs Committee of the European Parliament in view of the value of the documentary evidence.

Reference on this point may further be made to the explanatory notes on the redrafted Article 12.

Article 95

1. The right to seek cancellation under paragraph 2 has been made subject, on the basis of the Opinion of the Parliament, to proof of an interest in the due performance of the provision infringed. This is the mandatory basis for any action brought by shareholders or any other interested party. This factor is not, however, sufficiently clearly expressed in the Parliament's proposal.

It was stated in the explanatory notes to Article 95(2) that breach of the provision must have influenced the General Meeting resolution in question. This idea has now been assumed into the text of paragraph 2 in the form given it by the European Parliament in the similar case where elections to the European Works Council (Article 20(1) of Annex II) or to the Supervisory Board (Article 22(1) of Annexe III) are challenged. What is in question here is therefore not an actual effect that may be hard to prove, but only a potential one.

Paragraph 2 in its present form also embraces with general effect all cases where a resolution of the General Meeting may be impugned under the rules in Article 12 of the proposal for a fifth Directive, without, however, its scope being thereby impaired.

If defects have occurred in the motion for a resolution of the General Meeting of the SE of the kind referred to in Article 42(a) to (d) of the above proposal it must in all events be assumed, in accordance with Article 95(2), that a shareholder was in a position to influence the discussions and the resolution by properly exercising his rights.

Defects under Article 42(e) and (f) of the proposal for a fifth Directive are further covered *ipso facto* by Article 95(2).

Article 96

This Article has been deleted on the basis of the European Parliament's Opinion.

The industrial and commercial activities of an SE are subject, under Articles 1(4) and 7(2), to the public policy of the Member States whose national law applies to them in each particular case. There is no justification for providing for exceptions, with ambiguous preconditions and disputable effects, in respect of resolutions of the General Meeting.

SECTION FIVE

Special supervision of Governing Bodies

Article 97

The provisions laying down the conditions for a special investigation and for jurisdiction have been reworded in view of the Opinions of the European Parliament and the Economic and Social Committee, who approved them in principle.

The Economic and Social Committee's suggestion that the General Meeting also be given a right of application has not, however, been adopted. It suffices if this right is accorded to the shareholders themselves.

Article 98

At the request of the European Parliament, paragraph 2 has been clarified to state it is enough for the court to consider the application as *Prima facie* justified.

If the court rejects the application as unfounded, costs will be awarded in accordance with ordinary procedural law. This need not, therefore, be regulated under the statute. If the petition is successful, provision must then necessarily be made regarding the cost of the special investigation. The first and second sentences of paragraph 1 of the former Article 99 have been assumed into paragraph 6 in order to ensure that, as before, interested parties will be informed of the results of the special investigation.

Article 99

1. Article 99 governs further procedures after submission of the special commissioners' report. It has been reworded on the basis of the European Parliament's Opinion.

2. Paragraph 1 now makes special provision for the closure of the proceedings if neither of the parties calls upon the court and applies for measures in accordance with paragraph 3. A decision by the Court as to closure of proceedings and publication thereof in accordance with paragraph 5 is in the company's interest.

3. The new paragraph 2 contains procedural rules for the application of measures under paragraph 3, at the European Parliament's request.

4. The new paragraph 3 incorporates the earlier paragraph 2. At the request of the European Parliament, the court's powers have been widened considerably beyond the original proposal. The court is given a wide measure of freedom to lay down measures to suit the circumstances.

5. The former paragraph 3 becomes paragraph 4 unchanged.

6. Paragraph 5 has been revised in accordance with the European Parliament's Opinion.

Title V

Representation of employees in the SE

The Statute for the European Company proposed in 1970 provides, in Title V, for three types of legal machinery for establishing the representation of employees and for facilitating the regulation of terms of employment and remuneration within the SE:

1. the European Works Council, representing the employees;

2. The representation of employees in the Supervisory Board of the SE;

3. The possibility of concluding collective agreements between the SE and the trades unions represented within its establishments.

This machinery was discussed in great detail by the European Parliament and the Economic and Social Committee. European industry and the European trade unions have also fully expressed their opinions on the subject.

Both the European Parliament and the Economic and Social Committee agree with the principles underlying this process of regulation. Views within the Economic and Social Committee differed, however, as to the details of the machinery and therefore it limited itself to presenting the various attitudes of its members, so as to avoid self-contradictory opinions on the individual points arising from shifts in the pattern of voting.

The creation of the European Works Council as a body representing all the employees of an SE with establishments in different Member States was widely approved. Its composition and competence, however, are the subject of debate.

The European Parliament has proposed the direct election of members of the European Works Council according to a uniform set of electoral rules. The previous solution, that of holding direct elections governed by existing national provisions on employees' representation in the establishments of the SE was no longer tenable, since no general statutory or formally agreed system of employee representation to which reference could be made exists in the United Kingdom or Ireland.

The Commission has adopted this new concept and the electoral rules based on it. They are contained in Annex II to the Statute, which is incorporated therein by virtue of Article 104 of the new version. The Commission, like the European Parliament, believes that the direct election of employees' representatives in accordance with democratic principles will increase the European Works Council's ability to operate at a supra-national level.

The provisions on the term of office and the operation of the European Works Council have been rearranged to render them more coherent.

Where there is doubt as to the extent of the obligation of secrecy imposed on members of the European Works Council under Article 114, this will in future be decided by the court and not, as hitherto, by the Board of Management.

At the request of the European Parliament and the European trades unions, the competence of the European Works Council has been more narrowly delineated in Article 119. It is now laid down in paragraph two of this Article that the competence of the European Works Council extends only to matters that cannot be settled at plant level. So as not to encroach on the province of the parties involved in the collective settlement of conditions of employment, the European Works Council is expressly prohibited from concluding agreements concerning such conditions.

The rights of the European Works Council to be kept informed on the position of the SE have been extended at the request of the European Parliament. Likewise at the request of the European Parliament the European Works Council's co-determination rights have in particular, been extended to cover the detrimental effects on employees of the closure or transfer of an establishment. This is the object of the social plan introduced in Article 126a. If the Board of Management of the SE and the European Works Council cannot reach agreement concerning the plan, the Arbitration Board provided for in Article 128, on which the Board of Management and the European Works Council have equal representation, decides the question in issue.

The economic decision itself on the actual closure of an establishment is not affected by these provisions. The decision is taken, as before, by the Board of Management with the agreement of the Supervisory Board, after consultation with the European Works Council pursuant to Article 125.

Section two of title V deals with the representation of employees in undertakings in a group controlled by an SE. The provisions in this section have where neces-

sary been adapted to the amendments to the first section on the European Works Council; otherwise they remain essentially unchanged.

The composition of the Supervisory Board has already been dealt with in section two of Title IV, (Articles 74 to 75b). The introductory notes to the new version of Title IV state that the Commission, in formulating Articles 74a, 75a, and 75b, has closely followed the Opinion of the European Parliament, and its version of Article 137. As regards the principles underlying the composition of the Supervisory Board, reference should be made to the introductory notes to Title IV, and in particular to Articles 74a, 75a and 75b.

In accordance with the position of Article 137 in the scheme of Title V, the new version of this Article deals only with the appointment of employee representatives to the Supervisory Board.

As a result of the Opinion of the European Parliament, persons employed in a group undertaking controlled by the SE, whose registered office is situated within the Community, now also participate in the election of employee representatives to the Supervisory Board of the SE. The reason is that, in accordance with the provisions relating to groups of companies, these undertakings are under the sole management of the SE, with the result that all the employees of a dependent undertaking belonging to the group are affected in the same way by decisions taken by the SE.

The previous provisions on elections contained in Articles 139 to 142 are no longer practicable, since no employee representative boards of the kind they presuppose exist in the United Kingdom or Ireland. The Commission has therefore adopted the electoral provisions contained in Annex III of the Statute as proposed by the European Parliament, and incorporated into it by Article 137(1) in the new version. According to them, employees of the SE and its dependent group undertakings elect a number of electoral delegates for the establishment in which they are employed, along the principles applying in the case of the European Works Council. The electoral college in turn elects representatives to the Supervisory Board of the SE by proportional representation. Since it is important that employees should also be represented by persons who are capable of viewing the undertaking of the SE both from the point of view of the particular industry and in the overall economic context, a minority of the employee representatives may, in accordance with Article 137(2), be persons who are not employed in the undertaking.

The European Parliament particularly welcomed the possibility offered in Section four of collective agreements being concluded between the SE and the trades unions represented in its establishments. The relevant provision was therefore retained without material alteration.

SECTION ONE

The European Works Council

Sub-section one

General

Article 100

1. The principle has been maintained that a European Works Council shall be set up if an SE has establishments in more than one of the Member States.

The case has indeed been put on many occasions that a European Works Council should be formed even if the SE has an establishment in only one Member State. But it is considered that the desired uniform representation of the SE employees' interests can in such cases be achieved through the instruments of national law. With this in mind, both the European Parliament and the Economic and Social Committee have lent their support to the present solution.

2. The wording of the Article has been clarified to meet the views of the European Parliament. Provision has been made in particular to ensure that the two establishments in various Member States concerned in the formation of a European Works Council shall have sufficient employees to enable representatives to be elected on to the European Works Council in accordance with the new Article 103.

Article 101

The feeling has been voiced in various quarters that the competence of the national bodies representing employees should be left quite untouched and that the European Works Council should be given only subsidiary powers. This view has, however, been expressly repudiated by the European Parliament as it conflicts with the idea of the European Works Council as a body whereby the interests of the SE's employees can be represented on a uniform basis (Article 119(1)). Article 101 has therefore been left unchanged.

Article 102

1. The European Parliament has proposed that the national organizations representing employees referred to in the following provisions of this Section (and of the subsequent Section) should no longer be specified in the body of the Statute but in a special appendix (Annex I), to be kept up-to-date by the Commission with the assistance of the Member State concerned in each case. In this way greater account can be taken on a more flexible basis of the changes occuring in the Member States.

The new wording corresponds substantially with the European Parliament's Opinion.

Article 102a

This provision refers to the arrangements of the Member State in which the establishment is situated concerning the conditions under which a trade or industrial union may be represented in an establishment of the SE.

A similar arrangement originally applied under Article 116(2), but as it also in fact applies to a number of other Articles, and especially in the case of the election of members to the European Works Council, a self-contained Article has been incorporated at the request of the European Parliament.

The wording of this Article based on the European Parliament's Opinion is the result of exhaustive consideration within the Legal Affairs Committee.

Whether or not a trade union is represented in an establishment will accordingly in no way be either directly or indirectly determined by the Statute. The sole criterion will be the arrangements applying in the Member State in which the establishment is situated.

Sub-section two

Composition and election

Article 103

1. The wording of paragraph 1 has been revised at the request of the European Parliament. Furthermore it was made clear that corresponding with the provisions of article 104 (in connection with article 102) of the original proposal only establishments within the Community may delegate representatives to the European Works Council. As to the question of electoral procedure (direct or indirect suffrage) with which this provision is partly concerned, cf, the notes on the new article 104.

2. Article 103(2) has been redrafted to meet the views of the European Parliament. It now states in what establishments representatives may be appointed and what the number of the latter will be. This was formerly governed by Article 105, but is of fundamental importance in view of the subsequent electoral arrangements under Article 104.

The former provisions of Article 105 have been changed in that establishments of 50 employees and over now represented on the European Works Council. The number of representatives for establishments of 500 employees and over has been increased. In this way a better balance can be achieved — as the Legal Affairs Committee of the European Parliament has already pointed out — as between the number of employees and the number of representatives on the European Works Council, and, in the larger establishments at least, adequate representation of the various employee groups is made possible.

3. Paragraphs 2 and 3 of the former Article 103 have in part been amended and incorporated into the new Article 103a in line with the Opinion of the European Parliament.

Article 103a

1. This provision now contains the special measures originally contained in Article 103(2) and (3), in accordance with the European Parliament's Opinion.

2. Paragraph 1 corresponds to the former Article 103(2).

3. Under paragraph 2 the additional elections for which provision was originally made only in the case of a merger are extended to apply in all similar circumstances, where the SE acquires or opens establishments with at least 50 employees after the European Works Council elections have been held. The European Parliament has, however, introduced a general restriction in this connection so as to avoid too swift a sequence of elections in such establishments.

Article 104

The proposed direct election of members of the European Works Council has met with criticism from industrial circles. Indirect elections through national employee representative bodies are preferred. This view has also been put by the European Trade Union Federation. In 1970, however, the European Federation of Free Trades Unions in memoranda dated 15 April and 4 November opted for direct voting on uniform electoral principles.

The European Parliament agreed with direct elections in its proposals and recommended the introduction of uniform electoral rules.

The Commission shares the European Parliament's view that the European Works Council will find its task—to represent the interests of employees in different Member States—made easier if its members are all confirmed in the same manner by the democratic votes of the employees.

The fear that this might lead to conflict between the European Works Council and the national representative bodies appears unjustified—particularly in view of the new wording in Article 119, recommended by the European Parliament, of the rule regarding the competence of the European Works Council. It should also be noted in this connection that dual membership of the European Works Council and national representative bodies is permissible under Article 107(2).

Under a direct voting system, however, the previously proposed reference to the electoral rules applying to the national employee representative bodies at the SE's establishments is no longer possible. In the United Kingdom and in Ireland there are no general representative bodies for employees existing on either a statutory or a contractual basis to which reference could be made.

The European Parliament has therefore proposed that uniform electoral rules be introduced as Annex II to the Statute, and wishes to make this Annex an integral part of the Statute. The new wording of Article 104 is based on this concept. As regards the electoral rules themselves, reference can be made to the notes on Annex II.

Article 105

This provision regarding the number of an establishment's representatives on the European Works Council has been incorporated in an amended form in Article 103(2).

Article 106

The date of the elections is now determined in the electoral rules in Annex II (cf. Article 14(1) in particular), so that the former provision can be deleted.

The provisions suggested by the European Parliament to take its place, regarding the convocation of the European Works Council, have been included in Article 109, which now deals with this matter comprehensively.

Sub-section three

Term of office

Article 107

1. The term of office of the European Works Council has been extended to four years at the request of the European Parliament. In consequence, the elections for the European Works Council (Article 104) and for

employees' representatives to serve on the Supervisory Board (Article 137(1) of the new version and Article 1 of Annex III) can be held simultaneously in the establishments of the SE, as the Supervisory Board's term of office is now also a standard four years (Article 74c).

The date of commencing office, originally governed by Article 111(3), is now determined in Article 107 so as to achieve greater cohesion and clarity in these provisions. In order to avoid any misunderstanding, re-election has been expressly authorized. This was formerly provided only in the case of shareholders' representatives on the Supervisory Board (Article 75(1)). The same rule now applies to all members of the Supervisory Board under Article 74c(1).

2. The wording of paragraph 2 has been revised having regard to the Opinion of the European Parliament.

Article 108

1. This Article now contains a cohesive provision on requirements for all effects of termination of European Works Council membership.

2. The number of grounds under paragraph 1 on which membership may terminate has been revised in accordance with the European Parliament's Opinion.

3. The new paragraph 2 governs the appointment of alternates in consequence of the foregoing. This was formerly governed by Article 110. The wording of this provision has been revised, particular attention being given to removal of members from the European Works Council, which is dealt with under Article 108a.

4. Paragraph 3 contains a special provision applying on expiry of the period of office intended to ensure continuity in the representation of an establishment on the European Works Council in the event of a delay in new elections. The European Parliament inserted this provision into its version of Article 109 as paragraph 3.

Article 108a

1. The European Parliament has asked that it be made possible for a member to be expelled from the European Works Council for dereliction of duty by court order and for a court to dissolve the European Works Council. The new Article provides for this procedure which substantially corresponds with Article 108(2) and (3) as proposed by the Parliament.

2. The European Parliament has, further, considered it desirable to introduce a provision whereby the European Works Council can compel the SE's Board of Management to observe the statute and wished to include a new paragraph 4 under Article 108 to this end.

The Commission feels that such a provision is unnecessary as the European Works Council already has the procedures under Articles 97 to 99 at its disposal for this purpose. The provision that Parliament seeks is, moreover, open to objection on legal grounds as the proposed imposition of a cash penalty without a compelling reason, encroaches upon the arrangements applying in each Member State for enforcing judgments. On this consideration the Commission diverged from the European Parliament in this matter.

Article 109

1. For the sake of convenience this Article now comprises all provisions regarding the constituent meeting of the European Works Council.

2. Paragraph 1 sets out in altered form the provisions formely contained in Article 106(1), regarding the constituent meeting of a European Works elected for the time. The provision corresponds to the provision suggested by the European Parliament as Article 106(1).

The maximum time-limit for convening the European Works Council had to be fixed at 100 days from the formation of the SE having regard to the necessary period in which to prepare for elections. Hitherto a time-limit of a total of three months applied in this respect under Articles 106 and 111(1).

It is intended under Article 14 of Annex II that members should be elected to the European Works Council within 75 days of the incorporation of the SE. The provisions of Article 109(1) therefore leave relatively little room for delay in holding elections at the individual establishments. Should elections at individual establishments be delayed for more than 25 days such establishments will not then be represented when the constituent meeting of the European Works Council is held. This fact must be accepted, bearing

in mind that too long a postponement of the constituent meeting will adversely affect the viability of the Council.

3. The former paragraph 1 of Article 109 is deleted; provision regarding new elections is now made in the electoral rules in Annex II.[1]

4. Paragraph 2 governs the constituent meeting of the newly elected European Works Council on the same lines as before. The wording has been adapted to the European Parliament's views (Article 109(1), Parliament's version). Delay in holding elections at individual establishments will not affect the constituent meeting of the newly elected European Works Council as the term of office of existing members of the Council will be extended in accordance with Article 108(3).

5. Paragraph 4 lays down the period of notice to be given for the constituent meeting of the European Works Council. The European Parliament proposed this period under Article 106(2).

Article 110

This provision regarding replacement by an altenate has been incorporated in amended form as Article 108(2).

Sub-section four

Operation

Article 111

1. Paragraph 1 of the new version now contains the provision previously contained in paragraph 2 concerning the first official action of the newly constituted European Works Council. The wording has been adapted to meet the views of the European Parliament.

2. The original paragraph 2 regarding the constituent meeting has now become Article 109(1) in altered form. The former paragraph 3 regarding the term of office has become superfluous through the redrafting of Article 107(1).

3. The new paragraph 2 regarding competence to take decisions was added, on the suggestion of the European Parliament, in order to secure proper conduct of the constituent meeting.

4. Paragraphs 3 and 4 regarding decisions taken by the European Works Council contain provisions parallel to those applicable to the Supervisory Board under Article 77. These rules of procedure are also important for the European Works Council as a means of facilitating the discharge of its duties.

5. Paragraph 5 expressly provides an opportunity for the European Works Council to set up committees. This can be useful where there is a large number of members. A committee can also be useful to prepare the proposals for electing the third Third of members of the Supervisory Board under Article 75a.

Article 112

1. Paragraph 1 regarding security against dismissal for members of the European Works Council has been adapted to the Opinion of the European Parliament.

2. Paragraph 2 deals with a request made by the European Parliament and the Social and Economic Committee with regard to protecting candidates for election to the European Works Council against dismissal. A time-limit had to be set for such protection. Protection running the full four years of the Council's term of office would appear unreasonable, particularly in view of the fact that the nomination of candidates is a simple matter.[2]

The risk of abuse must therefore be avoided.

It suffices if candidates are protected during the run-up period and during a cooling-off period after the elections. Three months seems reasonable for the latter prupose.

3. The sanction under paragraph 3 was put forward by the European Parliament (Article 145) as an extension to the protection against dismissal of employees' representatives on the Supervisory Board. A parallel provision in the instances under Article 108 seems requisite.

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[1] Cf. Article 14(1) in particular.
[2] Cf. Article 3(3) of Annex II.

Article 113

1. As the European Parliament and the Economic and Social Committee wish the members of the European Works Council are no longer exempted from their professional duties by their own decision but only if the Council as a whole considers it necessary.

2. Paragraph 2 was revised at the suggestion of trades unions.

Article 114

1. Paragraph 1 has been reworded so as to place greater emphasis on the object of professional secrecy. The obligation of secrecy has, at the request of the European Parliament, been extended to trade union delegates (Articles 116) and experts consulted by the Council (Article 117). To ensure that this obligation of secrecy under Article 114 is observed, the range of offences set out in Annex IV that Member States may penalise under Article 282 has been extended to include a provision relating inter alia to infringements under Article 114.

2. The new paragraph 2 lifts the obligation of secrecy in dealings with members of the SE's Supervisory Board and of the Group Works Council to enable members of the European Works Council to work freely with such persons. It was possible to allow this without harming any of the SE's interests worthy of protection as such persons are already subject to a particular obligation of secrecy under the Statute (Article 80(2) as regards Supervisory Board members, while Article 133 refers to Article 114 as regards members of the Group Works Council).

The obligation of secrecy could not be lifted further to extend to national employee representative bodies, however. The range of persons in possession of a secret would then no longer remain sufficiently manageable to guarantee effective secrecy. This would mean in practice that the information flow from Board of Management to European Works Council would not be facilitated and the latter would encounter greater difficulty in fulfilling its functions.

3. Paragraph 3 offers the European Works Council an opportunity to obtain a decision from the court as to whether the Board of Management has correctly designated information as secret. The former rule, which left it to the Board to determine the scope of the obligation of secrecy, was unsatisfactory in the trades unions' view as the Board could then in certain circumstances unjustifiably have prevented members of the European Works Council from keeping employees informed (Article 118(1)). Nor did it, on the other hand, appear right to make secrecy regarding any particular fact a matter for agreement between the Board and the Council, as had been requested by the European trades unions. Members of the European Works Council would not normally have the necessary technical expertise to appraise questions regarding the protection of business secrets. Nor, for the same reasons, do members of the arbitration board seem competent to judge on such matters. It therefore appears preferable to seek a decision from a court, which will also be approached with such matters in other contexts. A judicial procedure is also provided under the Statute to decide whether the Board of Management may withhold information from shareholders at a general meeting (Article 90(5)). The provision in Article 114(3) is derived therefrom.

Article 115

The addition precludes any misunderstanding regarding the cost of European Works Council elections.

Article 116

1. The participation of trade union representatives in European Works Council meetings has been simplified at the request of the European Parliament. An appropriate resolution by a majority of the Council remains necessary for this purpose, though irrespective of the number of Council members moving such a resolution.

Cooperation between the European Works Council and the trades unions represented at SE establishments on matters of acknowledged mutual interest may in certain circumstances be promoted by eliminating the procedural obstacles previously existing.

2. The former paragraph 2 regarding trades unions represented at SE establishments has been reformulated and incorporated as Article 102a.

Article 117

The circumstances in which an expert may be consulted by the European Works Council have been stated more concretely at the suggestion of the European Parliament. The Social and Economic Committee's desire that the obligation of secrecy be extended to cover experts has already been accommodated by extension to Article 114.

Article 118

1. The obligation to pass information on to the European Works Council is now specifically extended to include members of national employee representative bodies. In this way special emphasis is placed on necessary cooperation between the Council and such bodies.

2. In paragraph 2 the concept of 'process secret' has been replaced by that of 'business secret' and contrasted with that of the 'operations secret' as also arises in Article 128(3). Having regard to the views of the Economic and Social Committee, no 'special protection' is now required for such secrets. All operational and business secrets must be handled in confidence by the European Works Council. In cases of doubt as to the scope of the protection of secrecy the provisions of Article 114 will apply.

Sub-section five

Functions and Powers

Article 119

The competence of the European Works Council has been more sharply delineated having regard to the opinion of the European Parliament. In the latter's view, the European Works Council should be responsible for matters in which uniform representation of the SE's employees is desirable, but not for matters that can in fact be settled at establishment level.

Nor is the collective formulation of working conditions a matter for the European Works Council. The function of the trades unions to safeguard their members' interests will be left untouched by the European Works Council.

The new version of paragraph 2 specifies, having regard to the opinion of the European Parliament, that where collectively agreed arrangements exist, their provisions will be left unaffected by the activities of the European Works Council. The latter has, further, been expressly prohibited from settling working conditions by agreement with the SE's Board of Management. It is hereby intended to forestall any possible conflict with the functions of the trades unions.

Article 120

1. The importance of passing comprehensive information on serious matters regarding the SE to the European Works Council at an early stage in order to facilitate its functions has been extensively acknowledged.

2. Paragraph 1 has been revised on the basis of the European Parliament's views. The suggestions of the Economic and Social Committee have also thereby been taken into account.

3. Paragraph 2 regarding the quarterly report to be made by the Board of Management has been amended and extended to meet Parliament's wishes.

The first two sentences have been drafted more succinctly.

The particulars to be included in the report have been substantially extended. As provided earlier, the report must deal in particular with general developments in the sector of the economy in which the SE is active. A comprehensive appraisal of the SE's position must also include the activities of undertakings controlled by it as defined in Article 6; this is also required in the case of the Board of Management's report to the Supervisory Board (Article 73a(1)).

The additional information now requested regarding the SE's economic and financial circumstances was suggested by the European Parliament. A true picture is obtained therefrom, however, only if account is taken of the SE's relations with its associated undertakings in a group. Shareholders' rights to information have therefore been extended under Article 90(1) to take this into account.

The information already required earlier regarding trends in the SE's affairs have at the request of Parliament been extended to include the production and sales position. The particulars to be included in the report regarding the level of employment have been reformulated. In certain cases conditions in a group undertaking under sole management by the Board of Management of the SE may have a bearing on the proper assessment of the Board's personnel policy.

The particulars now required regarding the production and investment programme and the other newly added information to be included in the report are based on the European Parliament's views.

Article 121

The new version of paragraph 2 provides that shareholders of the SE shall, where applicable, be furnished with the consolidated and semi-consolidated annual accounts and the corresponding status reports (Articles 196 to 202 and Article 216(4)).

Article 122

Paragraph 1 has been revised to express more clearly that the Board of Management is obliged to provide the information sought.

Article 123

1. The European Works Council's right of co-determination in the cases set out in paragraph 1 has been underwritten by the European Parliament and, moreover, been extended to the preparation of a social plan in the event of the closure of an establishment. The Economic and Social Committee voiced no united opinion on the question whether the European Works Council should be granted the latter right, but recommended the deletion of items (c), (f) and (g) in the list in paragraph 1, which it considered went too far.

2. The social plan provided for under item (h) of the European Parliament's proposal has not, however, been included in the list under Article 123(1). It is not sufficient in this case to accord a co-determination right; The Board of Management must be obliged to prepare a social plan and to discuss it with the European Works Council. A new Article 126a relating to the social plan has therefore been included to complement Article 125, which lists the cases when a social plan may be required, and Article 126, which imposes a duty on the Board of Management to provide information in such cases. In this way the European Parliament's request is substantially met.

3. The European Parliament's desire that the European Works Council be consulted when an establishment is closed as expressed in item (i) of its version of Article 123(1) is met under Article 125(1)(a), so that no provision need be made in Article 123.

Article 124

1. The Economic and Social Committee objected to this Article as it feared that it might anticipate terms of wage agreements. The European Parliament, on the other hand, supported its retention and suggested that it be extended by a provision regarding controls on workers' performance (Article 1(C)). In view of the considerations made by the Social and Economic Committee, however, Parliament did not adopt its Social Affairs Committee's opinion that the list under Article 124 should be made subject to approval by the European Works Council, by analogy with the position regarding works councils in Western Germany.

This could in fact lead to an overlap with wage agreement arrangements. If however, the European Works Council is consulted only in the cases set out in Article 124 such arrangements cannot then be anticipated. The Commission has therefore retained Article 124.

2. The wording of paragraph 1 has been completed, in accordance with the European Parliament's views, with a provision regarding controls on employee performance.

3. Article 2 now avoids the previous reference.

Article 125

1. The list of cases under paragraph 1 in which the European Works Council must be consulted has been adapted to the new working of the list in Article 66(1)

in accordance with the underlying concept of Article 125. The European Parliament's Opinion on Article 125(1)(a) to (d) is substantially met thereby.

2. The European Parliament has, moreover, proposed that the list be extended to ensure that the European Works Council is also consulted when the SE is dissolved or merged with other companies. This request by Parliament has been taken care of elsewhere. It is in fact difficult to fit consultation of this kind into the list under Article 125 as it is not for the Board of Management or the Supervisory Board but for the General Meeting to decide in this case. Consultation with the European Works Council is therefore provided for in the new Article 248(2) in the case of dissolution and by Article 23c in the case of forming an SE by merger, to which reference is also made in the new provisions of Title XI regarding mergers.

Consultation is also provided for when the SE is transformed (Article 265(2)) and where the SE takes part in forming a joint subsidiary (Article 36(3)(c). In all such cases the duty of consultation fits better into the provisions of the Article concerned rather than into the list under Article 125.

3. Article 125, unlike Article 66, need not extend to decisions taken by the Board of Management in the exercice of sole management in respect of a group undertaking controlled by the SE. The European Works Council in fact represents only the interests of employees of the SE. The Board of Management may, however, be obliged to consult the Group Works Council in the case of such decisions, under Article 135(2).

4. The addition providing for better determination of the duty of consultation in the cases listed in Article 125 corresponds with the parallel arrangement under Article 66(2). For the reasons set out above, the European Works Council should be consulted on matters regarding the SE but not those concerning dependent undertakings within a group.

Article 126

The requirements as to the written information to be supplied by the Board of Management to the European Works Council when the latter is consulted in accordance with Article 125 have been worded to follow Articles 23a and 271b more closely. These provisions are in turn based on Article 6(1) of the amended Proposal for a third Directive on mergers of sociétés anonymes.[1]

The report provided by the Board of Management in accordance with Article 126 is also intented to serve as the basis for the negotiations provided for in Article 126a on the social plan, if, already in the opinion of the Board of Management, the interests of employees are likely to be adversely affected by the proposed decision.

Article 126a

1. This Article contains the provisions requested by the European Parliament on the social plan to be adopted if establishments are closed or transferred. As indicated in the explanatory notes to Article 123 of the new version, it is not sufficient in this case to extend the right of the European Works Council to participate in making decisions, as proposed by the European Parliament; the Board of Management must also be obliged to prepare a social plan and to discuss it with the European Works Council.

2. The scope of the provisions regarding the social plan dovetails with the list in Article 125. All cases are thus included where the structure of the undertaking may be altered by a decision of the Board of Management, and the interests of employees thereby adversely affected.

Alterations resulting from winding-up or merger of the SE with other companies, decided upon by the General Meeting in accordance with Article 247a, are excluded. Provision regarding the social plan has in such cases been made in conjunction with preparation of the appropriate resolution by the General Meeting (Articles 23c and 23d, which, by corresponding references, also apply to mergers, pursuant to the provisions of Title XI; Article 248a applies in the case of dissolution by resolution of the General Meeting).

3. The provision itself closely follows those referred to above contained in Articles 23c and 23d in respect of mergers, which in turn follow Article 6 of the amended Proposal for a third Directive on mergers of sociétés anonymes. References should therefore be made to the explanatory notes to Articles 23c and 23d of the new version.

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[1] COM (72) 1668, 4.1.1973.

4. According to paragraph 1, the Board of Management must enter into negotiations on the social plan if the European Works Council considers that the decision which the Board of Management intends to make would adversely affect the interests of employees.

5. According to paragraph 2, the agreement between the Board of Management and the European Works Council regarding the social plan has the effect of an agreement under Article 127. Article 127(2) and (3) therefore apply.

6. If no agreement is reached on the social plan, and if the Supervisory Board agrees to the decision which the Board of Management intends to make, the appropriate course of action will be decided by an Arbitration Board, as in the cases referred to in Articles 123, 23c and 23d.

7. There is no justification for granting the European Works Council a right of veto in respect of the closure of an establishment if the rights and interests of employees are protected in this way. Such a veto was requested by the Legal Affairs Committees of the European Parliament, but the request was rejected by Parliament in plenary session.

Nor, under the proposals applying to national companies, are employee representatives granted the right to object to fundamental decisions; such proposals include eg, the proposal for a third Directive on mergers and the Proposal for a Directive on the retention of the rights and advantages of employees in the case of mergers, takeovers and amalgamations.[1]

In the context of the powers held within the European Company, the Supervisory Board of the SE is the most suitable body to bring about a settlement which will take account of all interests involved, including those of employees, where conflict arises as a result of the possible closure of an establishment. Article 126 a therefore lays down that neither the negotiations regarding the social plan, nor the referral of the matter to the arbitration board should these negotiations break down, should hinder implementation of the measures intended. That this is true in the former case is clear from Article 126a in general, and from Article 126a(4) in particular, while Article 126a(5), which is modelled on Article 8(3) of the abovementioned Proposal for a Directive of 31 May 1974, expressly indicated that this also applies in the latter case.

Article 127

1. The European Trade Union Confederation considered that no useful purpose was served by granting the European Works Council the right to conclude agreements. However, the Legal Affairs Committee and the Committee on Social Affairs and Employment of the European Parliament were in favour of retaining this Article.

It seems desirable that the European Works Council should be equipped in a way that ensures that all employees of the SE, irrespective of their place of employment and of any change therein within the SE across intra-Community frontiers, should have a statutory right to be included in the SE's welfare facilities. The provisions regarding agreement on a social plan (Article 126a) stress the importance for employees of the results of agreements concluded by the European Works Council. There is no longer any likelihood, following the redrafting of Article 119, of a conflict between agreements concluded by the European Works Council and collective agreements regulating conditions of employment. Where the latter type of agreement exists, agreements cannot be concluded by the European Works Council. The Commission retained Article 127 in view of these considerations.

The scope of agreements to be concluded by the European Works Council has, moreover, been limited by paragraph 1 to the cases set out in Article 123, in order to anticipate the possibility of conflict (within the area covered by Article 124) with collective agreements.

2. Paragraph 2 has been supplemented as a result of the Opinion of the European Parliament, to make it clear that whichever provisions are more favourable to employees must be applied.

3. At the request of the European Parliament, paragraph 3 clarified the effect of agreements concluded by the European Works Council.

[1] Proposal of 31.5.1974, OJ C104 of 13.9.1974.

Sub-section six

Arbitration proceedings

Article 128

1. Reference of disputes between the Board of Management and the European Works Council to an Arbitration Board for settlement was considered desirable by the European Parliament, especially in view of the European Works Council's co-determination rights in the matters dealt with by Article 123. This is necessary to prevent decision-making within the undertaking coming to a halt.

The rights of trades unions remain as little affected by this provision as by the other provisions concerning the European Works Council.

2. As a result of the Opinion of the European Parliament, the powers of the Arbitration Board have been limited in paragraph 1. Paragraph 2, covering the composition of the Board, has been reworded to make it clearer.

3. The wording of paragraph 3, which imposes a duty of professional secrecy on Members of the Arbitration Board has been adapted to Article 114.

Article 129

The principle that disputes between the bodies representing employees at establishment level and the European Works Council should be settled within the undertaking, has been approved by the European Parliament.

The only alteration to this Article has been the adaptation of its wording to Article 102.

SECTION TWO

The Group Works Council

Article 130

1. The Group Works Council is not a representative body for establishments, but for undertakings belonging to the group as a whole.[1]

2. At the request of the European Parliament, it is no longer a requirement for the formation of a Group Works Council that the SE and its dependent undertakings should have establishments in several Members States.

As the Legal Affairs Committee of the European Parliament emphasized, contrary to the position existing in the case of the European Works Council, there is no need to take account, when making provision for the Group Works Council, of the opportunities under national law for employee representation in dependent group undertakings. The Group Works Council must be seen in the context of the legal provisions regarding company groups relating to the SE and the latter's capacity to exercise sole management (Article 240) over the group. A Group Works Council must therefore be formed wherever a group exists as defined in Article 223, and if at least two undertakings within the group have sufficient employees to appoint representatives to the Group Works Council in accordance with Article 132.

3. The original text provided that a Group Works Council had also to be formed if the SE was in turn dependent on another undertaking. This case does not in fact require any special treatment, since such dependance *per se* does not essentially affect the capacity of the SE to exercise management over other undertakings and thereby to establish a group within the meaning of Article 223.

A Group Works Council would therefore have to be established even in the absence of specific provisions.

Special treatment is required only in the more specific case where the 'controlling' SE is itself subject to unifed group management, i.e., as a 'dependent group undertaking'. In accordance with the provision approved by the European Parliament, a Group Works Council must be established in this case in order that the interests of employees in the sub-group controlled through the SE can be protected by the provisions of the Statute as far as possible.

An exception to the general rule is, however, justified in cases where employees of the SE and of group undertakings controlled by it are represented on a body of the undertaking which has overall control of the group, on an equivalent basis as their representation on the Group Works Council of the SE.

[1] In the Opinion of the European Parliament, the wording of the German text of this Article has been amended to give full effect to this point.

If employees are represented on a body of a similar composition and having the same powers as the Group Works Council in the SE *vis-à-vis* the group's overall management, representation at sub-group level would only lead to an unnecessary duplication of competence in bodies representing employees at intermediate levels.

4. Paragraph two, which was intended to enable other bodies to represent employees in dealings with the Board of Management having overall control of the group, has been deleted as proposed in the European Parliament's Opinion. The Committee on Social Affairs and Employment of the European Parliament had feared lest this provision be used to circumvent those by which the Group Works Council was set up.

Article 131

1. This Article on the appointment of members of the Group Works Council was amended to accord with the Opinion of the European Parliament.

The proposal for the indirect selection of members has been retained in view of the deliberations of the Legal Affairs Committee of the European Parliament. Considering the large number of employees in different establishments who are represented by a single member of the Group Works Council, it would be impossible for such a member to make himself properly known to employees and gain their confidence in a direct election.

If, on the other hand, the number of members of the Group Works Council were increased to remedy the situation, the Group Works Council could become incapable of functioning properly and dialogue with the group's overall management become considerably more difficult to establish.

2. As a result of the Opinion, of the European Parliament, the circle of representative bodies entitled to participate in the election has been expanded in two respects in contrast with the original text. In all group undertakings, the bodies representing employees that have to be set up at group undertaking level in accordance with the appropriate provision are not the principal factor. If there is no central representative body at group undertaking level, the representative bodies at establishment level within the meaning of Annex I jointly elect representatives for the undertaking concerned. The new version of Article 132(2) lays down that in this case the management body in the particular undertaking must ensure that the necessary steps are taken for the election to be carried out.

In countries where there are no employees' representative bodies within the meaning of Annex I, the election will be conducted by the persons or organizations recognized there as representing employees.

The text as given in the Opinion of the European Parliament has been further extended by the addition of a sub-paragraph (c) governing the situation where neither form of employees' representative body exists in a group undertaking. In this case, recourse must be had to the body of the employees as a whole. This would appear unobjectionable, as it is small undertakings with clearly defined structures which will usually be concerned in such a case.

Article 132

1. Paragraph 1 regarding the number of representatives to be appointed from the group undertaking has been adapted to the Opinion of the European Parliament.

2. Paragraph 2 has been added to ensure that the election is properly carried out. The responsibilities at each stage of the procedure have therefore been stressed.

3. Paragraph 3 makes provision for the intervening period before a decision by the European Court of Justice on whether an undertaking is a group undertaking, if this is in dispute. A similar provision was proposed by the European Parliament in respect of the participation of employees of such undertakings in the election of members to the Supervisory Board of the SE.[1]

Article 133

There is justification for the provisions regarding the term of office of the European Works Council (Articles 107 to 109) being applied to the Group Works Council as well.

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[1] Article 4(5) of Annex III.

Article 134

1. The wording of paragraph 1 on responsibilities of the Group Works Council has been amended to emphasize that it applies to groups (or sub-groups) controlled by the SE.

2. The first sub-paragraph of paragraph 2 emphasizes that the competence of the Group Works Council extends over the group controlled by the SE as a whole, but at the same time it makes no material change as regards competence in matters concerning a number of undertakings within the group. As previously, this provision follows Article 119(2) in defining the area of competence. The amendments made to that article have consequently been applied to Article 134(2).

3. The individual powers of the Group Works Council are now set out in Article 135. Article 135(1) and (2) of the new version replaces the provisions contained in the previous Article 134(3).

Article 135

1. The right of the Group Works Council to be kept informed, to be consulted and to share in decision-taking is now governed by this one article. The principles of this provision were originally contained in Article 134(3) and Article 135(1) and (2).

2. The new version of paragraph 1 governs the duty of the Board of Management to provide information. This duty now extends expressly to matters concerning the group.

3. The new version of paragraph 2 now lays down expressly that in matters affecting the group, the Group Works Council has the same right to be consulted and to share in decision-taking as the European Works Council.

4. The new version of paragraph 3 corresponds to the earlier paragraph 1 which has been changed only in its wording.

5. The new version of paragraph 4 contains the previous paragraph 2 regarding the precedence of agreements concluded by the Group Works Council. At the request of the European Parliament, the text has been amended to follow the new text of Article 127(2).

6. Paragraph 5 corresponds to Article 127(3).

Article 136

1. The provisions governing settlement of disputes between the Board of Management of the SE and the Group Works Council, and between the latter and the bodies representing employees in dependent group undertakings, had to be amended to follow the amendments to Article 128 in particular. For this reason, both cases are now dealt with separately in Article 136(1) and (2).

2. Paragraph 3 retains the references to the provisions regarding the establishment and procedure of Arbitration Boards, previously contained in paragraph 2, materially unchanged.

SECTION THREE

Representation of employees on the Supervisory Board

Article 137

1. Paragraph 1 regarding the representation of employees on the Supervisory Board of the SE was one of the central topics in the discussion of the Commission Proposal for a Statute for the European company.

As already indicated in the introductory notes to Title IV, the Commission has adopted the Opinion of the European Parliament, and now proposes that one third of the members of the Supervisory Board should consist of representatives of shareholders, one third of employee' representatives, and one third of members representing general interests and coopted by both groups.

In conformity with the general scheme of the Statute, the provisions regarding the composition of the Supervisory Board were not, as originally proposed by the

European Parliament, included in Article 137 under Title V on the 'Representation of Employees in the SE', but under Title IV in the newly incorporated Article 74a in the section headed 'The Supervisory Board'. There has not, however, been any material deviation from the text of Article 137(1) contained in the Opinion of the European Parliament.

2. In accordance with its position in Title V on the representation of employees, Articles 137(1) now deals only with the election of employees' representatives to the Supervisory Board of the SE. It provides that employees' representatives must be elected by the employees of the SE and of group undertakings contolled by it.

The participation of employees of dependent group undertakings in the election of employees' representatives to the Supervisory Board of the SE was requested by the European Parliament and taken into account in its proposed electoral rules.[1] Such participation is necessary, since these undertakings may, according to the provisions of the Statute applicable to groups (Article 240), fall under sole management. It follows from this that decisions taken by the management of the SE affect employees in dependent group undertakings in the same way as employees in the SE. The former must therefore be given the same opportunity to shape and assume responsibility for the policy decisions of the SE as the latter.

3. According to the provision proposed originally, employees' representatives on the Supervisory Board were to be elected by the national bodies representing employees at establishment level. This provision is no longer practicable since a general system of employee representation on a statutory or formally agreed basis, to which reference could be made for present purposes, does not exist in the United Kingdom or in Ireland. The provision contained defects even apart from this, since small establishments in which there is no requirement to set up bodies representing employees were excluded from participating in elections.

The European Parliament therefore proposed the introduction of a uniform set of electoral rules for employee representatives on the Supervisory Board, and set these out in Annex III. The Parliament wished to incorporate this Annex into the Statute by means of Article 137a, of its proposed text. The Commission views this as a practicable solution, and has therefore incorporated Article 137a of the text proposed by the European Parliament in the new text of Article 137(1).

The electoral rules contained in Annex III are, like the original Commission Proposal, based on the indirect election of employee representatives to the Supervisory Board. The Legal Affairs Committee of the European Parliament came out against direct elections, on the grounds that candidates would have great difficulty in making themselves know to all the employees in the various establishments and in gaining their confidence. It therefore proposed the election of employee representatives by means of electoral delegates, who in their turn would be appointed in all the establishments of the SE and of its dependent group undertakings in accordance with the principles applicable to the election of representatives to the European Works Council.

The election of employee representatives by the electoral college is also intended to take place on the basis of proportional representation.

If elections are held in only one establishment, they are to be conducted on a direct basis, again, by proportional representation.

As regards the electoral rules in detail, reference should be made to Annex III and to the explanatory notes thereon.

4. Paragraph 2 now takes the opinion of the European Parliament by requiring a majority of the employee representatives to be employed by the SE or by group undertakings controlled by it.

A proportion of the employee representatives may, however, fall outside the scope of such an employment relationship. Where the number of employee representatives is three, this applies in the case of one of them; where there are five, seven or nine employee representatives, as is arithmetically possible under Article 74(3), this applies in the case of two of them.

The Legal Affairs Committee of the European Parliament stessed the need to include, amongst employee representatives, people who are better able than those employed in the undertaking to consider the undertaking both within the overall economic context and from the point of view of the particular industry.

However, according to the opinion of the European Parliament, it should be left to the employees of the SE to decide whether they also want to nominate and to

[1] Annex III, Article 1.

elect as their representatives to the Supervisory Board persons not employed in the establishments of the SE.

5. Paragraphs 3 provides that, in general, employees of dependent group undertakings will take part in the election of the Supervisory Board of the SE, even if the SE is itself a group undertaking controlled by another undertaking. This provision is based on the same principle as the original second sentence of Article 130(1) regarding the Group Works Council in a sub-group. This provides that where an undertaking in a sub-group is contolled through an SE, its employees must be suitably represented in the decision-making process of the SE at sub-group level.

However, employees in a group undertaking controlled by an SE do not have to be represented on the Supervisory Board of the SE, if the SE is a group undertaking controlled by a company on whose governing bodies employees of the SE and its dependent undertakings are represented in a manner equivalent to that required under the provisions in respect of the SE regarding the composition and powers of the Supervisory Board. In this case, the employees' representatives on the Supervisory Board of the SE are only elected by its own employees. However, the employees in undertakings controlled by the SE also appoint representatives to the corresponding bodies of the controlling group company along with the employees of the SE.

Different additional provisions would multiply the number of electoral procedures and unnecessarily complicate the decision-making structure within the group.

6. Paragraph 4 provides that only dependent group undertakings whose registered offices are situated within the Community may participate in elections to the Supervisory Board of the SE. The Statute cannot impose requirements as to elections outside its field of application; nor could the courts guarantee that they would be properly implemented. Moreover, undertakings whose registered offices are situated outside the Community and which are dependent on an SE do not come within the provisions of the Statute regarding groups.

Paragraph 4 lays down a general provision for the election of employees' representatives to the Supervisory Board, to prevent the series of individual provisions which apply to dependent group undertakings from becoming too unwieldy.

Article 138

1. The European Parliament was in favour of employees not being represented on the Supervisory board of the SE if a majority of the employees so decide. The Commission has decided to adhere to this principle in place of the original requirement of a two-thirds majority in favour of renouncing representation.

However, in view of the electoral rules in Article 137, this decision can no longer be taken solely by the employees in the SE. The employees in dependent group undertakings who participate in the election of employees' representatives to the Supervisory Board must also be taken into account. Article 138(1) incorporates for this purpose the provisions relating to entitlement to vote contained in Annex III, Article 2, and provides that employees will not be represented on the Supervisory Board if a majority of the employees who are entitled to vote in accordance with Annex III Article 2 vote against representation.

2. At the request of the European Parliament, paragraph 2 clarifies the effect of a decision against representation taken in accordance with Article 138(1).

Articles 139 to 143

1. Since the electoral rules are now contained in Article 137(1) and Annex III, the previous provisions relating to the election of employees' representatives to the Supervisory Board of the SE have been deleted.

2. The provision contained in the previous Article 142 was for shematic reasons incorporated in Article 74b(1) in Section 2 of Title IV in the form in which it appears as Article 143(1) of the Opinion of the European Parliament. The application of Article 143(2) in the version of the Opinion of the European Parliament was extended to all members of the Supervisory Board, and incorporated in this form in Article 74c(2).

Article 144

1. The term of office and its premature termination are now governed in respect of all members of the Supervisory Board by Articles 74c and 74d. Article 144 has therefore been deleted.

2. Article 144a in the version of the Opinion of the European Parliament has been incorporated in an amended form in Article 74e. This Article provides for a system of appeal to the courts in the case of gross dereliction of duty, in accordance with the proposal of the European Parliament, though applying equally to the Supervisory Board.

Article 145

1. The first sentence of paragraph 1 retains unchanged, for the sake of clarity, the first sentence of the old provision, although the principle of equality of rights and obligations is already provided for in Title IV, in particular in Articles 80 and 81 and now additionally, in Article 74e.

2. In order to prevent misunderstandings, it was expressly laid down that membership of the Supervisory Board should be compatible with membership of the various bodies representing employees. A similar provision was laid down in Article 107(2) with regard to the relationship between membership of the European Works Council and membership of national bodies representing employees. Membership of both the Works Council and the Supervisory Board is common practice for example in the Federal Republic of Germany.

3. The first sentence of paragraph 2 regarding protection from dismissal corresponds essentially to the second sentence of the previous version of Article 145. Paragraph 2, moreover, contains a parallel provision to that contained in Article 113(1) and (2).

SECTION FOUR

Regulation of terms of employment

Article 146

Article 146 regarding the special capacity of the SE to conclude collective agreements was extended at the request of the European Parliament to include a provision ensuring that favourable terms obtained in the individual establishments of the SE take precedence. At any one time, the most favourable terms of employment should apply in respect of employees.

Article 147

The European Trade Union Confederation was not in favour of the idea that terms of employment agreed in a European collective agreement might, under paragraph 2, be extended by the contract of employment to employees who do not belong to a trade union.

Encroachment in this way upon the right to conclude contracts freely by prohibiting an extension of the contract seems, however, to be beyond the limited objectives of the Statute for the European company. It cannot be inferred from this provision, which is concerned with the individual contract of employment, that the collectively agreed conditions of employment are generally binding.

Title VI

Preparation of the annual accounts

The provisions of this Title have been adapted to follow the amended proposal of a Fourth Directive on the annual accounts of limited liability companies[1] and on the proposal of a Fifth Directive on the structure of societes anonymes,[2] as expressly requested by the European Parliament and the Economic and Social Committee. Most of the amendments which follow are the result of this adaptation and do not therefore require a special commentary.

A draft Directive on the preparation of group accounts is at present still under preparation by the Commission. On its completion, the provisions in Section 6 of this Title (Preparation of Group Accounts) will have to be adapted to follow it.

Article 148

The inclusion of a statement of source and application of funds in the annual accounts of the SE is the result of a suggestion by the European Parliament. The reader of the balance sheet should be informed about the funds at the company's disposal during the accounting year, the sources of these funds (e.g., the year's profit, increase in capital, issuing of debentures), and how they have been used (e.g., purchase of plant, increase of stocks, dividends). A much clearer view of the company's financial position will be obtained with the provision of a funds statement. The importance of the funds statement is becoming increasingly recognized in accounting practice, and it is, moreover, already required in some Member States for companies quoted on the stock exchange. The proposed Directive on the prospectus to be published when securities are admitted to official stock exchange quotation[2] contains a corresponding provision.

The general provisions which apply to the drawing up of the annual accounts apply to the funds statement. There are no further requirements as to the content and lay-out of the funds statement, which are to be determined by developments in practice. This process is not yet far enough advanced to enable detailed rules to be formulated at present on this part of the annual accounts.

Article 157

Discounts must always be shown as a separate item, whether they appear in the balance sheet or in the notes of the accounts (cf. Article 188). They may be shown under costs of formation.

Article 161

Particular importance is also ascribed in other parts of the Statute to the relationship of the SE with majority-held subsidiaries or with undertakings which hold a majority interest in the SE. Such relationships are also relevant for the purposes of disclosure. The concept of the associated undertaking is therefore extended to include these relationships.

Article 181

This provision is modelled on Article 30 of the amended proposal of a Fourth Directive on annual accounts. Article 31 of the draft Directive also authorizes the revaluation of tangible fixed assets and of participating interest and other financial assets. These revaluations, which are intended to fix the value of assets at present values, do not have to be carried out according to a fixed system. This provision may seem acceptable having regard to the accounting practices in some Member States. For the SE however, such a provision appears less desirable. Only a systematic revaluation on the basis of one of the methods set out in Article 181(1) is therefore permitted.

Article 191

1. To ensure that the record is complete, the information required under item 10 must also include the total emoluments received by the people concerned on account of their positions of a comparable nature in undertakings dependent on or controlling the SE.

2. If the classical purchase price or production cost method of valuation is used in preparing the annual accounts, the SE must, in accordance with item 13,

[1] Supplement 6/74 — Bull. EC.
[2] OJ C131 of 13.12.1972.

supply additional information as to the amount of its assets and the results for the year, calculated on the basis of one of the more recent valuation methods specified in Article 181(1). It is important that this information is shown on the accounts, so that the possible effects of inflation on the assets and the company results can be gauged. There is no similar duty of disclosure in the amended draft Fourth Directive. The methods of valuation mentioned are not yet part of accounting practice in most of the Member States, and their introduction could make effective auditing difficult. Even though the introduction of such a duty of disclosure for all companies under national law as part of a process of approximation still appears premature, it may nevertheless be instituted in respect of the SE, which can draw on the necessary experts.

Article 196

1. The group accounts must, like the accounts referred to in Article 148, contain a funds statement, in this case for the whole group.

2. Article 227 is incorparated in Article 196.

Article 203

In accordance with a proposal from the European Parliament, paragraph 2 has been clarified to show that the admission procedure and the examination do not necessarily have to be governed by legal provisions. The conditions contained in this paragraph will also be fulfilled if the admission procedure and the examination are recognized under national law.

Articles 203a to 220

1. These Articles have been adapted to follow the provisions of the proposal for a Fifth Directive and, in so far as they are concerned with the publication of annual accounts, the corresponding provisions in the draft Fourth Directive.

2. The rules governing the independance of auditors contained in Article 203a and 203b also take account of the relationships between the SE and undertakings dependent on it or controlling it.

3. Article 209 governs the auditor's liability, as before *pari passu* with that of the special auditor under the new Article 15(3). This provision corresponds with that regarding members of the Board of Management (Articles 71 and 72a) and of the Supervisory Board of the SE (Articles 81 and 81a).

4. The provisions concerning the discharge of the members of the Board of Management and of the Supervisory Board in Article 216(3) and Article 218 have been deleted and not replaced. In conformity with Article 14(5) of the draft Fifth Directive, the general meeting can still bring a civil action irrespective of whether it has granted a discharge from liability.

Title VII

Groups of companies

The essential feature of the rules applicable to groups of companies, contained in the previous proposal, have been retained. The European Parliament has accepted in principle the provisions of the Statute applying to groups of companies and has approved the creation of the legal framework on which the operation of a group of companies is based and the protection to be afforded to outside shareholders and creditors of dependent group companies. The Economic and Social Committee has proposed no fundamental changes to these provisions either.

Certain new rules have been added. . The application of the protective provisions to sub-groups controlled by an SE is more precisely defined (Article 224). The controlling group undertaking is now entitled to acquire the shares of outside shareholders of a depending group company once it holds ninety per cent of its shares. Similarly, outside shareholders are also entitled to require that their shares be acquired (Section 4). Further, provisions have been included concerning the liability of members of the board of directors of the controlling group undertaking for damage resulting from their failure to exercise the necessary care in conducting the group management (Section 6). Lastly, transitional rules have been laid down for applying the provisions to group relationships already in existence prior to the formation of the SE (Section 7).

SECTION ONE

Definition and Scope

Article 223

1. According to the criteria for defining the existence of a group in paragraph 1, the legal form of the controlling undertaking is not a decisive factor. The grouping of legally autonomous undertakings under uniform management can be organized other than in the legal form of a company limited by shares. A rule that made provision only for controlling group undertakings in the form of a limited company would be easy to circumvent.

This does not apply to dependent group undertakings. The definition in paragraph 1 takes account only of dependent group undertakings carried on in the legal form of a limited company (paragraph 1). With other legal forms involving a greater degree of personal liability it is difficult to conceive of a conflict between the interests of the company and those of the group which might put outside shareholders and creditors at risk. The original proposal also intended that the safeguards of the 3rd Section should apply only to limited companies, as shown by Article 238 of the previous version. With the introduction of Article 238 of the previous version. With the introduction of Article 223(3) of the new version this Article has become redundant.

2. In paragraph 1 the phrase 'whether existing within the Member States or not' has been deleted as being reduntant. Article 224 defines the scope of application of Title VII.

3. Title VII applies only to dependent group companies formed under the law of a Member State. Paragraph 4 is worded accordingly, as are Articles 224(1), 225(1) and 228(1).

Article 224

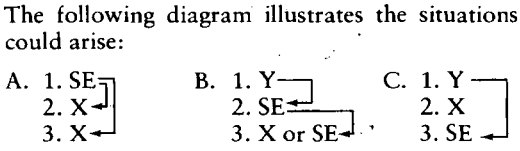
1. Certain drafting changes have been made, especially with regard to the new Section 6.

2. The criteria laid down in Article 223(1) for defining the existence of a group are based on the economic unity of the group. The group consists of *one* controlling undertaking and one or more dependent companies under the uniform management of the controlling undertaking. The concept 'controlling undertaking of a group' in Article 224 must be interpreted in accordance with the definition in Article 223(1). This means that where an indirect relationship of dependence exists, the safeguarding provisions to the benefit of the outside shareholders and creditors must be applied by the undertaking in overall control of the group. In fact, only this undertaking has the right to issue instructions under Article 240.

A special situation arises, however, where further group companies are controlled through a dependent SE within a group i.e., where a sub-group is controlled by an SE. If application of the provisions safeguarding outside shareholders and creditors were not extended to group companies controlled through an SE it would be simple to circumvent the provisions of this Title. Companies forming an SE would only

need to ensure that the SE, instead of being at the top of the group structure, occupied an intermediate position in the chain of group companies. The provisions of Title VII would then apply merely to the relationship between the controlling group undertaking and the dependent SE within the group, but not to group companies controlled through the SE. For this reason the scope of application of Title VII now extends to cover the situation where a sub-group is controlled by an SE. A further consideration is that employees of companies in a sub-group are protected at the level of the SE which controls it. They participate in the elections to the Supervisory Board of the SE and are represented on the Group Works Council of the SE.

The following diagram illustrates the situations that could arise:



X: dependent group company formed under the law of a Member State

Y: controlling undertaking (not an SE), irrespective of the location of its registered office

The arrows indicate which undertaking must give the guarantees referred to in Sections 3 and 5 to which other undertaking.

Situation A

The SE exercises uniform management and is therefore also able to cause loss or damage to company 3 through company 2. For this reason it must give both companies the guarantees laid down. Other provisions of the Statute are based on the same concept so that, for example, the Supervisory Board and the shareholders of the SE enjoy a right of access to information in respect of the dependent group company 3 (Articles 73 and 90(1)). A Group Works Council, in which the interests of the employees of company 3 are also represented, must be formed within the SE.

Situation B

The dependent SE within the group must, for its part, protect shareholders and creditors of company 3 (paragraph 3). It counts as controlling undertaking of a group under the terms of Articles 225 to 240d and must give the guarantees laid down in Sections 3 and 5. It also has the right under Article 240 to issue instructions and is subject to the rules on liability contained in Articles 240a to 240c. In the event of an exchange of shares, the shareholders in company 3 become normally outside shareholders in the SE and are thus again covered by the safeguards of Section 3 (Article 224(1)). If the conditions laid down in Article 228(1)(a) or (b) were satisfied the SE could also make a direct offer of an exchange of shares in company 1. On the other hand, the SE must not be allowed to calculate the equalization payment provided for in Article 228(2) on the basis of its own profit for the year. The SE is itself a dependent company within a group and could suffer through the exercise by company 1 of its right to issue instructions. Article 231(2)(b) accordingly contains special rules applicable to a sub-group. There is no need for similar provisions in respect of creditors. Creditors of company 3 become creditors of the SE when the provisions of Article 239 apply and thus they become creditors of company 1 where necessary.

Situation C

Outside shareholders and creditors of the SE must be protected not by company 2 but by company 1. Undertakings 1, 2 and 3 form a group. Since undertaking 1 exercises uniform management, it is ultimately liable for any harm done to the SE by company 2.

In the case of an exchange of shares, an equalization payment under Article 228(2) or liability for non-payment under Article 239, any guarantees given by company 2 to the SE could also be to little effect. Company 2 is itself a dependent company within a group and could be injured by undertaking 1.

Article 225

1. In certain circumstances it can also be important to an undertaking formed under national law to know with certainty whether or not it must be regarded as a controlling undertaking of a group within the meaning of the Statute and whether it must therefore give the guarantees laid down in Sections 3 and 5. For this reason the right to apply to the Court of Justice for a decision under paragraph 1 is extended to such companies also, as it is, of course, to dependent group companies in a sub-group controlled by an SE.

2. In calculating the shares which must be held by outside shareholders under paragraph 2(a), those

owned directly or indirectly by the controlling group undertaking or which are attributable to it must be left out of account. The criterion for calculating the shareholding in an SE has been deleted and has not been replaced.

3. The interests of employees of a group company controlled by an SE are catered for in the manner laid down in this Statute when the election of members of the Supervisory Board of the SE is organized and through the formation of a Group Works Council. For this reason employees and their representative bodies have an interest equal to that of outside shareholders and creditors of a dependent group company in being able to apply to the court for a decision as provided under this Article (paragraph 3).

SECTION TWO

Publicity

Article 226

When giving notice that it belongs to a group, the SE must make clear the position which it occupies in the group structure, and, where it is a dependent group company, it must publish the name of the controlling group undertaking.

Article 227

This Article has been incorporated in Article 196.

SECTION THREE

Protection of outside shareholders

Article 228

1. Under the original proposal a controlling group undertaking which was an SE or a company limited by shares formed under national law with a registered office within a Member State had to offer outside shareholders the option of a cash payment or an exchange of shares. In certain circumstances such a rule could place a heavy financial burden on the controlling group undertaking, especially if, where the shareholding was a relatively small one, a large number of outside shareholders was to opt for a cash settlement. For this reason the controlling group undertaking has now been given the right to choose between a cash payment and an exchange of shares but only, of course, in the cases specified in sub-paragraphs 1(a) and 1(b). Where the controlling undertaking is an SE or a company limited by shares formed under the law of a Member State, it may offer a cash payment or an exchange of shares or both, in which case the choice is left to the outside shareholders (paragraph 1(a)). A company limited by shares not formed under the law of a Member State may offer outside shareholders only a cash payment or the choice between a cash payment and an exchange of shares. Where a company limited by shares formed outside the Community is involved, there could be problems in examining the share exchange ratio, so that in this case the offer of an exchange of shares alone is not permitted. Where an exchange of shares is offered, the shareholders must always be in a position to opt for a cash settlement (paragraph 1(b)).

Where shares are exchanged, the controlling group undertaking may offer (convertible) debentures instead of its own shares. Where a sub-group is controlled by an SE, the latter may, as an alternative, offer shares in the group company which controls it, provided that the conditions laid down in paragraphs 1(a) and 1(b) are satisfied.

2. Under Article 231 of the original version the controlling group undertaking had discretion to offer outside shareholders an annual equalization payment as well. This rule can lead to outside shareholders being forced to relinquish their shares since no real alternative is open to them if they are offered an excessively low payment or no payment at all.

The second paragraph of Article 228 of the new version requires the controlling group undertaking to offer an annual equalization payment in every case and, in addition, Article 231 of the new version lays down certain criteria for calculating its amount. This ensures that outside shareholders have complete freedom to decide whether or not to relinquish their shares.

3. The initiative for the procedure laid down in Section 3 must be taken by the controlling group undertaking (paragraph 1) which must itself decide on the options open to it under Articles 228(1) and

231. The procedure has thus been modified in that under the original proposal the controlling group undertaking was required to submit a proposal only after it had received the experts' report on the adequacy of the offers of the dependent group undertaking (Article 233 of the former version).

Articles 229 and 230

These provisions have been incorporated in the first paragraph of Article 228 except for Article 230(3) which it has been possible to drop in the light of the last sentence of Article 224(3).

Article 231

The annual equalization payment to be offered by the controlling group undertaking must provide outside shareholders with a real alternative; the criteria for calculating its amount have accordingly been more precisely defined. These criteria are designed to secure a minimum amount but the annual equilization amount can be higher. They also provide a yardstick to the experts who are required to examine the adequacy of the offer under Article 232. The annual equalization payment must be at least as much as the dependent group company's potential future dividend. It may be calculated on the basis of future dividends payable by the controlling group undertaking only if the latter is an SE or a company limited by shares incorporated under national law (paragraph 2(a)). In this case the ratio between both companies' shares must be calculated and examined by the experts as provided for in Article 232.

According to paragraph 2(a) read together with Article 224(3) of the new version, where a sub-group is controlled by an SE, the latter could calculate the payment on the basis of its future dividends. This would, however, be less appropriate since the SE is itself a dependent company within a group. Paragraph 2(a) therefore provides that in this case the calculation may be made by reference only to future dividends paid by the company with overall control.

Article 232

1. The dependent group company need appoint experts only after the controlling group undertaking has made the offers under Article 228.[1] The expert's report is intended for the outside shareholders, who may have sight of its entire contents (Article 234(3)).

2. The experts are under the same liability for errors and omissions in their report as the auditors under Article 15(3) (paragraph 1).

3. Protection of outside shareholders is strengthened through their right to challenge the appointment of the experts before the court within whose jurisdiction the registered office is situated on the grounds that they are insufficiently unbiased, and to ask for other experts to be appointed paragraph 2).

4. Paragraphs 3 to 5 are modelled on Article 23.

Article 233

1. Because of the changed procedure under Article 228, paragraphs 1 to 3 of the original version have become redundant.

2. Paragraph 4 of the original version has been aligned on Articles 228 and 232(1) of the amended version.

Article 234

1. At least one month must elapse between the date of convening the General Meeting required to decide on the offers and the date on which it is held. This ensures that outside shareholders have sufficient time to consider the matter (paragraph 1).

2. Paragraph 2 is aligned on the amended version of Article 228.

3. With regard to the last sentence of paragraph 3, see Article 23b(3) of the amended proposal.

Article 235

1. Paragraph 1 has been aligned on the amended version of Articles 6 and 228.

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[1] See explanatory notes to Article 228(3).

2. Under paragraph 3 the proceeding of the General Meeting are to be recorded in a notarial deed. The minutes are to be filed and made available to any interested party.

Article 236

1. The General Meeting might possibly reject part only of the proposals of the controlling group undertaking. Where such rejection relates to an offer which is not mandatory under Article 228, e.g., to an exchange of convertible debentures with a simultaneous offer of a cash payment, a decision of the court under Article 236 is unnecessary. It would be necessary only if the entire settlement procedure were blocked through rejection of the offer by the General Meeting.

The controlling group undertaking would appear to be the most obvious potential applicant, although the possibility of its ceasing to operate, thus preventing the procedure from taking its course, must not be excluded. In this case the individual shareholders of the dependent group company have the right to apply to the court.

2. The experts appointed by the court (paragraph 3) are under the same liability as the auditors under Article 15(3).

Article 237

1. Paragraphs 1, 2 and 4 have been aligned on Article 228 as amended. In addition, paragraph 1 gives a more precise definition of the term 'company journals' as applied to dependent group companies not in the legal form of an SE.

2. Paragraph 5 makes the group undertaking concerned jointly and severally liable for making the annual equalization payments.

SECTION FOUR

Relinquishment of minority shareholders

This Section is new. Under the law of some Member States, where a company holds more than a certain percentage of the shares of another company, it has the right, in certain circumstances, to acquire the shares of the remaining minority shareholders in that company. The introduction of such a rule for the SE would appear entirely justified, and it would appear appropriate to tie this directly to the criteria for determining the existence of a group as defined in the Statute.

It is precisely in a group, especially where there are dependent group companies with only a few minority shareholders, that the interest of majority and of minority shareholders may conflict. In such circumstances it could be in the interests of the controlling group undertaking to make the dependent group company entirely subordinate to the interests of the group and to integrate it into the group policy. This would be made much simpler if it could acquire the shares of minority shareholders in the dependent company. Further, in such cases the few minority shareholders are not in a particularly enviable position; their ability to influence the workings of the company is in practice negligible. There is therefore every reason for giving them the opportunity of relinquishing their shares in it.

Under the following rules, the proportion of shares which must be held is fixed at ninety per cent. Once its holding reaches or exceeds this percentage the controlling group undertaking may acquire the shares of outside shareholders of a dependent group company and the outside shareholders may, for their part, require that their shares be acquired.

Article 238a

The controlling group undertaking may acquire ninety per cent or more of the shares of the dependent group company at various times. Basically three cases are possible. It may hold this percentage when the group comes into existence, the percentage may be reached in the course of the procedure laid down in Section 3, or as a result of the acquisition of further shares after completion of the procedure. Article 238a lays down rules governing the first and the third cases while the second case is covered by Article 238b.

Where the above-mentioned percentage has already been reached or exceeded by the time the group comes into existence, the controlling group undertaking may elect to carry out either the procedure laid down in Section 3 or a procedure under Article 238a. The difference between the two is that in the first case,

outside shareholders must be offered an annual equalization payment. If the controlling group undertaking does not wish to acquire the shares of all outside shareholders at the time when the group comes into existence it can still decide to do so later.

Where the controlling group undertaking acquires ninety per cent or more of the shares only after completion of the procedure laid down in Section 3, it does not need to decide immediately whether or not to acquire the shares of the remaining outside shareholders. No period is laid down within which this decision must be taken.

The controlling group undertaking must in all cases immediately notify its acquisition of 90% or more of the shares to the dependent group company concerned so that this may be published in the company journals (paragraph 2). It is on the basis of this information that outside shareholders may themselves enforce their right to relinquish their shares.

If the controlling group undertaking wishes to acquire the shares of the outside shareholders it must offer them a cash payment or an exchange of shares. The provisions of Section 3 relating to the rules of procedure, examination and the process for reaching a decision must be applied. Upon publication of the final offer, the shares of the outside shareholders *ipso jure* become the property of the controlling group undertaking and outside shareholders can then no longer act in that capacity. If they have a share certificate this is evidence only of a claim to a cash payment or an exchange of shares (paragraph 1) and it ceases to confer any rights on them.

If an outside shareholder wishes to relinquish his shares the controlling group undertaking must, at his request, make him an offer. It may offer a cash payment or, in the cases specified in Article 228(1), the alternative of shares or debentures in exchange. The outside shareholders may so request at any time after publication pursuant to paragraph 2. No time-limit is laid down. Where, pursuant to this provision, the controlling group undertaking has previously acquired the shares of other outside shareholders it behoves a new applicant to know what offer was made to them and its amount. This reduces the risk of unequal treatment.

The procedural rules and the rules on examination of the offer in Section 3 do not apply since in this case requests will, for the most part, come from individual outside shareholders and any procedure under those rules would be too cumbersome. The adequacy of the offer in response to a request from an outside shareholder does not therefore need to be examined and verified by an expert. However, if the outside shareholder finds the amount of the offer unacceptable he may have recourse to the court. Since the court's decision is of importance to any remaining outside shareholders of the company, it must be published.

Article 238b

This provision governs the situation where, on completion of the procedure laid down in Section 3, the controlling group company has acquired 90% or more of the capital of the dependent group company by obtaining outside 'shareholders' shares for cash or by share exchange. The controlling group undertaking may then subsequently acquire the shares of the remaining outside shareholders of the dependent group company who have decided to accept the offer of an annual equilization payment, on the same terms as those offered to them on completion of the procedure laid down in Section 3 (Article 237(1)). The outside shareholders, for their part, may require that their shares be purchased or exchanged on those terms. It is perfectly conceivable that they might wish to alter their original decision to remain members of the company once the predominance of the controlling group undertaking has further increased.

The procedure laid down is simple as the conditions for acquiring the shares of outside shareholders have already been tested and confirmed. The procedure must of course be carried out promptly since the adequacy of the cash payment or share exchange ratio might otherwise become uncertain owing to changes in the economic circumstances.

The procedure is as follows. Where, on expiry of the period referred to in Article 237(2), the controlling group undertaking has acquired ninety per cent or more of the capital of the dependent group company it must, within one week after this period has lapsed, notify the dependent group company whether or not it wishes to buy out the remaining outside shareholders (paragraph 1). This notification must be immediately published in the company journals by the dependent group company, with details of the amount of the cash payment or of the share exchange ratio (paragraph 2).

If the controlling undertaking does not wish to acquire the outside shareholders' shares, these become the property of the controlling undertaking *ipso jure* as soon as notification is published.

If the controlling undertaking does not wish to acquire the shares of outside shareholders the latter may, within one month of publication of the notification, require that their shares be acquired for cash or by way of an exchange of shares (paragraph 4).

If acquisition of the outside shareholders' shares is desired neither by the controlling group undertaking nor by the outside shareholders themselves, both may still request this at a later date under the general rules in Article 238a.

SECTION FIVE

Protection of creditors

Article 239

1. The definition of the scope of application in paragraph 1 has been deleted as this is now dealt with definitively in Article 224.

2. The words 'jointly and severally' in paragraph 1 have been deleted. The liability referred to in paragraph 1 is not joint and several since creditors must first claim payment from the dependent group company itself (paragraph 2). They must have made a written demand for payment and have failed to obtain satisfaction.

SECTION SIX

Instructions and liability

Article 240

The original version only resolved the conflict that may confront the board of directors of the dependent group company when the controlling group undertaking exercises its *de facto* powers. This board is required to safeguard the interests of the dependent group company alone. In order to establish clear relationships between the group undertakings concerned, the controlling group undertaking now enjoys an express right to issue instructions. The right to issue instructions is the counterpart of the guarantees to be offered by the controlling group undertaking. A controlling group undertaking not formed under the law of a Member State also has the right to issue instruction since such undertakings must also provide the guarantees (paragraph 1).

The right to issue instructions may be exercised from the time of publication under Article 237. The guarantees are definitively in force from that time onwards.

Problems may arise where, under the law governing the dependent group company, certain decisions of its board of directors may be taken only with the consent of a supervisory body. In this connection, the possibility must also be considered that employees have seats on the supervisory body whose consent is required. The ability to enforce an instruction even against the wishes of a supervisory body which includes such members would appear to be justified only if the interests of the employees of the dependent group company are protected in the same or in an equivalent manner in the decision making procedure at the level of the controlling group undertaking.

This requirement would be satisfied in a group or a sub-group controlled by an SE. Employees in companies within a group controlled by an SE participate in electing members to its Supervisory Board. Thus, under Article 240(2), the SE is able to enforce a decision even if the consent necessary at the level of a group company controlled by it is refused, but only after it has obtained the consent of the Supervisory Board of the SE.

Where the controlling group undertaking is an undertaking formed under national law, it may enforce an instruction against the wishes of the Supervisory Board of an SE within a group controlled by it only, if the interests of the employees of the SE and, in the case of a sub-group, of other group companies controlled through it, are protected in the same or in an equivalent manner at the level of the controlling group undertaking. It is impossible, within the present scope of the Statute, to lay down rules as to the structure of a controlling group undertaking formed under national law. However, this should not result in any reduction in the protection of employees interests afforded by the SE.

The reference in paragraph 3 to the powers of a dependent group undertaking which is an SE under Article 240(2) applies where a subgroup is controlled by an SE. Under Article 240 the SE also has the right to issue instructions within sub-groups and is thus able, where the conditions set out in Article 240(2) are satisfied, to enforce an instruction against the wishes of the supervisory body of a group company controlled by the SE. In exercising its right to issue instructions the controlling group undertaking could disregard such a decision of the Supervisory Board only if the employees of the SE and of companies associated with it in the sub-group are represented in an equivalent manner on the governing bodies of the controlling group undertaking.

The powers of the employees' representative bodies existing within the group undertaking (European Works Council or representative bodies within the meaning of Annex I to the Statute) remain unaffected. If the controlling undertaking of a group is however an SE and the measures envisaged affect several group undertakings, Article 135(2) and (3) shall apply.

Articles 240a, 240b and 240c

Where the controlling group undertaking acquires the right to issue instruction under Article 240, the board of directors of the dependent group company, insofar as it is required to carry out the instructions, becomes merely the instrument for putting into effect the group policy laid down by the company with overall control. In certain circumstances this could adversely affect the interests of an individual dependent group company. However, once the right to issue instructions has been recognized the grounds are removed for holding the members of the board of directors of the latter company liable to it for any harm they may cause it (Article 240c). Liability must in fact attach at group level. In exercising uniform management, the members of the board of directors of the controlling undertaking, and, where there is a supervisory body and a management body, the members of both bodies, must exercise the necessary standard of care (Article 240a). If they fail to do so, the management at group level is liable to the dependent group company for any resulting harm caused to it (Article 240b(1)).

This liability attaches only from the time at which its powers of management are legalized. If the dependent group company sustains loss as a result of instructions carried out before this time, the members of the board of directors of the company will be subject to the traditional rules governing liability.

Proceedings may be brought by one or more outside yhareholders in accordance with the conditions laid down in Article 240b(2)(a) or, where appropriate, by the liquidator or trustee in bankruptcy (Article 240b(2)(b)). Since both the board of directors and the General Meeting of the dependent group company are entirely under the control of the group management, they are not likely to do so.

SECTION SEVEN

Special rules regarding group relationships in existence prior to the formation of the SE

Article 240d

Not infrequently the companies that form the SE will themselves belong to a group and control one or more dependent group companies. After the SE has been formed these latter companies could become dependent group companies in a group controlled by the SE, especially where an SE is formed by merger or through the establishment of a holding company. If the SE were required to immediately apply the procedure laid down in Section 3 to all such companies, a considerable financial burden could be laid on it. This might, on occasion, be seen as a reason for not forming an SE. Further, the question arises as to whether the SE must be held liable for all the commitments of these companies. The introduction of transitional rules therefore seems appropriate.

The rules apply only where the SE notifies the Commercial Register and publishes in the company journals immediately once the group comes into existence firstly the fact that certain of its dependent group companies were, prior to the formation, group companies of one of its founder companies, and secondly, the names of the dependent group companies concerned (paragraph 1). If the notification is not made, the provisions of Sections 3 to 6 must be applied in full.

Within 18 months after it is formed the SE need offer outside shareholders of the companies notified

no more than an annual equalization payment (paragraph 2). The right to issue instructions may be exercised and the rules on liability contained in Articles 240a to 240c apply as soon as the annual equalization payment has been determined (paragraph 6).

The SE must offer a cash payment or an exchange of shares under Article 228(1) within six years of its formation (paragraph 3). Where the transitional rules apply, the SE may acquire the shares of outside shareholders under the Section 4 rules only after this procedure has been completed. From that time onwards outside shareholders may also require that their shares be acquired under these rules (paragraph 4). This provision is necessary since outside shareholders could otherwise require that their shares be acquired immediately after formation, provided the requirement of Section 4 were met, and could thus invalidate the transitional rules.

Creditors of the companies notified may bring claims against the SE only in respect of commitments arising after the formation of the SE (paragraph 5).

Title VIII

Alteration of the statutes

There have been no fundamental changes in the rules for altering the Statutes.

Article 241

The earlier provisions have been supplemented by a new paragraph 2 which provides that the Board of Management may propose an alteration of the Statutes to the General Meeting only with the consent of the Supervisory Board. It seems desirable to lay down a formal procedure of cooperation with the Supervisory Board similar to that under which the prior authorization referred to in Article 66(1) is obtained, with regard to the preparation of Board of Management proposals for alteration of the statutes. The duty formerly imposed upon the Board of Management by Article 242(3) of justifying its proposals before the General Meeting is dealt with in the second paragraph of Article 241, thereby consolidating the rules relating to the duties of the Board of Management when an alteration of the Statutes is proposed.

The rights of the General Meeting of the shareholders remain unaffected by the new additions. The shareholders themselves retain the right, as before, to request alteration of the Statutes where Articles 85 or 86 apply.

Article 242

Paragraph 1 has had its wording changed.

Paragraph 2 also includes the report to be drawn up by the Board of Management pursuant to Article 241(2) of the new text amongst documents that shareholders may obtain before the General Meeting.

Paragraph 3, which relates to this report, has been deleted as superfluous since its first sentence has become Article 241(2) and its second sentence Article 242(2).

Article 243

The quorum required under paragraph 1 to enable the General Meeting to resolve resolutions effectively and the need to convene a second General Meeting where this quorum is not reached have been regarded with some misgivings by those concerned in Member States whose company law contains no provisions for such a quorum.

However, the European Parliament has insisted on the need for a quorum, as required in Belgium, France, Italy and Luxembourg, both here and in the case of a meeting of debenture holders (Article 58(2)). The Commission has not altered the first paragraph of Article 243 since Parliament has not objected to its present form.

Paragraphs 2 and 3 have been merged so that the Statutes may now only prescribe a majority higher than the three-quarters majority laid down. They may no longer impose additional requirements as was previously possible. There appears to be no overriding need for such requirements which might give rise to uncertainty in the case of a company operating in a European context.

Article 245

The procedure whereby the European Court of Justice scrutinizes alterations to the States has been more closely aligned with the rules in Article 17 governing scrutiny of the formation of the company, to the new text of the explanatory note to which Article reference may be made. At the same time, account has been taken of the Economic and Social Committee's desire that paragraph 1 be amended. Sub-paragraph (b) of the former paragraph 2 has been dropped as a ground for refusing registration since it might have given the impression that it required the court to assess the auditors' report from an economic standpoint. This the court is, however, not asked to do, especially as the rule concerning liability in Article 43(a) effectively ensures that capital is fully paid up in all cases.

The new text accordingly retains only sub-paragraph (b) of the previous text as a ground for refusal. However, it mentions only the resolution of the General Meeting, since defective proceedings automatically result in the resolution itself being defective and therefore do not need separate mention, as was previously the case.

Paragraph 4 of the new text corresponds to Article 246(1). This provision regarding registration of the alternation has been included un Article 245 with the other provisions concerning the procedure for examination by the court, so as to match up with Article 17.

Paragraph 5 corresponds to Article 246(2). This provision, too, has been incorporated into the existing Article 245 to make for a clearer arrangement of the rules.

Article 246

The provisions of paragraphs 1 and 2 have been assumed into Article 245 because their substance is closely related to it and in view of the provision made under Article 17.

Paragraph 3 has been deleted since the effects of an alteration of the Statutes as against third parties are now generally dealt with under Article 9a.

Title IX

Dissolution, liquidation, bankruptcy and related proceedings

At the request of the European Parliament, provisions has been made for the European Works Council to be consulted before the General Meeting resolves to dissolve the company. In addition, the preparation of a social plan has been prescribed to deal with social consequences arising from such a decision of the General Meeting.

Furthermore, provisions of this Title have further been changed with regard to certain technical points, with particular reference to the Opinion of the Economic and Social Committee. It will consequently be possible in future to continue to operate an SE which has either been dissolved by General-Meeting resolution or by the passage of time provided that distribution of its assets among the shareholders has not yet begun.

SECTION ONE

Dissolution

Article 247

1. The wording of sub-paragraph (c) regarding winding-up under Article 249(4) has been amended so as to state with greater clarity that *ipso jure* dissolution is concerned. No other statutory grounds for winding-up are at present included in the Statute. The Commission does not therefore feel that the time is ripe for adjustment to the future introduction of further grounds for dissolution, as requested by the Legal Affairs Committee of the European Parliament.

2. Sub-paragraph (d) regarding dissolution upon insolvency now expressly includes the case of dissolution by a decision of the court refusing institution of bankruptcy proceedings due to lack of assets.

3. Sub-paragraph (e) has been added in order to take account of the expansion of powers under Article 99 inserted at the request of the European Parliament.

Article 248

1. Paragraph 1 regarding the conditions for a resolution by the General Meeting to dissolve the company has merely been reworded.

2. The new paragraphs 2 and 3 take account of the European Parliament's wish to alter Article 125 and ensure that the European Works Council can form an opinion before the General Meeting decides to dissolve the SE.

2. The Board of Management must, under paragraph 2, both advise and hear the views of the European Works Council if it itself intends to propose dissolution, and also if shareholders have applied for dissolution under Article 85.

4. Paragraph 3 corresponds with Article 125(2).

Article 248a

This Article contains a parallel provision to Article 126a, adapted to the special features of dissolution, regarding the social plan, to deal with the consequences upon the employees of dissolution decided upon by the General Meeting.

The provision takes account of the request made by the European Parliament for the introduction of a social plan amongst the list of decisions requiring approval under Article 123 (Article 123(1)(h), of the parliamentary draft).

Article 249

1. Paragraph 1(2) of this provision regarding the resolution to be passed by the General Meeting upon the company encountering substantial losses has been altered at the request of the European Parliament in order to avoid conflict between the Board of Management and the Supervisory Board. The provision, has, further, been worded more clearly.

2. The report by the Board of Management and the Supervisory Board's opinion on dissolution will in future be made available not just to persons attending the General Meeting, as was previously the case. The interests of employees and their representatives and those of creditors will also be affected by the dissolution. Provision has therefore been made in the

second sub-paragraph of the new version of paragraph 1 for these reports to be made available to any interested person. The original proposal made similar provision in respect of the document of constitution and its appendices (Articles 24(2) of the original proposal, now Article 23b(1) of the new version).

3. The requirements for statutory dissolution under paragraph 4 have been streamlined at the European Parliament's request. From the statutory point of view, the question is merely one of the absence of a valid resolution by the General Meeting.

Article 250

1. This provision has been redrafted in order to clarify the procedure to be followed for registering the dissolution and publishing it both in the case of dissolution by General Meeting resolution (Article 247a) and in the case of dissolution by passage of time (Article 247b) or *de jure* (Article 247c). The procedure in the case of dissolution through insolvency (Article 247d) or by court order (Article 247e) is dealt with separately under the provisions applying in such cases (Articles 263 and 99).

2. Paragraph 1 of the new version governs supervision of the dissolution resolution of the General Meeting (Article 247a) by the European Court of Justice and registration of the dissolution and publication thereof, by reference to the provisions relating to changes to the statutes.

3. Under the new version of paragraph 2, in the cases of dissolution by passage of time (Article 247b) and *de jure* (Article 247c) originally covered by Article 250, the liquidators are now required to have the dissolution registered. Under paragraph 1 of the original version this only lay upon the Board of Management. In such cases, however, dissolution will, contrary to what is the case with dissolution by resolution of the General Meeting, already have occured before registration. The powers of the Board of Management have in fact been extinguished upon dissolution and passed on to the liquidators (Article 252(1)).

4. Paragraph 2(2) contains the substance of the provision in the previous paragraph 2 regarding registration to be ordered by the court in the case of dissolution by passage of time or *de jure*.

The second sub-paragraph of paragraph 2 contains a provision for publication applying both to registration of the dissolution by the liquidators and to registration under court order. The costs provision thereby became dispensable and was deleted.

SECTION TWO

Liquidation

Article 252

1. Paragraph 2 of the new version has been altered so as to get out the occasions on which the court may intervene in the appointment and dismissal of liquidators more clearly.

If the court orders dissolution of the company under Article 99 or registration of *de jure* dissolution under Article 250(2), it is then proper for the court itself to appoint the liquidators at the outset, so as to give a guarentee that abuses or irregularities that have occurred cannot be repeated.

2. Paragraph 3 has been made to state clearly that the liquidators appointed by the court under paragraph 2, cannot be dismissed e.g., by the General Meeting.

Article 253

This provision now states further that it is for the liquidators appointed in each case to notify the Commercial Register.

Article 254

At the suggestion of representatives of commerce and industry, the liquidators have now been enabled to distribute assets of the company amongst the shareholders at their market value rather than convert such assets into cash, wherever disposal on this way is possible—e.g., in the case of shares held by the SE.

Article 255

1. The procedure under paragraph 2 whereby creditors are required to notify their claims, has been simplified by the general introduction of notice by registered letter instead of the reference, previously adopted, to the provisions of domestic law governing the service of documents.

2. At the request of the European Parliament and the Economic and Social Committee, paragraph 3 no longer provides for the extinguishing of unnotified claims. According to the new version, creditors who fail to notify their claims within the prescribed period lose only the right to enforce their claims on the company. Such claims otherwise continue unaffected —e.g., against third parties with joint liability.

The exception requested by the Economic and Social Committee in respect of future claims seems inopportune to the Commission. Such claims can be provisionally notified and where necessary discharged under Article 257(2).

Article 256

Paragraph 2 takes account of the release from liability under Article 218 and no longer states this provision within the reference thereto.

Article 257

The substance of paragraph 1 has been adjusted with regard to Article 49(1).

Article 258

Only shareholders and creditors are now given the opportunity under paragraph 2 to proceed against the scheme of distribution as only they have their statutorily protected rights affected thereby.

Article 260

The Commission agrees with the Economic and Social Committee that modern methods of information storage must be available to the European Commercial Register, but feels that the proper way in which deposited documents should be safekept should not be governed by Article 260 but by the rules to be prescribed by the Council under Article 8(2).

Article 260a

This provision has been introduced at the request of the Economic and Social Committee in order to facilitate continuation of an SE dissolved by a resolution of the General Meeting, provided that distribution of the assets to shareholders has not yet begun. The provision has been worded analogously with Articles 248(1) and 250(1).

Article 260b

Having regard to the provisions of Article 260a, it seems fitting that an SE should also be capable of continuation where the period laid down for its duration in the statutes has expired, provided that distribution of its assets amongst the shareholders has not yet begun.

Article 260b permits an appropriate alteration of the statutes to suffice for this purpose.

SECTION THREE

Bankruptcy, winding-up, arrangements, compositions and similar proceedings

Article 261

The terminology of the provision and the heading to this Section have been adapted to the 'preliminary draft of a Convention on bankruptcy, winding-up, arrangements, compositions and similar proceedings' of 16.2.1970.

Article 262

Under Article 3 of the above preliminary draft of a Convention on bankruptcy, sole competence for the hearing of bankruptcy proceedings rests with the courts of the Member State in which the debtor's centre of administration is situated. In the case of companies it is presumed (subject to rebuttal) that the company's centre of administration is situated where the registered office is established under the statutes.

This provision is to be preferred in respect of the SE to that originally made in Article 262, whereby it was irrefutably presumed that the SE's registered office under the statutes was its centre of administration. In this way it was intended to ensure that the court having jurisdiction over the place of the registered office would be competent for the institution of bankruptcy proceeding.[1] This provision might, however, have led to difficulties where the SE had several registered offices.

If competence to hear bankruptcy proceedings against the SE is defined by the general provisions of the Convention, such difficulties do not arise. The provisions contained in the preliminary draft already comprehensively cover the possibility of courts of several Member States being seized of the bankruptcy of the same SE.

On these considerations the special provisions of Article 262 were deleted.

Article 263

1. Paragraph 1 now ensures that not only the institution of bankruptcy proceedings but also that of composition and other proceeding in respect of which the provisions of the above preliminary draft of a Convention on bankruptcy apply (Article 1 of the preliminary draft) will be notified to the European Commercial Register for registration.

This provision corresponds with Article 25(2) of the preliminary draft of a Convention on bankruptcy. The particulars to be entered on the European Commercial Register have been stated in greater detail as the draft Convention makes no stipulation to this effect. The opportunity has, however, been taken to incorporate the information to be published in the Official Journal of the EEC pursuant to Article III of the protocol to the Convention.

2. Paragraph 2 ensures that the judgements and acts to be published in the Official Journal of the EEC pursuant to Article IV of the above protocol will also be notified to the European Commercial Register.

3. The new paragraph 3 provides for registration of dismissal of bankruptcy proceedings owing to want of assets, by direction of the court.

Instructions may be given by the court—as is usual in such cases in the Federal Republic of Germany for example—either on its own moving or on application by an interested party.

4. Paragraph 4 contains a provision regarding publication of the registration applying to paragraphs 1 and 3.

[1] Cf. the explanatory notes to Article 262 of the original proposal.

Title X

Transformation

The European Parliament and the Economic and Social Committee have approved the principle that an SE may be transformed into a limited company constituted under national law.

The rules relating to transformation set out in the earlier version of Articles 264 and 265 have, however, been supplemented by provisions intended to ensure that employees continue to be represented in the governing bodies of the company.

The Legal Affairs Committee of the European Parliament and the Economic and Social Committee have also discussed ways of ensuring that employees continue to participate in decision-making when an SE is transformed. These discussions did not, however, result in any proposals for supplementing the previous text.

The Commission's view is that a more effective guarantee of continued participation in decision-making is now required, in particular because a different concept based on the Opinion of the European Parliament underlies the employee participation rules.

According to the Opinion of the European Parliament, which the Commission has followed in its amended Proposal, employees are to be represented on the Supervisory Board of the European company on an equal footing with shareholders, so that the interests of both groups are properly taken into account in supervising the running of the company and in taking major decisions concerning it. This new concept of the SE, which is concerned equally with the interests of shareholders and employees, is incompatible with a situation where the right of employees to be represented on the Supervisory Board of the SE could be withdrawn through transformation of the SE into a company incorporated under national law, without equivalent provision for employee participation, solely by a resolution of the General Meeting.

The Commission therefore proposes that the conversion of an SE involving a reduced measure of employee participation on the governing bodies of the company may only be effected if a majority of the employee's representatives on the Supervisory Board of the SE is convinced that transformation is an economic necessity, and votes accordingly.

The rules governing the technicalities of transformation have, moreover, been arranged more logically in accordance with the observations of the Economic and Social Committee.

Article 264

1. In order to give effect to the rules for the protection of employees interests set out in the introduction to the new version of this Title, the first paragraph now provides that an SE may be transformed by the General Meeting only upon a proposal by the Board of Management, and that the proposal requires the agreement of the Supervisory Board.

2. The newly added fourth paragraph lays down that the consent of the Supervisory Board to transformation of the SE into a company on whose governing bodies employee representation is not equivalent to that required under the rules governing the SE will be effective only if supported by a majority of the employees' representatives on the Supervisory Board. Under the newly added second paragraph of Article 265, the Supervisory Board cannot decide whether to give its consent until the Board of Management has consulted the European Works Council.

3. In accordance with the wishes of the European Parliament and the Economic and Social Committee, this provision enables the SE to be transformed on the grounds of unavoidable economic necessity in certain circumstances. At the same time however, the Commission feels that it takes full account of the new concept of the European company and of the interests of its employees.

4. The second and third paragraphs are retained unchanged. The observance of a waiting period before conversion can be effected is still a sound principle. It prevents the SE being used merely as a means of changing the form of a company. Such use and the dangers of abuse arising from it would be detrimental to the success of the new legal framework for a European company. However, in view of the protective provisions ensuring the continuation of a participation in decision-making on the part of employees, it no longer appears necessary to extend this period to five years as requested by the Economic and Social Committee.

Article 265

Only the wording of the first paragraph has been altered.

The second paragraph ensures that the European Works Council is consulted before the SE is transformed. The European Parliament proposed in respect of Article 125 that the European Works Council should also be consulted on matters of importance to the undertaking other than those set out in the Article. Such matters would in fact include transformation, along with dissolution and mergers as specified by Parliament.

Transformation differs from the dissolution of the SE or mergers, however, in that no social plan has been provided for, since transformation as such cannot have consequences for employees which would need to be dealt with by a social plan.

Article 266

The third and fourth paragraphs have been amended so that the terminology conforms with that used in the amended provisions of Article 245 concerning scrutiny of the alteration of the Statutes by the European Court of Justice. The reader is referred to the explanatory notes to that Article.

Article 267

This provision gave rise to misunderstanding concerning the timing and effect of the transformation. It has therefore been deleted and incorporated in a different form as the second paragraph of Article 268 of the new draft.

Article 268

The transformation procedure following examination of the transformation by the European Court of Justice (Article 266) has been made clearer. This is to avoid misunderstandings as to the formalities to be carried out and the sequence of the procedural steps. The new rules follow more closely the preliminary draft made by Professor Sanders,[1] and take account of the observations of the Economic and Social Committee.

The first paragraph makes it clear that the subsequent transformation procedures take place at national level.

The second paragraph governs the effect of transformation; unlike the deleted Article 267, it makes it clear that the identity of the company is retained.

The third and fourth paragraphs of the new draft contain essentially the provisions relating to the procedure to be followed on completion of transformation, which were contained in the first and second paragraphs of the original draft.

The third paragraph of the original text is deleted, since the effect of registering the transformation as against third parties is governed by the newly introduced general provision regarding publication in Article 9a.

[1] Preliminary draft Statute for the European company, December 1966 — Competition series, No 6, 1967.

Title XI

Merger

The provisions of Title XI concerning the merger of European companies have been completely redrafted, although they are still based on the fundamental concept embodied in the original proposal that a European company should be able to merge with other European companies and with limited companies incorporated under national law by taking them over or by forming a new European company with them. Moreover, the reverse process should be permissible so that it should be possible for a European company to be absorbed by a limited company incorporated under national law or to form a new limited company under national law with such companies or with European companies.[1]

This concept has been formally approved by the European Parliament and by the Economic and Social Committee. However, the Economic and Social Committee, in particular, has rightly pointed out that the former rules do not do justice to this concept and it has stressed that the Statute must include specific rules on the acquisition of an SE by a limited company incorporated under national law.

The former rules were also clearly in need of improvement in other respects. The previously mentioned references to the provisions governing formation in Section 2 of Title II which relates to merger by formation of a new company are not, in fact, always appropriate in the case of mergers by take-over.

Where it has not been possible to refer to Section 2 of Title II regarding the provisions governing formation, the new provision of Title XI have been assimilated, as were the provisions governing formation, to the provisions of the amended Proposal for a Third Directive and to those of the Draft Convention on the international merger of limited companies.[2]

The first Section of the new rules, 'General Provisions', contains a list of all cases in which an SE may participate in a merger and refers to the provisions of this Statute that apply in specific cases. Further, this Section contains general provisions which apply in every case in which an SE participates in a merger.

The second Section lays down the rules that apply where an SE takes over another SE or a company governed by national law. In the original proposal, the rules that applied in these two cases were contained in Sections 1 and 2 (Articles 271 and 274). They can, however, be dealt with together.

Cases of merger by formation of a new SE, also dealt with in Sections 1 and 2 of the original rules, are already automatically covered by the provisions governing formation in Title II and no longer need separate mention other than in the general provisions in the first Section of Title XI. The third Section of the new text of Title XI deals with the acquisition of an SE by a limited company incorporated under national law.

The concluding fourth Section of this Title lays down the rules that apply to a merger by formation of a new limited company under national law.

SECTION ONE

General provisions

Article 269

Section 1 now provides a complete list of the various cases in which an SE may participate in a merger. At the wish of the European Parliament and of the Economic and Social Committee, it expressly admits the possibility of a merger between an SE and several other companies. It was possible, under the former proposal, for more than two companies to participate in the formation of an SE by merger (cf. Articles 2 and 3).

Section 2 defines the merger operations, regulated by Title XI, in which an SE may participate.

Various people have expressed the wish that an SE should also be able to participate in operations similar to mergers, such as scission. However, the corresponding legal forms in the various Member States differ considerably and in some they are unknown. The establishment of satisfactory rules for the SE therefore presents considerable difficulty, especially in the case of cross-frontier operations. At the pre-

[1] Initial explanatory note to Title XI — Supplement to Bull. EC 8-1970.

[2] In this connection cf. the initial explanatory note to the amended provisions of Title II.

sent time the Commission considers that such rules are not absolutely necessary.

Section 3 of the new rules contains the provision in the former paragraph 2 concerning the participation in a merger of an SE in liquidation. Furthermore, where national companies in liquidation are acquired by an SE they may participate in a merger. Corresponding rules relating to the founder companies of the SE have already been adopted in Article 21(2) of the new text. It is logical that national limited companies should receive the same treatment in both these types of merger since their assets are to be transferred to an SE in each of the two cases.

Article 270

The new text of this Article contains provisions which apply to an SE in all cases in which it participates in a merger (paragraph 1). Formerly such provisions did not exist. They are, however, necessary so that the references to the law governing the merging companies contained in the provisions governing formation in Title II or in the subsequent Sections of Title XI may be complemented if an SE is affected.

Paragraph 2 lays down rules for drawing up the draft document of constitution or the merger plan.

Paragraph 3 requires the Board of Management to appoint the auditors chosen by the General Meeting who possess the necessary qualifications for carrying out the formation audit (Article 203), (cf. the former Articles 270(2), 271(2)).

Paragraph 4 lays down that the resolution of the General Meeting approving the merger be passed in like manner to a resolution for alteration of the Statute. This corresponds to the concept embodied in the former rules (Articles 271(1)).

Article 270a

There are many references in subsequent Sections of this Title to the provisions governing formation in Title II. However, concepts used in the latter, such as 'founder company', need to be replaced in the case regulated in Sections 2 and 3, since these are concerned not with merger by formation of a new SE but with merger by take-over. Article 270a makes this adjustment.

SECTION TWO

Acquisition by an SE

Article 271

1. The material requirements in paragraph 1(a) to (e) which the merger plan must satisfy in the event of the take-over of a limited company by an SE correspond to the rules governing merger by take-over in Article 3(2) of the amended proposal for a Third Directive and Article 8(2) of the Draft Convention on international mergers.

2. The other rules governing the content of the merger plan and its annexes are aligned on Article 22 or consist of references to that provision.

Article 271a to 271e

The rules which govern examination of the merger plan, explanation of it to all interested persons, covening of the General Meeting, discussion with employees of repercussions of the merger, determination of any measures to be adopted in respect of them and, lastly, approval of the merger by the General Meeting, in the case both of the company acquired and of the acquiring company, consist largely of references on the same lines as the provisions governing formation in Title II.

As was in fact the case hitherto, limited companies incorporated under national law are therefore subject to the same Community rules in all cases where assets are transferred to an SE by way of merger.

Article 271f

The rules which govern notification of the merger to the Court of Justice of the European Communities for registration in the European Commercial Register are modelled on Article 26(1).

Article 271g

This provision lays down rules concerning examination of the merger by the court, publication of it and

the date on which it takes effect on the same lines as the provisions governing formation of an SE (with regard to paragraph 3, cf. Article 26(2)).

Article 271h

A reference to Article 27 ensures the protection of creditors of the company acquired.

Article 271i

1. This provision regulates the special circumstances which may arise where the acquiring SE owns shares in one of the companies acquired. The rules in Section 1 correspond in substance to Article 28(1) and those in Section 2 to Article 5(2) of the Draft Convention on international mergers. The provision is in response to a wish expressed by the Economic and Social Committee.

2. The reverse case, where the company acquired owns shares in the SE, is covered by the rules in Article 46(4)(a), which require the SE to dispose of its own shares where these are acquired by way of universal succession.

SECTION THREE

Acquisition of an SE by a limited company incorporated under national law

Article 272

This provision regulates the material requirements to be satisfied by the merger plan, and by the procedures for examination and explanation of it, through references to the rules in the second Section of this Title.

Article 272a

As in the case of the transformation of an SE into a limited company incorporated under national law where an SE is taken over by such a company, the question of representation of employees on the latter's governing bodies also arises if the limited company incorporated under national law is not subject to employee participation rules equivalent to those which govern the SE.

As in the case of transformation, the Commission considers it as unjustified, in the event of a merger, that through the merger, employees of the SE should lose their representation on the Supervisory Board of their company or see it considerably reduced against the wishes of their elected representatives.

In this connection, reference should be made as regards points of detail to the explanatory notes to Article 264, concerning transformation.

Article 272b to 272d

With regard to an SE which has been acquired, the rules which govern the convening of the General Meeting, discussion with employees on repercussions of the merger, determination of any measures to be adopted in respect of them and approval of the merger by the General Meeting, consist of references to the provisions governing formation.

On the other hand, with regard to the acquiring limited company these matters may be settled by the national law applicable to them and therefore need not be dealt with by the Statute.

Article 272e

This Article lays down rules governing supervision of the merger by the Court of Justice of the European Communities and is modelled on the corresponding Article concerning transformation (Article 266).

Article 272f

This provision regulates registration of the merger in the European Commercial Register and notice of such registration at Community level.

Article 272g

The effect of the merger — that the SE ceases to exist — is governed by standard rules at Community level.

Article 272h

This provision protects creditors of the SE by referring to Article 27. However, creditors may well avail themselves of any more favourable guarantees to which they may be entitled under the law governing the acquiring company.

Article 272i

This Article lays down the rules which apply where the acquiring company owns all or part of the shares of the SE.

Article 271i notwithstanding, no rules are laid down for the final treatment of such shares; this is governed by the law to which the acquiring company is subject (in this connection, see the explanatory notes to Article 28 and the Goldman Report on Article 5 of the Draft Convention on international mergers).

SECTION FOUR

Merger by formation of a new limited liability company incorporated under national law

Article 273

This Article lays down rules governing the material requirements which the merger plan must satisfy. References to the provisions governing formation were possible since the cases are arranged in much the same way.

The opening balance sheet to be prepared under Article 22(1)b in respect of an SE has not been prescribed for the new company which is to be incorporated under national law. Under Article 273e, domestic law will apply in this case.

Paragraph 3 corresponds to Article 45(1) of the Draft Convention on international mergers.

Paragraph 4 concerns the qualifications of the auditors not covered in paragraph 2 by the reference to Article 23.

Article 273a to 273d

The content of these Articles corresponds to that of Article 272a to d. Equal treatment of the SE is justified by the fact that in both cases the SE ceases to exist and transfers its assets and liabilities to a company incorporated under national law.

Article 273e

The rules governing formation of the new company correspond to Article 46 of the Draft Convention on international mergers.

Article 273f

It was possible to lay down rules gover ing examination of the merger by the European Court of Justice and registration of the merger by reference to the provisions which apply to mergers by take-over of an SE.

The time specified in paragraph 2 is governed by the provisions referred to in Article 273e. It is important because of the effects referred to in Article 273g.

Article 273g

The expiry of the SE must coincide with the formation of the new company. Thus, in contrast with other forms of merger, the effects of the merger cannot be regulated exhaustively at Community level.

Article 273h

This provision corresponds to Article 272h.

Article 273i

Paragraph 1 of this provision corresponds to Article 272i(1); reference may be made to the explanatory notes to the latter.

Paragraph 2, on the other hand, corresponds to Article 28(2); reference may, again, be made to the explanatory notes to the latter.

Article 274

Acquisition by an SE is now dealt with in Section Two of this Title. Article 274 has therefore been deleted.

Title XII

Taxation

No changes have been made to the substance of the provisions of this Title. The rules laid down in the Statute have been approved in principle both by the European Parliament and by the Economic and Social Committee.

SECTION ONE

Formation

Article 275

The European Parliament wished to supplement this provision concerning the formation of a European holding company with a clause stipulating that shareholders' benefits under double taxation agreements should not be prejudicied.

Holding companies within the Community are generally covered by such agreements. As a rule, an SE or its shareholders benefit from them without special mention being necessary. However, double taxation agreements do not apply to holding companies subject to a special tax system, as may, in particular, be the case in Luxembourg.

The addition to Article 275 could, however, lead to such companies unjustifiably deriving benefit from double taxation agreements. This must be prevented in the interests of combating tax evasion.

In view of these considerations, the Commission has not adopted the amendment desired.

SECTION THREE

Permanent establishments and subsidiaries

Article 278

To avoid double taxation of an SE with a permanent establishment in another Member State, the European Parliament would like rules on the lines of those in Article 281(2) added to Article 278 to ensure that permanent establishments and subsidiary companies are given equal treatment when carrying losses forward to the SE.

This request for parity is, however, misconceived since the situations of the permanent establishment and subsidiary company are not identical. The Statute applies only to permanent establishments within the Community (Article 278) whereas there is no such limitation in the case of subsidiary companies (Article 281). It is known that all Member States including the three new ones permit resident companies to carry forward their losses. It therefore follows that under Article 279 permanent establishments will also be able to do so. The proposed paragraph 5 is hence superfluous.

Subsidiary companies on the other hand may find that under the fiscal system of a third country they are unable to carry forward their losses. Provision is therefore made for this contingency in Article 281, paragraph 2, first sentence.

Articles 280 and 281

The amendments are no more than technical corrections.

Title XIII

Offences

Article 282

1. The concept underlying the previous rules has been retained. However, the European Parliament is unwilling to leave it to Member States to lay down the penalties attaching to the offences set out in the Annex to the Statute (Annex 4 of the new text). It has called for a Community Directive establishing the nature of the offences and the appropriate penalties. The Economic and Social Committee has also stated that it is in favour of establishing penalties as part of Community law.

In the Commission's view, to meet the Parliament's request would give rise to difficult questions regarding the equivalence of the penalties provided under the existing wide variety of systems of criminal law and forms of criminal procedures, and would unnecessarily increase the complexity of the Statute.

The aim is to penalize certain offences set out in the Annex to the Statute (Annex 4). It can be left to the national legislatures to provide for the means most suited to achieving this aim in the particular national context.

2. The wording of Article 282 has been amended to take account of the special circumstances which result from the distinction drawn in Germany between administrative offences punishable by fines and criminal offences. In fact, certain acts equivalent to those set out in the Annex are dealt with in Germany not as criminal but as administrative offences.

Title XIV

Final provisions

Article 283

The European Parliament and the Economic and Social Committee have expressed misgivings about the shortness of the period within which national laws must be adapted. At the wish of the European Parliament this period has been extended to 12 months.

Article 284

At the wish of the European Parliament, the period referred to in Article 284 has also been extended to 12 months to keep it in line with the period referred to in Article 283.

Annex I

National employees' representative bodies pursuant to Article 102(1) of this regulation

Article 102 of the Statute has been altered in conformity with the opinion of the European Parliament. As a result, the national employee representative bodies to whom reference is made in the provisions of Title V and elsewhere in the Statute are now listed in this Annex.

Reference is made in these provisions, at times, to representation at plant level and, at times, to central representation (cf. e.g., Article 131 where the election of members of the Group Works Council is primarily a matter for the centrally formed employee representative body).

Annex I has accordingly been divided into two sections, in which the representative bodies and their legal or negotiated bases are listed at each of the two levels. Only such representative bodies have been listed for which there is a statutory or generally recognized negotiated basis open to all employees. At the present time no such representation exists either in the United Kingdom or Ireland. In Belgium and Denmark they so far exist only at works level.

The Annex will have to be kept updated in the light of developments and, where necessary, restated in greater detail. The latter point applies particularly in the case of Italy, where 'Commissioni interne' have in many undertakings been replaced or complemented by 'Consigli di fabbrica' as the representative body for all the employees, wholly or partly assuming the tasks of the former.

Annex II

Rules for the election of members Of the European Works Council

1. Annex II contains the electoral rules recommended by the European Parliament for the European Works Council. These rules have been incorporated into the Statute by the new Article 104.

As regards the reasons for introducing the electoral rules, reference should be made to the explanatory notes on the new version of Article 104 of the Statute.

The rules were prepared by the Legal Affairs Committee of the European Parliament in consultation with the rapporteur of the Committee for Social Affairs and with the technical support of officials of the Commission.

2. Section I (Articles 1 to 8) contains the general rules applying to elections.

Members of the European Works Council are elected at the individual establishments of the SE by the workers employed therein, irrespective of their nationality and by direct, secret ballot (Articles 1 and 3(1)). Lists of candidates may be submitted by the trades unions and by groups of employees (Article 3(2)).

There seems no justification in granting the right to appoint candidates only to the unions, as is the case e.g., in Belgium. The relationship between organized and unorganized labour varies too greatly in this respect from one Member State to another and to some extent, within the same Member State, even from one undertaking to the next. It appears however to be justified to increase the minimum number proposed by the Parliament for groups of employees from 25 to 100, in order to prevent too wide a fragmentation of votes.

Employees have not been divided up into individual groups, such as 'workers', 'staff', or 'supervisory staff' for the purpose of European Works Council elections. Such categorization differs too greatly from Member State to Member State. On this point, the Legal Affairs Committee's Supplementary Report reads: '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; neither its functions nor its composition are the same'.[1]

By adopting the d'Hondt system of proportional representation by the maximum quotient method with

[1] PE 35.861. Document 67/74 of 26.6.1974, paragraph 113.

a preference vote for one candidate on the elected list (Articles 5 and 6) fair representation on the European Works Council of all groups of employees in the establishment concerned can in fact be ensured as far as possible.

3. Preparations for (Articles 14 to 16) and implementation of (Articles 17 to 19) the elections governed by Section II are in the hands of an electoral commission, independent of the SE's Board of Management (Articles 9 to 13), which is to be set up in the establishment concerned (Article 11).

The time-limits included in the individual electoral rules relate to a timetable, according to which the elections are due to take place not more than 75 days after the formation of the SE or 30 days before the expiry of the period of office of the European Works Council that is to be re-elected (cf. Article 14(1)). To ensure trouble-free adhesion to this timetable, the period fixed under Article 9(2) for objections against the listing of all establishments participating in the election was reduced, contrary to the text of the European Parliament's Opinion, from 20 days to 15.

4. Section III (Article 20) covers contestation of the elections and the consequences thereof.

5. As regards details of the voting procedures, reference should be made to Mr Brugger's explanatory comments in the Legal Affairs Committee's Supplementary Report.[1] This applies particularly as regards the description of the d'Hondt maximum quotient method.[2]

Annex III

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

1. The provisions regarding the election of employees' representatives to the Supervisory Board were, like the provisions of Annex II regarding elections for the European Works Council, prepared by the European Parliament's Legal Affairs Committee in consultation with the rapporteur of the Committee for Social Affairs and with the technical assistance of the officials of the Commission and approved by the Plenum of the European Parliament. These were incorporated into the Statute by the new Article 137(1), which corresponds to Article 137a of the text of the European Parliament's Opinion.

The reasons why the provisions were introduced have already been stated in the explanatory notes on the new version of Article 137. Here the chief points have also been set out that the new wording shares with the original proposal and also those on which they differ.

2. General matters are dealt with in Article 137 of the Statute and in Section II of Annex III.

As was done previously, provision is made for the indirect election of employees' representatives to the Supervisory Board, in cases where several establishments participate (Article 1(1)). Under the new provisions, the votes in this case are cast by special electors elected on a uniform basis in the individual establishments (Article 1(2)). Not only the SE employees but also the employees of group undertakings controlled by the SE having their registered offices within the Member States participate in these elections (Article 137(1)(3) and (4) of the Statute; Article 1(1) of Annex III). If a vote is to be taken in only one establishment, however, the employees' representatives will be elected directly (Article 1(3)).

For the grounds underlying these regulations, reference should be made to the explanatory notes in Article 137 of the new proposal and to paragraphs 131 and 132 of the Supplementary Report of the European Parliament's Legal Affairs Committee.[3]

3. Section II (Articles 3 to 22) governs the indirect election of employees' representatives.

4. Sub-section A of this Section (Articles 3 to 6) governs the election of electoral delegates on the principles applying in the case of the election of members of the European Works Council (cf. in particular, Article 3(1)).

5. Sub-section B of this Section (Articles 7 to 21) governs the election of employees' representatives by the electoral delegates.

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[1] Op cit paragraph 118.
[2] Op cit paragraphs 112 to 130.
[3] PE 35.861 — Document 67/74 of 26.6.1974.

Nominations may be submitted by the European Works Council, the trades unions, and groups of employees or electoral delegates (Article 7). For the same reasons as were stated in the explanatory notes to Appendix II in respect of elections for the European Works Council, it would not be proper to accord nomination rights only to the trades unions.

The electoral college for its part elects the employees' representatives on the Supervisory Board of the SE. If a number of representatives are to be elected the d'Hondt system of proportional representation by the maximum quotient method will be used (Articles 10 and 11). Here, too, as in the case of elections for the European Works Council, every attempt is made to use voting procedures to ensure that all groups of employees will be represented on the Supervisory Board.

The technical implementation of elections of electoral delegates and of employee representatives on the Supervisory Board is closely coordinated with that applying to membership of the European Works Council.

Preparations for and implementation of the elections is left to a central electoral commission (Article 14). This commission is composed of three members appointed from the electoral commissions at plant level. The central electoral commission presides over the discussions within the electoral college (Article 19). Provision has been made to ensure that nominations not made by the electoral delegates themselves can still be amended, withdrawn or consolidated with other nominations in the electoral college by their representatives (Article 18)4)).

6. Sub-section C (Article 22) covers contestation of the elections.

7. Section III governs the direct election of employees' representatives on the Supervisory Board which occurs in accordance with Article 1(3) if voting is confined to one establishment.

The elections are prepared as provided in respect of those for the European Works Council; seats will be distributed in accordance with the rules applying under Section II with regard to the electoral college.

8. As regards details of the electoral rules, reference should be made to the Supplementary Report of the Legal Affairs Committee, by Mr Brugger.[1] This applies particularly to an explanation of the d'Hondt maximum quotient method.[2]

9. Certain technical departures have, however, been made from the electoral rules as stated in the European Parliament's Opinion.

These relate to the alteration of Article 137(2) of the Statute consequent upon the European Parliament's Opinion. Contrary to the original wording of the Commission's proposal and the recommendations of the European Parliament's Legal Affairs Committee, the election to the Supervisory Board of employee representatives from outside the undertaking is no longer mandatorily requisite.

Consequently, when distributing seats on the Supervisory Board, it was no longer necessary to ensure that the required number of persons from outside the undertaking under Article 137(2) should obtain seats on the Board. According to the new version of Article 137(2), it is necessary now only to prevent more seats falling to candidates from outside the undertaking than is permitted under Article 137(2).

Having regard to the above, Articles 8 regarding the lists of candidates and 10(3) and (4) and 11 regarding the distribution of seats in the event of there being several lists, and 12(1) and (2) regarding the distribution of seats where there is only one list have been altered accordingly.

If, as a result, the number of seats allotted to candidates not employed in an establishment of the SE exeeds, as to the persons not employed in the establishments of the SE, the maximum number permitted under Article 137(2), the supernumerary candidates must give way to the candidates employed in an establishment of the SE, who are next in line on their electoral list. Example:

Five employees' representatives are to be elected to the Supervisory Board. Under the maximum quotient system of d'Hondt (Article 11(1) seats 1 and 3 are to be allotted to list A, seats 2 and 4 to list B, and seat 5 to list C.

Seat 1 falls to a candidate not employed in an establishment of the SE entered on list A, either through precedence on the list itself or as a result of preferential votes in his favour; seat 4 is allocated to a similar candidate on list B.

[1] PE 35.861 — Document 67/74 of 26.6.1974, paragraphs 131 to 141.
[2] Op cit paragraph 138.

If seat 5, allotted to list C, subsequently falls to a candidate on this list not employed in an establishment of the SE, in order to prevent that more persons not employed in an establishment of the SE will be elected than is permitted under Article 137(2), this candidate must give way, on the distribution of seats, to candidate nearest to him on list C either in sequence of listing or in the number of preference votes obtained, but employed in an establishment of the SE (Article 11(3)).

10. In Article 23(3), the minimum number required in case of direct elections for groups of employees wishing to submit lists of candidates was increased, as compared with the proposal of the European Parliament, from 25 to 110, as in the similar case under Article 3(2) of Annex II.

Annex IV

Penalties for infringements of the Statute

1. In the introductory clause, it is left to the Member States—as a consequence of the alteration of Article 282—to penalize the incidents subsequently listed either by criminal proceedings or in some other way.

2. The incident under item VIII has been extended to include the threat of sanctions not only in the case of a breach of Article 82 but also of failure to fulfil the declaration obligations under Article 46a of the new version.

3. The incidents under items IX to XI have been newly added. Under item IX, Member States are obliged to introduce sanctions against the breach of the obligations of secrecy under the Statute for European Companies.

No effective protection against the revelation of secrets has hitherto been afforded, but is nonetheless indispensable. The provision embraces all persons who have a duty of secrecy imposed upon them by the Statute, i.e., in particular, members of the Board of Management, of the Supervisory Board, of the European Works Council, and of the Group Works Council, auditors, trade union representatives attending meetings of the European Works Council, and European Works Council experts.

Item X was necessary in order to ensure that the votes of European Works Council members and of employees' representatives on the Supervisory Board of the SE remain free from unfair influence. Comparable provisions may be found in the legislation of certain Member States, protecting the implementation of elections for employee representative bodies set up under municipal law.

Item XI serves to protect the trade names of the SE by creating sanctions against the unlawful use of confusing descriptions.

Item XII is intended to facilitate transactions with the SE and to ensure that third parties having dealings with it will have continuing and untrammeled access to information that is important to them.

Obligations on the part of Member States such as those mentioned under items XI and XII have also been incorporated by the Commission into Article 19(2) of its proposal for a regulation of the Council on the European Cooperation grouping (ECG).[1]

[1] OJ C14 of 15.2.1974; explanatory notes printed as Supplement 1/74 — Bull. EC.