

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