
STATUTORY INSTRUMENTS

2004 No.

EUROPEAN COMMUNITIES

The European Public Limited-Liability Company Regulations
2004

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^a S.I. 1999/3323.

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The Secretary of State, being a Minister designated^a for the purposes of section 2(2) of the European Communities Act 1972^b in relation to measures relating to the registration, operation and regulation of European public limited liability companies, in exercise of the powers conferred on her by section 2(2) of that Act and of all other powers enabling her in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and extent

1. These Regulations, which extend to Great Britain, may be cited as the European Public Limited-Liability Company Regulations 2004 and shall come into force on 8th October 2004.

Interpretation

2. (1) In these Regulations –

the “1985 Act” mean the Companies Act 1985^c;

^a S.I. 2003/2901.

^b 1972 c. 68: as amended by the European Economic Area Act 1989 (c. 40)

^c 1985 c.6.

the “1996 Act” means the Employment Rights Act 1996^a;
the “EC Regulation” means Council Regulation 2157/2001/EC^b of 8 October 2001 on
the Statute for a European Company set out in Schedule 1 to these Regulations;

- (2) (a) References to “SE” or “SEs” are references to a European Public Limited-Liability Company within the meaning of Article 1 whose registered office is, or is to be, in Great Britain except where the context requires otherwise;
- (b) Expressions used in these Regulations which are listed in the Index of defined expressions in section 744A of the 1985 Act have the meaning assigned to those expressions by that Act.
- (c) References to numbered Articles in these Regulations are, unless otherwise specified, references to the Articles of the number in the EC Regulation.
- (d) In the absence of a definition in these Regulations, other words and expressions used in these Regulations which are also used in the EC Regulation or in the EC Directive have the same meaning as they have in that Regulation or Directive.
- (e) The following terms, defined in the EC Directive, have the same meanings as in that Directive when used in Part 3 of these Regulations, that is to say –

“participating companies”

“subsidiary”

“concerned subsidiary or establishment”

“special negotiating body”

“involvement of employees”

“information”

“consultation”.

- (3) In these Regulations –

“absolute majority vote” means a vote passed by a majority of the total membership of the special negotiating body where the members voting with that majority represent the majority of the employees of the participating companies

^a 1996 c. 18.

^b OJ L 294, 10.11.2001, p. 1.

and their concerned subsidiaries and establishments employed in the Member States;

“ACAS” means the Advisory, Conciliation and Arbitration Service;

“Appeal Tribunal” means the Employment Appeal Tribunal;

“CAC” means the Central Arbitration Committee;

“employee” means an individual who has entered into or works under a contract of employment and includes, where the employment has ceased, an individual who worked under a contract of employment;

“employee involvement agreement” means an agreement reached between the special negotiating body and the competent organs of the participating companies governing the arrangements for the involvement of employees within the SE;

“EC Directive” means Council Directive 2001/86/EC of 8 October 2001^a supplementing the Statute for a European Company with regard to the involvement of employees;

“employees’ representatives” means –

- (a) if the employees are of a description in respect of which an independent trade union is recognised by their employer for the purpose of collective bargaining, representatives of the trade union who normally take part as negotiators in the collective bargaining process, and
- (b) any other employees of their employer who are elected or appointed as employee representatives to positions in which they are expected to receive, on behalf of the employees, information –
 - (i) which is relevant to the terms and conditions of employment of the employees, or
 - (ii) about the activities of the undertaking which may significantly affect the interests of the employees,

^a OJ L 294, 10.11.2001, p. 22.

but excluding representatives who are expected to receive information relevant only to a specific aspect of the terms and conditions or interests of the employees, such as health and safety or collective redundancies;

“information and consultation representative” has the meaning given to it in regulation 26(5);

“Member State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“participation” means the influence of the body representative of employees and the employees’ representatives in the SE or a participating company by way of the right to –

- (a) elect or appoint some of the members of the SE’s or the participating company’s supervisory or administrative organ; or
- (b) recommend and/or oppose the appointment of some or all of the members of the SE’s or the participating company’s supervisory or administrative organ;

“representative body” means the persons elected or appointed under the employee involvement agreement or under the standard rules on employee involvement;

“SE established by merger” means an SE established in accordance with Article 2(1);

“SE established by formation of a holding company or subsidiary company” means an SE established in accordance with Article 2(2) or 2(3), as the case may be;

“SE established by transformation” means an SE established in accordance with Article 2(4);

“two thirds majority vote” means a vote passed by a majority of at least two thirds of the total membership of the special negotiating body where the members voting with that majority –

- (a) represent at least two thirds of the employees of the participating companies and their concerned subsidiaries and establishments employed in the Member States; and
- (b) include members representing employees employed in at least two Member States;

“UK employee” means an employee employed to work in the United Kingdom;
and

“UK member of the special negotiating body” means a member of the special negotiating body elected or appointed by UK employees.

PART 2

REGISTRATION OF SEs AND THE REGISTRATION AUTHORITY ETC.

Registration authority

3. For the purposes of the registration of an SE in Great Britain, whether on a transfer under Article 8, on formation, or on conversion under Article 2(4), the registrar shall be subject to the duties, and shall perform functions, set out in this Part.

Registration of an SE formed by merger in accordance with Article 2(1)

4. Where it is proposed to register an SE formed by merger in accordance with Article 2(1) there shall be delivered to the registrar a registration form in Form SE4 set out in Schedule 3 together with the documents specified in that Form.

Registration of the formation of a holding SE in accordance with Article 2(2)

5. Where it is proposed to register a holding SE formed in accordance with Article 2(2) there shall be delivered to the registrar a registration form in Form SE5 set out in Schedule 3 together with the documents specified in that Form.

Registration of the formation of a subsidiary SE in accordance with Article 2(3)

6. Where it is proposed to register a subsidiary SE formed in accordance with Article 2(3) there shall be delivered to the registrar a registration form in Form SE6 set out in Schedule 3 together with the documents specified in that Form.

Registration of an SE by the conversion of a public company in accordance with Article 2(4)

7. Where it is proposed to register an SE formed in accordance with Article 2(4) by the conversion of a public company there shall be delivered to the registrar a registration form in Form SE7 set out in Schedule 3 together with the documents specified in that Form.

Registration of an SE formed as the subsidiary of an SE in accordance with Article 3(2)

8. (1) Where it is proposed to register an SE formed as the subsidiary of an SE in accordance with Article 3(2) there shall be delivered to the registrar a registration form in Form SE8(1) set out in Schedule 3 together with the documents specified in that Form.

(2) The reference to an SE, a subsidiary of which is to be registered under this regulation, includes a reference to an SE whose registered office is in another Member State.

Registration of an SE on the transfer of its registered office to Great Britain in accordance with Article 8

9. Where it is proposed to transfer to Great Britain the registered office of an SE whose registered office is situated in another Member State there shall be delivered to the registrar a registration form in respect of that SE in Form SE9 set out in Schedule 3 together with the documents specified in that Form.

Certificate of the competent authority under Article 8(8)

10. Where it is proposed to transfer the registered office of an SE from Great Britain to another Member State there shall be delivered to the Secretary of State for the purposes of applying for the issue of a certificate under Article 8(8), a transfer form in Form SE10 set out in Schedule 3 together with the documents specified in that Form.

Registration of an SE

11. The registrar shall register an SE formed or transformed under the provisions of Articles 2 and 3 or an SE whose registered office is transferred to Great Britain under Article 8 where she is satisfied that all the requirements of these Regulations and the EC Regulation in respect of such formation, transformation or transfer of an SE, as the case may be, have been complied with in respect of that SE.

Documents sent to the registrar

12. (1) The registrar shall retain any document delivered to her under any provision of these Regulations or the EC Regulation.
- (2) For the purposes of this regulation documents delivered to the Secretary of State under regulation 10 shall be treated as documents delivered to the registrar on the deletion of the registration of the SE making the application under the regulation and the provisions of regulation 13 will apply accordingly.

Application of the 1985 Act to the registration of SEs

13. The provisions of the 1985 Act specified in Schedule 2 to these Regulations shall apply in respect of
 - (a) the registration or the deletion of registration of SEs under these Regulations and the EC Regulation;
 - (b) the functions of the registrar in respect of such registrations or deletions;
 - (c) the keeping of the documents specified in regulation 12 as records by the registrar;
 - (d) the inspection of such records.

Those provisions shall apply under this regulation subject to any limitations or qualifications specified in relation to each such provision in that Schedule.

False statements in documents sent to the registrar or the Secretary of State

14. Any person who makes a false statement:
 - (a) in any registration form sent to the registrar under regulations 4 to 9;
 - (b) in any transfer form sent to the Secretary of State under regulation 10;
 - (c) in any document, specified in such a form; or
 - (d) in any other document required to be sent to the registrar under these Regulations,

which he knows to be false or does not believe to be true is liable, on conviction on indictment to imprisonment not exceeding two years, or to a fine, or to both, and on summary conviction to imprisonment not exceeding three months, or to a fine not exceeding the statutory maximum or to both..

PART 3

EMPLOYEE INVOLVEMENT

CHAPTER 1

PARTICIPATING COMPANIES AND THE SPECIAL NEGOTIATING BODY

Circumstances in which certain provisions of this Part apply

15. (1) Subject to paragraphs (2) and (3), this Part shall apply where –

- (a) a participating company intends to establish an SE whose registered office is to be in Great Britain; or
- (b) an SE has its registered office in Great Britain.

(2) Chapter 2 (election or appointment of members of special negotiating body and representation of employees) shall apply in relation to the election or appointment of UK members of the special negotiating body regardless of where the registered office is to be situated and, where there are UK employees in both Great Britain and Northern Ireland, Chapter 2 shall apply where the majority of those employees are employed in Great Britain.

(3) Chapters 5 to 8 shall apply where –

- (a) a participating company, its concerned subsidiaries or establishments;
- (b) a subsidiary of an SE;
- (c) an establishment of an SE; or
- (d) an employee or an employees' representative,

is registered or situated, as the case may be, in Great Britain, regardless of where the registered office of the SE is, or is intended to be situated.

Duty on participating companies to provide information

16. (1) When the competent organ of a participating company decides to form an SE, that organ shall, as soon as possible after-

- (a) publishing the draft terms of merger,
- (b) creating a holding company, or
- (c) agreeing a plan to form a subsidiary or to transform into an SE,

provide information to the employees' representatives of the participating company, its concerned subsidiaries and establishments or, if no such representatives exist, the employees themselves.

(2) The information referred to in paragraph (1) includes information on the identity of the participating companies, concerned subsidiaries and establishments, the number of employees each has and the number of employees employed in each Member State.

(3) When a special negotiating body has been formed in accordance with regulation 19, the competent organs of the participating company or companies shall provide that body with such information as is necessary to keep it informed of the plan and progress of establishing the SE up to the time the SE has been registered.

Complaint of failure to provide information

17. (1) An employees' representative or, where there is no such representative for an employee, the employee may present a complaint to the CAC that –

- (a) the competent organ of a participating company has failed to provide the information referred to in regulation 16; or
- (b) the information which has been provided by the competent organ of a participating company is false or incomplete in a material particular.

(2) Where the CAC finds the complaint well-founded it shall make an order requiring the competent organ to disclose information to the complainant which order shall specify -

- (a) the information in respect of which the CAC finds that the complaint is well-founded and which is to be disclosed to the complainant; and
- (b) a date (not being less than one week from the date of the order) by which the competent organ must disclose the information specified in the order.

Function of the special negotiating body

18. The special negotiating body and the competent organs of the participating companies shall have the task of reaching an employee involvement agreement.

Composition of the special negotiating body

19. (1) The competent organs of the participating companies shall make arrangements for the establishment of a special negotiating body which shall be constituted in accordance with paragraphs (2) to (7) below.

- (2) In each Member State in which employees of a participating company, concerned subsidiary or establishment are employed, those employees shall be entitled to elect or appoint one member of the special negotiating body for each 10% or fraction thereof which those employees represent of the total workforce. These members shall be the 'ordinary members'.

- (3) If, in the case of an SE to be established by merger, following the election or appointment referred to in paragraph (2), the members elected or appointed to the special negotiating body do not include at least one eligible member in respect of each relevant company the employees of any relevant company in respect of which there is no eligible member shall be entitled to elect or appoint an additional member to the special negotiating body, subject to paragraph (4).

- (4) The number of additional members which the employees are entitled to elect or appoint under paragraph (3) shall not exceed 20% of the number of ordinary members elected or appointed under paragraph (2) and if the number of additional members under paragraph (3) would exceed that percentage the employees who are entitled to appoint or elect the additional members shall be:
 - (a) if one additional member is to be appointed or elected, those employed by the company not represented under paragraph (3) having the highest number of employees; and
 - (b) if more than one additional member is to be appointed or elected, those employed by the companies in each Member State that are not represented under paragraph (3) having the highest number of employees in descending order, starting with the company with the highest number, followed by those employed by the companies in each Member State that are not so represented having the second highest number of employees in descending order, starting with the company (among those companies) with the highest number.

- (5) The competent organs of the participating companies shall, as soon as reasonably practicable and in any event no later than one month after the establishment of the special negotiating body, inform their employees and those of their concerned subsidiaries and establishments of the identity of the members of the special negotiating body.

- (6) If, following the appointment or election of members to the special negotiating body in accordance with this regulation,
- (a) changes to the participating companies, concerned subsidiaries or establishments result in the number of ordinary or additional members which employees would be entitled to elect or appoint under this regulation either increasing or decreasing, the original appointment or election of members of the special negotiating body shall cease to have effect and those employees shall be entitled to elect or appoint the new number of members in accordance with the provisions of these Regulations; and
 - (b) a member of the special negotiating body is no longer willing or able to continue serving as such a member, the employees whom he represents shall be entitled to elect or appoint a new member in his place.
- (7) In this regulation –
- (a) “eligible member” means a person who is –
 - (i) in the case of a relevant company registered in a Member State whose legislation allows representatives of trade unions who are not employees to be elected to the special negotiating body, an employee of the relevant company or a trade union representative; and
 - (ii) in the case of a relevant company not registered in such a Member State, an employee of the relevant company.
 - (b) “relevant company” means a participating company which has employees in the Member State in which it is registered and which it is proposed will cease to exist on or following the registration of the SE; and
 - (c) “the total workforce” means the total number of employees employed by all participating companies, concerned subsidiaries and establishments throughout all Member States.

Complaint about establishment of special negotiating body

20. (1) An application may be presented to the CAC for a declaration that the special negotiating body has not been established at all or has not been established properly in accordance with regulation 19.
- (2) An application may be presented under this regulation by -

- (a) a member of the special negotiating body;
 - (b) an employees' representative or, where no such representative exists in respect of a participating company, concerned subsidiary or establishment, an employee of that participating company, concerned subsidiary or establishment; or
 - (c) the competent organ of a participating company, concerned subsidiary or establishment.
- (3) The CAC shall only consider an application made under paragraph (1) if it is made within a period of one month from the date or, if more than one, the last date on which the participating companies complied or should have complied with the obligation to inform their employees under regulation 19(5).
- (4) Where the CAC finds the application well-founded it shall make a declaration that the special negotiating body was not established at all or was not established properly and that any establishment of the special negotiating body shall cease to be of any effect and the competent organs of the participating companies shall continue to be under the obligation in regulation 19(1).

CHAPTER 2

ELECTION OR APPOINTMENT OF UK MEMBERS OF THE SPECIAL NEGOTIATING BODY

Ballot arrangements

21. (1) Subject to regulation 23, the UK members of the special negotiating body shall be elected by balloting the UK employees.
- (2) The management of the participating companies to which this regulation applies ('the management') must arrange for the holding of a ballot or ballots of the employees referred to in paragraph (1), in accordance with the requirements of paragraph (3).
- (3) The requirements referred to in paragraph (2) are that –
- (a) in relation to the election of ordinary members under regulation 19(2) –
 - (i) if the number of members which UK employees are entitled to elect to the special negotiating body is equal to the number of participating companies

- which have employees in the UK, there shall be separate ballots of the UK employees in each participating company;
- (ii) if the number of members which the UK employees are entitled to elect to the special negotiating body is greater than the number of participating companies which have employees in the UK, there shall be separate ballots of the UK employees in each participating company and the management shall ensure, as far as practicable, that at least one member representing each such participating company is elected to the special negotiating body and that the number of members representing each company is proportionate to the number of employees in that company;
 - (iii) if the number of members which the UK employees are entitled to elect to the special negotiating body is smaller than the number of participating companies which have employees in the UK, -
 - (aa) the number of ballots held shall be equivalent to the number of members to be elected;
 - (bb) a separate ballot shall be held in respect of each of the participating companies with the higher or highest number of employees; and
 - (cc) it shall be ensured that any employees of a participating company in respect of which a ballot does not have to be held are entitled to vote in a ballot held in respect of one of the other participating companies; and
 - (iv) if there are any UK employees employed by concerned subsidiaries or establishments of non-UK participating companies, the management shall ensure that those employees are entitled to vote in a ballot held pursuant to this regulation.
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- (b) In relation to the ballot of additional members under regulation 19(3) the management shall hold a separate ballot in respect of each participating company entitled to elect an additional member.
 - (c) In a ballot in respect of a participating company, a UK employee employed in that participating company or in its concerned subsidiaries and establishments is entitled to vote;
 - (d) In a ballot in respect of a participating company, any person who is immediately before the latest time at which a person may become a candidate—
 - (i) a UK employee employed in that participating company or in its concerned subsidiaries and establishments; or

(ii) if the management of that participating company so permits, a representative of a trades union who is not an employee of that participating company or its concerned subsidiaries or establishments,

is entitled to stand as a candidate for election as a member of the special negotiating body in that ballot.

- (e) The management must, in accordance with paragraph (7), appoint an independent ballot supervisor to supervise the conduct of the ballot of UK employees but may instead, where there is to be more than one ballot, appoint more than one independent ballot supervisor in accordance with that paragraph, each of whom is to supervise such of the separate ballots as the management may determine, provided that each separate ballot is supervised by a supervisor;
 - (f) after the management has formulated proposals as to the arrangements for the ballot of UK employees and before it has published the final arrangements under sub-paragraph (g) it must, so far as reasonably practicable, consult with the UK employees' representatives on the proposed arrangements for the ballot of UK employees; and
 - (g) the management must publish the final arrangements for the ballot of UK employees in such manner as to bring them to the attention of, so far as reasonably practicable, the UK employees and the UK employees' representatives.
- (4) Any UK employee or UK employees' representative who believes that the arrangements for the ballot of the UK employees are defective may, within a period of 21 days beginning on the date on which the management published the final arrangements under sub-paragraph (g), present a complaint to the CAC.
- (5) Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the management to modify the arrangements it has made for the ballot of UK employees or to satisfy the requirements in sub-paragraph (f) or (g) of paragraph (3).
- (6) An order under paragraph (5) shall specify the modifications to the arrangements which the management is required to make and the requirements it must satisfy.

- (7) A person is an independent ballot supervisor for the purposes of paragraph (3)(e) if the management reasonably believes that he will carry out any functions conferred on him in relation to the ballot competently and has no reasonable grounds for believing that his independence in relation to the ballot might reasonably be called into question.
- (8) For the purposes of paragraph (4) the arrangements for the ballot of the UK employees are defective if any of the requirements specified in sub-paragraphs (a) to (g) of paragraph (3) is not satisfied.

Conduct of ballot

22. (1) The management must –
- (a) ensure that a ballot supervisor appointed under regulation 21(3)(e) carries out his functions under this regulation and that there is no interference with his carrying out of those functions from the management; and
 - (b) comply with all reasonable requests made by a ballot supervisor for the purposes of, or in connection with, the carrying out of those functions.
- (2) A ballot supervisor’s appointment shall require that he –
- (a) supervises the conduct of the ballot, or the separate ballots he is being appointed to supervise, in accordance with the arrangements for the ballot of UK employees published by the management under regulation 21(3)(g) or, where appropriate, in accordance with the arrangements as required to be modified by an order made as a result of a complaint presented under regulation 21(4);
 - (b) does not conduct the ballot or any of the separate ballots before the UK management has satisfied the requirement specified in regulation 21(3)(g) and–
 - (i) where no complaint has been presented under regulation 21(4), before the expiry of a period of 21 days beginning on the date on which the management published its arrangements under regulation 21(3)(g); or
 - (ii) where a complaint has been presented under regulation 21(4), before the complaint has been determined and, where appropriate, the arrangements have been modified as required by an order made as a result of that complaint;
 - (c) conducts the ballot, or each separate ballot so as to secure that –

- (i) so far as reasonably practicable, those entitled to vote are given the opportunity to vote;
 - (ii) so far as reasonably practicable, those entitled to stand as candidates are given the opportunity to stand;
 - (iii) so far as reasonably practicable, those voting are able to do so in secret, and
 - (iv) the votes given in the ballot are fairly and accurately counted.

- (3) As soon as reasonably practicable after the holding of the ballot, the ballot supervisor must publish the results of the ballot in such manner as to make them available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates.

- (4) A ballot supervisor shall publish a report (“an ineffective ballot report”) where he considers (whether or not on the basis of representations made to him by another person) that –
 - (a) any of the requirements referred to in paragraph (2) was not satisfied with the result that the outcome of the ballot would have been different; or
 - (b) there was an interference with the carrying out of his functions or a failure by management to comply with all reasonable requests made by him with the result that he was unable to form a proper judgement as to whether each of the requirements referred to in paragraph (2) was satisfied in the ballot.

- (5) Where a ballot supervisor publishes an ineffective ballot report the report must be published within a period of one month commencing on the date on which the ballot supervisor publishes the results of the ballot under paragraph (3).

- (6) A ballot supervisor shall publish an ineffective ballot report in such manner as to make it available to the management and, so far as reasonably practicable, the UK employees entitled to vote in the ballot and the persons who stood as candidates in the ballot.

- (7) Where a ballot supervisor publishes an ineffective ballot report then –
 - (a) if there has been a single ballot or an ineffective ballot report has been published in respect of every separate ballot, the outcome of the ballot or ballots shall have

no effect and the UK management shall again be under the obligation in regulation 21(2).

- (b) If there have been separate ballots and sub-paragraph (a) does not apply –
 - (i) the management shall arrange for the separate ballot or ballots in respect of which an ineffective ballot report was issued to be re-held in accordance with regulation 21 and this regulation; and
 - (ii) no such ballot shall have effect until it has been re-held and no ineffective ballot report has been published in respect of it.

- (8) All costs relating to the holding of a ballot, including payments made to a ballot supervisor for supervising the conduct of the ballot, shall be borne by the management (whether or not an ineffective ballot report has been made).

Appointment of UK members by a consultative committee

- 23. (1) This regulation applies where-
 - (a) regulation 21(3)(a)(i) or (ii) or (b) would require a ballot to be held; and
 - (b) there exists in the participating company in respect of which a ballot would be held under regulation 21, a consultative committee.

- (2) (a) Where this regulation applies, the election provided for in regulation 21 shall not take place but the consultative committee shall be entitled to appoint the UK member or members of the special negotiating body who would otherwise be elected pursuant to regulation 21 provided that the consultative committee's appointment complied with sub-paragraph (b).

- (b) The consultative committee is entitled to appoint as a member of the special negotiating body:
 - (i) one of their number; or
 - (ii) if the management of the participating company in respect of which the consultative committee exists so permits, a trades union representative who is not an employee of that company.

- (3) In this regulation, "a consultative committee" means a body of persons –

- (a) whose normal functions include or comprise the carrying out of an information and consultation function;
 - (b) which is able to carry out its information and consultation function without interference from the management of the participating company;
 - (c) which, in carrying out its information and consultation function, represents all the employees of the participating company; and
 - (d) which consists wholly of persons who are employees of the participating company, its concerned subsidiaries or establishments.
- (4) In paragraph (3) “information and consultation function” means the function of-
- (a) receiving, on behalf of all the employees of the participating company, information which may significantly affect the interests of the employees of that company, but excluding information which is relevant only to a specific aspect of the interests of the employees, such as health and safety or collective redundancies; and
 - (b) being consulted by the management of the participating company on the information referred to in sub-paragraph (a) above.
- (5) The consultative committee must publish the names of the persons whom it has appointed to be members of the special negotiating body in such a manner as to bring them to the attention of the management of the participating company and, so far as reasonably practicable, the employees and the employees’ representatives of that company.
- (6) Where the management of the participating company, an employee or an employees’ representative believes that –
- (a) the consultative committee does not satisfy the requirements in paragraph (3) above; or
 - (b) any of the persons appointed by the consultative committee is not entitled to be appointed,

it, or as the case may be, he, may, within a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons appointed, present a complaint to the CAC.

- (7) Where the CAC finds the complaint well-founded it shall make a declaration to that effect.
- (8) Where the CAC has made a declaration under paragraph (7) –
 - (a) no appointment made by the consultative committee shall have effect; and
 - (b) the members of the special negotiating whom the committee purported to appoint shall be elected by a ballot of the employees in accordance with regulation 21.
- (9) Where the consultative committee appoints any person to be a member of the special negotiating body, that appointment shall have effect after –
 - (a) where no complaint has been presented under paragraph (6), the expiry of a period of 21 days beginning on the date on which the consultative committee published under paragraph (5) the names of the persons nominated; or
 - (b) where a complaint has been presented under paragraph (5), the complaint has been determined without a declaration under paragraph (7) having been made.

Representation of employees

- 24. (1) Subject to paragraphs (2) and (3) below, a member elected in a ballot in accordance with regulation 19(2), is deemed to represent the employees for the time being of the participating company, concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.
- (2) If an additional member is elected in accordance with regulation 19(3) and (4), he, and not any member elected in accordance with regulation 19(2), is deemed to represent the employees for the time being of the participating company, concerned subsidiary or establishment whose employees were entitled to vote in the ballot in which he was elected.
- (3) When a member of the special negotiating body is appointed by a consultative committee in accordance with regulation 23, the employees whom the consultative committee represents are deemed to be represented by the member so appointed.

CHAPTER 3
NEGOTIATION OF THE EMPLOYEE
INVOLVEMENT AGREEMENT

Negotiations to reach an employee involvement agreement

25. (1) In this regulation and in regulation 26 the competent organs of the participating companies and the special negotiating body are referred to as “the parties”.
- (2) The parties are under a duty to negotiate in a spirit of cooperation with a view to reaching an employee involvement agreement.
- (3) The duty referred to in paragraph (2) commences one month after the date or, if more than one, the last date on which the members of special negotiating body were elected or appointed and applies –
- (a) for the period of six months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within that period, until the completion of the negotiations;
 - (b) where the parties agree before the end of that six month period that it is to be extended, for the period of twelve months starting with the day on which the duty commenced or, where an employee involvement agreement is successfully negotiated within the twelve month period, until the completion of the negotiations.

The employee involvement agreement

26. (1) The employee involvement agreement must be in writing.
- (2) Without prejudice to the autonomy of the parties and subject to paragraph (4), the employee involvement agreement shall specify:
- (a) the scope of the agreement;
 - (b) the composition, number of members and allocation of seats on the representative body;
 - (c) the functions and the procedure for the information and consultation of the representative body;
 - (d) the frequency of meetings of the representative body;
 - (e) the financial and material resources to be allocated to the representative body;

- (f) if, during negotiations, the parties decide to establish one or more information and consultation procedures instead of a representative body, the arrangements for implementing those procedures;
 - (g) if, during negotiations, the parties decide to establish arrangements for participation, the substance of those arrangements including (if applicable) the number of members in the SE's administrative or supervisory body which the employees will be entitled to elect, appoint, recommend or oppose, the procedures as to how these members may be elected, appointed, recommended or opposed by the employees, and their rights; and
 - (h) the date of entry into force of the agreement and its duration, the circumstances, if any in which the agreement is required to be re-negotiated and the procedure for its re-negotiation.
- (3) The employee involvement agreement shall not be subject to the standard rules referred to in regulation 30, unless it contains a provision to the contrary.
- (4) In relation to an SE to be established by way of transformation, the employee involvement agreement shall provide for the elements of employee involvement at all levels to be at least as favourable as those which exist in the company to be transformed into an SE.
- (5) If the parties decide to establish one or more information and consultation procedures instead of a representative body in accordance with paragraph (2)(f) and if those procedures include a provision for representatives to be elected or appointed to act in relation to information and consultation, those representatives are "information and consultation representatives".

Decisions of the special negotiating body

27. (1) Each member of the special negotiating body shall have one vote.
- (2) Subject to paragraph (3) and regulation 28, the special negotiating body shall take decisions by an absolute majority vote.
- (3) In the following circumstances any decision which would result in a reduction of participation rights must be taken by a two thirds majority vote:

- (a) where an SE is to be established by merger and at least 25% of the employees employed in the Member States by the participating companies which are due to merge have participation rights; and
- (b) where an SE is to be established by formation of a holding company or of a subsidiary company and at least 50% of the total number of employees employed in the Member States by the participating companies have participation rights, and

in this paragraph, reduction of participation rights means that the body representative of the employees has participation rights in relation to a smaller proportion of members of the supervisory or administrative organs of the SE than the employees' representatives had in the participating company which gave participation rights in relation to the highest proportion of such members in that company.

- (4) The special negotiating body must publish the details of any decision taken under this regulation or under regulation 28 in such a manner as to bring the decision to the attention, so far as reasonably practicable, of the employees whom they represent and such publication shall take place as soon as reasonably practicable and, in any event no later than 14 days, after the decision has been taken.
- (5) For the purpose of negotiations, the special negotiating body may be assisted by experts of its choice.
- (6) The participating company or companies shall pay for any reasonable expenses of the functioning of the special negotiating body and any reasonable expenses relating to the negotiations that are necessary to enable the special negotiating body to carry out its functions in an appropriate manner; but where the special negotiating body is assisted by more than one expert the participating company is not required to pay such expenses in respect of more than one of them.

Decision not to open or to terminate negotiations

- 28. (1) Subject to paragraph (2), the special negotiating body may decide, by a two thirds majority vote, not to open negotiations with the competent organs of the participating companies or to terminate any such negotiations.
- (2) The special negotiating body cannot take the decision referred to in paragraph (1) in relation to an SE to be established by transformation if any employees of the company to be transformed have participation rights.

- (3) Any decision made under paragraph (1) shall have the following effects -
- (a) the duty in regulation 25(2) to negotiate with a view to reaching an employee involvement agreement shall cease from the date of the decision;
 - (b) any rules relating to the information and consultation of employees in a Member State in which employees of the SE are employed shall apply to the employees of the SE in that Member State; and
 - (c) the special negotiating body shall be reconvened only where a valid request in accordance with paragraph (4) has been made by employees or employees' representatives.
- (4) To amount to a valid request, the request referred to in paragraph (3)(c) must-
- (a) be in writing;
 - (b) be made by at least 10% of the employees of, or by employees' representatives representing at least 10% of the employees of-
 - (i) the participating companies, concerned subsidiaries and establishments, or
 - (ii) where the SE has been registered, the SE, its subsidiaries and establishments; and
 - (c) be made no earlier than two years after the decision made under paragraph (1) was or should have been published in accordance with regulation 27(4) unless the special negotiating body and the competent organs of the participating companies, concerned subsidiaries and establishments or, where the SE has been registered, the SE agree to the special negotiating body being reconvened earlier.

Complaint about decisions of special negotiating body

29. (1) If a member of the special negotiating body, an employees' representative, or where there is no such representative in respect of an employee, that employee believes that the special negotiating body has taken a decision referred to in regulation 27 or 28 and –
- (a) that decision was not taken by the majority required by regulation 27 or 28, as the case may be; or
 - (b) the special negotiating body failed to publish the decision in accordance with regulation 27(4),

he may present a complaint to the CAC within 21 days of the date the special negotiating body did or should have published their decision in accordance with regulation 27(4).

- (2) Where the CAC finds the complaint well-founded it shall make a declaration that the decision was not taken properly and that it shall have no effect.

CHAPTER 4

STANDARD RULES ON EMPLOYEE INVOLVEMENT

Standard rules on employee involvement

30. (1) Without prejudice to paragraph (3), where this regulation applies, the competent organ of the SE and its subsidiaries and establishments shall make arrangements for the involvement of employees of the SE and its subsidiaries and establishments in accordance with the standard rules on employee involvement set out in Schedule 4 to these Regulations.
- (2) This regulation applies in the following circumstances:
 - (a) where the parties agree that the standard rules referred to in paragraph (1) shall apply; or
 - (b) where the period specified in regulation 25(3)(a) or, where applicable, (b) has expired without the parties reaching an employee involvement agreement and -
 - (i) the competent organs of each of the participating companies agree that the standard rules referred to in paragraph (1) shall apply and so continue with its registration of the SE; and
 - (ii) the special negotiating body has not taken any decision under regulation 28(1) either not to open or to terminate the negotiations referred to in that regulation.
- (3) The standard rules set out in Part 3 of Schedule 4 to these Regulations (standard rules on participation) only apply in the following circumstances-
 - (a) in the case of an SE established by merger if, before registration of the SE, one or more forms of participation existed in at least one of the participating companies and either:

- (i) that participation applied to at least 25% of the total number of employees of the participating companies employed in the Member States, or
 - (ii) that participation applied to less than 25% of the total number of employees of the participating companies employed in the Member States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE; or
 - (b) in the case of an SE established by formation of a holding company or subsidiary company if, before registration of the SE, one or more forms of participation existed in at least one of the participating companies and either:
 - (i) that participation applied to at least 50% of the total number of employees of the participating companies employed in the Member States; or
 - (ii) that participation applied to less than 50% of the total number of employees of the participating companies employed in the Member States but the special negotiating body has decided that the standard rules of participation will apply to the employees of the SE.
- (4) Where the standard rules on participation apply and, if more than one form of participation existed in the participating company, the special negotiating body shall decide which of the existing forms of participation shall exist in the SE and shall inform the competent organs of the participating companies accordingly.

CHAPTER 5

COMPLIANCE AND ENFORCEMENT

Disputes about operation of an employee involvement agreement or the standard rules on employee involvement

31. (1) Where –

- (a) an employee involvement agreement has been agreed; or
- (b) the standard rules on employee involvement apply,

a complaint may be presented to the CAC by a relevant applicant who considers that the competent organ of a participating company or of the SE has failed to comply with the terms of the employee involvement agreement or, as the case may be, one or more of the standard information and consultation provisions.

- (2) A complaint brought under paragraph (1) must be brought within a period of 3 months commencing with the date of the alleged failure.
- (3) In this regulation –

“failure” means an act or omission,
“relevant applicant” means –
 - (a) in a case where a representative body has been appointed or elected, a member of that body; or
 - (b) in a case where no representative body has been elected or appointed, an information and consultation representative or an employee.
- (4) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the competent organ of the participating company or of the SE, as the case may be, to take such steps as are necessary to comply with the terms of the employee involvement agreement or, as the case may be, the standard rules on employee involvement.
- (5) An order made under paragraph (4) shall specify –
 - (a) the steps which the competent organ is required to take;
 - (b) the date of the failure; and
 - (c) the period within which the order must be complied with.
- (6) If the CAC makes a decision under paragraph (4), the relevant applicant may, within the period of three months beginning with the day on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.
- (7) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the competent organ of the participating company or the SE requiring it to pay a penalty to the Secretary of State in respect of the failure unless satisfied, on hearing

representations from the competent organ, that the failure resulted from a reason beyond its control or that he has some other reasonable excuse for its failure.

- (8) Regulation 32 shall apply in respect of a penalty notice issued under this regulation.
- (9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the competent organ.

Penalties

32. (1) A penalty notice issued under regulation 31 shall specify –
- (a) the amount of the penalty which is payable;
 - (b) the date before which the penalty must be paid; and
 - (c) the failure and period to which the penalty relates.
- (2) No penalty set by the Appeal Tribunal under this regulation may exceed £75,000.
- (3) When setting the amount of the penalty, the Appeal Tribunal shall take into account –
- (a) the gravity of the failure;
 - (b) the period of time over which the failure occurred;
 - (c) the reason for the failure;
 - (d) the number of employees affected by the failure; and
 - (e) the number of employees employed by the undertaking.
- (4) The date specified under paragraph (1)(b) above must not be earlier than the end of the period within which an appeal against a decision or order made by the CAC under regulation 31 may be made.
- (5) If the specified date in a penalty notice has passed and –
- (a) the period during which an appeal may be made has expired without an appeal having been made; or
 - (b) such an appeal has been made and determined,

the Secretary of State may recover from the competent organ of the participating company or the SE, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.

- (6) The making of an appeal suspends the effect of the penalty notice.
- (7) Any sums received by the Secretary of State under regulation 31 or this regulation shall be paid into the Consolidated Fund.

Misuse of procedures

33. (1) If an employees' representative or where there is no such representative in relation to an employee, the employee, believes that a participating company or an SE is misusing or intending to misuse the SE or the powers in these Regulations for the purpose of-

- (a) depriving the employees of that company, its concerned subsidiaries or establishments or that SE or its subsidiaries of their rights to employee involvement; or
- (b) withholding rights from any of the people referred to in sub-paragraph (a),

he may make present a complaint to the CAC.

(2) Where a complaint is made to the CAC under paragraph (1) before registration or within a period of 12 months of the date of the registration of the SE, the CAC shall uphold the complaint unless the respondent proves that it did not misuse or intend to misuse the SE or the powers in these Regulations for either of the purposes set out in sub-paragraphs (a) or (b) of paragraph (1).

(3) If the CAC finds the complaint to be well founded –

(a) it shall make a decision to that effect and may make an order requiring the competent organ of the participating company or of the SE, as the case may be, to take such action as is specified in the order to ensure that the employees referred to in paragraph (1)(a) are not deprived of their rights to employee involvement or that rights are not withheld from them; and

(b) the provisions in regulations 31(6) to (9) and 32 shall apply to the complaint.

CHAPTER 6

CONFIDENTIAL INFORMATION

Breach of statutory duty

34. (1) A person to whom the competent organ of an SE, a participating company or its concerned subsidiaries or establishments, pursuant to its obligations under these Regulations, entrusts any information or document on terms requiring it to be held in confidence shall not disclose that information or document except in accordance with those terms.
- (2) In this regulation a person referred to in paragraph (1) to whom information or a document is entrusted is referred to as a “recipient”.
- (3) The obligation to comply with paragraph (1) is a duty owed to the competent organ of a participating company or the SE and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (4) Paragraph (3) shall not affect the liability which any person may incur, nor affect any right which any person may have, apart from paragraph (3).
- (5) No action shall lie under paragraph (3) where the recipient reasonably believed the disclosure to be a “protected disclosure” within the meaning given to that expression by section 43A of the 1996 Act^a.
- (6) A recipient whom the competent organ of a participating company or the SE has entrusted with any information or document on terms requiring it to be held in confidence may apply to the CAC for a declaration as to whether it was reasonable for the competent organ to require the recipient to hold the information or document in confidence.
- (7) If the CAC considers that the disclosure of the information or the document by the recipient would not, or would not be likely to, harm the legitimate interests of the undertaking, it shall make a declaration that it was not reasonable for the competent organ to require the recipient to hold the information or document in confidence.
- (8) If a declaration is made under paragraph (7), the information or document shall not at any time thereafter be regarded as having been entrusted to the recipient who made the

^a Section 43A of the 1996 Act was inserted by the Public Interest Disclosure Act 1998 (c. 23), section 1.

application under paragraph (6), or to any other recipient, on terms requiring it to be held in confidence.

Withholding of information by the competent organ

35. (1) The competent organ of an SE registered in Great Britain or a participating company, concerned subsidiary registered in Great Britain is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the SE, participating company or any subsidiaries or establishments concerned.
- (2) Where there is a dispute between the competent organ of a participating company, concerned subsidiary or establishment or an SE and -
- (a) where a representative body has been appointed or elected, a member of that body; or
 - (b) where no representative body has been elected or appointed, an information and consultation representative or an employee,

as to whether the nature of the information or document which the competent organ has failed to provide is such as is described in paragraph (1), the competent organ or a person referred to in sub-paragraph (a) or (b) may apply to the CAC for a declaration as to whether the information or document is of such a nature.

- (3) If the CAC makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, seriously harm the functioning of, or be prejudicial to, the SE, participating company or any subsidiary or establishment concerned, as the case may be, the CAC shall order the competent organ to disclose the information or document.
- (4) An order under paragraph (3) shall specify –
- (a) the information or document to be disclosed;
 - (b) the recipient or recipients to whom the information or document is to be disclosed;
 - (c) any terms on which the information or document is to be disclosed; and
 - (d) the date before which the information or document is to be disclosed.

CHAPTER 7

PROTECTION FOR MEMBERS OF SPECIAL NEGOTIATING BODY, ETC.

Right to time off for members of special negotiating body, etc.

36. (1) An employee who is –
- (a) a member of a special negotiating body;
 - (b) a member of a representative body;
 - (c) an information and consultation representative;
 - (d) an employee member on a supervisory or administrative organ; or
 - (e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such a member, representative or candidate.

- (2) For the purpose of this regulation the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

Right to remuneration for time off under regulation 36

37. (1) An employee who is permitted to take time off under regulation 36 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.
- (2) Chapter II of Part XIV of the 1996 Act (a week's pay) shall apply in relation to this regulation as it applies in relation to section 62 of the 1996 Act.
- (3) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken.
- (4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by –
- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of

twelve weeks ending with the last complete week before the day on which the time off is taken; or

- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the consideration specified in paragraph (5) as are appropriate in the circumstances.

(5) The consideration referred to in paragraph (2)(b) are-

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract; and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment.

(7) Any contractual remuneration paid to an employee in respect of a period of time off under regulation 36 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period, and conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to time off: complaints to tribunals

38. (1) An employee may present a complaint to an employment tribunal that his employer-

- (a) has unreasonably refused to permit him to take time off as required under regulation 36; or
- (b) has failed to pay the whole or any part of any amount to which the employee is entitled under regulation 37.

(2) A tribunal shall not consider a complaint under this regulation unless it is presented –

- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged that the time off should have been permitted; or

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where a tribunal finds a complaint under this regulation well-founded, the tribunal shall make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under regulation 37 if the employer had not refused,
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under regulation 37, the tribunal shall also order him to pay to the employee the amount which it finds is due to him.

Unfair dismissal

39. (1) An employee who is dismissed and to whom paragraph (2) or (5) applies shall be regarded, if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3) or (6), as unfairly dismissed for the purposes of Part X of the 1996 Act.
- (2) This paragraph applies to an employee who is –
- (a) a member of a special negotiating body;
 - (b) a member of a representative body;
 - (c) an information and consultation representative;
 - (d) an employee member in a supervisory or administrative organ; or
 - (e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative.
- (3) The reason is that –
- (a) the employee performed any functions or activities as such a member, representative or candidate; or
 - (b) the employee or a person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 36 or 37,

or proposed to do so.

- (4) The reason in paragraph (3)(a) does not apply where the reason (or principal reason) for the dismissal is that in the performance, or purported performance, of the employee's functions or activities he has disclosed any information or document in breach of the duty in regulation 34, unless the employee reasonably believed the disclosure to be a 'protected disclosure' within the meaning given to that expression by section 43A of the 1996 Act.
- (5) This paragraph applies to any employee whether or not he is an employee to whom paragraph (2) applies.
- (6) The reasons are that the employee-
 - (a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right or secure an entitlement conferred on him by these Regulations;
 - (b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations;
 - (c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;
 - (d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;
 - (e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member on a supervisory or administrative organ or be an information and consultation representative;
 - (f) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
 - (g) voted in such a ballot;
 - (h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
 - (i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).
- (7) It is immaterial for the purposes of paragraph (6)(a) –

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed,

but for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

Subsidiary provisions relating to unfair dismissal

40. (1) In section 105 of the 1996 Act (redundancy as unfair dismissal) in subsection (1)(c) (which requires one of a specified group of subsections to apply for a person to be treated as unfairly dismissed)^a there shall be inserted “or (7G)” immediately before “applies” and after subsection (7F) there shall be inserted –

“(7G) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) or (6) of regulation 39 of the European Public Limited-Liability Company Regulations 2004.”.

- (2) In section 108^b of the 1996 Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period of employment is required)^c the word “or” at the end of paragraph (i) shall be omitted and after paragraph (j) there shall be inserted –

“or

(k) paragraph (3) or (6) of regulation 39 of the European Public Limited-Liability Company Regulations 2004 applies.”.

- (3) In section 109 of the 1996 Act (exclusion of right: upper age limit) in subsection (2) (cases where the upper age limit does not apply)^d the word “or” at the end of paragraph (i) shall be omitted and after paragraph (j) there shall be inserted –

^a Section 105 has been amended on a number of occasions to specify additional circumstances in which an employee dismissed by reason of redundancy is to be regarded as unfairly dismissed.

^b Section 108(1) was amended by S.I. 1999/1436, Article 3.

^c Section 108(3) has been amended on a number of occasions to specify additional cases in which no qualifying period of employment is required.

^d Section 109(2) has been amended on a number of occasions to specify additional cases where the upper age limit does not apply.

“or

(k) paragraph (3) or (6) of regulation 39 of the European Public Limited-Liability Company Regulations 2004 applies.”.

Detriment

41. (1) An employee to whom paragraph (2) or (5) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer, done on a ground specified in paragraph (3) or (6).

(2) This paragraph applies to an employee who is -

- (a) a member of a special negotiating body;
- (b) a member of a representative body;
- (c) an information and consultation representative;
- (d) an employee member on a supervisory or administrative organ; or
- (e) a candidate in an election in which any person elected will, on being elected, be such a member or a representative.

(3) The ground is that –

- (a) the employee performed any functions or activities as such a member, representative or candidate; or
- (b) the employee or person acting on his behalf made a request to exercise an entitlement conferred on the employee by regulation 36 or 37,

or proposed to do so.

(4) The ground in paragraph (3)(a) does not apply where the ground for the subsection to detriment is that in the performance, or purported performance, of the employee’s functions or activities he has disclosed any information or document in breach of the duty in regulation 34, unless the employee reasonably believed the disclosure to be a “protected disclosure” within the meaning given to that expression by section 43A of the 1996 Act.

(5) This paragraph applies to any employee, whether or not he is an employee to whom paragraph (2) applies.

(6) The grounds are that the employee-

- (a) took, or proposed to take, any proceedings before an employment tribunal to enforce any right or secure an entitlement conferred on him by these Regulations;
- (b) exercised, or proposed to exercise, any entitlement to apply or complain to the CAC or the Appeal Tribunal conferred by these Regulations;
- (c) acted with a view to securing that a special negotiating body, a representative body or an information and consultation procedure did or did not come into existence;
- (d) indicated that he did or did not support the coming into existence of a special negotiating body, a representative body or an information and consultation procedure;
- (e) stood as a candidate in an election in which any person elected would, on being elected, be a member of a special negotiating body, a representative body, an employee member on a supervisory or administrative organ or be an information and consultation representative;
- (f) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in a ballot arranged under these Regulations;
- (g) voted in such a ballot;
- (h) expressed doubts, whether to a ballot supervisor or otherwise, as to whether such a ballot had been properly conducted; or
- (i) proposed to do, failed to do, or proposed to decline to do, any of the things mentioned in sub-paragraphs (d) to (h).

(7) It is immaterial for the purposes of paragraph (6)(a) –

- (a) whether or not the employee has the right; or
- (b) whether or not the right has been infringed,

but for that paragraph to apply, the claim to the right and, if applicable, the claim that has been infringed must be made in good faith.

Detriment: enforcement and subsidiary provisions

42. (1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of regulation 41.
- (2) The provisions of sections 48(2) to (4) of the 1996 Act (complaints to employment tribunals and remedies) shall apply in relation to a complaint under this regulation as they apply in relation to a complaint under section 48 of that Act but taking references

in those provisions to the employer as references to the employer within the meaning of regulation 41(1) above.

- (3) Regulation 41 does not apply where the detriment in question amounts to dismissal.

Conciliation

43. In section 18 of the Employment Tribunals Act 1996 (conciliation), in subsection (1) (which specifies the proceedings and claims to which the section applies)^a after paragraph (m), there shall be inserted –

“or (n) arising out of a contravention, or alleged contravention of regulation 38 or 42 of the European Public Limited-Liability Company Regulations 2004.”.

CHAPTER 8

MISCELLANEOUS

CAC: proceedings

44. (1) Where under these Regulations a person presents a complaint or makes an application to the CAC the complaint or application must be in writing and in such form as the CAC may require.
- (2) In its consideration of a complaint or application under these Regulations, the CAC shall make such enquiries as it sees fit and give any person whom it considers has a proper interest in the complaint or application an opportunity to be heard.
- (3) Where the participating company, concerned subsidiary or establishment or the SE has its registered office in England and Wales –
- (a) a declaration made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the High Court in England and Wales; and
 - (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the High Court in England and Wales.

^a 1996 c. 17. Section 18(1) has been amended on a number of occasions to specify additional proceedings and claims to which the section applies.

- (4) Where the participating company, concerned subsidiary or establishment or the SE has its registered office in Scotland –
 - (a) a declaration or order made by the CAC under these Regulations may be relied on as if it were a declaration or order made by the Court of Session; and
 - (b) an order made by the CAC under these Regulations may be enforced in the same way as an order of the Court of Session.
- (5) A declaration or order made by the CAC under these Regulations must be in writing and state the reasons for the CAC's findings.
- (6) An appeal lies to the Appeal Tribunal on any question of law arising from any declaration or order of, or arising in any proceedings before, the CAC under these Regulations.

Appeal Tribunal: proceedings

45. (1) The Employment Tribunals Act 1996 shall be amended as follows.
 - (2) In section 20(4) (the Appeal Tribunal), after "1999" there shall be inserted "and regulation 45 of the European Public Limited-Liability Company Regulations 2004."
 - (3) In section 21 (jurisdiction of the Appeal Tribunal), in subsection (1) (which specifies the proceedings and claims to which the section applies) -
 - (a) at the end of paragraph (m), the word "or" shall be omitted; and
 - (b) after paragraph (n), there shall be inserted –

"or (o) the European Public Limited-Liability Company Regulations 2004."

ACAS

46. (1) If on receipt of an application or complaint under these Regulations the CAC is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the

application or complaint to ACAS and shall notify the applicant or complainant and any persons whom it considers have a proper interest in the application or complaint accordingly, whereupon ACAS shall seek to promote a settlement of the matter.

- (2) If an application or complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the CAC of its opinion.
- (3) If the application or complaint is not referred to ACAS or if it is so referred, on ACAS, informing the CAC of its opinion that further attempts at conciliation are unlikely to result in a settlement, the CAC shall proceed to hear and determine the application or complaint.

Restrictions on contracting out: general

47. (1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports –
 - (a) to exclude or limit the operation of any provision of these Regulations other than a provision of Chapter 7 of this Part; or
 - (b) to preclude a person from bringing any proceedings before the CAC, under any provision of these Regulations other than a provision of that Chapter.
- (2) Paragraph (1) does not apply to any agreement to refrain from continuing any proceedings referred to in sub-paragraph (b) of that paragraph made after the proceedings have been instituted.

Restrictions on contracting out: Chapter 7 of this Part

48. (1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports –
 - (a) to exclude or limit the operation of any provision of Chapter 7 of this Part of these Regulations; or
 - (b) to preclude a person from bringing any proceedings before an employment tribunal under that Chapter.
- (2) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an employment tribunal where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation).

- (3) Paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an employment tribunal proceedings within section 18(1)(k) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available) if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.
- (4) For the purposes of paragraph (3) the conditions regulating compromise agreements are that –
- (a) the agreement must be in writing;
 - (b) the agreement must relate to the particular proceedings;
 - (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal;
 - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
 - (e) the agreement must identify the adviser; and
 - (f) the agreement must state that the conditions in sub-paragraphs (a) to (e) are satisfied.
- (5) A person is a relevant independent adviser for the purposes of paragraph (4)(c) –
- (a) if he is a qualified lawyer;
 - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and authorised to do so on behalf of the trade union; or
 - (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and authorised to do so on behalf of the centre.
- (6) But a person is not a relevant independent adviser for the purposes of paragraph (4)(c) in relation to the employee -

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer;
- (b) in the case of a person within paragraph (5)(b) or (c), if the trade union or advice centre is the employer or an associated employer; or
- (c) in the case of a person within paragraph (5)(c), if the employee makes a payment for the advice received by him.

(7) In paragraph (5)(a), a “qualified lawyer” means –

- (a) as respects England and Wales, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practicing certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990^a); and
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.

(8) For the purposes of paragraph (6) any two employers shall be treated as associated if –

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.

Amendment of the Transnational Information and Consultation of Employees Regulations 1999

49. In the Transnational Information and Consultation of Employees Regulations 1999, after regulation 46 there shall be inserted the following –

“46A. (1) Subject to paragraph (2), these Regulations shall not apply to an SE which is a Community-scale undertaking or a controlling undertaking of a Community-scale group of undertakings.

^a 1990 c.41.

(2) Paragraph (1) shall not apply if the special negotiating body has taken the decision referred to in regulation 28 of the European Public Limited-Liability Company Regulations 2004^a (decision not to open or to terminate negotiations).

(3) In this regulation an “SE” means a company established in accordance with the European Public Limited-Liability Company Regulations 2004.”

Existing employee involvement rights

50. (1) Subject to paragraph (2), nothing in these Regulations shall affect employee involvement rights of employees of an SE, its subsidiaries or establishments provided for by law or practice in the Member State in which they were employed immediately prior to the registration of the SE.

(2) Paragraph (1) does not apply to rights to participation.

PART 4

PROVISIONS RELATING TO THE EXERCISE BY MEMBER STATES OF DISCRETIONARY POWERS CONFERRED BY THE EC REGULATION

Participation in the formation of an SE by a company formed under the law of a Member State whose head office is not in the Community (Article 2(5))

51. A company, formed under the law of a Member State, the head office of which is not in the Community, may participate in the formation of an SE where its registered office is in that Member State and it has a real and continuous link with a Member State’s economy.

Additional forms of publication of transfer proposal (Article 8(2))

52. (1) The SE shall notify in writing its shareholders, and every creditor of whose claim and address it is aware, of the right to examine the transfer proposal and the report drawn up under Article 8(3), at its registered office and, on request, to obtain copies of those documents free of charge, not later than one month before the general meeting called to decide on the transfer.

^a Insert S.I. number.

- (2) Every invoice, order for goods or business letter, which, at any time between the date on which the transfer proposal and report become available for inspection at the registered office of the SE and the deletion of its registration on transfer, is issued by or on behalf of the SE, shall contain a statement that the SE is proposing to transfer its registered office to another Member State under Article 8 and identifying that Member State.
- (3) If default is made in complying with sub-paragraphs (1) or (2) above the SE is liable on summary conviction to a fine not exceeding one fifth of the statutory maximum.

Extension of protection given by Article 8(7) to liabilities incurred prior to transfer (Article 8(7))

53. The first sub-paragraph of Article 8(7) shall apply to liabilities that arise (or may arise) prior to the transfer.

Power of the competent authorities of a Member State to oppose a transfer on public interest grounds (Article 8(14))

54. The competent authorities may exercise the power given by Article 8(14) to oppose the transfer of a registered office.

Power to permit the management or administrative organ of an SE to amend statutes where in conflict with employee involvement arrangements (Article 12(4))

55. Where there is a conflict between the arrangements for employee involvement and the existing statutes the management or administrative organ of the SE may amend the statutes in accordance with Article 12(4) without any further decision from the general shareholders meeting.

Power of the competent authorities of a Member State to oppose the participation of a merging company governed by its law on public interest grounds (Article 19)

56. The competent authorities may exercise the power given by Article 19 to oppose the taking part in the formation of an SE by merger by a company of the type specified in relation to the United Kingdom in Annex 1 to the EC Regulation.

Power of Member States to fix a minimum and/or maximum number of members of the management organ (Article 39(4))

57. The minimum number of the members of the management organ of an SE shall be two.

Power of Member States to stipulate the number of members of the supervisory organ or a minimum and/or maximum number of them (Article 40(3))

58. The minimum number of the members of the supervisory organ of an SE shall be two.

Power of Member States to provide for each member of the supervisory organ to be entitled to require the management organ to provide information (Article 41(3))

59. Each member of the supervisory organ is entitled to require the management organ to provide to that member information of the kind described in Article 41(3).

Power of Member States to set a minimum and, where necessary, a maximum number of members of an administrative organ of an SE (Article 43(2))

60. The minimum number of the members of the administrative organ of an SE shall be two.

Power of Member States to provide for the first general meeting of an SE to be held at any time in the 18 months following incorporation (Article 54(1))

61. The first general meeting of an SE may be held at any time in the 18 months following an SE's incorporation.

Power of Member States to reduce the proportion of shareholders of an SE who may require one or more additional items to be put on the agenda of any general meeting (Article 56)

62. The proportion of the shareholders of an SE who may require one or more additional items to be put on the agenda of any general meeting is to be the holders of at least 5% of the SE's subscribed capital.

Power of Member States, to whom the third phase of EMU does not apply, to make an SE subject to their law on public limited liability companies as regard the expression of its capital (Article 67(1))

63. An SE shall be subject to the provisions of the enactments and rules of law applying to a public company as regards the expression of its capital.

PART 5

PROVISIONS REQUIRING THE MEMBER

STATES TO ENACT MEASURES

Provisions requiring the publication of terms of transfer, formation and conversion

64. (1) Where in respect of the Articles listed in sub-paragraph 2 below, terms or draft terms of formation or conversion, or a transfer proposal are required to be publicised, there shall be delivered to the registrar a copy of the terms, draft terms or the proposal, as the case may be, accompanied by the Form specified in relation to each Article in sub-paragraph 2 below and the registrar shall cause to be published in the Gazette notice of the receipt by her of the copy of the terms, draft terms or proposal

(2) the Articles referred to in sub-paragraph (1) are:

8(2) Form SE64(2)(a) in Schedule 3

32(3) Form SE64(2)(b) in Schedule 3

37(5) Form SE64(2)(c) in Schedule 3

Provision requiring publication of completion of merger (Article 28)

65. Where an SE is formed by merger, whether its registered office is in Great Britain or not, and a public company has taken part in that procedure, the registrar shall cause to be published in the Gazette notice that the merger has been completed.

Provision requiring publication of fulfilment of conditions for the formation of a holding SE (Article 33(3))

66. (1) Where, in respect of a company, the conditions for the formation of a holding SE, whether or not it is to be registered in Great Britain, are fulfilled, the company shall deliver to the registrar within 14 days of such fulfilment notice of that event in the Form SE66(1) set out in Schedule 3 and the registrar shall cause to be published in the Gazette notice that these conditions have been fulfilled.

(2) If default is made in complying with paragraph (1) above, the company is liable on summary conviction to a fine not exceeding one fifth of the statutory maximum.

Provisions requiring the publication of other documents or information

67. (1) Where, in respect of the Articles of the EC Regulation listed in sub-paragraph (2) below, the occurrence of an event is required to be publicised, the registrar shall cause to be published in the Gazette notice of the receipt by her of the particulars of that event described in those Articles.

(2) The Articles referred to in sub-paragraph (1) above are:

59(3)

65

(3) Where, in respect of the Articles listed in sub-paragraph (4) below, the registration of an SE, whether on formation under Title II of the EC Regulation, or on the transfer of the registered office of an SE under Article 8 or the deletion of a registration under that Article is required to be publicised, the registrar shall cause to be published in the Gazette notice of that registration or the deletion of that registration and of the receipt of the documents and particulars related to that registration or deletion required to be delivered to the registrar by the EC Regulation or these Regulations.

(4) The Articles referred to in sub-paragraph (3) above are:

8(12)

15(2)

Requirements for the protection of creditors and others on a transfer (Article 8(7))

68. (1) Where an SE proposes to transfer its registered office to another Member State under Article 8 the SE shall satisfy the Secretary of State that the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in respect of any liabilities arising (or that may arise) prior to the transfer by the making of a statement of solvency in the terms set out in sub-paragraphs 4 and 5 below.

(2) The statement of solvency must be made by all the members of the administrative organ in the case of an SE within the one-tier system and by all the members of the management organ in the case of an SE within the two-tier system.

(3) In the case of an SE within the two-tier system the statement of solvency may not be made unless authorised by the supervisory organ.

- (4) The statement shall state that the members of the administrative or management organ, as the case may be, have formed the opinion:
- (a) as regards its financial situation immediately following the date on which the transfer is proposed to be made, that there will be no grounds on which the SE could then be found to be unable to pay its debts, and
 - (b) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the SE's business during that year and to the amount and character of the financial resources which will in their view be available to the SE during that year, the SE will be able to carry on business as a going concern (and will accordingly be able to pay its debts as they fall due throughout that year).
- (5) In forming their opinion for the purposes of sub-paragraph 4(a), the members of the administrative or the management organ, as the case may be, shall take into account the same liabilities (including prospective and contingent liabilities) as would be relevant under section 122 of the Insolvency Act 1986^a (winding up by the court) to the question whether a company is unable to pay its debts.
- (6) The statement required by this regulation shall be in the Form SE68(6) set out in Schedule 3.
- (7) A member of an administrative or management organ who makes a statement under this regulation without having reasonable grounds for the opinion expressed in the statement is liable, on conviction on indictment, to imprisonment not exceeding two years, or to a fine, or to both, and on summary conviction imprisonment not exceeding three months, or to a fine not exceeding the statutory maximum, or to both.

Provisions required to be made where an SE no longer complies with the requirements of Article 7

69. (1) If it appears to the Secretary of State that an SE no longer complies with the requirements laid down in Article 7 she may direct the SE to regularise its position in accordance with Article 64(1)(a) or (b) within such period as she may specify in the direction.

^a 1986 (c.45)

- (2) A direction under this regulation is enforceable on the application of the Secretary of State:
- (a) in respect of an SE with its registered office in England and Wales, to the High Court by injunction; or
 - (b) in respect of an SE with its registered office in Scotland, to the Court of Session by an order under section 45 of the Court of Session Act 1988.^a
- (3) After sub-section 1 of section 124A of the Insolvency Act 1986 insert the following subsection:

“(1A) Where it appears to the Secretary of State that it is necessary that an SE, which is no longer in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company, be liquidated, she may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

For the purposes of this sub-section “SE” has the meaning attributed to it in the European Public Limited-Liability Company Regulations 2004.”

Provisions relating to the review of decisions of a competent authority (Articles 8(14) and 19)

70. (1) Where any competent authority or competent authorities oppose:
- (a) the transfer of the registered office of an SE under Article 8(14); or
 - (b) the taking part by a company of the type specified in relation to the United Kingdom in Annex 1 to the EC Regulation in the formation of an SE by merger under Article 19,
- the provisions of sub-paragraphs 2 to 5 shall apply.
- (2) An SE, the transfer of whose registered office is opposed by a competent authority or authorities under Article 8(14) or a company whose taking part in the formation of an SE by merger is opposed by a competent authority or competent authorities under Article 19, may appeal to the relevant court on the grounds that the opposition:

^a 1988 c. 36

- (a) is unlawful; or
 - (b) is irrational or unreasonable; or
 - (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

- (3) For the purposes of this regulation the “relevant court” is in the case of:
 - (a) an SE, or a company, whose registered office is in England or Wales, the High Court; and
 - (b) an SE, or a company, whose registered office is in Scotland, the Court of Session.

- (4) No appeal under this regulation may be brought unless the leave of the court has been obtained.

- (5) An SE or a company must bring an appeal within 21 days of being notified of the opposition of the competent authority, or with the court’s permission, after the end of such period, but only if the court is satisfied:
 - (a) where permission is being sought before the end of the period, that there is good reason for the SE or the company being unable to bring the appeal in time; or
 - (b) where permission is sought after that time, that there was a good reason for the failure of the SE or the company to bring the appeal in time and for any delay in applying for permission.

- (6) The court determining an appeal may:
 - (a) dismiss the appeal; or
 - (b) quash the opposition, and where the court quashes an opposition it may refer the matter to the opposing competent authority or authorities with a direction to reconsider it and to make a determination in accordance with the findings of the court.

PART 6

PROVISIONS RELATING TO THE EFFECTIVE APPLICATION OF THE EC REGULATION

Competent authorities

71. The competent authorities designated under Article 68(2) are:
- (a) in respect of Articles 8, 54, 55 and 64, the Secretary of State; and
 - (b) in respect of Articles 25 and 26, the High Court in relation to an SE where the registered office is proposed to be in England and Wales, and, in relation to an SE where the registered office is proposed to be in Scotland, the Court of Session.

Enforcement of obligation to amend Statutes in conflict with Arrangements for Employee Involvement

72. (1) If it appears to the Secretary of State that:
- (a) the statutes of an SE are in conflict with the arrangements for employee involvement determined in accordance with Part 3 of these Regulations; and
 - (b) the statutes have not, to the necessary extent, been amended.
- she may direct the SE to amend the statutes to that extent within such period as she may specify in the direction.
- (2) A direction under this regulation is enforceable on the application of the Secretary of State:
- (a) in respect of an SE with its registered office in England and Wales, to the High Court by injunction; and
 - (b) in respect of an SE with its registered office in Scotland, to the Court of Session by an order under section 45 of the Court of Session Act 1988.

Records of an SE transferred under Article 8(11) or a public company ceasing to exist under Article 29(1) and (2)

73. (1) Where:

- (a) the registration of an SE is deleted under Article 8(11) pursuant to a transfer of its registered office to another Member State; or
- (b) a public company ceases to exist under Article 29(1)(c) or (2)(c),

the records of that SE or public company, as the case may be, kept by the registrar shall continue to be kept by her for a period of twenty years following such a deletion or cessation of existence.

- (2) Where the registration of an SE is deleted, the Form, and the documents accompanying it, delivered to the Secretary of State under regulation 10, together with a copy of the certificate issued under Article 8(8) shall be deemed to be documents to be retained by the registrar under regulation 12 and the provisions of these Regulations shall apply accordingly.

Provision with respect to members of supervisory, management and administrative organs

74. (1) Where –

- (a)
 - (i) any provision of the EC Regulation, other than Article 9, requires application of any enactment relating to public companies to determine any question or matter; or
 - (ii) in the case of any matter not regulated by the EC Regulation or, where matters are partly regulated by it, of those aspects not covered by it, Article 9 requires the application of any enactment relating to public companies; and
- (b) any such enactment includes references to “directors” or to the “board of directors” in respect of public companies,

then the provisions of paragraph 2 shall have effect in respect of the application of such an enactment.

- (2) Subject to paragraphs (3), (4) and (5) references to “directors” or “board of directors” shall be treated as references to the members of the administrative organ in a one-tier system and to the members of the supervisory and management organs in a two-tier system, and applied accordingly.
- (3) Any enactment so applied in relation to a two-tier system shall be applied separately in respect of the members of the supervisory organ and in respect of the members of the

management organ in relation to the functions of the organ, and the acts and omissions of the members of those organs.

- (4) Where, in a two-tier system, any function relates to the management of the SE and, by virtue of Articles 39(1) or 40(1), is a function that cannot be carried out by the supervisory organ, nothing in paragraph (2) can have the effect of permitting or requiring the members of the supervisory organ to carry out any such functions.
- (5) Where, by virtue of any provision in the EC Regulation or in the statutes, any transaction or function carried out by the management organ in a two-tier system requires the authorisation of the supervisory organ, nothing in paragraph (2) can affect, or dispense with, the requirement for such authorisation.

Register of members of supervisory organ

75. (1) Every SE which has adopted the form of a two-tier system in its statutes shall keep at its registered office a register of the members of its supervisory organ (“the members”); and the register shall, with respect to the particulars to be contained in it of those persons, comply with the paragraphs below.

- (2) The SE shall, within the period of 14 days from the occurrence of—
 - (a) any change among the members, or
 - (b) any change in the particulars contained in the register,

send to the registrar a notification in the Form SE75A, SE75B or SE75C, as appropriate, set out in Schedule 3 of the change and of the date on which it occurred; and a notification of a person having become a member shall contain a consent, signed by that person, to act in the relevant capacity.

- (3) The register shall be open to the inspection of any shareholder of the SE without charge and of any other person on payment of [fee to be specified].
- (4) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2), the SE is liable on summary conviction to a fine not exceeding the statutory maximum.
- (5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

- (6) Where a confidentiality order, made under section 723B of the 1985 Act, or under that section to the extent that that enactment is applied by any provision of the EC Regulation, is in force in respect of a member, subsections (3) and (5) of that section shall not apply in relation to that part of the register of the SE as contains particulars of the usual residential address of that individual.
- (7) For purposes of this and the next regulation, where, to the extent that the application of section 741(2) of the 1985 Act under any provision of the EC Regulation requires it, a shadow director of an SE, by virtue of the members of the supervisory organ acting in accordance with his directions or instructions, is deemed a member of that organ.
- (8) Where an SE is required to keep a register of members of the supervisory organ by this regulation, the application of regulation 74 to that SE shall not require that particulars of members of the supervisory organ to be kept on any register required be kept under section 288 of the 1985 Act.

Particulars of members to be registered under regulation 75

76. (1) Subject to the provisions of this regulation, the register kept by an SE under regulation 75 shall contain the following particulars with respect to each member —
 - (a) in the case of an individual—
 - (i) his present name,
 - (ii) any former name,
 - (iii) his usual residential address,
 - (iv) his nationality,
 - (v) his business occupation (if any),
 - (vi) particulars of any other directorships held by him or which have been held by him, and
 - (vii) the date of his birth;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and registered or principal office.
- (2) Where a confidentiality order made under section 723B of the 1985 Act or under that section to the extent that is applicable by any provision of the EC Regulation is in force in respect of a member, the register shall contain, in addition to the particulars specified

in paragraph (1)(a), such address as is for the time being notified by the member to the company under regulations made under sections 723B to 723F of the 1985 Act.

- (3) In paragraph (1)(a) —
- (a) “name” means a person’s Christian name (or other forenames) and surname, except that in the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname, or in addition to either or both of them; and
 - (b) the reference to a former name does not include —
 - (i) in the case of a peer, or an individual normally known by a British title, the name by which he was known previous to the adoption of or succession to the title, or
 - (ii) in the case of any person, a former name which was changed or disused before he attained the age of 18 years or which has been changed or disused for 20 years or more, or
 - (iii) in the case of a married woman, the name by which she was known previous to the marriage.
- (4) It is not necessary for the register to contain on any day particulars of a directorship of a company —
- (a) which has not been held by a director at any time during the 5 years preceding that day,
 - (b) which is held by a director in a company which—
 - (i) is dormant or grouped with the SE keeping the register, and
 - (ii) if he also held that directorship for any period during those 5 years, was for the whole of that period either dormant or so grouped,
 - (c) which was held by a member for any period during those 5 years in a company which for the whole of that period was either dormant or grouped with the SE keeping the register.
- (5) For purposes of subsection (4), “company” includes any body corporate incorporated in Great Britain; and—
- (a) section 249AA(3) of the 1985 Act applies as regards whether and when a company is or has been dormant,

- (b) section 249AA(3) of the 1985 Act, to the extent that enactment is applied by any provision of the EC Regulation, applies as regards whether and when an SE is or has been dormant, and
- (c) a company or SE is to be regarded as being, or having been, grouped with another at any time if at that time it is or was a company or SE of which the other is or was a wholly-owned subsidiary, or if it is or was a wholly-owned subsidiary of the other or of another company or SE of which that other is or was a wholly-owned subsidiary.

The SE as a body corporate

77. (1) Where –

- (a) any enactment is applied in the manner described in regulation 74(1)(a); or
- (b) any enactment applies to an SE otherwise than in the manner described in regulation 74(1)(a)

and those enactments are expressed to apply to, or in respect of, a body corporate, an SE shall be treated for the purposes of the application of those enactments as if it were a body corporate.

- (2) Nothing in this regulation can have the effect of constituting an SE as a body corporate incorporated in, or formed under the law of, Great Britain.

Notification of Amendments to Statutes and Insolvency Events (Articles 59(3) and 65)

78. (1) Where, under Articles 59(3) and 65, publication by the registrar in the Gazette of the events described in those Articles is required by regulation 67(1):

- (a) in the case of Article 59(3), the amendments to the statutes shall be delivered to the registrar by the SE accompanied by Form SE78(1)(a) in Schedule 3 within 14 days of the adoption of those amendments; and
- (b) in the case of Article 65, notice of the relevant event set out in Form SE78(1)(b) in Schedule 3 shall be delivered to the registrar by the SE within 14 days of the occurrence of the event.

- (2) If default is made in complying with sub-paragraph (1)(a) or (b) the SE is liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum.

Accounting Reference Period and Financial Year of Transferring SE

79. (1) Where an SE transfers its registered office to Great Britain under Article 8:

its first accounting reference period, for the purposes of section 224 of the 1985 Act, is the period of twelve months beginning with its last balance sheet date before the registration of the transfer and the date on which that period ends is its accounting reference date for those purposes; and

its first financial year for the purposes of section 223 of the 1985 Act begins with the first day of its first accounting reference period and ends with the last day of that period or such other date, not more than seven days before or after the end of that period as the SE may determine.

(2) For purposes of this regulation “the last balance sheet date” is the date as at which the balance sheet of the transferring SE was required to be drawn up under the provisions of the law of the Member State in which it had its registered office, where the balance sheet was the last one required to be drawn up before the registration of the transfer in Great Britain.

(3) Where the transferring SE has not been required to draw up a balance sheet under the provisions of the law of the Member State where it had its registered office, or, if different, of the Member State where it was first registered, before the registration of the transfer in Great Britain, its accounting reference date for the purposes of section 224 of the 1985 Act is the last day of the month in which the anniversary of its registration on formation falls and its first accounting reference period is the period beginning with its date of registration on formation and ending with its accounting reference date; and paragraph (1)(b) above applies in respect of its first financial year accordingly.

Penalties for Breach of Article 11

80. Where:

(a) an SE fails to comply with Article 11(1); or

(b) any person fails to comply with Article 11(2)

the SE or that person is liable on summary conviction to a fine not exceeding one fifth of the statutory maximum.

PART 7

PROVISIONS RELATING TO THE CONVERSION OF AN SE TO A PUBLIC COMPANY IN ACCORDANCE WITH ARTICLE 66

Registration of a public company by the conversion of an SE

81. Where it is proposed to convert an SE to a public company in accordance with Article 66 there shall be delivered to the registrar a registration form in Form SE81 set out in Schedule 3 together with the documents specified in that Form; and, for the purposes of registering the SE, (in this Part referred to as the “converting SE”), as a public company under the provisions of the 1985 Act, the provisions of that Act shall have effect with the modifications set out in paragraph 1 of Schedule 5 to these Regulations and subject to the provisions of this Part.

Publication of draft terms of conversion

82. Where under Article 66(4) draft terms of conversion are required to be publicised there shall be delivered to the registrar a copy of such draft terms accompanied by Form SE82 set out in Schedule 3 and the registrar shall cause to be published in the Gazette notice of the receipt by her of the copy of the draft terms.

Registration under the 1985 Act

83. (1) On and after the day on which Form SE81 is delivered to the registrar section 12(2) of the 1985 Act (duty of the registrar) shall apply in relation to the memorandum and articles of association of the converting SE delivered with Form SE81 as if –
- (a) they have been delivered under section 10 of the 1985 Act (documents to be delivered to the registrar), and
 - (b) the requirements of that Act in respect of registration and of matters precedent and incidental to it had been complied with.
- (2) The registrar shall carry out her duty under section 12 of the 1985 Act to register the memorandum and articles of the converting SE.
- (3) On registration of the memorandum and articles of association of the converting SE the registrar shall give a certificate –

- (a) that the converting SE is incorporated and retains the legal personality it had when an SE;
 - (b) that its memorandum and articles of association are registered under the 1985 Act, and
 - (c) that it is a public company limited by shares.
- (4) The certificate is conclusive evidence –
- (a) that the requirements of the 1985 Act in respect of registration and of matters precedent and incidental to it have been complied with, and
 - (b) that on and after the registration the converting SE is a public company limited by shares.

Effect of registration

84. (1) In its application to a converting SE on or after registration the 1985 Act shall have effect with the modifications set out in paragraphs 2 to 10 of Schedule 5 to these Regulations.
- (2) On and after registration a converting SE shall be known by the name contained in its memorandum (subject to section 28 of the 1985 Act).
- (3) The persons named in Form SE81 shall be deemed to have been appointed as the first directors or secretaries of a converting SE on registration.

Records of a converting SE

85. The records of a converting SE, when the converting SE has been registered as a public company limited by shares under the provisions of this Part, relating to any period before its registration as a public company shall be treated for the purposes of the 1985 Act as if they were records of that public company.

SCHEDULE 1 Regulation 2(1)

COUNCIL REGULATION (EC) NO 2157/2001
of 8 October 2001
on the Statute for a European company (SE)

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 proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the Economic and Social Committee(3),

Whereas:

(1) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(2) Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers. Such operations can be carried out only with due regard to the rules of competition laid down in the Treaty.

(3) Restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems. The approximation of Member States' company law by means of Directives based on Article 44 of the Treaty can overcome some of those difficulties. Such approximation does not, however, release companies governed by different legal systems from the obligation to choose a form of company governed by a particular national law.

(4) The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(5) Member States are obliged to ensure that the provisions applicable to European companies under this Regulation do not result either in discrimination arising out of unjustified different treatment of European companies compared with public limited-liability companies or in disproportionate restrictions on the formation of a European company or on the transfer of its registered office.

(6) It is essential to ensure as far as possible that the economic unit and the legal unit of business in the Community coincide. For that purpose, provision should be made for the creation, side by side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States.

(7) The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.

(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.

(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.

(10) Without prejudice to any economic needs that may arise in the future, if the essential objective of legal rules governing SEs is to be attained, it must be possible at least to create such a company as a means both of enabling companies from different Member States to merge or to create a holding company and of enabling companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries.

(11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.

(12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.

(13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. 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.

(14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.

(15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling undertaking by its own law, for example the requirement to prepare consolidated accounts.

(16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.

(17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.

(18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.

(19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC(4), and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.

(20) 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 the above areas and in other areas not covered by this Regulation.

(21) Directive 2001/86/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.

(22) 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 2001/86/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.

(23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.

(24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.

(25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.

(26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.

(27) In view of the specific Community character of an SE, the "real seat" arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States' laws and does not pre-empt any choices to be made for other Community texts on company law.

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

(29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained

at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

1. A company may be set up within the territory of the Community in the form of a European public limited-liability company (Societas Europaea or SE) on the conditions and in the manner laid down in this Regulation.

2. The capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed.

3. An SE shall have legal personality.

4. Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.

Article 2

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.

2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:

(a) is governed by the law of a different Member State, or

(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:

(a) is governed by the law of a different Member State, or

(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.

5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

1. For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.

2. An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies(5) shall apply to SEs *mutatis mutandis*.

Article 4

1. The capital of an SE shall be expressed in euro.

2. The subscribed capital shall not be less than EUR 120000.

3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

Article 5

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

Article 6

For the purposes of this Regulation, "the statutes of the SE" shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

Article 7

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

Article 8

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:

- (a) the proposed registered office of the SE;
- (b) the proposed statutes of the SE including, where appropriate, its new name;
- (c) any implication the transfer may have on employees' involvement;
- (d) the proposed transfer timetable;
- (e) any rights provided for the protection of shareholders and/or creditors.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.

4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.

5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.

11. When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.

13. On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

Article 9

1. An SE shall be governed:

(a) by this Regulation,

(b) where expressly authorised by this Regulation, by the provisions of its statutes

or

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;

(ii) the provisions of Member States' laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;

(iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.

2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.

3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

Article 10

Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

Article 11

1. The name of an SE shall be preceded or followed by the abbreviation SE.

2. Only SEs may include the abbreviation SE in their name.

3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

Article 12

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(6).

2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.

4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

Article 13

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

Article 14

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.

2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

TITLE II

FORMATION

Section 1

General

Article 15

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.
2. The registration of an SE shall be publicised in accordance with Article 13.

Article 16

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.
2. If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

Section 2

Formation by merger

Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).
2. Such a merger may be carried out in accordance with:
 - (a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive

(78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies(7) or

(b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

Article 18

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

Article 19

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

Article 20

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

(a) the name and registered office of each of the merging companies together with those proposed for the SE;

(b) the share-exchange ratio and the amount of any compensation;

(c) the terms for the allotment of shares in the SE;

(d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;

(e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;

(f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;

(h) the statutes of the SE;

(i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.

2. The merging companies may include further items in the draft terms of merger.

Article 21

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

(a) the type, name and registered office of every merging company;

(b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the SE.

Article 22

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

Article 23

1. The general meeting of each of the merging companies shall approve the draft terms of merger.
2. Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

Article 24

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

(a) creditors of the merging companies;

(b) holders of bonds of the merging companies;

(c) holders of securities, other than shares, which carry special rights in the merging companies.

2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

Article 25

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23(1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

Article 26

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.

2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 25(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.

4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

Article 27

1. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.

2. The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

Article 28

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

Article 29

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences ipso jure and simultaneously:

- (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;
- (b) the shareholders of the company being acquired become shareholders of the acquiring company;
- (c) the company being acquired ceases to exist;
- (d) the acquiring company adopts the form of an SE.

2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences ipso jure and simultaneously:

- (a) all the assets and liabilities of the merging companies are transferred to the SE;
- (b) the shareholders of the merging companies become shareholders of the SE;
- (c) the merging companies cease to exist.

3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

4. The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

Article 30

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

Article 31

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), Article 29(1)(b) nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.

2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

Section 3

Formation of a holding SE

Article 32

1. A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall include a report explaining and justifying the legal and economic aspects of the formation and indicating the implications for the shareholders and for the employees of the adoption of the form of a holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c),

(f), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State's national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.

5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

Employee involvement in the holding SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each company promoting the operation may reserve the right to make registration of the holding SE conditional upon its express ratification of the arrangements so decided.

7. These provisions shall apply *mutatis mutandis* to private limited-liability companies.

Article 33

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders

of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

Article 34

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.

Section 4

Formation of a subsidiary SE

Article 35

An SE may be formed in accordance with Article 2(3).

Article 36

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

Section 5

Conversion of an existing public limited-liability company into an SE

Article 37

1. An SE may be formed in accordance with Article 2(4).
2. Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.
3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.
4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.
5. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.
6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC(8) *mutatis mutandis* that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.
7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.
8. Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.
9. The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE.

TITLE III

STRUCTURE OF THE SE

Article 38

Under the conditions laid down by this Regulation an SE shall comprise:

- (a) a general meeting of shareholders and
- (b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1

Two-tier system

Article 39

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.

3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

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.

Article 40

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.

2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

Article 41

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.

3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

Article 42

The supervisory organ shall elect a chairman from among its members. If half of the members are

appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 2

The one-tier system

Article 43

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.

3. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

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.

Article 44

1. The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

2. Each member of the administrative organ shall be entitled to examine all information submitted to it.

Article 45

The administrative organ shall elect a chairman from among its members. If half of the members are

appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

Section 3

Rules common to the one-tier and two-tier systems

Article 46

1. Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

Article 47

1. An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2. No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 who:

(a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or

(b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, lay down special conditions of eligibility for members representing the shareholders.

4. This Regulation shall not affect national law permitting a minority of shareholders or other persons

or authorities to appoint some of the members of a company organ.

Article 48

1. An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

Article 49

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

Article 50

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:

(a) quorum: at least half of the members must be present or represented;

(b) decision-taking: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

Article 51

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 4

General meeting

Article 52

The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation or

(b) the legislation of the Member State in which the SE's registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE's registered office is situated, either by the law of that Member State or by the SE's statutes in accordance with that law.

Article 53

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 54

1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE's registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE's incorporation.

2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated.

Article 55

1. One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE's statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2. The request that a general meeting be convened shall state the items to be put on the agenda.

3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE's registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

Article 56

One or more shareholders who together hold at least 10 % of an SE's subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE's registered office is situated or, failing that, by the SE's statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE's registered office is situated under the same conditions as are applicable to public limited-liability companies.

Article 57

Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.

Article 58

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not

taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

Article 59

1. Amendment of an SE's statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires or permits a larger majority.
2. A Member State may, however, provide that where at least half of an SE's subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.
3. Amendments to an SE's statutes shall be publicised in accordance with Article 13.

Article 60

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.
2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

TITLE IV

ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 61

Subject to Article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the Member State in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

Article 62

1. An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions(9) as regards the preparation of its annual

and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁽¹⁰⁾ as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts.

TITLE V

WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

Article 63

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

Article 64

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:

(a) by re-establishing its head office in the Member State in which its registered office is situated or

(b) by transferring the registered office by means of the procedure laid down in Article 8.

2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.

3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any established infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.

4. Where it is established on the initiative of either the authorities or any interested party that an SE has

its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

Article 65

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up, liquidation, insolvency or cessation of payment procedures and any decision to continue operating shall be publicised in accordance with Article 13.

Article 66

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.

3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.

4. The draft terms of conversion shall be publicised in the manner laid down in each Member State's law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.

6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

TITLE VI

ADDITIONAL AND TRANSITIONAL PROVISIONS

Article 67

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu(11).

TITLE VII

FINAL PROVISIONS

Article 68

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

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:

- (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;
- (c) revising the jurisdiction clause in Article 8(16) 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.

Article 70

This Regulation shall enter into force on 8 October 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 8 October 2001.

For the Council
The President
L. Onkelinx

- (1) OJ C 263, 16.10.1989, p. 41 and OJ C 176, 8.7.1991, p. 1.
- (2) Opinion of 4 September 2001 (not yet published in the Official Journal).
- (3) OJ C 124, 21.5.1990, p. 34.
- (4) See p. 22 of this Official Journal.
- (5) OJ L 395, 30.12.1989, p. 40. Directive as last amended by the 1994 Act of Accession.
- (6) OJ L 65, 14.3.1968, p. 8. Directive as last amended by the 1994 Act of Accession.
- (7) OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 1994 Act of Accession.
- (8) Second Council Directive 77/91/EEC of 13 December 1976 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, in respect of the formation of

public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the 1994 Act of Accession.

(9) OJ L 126, 26.5.2000, p. 1.

(10) OJ L 374, 31.12.1991, p. 7.

(11) OJ L 317, 16.11.1990, p. 57.

ANNEX I

PUBLIC LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(1)

BELGIUM:

la société anonyme/de naamloze vennootschap

DENMARK:

aktieselskaber

GERMANY:

die Aktiengesellschaft

GREECE:

ἀνώνυμη εταιρεία

SPAIN:

la sociedad anónima

FRANCE:

la société anonyme

IRELAND:

public companies limited by shares

public companies limited by guarantee having a share capital

ITALY:

società per azioni

LUXEMBOURG:

la société anonyme

NETHERLANDS:

de naamloze vennootschap

AUSTRIA:

die Aktiengesellschaft

PORTUGAL:

a sociedade anónima de responsabilidade limitada

FINLAND:

julkinen osakeyhtiö/publikt aktiebolag

SWEDEN:

publikt aktiebolag

UNITED KINGDOM:

public companies limited by shares

public companies limited by guarantee having a share capital

ANNEX II

PUBLIC AND PRIVATE LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(2)

BELGIUM:

la société anonyme/de naamloze vennootschap,

la société privée à responsabilité limitée//besloten vennootschap met beperkte aansprakelijkheid

DENMARK:

aktieselskaber,

anpartselskaber

GERMANY:

die Aktiengesellschaft,

die Gesellschaft mit beschränkter Haftung

GREECE:

ἀνώνυμη εταιρεία

επιχειρηματική εταιρεία με περιορισμένη ευθύνη

SPAIN:

la sociedad anónima,

la sociedad de responsabilidad limitada

FRANCE:

la société anonyme,

la société à responsabilité limitée

IRELAND:

public companies limited by shares,

public companies limited by guarantee having a share capital,

private companies limited by shares,

private companies limited by guarantee having a share capital

ITALY:

società per azioni,

società a responsabilità limitata

LUXEMBOURG:

la société anonyme,

la société à responsabilité limitée

NETHERLANDS:

de naamloze vennootschap,

de besloten vennootschap met beperkte aansprakelijkheid

AUSTRIA:

die Aktiengesellschaft,

die Gesellschaft mit beschränkter Haftung

PORTUGAL:

a sociedade anónima de responsabilidade limitada,
a sociedade por quotas de responsabilidade limitada

FINLAND:

osakeyhtiö

aktiebolag

SWEDEN:

aktiebolag

UNITED KINGDOM:

public companies limited by shares,

public companies limited by guarantee having a share capital,

private companies limited by shares,

private companies limited by guarantee having a share capital

SCHEDULE 2 Regulation 13

PROVISIONS OF THE 1985 ACT APPLYING TO THE REGISTRATION OF SEs

1 Section 704(5), (7) and (8).

2 Section 705 as if it referred to the allocation of a number to an SE.

3 Sections 706, 707A, 707B and 709 as if they referred to documents etc. delivered to the registrar under these Regulations.

4 Section 713 as if it referred to default in complying with any provision of these Regulations requiring the delivery of documents, or the giving of notice, to the registrar.

5 Section 715A to the extent necessary by virtue of the provisions applied in this Schedule.

SCHEDULE 3 Regulations 4, 5, 6, 7, 8, 9, 10, 64, 66, 68, 75, 78, 81 and 82

FORMS

[THE FORMS HAVE BEEN REPRODUCED IN A SEPARATE PDF FILE]

SCHEDULE 4 Regulation 30

STANDARD RULES ON EMPLOYEE INVOLVEMENT

Part 1: Composition of the representative body

- (1) The management of the SE shall arrange for the establishment of a representative body in accordance with the following provisions-
 - (a) the representative body shall be composed of employees of the SE and its subsidiaries and establishments;
 - (b) the representative body shall be composed of one member for each 10% of fraction thereof of employees of the SE, its subsidiaries and establishments employed for the time being in each Member State;
 - (c) the members of the representative body shall be elected or appointed by the members of the special negotiating body; and
 - (d) the election or appointment shall be carried out by whatever method the special negotiating body decides.
2. Where its size so warrants, the representative body shall elect a select committee from among its members comprising at most three members.
3. The representative body shall adopt rules of procedure.
4. The representative body shall inform the competent organ of the SE of the composition of the representative body and any changes in its composition.
5. (1) Four years after its establishment, the representative body shall decide whether to open negotiations with the competent organ of the SE to reach an employee involvement agreement or whether the standard rules in Part 2 and, where applicable, Part 3 of this Schedule shall continue to apply.
- (2) Where a decision is taken under sub-paragraph (1) to open negotiations regulations 25 to 27 and 29 shall apply to the representative body as they apply to the special negotiating body.

Part 2: Standard rules for information and consultation

6. (1) The competence of the representative body shall be limited to questions which concern the SE itself and any of its subsidiaries or establishments in another Member State or which exceed the powers of the decision-making organ in a single Member State.

(2) For the purpose of informing and consulting under sub-paragraph (1) the competent organ of the SE shall:

(a) prepare and provide to the representative body regular reports on the progress of the business of the SE and the SE's prospects;

(b) provide the representative body with the agenda for meetings of the administrative or, where appropriate, the management or supervisory organs and copies of all documents submitted to the general meeting of its shareholders.

(c) inform the representative body when there are exceptional circumstances affecting the employees' interests to a considerable extent, particularly in the event of relocations, transfers, the closure of establishments or undertakings or collective redundancies

(a) if the representative body so desires, meet with that body –

(i) without prejudice to sub-paragraph (ii) below, at least once a year to discuss the reports referred to in sub-paragraph (a). The meetings shall relate in particular to the structure, economic and financial situation, the probable development of business and of production and sales, the situation and probable trend of employment, investments and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof and collective redundancies;

(ii) in the circumstances set out in sub-paragraph (c). In these circumstances the representative body may decide, for reasons of urgency, to allow the select committee to meet the competent organ and it shall have the right to meet a more appropriate level of management within the SE rather than the competent organ itself;

(ii) in the event of the competent organ not acting in accordance with the opinion expressed by the representative body, if that body wishes to meet again to seek an agreement.

(b) In the circumstances set out in (d) (ii) above, if the select committee attends the meeting, any other members of the representative body who represent employees who are directly concerned by the measures being discussed also have the right to participate in the meeting.

(3) Before any meeting referred to in paragraph (3), the members of the representative body or the select committee, as the case may be shall be entitled to meet without the representatives of the competent organ being present.

(4) Without prejudice to regulation 31, the members of the representative body shall inform the employees' representatives or, if no such representatives exist, the employees of the SE and its subsidiaries and establishments of the content and outcome of the information and consultation procedures.

(5) The representative body and the select committee may be assisted by experts of its choice.

(6) The costs of the representative body shall be borne by the SE which shall provide the members of that body with financial and material resources needed to enable them to perform their duties in an appropriate manner, including (unless agreed otherwise) the cost of organising meetings, providing interpretation facilities and accommodation and travelling expenses. However, where the representative body or the select committee is assisted by more than one expert the SE is not required to pay the expenses of more than one of them.

Part 3: Standard rules for participation

7. (1) In the case of an SE established by transformation, if the rules of a Member State relating to employee participation in the administrative or supervisory body applied before registration, all aspects of employee participation shall continue to apply to the SE. Sub-paragraph (2) shall apply *mutatis mutandis* to that end.

(2) In the case where an SE is established other than by transformation and where the employees or their representatives of at least one of the participating companies had participation rights, the representative body shall have the right to elect, appoint, recommend or oppose the appointment

of a number of members of the administrative or supervisory body of the SE, such number shall be equal to the highest proportion in force in the participating companies concerned before the registration of the SE.

(3) (a) Subject to paragraph (b), the representative body shall, taking into account the proportion of employees of the SE employed in each Member State, decide on the allocation of seats within the administrative or supervisory body.

(b) In making the decision set out in sub-paragraph (a), if the employees of one or more Member State is not covered by the proportional criterion set out in (a) the representative body shall appoint a member from one of those Member States including one from the Member State in which the SE is registered, if appropriate.

(c) Every member of the administrative body or, where appropriate, the supervisory body of the SE who has been elected, appointed or recommended by the representative body or the employees shall be a full member with the same rights and obligations as the members representing shareholders, including the right to vote.

SCHEDULE 5 Regulation 81

MODIFICATIONS OF THE 1985 ACT AND THE INSOLVENCY ACT 1986

Modifications applying before registration

1. (1) The converting SE's memorandum and articles of association shall not have names subscribed on it.
- (2) Section 2(5)(b) and (c), (6) and (6A) of the 1985 Act (memorandum of association: subscribers) shall not apply.
- (3) In section 7 of the 1985 Act (articles of association) the following shall not apply –
 - (a) the requirement in subsection (1) for signature by the subscribers to the memorandum,
 - (b) subsection (3)(c), and
 - (c) subsection (3A).
- (4) Section 10 of the 1985 Act (documents to be sent to the registrar) shall not apply.

Modifications applying on or after registration

2. A reference to a company's incorporation shall be construed as a reference to the registration of a converting SE's memorandum and articles of association.
3. A reference to documents delivered under the 1985 Act shall be taken to include a reference to documents delivered under regulation 81.
4. (1) – A reference to a company's certificate of incorporation shall be construed as a reference to the certificate given under regulation 83(3).
- (2) – A requirement for the registrar of companies to issue a certificate of incorporation to a company shall –
 - (a) be construed as a requirement to issue a certificate of registration similar to the certificate under regulation 83(3), and
 - (b) apply with such other modifications as the registrar considers necessary in consequence of paragraph (a).

5. In section 735 of the 1985 Act (definition of company), and in other legislation relating to companies, any reference to a company formed and registered under that Act shall have effect as if the reference to formation were omitted.

Effect of registration

6. Section 13 of the 1985 Act (effect of registration) shall not apply.

7. Section 22(1) of the 1985 Act (definition of “member”) shall not apply.

Use of “limited”

8. In section 34 of the 1985 Act (penalty for improper use of “limited”) the reference to incorporation with limited liability shall be construed as a reference to registration as a company with limited liability.

Certificate as to share capital

9. The following provisions shall not apply –

- (a) section 117 of the 1985 Act (public company share capital requirements), and
- (b) section 122(1)(b) of the Insolvency Act 1986 (winding up by the court: lack of certificate under section 117 of 1985 Act).

Fees

10. In any regulations made under section 708 of the 1985 Act a reference to a certificate of incorporation shall be construed as including a reference to –

- (a) a certificate under regulation 83(3), and
- (b) a certificate issued in accordance with paragraph 4(2).

Accounting Reference Date

11. No modification made under this Schedule shall affect the determination of the accounting reference date of a converting SE by the application of section 224(3A) of the 1985 Act, by virtue of Article 61 of the EC Regulation, or of regulation 79 prior to the registration of the converting SE under regulation 83.