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REPORT

on the Draft Council regulation on the Statute for a European Company (SE)
(14886/2000 – C5-0092/2001 – 1989/0218(CNS))

(Renewed consultation)

Committee on Legal Affairs and the Internal Market

Rapporteur: Hans-Peter Mayer

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

On 30 June 1970 the Commission submitted its initial proposal for a regulation on a European Company. This proposal was amended in 1975. On 25 August 1989 the Commission submitted further proposals for a regulation on the Statute for a European Company and an associated directive on the involvement of employees in the European Company (COM(1989) 268 - 1989/0218-0219(SYN))[1], which were amended in 1991 (COM(1991) 174)[2].

The 1989 and 1991 proposals were based on Article 54 (the current Article 44) of the EC Treaty, which provided for the cooperation procedure. Once the Maastricht Treaty had come into force the proposals were placed under the codecision procedure.

At the sitting of 24 January 1991, Parliament adopted its position on the proposals at first reading and confirmed that position on 2 December 1993 and again on 27 October 1999.

The Council subsequently decided that the proper legal basis for the proposals was Article 308 of the EC Treaty, which provides for consultation of the European Parliament.

By letter of 9 March 2001 the Council consulted Parliament again under Article 308 of the EC Treaty, on the draft Council regulation on the Statute for a European Company (SE) (14886/2000 - 1989/0218 (CNS)).

At the sitting of 15 March 2001 the President of Parliament announced that she had referred this Council text to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Economic and Monetary Affairs and Committee on Employment and Social Affairs for their opinions (C5-0092/2001).

The Committee on Legal Affairs and the Internal Market had appointed Hans-Peter Mayer rapporteur at its meeting of 29 February 2000.

The committee considered the draft Council regulation and draft report at its meetings of 26 July 1994, 29 February 2000 and 27 February, 5 March, 23 April, 14 May, 29 May and 26 June 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley, Rainer Wieland and Ward Beysen, vice-chairmen; Hans-Peter Mayer, rapporteur; Maria Berger, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Othmar Karas (for Enrico Ferri pursuant to Rule 153(2)), Ioannis Koukiadis (for Enrico Boselli), Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Manuel Medina Ortega, Bill Miller, Astrid Thors (for Toine Manders), Feleknas Uca, Diana Wallis, Joachim Wuermeling, Christos Zacharakis (for Antonio Tajani) and Stefano Zappalà.

The opinion of the Committee on Employment and Social Affairs is attached; the Committee on Economic and Monetary Affairs decided on 16 June 2001 not to deliver an opinion.

[1] OJ C 263, 16.10.1989, p. 69
[2] OJ C 138, 14.5.1991, p. 8

The report was tabled on 26 June 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Draft Council regulation on the Statute for a European Company (SE) (14886/2000 – C5-0092/2001 – 1989/0218(CNS))

The proposal is amended as follows:

Text proposed by the Council[1]	Amendments by Parliament
Amendment 1 Citations	
THE COUNCIL OF THE EUROPEAN UNION,	***THE EUROPEAN PARLIAMENT AND*** THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article ***308*** thereof,	Having regard to the Treaty establishing the European Community, and in particular Article ***95*** thereof,
Having regard to the proposal from the Commission [1],	Having regard to the proposal from the Commission[1],
Having regard to the Opinion of the European Parliament [2],	***Deleted***
Having regard to the Opinion of the Economic and Social Committee [3],	Having regard to the Opinion of the Economic and Social Committee[2],
	Pursuant to the procedure laid down in Article 251 of the EC Treaty,
	[1] OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.
	[2] OJ C 124, 21.5.1990, p. 34.

Justification

In contrast to the Commission text, the proposal amended by the Council has the wrong legal basis.

[1] OJ not yet published

Amendment 2
Recital 7 a (new)

With a view to creating a uniform legal framework for the functioning of SEs, this Regulation should aim at minimising reference to differing national rules and laws, which may result in discrepancies in the treatment of SEs registered in different Member States.

Justification

The current proposal still refers to too great an extent to national legislation, which means that, effectively, there is not one uniform SE but 15 different systems, whilst a single internal market allowing free competition should be the objective. Barriers to competition should be removed as far as possible.

Amendment 3
Recital 8

The Statute for a European public limited-liability Company (hereafter referred to as 'SE') is among the measures to be adopted by the Council before 1992 listed in the Commission's White Paper on completing the internal market, approved by the European Council that met in Milan in June 1985. The European Council that met in Brussels in 1987 expressed the wish to see such a Statute created swiftly.	The Statute for a European public limited-liability Company (hereafter referred to as 'SE') is among the measures to be adopted by the Council before 1992 listed in the Commission's White Paper on completing the internal market, approved by the European Council that met in Milan in June 1985. The European Council that met in Brussels in 1987 expressed the wish to see such a Statute created swiftly. ***The Commission then submitted its proposal in 1989[1] on which Parliament delivered its opinion at first reading in 1991[2]. The Commission amended its proposal in 1991[3] and consulted Parliament again[4]. In 1993 Parliament confirmed its opinion from first reading[5].***

[1] OJ C 263, 16.10.1989, p. 41
[2] OJ C 148, 29.02.1991, p. 54
[3] OJ C 176, 8.7.1991
[4] COM(1993) 570
[5] OJ C 342, 20.12.1993, p. 15

Justification

The recital suppresses substantial parts of the legislative procedure hitherto.

Amendment 4
Recital 9

Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability Company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where the functioning of an SE does not need uniform Community rules reference may be made to the law governing public limited-liability companies in the Member State where it has its registered office.	Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability Company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where ***in the first instance*** the functioning of an SE does not ***necessarily*** need uniform Community rules reference may ***provisionally*** be made to the law governing public limited-liability companies in the Member State where it has its registered office.

Justification

The rules contained in the proposal are essentially rules on the formation of SEs. Substantial areas are left untouched. This should not be a permanent state of affairs. To ensure that the legal construct of the SE is standard in all Member States, national peculiarities need to be avoided. The Commission is therefore called upon to table appropriate proposals after an introductory period.

Amendment 5
Recital 21

This Regulation does not cover other areas of law such as ***taxation,*** competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in	This Regulation does not cover other areas of law such as competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above

the above areas and in other areas not covered by this Regulation.	areas and in other areas not covered by this Regulation. ***With regard to fiscal matters and accounting approaches, standard rules on taxation are required; the Commission will submit appropriate proposals.***

Justification

It is essential for fiscal accompanying rules to be adopted after a transitional period of three years following the entry into force of the regulation and the directive. The success of the SE as an autonomous legal form depends not least on resolving the problems of fiscal law which affect SEs in particular because of their links with different tax systems. The Commission is therefore requested to submit proposals promptly.

Amendment 6
Recital 21 a (new)

	A long-term solution has to be found to problems arising out of unequal taxation burdens on SEs registered in different Member States.

Justification

The existence of major differences between national tax systems impedes free competition, precisely because of national differences affecting businesses within the internal market. For that reason, it will be necessary to endeavour in future to coordinate tax systems at the European level.

Amendment 7
Recital 22

Directive 2001/.../EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by	Directive 2001/.../EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by

the national provisions applicable, under the same conditions, to public limited-liability companies.	the national provisions applicable, under the same conditions, to public limited-liability companies. ***Nevertheless, a guarantee that acquired rights of involvement will be preserved, regardless of any subsequent transfer of the SE's registered offices, is essential.***

Justification

It is essential to preserve workers' acquired rights of involvement, regardless of the nature of such rights.

Amendment 8
Recital 23

The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/ /EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.	The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/ /EC and set up in advance the necessary machinery for the formation and operation of SEs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly. ***However, provision should be made for the formation of an SE when only those Member States are affected which have ensured transposition of this Regulation and Council Directive 2001/.../EC[1] prior to the end of the period of deferral.***
	[1] Council Directive of... supplementing the statute for a European Company in respect of workers' involvement, OJ ...

Justification

Provision should be made for the SE to be used immediately by companies of those Member States which have already integrated the SE in their legal systems. This would also create an incentive for speedier transposition.

Amendment 9
Recital 29

The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article ***308*** thereof.	The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article ***95*** thereof.

Justification

See justification for Amendment 1.

Amendment 10
Article 8, paragraph 2, letter c

Any implication the transfer may have on employees' involvement;	any implication the transfer may have on employees' involvement ***and the measures to protect existing forms of involvement;***

Justification

In the event of transfer of an SE, existing forms of involvement must not be curtailed. The transfer plan must therefore include those measures required to safeguard existing forms of involvement.

Amendment 11
Article 12(1)

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the First Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article ***58*** of the Treaty, with a view to making such safeguards equivalent throughout the Community [1]. [1] OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.	1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the First Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article ***48*** of the Treaty, with a view to making such safeguards equivalent throughout the Community [1]. [1] OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.

Justification

Reference should be to Article 48 of the Treaty.

Amendment 12
Article 20, paragraph 1, letter i

Information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/ /EC.	Information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/ /EC***, in particular measures to protect existing forms of involvement.***

Justification

In the event of merger of two SEs, existing forms of involvement must not be curtailed. The transfer plan must therefore include those measures required to safeguard existing forms of involvement.

Amendment 13
Article 39, paragraph 5

Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State ***may*** adopt the appropriate measures in relation to SEs.	Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State ***shall*** adopt the appropriate measures in relation to SEs.

Justification

Freedom to choose between the single-tier and two-tier systems means that scope for a single-tier system must be created not only in Member States which have hitherto had a two-tier system. With a view to safeguarding acquired forms of worker involvement, appropriate facilities must be created in Member States which hitherto have had a single-tier system only.

Amendment 14
Article 43, paragraph 4

Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State ***may*** adopt the appropriate measures in relation to SEs.	Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State ***shall*** adopt the appropriate measures in relation to SEs.

Justification

Freedom to choose between the single-tier and two-tier systems means that scope for a single-tier system must be created in Member States which have hitherto had a two-tier system. The question of safeguarding acquired rights of worker involvement is dependent on this and must be regulated in the merger plan.

Amendment 15
Article 68, paragraph 1

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.	The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation. ***The Member States may provide for an SE to be formed if the Member States in question have already ensured the effective application of this Regulation and of Council Directive 2001/.../EC[1].***
	[1] Council Directive of.... supplementing the Statute for a European Company in respect of workers' involvement, OJ...

Justification

See justification for Amendment 8

Amendment 16
Article 69, paragraph 1

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:	***Three*** years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the ***impact of this Regulation on small and medium-sized enterprises, in particular any obstacles to their forming an SE, and*** the appropriateness of:
(a) allowing the location of an SE's head office and registered office in different Member States;	(a) allowing the location of an SE's head office and registered office in different Member States;
(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;	(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;

(c) revising the jurisdiction clause in Article 8(12) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;	(c) revising the jurisdiction clause in Article 8(12) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;
(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.	(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.
	(e) approximating the fiscal rules applicable to SEs in order to solve the problems resulting from links with different systems of taxation.

Justification

3 years:
A shorter deadline is proposed for making an initial evaluation, in order to avoid shortcomings impeding for too long the proper functioning of the regulation.

Small and medium-sized companies:
The regulation currently takes too little account of SMEs, which provide a great deal of employment and are the driving force behind a large section of the European economy.

See also justification for Amendment 5.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Draft Council regulation on the Statute for a European Company (SE) (14886/2000 – C5-0092/2001 – 1989/0218(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the Draft Council regulation (14886/2000[1]),

– having regard to the Commission proposal to the Council (COM(1989) 268)[2] amended in 1991 by COM(1991) 174[3],

– having regard to its position at first reading of 24 January 1991[4] confirmed on 2 December 1993[5] and 27 October 1999[6],

- having been consulted by the Council again under Article 308 of the EC Treaty (C5-0092/2001),

- having regard to Rule 67 and 71(2) of its Rules of Procedure,

- having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Employment and Social Affairs (A5-0243/2001),

1. Approves the Council draft as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

4. Asks to be consulted again if the Council intends to amend the draft regulation substantially;

5. Instructs its President to forward its position to the Council and Commission.

[1] Not yet published.
[2] OJ C 263, 16.10.1989, p. 69
[3] OJ C 138, 29.5.1991, p. 8
[4] OJ C 48, 25.2.1991, p. 55
[5] OJ C 342, 20.12.1993, p. 15
[6] OJ C 154

EXPLANATORY STATEMENT

1. Decision of general principle

The idea of creating a European form of company obeying the same supranational rules in all Member States is almost as old as the European Union itself. The Societas Europaea (SE) is the flagship of European company law. The foundation stones were laid in the late 1950s when there were calls for uniform legislation. In **1970** the Commission submitted a proposal for a regulation on the statute of an SE. It contained uniform law down to the last detail. However, it ran into opposition because of diverging forms of company law in the Member States. As a result, in **1989** the Commission submitted an entirely new proposal for a regulation which excluded social and labour law, fiscal law, law on competition, protection of industrial property rights, insolvency law and industrial constitution law. However, the Member States were unable to agree on a common form of workers' participation.

Finally, on 20 December 2000, at the European Council summit in **Nice**, political agreement was reached on a Council regulation on the statute of the SE and a directive on worker participation.

2. The legal base

The **first** proposal for a statute of the SE was based on the current Article 308, which provides only for Parliament to be consulted. The **1989** proposal was in two parts: the regulation was based on the present Article 95 and the directive on the present Article 44(2)(g). The **Nice** proposals are both based on Article 308 with the result that, once again, Parliament is simply consulted.

Article 95 is just as appropriate a legal basis for the regulation as Article 308. For the purposes of democratic legitimacy - and in line with decisions of the Court of Justice - in such cases the legal base giving Parliament most say should be chosen.

In order that the SE can be applied speedily - which is something that industry is waiting for - the rapporteur proposes that the procedure be completed under Article 308 (consultation) as soon as possible. However, Parliament reserves the right, following adoption by the Council, to bring a case before the Court to examine the legal base.

3. The regulation

a) Statutory sources, company formation, capital and registered offices

Article 9 covers the statutory sources: firstly, the text of the regulation itself, secondly, company law of the Member States and, thirdly, the statutes of the SE.

Pursuant to Article 2 and 3, there are five different ways in which an SE can be established: two public limited-liability companies, with registered offices and head offices within the Community and formed under the law of a Member State, may form an SE by means of a

merger; two national public or private limited-liability companies may set up a holding SE; companies within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law may form a subsidiary SE; a public limited-liability company formed under the law of a Member State may be transformed into an SE if, for at least two years, it has had a subsidiary company; finally, an SE may set up a subsidiary company, also in the form of an SE. The common feature is that the SE must impact on at least two Member States.

The capital of the SE is in Euro and must be at least EUR 120 000.

The registered offices must be in the Member State where the head offices are located.

b) Bodies

There are two different systems of managing limited-liability companies under the company law of the Member States. The 'single' system in Britain, for example, provides solely for an administrative body. The 'dual' system, applicable in Germany, for example, provides for a supervisory body and a management body. European unification requires that both systems be available in each country. Hence, companies can choose the single or the dual approach. This means, for example, that employee participation will be possible even in the single system. This will present national parliaments with complex tasks.

c) Transfer of place of business to another Member State

Hitherto, company law of the Member States has been such that national companies can only transfer their place of business if they are dissolved an d re-formed in other Member State. With an SE a transfer will not result in the company being dissolved or in a new legal entity being created.

However, a transfer plan has to be drawn up and made public. The management or administrative body of the SE also has to draw up a report on the consequences of the transfer. The report must be made available to shareholders and creditors. After a certain period the general meeting decides on the transfer. The transfer takes legal effect as soon as the SE is entered in the register of the new location, following which the entry in the previous registry is deleted.

4. The directive

The directive will enter into force at the same time as the regulation. The rapporteur is Mr Miller. In connection with the regulation, the most important feature is protection of acquired rights of participation of the employees, whatever form that may take, and regardless of the subsequent location of the SE's registered offices.

5. The need for SEs

The shortcomings in the regulation and the complex nature of the directive lead to the question: do we actually need SEs? The answer is clearly 'yes'. It is not the need for SEs that is in doubt, but the way in which they are structured.

Although companies operate on a transnational basis today, they still face considerable legal and other difficulties. Despite approximation by European directives, company law still displays considerable differences. The growing together of what used to be separate markets means that we must finally create organisational forms which reflect the new situation in Europe. The obstacles to mobility for companies operating Europe-wide need to be removed.

However, there are serious shortcomings to the nature of the SEs. The directive on employee participation is fairly complex and it also enables all national rules on participation to be transferred to any other Member State. This will have serious legal consequences which are difficult to foresee.

It follows that SEs will differ from one Member State to another. There will not be one European SE, but an SE with French, Spanish or German features, for example. Furthermore, even within the same Member State a variety of different SEs will be created covering the full range of possible forms. It goes without saying that this will have its disadvantages - of a legal, actual and financial nature. In effect this will make access to SE status difficult for small and medium-sized businesses in particular.

Companies from Member States which do not have a tradition of worker participation are unlikely to want to adopt maximum participation. There is a risk, therefore, that German companies will in effect be unable to enter into a merger with companies from Member States where there is no employee participation. This will have a substantial discriminatory effect on such companies.

Furthermore, it is essential that in parallel with the entry into force of the directive and the regulation and after a transitional period of three years in which national legislation is to be enacted, accompanying **fiscal** rules are also adopted. The precise nature of the SE will, naturally be determined in part by fiscal legislation (e.g. accounting for profits and losses). The Commission and the national governments are therefore called upon to adopt the requisite accompanying fiscal rules by the year 2003 in order to give full shape to the new legal form of the SE.

There is one further point which the rapporteur believes is important. It should be possible for the SE to be used even before the end of the transitional period by companies in countries which have already transposed the entire package in their national law. This would provide a certain incentive for countries which are lagging behind.

As a general rule, the same consideration applies as applies to any case of approximation of laws and standardisation: it is long-term success which counts. Sooner or later the first step has to be taken so that the SE as a legal form can actually be created. In my opinion, in the course of time national peculiarities in interpretation of the law will increasingly become of secondary importance since the SE requires uniform rules if it is to function properly. Here, too, the post-Nice process comes into play: improvements have to be made.

In conclusion, I advocate launching the SE on its maiden voyage. This will show where repairs are still needed so that one day it will fulfil our hopes and become the flagship.

21 June 2001

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the proposal for a Council regulation on the Statute for a European Company (SE) (14886/2000 – C5-0092/2001 – 1989/0218(CNS))

Draftsman: Toine Manders

PROCEDURE

The Committee on Employment and Social Affairs appointed Toine Manders draftsman at its meeting of 15 February 2001.

It considered the draft opinion at its meetings of 20 March 2001, 29 May 2001 and 21 June 2001.

At the last meeting it adopted the following amendments by 35 votes to 0, with 5 abstentions.

The following were present for the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; Marie-Thérèse Hermange, vice-chairman; Toine Manders, draftsman (for Luciana Sbarbati); Jan Andersson, Elspeth Attwooll (for Luciano Caveri), Regina Bastos, Alima Boumediene-Thiery (for Jillian Evans pursuant to Rule 153(2)), Philip Bushill-Matthews, Alejandro Cercas, Luigi Cocilovo, Elisa Maria Damião, Den Dover (for Gunilla Carlsson), Harald Ettl, Carlo Fatuzzo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Anne-Karin Glase, Ian Stewart Hudghton, Stephen Hughes, Anne Elisabet Jensen (for Daniel Ducarme), Karin Jöns, Piia-Noora Kauppi (for Roger Helmer), Dieter-Lebrecht Koch (for Jorge Salvador Hernández Mollar), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Ria G.H.C. Oomen-Ruijten (for Ruth Hieronymi), Manuel Pérez Álvarez, Bartho Pronk, Tokia Saïfi, Herman Schmid, Peter William Skinner (for Hans Udo Bullmann), Helle Thorning-Schmidt, Anne E.M. Van Lancker and Barbara Weiler.

SHORT JUSTIFICATION

A Statute for a European Company was already being discussed more than 30 years ago. In 1959 it became increasingly clear to Dutch lawyers that a statute for a European Company was needed. One of those lawyers was Mr Sanders who, on becoming professor at Rotterdam's Erasmus University, delivered an inauguaral lecture entitled 'Towards a European limited company?', in which he called for the concept of a European company to be established. On that occasion he established the term SE. The Commission subsequently asked him to produce a blueprint. Multinational companies wished to spread their business activities over a number of European countries. For such companies to be forced to set up a national company structure in each Member State is counter-productive and a source of frustration. Fragmentation of this kind is, moreover, inappropriate in the context of the internal market, which was completed in 2001.

It was not until 1970 that the first proposal was presented by the Commission. This proposal introduced the term 'Societas Europaea' for the European Company, based on a uniform definition comprehensible to all Europeans. The concept was elaborated in great detail by the Commission at that time, with the original proposal extending to as many as 284 articles. The proposals have since been reduced to their essence, set out in 70 articles.

There is currently a great need for an SE, as more and more companies are operating across borders as a result of the completion of the internal market and the globalisation of business activities under the impact of information and communications technology such as the Internet. Some organisations maintain that the statute for an SE would save European businesses EUR 30 000 million a year.

There is at present no European company law but only national laws laid down in each Member State in this area. That may perhaps be the reason why for a long time it has not been possible to reach an agreement on this proposal, the delay being attributable, namely, to the different cultures existing in this area in the Member States.

It is to be welcomed that a common position has now finally been found by the Nice European Council. In this connection, reference should be made to the legal basis which was changed in the course of the negotiations at Nice from Article 95 (ex Article 44) of the Treaty to Article 308: on paper, a small change, but one which in fact has major implications for Parliament. On the basis of Article 95 (ex Article 44) Parliament had the right of codecision, whilst its role is now confined to advising and giving an opinion. In spite of the fact that democratic control by the EP is being disregarded in this respect, your draftsman takes the view that we should welcome the foundations laid here. In order to avoid this fragile common position falling apart, your draftsman has confined himself to making as few amendments as possible. Greater clarification can perhaps be provided later.

However, a number of issues have not been sufficiently dealt with in connection with this report. The statute for the SE pays little attention to the specific interests of small and medium-sized companies. It would be appropriate for more account to be taken of this category of businesses in future.

Although an oblique reference is made to small and medium-sized companies in recital 13 ('In order to ensure that such companies are of reasonable size, a minimum amount of capital should

be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.'), it is important that more attention be given to such companies. European small and medium-sized companies provide a great deal of employment and are the driving force behind a large section of the European economy.

If we wish the statute for the SE to work fully effectively in future, we must also look at the different systems of taxation. The various systems will need to be harmonised in such a way that, for example, investment, depreciation, profit, losses, various cost items and, above all, obligations under administrative provisions are dealt with in the same way by SEs in different Member States. This is primarily in order to ensure equality before the law in Europe, and to avoid national judges invoking national laws to review legal acts of SEs.

Adopting this regulation and the Menrad report (directive 2001/…/EC on the involvement of employees) means making a start to a formal SE, which can be improved over the longer term, if necessary, on the basis of experience in practice and under pressure from the market. It is advisable that an evaluation be carried out three years after entry into force, ensuring that a review of the way in which the statute is functioning is made in the not too distant future. We must avoid it being another thirty years before the statute functions fully satisfactorily.

An effective SE is in the interests of business, employment and consumers. Last but not least, the SE will strengthen not only the internal market but, above all, the European idea.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Council[1]	Amendments by Parliament
Amendment 1 Recital 7 a (new)	
	With a view to creating a uniform legal framework for the functioning of SEs, this Regulation should aim at minimising reference to differing national rules and laws, which may result in discrepancies in the treatment of SEs registered in different Member States.

[1] Not yet published.

Justification

The current proposal still refers to too great an extent to national legislation, which means that, effectively, there is not one uniform SE but 15 different systems, whilst a single internal market allowing free competition should be the objective. Barriers to competition should be removed as far as possible.

Amendment 2
Recital 21 a (new)

A long-term solution has to be found to problems arising out of unequal taxation burdens on SEs registered in different Member States.

Justification

The existence of major differences between national tax systems impedes free competition, precisely because of national differences affecting businesses within the internal market. For that reason, it will be necessary to endeavour in future to coordinate tax systems at the European level.

Amendment 3
Article 69

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:	***Three*** years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse ***the impact of this Regulation on small and medium-sized enterprises, in particular any obstacles to their forming an SE, and*** the appropriateness of:
(a) allowing the location of an SE's head office and registered office in different Member States;	(a) allowing the location of an SE's head office and registered office in different Member States;
(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;	(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;

(c) revising the jurisdiction clause in Article 8(12) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;	(c) revising the jurisdiction clause in Article 8(12) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;
(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.	(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State***;***
	(e) establishing a common tax on all SEs, regardless of the Member State in which they are registered, with a view to preventing any restriction or distortion of competition.

Justification

3 years:
A shorter deadline is proposed for making an initial evaluation, in order to avoid shortcomings impeding for too long the proper functioning of the regulation.

Small and medium-sized companies:
The regulation currently takes too little account of SMEs, which provide a great deal of employment and are the driving force behind a large section of the European economy.

(e):
Only if there are coordinated tax systems applying to all SEs can SEs really function effectively within the whole of Europe. Without such coordination, free competition will continue to be impeded.