COMMISSION

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

(91/C 138/08)

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(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 6 April 1991)

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Proposal for a Council Directive complementing the Statute for a European company with regard to the involvement of employees in the European company	**Amended proposal for a Council Directive complementing the Statute for a European company with regard to the involvement of employees in the European company**
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,	Unchanged
Having regard to the proposal from the Commission,	Unchanged
In cooperation with the European Parliament,	Unchanged
Having regard to the opinion of the Economic and Social Committee,	Unchanged
Whereas, in order to attain the objectives set out in Article 8a of the Treaty, Council Regulation (EEC) No ... establishes a Statute for a European company (SE);	Unchanged
Whereas, in order to promote the economic and social objectives of the Community, arrangements should be made for employees to participate in the supervision and strategic development of the SE;	Unchanged
Whereas the great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives participate in supervision of the decisions of the governing bodies of public limited companies makes it impossible to lay down uniform rules on the involvement of employees in the SE;	Unchanged

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Whereas the laws of the Member States should therefore be coordinated with a view to making equivalent the safeguards required for the protection of the interests of members and third persons, of public limited companies in each Member State, with due regard to the specific characteristics of the operation of such companies having their registered office in its territory; whereas such coordination must take account of the fact that an SE is created by a restructuring or cooperation operation involving companies governed by the law of at least two Member States;	Unchanged
Whereas account should be taken of the specific characteristics of the laws of the Member States by establishing for the SE a framework comprising several models of participation, and authorizing, first, Member States to choose the model best corresponding to their national traditions, and, secondly, the management or the administrative board, as the case may be, and the representatives of the employees of the SE or of its founder companies to choose the model most suited to their social environment;	Unchanged
	Whereas in order to ensure the proper operation of the internal market and to avoid any inequality in the terms of competition the different models of participation should guarantee equivalent levels of participation and comparable influence to the employees of all SEs;
Whereas the provisions of this Directive form an indissociable complement to the provisions of Regulation (EEC) No ... and it is therefore necessary to ensure that the two sets of provisions are applied concomitantly,	Unchanged
HAS ADOPTED THIS DIRECTIVE:	HAS ADOPTED THIS DIRECTIVE:
Article 1	*Article 1*
The coordination measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions in the Member States concerning the involvement of employees in the SE.	Unchanged
These measures are an essential supplement to Regulation (EEC) No ... on the Statute for a European company.	Unchanged

ORIGINAL PROPOSAL

TITLE 1

MODELS OF PARTICIPATION

Article 2

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

Article 3

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

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TITLE I

MODELS OF PARTICIPATION

Article 2

Unchanged

Article 3

1. Subject to the application of paragraph 5, the participation of SE employees prescribed by Article 2 shall be determined in accordance with one of the models set out in Articles 4, 5 and 6 by means of an agreement concluded between the management or administrative boards of the founder companies or other founder bodies and the representatives of the employees of those companies or other founder bodies provided for by the laws and practices of the Member States. With a view to reaching such an agreement, and subject to the national measures taken under Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the parties to this negotiation shall consider the legal, economic and social consequences of the formation of the SE and any measures to be taken with respect to the employees in order to arrive at an agreement on the model of participation which is to apply to the SE. The agreement must be concluded before the decision to form the SE. The agreement shall be in writing.

1a. Where no such agreement can be reached the employees' representatives may make a written statement setting out why in their opinion the formation of the SE is contrary to the employees' interests and what measures should be taken with respect to the employees.

1b. The management or administrative boards of the founder companies or other founder bodies shall draw up for submission to the general meeting called to approve the formation of the SE a report to which is attached either

— the text of the agreement referred to in paragraph 1, or

— the statement by the employees' representatives which is referred to in paragraph 1a.

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2. An SE may not be formed unless one of the models referred to in Articles 4, 5 and 6 has been chosen.	2. The general meeting called to approve the formation of the SE shall ratify the model of participation chosen in the agreement referred to in paragraph 1, or where no agreement has been reached shall choose the model of participation which is to apply to the SE on the basis of the report referred to in paragraph 1b and of the statement by the employees' representatives. An SE may not be registered in accordance with Article 8 of Regulation (EEC) No ... unless a model of participation has been chosen.
3. Subject to the application of paragraph 5, the chosen model may be replaced by another model in Articles 4, 5 and 6 by an agreement concluded between the management or the administrative board and the representatives of the employees of the SE. This agreement must be submitted for the approval of the general meeting.	3. Subject to the application of paragraph 5, the chosen model may be replaced by another model in Articles 4, 5 and 6 by an agreement concluded between the management or the administrative board and the representatives of the employees of the SE.
4. Each Member State shall determine the manner in which the participation models shall be applied for SEs having their registered office in its territory.	Unchanged
5. A Member State may restrict the choice of the models referred to in Articles 4, 5 and 6 or make only one of these models compulsory for SEs having their registered office in its territory.	Unchanged
	6. The procedure laid down in this Article shall apply in the event of transformation under Article 2 (3) of Regulation (EEC) No ...
	7. In the event of a transfer of the registered office of an SE to another Member State, the model of participation applied before the transfer may be altered only in accordance with the procedure set out in this Article. The parties to the negotiation shall here be the management board or the administrative board of the SE and the representatives of the employees of the SE.
SECTION I	SECTION 1
SUPERVISORY BOARD OR ADMINISTRATIVE BOARD	**SUPERVISORY BOARD OR ADMINISTRATIVE BOARD**
Article 4	*Article 4*
The appointment of members of the supervisory board or the administrative board, as the case may be, shall be governed by the following rules:	The appointment and removal of members of the supervisory board (in the two-tier board system) or the administrative board (in the one-tier board system) shall be governed by the following rules:
— at least one third and not more than one half of them shall be appointed by the employees of the SE or their representatives in that company, or	I. at least one third and not more than one half of them shall be appointed and removed by the employees of the SE or their representatives in that company, or

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

SECTION II

SEPARATE BODY

Article 5

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

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II. they shall be appointed and removed by the supervisory board or administrative board itself, subject to point (d). However,

(a) the general meeting and the representatives of the employees of the SE shall alike be entitled to nominate candidates to the supervisory board or the administrative board;

(b) the general meeting and the representatives of the employees of the SE shall alike be entitled to object to the appointment of a particular candidate:

— on the ground that he is incapable of performing the duties of the position,

— on the ground that if he were appointed the board would, having regard to the interests of the SE, its shareholders and its employees, be improperly constituted, or

— on the ground that the procedure set out here has not been complied with;

(c) where such an objection is put forward the candidate nominated may not be appointed until a court, administrative authority or other independent body has declared the objection unfounded;

(d) the first members of the supervisory board or of the administrative board shall be appointed by the general meeting. However, the representatives of the employees of the SE may nominate candidates for appointment by the general meeting, and may object to the appointment of a candidate nominated by the general meeting on any of the grounds listed in point (b). Where an objection is put forward by the general meeting or by the employees' representatives, point (c) shall apply.

SECTION 2

SEPARATE BODY

Article 5

1. A body hereinafter referred to as the 'separate body' shall represent the employees of the SE.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
2. The body representing the employees shall have the right:	2. The management board or the administrative board of the SE shall at least every three months inform the separate body of the progress of the SE's business and of its prospects taking account of any information on any undertakings controlled by the SE which might have an appreciable impact on the progress of the SE's business.
(a) at least once every three months, to be informed by the management board or the administrative board of the progress of the company's business, including that of undertakings controlled by it, and of its prospects;	
(b) where it is necessary for the performance of its duties, to require from the management board or the administrative board a report concerning certain of the company's business or any information or documents;	
(c) to be informed and consulted by the management board or the administrative board before any decision referred to in Article 72 of Regulation (EEC) No ... is implemented.	
	2a. The management board or the administrative board shall without delay supply to the separate body any information which may have significant implications for the SE's situation.
	2b. The separate body may at any time require from the management board or the administrative board information or a special report on any matter concerning conditions of employment.
	2c. Each member of the separate body shall be entitled to examine all documents submitted to the general meeting.
	2d. The operations referred to in Article 72 (1) of Regulation (EEC) No ... may be effected only after the separate body has been informed and consulted by the management board or the administrative board of the SE.
3. Article 74 (3) of that Regulation shall apply to members of the separate body.	3. Article 74 (3) of Regulation (EEC) No ... shall apply to members of the separate body.
SECTION 3	SECTION 3
OTHER MODELS	**OTHER MODELS**
Article 6	*Article 6*
1. Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management boards and the administrative boards of the founder companies and the employees or their representatives in those companies.	1. Models other than those referred to in Articles 4 and 5 may be established by means of an agreement concluded between the management board or the administrative board of the SE and the representatives of the employees of the SE.
2. The agreement reached shall provide at least for the employees of the SE or their representatives:	2. The agreement reached shall assure the representatives of the employees of the SE at least:

ORIGINAL PROPOSAL	AMENDED PROPOSAL
(a) once every three months, to be informed of the progress of the company's business, including that of undertakings controlled by it, and of its prospects;	(a) the quarterly information referred to in Article 5 (2);
(b) to be informed and consulted before any decision referred to in Article 72 of Regulation (EEC) No ... is implemented.	(b) the information referred to in Article 5 (2a) and (2b);
	(c) the information and consultation referred to in Article 5 (2d);
	(d) entitlement to examine all documents submitted to the general meeting.
3. Where the agreement provides for a collegiate body representing the employees, that body may require the management board or the administrative board to provide the information necessary for the performance of its duties.	Deleted
4. The agreement shall provide that the employees' representatives must observe the necessary discretion in relation to any confidential information they hold on the SE. They shall be bound by this obligation even after their duties have ceased.	4. The agreement shall provide that the employees' representatives are to be under a duty of discretion in relation to any confidential information they hold on the SE. They shall be bound by this obligation even after their duties have ceased.
5. If the law of the State where the SE has its registered office so permits, the agreement may permit the management board or the administrative board of the SE to withhold from the employees or their representatives any information the disclosure of which might seriously jeopardize the interests of the SE or disrupt its projects.	Deleted
6. The parties to the negotiations may be assisted by experts of their choice at the expense of the founder companies.	Deleted
7. The agreement may be concluded for a fixed period and renegotiated upon expiry of that period. However, the agreement concluded shall remain in force until the entry into force of the new agreement.	Unchanged
8. Where the two parties to the negotiations so decide, or where no agreement such as is mentioned in paragraph 1 can be reached, a standard model, provided by the law of the State where the SE has its registered office, shall apply to the SE. This model shall be in conformity with the most advanced national practices and shall ensure for the employees at least the rights of information and consultation provided for by this Article.	8. Where the two parties to the negotiations so decide, or where no agreement such as is mentioned in paragraph 1 can be reached, a standard model, provided by the law of the State where the SE has its registered office, shall apply to the SE. This model shall guarantee for the employees at least the rights of information and consultation provided for by this Article.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
SECTION 4	SECTION 4
ELECTION OF THE REPRESENTATIVES OF THE EMPLOYEES OF THE SE	**ELECTION OF THE REPRESENTATIVES OF THE EMPLOYEES OF THE SE**
Article 7	*Article 7*
The representatives of the employees of the SE shall be elected in accordance with systems which take into account, in an appropriate manner, the number of staff they represent.	1. The representatives of the employees of the SE shall be elected in accordance with the laws or practices of the Member States, and in compliance with the following principles:
All employees must be able to participate in the vote.	(a) representatives of the employees must be elected in each Member State in which the SE has an establishment;
The election shall be conducted in accordance with the laws or practices of the Member States.	(b) the number of representatives so elected must so far as it is practicable be proportional to the number of employees they represent;
	(c) all employees must be able to participate in the vote, irrespective of their length of service or the number of hours they work per week;
	(d) the election shall be by secret ballot.
	2. The employees' representatives elected in accordance with paragraph 1 may perform their functions within the SE irrespective of the rules governing qualification as an employees' representative in the legislation of the Member State in which the SE has its registered office.
Article 8	*Article 8*
The first members of the supervisory board or the administrative board to be appointed by the employees and the first members of the separate body representing the employees shall be appointed by the representatives of the employees of the founder companies in proportion to the number of employees they represent and in accordance with the laws or practices of the Member States. Those first members shall remain in office until such time as the requirements for electing the representatives of the employees of the SE are satisfied.	Deleted

ORIGINAL PROPOSAL	AMENDED PROPOSAL
SECTION 5	SECTION 5
Article 9	*Article 9*
1. The management board or the administrative board of the SE shall provide the representatives of the employees with such financial and material resources as enable them to meet and perform their duties in an appropriate manner.	1. The management board or the administrative board of the SE shall provide the representatives of the employees with such financial and material resources and other facilities as enable them to meet and perform their duties in an appropriate manner at the SE's registered office and in any establishment of the SE in the same or another Member State without loss of salary or adverse effect on their advancement.
2. The practical arrangements for making available such financial and material resources shall be settled in consultation with the representatives of the employees of the SE.	2. The facilities referred to in paragraph 1 shall include the right to be assisted by experts of their choice at the SE's expense.
SECTION 6	SECTION 6
REPRESENTATION OF EMPLOYEES IN THE ESTABLISHMENTS OF THE SE	**REPRESENTATION OF EMPLOYEES IN THE ESTABLISHMENTS OF THE SE**
Article 10	*Article 10*
Save as otherwise provided in this Directive, the status and duties of the representatives of the employees or of the body which represents them, for which provision is made in the establishments of the SE, shall be determined by the laws or practices of the Member States.	Save as otherwise provided in this Directive, the laws or practices of the Member States governing the status and duties of the representatives of the employees or of the body which represents them shall apply in the establishments of the SE.
TITLE 2	TITLE 2
EMPLOYEE PARTICIPATION IN THE CAPITAL OR IN THE PROFIT OR LOSS OF THE SE	**EMPLOYEE PARTICIPATION IN THE CAPITAL OR IN THE PROFIT OR LOSS OF THE SE**
SECTION 1	SECTION 1
Article 11	*Article 11*
Employee participation in the capital or in the profits or losses of the SE may be organized by means of a collective agreement negotiated and concluded by the management boards and the administrative boards of the founder companies, or of the SE when constituted, and the employees or their representatives who are duly authorized to negotiate in those companies.	The management board or the administrative board and the employees' representatives may negotiate and conclude collective agreements on matters of concern to the SE's employees, including mechanisms for participation in the capital and profits of the SE.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
	Article 11a
	1. A Contact Committee serviced by the Commission shall be set up upon the adoption of this Directive. Its function shall be:
	(a) without prejudice to Articles 169 and 170 of the Treaty, to facilitate the application of this Directive through regular consultation dealing in particular with practical problems arising from its implementation;
	(b) to advise the Commission, if necessary, on additions or amendments to be made to this Directive.
	2. The Contact Committee shall be composed of representatives of the Member States, of the social partners and of the Commission. The chairman shall be a representative of the Commission, which shall also provide secretarial services.
	3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.
SECTION 2	SECTION 2
FINAL PROVISIONS	**FINAL PROVISIONS**
Article 12	*Article 12*
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1992. They shall immediately communicate the measures taken to the Commission.	1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1993. They shall immediately communicate the measures taken to the Commission.
The provisions adopted pursuant to the first subparagraph shall make express reference to this Directive.	1a. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.
2. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field covered by this Directive	Unchanged
Article 13	*Article 13*
This Directive is addressed to the Member States.	Unchanged