Proposal for a Council Directive complementing the Statute for a European company with regard to the involvement of employees in the European company

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(Submitted by the Commission to the Council on 25 August 1989)

(89/C 263/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, in order to attain the objectives set out in Article 8a of the Treaty, Council Regulation No ... establishes a Statute for a European company (SE);

Whereas, in order to promote the economic and social objectives of the Community, arrangements should be made for employees to participate in the supervision and strategic development of the SE;

Whereas the great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives participate in supervision of the decisions of the governing bodies of public limited companies makes it impossible to lay down uniform rules on the involvement of employees in the SE;

Whereas the laws of the Member States should therefore be coordinated with a view to making equivalent the safeguards required for the protection of the interests of members and third persons, of public limited companies in each Member State, with due regard to the specific characteristics of the operation of such companies having their registered office in its territory; whereas such coordination must take account of the fact that an SE is created by a restructuring or cooperation operation involving companies governed by the law of at least two Member States;

Whereas account should be taken of the specific characteristics of the laws of the Member States by establishing for the SE a framework comprising several models of participation, and authorizing, first, Member States to choose the model best corresponding to their national traditions, and, secondly, the management or the administrative board, as the case may be, and the representatives of the employees of the SE or of its founder companies to choose the model most suited to their social environment;

Whereas the provisions of this Directive form an indissociable complement to the provisions of Regulation No ... and it is therefore necessary to ensure that the two sets of provisions are applied concomitantly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions in the Member States concerning the involvement of employees in the SE.

These measures are an essential supplement to Regulation No ... on the Statute for a European company.

TITLE 1

MODELS OF PARTICIPATION

Article 2

Member States shall take the necessary measures to enable employees of the SE to participate in the supervision and strategic development of the SE in accordance with the provisions of this Directive.

Article 3

1. Subject to the application of paragraph 5, the participation of SE employees prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the representatives of the employees of those companies provided for by the laws and practices of the Member States. Where no agreement can be reached the management and administrative boards shall choose the model applicable to the SE.

2. An SE may not be formed unless one of the models referred to in Articles 4, 5 and 6 has been chosen.
3. Subject to the application of paragraph 5, the chosen model may be replaced by another model in Articles 4, 5 and 6 by an agreement concluded between the management or the administrative board and the representatives of the employees of the SE. This agreement must be submitted for the approval of the general meeting.

4. Each Member State shall determine the manner in which the participation models shall be applied for SEs having their registered office in its territory.

5. A Member State may restrict the choice of the models referred to in Articles 4, 5 and 6 or make only one of these models compulsory for SEs having their registered office in its territory.

SECTION 1
SUPERVISORY BOARD OR ADMINISTRATIVE BOARD

Article 4
The appointment of members of the supervisory board or the administrative board, as the case may be, shall be governed by the following rules:

— at least one-third and not more than one-half of them shall be appointed by the employees of the SE or their representatives in that company, or

— they shall be co-opted by the board. However, the general meeting of shareholders or the representatives of the employees may, on specific grounds, object to the appointment of a particular candidate. In such cases the appointment may not be made until an independent body established under public law has declared the objection inadmissible.

SECTION 2
SEPARATE BODY

Article 5
1. A separate body shall represent the employees of the SE. The number of members of that body and the detailed rules governing their election or appointment shall be laid down in the statutes in consultation with the representatives of the employees of the founder companies in accordance with the laws or practices of the Member States.

2. The body representing the employees shall have the right:

a) at least once every three months, to be informed by the management board or the administrative board of the progress of the company’s business, including that of undertakings controlled by it, and of its prospects;

b) where it is necessary for the performance of its duties, to require from the management board or the administrative board a report concerning certain of the company’s business or any information or documents;

c) to be informed and consulted by the management board or the administrative board before any decision referred to in Article 72 of Regulation No ... is implemented.

3. Article 74(3) of that Regulation shall apply to members of the separate body.

SECTION 3
OTHER MODELS

Article 6
1. Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees or their representatives in those companies.

2. The agreement reached shall provide at least for the employees of the SE or their representatives:

a) once every three months, to be informed of the progress of the company’s business, including that of undertakings controlled by it, and of its prospects;

b) to be informed and consulted before any decision referred to in Article 72 of Regulation No ... is implemented.

3. Where the agreement provides for a collegiate body representing the employees, that body may require the management board or the administrative board to provide the information necessary for the performance of its duties.

4. The agreement shall provide that the employee’s representatives must observe the necessary discretion in relation to any confidential information they hold on the SE. They shall be bound by this obligation even after their duties have ceased.

5. If the law of the State where the SE has its registered office so permits, the agreement may permit the management board or the administrative board of the SE to withhold from the employees or their representatives any information the disclosure of which might seriously jeopardize the interests of the SE or disrupt its projects.

6. The parties to the negotiations may be assisted by experts of their choice at the expense of the founder companies.
The agreement may be concluded for a fixed period and re-negotiated upon expiry of that period. However, the agreement concluded shall remain in force until the entry into force of the new agreement.

Where the two parties to the negotiations so decide, or where no agreement such as is mentioned in paragraph 1 can be reached, a standard model, provided by the law of the State where the SE has its registered office, shall apply to the SE. This model shall be in conformity with the most advanced national practices and shall ensure for the employees at least the rights of information and consultation provided for by this article.

SECTION 4

ELECTION OF THE REPRESENTATIVES OF THE EMPLOYEES OF THE SE

Article 7

The representatives of the employees of the SE shall be elected in accordance with systems which take into account, in an appropriate manner, the number of staff they represent.

All employees must be able to participate in the vote.

The election shall be conducted in accordance with the laws or practices of the Member States.

Article 8

The first members of the supervisory board or the administrative board to be appointed by the employees and the first members of the separate body representing the employees shall be appointed by the representatives of the employees of the founder companies in proportion to the number of employees they represent and in accordance with the laws or practices of the Member States. Those first members shall remain in office until such time as the requirements for electing the representatives of the employees of the SE are satisfied.

SECTION 5

Article 9

1. The management board or the administrative board of the SE shall provide the representatives of the employees with such financial and material resources as enable them to meet and perform their duties in an appropriate manner.

2. The practical arrangements for making available such financial and material resources shall be settled in consultation with the representatives of the employees of the SE.

SECTION 6

REPRESENTATION OF EMPLOYEES IN THE ESTABLISHMENTS OF THE SE

Article 10

Save as otherwise provided in this Directive, the status and duties of the representatives of the employees or of the body which represents them, for which provision is made in the establishments of the SE, shall be determined by the laws or practices of the Member States.

TITLE 2

EMPLOYEE PARTICIPATION IN THE CAPITAL OR IN THE PROFIT OR LOSS OF THE SE

SECTION 1

Article 11

Employee participation in the capital or in the profits or losses of the SE may be organised by means of a collective agreement negotiated and concluded by the management boards and the administrative boards of the founder companies, or of the SE when constituted, and the employees or their representatives who are duly authorised to negotiate in those companies.

SECTION II

FINAL PROVISIONS

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to
comply with this Directive by 1 January 1992. They shall immediately communicate the measures taken to the Commission.

The provisions adopted pursuant to the first sub-paragraph shall make express reference to this Directive.

2. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.