

COMMISSION OF THE EUROPEAN COMMUNITIES

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PART II

AMENDED PROPOSAL FOR A COUNCIL REGULATION

ON THE STATUTE FOR EUROPEAN COMPANIES

- Titles VI to XIV (Articles 148 to 284)
- Annexes I to IV

presented by the Commission to the Council pursuant to
the second paragraph of Article 149 of the EEC Treaty

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PART II

COMMISSION OF THE EUROPEAN COMMUNITIES

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PART II

CORRIGENDUM

AMENDED PROPOSAL FOR A COUNCIL REGULATION

ON THE STATUTE FOR EUROPEAN COMPANIES

- Titles VI to XIV (Articles 148 to 284)
- Annexes I to IV

presented by the Commission to the Council pursuant to
the second paragraph of Article 149 of the EEC Treaty

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PART I.

TO BE CORRECTED

Pages 378 and 379 - Article 223, paragraph 1, reads as follows:

1. Within a reasonable time after a group of companies comes into existence or after a company is declared to be a dependent company within such a group by the Court of Justice of the European Communities, the controlling undertaking of the group shall make an offer to the outside shareholders of each dependent company to acquire their shares for an appropriate cash payment.

a) Where the controlling undertaking is an S.E. or a company limited by shares formed under the law of a Member State, it may in place of such a cash payment, make an offer to acquire the shares of the outside shareholders in exchange for shares or (convertible) debentures of the controlling company of the group. The offer may also give the outside shareholders the choice between a cash payment and an exchange of their shares.

b) Where the controlling undertaking of the group is a company limited by shares not formed under the law of a Member State, it may also give the outside shareholders the choice between a cash payment and an exchange of their shares for shares or (convertible) debentures of the controlling company of the group.

C O N T E N T S

Part 1 : Preamble

Titles I to V (Articles 1 to 147)

Part 2 : Titles VI to XIV (Articles 148 to 284)

Annexes I to IV

Part 3 : Explanatory Notes to the Statute and its annexes

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Titls VI

Preparation of the Annual Accounts

Section one

General provisions

Article 148

1. The annual accounts shall comprise the balance sheet, the profit and loss account, and the notes on the accounts. These shall constitute a composite whole.

2. The annual accounts shall be drawn up in accordance with regular and proper accounting principles.

3. They shall be presented clearly and accurately. Subject to the provisions on valuation and classification, they shall reflect as true and fair a view as possible of the company's assets, liabilities, financial position and results.

4. The methods of valuation and classification used in consecutive annual accounts, and particularly their manner of presentation, shall be consistent. Legitimate departures from these may be made in exceptional cases and must be duly explained and justified in the notes on the accounts.

Article 148

1. The annual accounts shall comprise the balance sheet, the profit and loss account, the notes on the accounts and a statement of source and application of funds. These documents shall constitute a composite whole.

2. The annual accounts shall give a true and fair view of the company's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the presentation of accounts.

deleted

(see Article 149-b and Article 179(1)(b))

Article 149

The provisions of Sections One to Six of this Title shall not apply to S.E.s the object of whose business is the making of loans (banks) or of contracts of insurance (insurance companies). The law of the Member State from which such companies are actually managed shall apply in place of those provisions.

Article 149

unchanged

Section two
Classification of the annual accounts

SUBSECTION ONE

GENERAL PROVISIONS

Article 149-a-

- see Article 148(4) of the
original text.

Article 149-a-

The lay-out of the balance sheet, the profit and loss account and the statement of source and application of funds, particularly as regards the form adopted for their presentation, shall not be changed from one year to the next. This principle may be departed from in exceptional cases. Where it is departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor.

Article 150

1. In both the balance sheet and the profit and loss account, the items specified in Subsections Two and Four of this Section shall always be shown separately. Items preceded by an Arabic numeral may be classified differently where the special nature of the undertaking so requires. A true and fair view must be reflected notwithstanding any different classification, which must in any event be explained in the notes on the accounts.

2. Balance sheet and the profit and loss account items preceded by an Arabic numeral which in relation to the size of the company are of minor importance may be lumped together.

Article 150

1. In both the balance sheet and the profit and loss account, the items referred to in Articles 153, 154 and 168 to 171 shall be shown separately. A more detailed subdivision of the items preceded by Arabic numerals is authorized.

2. A different lay-out for balance sheet and profit and loss account items preceded by Arabic numerals shall be permitted only where the special nature of the undertaking so requires. Any such different lay-out shall, however, present an equivalent view and be explained in the notes on the accounts.

3. Balance sheet and profit and loss account items preceded by Arabic numerals may be grouped together:

(a) where, in relation to the object of Article 148(2), they are of minor importance, or

(b) if the accounts would thereby be rendered clearer. Items which are grouped together must, however, be shown separately in the notes on the accounts.

Article 150

3. Comparative figures for the previous financial year shall be shown in respect of each item in the balance sheet and the profit and loss account.

Article 150

4. unchanged

Article 150-a-

The lay-out of the balance sheet may be adapted in order to bring out the allocation of the results.

Article 151

Assets shall not be shown net of liabilities, nor income net of changes, or vice versa.

Article 151

unchanged

SUBSECTION TWO

BALANCE SHEET

Article 152

The balance sheet shall be
drawn up either in the horizontal
(Art. 153) or in the narrative
(Art. 154) form of presentation.

Article 152

unchanged

Article 153

Horizontal form of presentation

The following items shall be shown on the assets side:

A. Costs of formation

B. Fixed assets:

I. Intangible assets:

1. Research and development costs,

2. Concessions, patents, licences, trade-marks and similar rights which:

(a) were acquired for consideration and are not to be included under 3, or

(b) were created by the company itself,

3. "Derivativer Firmenwert", "goodwill", "fonds de commerce", "avviamento",

4. Work in progress and prepayments on account of intangible assets.

Article 153

Horizontal form of presentation

Assets:

A. Costs of formation

B. Fixed assets:

I. Intangible assets:

1. unchanged

2. unchanged

3. Goodwill, to the extent that it was acquired for valuable consideration,

4. Payments on account

Article 153

II. Tangible assets:

1. Land and buildings,
2. Industrial plant and machinery,
3. Other plant and industrial and commercial equipment,
4. Plant under construction and pre-payments on account of tangible assets.

III. Investments and other financial assets:

1. Investments other than those included under B-III-2,
2. Holdings in associated companies,
3. Securities representing financial assets other than those included under B-III-1 and 2,
4. Claims on companies in which the S.E. holds an investment,
5. Claims on associated companies,
6. Other claims,

C. Current assets:

I. Stocks:

1. Raw materials and auxiliary materials including fuel,
2. Products in course of manufacture, including rejects,

Article 153

II. Tangible assets:

1. unchanged
2. unchanged
3. unchanged
4. Payments on account and tangible assets in process of construction.

III. Participating interests and other financial assets:

1. Holdings in associated undertakings,
2. Claims on associated undertakings,
3. Participating interests,
4. Claims on undertakings with which the company is associated by virtue of a participating interest,
5. Securities ranking as fixed assets,
6. unchanged

C. Current assets:

I. Stocks:

- 1 1. unchanged
2. unchanged

Article 153

3. Finished products and goods for resale,
4. Prepayments on account of stocks.

II. Debtors:

(Amounts becoming due and payable within one year shall be shown separately in each case.)

1. Debtors (trade),
2. Debtors (undertakings in which the S.E. holds an investment),
3. Debtors (associated companies),
4. Miscellaneous.

III. Securities forming part of current assets and other liquid assets:

1. Bills of exchange,
2. Other securities forming part of current assets except cheques included under 3,
3. Balances with banks and on post office current accounts, cheques and cash.

Article 153

3. unchanged
4. Payments on account.

II. Debtors:

(unchanged)

1. unchanged
2. Claims on associated undertakings,
3. Claims on undertakings in which the company has a participating interest,
4. Other claims.

III. Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings,
2. Bills of exchange,
3. unchanged
4. Other securities.

Article 153

Article 153

D. Prepayments

D. Prepayments

E. Loss per balance sheet

E. Loss per balance sheet (where not shown on the liabilities side)

The following items shall be shown on the liabilities side:

Liabilities:

I. Share capital:

Different classes of shares, if any, shall be shown separately, stating the nominal amount of each share.

A. Subscribed capital:

unchanged

II. Reserves:

1. Balance on share premium account,
2. Reserves arising on revaluation,
3. Reserves for intangible assets,
4. Statutory reserves,
5. Free reserves.

B. Reserves:

1. Legal reserve,
2. Share premium account,
3. Revaluation reserve,
4. Statutory reserves,
5. Optional reserves.

III. Depreciation not shown on the assets side;

1. Depreciation of costs of formation,

C. Total of subscribed capital and reserves less loss per balance sheet where latter not shown on the assets side. (The loss per balance sheet must be shown separately.)

Article 153

Article 153

- 2. Depreciation of intangible assets,
- 3. Depreciation of tangible assets,
- 4. Depreciation of investments and other financial assets.

(Items included under 2 to 4 should be broken down in the same way as the corresponding assets.)

IV. Provisions for depreciation, where the provision is not shown on the assets side:

- 1. Of intangible assets
- 2. Of tangible assets
- 3. Of investments and other financial assets

(Items included under 1 to 3 should be broken down in the same way as the corresponding assets.)

V. Provisions for contingencies and charges:

- 1. Pensions and similar commitments,
- 2. Taxation (provision for future taxation being shown separately),
- 3. Miscellaneous.

deleted

D. Provisions for contingencies and charges:

- 1. Provisions for pensions and similar obligations,
- 2. unchanged
- 3. Other provisions.

Article 153

Article 153

VI. Creditors:

(In respect of each of the following headings, debts becoming due and payable within one year and fully secured debts shall be shown separately.)

1. Loans (convertible loans being shown separately),
2. Bank borrowings,
3. Prepayments on orders received,
4. Suppliers of goods and services,
5. Bills of exchange,
6. Creditors (companies in which the S.E. holds an investment),
7. Creditors (associated companies),

8. Miscellaneous.

VII. Accruals

VIII. Profit per balance sheet.

E. Creditors:

(Amounts becoming due and payable within one year, amounts becoming due and payable after more than five years and amounts covered by valuable security, must be shown separately for each item.)

1. unchanged
2. unchanged
3. Prepayments received on account of orders,
4. unchanged
5. unchanged
6. Debts to associated undertakings,
7. Debts to undertakings with which the company is associated by virtue of a participating interest,
8. unchanged

F. Accruals

G. Profit per balance sheet.

Article 154

Balance sheet in narrative form

Article 154

Balance sheet in narrative form

A. Costs of formation

B. Fixed assets:

I. Intangible assets:

1. Research and development costs

2. Concessions, patents, licences, trade-marks and similar rights and values, if they were:

(a) acquired for valuable consideration and are not to be shown under B-I-3,

(b) created by the undertaking itself,

3. Goodwill, to the extent that it was acquired for valuable consideration,

4. Payments on account.

II. Tangible assets:

1. Land and buildings,

2. Plant and machinery,

3. Other fixtures, tools and equipment,

4. Payments on account and tangible assets in process of construction.

Article 154

Article 154

III. Participating interests and other financial assets:

1. Holdings in associated undertakings,
2. Claims on associated undertakings,
3. Participating interests,
4. Claims on undertakings with which the company is associated by virtue of a participating interest,
5. Securities ranking as fixed assets,
6. Other claims.

C. Current assets:

I. Stocks:

1. Raw and auxiliary materials,
2. Goods in course of production and waste products,
3. Finished products and stock in hand,
4. Payments on account.

II. Debtors:

(Amounts becoming due and payable within one year must be shown separately in each case.)

1. Claims in respect of sales and services rendered,
2. Claims on associated undertakings,

Article 154

Article 154

3. Claims on undertakings with which the company is associated by virtue of a participating interest,

4. Other claims.

III. Securities forming part of current assets, and liquid assets:

1. Holdings in associated undertakings,

2. Bills of exchange,

3. Bank balances, postal cheque account balances, cheques and cash in hand,

4. Other securities.

D. Prepayments.

E. Debts becoming due and payable within one year:

(Amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately,

2. Debts to credit institutions,

3. Payments received on account of orders,

4. Debts in respect of purchases and services received,

Article 154

Article 154

5. Debts represented by bills of exchange,
6. Debts to associated undertakings,
7. Debts to undertakings with which the company is associated by virtue of a participating interest,
8. Other debts.

F. Current assets in excess of debts becoming due and payable within one year.

G. Total amount of asset items after deduction of debts becoming due and payable within one year.

H. Creditors for amounts becoming due and payable after more than one year:

(Amounts becoming due and payable after more than five years and amounts covered by valuable security must be shown separately for each item.)

1. Debenture loans, showing convertible loans separately,
2. Debts to credit institutions,
3. Payments received on account of orders,

Article 154

Article 154

4. Debts in respect of purchases and services received,
5. Debts represented by bills of exchange,
6. Debts to associated undertakings,
7. Debts to undertakings with which the company is associated by virtue of a participating interest,
8. Other creditors.

I. Provisions for contingencies and charges:

1. Provisions for pensions and similar obligations,
2. Provisions for taxation, provisions for future taxation being shown separately,
3. Other provisions.

J. Accruals.

K. Subscribed capital.

(The shares must be shown by classes, indicating their nominal value.)

Article 154

Article 154

L. Reserves:

1. Legal reserve,
2. Share premium account,
3. Revaluation reserve,
4. Statutory reserves,
5. Optional reserves.

M. Profit/loss per balance sheet.

Article 155.

1. Where an asset or a liability relates to more than one item in the balance sheet, this fact shall be stated, where it is necessary to a proper understanding of the balance sheet, against the item under which it is shown.

2. Investments in associated companies shall be shown only under the item which relates thereto.

Article 155.

1. Where a component of the assets or liabilities pertains to several items in the balance sheet, its relationship to other items shall be indicated either under the item where it appears or in the notes on the accounts, unless such indication is not essential for purposes of presentation of clear and accurate annual accounts.

2. unchanged

Article 156

Article 156

The following, unless required to be shown on the liabilities side, shall be set out separately at the end of the balance sheet or in the notes on the accounts:

1. Contingent liabilities on bills of exchange issued and negotiated, indemnities, guarantees and similar commitments,

2. Any financial obligations incurred for an amount exceeding 100 000 units of account and for a term exceeding one year.

Liabilities incurred towards associated companies are to be shown separately.

1. The following shall, if there is no obligation to show them under liabilities, be set out separately below the balance sheet or in the notes on the accounts:

(a) Contingent liabilities on bills of exchange issued and negotiated, indemnities, guarantees and similar obligations, distinguishing between the various types of guarantee and specifying what valuable security, if any, has been provided,

(b) Any financial obligations incurred for an amount exceeding 100 000 units of account and for a term exceeding one year.

2. Liabilities or obligations incurred towards associated undertakings shall be shown separately.

SUBSECTION THREE

PARTICULARS CONCERNING CERTAIN ITEMS IN THE BALANCE SHEET

Article 157

Costs of formation shall include, in particular, costs of incorporation and of issue of capital, expenses incurred on inauguration, expansion or reconstitution of the undertaking, and discounts.

Article 157

Costs of formation shall include, in particular, costs of incorporation and of issue of capital, expenses incurred on inauguration, expansion or reconstitution of the undertaking.

Article 158

1. Whether a particular asset is to be classified as fixed or current shall depend upon its purpose.
2. Fixed assets shall comprise only those which are permanently used to enable the company to operate.
3. Where the classification of a fixed asset is in doubt, an indication of the item under which it has been included shall be given either in the balance sheet or in the notes on the accounts.
4. The balance sheet or the notes on the accounts shall indicate the changes in fixed assets that have taken place; using as starting point the purchase price or initial production cost or the replacement cost severally for each item of fixed assets, there shall be shown by way of total as at the date of the balance sheet, first, the assets acquired, assets disposed of, transfers and appreciations in value during the accounting period and, secondly, depreciation and provisions for depreciation. If depreciation and provisions therefor are shown in the balance sheet they may be entered either:

(a) on the assets side, or

Article 158

1. unchanged
2. unchanged
3. deleted
3. (a) Movements in the various items of fixed assets shall be shown in the balance sheet or in the notes on the accounts. To this end there shall be shown, starting with the initial purchase price or production cost, separately for each of the items of fixed assets, on the one hand the additions, disposals, transfers and upward corrections during the year, and on the other hand the depreciation and provisions for depreciation as at the date of the balance sheet. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

Article 158

(b) on the liabilities side.

Article 158

(b) Where, at the time the first annual accounts are drawn up in accordance with the provisions of this Title, the purchase price or production cost of an element of fixed assets cannot be determined without untoward expense or delay, the residual value at the beginning of the year may be treated as the purchase price or production cost. If use is made of the provisions contained in this subparagraph the fact must be mentioned in the notes on the accounts.

(c) In the case of application of Article 181, the presentation of the movements in the various items of fixed assets referred to under (a) shall be supplemented by showing separately for each of the various items the cumulative amounts, at the date of the balance sheet, of the differences referred to in Article 181(2) and of all additional depreciation and provisions for depreciation.

4. (a) Movements in the various items of current assets shall be presented in the balance sheet or in the notes on the accounts. To this end there shall be shown, separately for each of the items of current assets, the purchase price or production cost and depreciation and provisions for depreciation. Depreciation and provisions for depreciation may be shown either in the balance sheet against the relevant item or in the notes on the accounts.

Article 158

5. Paragraph 4 shall equally apply to the treatment of costs of formation.

Article 158

(b) Paragraph 3(a) shall apply for purposes of the presentation of the item "Stocks".

5. Paragraph 3(a) and (b) shall apply for purposes of the presentation of the item "Costs of formation".

Article 159

Article 159

Under research and development costs unchanged
there shall be included only the
research and development costs
relating to particular products and
processes.

Article 160 .

Article 160 .

Under "Land and buildings" shall be unchanged
included land, whether built on or
not, and any buildings erected there-
on including their fixtures.

Article 161

1. Investments for the purposes of this Title shall mean rights of participation, whether or not represented by scrip certificates, in other undertakings, which rights are intended, by establishing a permanent link with those undertakings, to promote the company's own business. Ownership of 10 per cent of the shares in the capital of a company limited by shares shall be deemed to constitute an investment.

2. Associated companies shall mean legally autonomous companies existing inside or outside the Member States which, in relation to the S.E., are dependent or controlling undertakings (Art. 6), undertakings forming part of the same group (Art. 223) or undertakings under the same management as the S.E. but in such manner that none of them is a dependent or controlling company.

Article 161

1. The term "participating interests" as used in this Title means rights in the capital of other undertakings, whether or not represented by certificates, which by creating a durable link with them, are intended to contribute to the activities of the company. The holding of 10% of the subscribed capital of another undertaking shall be presumed to constitute a participating interest.

2. The term "associated undertakings" means legally autonomous undertakings existing inside or outside the Member States in which the S.E. owns a majority interest, or which own a majority interest in the S.E., dependent or controlling undertakings (Art. 6), or undertakings forming part of the same group (Art. 223) or undertakings under the same management as the S.E. but in such manner that none of them is a dependent or controlling undertaking.

Article 162

Under "Equalization accounts" there shall be shown, on the assets side, expenditure incurred during the accounting period but relating to a subsequent period.

Article 162

Under "Prepayments" on the assets side shall be shown expenditure incurred during the year but relating to a subsequent year together with earnings relating to the year to the extent that they will not be received until after the close of the year. The latter, however, may also be shown under debtors. If they are substantial in amount an explanation must be given in the notes on the accounts.

Article 163

Article 163

Provision in respect of deleted
intangible assets shall be the
adjusting item for "Research and
development costs" on the assets
side and for the intangible assets
referred to in Article 153 at
B-I-2(b).

Article 164

1. Under depreciation there shall be included all losses in value definitively sustained as at the date of the balance sheet.

2. Provisions for depreciation shall be the adjusting items for losses in value of assets which have not yet definitively been sustained but which are to be expected in the light of prudent valuation.

Article 164

Depreciation and provisions for depreciation are adjustment items relating to elements of assets and are intended to take account of depreciation of those elements as at the date of the balance sheet, whether the depreciation is definitive or not.

Article 165

Under "Provisions for contingencies and charges" there shall be included:

1. Debts whose origin, existence or amount is doubtful;

2. Losses which may arise from current operations;

3. Charges arising during the financial year but involving expenditure only in a subsequent year.

Article 165

The provisions for contingencies and charges are intended to cover either the certain cost of major maintenance work or of major repairs which will be incurred in the course of subsequent years, or losses or charges the nature of which is clearly defined but which at the date of the balance sheet are either likely to be incurred, or are certain to be incurred but are indeterminate as to amount or as to the date on which they will arise.

The provisions for contingencies and charges shall not be used to adjust the value of elements of assets.

Article 166

Under "Accruals" there shall be shown, on the liabilities side, income received before the date of the balance sheet but attributable to a subsequent financial year.

Article 166

Under "Accruals" on the liabilities side shall be shown income received before the date of the balance sheet but attributable to a subsequent year together with charges which, though relating to the year in question, will only be paid in the course of a subsequent year. The latter, however, may also be shown under creditors. If they are substantial in amount an explanation must be given in the notes on the accounts.

SUBSECTION FOUR

CLASSIFICATION OF THE PROFIT AND LOSS ACCOUNT

Article 167

Article 167

The profit and loss account unchanged
shall be prepared in accordance with
one of the following methods.

Article 168

Article 160

- | | |
|--|---|
| I. Trading results (excluding income and expenditure, if any, included under II): | I. unchanged |
| 1. Net turnover, | 1. unchanged |
| 2. Changes in stocks of finished and semi-finished products, | 2. unchanged |
| 3. Other goods and services supplied by the undertaking to itself, | 3. unchanged |
| 4. Other trading income arising out of the operations of the undertaking, | 4. unchanged |
| 5. Raw materials and auxiliary materials including fuel, | 5. unchanged |
| 6. Labour costs, | 6. Staff costs:
(a) Wages and salaries,
(b) Social security contributions prescribed by law,
(c) Other social security contributions, those for old age benefits being shown separately, |
| 7. Depreciation of costs of formation, | 7. Depreciation and provisions for depreciation in respect of:
(a) Costs of formation, tangible and intangible fixed assets,
(b) Elements of current assets, |
| 8. Depreciation and provisions for depreciation of intangible and tangible assets, | 8. Other operating expenses, |
| 9. Other trading costs, | 9. Operating result. |
| 10. Trading profit or loss. | |

Article 168

Article 168

II. Financial results:

- 11. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately,
- 12. Income from trade investments, other than income shown under II-11, income from associated undertakings being shown separately,
- 13. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately,
- 14. Other interest and similar income, that from associated undertakings being shown separately,
- 15. Expenditure arising from absorption of losses,
- 16. Depreciation and provisions for depreciation of investments and other fixed financial assets,
- 17. Interest and similar charges, those arising in respect of associated undertakings being shown separately,
- 18. Financial profit or loss.

III. Non-recurring income and expenditure:

- 19. Non-recurring income
- 20. Non-recurring expenditure
- 21. Balance of non-recurring items
- 22. Subtotal

II. Financial results:

- 10. unchanged
- 11. Income from participating interests, other than income shown under II-10, income from associated undertakings being shown separately,
- 12. unchanged
- 13. unchanged
- 14. unchanged
- 15. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets,
- 16. unchanged
- 17. unchanged

III. Exceptional result

- 18. unchanged
- 19. unchanged
- 20. unchanged

IV. Subtotal

Article 163

Article 168

IV. Taxation:	V. Taxes:
23. Taxation of profits	21. unchanged
(a) current	
(b) future	
24. Other taxes not included under I, II or III above	22. unchanged
25. Subtotal	VI. Subtotal
V. Set-off or transfer of profit or loss:	VII. Set-off or transfer of profit or loss:
26. Income arising as a result of set-off of losses	23. unchanged
27. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits	24. unchanged
VI. Profit for the year/Loss for the year	VIII. Profit for the year/Loss for the year
VII. Profit or loss brought forward from the previous year	IX. Profit or loss brought forward from the previous year
28. Subtotal	X. Subtotal
VIII. Changes in reserves:	XI. Changes in reserves
29. Withdrawals from reserves	25. unchanged
30. Appropriation of profit for the year to reserves	26. unchanged
IX. Profit/Loss to balance sheet	XII. Profit/Loss to balance sheet

Article 169

Article 169

A. Expenditure

A. Charges

I. Trading costs (excluding those, if any, included under II):

I. unchanged

1. Reduction in stocks of finished and semi-finished products

1. unchanged

2. Raw materials and auxiliary materials including fuel

2. unchanged

3. Labour costs

3. Staff costs:

(a) Salaries and wages

(b) Social security contributions prescribed by law

(c) Other social security contributions, those for old age benefits being shown separately.

4. Depreciation of costs of formation

4. Depreciation and provisions for depreciation in respect of:

(a) Costs of formation, tangible and intangible fixed assets

(b) elements of current assets

5. Depreciation and provisions for depreciation of intangible and tangible assets

6. Other trading costs

5. unchanged

Article 169

Article 169

II. Financial expenditure:

1. Expenditure arising from absorption of losses
2. Depreciation and provisions for depreciation of investments and other fixed financial assets
3. Interest and similar charges, those arising in respect of associated undertakings being shown separately

III. Non-recurring expenditure.

IV. Taxation:

1. Taxation of profits
 - (a) current
 - (b) future
2. Other taxes not included under I, II or III above

- V. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits

VI. Profit:

1. Loss brought forward from the previous year
2. Appropriation of profit for the year to reserves
3. Profit to balance sheet

II. Financial expenditure:

1. unchanged
2. Depreciation and provisions for depreciation in respect of participating interests, and other financial assets and of securities forming part of current assets
3. unchanged

III. Exceptional charges.

IV. Taxes:

1. unchanged
2. unchanged

- V. unchanged

VI. Profit:

1. unchanged
2. unchanged
3. unchanged

Article 169

Article 169

B. Income

I. Trading income (excluding income, if any, included under II):

1. Net turnover
2. Increase in stocks of finished and semi-finished products
3. Other goods and services supplied by the undertaking to itself
4. Other trading income

II. Financial income:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately
2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately
3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately
4. Other interest and similar income, that from associated undertakings being shown separately

III. Non-recurring income.

IV. Income arising as a result of set-off of losses.

V. Losses:

1. Profit brought forward from the previous year
2. Withdrawals from reserves
3. Loss to balance sheet

B. Income

I. unchanged

1. unchanged
2. unchanged
3. unchanged
4. unchanged

II. Financial earnings:

1. unchanged
2. unchanged
3. unchanged
4. unchanged

III. Exceptional earnings.

IV. Income arising as a result of set-off of losses.

V. Losses:

1. unchanged
2. unchanged
3. unchanged

Article 170

Article 170

- | | |
|---|--|
| I. Trading results (excluding any income and expenditure, if any, shown under II), | I. unchanged |
| 1. Net turnover, | 1. unchanged |
| 2. Production costs of goods and services supplied (including depreciation and provisions for depreciation), | 2. Production costs of output supplied (including depreciation and provisions for depreciation), |
| 3. Gross trading profit, | 3. unchanged |
| 4. Distribution costs (including depreciation and provisions for depreciation), | 4. unchanged |
| 5. General administration expenses (including depreciation and provisions for depreciation), | 5. unchanged |
| 6. Other trading income, | 6. unchanged |
| 7. Trading profit or loss, | 7. unchanged |
| II. Financial results: | II. Financial result: |
| 8. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately, | 8. unchanged |
| 9. Income from trade investments, other than income shown under II-8, income from associated undertakings being shown separately, | 9. unchanged |
| 10. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately, | 10. unchanged |
| 11. Other interest and similar income, that from associated undertakings being shown separately, | 11. unchanged |
| 12. Expenditure arising from absorption of losses, | 12. unchanged |

Article 170

Article 170

13.	Depreciation and provisions for depreciation of investments and other fixed financial assets,	13.	Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets.
14.	Interest and similar charges, those arising in respect of associated undertaking being shown separately.	14.	unchanged
15.	Financial profit or loss.	15.	unchanged
III. Non-recurring income and expenditure:		III. Exceptional result :	
16.	Non-recurring income,	16.	unchanged
17.	Non-recurring expenditure,	17.	unchanged
18.	Balance of non-recurring items,	18.	unchanged
19.	Subtotal.		
		IV. Subtotal	
IV. Taxation:		V. Taxes :	
20.	Taxation of profits, (a) current, (b) future,	19.	unchanged
21.	Other taxes not included under I, II or III above,	20.	unchanged
22.	Subtotal		
		VI. Subtotal :	
V. Set-off or transfer of profit or loss:		VII. Set-off or transfer of profit or loss:	
23.	Income arising as a result of set-off losses,	21.	unchanged
24.	Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.	22.	unchanged

Article 170

Article 170

VI.	Profit for the year/Loss for the year.	VIII.	Profit for the year/Loss for the year.
VII.	Profit or loss brought forward from the previous year :	IX.	Profit or loss brought forward from the previous year :
	25. Subtotal.	X.	Subtotal.
VIII.	Changes in reserves :	XI.	Changes in reserves :
	26. Withdrawals from reserves,		23. unchanged.
	27. Appropriation of profit for the year to reserves.		24. unchanged.
IX.	Profit/Loss to balance sheet.	XII.	Profit/Loss to balance sheet.

Article 171

Article 171

A. Expenditure

A. Charges

I. Trading costs (excluding those, if any, included under II):

I. unchanged

1. Production costs of goods and services supplied (including depreciation and provisions for depreciation),
2. Distribution costs (including depreciation and provisions for depreciation),
3. General administration expenses (including depreciation and provisions for depreciation),

1. Production costs of output supplied (including depreciation and provisions for depreciation),
2. unchanged
3. unchanged

II. Financial expenditure:

II. Financial charges:

1. Expenditure arising from absorption of losses,
2. Depreciation and provisions for depreciation of investments and other fixed financial assets,
3. Interest and similar charges, those arising in respect of associated undertakings being shown separately.

1. unchanged
2. Depreciation and provisions for depreciation in respect of participating interests and other financial assets and of securities forming part of current assets,
3. unchanged

III. Non-recurring expenditure.

III. Exceptional charges.

Article 171

Article 171

IV. Taxation

1. Taxation of profits,
 - (a) current,
 - (b) future,
2. Other taxes not included under I, II or III above.

IV. Taxes

1. unchanged
2. unchanged

- V. Profits transferred under agreement requiring transfer of profits, whether relating to the whole or a part of the profits.

V. unchanged

VI. Profits:

1. Loss brought forward from the previous year,
2. Appropriation of profit for the year to reserves,
3. Profit to balance sheet.

VI. Profit

1. unchanged
2. unchanged
3. unchanged

B. Income

I. Trading income (excluding income, if any, included under II):

1. Net turnover,
2. Other trading income.

B. Income

I. unchanged

1. unchanged
2. unchanged

II. Financial income:

1. Income arising under agreements requiring transfer of profits, whether relating to the whole or a part of the profits, income from associated undertakings being shown separately,

II. Financial earnings

1. unchanged

Article 171

Article 171

2. Income from trade investments other than as shown under II-1, income from associated undertakings being shown separately,

2. unchanged

3. Income from other securities held and from claims forming part of the financial assets, income from associated undertakings being shown separately,

3. unchanged

4. Other interest and similar income that from associated undertakings being shown separately.

4. unchanged

III. Non-recurring income

III. Exceptional earnings.

IV. Income arising as a result of set-off of losses.

IV. Income arising as a result of set-off of losses.

V. Losses:

V. Losses:

1. Profit brought forward from the previous year,

1. unchanged

2. Withdrawals from reserves,

2. unchanged

3. Loss to balance sheet.

3. unchanged

SUBSECTION FIVE

PARTICULARS CONCERNING CERTAIN ITEMS IN THE PROFIT AND LOSS ACCOUNT

Article 172

"Net turnover" shall comprise the receipts from sale of the products, goods and services which it is the company's normal business to supply, less any reductions in selling prices, value added tax and other taxes calculated on turnover.

Article 172

The net amount of turnover includes receipts from sales of products, goods and services falling within the usual operations of the company, after allowing for any price reduction in respect of those sales, and for value-added tax and other taxes directly related to turnover.

Article 173

Under "Other goods and services supplied by the undertaking to itself" shall be shown all goods and services supplied by the undertaking and applied for its own internal use, where these are included in the assets, but excluding increases in stocks of finished and semi-finished products.

Article 173

deleted

Article 174

Under "Expenditure arising as a result of absorption of losses" shall be shown losses incurred by other companies which the S.E. is committed to absorb.

Article 174

unchanged

Article 175

1. Under "Non-recurring income" and "Non-recurring expenditure" shall be shown income and expenditure which is attributable to another financial year and income and expenditure arising otherwise than as a result of the company's normal activities.

2. If these items of income and expenditure are not unimportant for the purpose of assessing the results, they shall be shown as a separate item in the profit and loss account or in the notes on the accounts.

Article 175

1. Under the items Exceptional earnings and Exceptional charges, shall be shown earnings and charges that are attributable to another year, together with any earnings and charges that do not arise out of the usual operations of the undertaking.

2. Unless such earnings and charges are of no importance in the assessment of the results, explanations of their amount and nature shall be given in the notes on the accounts.

Article 176

Under "Taxation of profits" shall be shown the actual amount of tax payable in respect of the financial year and also, separately, the amount of any future tax liabilities.

Article 176

Under the item Taxes on the Result shall be shown the actual amount of taxes payable for the year, and separately, the amount of the future liability to tax.

Article 177

Under "Income arising from unchanged
absorption of losses" shall be
shown expenditure repayable by third
parties pursuant to agreements for
pooling of losses.

Article 177

Article 178

Under "Appropriation of profit for the year to reserves" shall be shown the amount of profit for the year which the Board of Management and the Supervisory Board decide to appropriate to reserves in accordance with Article 217, paragraph 1.

Article 178

Under "Appropriation of profit for the year to reserves" shall be shown the amount of profit for the year which the Board of Management and the Supervisory Board decide to appropriate to reserves in accordance with Article 217, paragraph 1 a).

Section three

Valuation rules

Article 179

1. The following general principles shall be applied in evaluating items for purposes of the annual accounts:

(a) Only profits earned as at the date of the balance sheet shall be included; proper allowance shall, however, be made for all risks foreseeable at that date.

(b) Proper allowance shall be made for any items involving losses which come to light after the date of the balance sheet but before it has been finalized, where the same have arisen during the financial year to which the annual accounts relate.

(c) Proper allowance shall be made for any depreciation in value, irrespective of whether the financial year closes with a loss or a profit.

Article 179

1. The following general principles shall be applied in evaluating items for purposes of the annual accounts:-

(a) It shall be assumed that the company will continue its activities.

(b) The methods of valuation shall not be changed from one year to another.

(c) In all cases the principle of prudence shall be observed. This shall mean, in particular:-

(aa) Only profits earned as at the date of the balance sheet shall be included in it; account shall nevertheless be taken of all contingencies foreseeable at that date.

(bb) Account shall be taken of any deficiencies that do not become apparent until after the date of the balance sheet, but before it is drawn up, if they arose in the course of the year to which the annual accounts relate.

(cc) Account shall be taken of any depreciation, whether the year closes with a profit or with a loss.

Article 179

Article 179

(d) Account shall be taken of charges and receipts appertaining to the financial year to which the annual accounts relate, irrespective of the date on which such charges or receipts are paid or received.

(d) All assets and liabilities shall be valued separately.

(e) Items shown on the assets and on the liabilities side shall be valued separately.

(e) The closing balance sheet relating to one financial year shall match up with the opening balance sheet relating to the following year.

(f) The opening balance sheet of one financial year must correspond with the closing balance sheet for the previous financial year.

2. Exceptions may be made in applying these general principles where special circumstances so require. The exceptions, and the reasons therefor, shall be duly explained in the notes on the accounts.

2. Departures from these general principles shall be permitted in exceptional cases. Where they are departed from, an indication thereof shall be given in the notes on the accounts together with an explanation of the reasons therefor and an assessment of the effect on the assets, liabilities, financial position and result.

Article 180

Article 180

Articles 182 to 189 shall apply to the valuation of items comprised in the annual accounts.

The valuation of items shown in the annual accounts shall be made in accordance with Articles 182 to 189, based on purchase price.

Article 181

1. In place of the valuation rules referred to in Article 180, the replacement cost method of valuation may be used. The notes on the accounts shall specify the items which have been valued on this basis.

2. Where the replacement cost method of valuation is used the following rules shall apply:
(a) differences arising as a result of the application of the replacement cost method of valuation in place of the valuation rules referred to in Article 180 shall be included under "Reserves arising on revaluation".
(b) Revaluation reserves may be written back only if the amounts transferred thereto are no longer required for the purpose of replacement of assets. If no longer required for that purpose, they shall be written back. These amounts shall be added to the profit for the year or shall be deducted from the loss for

Article 181

1. Notwithstanding the provisions of Article 180, valuation may be effected:
(a) on the basis of replacement value for tangible fixed assets with a limited useful life, and for stocks;
(b) on the basis of methods other than that provided for under (a), to take account of the present value for tangible fixed assets, participating interests and other financial assets, and for stocks.

Where one of these methods is employed, an indication thereof shall be given in the notes on the accounts, specifying the relevant items in the balance sheet and in the profit and loss account, and the method employed in valuing them.

2. Where paragraph 1 is applied, the amount of the difference between the valuation on the basis of replacement value or any other of the above-mentioned methods and the valuation on the basis of the general rule contained in Article 180 shall be shown under liabilities in the item Revaluation Reserve, after separate deduction of future taxes, if any. This item shall be sub-divided into:
- Reserve for tangible fixed assets;
- Reserve for participating interests and other financial assets;
- Reserve for stocks.

Article 181

the year. They shall be shown in the profit and loss account as a separate item.

(c) Subject to Article 41, revaluation reserves may be capitalized.

(d) The differences referred to in 2(a) shall, in the notes on the accounts, be shown separately at least in respect of the following items:

I. Balance sheet:

1. Fixed assets:

- (a) Intangible assets;
- (b) Tangible assets;
- (c) Trade investments and other fixed financial assets.

2. Current assets.

II. Profit and loss account:

1. Depreciation of fixed assets:

- (a) Intangible assets;
- (b) Tangible assets;
- (c) Trade investments and other fixed financial assets.

2. Provisions for depreciation of fixed assets:

- (a) Intangible assets;
- (b) Tangible assets;
- (c) Trade investments and other fixed financial assets.

Article 181

3. Revaluation reserves may be capitalized as provided in Article 41.

4. The Revaluation reserve shall be reduced to the extent that the amounts transferred thereto are no longer required for the purpose of maintaining the substance of the undertaking. The amounts in question shall be added to the result for the year. They shall be shown separately in the profit and loss account.

Article 181

(e) Depreciation and provisions for depreciation shall be calculated annually on the basis of the replacement cost arrived at for the year in question.

(f) In addition, Articles 182 to 189 shall apply.

Article 181

5. Save as provided in paragraphs 3 and 4 the Revaluation reserve shall not be reduced.

6. Depreciation and provisions for depreciation shall be calculated each year on the basis of the values arrived at for the financial year in question.

Article 181-a

see Article 188 (1-3) of the original text.

1. (a) Costs of formation shall be written off over a maximum period of five years.

(b) Insofar as costs of formation have not been completely written off, no distribution of profits shall take place unless the amount of the optional reserves is at least equal to the amount of such expenditure not written off.

2. The amounts entered under this item shall be explained in the notes on the accounts.

Article 182

1. (a) Items of fixed assets shall be shown in the balance sheet at purchase price or production cost after charging depreciation and making provision for depreciation.

(b) The purchase price or production cost of fixed assets having a working life limited in time shall be depreciated at rates which are in keeping with regular and proper accounting principles.

(c) (aa) Provision for unusual depreciation of items of fixed assets may be made whether or not their working life is limited in time, so that their value be shown at the lower figure attributable to them as at the date of the balance sheet or as accepted for tax purposes.

(bb) Special depreciation shall be charged if it is anticipated that the reduction in value will be permanent.

Article 182

1. (a) The items of fixed assets shall, without prejudice to the provisions of (b) and (c) below, be valued at purchase price or production cost.

(b) Unchanged

(c) (aa) Provisions for depreciation may be made in respect of participating interests and other financial assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet.

(bb) Items of fixed assets shall be depreciated whether or not their useful life is limited so that they are valued at the lowest figure attributable to them at the date of the balance sheet, if it is anticipated that the reduction in value will be permanent.

Article 182

(co) Such lower figure shall cease to apply when the circumstances on the basis of which the depreciation was charged or the provision for depreciation was made have ceased to obtain.

Article 182

(cc) The depreciation and provisions for depreciation referred to in (aa) and (bb) shall be shown separately in the profit and loss account or in the notes on the accounts.

(dd) Valuation at the lowest value provided for in (aa) and (bb) shall be discontinued if the reasons for which the value adjustments were made have ceased to apply.

(d) If the items of fixed assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The purchase price shall be calculated by adding to the price paid the expenses incidental thereto.

3. (a) The production cost shall be calculated by adding to the purchase price of raw and auxiliary materials including fuel the manufacturing costs directly attributable to the product in question.

(b) A reasonable proportion of the manufacturing costs which are only indirectly attributable to the product in question may also be added to the production cost to the extent that they relate to the period of manufacture.

(c) Costs of distribution shall not be included in production cost.

2. Unchanged

3. (a) Unchanged

(b) A reasonable proportion of the manufacturing costs which are only indirectly attributable to the product in question may be added to the production cost to the extent that they relate to the period of manufacture.

(c) Unchanged

Article 182

4. (a) Interest on loans raised to finance the acquisition of fixed capital assets may be included in production cost to the extent that it relates to the period during which the acquisition was made; the inclusion of this interest element in the assets shall be mentioned in the notes on the accounts.

(b) Interest on own capital may be included in production cost; the reasons for including this element in the assets, and the amount of the interest, shall be indicated in the notes on the accounts.

Article 182

4. Interest on capital borrowed to finance the manufacture of fixed assets may be included in production costs to the extent that it relates to the period of such manufacture. The inclusion of this interest element in the assets shall be mentioned in the notes on the accounts.

Deleted

Article 183

1. Where intangibles are brought in as assets, they shall be depreciated over the period of their useful economic life assessed with proper commercial caution.

2. A reserve shall be constituted of an amount equal to the research and development costs included under assets and to the value of the intangible assets referred to in Article 153, B I-2(b). Amounts withdrawn from such reserve shall form part of the profit for the year or be deducted from the loss for the year. They shall be shown in the profit and loss account as a separate item.

Article 183

1. unchanged

2. (a) Article 181(a) shall apply to the item "Cost of research and development".

(b) Article 181(a)(1)(a) shall apply to the item "Goodwill to the extent that it was acquired for valuable consideration".

Article 184

Fixed assets as well as raw materials and auxiliary materials including fuel which are constantly being replaced may, notwithstanding Article 179, paragraph 1(d), be shown on the assets side at a fixed quantity and value, if variations in the quantity, value and composition thereof are negligible.

Article 184

Tangible fixed assets, raw and auxiliary materials, which are constantly being replaced and whose overall value is of small importance to the undertaking may, notwithstanding Article 179(1) e., be shown at a fixed quantity and value if the quantity, value and composition thereof do not vary appreciably.

Article 185

Article 185

Where an S.E. holds an investment,
within the meaning of Article 161,
in excess of 50 per cent; that
holding shall be shown at its true
value.

unchanged

Article 186

Article 186

1. Current assets shall be valued at purchase price or production cost.

2. If the market price at the date of the balance sheet is lower than the purchase price or production cost, the lower value shall be used.

3. If the market price cannot be ascertained and the purchase price or production cost is higher than the value which ought to be imputed to the relevant assets at the date of the balance sheet, it is the latter value which shall be adopted.

4. Current assets may be shown at a lower value than that calculated in accordance with paragraphs 2 or 3 above :
(a) if this is required, upon a reasonable commercial assessment, so that the valuation of these items does not have to be changed in the short term on account of fluctuations in value, or

(b) if this is permitted for tax purposes.

5. Such lower value shall cease to apply when circumstances on the basis of which it was adopted no longer obtain.

1. (a) Items of current assets shall be valued at purchase price or production cost, without prejudice to the provisions of (b) and (c) below.

(b) Depreciation or provisions for depreciation shall be allowed for or made in respect of the items of current assets so that they are valued at the lowest figure attributable to them at the date of the balance sheet.

(c) Exceptional provisions for depreciation may be made if, on the basis of a reasonable commercial assessment, those are necessary so that the valuation of those items does not have to be modified in the near future because of fluctuations in value. The amount of such provisions for depreciation shall be shown separately in the profit and loss account or in the notes on the accounts.

(d) Valuation at the lowest value provided for in (b) and (c) shall be discontinued if the reasons for which the depreciation and provisions for depreciation were allowed for or made have ceased to apply.

(e) If the items of current assets are the subject of exceptional depreciation or provisions for depreciation solely for reasons of fiscal law, the amount of the depreciation or provisions for

Article 186

6. The definitions of purchase price and of production cost contained in Article 182, paragraphs 2 to 4, shall apply.

Article 186

depreciation and the future taxes concerned must be indicated in the notes on the accounts and adequately justified.

2. The definitions of purchase price and of production cost contained in Article 182 (2) to (4), shall apply.

Article 187

Identical items of stocks which have been purchased at different prices may be valued at the balance sheet date either on the basis of weighted average prices or by the "First in first out" (Fifo) method or "Last in first out" (Lifo) method.

Article 187

1. The purchase price or production cost of stocks of goods in the same category may also be calculated either on the basis of weighted average prices or by the "First in - first out" (Fifo) method or "Last in - first out" (Lifo) method, or some similar method.

2. Where, because of the method employed, the valuation of balance sheet items is considerably different from their valuation on the basis of purchase price, the amount of the difference shall be shown in the notes on the accounts.

Article 188

1. Costs of formation shall be shown as a separate item in the balance sheet at purchase price or production cost.
2. They shall be duly depreciated over a five-year period. A different procedure may be adopted in exceptional cases if warranted by the circumstances.
3. Items included under this heading shall be explained in the notes on the accounts.
4. (a) Where debts or loans to be repaid exceed the principal, the difference may be capitalized under costs of formation as a separate item.
(b) The amount of the difference shall be written off not later than the time when repayment of the loan or debt is made.

Article 188

1 to 3 deleted (see new Article 181(a))

1. Where the amount of any debt repayable is greater than the amount received, the difference may be shown as an asset. It shall be shown separately in the balance sheet or in the notes on the accounts.
2. The amount of the difference shall be written off not later than the time when the debt is paid.

Article 188

Provisions shall not exceed in amount the sums which a reasonable businessman would consider necessary.

Article 189

Provisions for contingencies and charges shall not exceed in amount the sums which a reasonable businessman would consider necessary.

The provisions shown in the balance sheet under the item "Other provisions" shall be specified in the notes on the accounts if they are at all substantial.

Section four

Contents of the notes on the accounts

Article 190

The notes on the accounts shall contain commentary on the balance sheet and profit and loss account in such manner as to give as true and fair a view as possible of the company's assets, liabilities, financial position and results.

Article 190

The notes on the accounts shall contain commentary on the balance sheet, profit and loss account and statement of source and application of funds in such manner as to give a true and fair view of the company's assets, liabilities, financial position and results.

Article 191

In addition to the information required under other Articles in this Statute, the notes on the accounts shall set out information in respect of the following matters in any event:

1. The principles of valuation applied to the various items in the annual accounts;

2. Any exceptions to the general principles set out in Articles 148, paragraph 4, and 179, which may affect comparison with the accounts as at the end of the previous year; any major differences which result must be quantified;

3. The names and registered offices of undertakings in which the S.E. holds not less than 10 per cent of the shares, together with the percentage holding in each case;

Article 191

unchanged

1. The valuation methods applied to the various items in the annual accounts, and the methods employed in calculating depreciation and provisions for depreciation. In the case of claims and debts in foreign currencies, the method employed in calculating the rate of exchange shall be indicated.

deleted

2. The name and registered office address of each of the undertakings in which the S.E. holds at least 10% of the capital, showing the proportion of capital held and the amount of the subscribed capital, the amount of the reserves and the results for the latest business year of the undertaking concerned.

3. Any investments in the capital of the S.E. of which it has been notified in accordance with Article 46(a)(1) together with the amount of investment and the names of the owners thereof.

Article 191

Article 191

4. Any investments in the capital of the S.E. of which it has been notified in accordance with Article 47, paragraph 5, together with the names of the owners thereof;

4. Any reciprocal shareholding within the meaning of Article 47, specifying the amount of the holding of each party;

5. Any group of companies to which the S.E. belongs either as a controlling company or as a dependent undertaking, or to which it has ceased to belong, together with an explanation of the circumstances; the S.E. must also state whether it is under common management with other companies without any of them being controlling companies or dependent undertakings;

unchanged

6. The names of associated companies (Art. 161, par. 2), the legal and business relationship with each of them, and any events that have taken place in any of them which might materially affect the position of the S.E.;

unchanged

7. Whether there are any convertible debentures, specifying the number thereof and what rights they confer.

7. Turnover, broken down according to products, operations and markets;

8. Net revenue from sales broken down according to categories of product, activity and specific geographical markets. The amount contributed by each of these categories and markets to the annual results shall be indicated.

Article 191

8. The composition of the labour force split up as between wage earners and salary earners, showing their age-groups and places of employment, average wages and salaries, and the amount of social security contributions during the financial year;

9. Total emoluments during the financial year paid to the Board of Management and the Supervisory Board, and to former members of the Board of Management or, in the event of death, to their dependants, with a breakdown of sums paid in respect of each category;

10. Value added tax and other taxes comprised in the trading results, financial results and non-recurring income and expenditure;

Article 191

9. The composition of the labour force split up as to categories, showing their age-groups and places of employment and, unless they are shown separately in the profit and loss account, the whole of the personnel costs relating to the financial year, broken down as indicated in Article 168(I)(6);

10. Total emoluments paid to the members of the Board of Management and the Supervisory Board for their work together with pension obligations which have arisen or have been assumed in respect of former members of these bodies or of their dependants. The above information shall be given in full in respect of each of these groups of persons. The like information shall be given regarding emoluments received by members of the above-mentioned bodies in their capacity as members of the administrative, managerial or supervisory bodies of an undertaking dependent on or controlling the company;

11. Taxes comprised in the trading results, financial results or non-recurring income and expenditure;

12. The amount of the changes in the result for the year due to the application of fiscal laws;

13. The overall amount of capital and reserves and the result for the year calculated on the basis of one of the valuation methods specified in Article 181(1), if the items in the annual accounts have been valued in accordance with Article 180.

Article 192

In respect of the items specified in Article 191, paragraphs 3 and 6, the information required may be omitted where in the opinion of a reasonable businessman it could seriously prejudice the interests of the undertakings in question. Such omissions shall be mentioned in the notes on the accounts or in a document pursuant to Article 193.

Article 192

The particulars required under Article 191(2), (3), (4) and (6) may be omitted if in the view of a reasonable businessman they would be prejudicial to an undertaking to which they relate. The omission of the particulars shall be mentioned in the notes on the accounts or in the statement drawn up pursuant to Article 193.

Article 193

The information required to be given under Article 191, paragraphs 3 and 6, may be contained in a document which shall be filed with the European Commercial Register. Where the information is supplied in this manner, that fact shall be mentioned in the notes on the accounts.

Article 193

The particulars required under Article 191 (2), (3), (4) and (6) may be given in a statement filed with the European Commercial Register. If any such statement is filed, the fact shall be mentioned in the notes on the accounts.

Article 194

The notes on the accounts shall contain a proposal for appropriation of profit for the year.

Article 194

unchanged

Section five

Contents of the annual report

Article 195

Article 195

1. The annual report shall review the development of the company's business and position during the past financial year, having regard to the principles of regular and proper accounting.

1. The annual report shall contain a detailed review of the development of the company's business and of its position.

2. In addition to the information required under other Articles in this Statute, the annual report shall set out information in respect of the following matters in any event:

2. unchanged

(a) Important events that have taken place since the end of the financial year;

(a) unchanged

(b) The company's likely future developments;

(b) unchanged

(c) Proposed capital expenditure, the scale thereof and the amount of the expenses likely to be incurred in connection therewith.

(c) Proposed capital expenditure, the scale thereof and the amount of the expenses likely to be incurred in connection therewith, in particular in the field of research and development.

Section six

Preparation of group accounts

Article 196

1. If the S.E. is the controlling company within a group of companies, it shall, in respect of the group, draw up a consolidated balance sheet and a consolidated profit and loss account together with notes on the consolidated accounts and a consolidated annual report. The consolidated accounts, prepared as at the same date as the annual accounts of the S.E., shall relate to every undertaking which, in accordance with Article 223, is a member of the group.

2. If the S.E. is a dependent company within a group of companies, it shall, in respect of its own part of the group and where Article 227, paragraph 2, applies, draw up a part-consolidated balance sheet and a part-consolidated profit and loss account together with notes on the part-consolidated accounts and a part-consolidated annual report. Such accounts, which shall be prepared as at the same date as the annual accounts of the S.E., shall relate to the undertakings controlled through the S.E. Articles 197 to 202 shall apply to part-consolidated accounts and reports.

Article 196

1. If the S.E. is the controlling undertaking within a group of undertakings, it shall, in respect of the group, draw up a consolidated balance sheet, a consolidated profit and loss account, notes on the group accounts, a statement of source and application of funds for the group (group accounts) and a group annual report.

The group accounts, prepared as at the same date as the annual accounts of the S.E., shall relate to every undertaking which, in accordance with Article 223, is a member of the group.

2. If the S.E. is a dependent undertaking within a group of undertakings and if other undertakings within a group are controlled through it, it shall, in respect of its own part of the group, draw up a part-consolidated balance sheet, part-consolidated profit and loss account, notes on the part-group accounts, a part-group statement of source and application of funds (part-group accounts) and a part-group annual report, unless the controlling undertaking within the group prepares group accounts in accordance with the provisions of this Title. Such accounts, which shall be prepared as at the same date as the annual accounts of the S.E., shall relate to the undertakings controlled through the S.E. Articles 197 to 202 shall apply to part-group accounts and reports.

Article 197

1. (a) Consolidated accounts shall not relate to undertakings within the group where the effect would be to make the information contained in the consolidated accounts less meaningful.

(b) Consolidated accounts need not relate to undertakings within the group which are so small that the view reflected of the assets, liabilities, financial position and results of the group is not affected by omitting them.

2. (a) The reason for non-consolidation of the accounts of any undertaking within the group shall be stated in the notes on the accounts.

(b) The annual accounts of undertakings such as are referred to in paragraph 1(a) shall be drawn up as at the date of the consolidated accounts and shall be annexed to the notes thereon.

Article 197

unchanged

Article 198

1. The consolidated accounts shall comprise the group balance sheet, the group profit and loss account and the notes on the accounts. These shall constitute a composite whole. They shall comply with regular and proper accounting principles.

2. Consolidated accounts shall be presented clearly and accurately. Subject to the provisions on presentation and valuation, they shall reflect as true and fair a view as possible of the group's assets, liabilities, financial position and results.

Article 198

1. The group accounts shall comprise the consolidated balance sheet, the consolidated profit and loss account, the notes on the group accounts and a statement of source and application of funds for the group. These documents shall constitute a composite whole.

2. The group accounts shall give a true and fair view of the group's assets, liabilities, financial position and results.

3. They shall be drawn up clearly, accurately and in accordance with the following provisions regarding the valuation of assets and the lay-out of accounts.

Article 199

Article 199

unchanged

the following exceptions:

1. In the group balance sheet: 1. unchanged

- (a) The amount of any differences as between the book value at the date of first consolidation of investment holdings in the capital of undertakings in the group, and the value thereof including reserves and profits, on subsequent valuation, shall be shown separately under one item entitled "Consolidation equalization account";
- (b) Interests held by companies outside the group in the capital, reserves and profits of undertakings within the group shall be shown as a separate item;
- (c) Stocks may be grouped together under one global item.

2. In the group profit and loss account the following items may be lumped together: 2. unchanged

- (a) Article 168, items I-2 to 9 (a) unchanged
- (b) Article 169, items A-I-1 to 6 and B-I-2 to 4 (b) Article 169, items A-I-1 to 5 and B-I-2 to 4
- (c) Article 170, items I-2 to 6 (c) unchanged
- (d) Article 171, items A-I-1 to 3 and B-I-2 (d) unchanged

Article 200

1. As the undertakings in a group constitute one economic unit, all assets and liabilities shall be incorporated in the group consolidated balance sheet at the values shown in the balance sheets of the undertakings within the group.

2. The annual accounts of undertakings to which consolidated accounts relate shall be prepared so far as possible in accordance with the same rules of valuation.

Article 200

unchanged

Article 201

1. In so far as the information contained in the notes on the consolidated accounts is important for the purpose of assessment thereof, Articles 191 to 193 shall apply.

2. The methods of consolidation and, in particular, the sources and composition of the consolidation equalization account and the non-elimination, if any, of profits on transactions between undertakings within the group shall be explained.

Article 201

unchanged

Article 202

Article 195 shall apply to the consolidated annual report.

Article 202

unchanged

Section seven

Audit

Article 203

Article 203

1. The annual accounts and, in so far as it reviews developments in the company's business and position during the past financial year, the annual report shall be audited by an independent auditor acting on his own responsibility.

2. Only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing a legally organized examination and shall be persons authorized in a Member State to act as auditors of the annual accounts of sociétés anonymes whose shares are quoted on a stock exchange.

3. Auditors shall be completely independent of the S.E.

1. unchanged

2. Only persons who are suitably qualified and experienced may be appointed auditors. They shall have obtained their professional qualifications by satisfying the requirements for admission and by passing an examination, both of which must be legally established or recognized and shall be persons authorized in a Member State to act as auditors of the annual accounts of companies limited by shares whose shares are quoted on a stock exchange.

3. deleted; see Article 203-a-

Article 203-a-

1. The audit may not be carried out by persons who are, or who within the last three years prior to their appointment have been, members of the Board of Management or of the Supervisory Board or employees of the S.E. or of an undertaking dependent on it or controlling it.

2. Further, the audit may not be carried out by :

(a) companies, whose members, whose members of the management or supervisory body, or whose duly authorized representatives are or, in the last three years prior to their appointment were, members of the Board of Management or of the Supervisory Board or employees of the S.E. or of an undertaking dependent on it or controlling it,

(b) a firm of auditors which is dependent on or which controls the S.E., or which is dependent on the undertaking controlling the S.E.

Article 203-b-

1. Persons who have carried out the audit may not become members of the Board of Management or of the Supervisory Board or employees of the S.E. or of an undertaking dependent on it or controlling it for at least three years after expiry of their term of office.

2. Further, members of the management or supervisory bodies, or duly authorized representatives or members of companies which have carried out the audit, may not for at least 3 years after completion of their duties, become members of the Board of Management or of the Supervisory Board or employees of the S.E. or of an undertaking dependent on it or controlling it.

Article 204

1. The auditor shall be appointed by the General Meeting. In respect of the first financial year, the auditor may be appointed by the General Meetings of the founder companies.

2. He may not be removed by the General Meeting save where there are serious grounds for so doing. He shall be entitled to be present during discussions concerning his removal.

3. The auditor shall be entitled to withdraw from his contract where there

Article 204

1. The auditor shall be appointed annually by the General Meeting. In respect of the first financial year, the auditor may be appointed by the General Meetings of the founder companies.

2. If the appointment is not made by the General Meeting in due time or should an appointed person be unable to carry out his task, the court within whose jurisdiction the registered office is situated shall, upon application by the Board of Management, the Supervisory Board or a shareholder, appoint an auditor.

3. Upon application by the Board of Management, the Supervisory Board or one or more shareholders whose shares represent in total at least five per cent of the share capital or a nominal value of at least 100 000 units of account, the court within whose jurisdiction the registered office is situated may remove an auditor appointed by the General Meeting and appoint another person in his place if there are serious grounds for so doing. Such application shall be made within 2 weeks of the appointment by the General Meeting.

4. Notwithstanding paragraph 3, the auditor may not be removed by the General Meeting before expiry of his term of office save where there are serious grounds for so doing. He shall be entitled to take part in any discussions concerning his removal.

5. unchanged

Article 204-a-

1. The auditor's remuneration shall be fixed by the General Meeting or, if he is appointed by the court, by the latter, before commencement of this duties.

2. No remuneration or benefits may be granted to him for auditing the accounts other than the remuneration fixed in pursuance of paragraph 1.

Article 205

The auditor shall ascertain whether the accounting system and the annual accounts comply with this Statute and with the Statutes of the company and with the principles of regular and proper accounting.

Article 205

The auditor shall ascertain whether the accounting system, the annual accounts and the annual report, insofar as the latter reviews developments in the company's business and position during the previous financial year, comply with this Statute, the Statutes of the company and the principles of regular and proper accounting.

Article 206

Article 206

1. In carrying out his duties, the auditor shall be completely free to examine and check any documents and assets of the S.E.

1. unchanged

2. He shall be entitled to require any explanation or information that he may consider necessary for the proper execution of his duties.

2. unchanged

3. If the carrying out of his duties shall so require, he shall have the like rights in respect of associated undertakings.

3. unchanged

4. The auditor may be assisted in his work by colleagues or specialists. They shall have the same rights as the auditor himself and shall act under his responsibility. The auditor and those who assist him shall keep secret all matters of professional confidence.

4. unchanged

Article 207

1. If, on completion of his audit, the auditor has no objection to make in respect of the annual accounts, he shall certify them without qualification.

2. If he has any objection to make in respect of the annual accounts, he shall qualify his certificate as appropriate or withhold it altogether.

3. Any qualification or withholding of a certificate shall be expressly explained.

Article 207

1. If, on completion of his audit, the auditor has no objection to make in respect of the annual accounts or annual report, he shall issue a written certificate to this effect.

2. unchanged

deleted; see Article 208(d)

Article 208

1. The auditor shall, furthermore, present to the Supervisory Board a written report on the results of his audit.
2. The auditor shall also report any matters which he discovers in carrying out his duties and which might jeopardize the existence of the company or significantly affect its development, or which indicate serious infringements by the Board of Management otherwise than in respect of preparation of the accounts, of any of the provisions of this Statute or of the Statutes of the company.

Article 208

The auditor shall, within three months following the end of the financial year, draw up a written report on the results of his audit. The report must contain at least the following information:

- (a) Whether he has carried out the audit in accordance with Article 205;
- (b) Any infringements of this Statute, the Statutes of the company or the principles of regular and proper accounting which he has discovered in the accounting system, the annual accounts or the annual report;
- (c) Any matters which he has discovered which might jeopardize the financial position of the S.E., or substantially impair its future prospects or which indicate serious infringements by the Board of Management otherwise than in respect of preparation of the accounts, of any of the provisions of this Statute or of the Statutes of the company;
- (d) The complete text of the certificate issued under Article 207. If the certificate is qualified or a certificate has been withheld, the reasons therefor shall be given.

Article 209

The provisions of Article 20 relating to the liability of auditors shall apply also to the liability of auditors of the annual accounts.

Article 209

1. An auditor shall be fully liable to the S.E., to its shareholders and to third parties for all loss or damage resulting from his failure to observe the provisions of this Statute or from any other breach of the obligations imposed on him in carrying out his duties.

If more than one auditor shall have been appointed, all auditors shall be liable jointly and severally. An auditor shall not, however, be liable if he can prove that no fault is attributable to him.

Such liability shall continue for a period of three years as from the day of publication in the Official Journal of the European Communities pursuant to Article 219, or, in the event of harmful acts or omissions having been concealed, as from the time of their discovery.

2. As regards any action brought by the S.E. in respect of such liability Article 72 shall be of corresponding application.

Article 210

Article 210

The provisions of this Section shall apply to the audit of the consolidated accounts and report of a group of companies or of part of a group of companies.

unchanged

Section eight

Approval of the accounts and report,
Appropriation of profits and
Publication

Article 211

Article 211

The Board of Management shall,
before the end of the first three
months of each financial year, draw
up the annual accounts and report for
the previous financial year.

unchanged

Article 212

The annual accounts and report shall be submitted by the Board of Management to the Supervisory Board. The auditor's report shall be annexed thereto.

Article 212

1. The annual accounts and report shall be submitted by the Board of Management to the Supervisory Board. The auditor's report shall be annexed thereto.

2. The annual accounts and report shall be discussed by the Board of Management and the Supervisory Board in joint meeting. At the request of the Supervisory Board, the auditors shall attend this meeting in an advisory capacity.

Article 213

1. The annual accounts and report shall be settled by the Board of Management and the Supervisory Board in joint session but voting separately.

2. At the request of the chairman of the Supervisory Board, the auditors shall, in an advisory capacity, attend meetings of the Supervisory Board at which the annual accounts and report are settled.

Article 213

1. The annual accounts shall be approved by the Board of Management and by the Supervisory Board in joint meeting but voting separately.

2. The annual report shall be approved by the Board of Management.

Article 214

1. Failing agreement by the Supervisory Board and the Board of Management in the matter of approval of the annual accounts, the accounts shall be approved by the General Meeting, save where the disagreement between the Board of Management and the Supervisory Board relates only to appropriation of the profit.

2. The annual accounts and report prepared by the Board of Management, together with the Supervisory Board's comments which shall be contained in a document to be appended to the notes on the accounts, shall be laid before the General Meeting for its decision.

Article 214

1. Failing agreement by the Supervisory Board and the Board of Management in the matter of approval of the annual accounts, the annual accounts shall be approved by the General Meeting.

2. The annual accounts prepared by the Board of Management together with the Supervisory Board's comments which shall be contained in a document to be appended to the notes on the accounts, shall be laid before the General Meeting for its decision.

Article 215

Article 215

Articles 211 to 214 shall apply to the unchanged approval of the consolidated accounts and report of a group of companies and of a part of a group of companies.

Article 216

Article 216

1. At the General Meeting, duly convened in accordance with Article 84, there shall be presented in one document:

- (a) The annual accounts;
- (b) The auditors' certificate. If the certificate is qualified or a certificate has been withheld, this shall be mentioned and explained;
- (c) The annual report.

1. unchanged

- (a) unchanged
- (b) the auditor's report provided for in Article 208,

(c) unchanged

2. As from the date of the notice convening the General Meeting, the documents referred to in the preceding paragraph (annual documents) may forthwith be obtained from the company by any person free of charge. A statement to this effect shall appear in the notice.

2. unchanged

3. The annual documents shall form the basis upon which the General Meeting will make its decision with respect to the appropriation of profit and the discharge of the members of the Board of Management and of the Supervisory Board.

deleted

4. Paragraphs 1 and 2 of this Article shall apply to the consolidated accounts and report of a group of companies and of a part of a group of companies.

3. unchanged

Article 216-a-

Article 216-a-

1. Five per cent of the profit for the year less any losses carried forward shall be transferred to the legal reserves until the latter are equal to at least ten per cent of the subscribed capital.

2. Insofar as the legal reserves do not exceed the amount specified in paragraph 1, they may only be used to offset losses to the extent that other reserves are insufficient for this purpose.

Article 217

1. If the Board of Management and the Supervisory Board approve the annual accounts, they may appropriate part of the profit for the year, but not exceeding one half thereof, to reserves.

2. Failing agreement by the Supervisory Board and the Board of Management as to the amount or manner of appropriation of the profit for the year, the matter shall be resolved by the General Meeting.

3. In the event of such disagreement, the comments of the Supervisory Board shall set out its views in a document to be appended to the notes on the accounts.

Article 217

1. (a) If the accounts are approved by the Board of Management and the Supervisory Board, they may appropriate part of the profit for the year, but not more than one half thereof, to reserves. When they do so, the profit for the year shall be reduced, first, by the amount required to be transferred to the legal reserves pursuant to Article 216-a- and, secondly, by any losses carried forward. The General Meeting shall decide as to the appropriation of the profit per balance sheet upon a joint proposal from the Board of Management and the Supervisory Board.

(b) Failing agreement by the Board of Management and the Supervisory Board as to the appropriation of profits, as entrusted to them in accordance with paragraph 1(a), the General Meeting shall decide as to the appropriation of the total profit for the year.

(c) In the event of such disagreement, the Supervisory Board shall set out its views in a document to be appended to the notes on the accounts. The same shall apply if the Board of Management and the Supervisory Board fail to agree on a proposal as to the appropriation of the profit per balance sheet to be submitted in accordance with paragraph 1 (a).

Article 217

4. The General Meeting shall determine the appropriation of the balance of profit shown in the balance sheet (paragraph 1) on the basis of the joint proposals of the Board of Management and of the Supervisory Board and, where requisite, the appropriation of profit for the year (paragraph 2) on the basis of the proposals of the Board of Management and of the views of the Supervisory Board referred to in the preceding paragraph.

Article 217

2. If the accounts are approved by the General Meeting pursuant to Article 214 (1), the latter shall decide as to the appropriation of the total profit.

Article 218

Article 218

1. The General Meeting to which the annual documents are presented shall determine whether a discharge be given to the members of the Board of Management and of the Supervisory Board. A separate vote shall be held in respect of the discharge of any particular member if one quarter of the shareholders represented shall so require.

2. A discharge is a vote of confidence by the General Meeting. It relates to all matters and acts apparent from the annual documents.

3. The General Meeting may not, after giving a discharge, resolve to bring an action for liability against the Board of Management or any of its members. The giving of a discharge shall not, however, preclude the bringing of other actions against the Board of Management, the Supervisory Board or any of their members, or against the company.

Article 219

Article 219

1. Immediately after the General Meeting two copies of the document laid before it in accordance with Article 216, and of the Minutes of the meeting, shall be filed in the European Commercial Register.

2. Notice of filing and, if appropriate, an announcement of any declaration of dividend, shall forthwith be published by the Board of Management in the company journals.

3. Paragraphs 1 and 2 of this Article shall apply to publication of the annual documents of a group of companies or of a part of a group of companies.

1. unchanged

2. Immediately after such filing, the accounts and the auditor's report provided for in Article 208 shall be published in full by the Board of Management in the company journals. At the same time, notice shall also be given of the filing of the annual report.

Unless shown in the annual accounts, the appropriation of the profit per balance sheet or the treatment of the loss per balance sheet shall be published in the company journals together with the annual accounts.

3. deleted (see Article 219-b.)

Article 219-a-

1. If the accounts and the annual report are published in full by the S.E., other than in the case specified in Article 219, they shall be reproduced in the form and text on the basis of which the auditor drew up his report. They shall be accompanied by the full text of the certificate. If the auditor made any qualifications or refused to certify the accounts, the fact shall be stated and the reasons given.

2. If the annual accounts are not published in full by the S.E., the fact that the version published is abridged shall be stated, and reference shall be made to the national gazette in which they were published. The auditor's certificate shall not accompany this publication, but it shall be stated whether the certificate was made with or without qualification, or was refused.

Article 219-b-

Articles 219 to 219-a- shall apply to the publication of group or part-group accounts.

Section nine

Legal proceedings in respect of the annual
accounts and report

Article 220

1. One or more shareholders whose shares represent in total five per cent of the share capital or a nominal value of 100 000 units of account, or the representative of a body of debenture holders, may apply, setting out their reasons, to the court within whose jurisdiction the registered office is situate, if they consider that the presentation of the annual accounts or of the report, in so far as it reviews developments in the company's business and position during the previous financial year, does not comply with the requirements of this Statute, provided that their objections have been recorded in the Minutes of the General Meeting.

2. The application shall be made within three months, computed from the date of filing required under Article 219, paragraph 1.

3. The court may call on one or more experts to assist it in reaching its decision. Articles 203 and 206 shall apply to these experts.

4. Evidence shall be heard in chambers in the presence of both parties. The judgement of the court shall be published.

Article 220

1. unchanged

2. The application shall be made within three months, calculated from the date of publication in the Official Journal of the European Communities provided for in Article 219(2).

3. The court may call on one or more experts to assist it in reaching its decision. Articles 15(3), 203, 203-a, 203-b and 206 shall apply to these experts. The period referred to in Article 15(3) shall run from the date on which the judgement becomes final.

4. unchanged

Article 221

Article 221

1. Where the court upholds the application, it shall order precisely how the company is to rectify its annual accounts or its annual report. Such order may be of future application only.

1. unchanged

2. Where the order of the court relates to the balance sheet or the profit and loss account for the year in respect of which the application is made, these shall be deemed to be invalid. The company shall then draw up a new balance sheet or profit and loss account, with due regard to the terms of the order, and shall submit the same to the General Meeting within the time limit prescribed. The court may limit the consequences of the invalidity.

2. unchanged

3. Where the order is of future application only, the court may subsequently, on application by the company, rescind the order if the circumstances have changed.

3. unchanged

Article 222

Article 222

The provisions of this Section shall unchanged
apply to the consolidated accounts
and report of a group of companies and
of a part of a group of companies.

TITLE VII
GROUPS OF COMPANIES
Section 1

Definition and Scope

Article 223

1. A controlling company and one or more undertakings controlled by it, whether existing within the Member States or not, shall constitute a group within the meaning of this Statute if all of them are under the sole management of the controlling company and if one of them is an S.E.

Each of them is an undertaking within the group.

2. Where an undertaking is controlled by another within the meaning of Article 6, there is a presumption that the controlling company and the controlled undertaking constitute a group.

Compare Article 238 of the original draft.

Article 223

1. A controlling undertaking and one or more companies dependent on it shall constitute a group within the meaning of this Statute if all of them are under the unified management of the controlling undertaking and if one of them is an S.E.

Each undertaking within the group is known as a group undertaking.

2. If a company is controlled by another undertaking within the meaning of Article 6, there shall be a presumption that the controlling undertaking and the controlled company constitute a group.

3. For the purposes of this Title, "dependent group companies" are group undertakings which take the legal form of an S.E. or a

Article 223

3. Where all the shares of an undertaking formed under national law, being an undertaking within a group and having its registered office in a Member State, are held by an S.E., any provisions of national law which in these circumstances require the undertaking to be wound up shall not apply.

Article 223

company limited by shares, or a limited partnership.

4. In the following provisions of this Title, outside shareholders and the general meeting of a dependent company shall, if it is a company limited by shares, be outside holders of shares and the general meeting of the company.

5. If all the shares of a dependent group company which has been formed under the law of a Member State, are held by an S.E., any provisions of national law which require the company to be wound up for that reason shall not apply.

Article 224

1. Where the controlling company of a group is an S.E., Sections 3 to 5 of this Title shall apply to dependent undertakings whose registered offices are situate in the Member States and to their relationship with the controlling S.E.

2. Where an S.E. is a dependent undertaking, Sections 3 to 5 of this Title shall apply to the S.E. and to its relationship with the controlling company, whether the registered office of the controlling company is situate in the Member States or elsewhere.

Article 224

1. If the controlling undertaking of a group is an S.E., Sections 3 to 6 of this Title shall apply to dependent companies in the group which have been formed under the laws of Member States, and to their relationship with the controlling S.E.

2. If an S.E. is a dependent group company, Sections 3 to 6 of this Title shall without prejudice to paragraph 3 apply to the S.E. and to its relationship with the controlling undertaking without regard to where its registered office is situate.

3. If an S.E. is a dependent group company and other group companies which have been formed under the laws of Member States or as an S.E. are controlled through it (sub-group), Sections 3 to 6 of this Title shall apply also to those companies and their relationship with the S.E. The S.E. shall be considered as a controlling undertaking of a group with regard to the application of the provisions of this Title.

Article 225

1. An S.E. may apply to the Court of Justice of the European Communities for a declaration as to whether it is an undertaking within a group within the meaning of this Statute.

An undertaking formed under national law may likewise apply to the Court of Justice for a declaration as to whether it is a dependent undertaking within a group controlled by an S.E.

2. Where the S.E. or the undertaking formed under national law makes no application for a declaration pursuant to paragraph 1, the following persons shall be entitled to apply:

a) Shareholders who, if the undertaking were held to be dependent, would be outside shareholders and who hold between them either 5 per cent of the capital, after deducting the shares belonging to the undertaking held to be the controlling undertaking, if that be the case, or shares in the S.E. of a nominal value of not less than 50 000 units of account; or

Article 225

1. An S.E. may apply to the Court of Justice of the European Communities for a decision whether it is a group undertaking within the meaning of this Statute.

A company formed under the law of a Member State may likewise apply for a decision whether it is a dependent group company controlled by an S.E., and an undertaking formed under national law may apply for a decision whether it is a controlling undertaking of a group within the meaning of this Statute.

2. If the S.E. or the company formed under national law does not make an application for a decision under paragraph 1, the following persons shall be entitled to apply for such a decision to be made:

a) Shareholders of a company who, if it were held to be a dependent group company, would be outside shareholders of the company, and who between them hold at least 5% of the capital of the company (after deducting shares which belong directly or indirectly to any undertaking which may be held to be the controlling undertaking of the group, or which are attributable to such an undertaking under Article 6(4)), or

Article 225

b). Creditors of such a company if any undertaking which may be held to be a controlling company does not comply with the requirements of Article 239.

new

3. The Court of Justice shall give judgment after hearing evidence from the undertakings within the group. It shall, where appropriate, determine the date with effect from which the undertaking becomes an undertaking within the group.

4. Costs shall be a matter for decision by the Court of Justice.

Article 225

b) No change

3. The question whether a company is a dependent group company may also be brought before the Court by institutions, organizations or persons connected with this company who if this question were answered positively would be entitled to propose candidates for election to the Supervisory Board of an S.E. or to appoint members to the Group Works Council of an S.E.

4. No change

5. No change

Section 2

Publicity

Article 226

1. Where an S.E. becomes an undertaking within a group, it shall forthwith cause that fact to be registered in the European Commercial Register and to be announced in the company journals.

2. The same shall apply where an S.E. ceases to form part of a group.

Article 226

1. If an S.E. becomes a controlling or dependant undertaking within a group, it shall forthwith cause that fact with, where appropriate, the name of the controlling undertaking of the group to be registered in the European Commercial Register and to be published in the company journals.

2. No change

Article 227

1. An S.E. which is a controlling company shall draw up consolidated annual accounts and a report in accordance with the provisions of Title VI.

2. An S.E. which is a dependent undertaking through which other undertakings are controlled shall, in accordance with the provisions of Title VI, draw up part-consolidated annual accounts and a report, save where the controlling company of the group itself draws up accounts in accordance with the provisions of Title VI relating to preparation of the accounts of groups of undertakings.

Article 227

Deleted

Compare Article 196 of the amended draft.

Deleted

Section 3

Protection of outside shareholders

Article 228

1. Outside shareholders of a dependent undertaking having its registered office in the Member States may elect for:

a) Payment in cash pursuant to Article 229, or

Article 228

1. Within a reasonable time after a group of companies comes into existence or after a company is declared to be a dependent company within such a group by the Court of Justice of the European Communities, the controlling undertaking of the group shall make an offer to the outside shareholders of each dependent company:

a) where the controlling undertaking is an S.E. or a company limited by shares formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment or, in place of such a cash payment, to acquire such shares in exchange for shares or (convertible) debentures of the controlling company of the group. The offer may also give the outside shareholders the choice between a cash payment and an exchange of their shares.

Article 228

b) Exchange of shares pursuant to Article 230

2. Where the controlling company of a group has also undertaken in accordance with Article 231, to make annual payments calculated in relation to the nominal value of each share, outside shareholders may elect instead to receive such payments.

Article 228

b) where the controlling undertaking of the group is a company limited by shares not formed under the law of a Member State, to acquire the shares of the outside shareholders for an appropriate cash payment. The offer can also give the outside shareholders the choice between a cash payment and an exchange of their shares for shares or (convertible) debentures of the controlling company of the group.

2. In addition to making an offer under paragraph 1, the controlling undertaking of a group shall offer the outside shareholders the alternative option of annual equalization payments calculated in proportion to the nominal value of their shares in accordance with Article 231.

Article 229

1. Where the controlling company of a group is an S.E. it shall make an offer to the outside shareholders to purchase for cash the shares held by them in a dependent undertaking whose registered office is situate within the Member States.

2. A controlling company incorporated under national law, whether its registered office is situate within the Member States or not, shall be subject to the like obligation in respect of the outside shareholders of an S.E. over which it has control.

Article 229

1. Deleted

Deleted

Article 230

Article 230

1. Where the controlling company of a group is an S.E. it shall, in addition to making an offer to purchase for cash the shares of outside shareholders in a dependent undertaking whose registered office is situate in the Member States, offer to exchange those shares for shares in the capital of the S.E.

1. Deleted

2. The controlling company of a group, being a société anonyme incorporated under national law whose registered office is situate in the Member States, shall be subject to the like obligation in respect of the outside shareholders of a dependent S.E.

2. Deleted

3. If, in the cases referred to in paragraphs 1 and 2, the controlling company of a group is in turn a dependent of an S.E. or of a société anonyme incorporated under national law whose registered office is situate in the Member States, it may offer to exchange the shares of outside shareholders of an undertaking over which it has control not for shares in its own capital but for shares in the capital of the company by which it is itself controlled.

Deleted

Article 231

The controlling company of a group, whether its registered office is situate in the Member States or not, may also undertake to compensate outside shareholders of a dependent undertaking whose registered office is situate in the Member States by paying them an annuity in compensation calculated in relation to the nominal value of their shares.

Article 231

1. The controlling undertaking of the group shall, by its offer of an annual equalization payment according to Article 228(2), undertake to make yearly payments of an amount which, having regard to the previous earnings and the future prospects of the dependent group company, may be calculated as representing the average prospective earnings per share.

2a) If the controlling undertaking of a group is an S.E. or a company limited by shares formed under national law, it may without prejudice to sub-paragraph b) alternatively calculate such an annual equalization payment by reference to the earnings per share of the controlling company of the group. The ratio between the shares of the two companies shall for this purpose be calculated in the same way as for a share exchange in the case of a merger.

b) If the S.E. is the parent company of a sub-group, it can calculate the annual equalization payment according to paragraph 2 a) only by reference to the earnings per share of the group company that finally controls it provided that this company is an S.E. or a company limited by shares formed under national law.

Paragraph 2 a) last sentence applies.

Article 232

1. A dependent undertaking whose registered office is situate in the Member States shall, immediately upon becoming a member of a group or being held by the Court of Justice to be a member of a group, appoint independent experts and instruct them to prepare a report concerning the amount of the payment in cash and, where necessary, the share exchange ratio that are appropriate.

Article 15, paragraph 2, shall apply to such experts.

Article 232

1. Immediately after the controlling undertaking of a group has made an offer under Article 223, the Board of Management of the dependent group company in the group shall appoint one or more independent experts and instruct them to prepare a report for the outside shareholders on the appropriateness of the offer.

Article 15(2) and (3) shall apply in respect of the experts. The time limit referred to in Article 15(3) shall run from the date of the notice under Article 234(2).

2. Upon an application by one or more outside shareholders of the dependent group company who alone or together hold either 5% of its capital (after deducting shares which belong directly or indirectly to the controlling company of the group or are attributable to it under Article 6(4)), the court in whose jurisdiction the registered office of the dependent group company is situate may appoint one or more experts if it appears that the independence of the experts has not been sufficiently established.

Article 232

3. In their report the experts shall in particular state whether, in their opinion, the offer is fair or not. The statement of their opinion shall set out on the following matters at least:

- a) where a cash offer is made under Article 228(1), the amount of the net assets of the company, based on their current values; the earnings of the company, having regard to its future prospects; and the criteria employed for valuing such net assets and determining such earnings;
- b) where an exchange is proposed under Article 228(1), the ratio between the net assets of the companies concerned, based on their current values; the ratio of the respective earnings of the companies, having regard to their future prospects; and the criteria employed for valuing such net assets and determining such earnings;
- c) where an annual equalization payment under Article 231(1) is proposed, the factors entering into the calculation of the average earnings per share;
- d) where an equalization payment under Article 231(2) is proposed, the same information as under b) of this paragraph.

Article 232

2. The experts shall be entitled to obtain any information from the dependent undertaking and from the controlling company and to undertake any investigations that may be necessary.

Article 232

4. Attention shall also be drawn in the report to any difficulties encountered in the course of valuation.

5. The experts shall be entitled to obtain any relevant information from the dependent and controlling undertakings in the group and to undertake any investigations that may be necessary.

Article 233

1. Upon completion of their investigations, the experts shall deliver their report to the dependent undertaking.

2. The dependent undertaking shall forthwith forward the report to the controlling company.

3. Within a reasonable period after receiving the report, the controlling company shall inform the dependent undertaking of its proposals concerning the amount of the payment in cash and, where necessary, the share exchange ratio, indicating at the same time whether it intends to make payment of annuities in compensation.

4. The management organs of the dependent undertaking shall prepare for the benefit of its shareholders a summary of the experts' report, setting out the results of the investigations undertaken and the main facts and circumstances on which the results are based. The said organs shall comment on the report and its conclusions. They may make proposals, stating their reasons, concerning the amount of the payment in cash and the share exchange ratio that they consider appropriate.

Article 233

Deleted

Deleted

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The Board of Management of the dependent group company shall draw up a report in which it shall comment on the report made by the experts under Article 232 and its conclusions. The Board of Management may make its own proposals, stating its reasons as to the amount of the payment in cash or the share exchange ratio and as to the amount of the annual equalization payment that they consider appropriate.

Article 234

1. The competent organ of management in the dependent undertaking shall within a reasonable period convene a General Meeting to decide on the amount of the payment in cash and, where necessary, the share exchange ratio.

2. The notice convening the meeting shall be accompanied by the controlling company's proposals concerning the amount of the payment in cash and, where appropriate, the share exchange ratio and, further, where appropriate, the amount of the annuity in compensation. Any proposals made by the organs of management shall also be sent to the shareholders.

3. There shall appear in the notice convening the meeting a note to the effect that shareholders are entitled to obtain free of charge on request a summary of the experts' report, the management organs' comments thereon and, if appropriate, a memorandum on the proposals made under paragraph 2.

Article 235

1. The Board of Management of the dependent group company shall convene a General Meeting of the company to decide whether the offer made by the controlling undertaking of the group should be accepted. At least one month's notice shall be given of the meeting.

2. The notice convening the meeting shall be accompanied by the proposals of the controlling undertaking of the group. Any proposals made by the Board of Management of the dependent company shall also be sent with the notice.

3. There shall be included in the notice convening the meeting a note to the effect that shareholders are entitled to obtain on request and free of charge copies of the experts' report, the report thereon of the Board of Management of the dependent company. Attention shall at the same time be drawn to the fact that resolution concerning the offer may be challenged under the conditions set out in Article 236, only by shareholders who vote against the resolution at the General Meeting and cause their opposition to be recorded in the minutes.

Article 235

1. When the proposed cash offer and share exchange ratio are put to the vote, shares held by the controlling company or attributable to it in accordance with Article 6, paragraph 4, shall be disregarded.

2. A majority of three-quarters of the capital entitled to vote pursuant to paragraph 1 and represented at the General Meeting shall be required in order for the vote to be decisive. Non-voting shares shall be counted in calculating the majority. They shall carry the right to vote.

Article 235

1. When the offer made under Article 228 is put to the vote, no votes shall be cast in respect of shares which are held directly or indirectly by the controlling undertaking of the group, or which are attributable to it in accordance with Article 6(4).

2. A resolution in respect of the offer shall be effective only if supported by the holders of three-quarters of the shares whose holders are entitled to vote pursuant to paragraph 1. Non-voting shares shall carry the right to vote, and shall be counted in calculating the majority.

3. The provisions of Article 24(3) and (4) shall apply.

Article 236

1. If the General Meeting rejects the proposals of the controlling company, the amount of the payment in cash and, where appropriate, the share exchange ratio shall, on application by the controlling company, be determined, without right of appeal, by the court within whose jurisdiction the registered office is situate. Such application shall be made within one month of the decision of the General Meeting.

2. The same shall apply if the resolution of the General Meeting to accept the controlling company's proposals is challenged. The action brought for this purpose shall be in respect only of the question whether the proposed cash payment or share exchange ratio is equitable and shall lie only on the part of outside shareholders who voted against the resolution at the Meeting and caused their opposition to be recorded in the Minutes, and who hold between them not less than 20 per cent of the capital entitled to vote pursuant to Article 235.

Article 235

1. If the General Meeting wholly or partly rejects the proposals made under the mandatory provisions of Article 228, the terms of the offer to which such rejection relates shall be determined, without right of appeal, by the court within whose jurisdiction the registered office is situate. An application for such a determination shall be made by the controlling undertaking of the group within one month after the decision of the General Meeting. If an application is not made within that period by the controlling undertaking of the group, an application may be made within a further month by any shareholder of the dependent group company at the expense of that company.

2. If the General Meeting accepts the proposals of the controlling undertaking of the group, the resolution passed by it may only be challenged on the ground that the cash payment, the share exchange ratio or the annual equalization payments are not fair and reasonable. Such application shall be made within one month of the decision of the General Meeting of the Court within whose jurisdiction the registered office is situated. An action challenging the resolution on this ground may be brought only by any outside shareholders who voted against a resolution at the General Meeting and caused their opposition to be recorded in the Minutes, and who together hold not less than 20 per cent of the shares whose holders are entitled to vote pursuant to Article 235. If the offer is not fair and reasonable, its terms shall be determined by the Court without right of appeal.

Article 236

3. The court may, at the expense of the dependent undertaking, appoint independent experts who satisfy the conditions prescribed by Article 15, paragraph 2. Article 232, paragraph 2, shall apply.

Article 236

3. The court may appoint independent experts at the expense of the dependent group company. The provisions of Article 15(2) and (3) and Article 232(5) shall apply to such experts. The period referred to in Article 15(3) shall run from the date on which the decision of the court takes effect.

Article 237

1. The competent organ of management in the dependent undertaking shall give notice in the company journals of the amount of the payment in cash and of the ratio of exchange of shares within two months of the passing of the resolution by the general meeting or, where Article 236 applies, within one month of the giving of judgment by the court. At the same time, it shall give notice in the company journals of any undertaking by the controlling company to pay annuities in compensation to outside shareholders pursuant to Article 231, and of the terms of such undertaking.

2. Every outside shareholder of the dependent undertaking shall be entitled to require payment in cash or, if appropriate, exchange of his shares within three months of publication of the final notice in the company journals.

3. The undertakings within the group shall be jointly and severally liable in respect of payment in cash. The controlling company shall be liable in respect of exchange of shares.

Article 237

1. The Board of Management of the dependent group company shall, within two months after the passing of the resolution by the general meeting, or, where Article 236 applies, within one month of the judgment of the court, publish in the company journals the amount of the payment in cash, the amount of the annual equalization payments and the terms of such payments and, where appropriate, the share exchange ratio. Where the dependent group company is a company formed under the law of a Member State, company journals within the meaning of this Title refer to the official Journal for the publication of matters relating to companies of the Member State concerned.

2. Every outside shareholder of the dependent group company shall be entitled to require payment in cash or, if appropriate, the exchange of his shares within three months of publication of the latest notice in the company journals.

3. No change

Article 237

4. Where the controlling company has undertaken to pay annuities in compensation pursuant to Article 231, payment thereof shall be made to outside shareholders who have not exercised their right under paragraph 2.

5. New

Article 237

4. Outside shareholders who do not exercise their rights under paragraph 2 shall be entitled to receive annual equalization payments.

5. The group undertakings concerned shall be jointly and severally responsible for payment of the annual equalization payments.

Article 238

The provisions of this Section shall apply to dependant undertakings existing as sociétés à responsabilité limitée. References to outside shareholders and to the General Meeting shall be read as if there were substituted therefor references to outside members and the meeting respectively.

Article 238

Deleted, compare Article 223(3) of the amended draft.

Section 4

Buying-out of outside shareholders

Article 238-a-

1. If the controlling undertaking of a group, taking into account shares attributable to it under Article 6(4), directly or indirectly acquires 90% or more of the capital of a dependent group company, it may, without prejudice to Article 238 b and in accordance with the provisions of Article 228(1), require the outside shareholders to transfer their shares to it for a cash payment or by way of exchange. The provisions of Articles 232 to 236 and Article 237(1) shall then apply. Upon the latest notice in the company journals being given under Article 237(1), the shares of the outside shareholders shall become the property of the controlling undertaking of the group. The certificates relating to such shares shall, until they have been delivered to the controlling undertaking, entitle their holders only to receive the cash payment or share exchange.

2. The controlling undertaking of the group shall forthwith notify its acquisition of the percentage, referred to in paragraph 1 of the capital of

Article 238-a-

the dependent group company to that company. The Board of Management of the dependent group company shall publish such notification in the company journals.

3. When a notification has been published under paragraph 2, every outside shareholder of the dependent group company shall be entitled to require that his shares shall be acquired by the controlling undertaking of the group. That undertaking shall, except in cases governed by Article 238-b-, make an offer in accordance with Article 228(1). In so doing, the controlling undertaking shall state whether and on what terms the shares of other outside shareholders have been bought by it in application of this paragraph during the year preceding the offer. If the outside shareholder rejects the offer, the amount of the cash payment or the ratio for the exchange of shares shall, upon an application being made by the outside shareholder, be determined by the court within whose jurisdiction the registered office of the dependent company is situate. Such an application shall be made within one month after the receipt of the offer. Article 236(3) shall apply. The decision of the court shall be published by the Board of Management of the dependent group company in the company journals.

Article 238-b-

1. Where, at the expiration of the period referred to in Article 237(2), the controlling undertaking of a group (taking into account shares attributable to it under Article 6(4)), has directly or indirectly acquired 90% or more of the capital of a dependent group company, it may require the outside shareholders of the dependent company to transfer their shares to it in consideration of cash or by way of an exchange of shares upon the terms which have been published pursuant to Article 237(1). It shall, within one week after the expiration of the period referred to in Article 237(2), notify the dependent group company whether it intends to exercise this right or not.

2. The Board of Management of the dependent group company shall forthwith cause the notification to be published in the company journals, with details of the amount of the cash payment or the ratio for the exchange of shares.

3. If the controlling undertaking of the group notifies its desire to acquire the shares of the outside shareholders, those shares shall, upon the latest publication of its notification in the company journals under paragraph 2, become the property of the controlling undertaking. The last sentence of Article 238-a(1) shall apply.

Article 238-b-

4. If the controlling undertaking of the group notifies its intention not to exercise the right to acquire the shares of outside shareholders, every outside shareholder shall be entitled during the period of one month following publication under paragraph 2 to require that his shares shall be acquired by it for cash or by way of an exchange of shares upon the terms published.

Section 4

Protection of creditors

Article 239

1. A controlling company, whether its registered office is situate in the Member States or not, shall be jointly and severally liable, for the obligations of a dependent undertaking whose registered office is situate in the Member States.

2. Proceedings may, however, be brought against the controlling company only where the creditor proves that he has endeavoured, and failed, to obtain payment of his debt from the dependent undertaking.

Section 5

Protection of creditors

Article 239

1. The controlling undertaking of a group shall be liable for the debts and liabilities of dependent group companies.

2. Nevertheless, proceedings may be brought against the controlling undertaking of a group only where the creditor has first made a written demand for payment from the dependent group company and failed to obtain satisfaction.

Section 5

Instructions

Article 240

Where the protection provided for in Section 3 has been accorded in conformity with the procedure prescribed therein, the organ appointed to represent a dependent undertaking shall not refuse to carry out the instructions of its controlling company whose registered office is situate in the Member States on the grounds that they would be contrary to the interests of the dependent undertaking.

Section 6

Instructions and liability

Article 240

1. From the time of the publication of the latest notice in the company journals of the dependent group company as provided under Article 237(1), the controlling undertaking of a group may issue instructions to the Board of Management of a dependent group company and these instructions shall be complied with by the Board of Management.

2. If the controlling undertaking in the group is an S.E. and issues instructions to the Board of Management of a dependent group company in respect of a transaction, and the latter may by law or under its statutes only enter into such transaction with the consent of its Supervisory Board, the instructions, if such consent is refused, may only be complied with by the Board of Management of the dependent company, if consent to the instruction is obtained from the Supervisory Board of the S.E.

Article 240

3. If the controlling undertaking of a group is an undertaking formed under national law, the powers vested in the Supervisory Board of a dependent group undertaking which is an S.E. under Article 66, shall remain unaffected, unless the employees of the S.E. and of the other group companies controlled through the S.E. are represented on the governing bodies of the controlling undertaking of the group in a manner equivalent to that in which they are represented under the rules governing the S.E.

Artikel 240-a-

In exercising their right to issue instructions under Article 240, members of the Board of Management of a controlling undertaking of a group shall exercise the standard of care required of a conscientious manager and shall promote the interests of the group and of its personnel.

Article 240-b-

1. In exercising their rights to issue instructions under Article 240, the members of the board of management of a controlling company in a group shall be liable to the dependent group company for any damage resulting from failure by them to carry out their obligations under Article 240-a-. Articles 71(2) to (5) and 81(2) to (4) shall apply accordingly.

2. Proceedings in respect of any such liability may be brought in the name and on behalf of the dependent group company by:

(a) one or more outside shareholders of the dependent group company who alone or together hold 5 % of the capital of the company, after deducting capital belonging directly or indirectly to the controlling undertaking of the group or attributable to it under Article 6(4). For these purposes the shareholders, if there is more than one of them, shall appoint a special representative who shall be empowered to conduct the proceedings;

(b) any liquidator or trustee in bankruptcy of the dependent group company.

3. Article 72(6) shall apply accordingly.

Article 240-c-

The members of the Board of Management of a dependent group company shall not be liable to that company for damages arising from acts or omissions by them consequent on the instructions of the controlling undertaking of the group given in accordance with article 240. They shall have the burden of proving that any such acts or omissions were consequent on the instructions of the controlling undertaking of the group.

Section 7

Special rules regarding group relationships in existence prior to the formation of the S.E.

Article 240-d-

1. If a company which is a dependent group company of one of the founder companies of the S.E. becomes, after the formation of the S.E., a dependent group company of the S.E., the S.E. shall cause that fact, with the name of the company concerned, to be registered in the European Commercial Register and shall publish those matters in the company journals together with the notification to be given under Article 226.
2. The S.E. need not apply the provisions of Sections 3 and 5 where the existence of a dependent group company is notified by it in accordance with paragraph 1. It shall, however, within 18 months after the formation of the S.E. offer to the outside shareholders of that company an annual equalization payment in accordance with Article 231. The provisions of Articles 232 to 237 shall then apply.
3. The S.E. shall not later than 6 years after its formation offer to the outside shareholders of a dependent company whose existence is notified by it under paragraph 1, an appropriate cash payment or an exchange of shares under Article 228(1). The provisions of Articles 232 to 237 shall then apply.

Article 240-d-

4. The provisions of Section 4 shall not apply until the proceedings referred to in paragraph 3 of this Article have been completed.

5. Liability in accordance with Article 239 shall apply in respect of all debts and liabilities of a dependent group company whose existence is notified under paragraph 1 if such debts and liabilities arise after the formation of the S.E.

6. The right to issue instructions under Article 240 may be exercised after the annual equalization payment referred to in paragraph 2 of this article has been ascertained in accordance with the procedure therein prescribed. From this time, the rules as to liability contained in Article 240-a, -b and -c shall also apply.

TITLE VIII

ALTERATION OF THE STATUTES

Article 241

Any alteration of the Statutes shall be effected by resolution of the General Meeting.

Article 241

1. Any alteration of the Statutes shall require a resolution of the General Meeting (x)
2. Proposals by the Board of Management for alterations of the Statutes require the approval of the Supervisory Board. The Board of Management shall state the reasons for its proposals in a report to the General Meeting.

(x) This modification concerns only the English text

Article 242

1. The substance of a proposed alteration of the Statutes shall be specified in the agenda of the meeting issued under Article 84.

2. As soon as notice of the General Meeting has been given, the shareholders may apply to the company for the complete text of the proposed alteration to be supplied to them immediately and free of charge. A note to this effect shall appear in the notice of the meeting.

3. The Board of Management shall set out in a report the reasons for its proposed alteration of the Statutes. Paragraph 2 shall also apply to the report.

Article 242

2. The agenda of the meeting shall state the proposed alteration of the Statutes.

2. As soon as the convening notice of the General Meeting has been given, any shareholder may require the company to provide him with a copy of the complete text of the proposed alteration, and of any report thereon by the Board of Management, free of charge. A note to this effect shall be included in the convening notice.

3. Deleted

Article 243

1. The General Meeting may be duly held only if not less than one half of the capital is represented. If the first notice of meeting fails to produce such quorum, a second shall be issued. The General Meeting may then be duly held irrespective of the amount of capital presented. A note to this effect shall appear in the notice of meeting.

2. Resolutions shall be duly passed if three-quarters of the votes validly cast are in favour thereof.

3. The Statutes may impose more stringent requirements.

Article 243

1. The General Meeting may be duly held only if not less than one half of the capital is represented. If the first convening notice fails to produce such quorum a second notice shall be issued. The General Meeting may then be duly held irrespective of the amount of capital represented. A note to this effect shall appear on the convening notice. (*)

2. Resolutions shall be duly passed only if at least three-quarters of the votes validly cast are in favour thereof. The Statutes may require a greater majority.

3. Deleted

(*) This modification concerns only the English text.

Article 244

Article 244

1. The alteration of the Statutes shall be notified by the Board of Management to the Court of Justice of the European Communities for registration in the European Commercial Register.

1. Unchanged

2. The notification shall be accompanied by two authenticated copies of:

2. Unchanged

- a) the minutes of the General Meeting and of the annexes prescribed by Article 94, relating to the alteration of the Statutes;
- b) the complete text of the Statutes as altered.

Article 245

1. The Court of Justice of the European Communities shall satisfy itself that the meeting was properly held, that the resolutions were validly passed and that where the capital has been increased it has been paid up in full, save where the increase is by way of creation of new capital within the meaning of Article 41, paragraph 3.

2. The Court of Justice of the European Communities shall refuse registration in the European Commercial Register where:

a) the resolution or the proceedings were not in accordance with the provisions of this Statute or of the Statutes of the company;

b) in the case of an increase of capital it does not appear from the auditors' report that payment up in full is certain or, in particular, that the value of subscriptions in kind is at least equal to the nominal value of the shares to be allotted in exchange.

Article 245

1. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolutions for the alteration of the Statutes were properly held and validly passed.

2. The Court of Justice shall refuse to register an alteration of the Statutes in the European Commercial Register if the resolution for the alteration was not in accordance with the provisions of this Statute or of the Statutes of the company.

3. The Court of Justice may allow the SE to supplement or correct its application and the supporting documents.

Article 245

Corresponds to art. 246 (1)
of the original proposal

Article 245

4. If the Court of Justice finds no reason to refuse or to defer registration, it shall order the alteration of the Statutes to be registered in the European Commercial Register, to which office it shall duly pass the application and supporting documents.

5. Notice of registration of the alteration shall be published in the company journals.

Article 246

Article 246

1. Where the Court of Justice finds no grounds for refusing or postponing registration, it shall order that the alteration of the Statutes be registered in the European Commercial Register and shall forward to the Register the notification and the annexed documents.

Deleted:

2. Notice of registration of the alteration shall be published in the company

Deleted:

3. Until notice of registration of the alteration of the Statutes has been published in the company's journals, the alteration shall not be relied on to defeat the claims of third parties unless the company proves that they had knowledge thereof.

Deleted

TITLE IX

DISSOLUTION, LIQUIDATION, BANKRUPTCY AND
RELATED PROCEEDINGS

Section 1

Dissolution

Article 247

An S.E. should be wound up

- a) by resolution of the General Meeting;
- b) on expiration of the period for which the company was formed as specified in its Statutes;
- c) in the circumstances referred to in Article 249, paragraph 4; or
- d) on declaration of insolvency of the S.E.

Article 247

An S.E. is dissolved

- a) unchanged
- b) on expiry of the period for which the company was formed as specified in the Statutes; *)
- c) on the occurrence of the ground for dissolution referred to in Article 249(4);
- d) on the institution of bankruptcy or similar proceedings in respect of the S.E., or where an adjudication of bankruptcy is refused by a court owing to insufficiency of assets;
- e) on a court order being made under Article 99 of this Statute.

- *) This modification concerns only the English.

Article 248

A resolution under paragraph a) of Article 247 shall comply with the requirements relating to resolutions for alteration of the Statutes.

Article 248

1. A resolution of the General Meeting to dissolve the S.E. shall fulfil the requirements for alteration of the statutes.
2. The Board of Management shall consult the European Works Council before the General Meeting resolves on dissolution.
3. The General Meeting may resolve on dissolution only if the views of the European Works Council have been made known, unless the Council shall have failed to express any views within a reasonable period of its being consulted by the Board of Management.

Article 248-a-

1. If the European Works Council considers that employees' interests will be adversely affected by dissolution of the S.E., the Board of Management shall open negotiations with the Council before the General Meeting resolves, in order to reach agreement on the steps to be taken with regard to employees (social plan)
2. Agreement reached on a social plan shall be recorded in writing and shall have the effect of an agreement pursuant to Article 127.
3. The Board of Management shall advise the General Meeting and the Supervisory Board of the outcome of negotiations on the social plan. The European Works Council may similarly put forward its opinion thereon.
4. If no agreement is achieved on the social plan and if the General Meeting resolves in favour of dissolution, the European Works Council or the S.E.'s liquidators may within one month invoke the arbitration board referred to in Article 128. The arbitration board shall specify the steps to be taken with regard to employees upon liquidation.

Article 249

1. If losses shown in the books reduce a company's net assets below half its share capital, the General Meeting convened for the purpose of considering the annual accounts pursuant to Article 84 shall decide whether the company should be wound up. Where this item is included in the agenda, the Board of Management shall expressly make known its opinion on the question of winding up in a special report approved by the Supervisory Board and referred to in the agenda. Any person entitled to attend the General Meeting may apply for a copy of this report to be sent to him free of charge fifteen days before the date of the meeting.

2. If it is decided not to wind up the company, its share capital shall be reduced within not more than two years from the date of the General Meeting referred to in paragraph 1 by an amount at least equal to the loss incurred, unless its net assets have in the meantime increased to an amount equal to not less than half of the capital. A reduction of the capital

Article 249

1. If losses entered in its books of account result in the value of the company's net assets being shown as less than half the amount of its capital, the General Meeting convened for the purpose of considering the annual accounts under Article 84 shall decide whether the company shall be dissolved. This matter shall be included in the agenda; the Board of Management shall state its opinion on the matter explicitly in a special report, on which the Supervisory Board shall give a reasoned opinion.

Any interested person may apply for a copy of this report to be sent to him free of charge not later than 15 days before the date of the meeting. A note to this effect shall appear in the convening notice.

2. If it is decided not to dissolve the company, its capital shall, not later than two years after the date of the General Meeting referred to in paragraph 1, be reduced by an amount at least equal to the loss incurred, unless its net assets have in the meantime increased to an amount equal to not less than half of its capital. The capital may be reduced to less than the

Article 249

below the minimum level prescribed by Article 4 may be effected, however, only where an increase in the capital to the level prescribed by that Article is effected simultaneously. The Board of Management shall forthwith notify the European Commercial Register of the date on which the said two-year period will expire.

3. In each case the General Meeting shall pass its resolutions in accordance with the provisions which apply to alteration of the Statutes.

4. If a General Meeting has not been held, or if it has been unable within the period prescribed by paragraph 2 to pass valid resolutions either for winding up the company or for reducing its capital under the conditions hereinbefore contained, the company shall at the end of the two-year period prescribed by paragraph 2 automatically be dissolved.

Article 249

minimum amount prescribed under Article 4, however, only if an increase in the capital to the amount prescribed under the said Article is effected simultaneously. The Board of Management shall forthwith notify the European Commercial Register of the date on which the said two-year period shall expire. m)

3. The General Meeting shall in each case pass its resolutions in accordance with the provisions applying to alteration of the statutes. m)

4. If a General Meeting has failed to decide within the period prescribed under paragraph 2 either to dissolve the company or to reduce its capital in the manner prescribed in paragraph 2, the company shall at the end of such period automatically be dissolved.

m) These modifications concern only the English text.

Article 250

Article 250

1. In the cases referred to in Article 247, b) and c), the Board of Management shall, for the purpose of registration, immediately notify the European Commercial Register of the winding up of the company and give notice in the company journals.

2. If the requirements of the preceding paragraph are not complied with before the expiration of two weeks following the winding up, any person concerned may apply to the court in whose jurisdiction the registered office is situated for an order that the winding up be registered in the European Commercial Register, and that notice be given at the company's expense.

1. A resolution passed by a General Meeting to dissolve the company shall immediately be notified by the Board of Management to the Court of Justice of the European Communities for registration in the European Commercial Register. Article 244 2a) and 245 shall apply correspondingly.

2. In the cases referred to in Article 247 b) and c), the liquidators shall immediately notify the European Commercial Register of the dissolution for registration thereof. If such notification is not made within 2 weeks, any interested person may apply to the court in whose jurisdiction the registered office of the company is situated for an order that the dissolution be registered in the European Commercial Register.

Notice of the registration of the dissolution shall be published in the company journals.

Section 2

Liquidation

Article 251

1. Save in the event of a declaration of insolvency, winding up of the company shall be followed by liquidation which shall be carried out in accordance with the provisions of this Section.

2. Unless otherwise required by the provisions of this Section and in so far as the provisions thereof are not inconsistent with the purpose of the liquidation, S.E.'s that are being wound up shall, until the liquidation is completed, continue to be subject to the same provisions as S.E.'s which are not being wound up.

3. The provisions relating to the powers and duties of the members of the Board of Management shall, for purposes of the liquidation, apply to the liquidators. The liquidators shall be subject to control by the Supervisory Board.

Article 251

1. Except in the event of the institution of bankruptcy proceedings, the dissolution of a company shall be followed by its liquidation, which shall be carried out in accordance with the provisions of this Section. x)

2. Unless otherwise required by the provisions of this Section and in so far as such provisions are not inconsistent with the purpose of the liquidation, S.E.'s which are in liquidation shall, until the liquidation is completed, continue to be subject to the same provisions as S.E.'s which are not in liquidation. x)

3. The provisions relating to the powers and duties of the members of the Board of Management shall, for the purpose of the liquidation, apply to the liquidators. The liquidators shall be subject to supervision by the Supervisory Board. x)

x) These modifications concern only the English text.

Article 252

1. On winding up the powers of the Board of Management shall cease. The members of the current Board of Management shall carry out the liquidation unless other persons are appointed as liquidators by the General Meeting.
2. On the application of one or more shareholders holding between them either 5 per cent of the share capital or shares of a nominal value of 100 000 units of account, the court in whose jurisdiction the registered office is situate may, where serious grounds exist, remove the liquidators and appoint others in their place.
3. The General Meeting may at any time remove the liquidators and appoint others in their place.
4. The General Meeting shall determine the amount of the liquidators' fees. If the liquidators are appointed by the court under paragraph 2, the amount of their fees shall be determined by the court.

Article 252

1. On the dissolution of an S.E. the powers of the Board of Management shall cease. The members of the Board of Management holding office at that time shall carry out the liquidation, unless other persons are appointed as liquidators by the General Meeting.
2. On the application of shareholders who individually or together hold either 5% of the capital of the company or shares of a nominal of 100 000 units of account, the court in whose jurisdiction the registered office of the company is situate may, if there are serious reasons for doing so, appoint one or more additional liquidators, or replace one or more existing liquidators.

Where the court orders the dissolution of the company under Article 99 or orders that its dissolution be registered under Article 250(2), it shall itself appoint the liquidators.

3. The General Meeting may at any time remove liquidators not appointed by the court and appoint others in their place.
4. The General Meeting shall determine the amount of the liquidators' remuneration. If the liquidators are appointed by the court under paragraph 2, the amount of their remuneration shall be determined by the court. *)

*) This modification concerns only

Article 253

Notice of the appointment or removal of liquidators shall be given to the European Commercial Register for the purpose of registration and be published in the company journals. Article 65 shall apply.

Article 253

Notice of the appointment or removal of liquidators shall be given by them to the European Commercial Register for the purpose of registration, and shall be published in the company journals. Article 65 shall apply correspondingly.

Article 254

The liquidators shall terminate work in progress, collect in the debts, convert the remaining assets into cash and pay off the creditors. If necessary for the purposes of the liquidation, they may enter into new commitments.

Article 254

The liquidators shall terminate transactions pending, collect debts, convert remaining assets into cash, where this is necessary for their realization, and pay the sums owing to creditors. The liquidators may undertake new transactions to the extent necessary for the purposes of liquidation.

Article 255

1. Making specific reference to the winding up of the company, the liquidators shall invite the creditors to submit their claims. Notice for this purpose shall be published in the company journals on three occasions, with an interval of not less than two weeks between each.

2. Every creditor known to the company who has failed to present his claim within three months of the date of the final notice shall, in manner required by his national law, be invited in writing to do so.

3. Claims which are not presented within one year of the date of the final notice shall be extinguished. Express notice to this effect shall be given in the notices published pursuant to paragraph 1 and in the written invitation pursuant to paragraph 2.

Article 255

1. The liquidators shall invite the creditors of the company to submit their claims and shall make specific reference to the fact that the company is in liquidation. Notice for this purpose shall be published in the company journals on three occasions, with an interval of not less than two weeks between each. *)

2. Every creditor known to the company who fails to present his claim within three months of the date of the final publication of the notice shall be invited by registered letter to do so.

3. Claims that creditors fail to present within one year after the date of the last publication of the notice in the company journals shall cease to be enforceable against the company. Express notice to this effect shall be given in the ^{last} notice published in accordance with paragraph 1 and in the written invitations issued in accordance with paragraph 2.

*) This modification concerns only the English text.

Article 256

1. The liquidators shall lay before the General Meeting annual accounts in respect of their activities.

2. The provisions of the first seven sections of Title VI concerning the preparation of accounts, of Article 218 concerning the release from liability of the members of the Board of Management and of the Supervisory Board, and of Article 219 concerning the publication of annual accounts shall apply to the annual accounts of the liquidators.

Article 256

1. The liquidators shall lay annual accounts in respect of the liquidation before the General Meeting. *)

2. The provisions of the first seven sections of Title VI concerning the preparation of accounts, and of Article 219 concerning the publication of annual accounts shall apply to the annual accounts of the liquidators.

*) This modification concerns only the English text.

Article 257

1. Assets remaining after discharge of the liabilities shall be distributed amongst the shareholders in proportion to the nominal value of their shares.

2. Where a liability cannot be discharged for the time being, or is disputed, a distribution of assets may be made only if security is given in favour of the creditor or if the assets remaining after a partial distribution constitute adequate security.

Article 257

1. Assets of the company remaining after discharge of its liabilities shall be distributed amongst the shareholders in proportion to the nominal value of their shares unless the statutes confer different rights in a distribution.

2. unchanged

Article 258

1. A complete or partial distribution of assets shall not be made until accounts prepared in accordance with Article 256, together with a scheme of distribution drawn up after the end of the one-year period prescribed by Article 255, paragraph 3, have been presented to the General Meeting, and a further three months have elapsed after filing of the annual documents and scheme of distribution in the European Commercial Register during which no proceedings have been commenced in the court within whose jurisdiction the registered office is situate. The same shall apply where any such proceedings have been dismissed by the court.

2. Notwithstanding the provisions of Article 220, any person interested may bring such proceedings provided that they relate to the scheme of distribution.

Article 258

1. No complete or partial distribution of assets of the company shall be made until accounts prepared in accordance with Article 256, together with a scheme of distribution drawn up after the end of the one-year period prescribed under Article 255 have been laid before the General Meeting, and until a further three months have elapsed after filing of such annual accounts and the scheme of distribution with the European Commercial Register without proceedings in respect of the distribution having been commenced in the court within whose jurisdiction the registered office is situate or having been dismissed by such court. *)

2. Any shareholder or creditor of the company may bring proceedings under the foregoing paragraph provided that they relate to the scheme of distribution.

*) This modification concerns only the English text.

Article 259

1. Upon completion of the liquidation the liquidators shall forthwith give notice thereof to the European Commercial Register for the purpose of registration and in the company journals.

2. If further action in respect of the liquidation shall thereafter become necessary, the court within whose jurisdiction the registered office is situate shall, on the application of the shareholders or of a creditor, renew the mandate of the former liquidators or appoint other liquidators.

Article 259

1. Upon completion of the liquidation, the liquidators shall forthwith give notice thereof to the European Commercial Register for the purpose of registration and publish it in the company journals. *)

2. If further steps in connection with the liquidation thereafter become necessary, the court within whose jurisdiction the company's registered office is situate shall, on the application of any shareholder or creditor, renew the mandate of the former liquidators or appoint other liquidators. *)

*) These modifications concern only the English text.

Article 260

Article 260

1. Following the liquidation, the books and records of the S.E. shall be lodged within the European Commercial Register for retention there for ten years.

1. unchanged

2. The Court of Justice of the European Communities may authorize shareholders and creditors to examine such books and records.

2. unchanged

Article 260-a-

1. Where an S.E. is dissolved by a resolution of the General Meeting, the General Meeting may, at any time before the distribution of assets among the shareholders has begun, resolve that the company shall continue in existence. Such a resolution must fulfil the requirements for alterations to the Statutes.

2. The liquidators shall notify the continuation of the company to the Court of Justice of the European Communities for registration in the European Commercial Register.

Articles 244(2) and 245 shall be of corresponding application.

Article 260-b-

Where an S.E. is dissolved by reason of the expiration of the period for which it was formed, the company may, at any time before the distribution of assets among the shareholders has begun, be continued in existence by means of an alteration of the Statutes.

Section 3

Insolvency and
similar procedures

Bankruptcy, winding-up,
arrangements, compositions and
similar proceedings

Article 261

Article 261

An S.E. shall be subject to any
Convention that may be concluded
between the Member States in respect
of bankruptcy, arrangements with
creditors and similar proceedings.

An S.E. shall be subject to the
Convention on bankruptcy, winding-up,
arrangements, compositions and similar
proceedings to be concluded among the
Member States.

Article 262

For the purpose of application of the regulations relating to jurisdiction which are contained in any convention concluded between the Member States in respect of insolvency, arrangements with creditors and similar procedures, the business of an S.E. shall always be deemed to be carried on from the registered office specified in its Statutes.

Article 262

deleted

Article 263

1. The syndic appointed upon the insolvency of an S.E. shall ensure that the order made at the commencement of insolvency proceedings is registered in the European Commercial Register before it is published in the Official Gazette of the European Communities and in the company journals. The entry in the Register shall include the particulars required by any convention concluded between the Member States in respect of insolvency, arrangements with creditors and similar procedures.

2. The syndic shall also notify the European Commercial Register of decisions made pursuant to any such convention.

1. The opening of bankruptcy proceedings or proceedings for arrangement or composition or similar proceedings in respect of the assets of the S.E. shall be notified for registration in the European Commercial Register by the administrator in bankruptcy or other person appointed to conduct the proceedings.

Registration shall comprise :

- a) the nature of the proceedings, the date of the order, and the court making it;
- b) the date on which payments were suspended, if included the court order
- c) the name and address of the administrator, trustee, receiver, liquidator or any other person vested with the powers of ^{an} administrator in bankruptcy or of each of them where there are more than one;
- d) any other information considered necessary.

2. The administrator shall further notify the European Commercial Register of the judgments and acts referred to in Article IV of the Protocol annexed to the said convention.

3. Where a court dismisses a final application for the institution of bankruptcy proceedings owing to want of sufficient assets, it shall, either on its own motion or on application by any interested party, order its decision to be registered in the European Commercial Register.

4. Particulars registered pursuant to paragraphs 1 and 3 above shall be published in the company journals.

TITEL X

CONVERSION

TRANSFORMATION (*)

Artikel 264

Artikel 264

1. By resolution of the General Meeting passed in like manner to a resolution for alteration of the statutes, an S.E. may be converted into a société anonyme constituted under the laws of one of the Member States.

2. Conversion shall not be effected until three years after formation of the S.E.

3. The S.E. shall be converted into a company under the laws of the Member State in which its effective management is located.

1. Upon a proposal by the Board of Management with the approval of the Supervisory Board, an S.E. may by means of an alteration of its statutes, be transformed into a limited company incorporated under the law of one of the Member States.

2. Transformation shall not be undertaken until three years after formation of the S.E. *)

3. The S.E. shall be transformed into a ^{limited} company under the law of the Member State in which its effective management is located. *)

4. If employees are not represented on the governing bodies of the limited company into which the S.E. is to be transformed in a manner equivalent to that in which they are represented under the rules governing the S.E., the approval of the Supervisory Board to the transformation shall be effective only if a majority of the employees' representatives on the Supervisory Board vote in favour thereof.

*) These modifications concern only the English text.

Article 265

The reasons for the proposal to convert an S.E. into a société anonyme constituted under the laws of a Member State shall be set out in a report by the Board of Management. Article 242, paragraph 2 shall apply to such report.

Article 265

1. The Board of Management shall prepare a report stating its reasons for the proposed transformation. Copies of the report shall be available free of charge to any interested person from the day on which the meeting is called. A note to this effect shall appear in the convening notice.

2. The Board of Management shall consult the European Works Council with regard to the proposed transformation, in accordance with the provisions of Article 125.

Article 266

1. The resolution for conversion shall be notified by the Board of Management to the Court of Justice of the European Communities.
2. The notification shall be accompanied by:
 - a) two authenticated copies of the Minutes of the General Meeting and, insofar as they relate to the resolution for conversion, the annexes specified in Articles 94 and 265;
 - b) the authenticated text of the Statutes as altered by the General Meeting.
3. The Court of Justice of the European Communities shall ascertain whether the resolution was validly passed.
4. If the resolution was passed in accordance with the provisions of this Statute and of the Statutes of the S.E., the Court of Justice of the European Communities shall return the documents mentioned in paragraph 2 to the S.E. together with a certificate that the resolution was validly passed.

Article 266

1. The resolution of transformation shall be notified by the Board of Management to the Court of Justice of the European Communities. *)
2. The notification shall be accompanied by:
 - a) two authenticated copies of the Minutes of the General Meeting and, insofar as they relate to the resolution for transformation the annexes specified in Articles 94 and 265; *)
 - b) unchanged
3. The Court of Justice of the European Communities shall satisfy itself that the meeting and the resolution of transformation were validly held and passed.
4. If the resolution of transformation was passed in accordance with the provisions of this Statute and of the Statutes of the S.E., the Court of Justice of the European Communities shall return the documents mentioned in paragraph 2 to the S.E. together with a certificate that the resolution of transformation was validly passed.

*) These modifications concern only the English text.

Article 267

The company shall subsist as an
S.E. until the day on which it acquires
legal personality as a société anonyme
constituted under national law.

Article 267

deleted

Article 268

3. Immediately after acquiring legal personality as a société anonyme constituted under national law, the company shall send to the European Commercial Register one of the copies referred to in Article 266, paragraph 2(a) together with one copy of the documents and supporting papers required under its national law for formation of sociétés anonymes, including the certificate that the requisite notices have appeared in the national publications.

Article 268

1. Upon receipt of the certificate referred to in Article 265(4), the Board of Management of the S.E. shall carry out the procedures for verification and publicity prescribed in connection with the formation of a limited company in the Member State to whose law the company is to be subject.

2. Transformation shall become effective as soon as the company acquires legal personality under the national law applicable to it. The company shall continue in existence as a limited company under national law.

3. Upon completion of the procedures referred to in paragraph 1, the governing body of the company shall send to the European Commercial register:

a) one of the copies referred to in Article 266(2) a;

b) one copy of the documents and supporting papers required under the national law for formation of a limited company, including the certificate that the requisite notices have been duly published.

2.

Article 268

2. The European Commercial Register shall register the conversion and give notice of the conversion in the Official Gazette of the European Communities, making due reference to the registration effected, filing of documents and giving of notices pursuant to the national law where the document and supporting papers sent to the European Commercial Register are evidence thereof.

3. The conversion of the company shall not be relied on to defeat the claims of third parties until such time as notice of the conversion has been published in the Official Gazette of the European Communities.

Article 268

4. The European Commercial Register shall register the transformation and publish a notice thereof in the Official Journal of the European Communities, making reference to the registration that has been effected, the filing of documents and the giving of notices under national law insofar as such matters are set out in the documents and supporting papers filed in the European Commercial Register. *)

deleted

*) this modification concerns only the English text.

TITLE XI

Merger

Section 1

Merger of European Companies

Article 269

1. An S.E. may, without being put into liquidation, merge with another S.E.

a) by formation of a new S.E. to which the whole of the assets and liabilities of the merging companies shall be transferred in exchange for shares in the new S.E.;

b) by transfer to the acquiring S.E. in exchange for shares therein of the whole of the assets and liabilities of the S.E. acquired.

TITLE XI

Merger

Section 1

General Provisions

Article 269

1. An S.E. may merge with other European limited companies or with other limited companies formed under the laws of the Member States:

a) by formation of a new S.E. in accordance with the provisions of this Statute concerning formation;

b) by the acquisition of one or more limited companies in accordance with Section 2 of this Title;

c) by the acquisition of the S.E., in accordance with Section 3 of this Title, by a limited company formed under national law;

d) by the formation of a new limited company under the law of one of the Member States, in accordance with Section 4 of this Title.

Article 269

2. An S.E. in liquidation may be party to a merger by formation of a new S.E. or by acquisition of an S.E., provided that distribution of the assets amongst the shareholders of the S.E. in liquidation has not yet begun.

Article 269

2. In the case of a merger by acquisition, one or more limited companies shall transfer the whole of their assets and liabilities to the acquiring company and shall be dissolved without being wound up. Shareholders of the transferring companies shall receive shares in the acquiring company.

In the case of a merger by formation of a new company, two or more limited companies shall transfer the whole of their assets and liabilities to a limited company formed by them and shall themselves be dissolved without being wound up. Their shareholders shall receive shares in the new company.

In either case, cash equalization payments may be made not exceeding 10% of the nominal value or, (in the absence of a nominal value), the book value of the shares transferred.

3. An S.E. in liquidation may be a party to a merger provided that the distribution of its assets amongst its shareholders has not begun. The same rule shall apply to a limited company formed under national law upon its acquisition by an S.E.

Article 270

Article 270

1. Merger by formation of a new S.E. shall require a resolution of the General Meeting of each S.E. passed in like manner to a resolution for alteration of the Statutes.

1. deleted

2. Sections 1 and 2 of Title II of this Statute shall apply. For purposes of application of those Sections, references to the "auditors" shall be deleted and there shall be substituted therefor in each case a reference to the "auditors of the annual accounts".

2. deleted

1. Where an S.E. is a party to a merger of any kind, the following provisions of this Article shall apply.

2. The draft of the document of information required for the merger where an S.E. is formed, or, in the case of mergers within the meaning of the following Sections, the draft of the document containing the terms of the merger shall be drawn up by the Board of Management of the S.E. The draft shall be approved by the Supervisory Board.

3. The Board of Management shall appoint the auditor or auditors of the S.E. to examine the draft document of information or the draft document containing the terms of merger.

4. The merger shall be approved by a resolution of the General Meeting, which must satisfy the requirements for an alteration of the Statutes.

Article 270-a-

Where reference is made in the provisions of Sections 2 and 3 of the Title to the provisions of Title II, the term "founder companies" shall mean merging companies, the term "S.E." shall mean an acquiring company, the term "formation" shall mean a merger and the term "document of constitution" shall mean the terms of merger.

Section 2

Acquisition by an S.E.

Article 271

Article 271

1. Merger by take-over shall require a resolution of the General Meeting of each S.E. passed in like manner to a resolution for alteration of the Statutes.

deleted

2. Sections 1 and 2 of Title II of this Statute shall apply by analogy save where this Article and the following Articles otherwise provide. For purposes of application of those Sections, references to the "auditors" shall be deleted and there shall be substituted therefor in each case a reference to the "auditors of the annual accounts".

deleted

3. A merger by take-over shall be notified by the acquiring S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.

deleted

4. Notice of registration shall be published in the company journals of the merging companies.

deleted

5. The S.E. acquired shall cease to exist on the date of publication in the Official Gazette of the European Communities. With effect from that date the liability of the acquiring S.E. shall be substituted for that of the S.E. acquired.

deleted

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed, and include:
a) the name, legal form and the registered office of the merging companies.

Article 271

- b) the ratio of the exchange of shares and the amount of any equalization payments in cash;
- c) details of the manner in which shares of the acquiring S.E. may be transferred and the time from which such shares will carry the right to participate in its profits;
- d) the time from which the business of the transferring companies will be deemed to be carried on on behalf of the acquiring S.E.;
- e) the rights to be conferred by the acquiring S.E. on shareholders of the transferring companies who are entitled to special rights and on the holders of securities other than shares, and measures proposed for the benefit of such persons;
- f) the experts' reports provided for in Article 271-a-;
- g) the reports of the governing bodies of the merging companies under Article 271-b-;

2. The following documents shall be annexed to the document containing the terms of the merger:

- a) the statutes of the merging companies in their current form;
- b) the balance sheets, interim balance sheets, profit and loss accounts and directors' reports of the merging companies, as required by Article 22(2) c), d) and e).

Article 271-a-

1. The governing body of each of the merging companies shall appoint one or more experts. The same persons may be appointed for only one company. The provisions of Article 15(2) and (3) shall be of corresponding application to such experts.

2. The experts shall examine the terms of the merger and prepare a report thereon for the shareholders. The provisions of Article 23(2) to (4) shall apply correspondingly.

Article 271-b-

1. The governing bodies of the merging companies shall draw up a report explaining and justifying the terms of merger, in particular the ratio for the exchange of shares, from both the legal and economic aspects.

2. The report shall also deal with the legal, economic and social effects of the merger on the employees over a period of at least two years, and indicate the measures to be taken regarding them.

Article 271-c-

1. The governing bodies of the merging companies shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of a merging company deciding upon the merger has been called.

2. Article 23-b-(2) and (3) shall apply in respect of the convening of the General Meeting of each of the merging companies.

Article 271-d-

The provisions of Article 23-c-
as to discussion of the effects of
the merger on the employees and of
Article 23-d- shall apply correspondingly.

Article 271-e-

1. The terms of merger shall be approved by each of the merging companies in General Meeting. The provisions of Article 24 shall apply in respect of the resolutions of approval.

2. The resolutions of the General Meeting may be challenged or declared invalid only in the circumstances set out in Article 25.

Article 271-f-

1. The merger shall be notified by the Board of Management of the acquiring S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The terms of merger and the annexes thereto, the Minutes of the General Meeting and a certificate that the minutes were duly filed shall be lodged with such notification. The governing bodies of the merging companies shall inform the court whether the resolution of the General Meeting has been challenged by proceedings in any court, and if so in which court.

Article 271-g-

1. The Court of Justice of the European Communities shall satisfy itself that the merger has been properly carried out. Article 17 shall apply correspondingly.
2. The registration of the merger shall include the name, registered office, and legal form of the merging companies, and the amount of the capital of the transferring company. It shall be published in the company journals.
3. As from the day when notice of the merger is published in the Official Journal of the European Communities, the transferring companies shall be dissolved. As from that date the S.E. shall assume the liabilities of the latter and the shareholders of the transferring companies shall become shareholders of the acquiring S.E.

Article 271-h-

Creditors of the transferring companies may require the acquiring S.E. to give them security. Article 27 shall apply correspondingly.

Article 271-i-

1. The provisions of this Section shall further apply where the acquiring S.E. holds all or part of the shares of one of the other merging companies. In this event, such shares shall lapse.

2. Where the acquiring S.E. holds all the shares of one of the merging companies, the same person may, notwithstanding the provisions of Article 271-a-, be appointed as the expert for both companies. In this event, the particulars to be furnished in accordance with Article 271 (1) b and c shall not be required.

Section 2

Merger of S.E.s with sociétés anonymes incorporated under the law of one of the Member States

Section 3

Acquisition of an S.E. by a company incorporated under national law

Article 272

1. An S.E. may, without being put into liquidation, merge with a société anonyme incorporated under the law of one of the Member States.

a) by formation of a new S.E., to which the whole of the assets and liabilities of the merging companies shall be transferred in exchange for shares in the new S.E.;

b) by transfer to the acquiring S.E. in exchange for shares therein of the whole of the assets and liabilities of the S.E. acquired.

2. An S.E. in liquidation or a société anonyme incorporated under the law of one of the Member States and in liquidation may be party to a merger by formation of a new S.E. or to a merger by take-over of a société anonyme incorporated under the law of one of the Member States provided that distribution of the assets of the company in liquidation amongst its shareholders has not yet begun.

Article 272

1. The governing bodies of the merging companies shall prepare the terms of merger, which shall be set out in a notarial deed.

2. The provisions of Article 271 to Article 271-b- shall apply in respect of the terms of merger. The term "transferring company" in Article 271 shall mean the transferring S.E. and the term "acquiring S.E." shall mean an acquiring company incorporated under national law.

Article 272-a-

If employees are not represented on the governing bodies of the acquiring company in a manner equivalent to that in which they are represented under the rules governing the transferring S.E., the approval of the Supervisory Board required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the S.E.

Article 272-b-

1. The Board of Management of the S.E. shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the S.E. deciding upon the merger has been called.

2. Article 23-b-(2) and (3) shall apply in respect of the convening of the General Meeting of the S.E.

Article 272-c-

The provisions of Article 23-c- as to discussion of the effects of the merger on the employees and of Article 23-d-, shall apply correspondingly with regard to the S.E.

Article 272-d-

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the S.E. and in respect of any challenge to the resolution of approval.

Article 272-e-

1. Upon the approval of the merger by the General Meeting of the S.E. and by the acquiring company, the resolutions of approval shall be notified by the Board of Management of the S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.

2. The following shall be annexed to the notification:

- a) the terms of merger and the annexes thereto;
- b) the statutes of the acquiring company;
- c) the minutes of the General Meeting of the S.E. and a certificate that such minutes were duly filed.

3. The European Court shall satisfy itself that the merger has been properly carried out.

4. If the merger complies with the provisions of this Statute and the statutes of the S.E., the Court shall return the documents referred to in paragraph 2 to the S.E. duly authenticated to the effect that the resolution for the merger has been validly passed by the S.E. Copies of the documents shall be filed with the European Commercial Register.

Article 272-f-

1. The merger shall be registered in the European Commercial Register only when the relevant formalities required of the acquiring company by its national law have been fulfilled.
2. An application for registration of the merger may be made to the European Commercial Register by the Board of Management of the S.E. or by the governing body of the acquiring company. Such application shall be accompanied by the authentication of the European Court and by documents and other evidence indicating that there is no obstacle to the merger under the law governing the acquiring company.
3. The registration of the merger in the European Commercial Register shall include the name, registered office, and objects of the acquiring company and a statement of the amount of its capital. The registration shall further include the names of the members of its Management and Supervisory Boards, and indicate the journals in which announcements concerning the company are published.
4. The registration together with the information referred to in paragraph 3, shall be published in the company journals of the S.E.

Article 272-g-

The S.E. shall cease to exist as from the day on which the registration of the merger is published in the Official Journal of the European Communities. As from that date the acquiring company shall assume the liabilities of the S.E. and the shareholders of the S.E. shall become shareholders of the acquiring company.

Article 272-h-

Except insofar as more stringent provision is made by the law applicable to the acquiring company, creditors of the S.E. may require the acquiring company to give them security. Article 27 shall apply correspondingly.

Article 272-i-

The provisions of this Section shall further apply where the acquiring company holds all or part of the shares of the S.E.

2. Where the acquiring company holds all the shares of the S.E. the same person may, notwithstanding the provisions of Article 271 a, be appointed as the expert for both companies. In this event the particulars to be furnished in accordance with Article 271 (1) b and c shall not be required.

Section 4

Merger by formation of a new limited liability company under national laws

Article 273

Sections 1 and 2 of Title II of this Statute shall apply to merger by formation of a new S.E. For purposes of application of those Sections, references to the "auditors" shall be deleted and there shall be substituted therefor in each case a reference to the "auditors of the annual accounts".

Article 273

1. The governing bodies of the merging companies shall prepare the draft terms of merger, which shall be set out in a notarial deed.
2. The terms of merger shall include the name, legal form and registered office of the merging companies and of the new company, and the particulars and reports referred to in Article 22(1) c - g.

The provisions of Articles 22, 22-a- (2) and (3), 23 and 23-a- shall be of corresponding application.

The term "founder companies" shall mean the merging companies, the term "S.E." shall mean the new company, and the term "document of formation" shall mean the terms of merger.

3. The terms of merger or the statutes of the new company shall include the name of each member of the governing bodies of the new company whom it falls under the law of the State in which the registered office of the company is situated, within the competence of either the General Meeting or of the merging companies to appoint.
4. Article 15 shall apply to the auditors.

Article 273-a-

If employees are not represented on the governing bodies of the new company in a manner equivalent to that in which they are represented under the rules governing the transferring S.E., the approval of the Supervisory Board for the merger required under Article 270(2) shall only be effective if supported by the votes of a majority of the employees' representatives on the Supervisory Board of the S.E.

Article 273-b-

1. The Board of Management of the S.E. shall furnish any interested person with copies of the draft document containing the terms of merger and of the documents annexed to it free of charge on application after the General Meeting of the S.E. deciding upon the merger has been called.

2. Article 23 b (2) and (3) shall apply in respect of the convening of the General Meeting of the S.E.

Article 273-c-

The provisions of Article 23-c as to discussion of the effects of the merger on the employees, and of Article 23-d-, shall apply correspondingly with regard to the S.E.

Article 273-d-

Articles 24 and 25 shall apply correspondingly in respect of the approval of the merger by the General Meeting of the S.E. and in respect of any challenge to the resolution for approval.

Article 273-e-

The formation of the new company and the publication thereof shall be effected in accordance with the provisions of the law of the State in which the registered office of the new company is situated governing the formation of companies in consequence of a merger or, in the absence of such provisions, in accordance with the law of the said State on the formation of companies.

Article 273-f-

1. The provisions of Articles 272-e- and 272-f- shall apply with regard to the examination of the regularity of the merger resolution passed by the S.E., to the registration of the merger in the European Commercial Register and to publication of the merger in the company journals of the S.E.

The term "acquiring company" shall mean the new company.

2. The registration of the merger shall state the date when the new company acquired legal personality.

Article 273-g-

The S.E. shall cease to exist from the day on which the new company acquires legal personality. As from that date the new company shall assume the liabilities of the S.E. and the shareholders of the S.E. shall become shareholders of the new company.

Article 273-h-

Except in so far as more stringent provision is made by the law applicable to the new company, creditors of the S.E. may require the new company to give them security. Article 27 shall apply correspondingly.

Article 273-i-

1. The provisions of this Section shall further apply where one of the merging companies holds all or part of the shares of the S.E.

2. Where one of the merging companies holds all the shares of one of the other merging companies the same person may, notwithstanding the provisions of Article 15(1), be appointed as an auditor for both companies.

Article 274

Article 274

1. Article 271 shall apply to merger by takeover of a société anonyme incorporated under the law of one of the Member States.

deleted

2. The merger shall be notified by the acquiring S.E. to the Court of Justice of the European Communities for registration in the European Commercial Register.

deleted

3. Notice of registration shall be published by the S.E. in its company journals. The société anonyme acquired shall procure notice of merger to be given in like manner to notice of dissolution of a company as prescribed by the law under which the société anonyme was incorporated.

deleted

4. The S.E. taken over shall cease to exist on the date of publication in the Official Gazette of the European Communities. With effect from that date the liability of the acquiring S.E. shall be substituted for that of the société anonyme acquired.

deleted

TITLE XII

TAXATION

Section 1

Formation

Article 275

1. Where a European holding company within the meaning of Articles 2 and 3 is formed by sociétés anonymes incorporated under the law of one of the Member States or by European companies, allotment to the shareholders of those companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any charge to tax.

2. Where such shares form part of the assets of an undertaking, the Member States may waive this rule if the shares in the European holding company are not shown in the balance sheet for tax purposes of that undertaking at the same value at which the shares in the sociétés anonymes or in the European companies were shown.

Article 275

1. Where a European holding company within the meaning of Articles 2 and 3 is formed by companies limited by shares incorporated under the law of one of the Member States or by S.E.s, allotment to the shareholders of those companies of shares in the European holding company in exchange for shares in those companies shall not give rise to any tax liability. *)

2. Where such shares form part of the assets of an undertaking, the Member States may waive this rule if the shares in the European holding company are not shown in the balance sheet for tax purposes of that undertaking at the same value at which the shares in the companies limited by shares, or in the S.E.s were shown. *)

*) These modifications concern only the English text.

Section 2

Tax domicile

Article 276

Article 276

1. For purposes of taxation, the S.E. shall be treated as resident in the Member State in which the centre of its effective management is located.

unchanged

2. Action to remove any difficulties or doubts which arise in connection with the application of paragraph 1 shall be taken by Member States if a competent authority in a Member State shall consider it necessary or if the S.E. shall request it to do so.

unchanged

3. The competent authorities in Member States may communicate with each other direct with a view to making an agreement for purposes of the preceding paragraph. The S.E. interested in or affected by such action, or its representative, shall at its request be allowed to give evidence.

3. The competent authorities in Member States may communicate with each other direct with a view to reaching an agreement for purposes of the preceding paragraph. The S.E. interested in or affected by such action, or its representative, shall at its request be allowed to present its case. *)

4. In default of agreement in pursuance of paragraphs 2 and 3, each State concerned may refer the matter to the Court of Justice, whose decision shall be final. The S.E. shall be entitled to be heard.

unchanged

*) This modification concerns only the English text.

Article 276

5. For so long as the centre of effective management shall not definitively have been determined by such actions as aforesaid, the liability of the S.E. for payment of tax shall at its request be deferred.

Article 276

5. For so long as the centre of effective management shall not definitively have been determined by such actions as aforesaid, the liability of the S.E. for payment of tax shall at its request be suspended. *)

*) This modification concerns only the English text.

Article 277

Article 277

Where an S.E., which for purposes of taxation has been resident in a Member State for not less than five years, transfers its effective management to another Member State, the State in which the centre of effective management was located prior to the transfer:

unchanged

- a) shall not impose any charge to tax on any increase in value of the assets of the S.E., that is to say on the amount of the difference between the real value of those assets and the value thereof as shown in the balance sheet of the S.E. for tax purposes, where these assets are from an accounting point of view attributed at the same value to a permanent establishment of the S.E. in that State, and contribute towards the taxable income of that establishment;
- b) shall authorize any such permanent establishment as is referred to in (a) above to carry forward and retain free from liability to tax under general law any provisions and reserves created by the S.E. in that State and which are exempt in whole or in part from liability to tax;

- a) shall not impose any charge to tax on any increase in value of the assets of the S.E., i.e. on the amount of the difference between the real value of such assets and their value as shown in the balance sheet of the S.E. for tax purposes, to the extent that such assets are from an accounting point of view attributed at the same value to a permanent establishment of the S.E. in that State and contribute towards the taxable income of the establishment concerned; x)
- b) shall authorize any such permanent establishment as is referred to in (a) above to take over and continue free from liability to tax under general law any provisions and reserves created by the S.E. in that State and which are exempt in whole or in part from liability to tax; x)

x) These modifications concern only the English text.

Article 277

- c) shall permit such permanent establishment to carry forward and write off, in accordance with general law, losses incurred by the S.E. which have not yet been written off for tax purposes in that State;
- d) shall from the date of transfer waive all right to impose any charge to tax in respect of the activities of the S.E. carried on outside its territory, if, for tax purposes, the S.E. includes such activities with those that it carries on in the State to which it transfers its centre of effective management. Where they are so included, paragraphs (b) and (c) above shall not apply if the provisions, reserves or losses therein referred to relate to activities carried on outside the territory of the State in which the centre of effective management was located prior to the transfer.

Article 277

- c) shall permit such permanent establishment to take over and set off, in accordance with general law, losses incurred by the S.E. which have not yet been set off for tax purposes in that State; ~~*)~~
- d) shall from the date of transfer relinquish all rights to impose any charge to tax in respect of the activities of the S.E. carried on outside its territory, in so far as, for tax purposes, the S.E. includes such activities with those that it carries on in the State to which it transfers its centre of effective management. Where they are so included, paragraphs b) and c) above shall not apply to the extent that the provisions, reserves or losses therein referred to relate to activities carried on outside the territory of the State in which the centre of effective management was located prior to the transfer. ~~*)~~

*) These modifications concern only the English text.

Section 3

Permanent establishments and subsidiaries

Article 278

Article 278

1. Where an S.E. whose domicile for tax purposes is in a Member State has a permanent establishment in another Member State, only the latter Member State shall have the right to charge to tax the profits of that establishment.

2. Where an S.E. whose residence for tax purposes is in a Member State has a permanent establishment in another Member State, only the latter Member State shall have the right to charge to tax the profits of that establishment. *)

2. If during any tax period the overall result of the operations of an S.E.'s permanent establishment in that State shows a loss, that loss shall be deductible from the taxable profits of the S.E. in the State in which it is resident for tax purposes.

unchanged

3. Subsequent profits made by those permanent establishments shall constitute taxable income of the S.E. in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction under paragraph 2 above.

unchanged

4. The amount of the loss deductible under paragraph 2 above and the amount of profit chargeable to tax under paragraph 3 above shall be determined in accordance with the law of the State in which the permanent establishment or establishments are located.

4. The amount of the loss deductible under paragraph 2 above and the amount or profits chargeable to tax under paragraph 3 above shall be determined in accordance with the law of the State in which the permanent establishment are located. *)

*) These modifications concern only the English text.

Artikel 279

The tax treatment of a permanent establishment maintained in a Member State by an S.E. which is resident for tax purposes in another Member State shall not result in a greater charge to tax for that permanent establishment than would arise in the case of a company carrying on a business of the same nature and being resident for tax purposes in that other State.

Artikel 279

The tax treatment of a permanent establishment which an S.E. resident for tax purposes in one Member State maintains in another Member State shall not result in a greater charge to tax for that permanent establishment than would arise in the case of a company which carries on a business of the same nature and is resident for tax purposes in that other State. *)

*) This modification concerns only the English text.

Article 230

1. The expression "permanent establishment" means a fixed place of business at which an S.E. carries on its activities in whole or in part.

2. The term of "permanent establishment" includes in particular:

- a) a seat of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, quarry or any other site for extraction of natural resources;
- g) work of construction or assembly carried on for more than twelve months

3. Installations and warehouses falling within sub-paragraphs a) to e) below shall not be considered permanent establishments irrespective of whether one or all of the criteria specified therein are satisfied:

- a) installations used solely for storage, display or delivery of goods owned by a company;
- b) warehouses for goods owned by a company and maintained solely for the purpose of storage, display or delivery;

Article 280

1. The term "permanent establishment" means a fixed place of business in which the business of an S.E. is wholly or partly carried on. *)

2. The term "permanent establishment" shall include especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, quarry or other place of extraction of natural resources;
- g) a building site or construction or assembly project which exists for more than twelve months. *)

3. Permanent establishments shall not be deemed to include facilities and maintenance meeting the conditions listed in sub-paragraphs a) to e) below whether these conditions are fulfilled singly or severally. *)

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to a company; *)
- b) the maintenance of a stock of goods or merchandise belonging to a company solely for the purpose of storage, display or delivery; *)

*) These modifications concern only the English text.

Article 280

- c) warehouses for goods owned by a company and maintained solely for the purpose of processing by another undertaking;
- d) a fixed place of business used solely for the purpose of purchasing goods or collecting information for a company;
- e) a fixed place of business used solely for the purpose of promotion, supplying information, scientific research or similar preparatory or auxiliary activities.

4. A person acting in one Member State on behalf of a company in another Member State, other than an independent agent within the meaning of paragraph 5, shall be deemed to be a "Permanent establishment" in the former State if in that State he enjoys and regularly exercises the right to make agreements in the name of the company, save where his activities are limited to the purchase of goods for the company.

Article 280

- c) the maintenance of a stock of goods or merchandise belonging to a company solely for the purposes of processing by another enterprise; x)
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for a company; x)
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for a company. x)

4. A person acting in one Member State on behalf of an S.E. of another Member State, other than an agent of an independent status to whom paragraph 5 applies, shall be deemed to be a "permanent establishment" in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts in the name of the S.E., unless his activities are limited to the purchase of goods or merchandise for the S.E.

x) These modifications concern only the English text.

Article 280

5. A company in one Member State shall not be treated as having a permanent establishment in another Member State simply because it carries on its activities therein through a broker, a general agent or any other independent agent acting in the normal course of their activities.

6. The fact that a company in one Member State controls or is controlled by a company that is subject to the law of another Member State or that carries on its activities therein (whether through a permanent establishment or not) shall not be sufficient in itself to make either of those companies a permanent establishment of the other.

Article 280

5. An S.E. of one Member State shall not be deemed to have a permanent establishment in another Member State merely because it carries on business in the other Member State through a broker, general commission agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.

6. The fact that an S.E. of one Member State controls or is controlled by a company that is subject to the law of another Member State or which carries on business in the other Member State (whether through a permanent establishment or otherwise) shall not of itself constitute either company ~~company~~ a permanent establishment of the other.

Article 281

1. Where an S.E. holds not less than 50 per cent of the capital of another company whose profits are chargeable to tax and whose operations in any tax period result in a loss, that loss shall be deductible, in proportion to the holding, from the profits chargeable to tax of the S.E. in the State in which the S.E. is resident for tax purposes.

2. A deduction made pursuant to paragraph 1 above shall be final if, under the law applicable to the company whose capital is held as aforesaid, the loss referred to in the said paragraph cannot be carried forward to other tax periods. Conversely, the subsequent profits of that company shall constitute taxable income of the S.E. in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction and pro rata to the capital held at the time those profits were earned.

3. Where the holding falls below 50 per cent, any loss deducted from the profits of the S.E. under paragraph 1 above during the preceding five tax periods shall, notwithstanding the provisions of paragraph 2, be added back to the taxable profits of that S.E.

Article 281

1. Where an S.E. holds not less than 50 per cent of the capital of another company liable to a tax on profits and whose operations in any tax period result in a loss, that loss shall be deductible, in proportion to the holding, from the profits chargeable to tax of the S.E. in the State in which the S.E. is resident for tax purposes. *)

2. A deduction made pursuant to paragraph 1 above shall be final if, under the law applicable to the company whose capital is held as aforesaid, the loss referred to in the said paragraph cannot be carried forward to other tax periods, Where this is not the case, the subsequent profits of that company shall constitute taxable income of the S.E. in the State in which it is resident for tax purposes up to an amount not exceeding the amount of the loss allowed by way of deduction and pro rata to the capital held at the time those profits were earned. *)

3. Where the holding falls below 50 per cent, any loss deducted from the profits of the S.E. under paragraph 1 above during the preceding five tax periods shall, notwithstanding the provisions of paragraph 2, be added back to the taxable profits of that S.E.

*) These modifications concern only the English text.

Article 281

Article 281

4. Where such holding as is referred to in paragraph 1 above is in the capital of a company resident in a Member State, the amount of the loss deductible under paragraph 1 above and the amount of the subsequent profits taxable under paragraph 2 above shall be determined in accordance with the law of that contracting State.

4. Where such holding as is referred to in paragraph 1 above is in the capital of a company resident in a Member State, the amount of the loss deductible under paragraph 1 above and the amount of the subsequent profits taxable under paragraph 2 above shall be determined in accordance with the law of that Member State. *)

*) This modification concerns only the English text.

TITLE XIII

OFFENCES

Article 282

1. The Member States shall introduce into their law appropriate provisions for creating the offences set out in the annex hereto.

2. Provisions of national law applicable to breach of regulations relating to companies shall not apply to breach of any of the provisions of this Statute.

Article 282

1. The Member States shall introduce into their law appropriate provisions for creating the offences set out in Annex IV.

2. unchanged in the English version.

TITLE XIV

FINAL PROVISIONS

Article 283

The Member States shall implement the requirements of Article 282 within six months of the making of this regulation.

Article 283

The Member States shall implement the requirements of Article 282 within twelve months of the making of this regulation.

Article 284

This regulation shall be binding in its entirety and directly applicable in each Member State.

It shall enter into force six months after publication in the Official Gazette of the European Communities.

Article 284

unchanged

It shall enter into force twelve months after publication in the Official Journal of the European Communities.

ANNEX I

NATIONAL EMPLOYEES' REPRESENTATIVE BODIES
PURSUANT TO ARTICLE 102(1) OF THIS REGULATION

1) at establishment level

Belgium : The "ondernemingsraden" or "conseils d'entreprise", established under the Act on the organisation of the economy, of 20 September 1948.

Denmark : The "samarbejdsudvalg" established under the Agreement on cooperation and cooperation committees, concluded between the Danish Employers' Confederation and the Danish Federation of Trade Unions on 2 October 1970.

Federal Republic of Germany : The "Betriebsräte" established under the Works Constitution Act of 15 January 1972.

France : The "comités d'entreprise" established pursuant to the Decree of 22 February 1945.

Ireland : (1)

(1) In neither Ireland nor the United Kingdom does institutional representation of employees on a statutory or negotiated basis exist as yet.

Italy : The "rappresentanze dei lavoratori" within the meaning of Act 300 of 30 May 1970, i.e. the "commissioni interne d'azienda" established pursuant to the Wages Agreement between Employers and the Employee organizations of 18 April 1966, or the "consigli di fabbrica".

Luxembourg : The "délégations ouvrières principales" established under the Grand-Ducal Decree of 30 October 1958 as amended by the Act of 20 November 1962, and the "délégations d'employés" established under the Act of 20 April 1962.

Netherlands : The "ondernemingsraden" established under the Works Councils Act of 28 January 1971.

United Kingdom : (1)

2) at undertaking level

Belgium : (2)

Denmark : (2)

Federal Republic
of Germany : The "Gesamtbetriebsräte" established under the Works
Constitution Act of 15 January
1972.

(1) see footnote on page 491.

(2) In neither Belgium nor Luxembourg does statutory representation of employees exist as yet at undertaking level.

- France : The "^{centraux}comités/d'entreprise" under the Decree of 22 February 1945.
- Ireland : (1)
- Italy : The "rappresentanze dei lavoratori" within the meaning of Act no. 300 of 30 May 1970, insofar as they exist at undertaking level.
- Luxembourg : The "comités mixtes d'entreprise" under the Act instituting joint committees in private sector undertakings and establishing employee representation in limited liability companies, of 6 May 1974.
- Netherlands : The "centrale ondernemingsraden" under the Works Councils Act of 28 January 1971.
- United Kingdom : (1)

1) see footnote on page 491

RULES FOR THE ELECTION OF MEMBERS OF
THE EUROPEAN WORKS COUNCIL

Section I

General provisions

Article 1

Employees of the S.E. who have reached the age of 16 years on the date of the election and have been employed in or have carried out their principal duties in an establishment of the S.E. for at least four months shall be entitled to vote.

Article 2

1. All persons entitled to vote in an establishment who on the date of the election

- have reached the age of 18 years
- have been employed for a total of more than six months in the establishment of the S.E. or one of its founder companies

shall be eligible for election as representatives of the establishment.

2. Persons debarred from public office by judicial decision under the law of the Member States shall not be eligible.

Article 3

1. Representatives shall be elected to the European Works Council by secret direct ballot.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 100 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. The number of candidates on a list shall not exceed twice the number of seats for employees' representatives on the European Works Council. An alternate shall be named for each candidate. No candidate or alternate shall appear on more than one list of candidates at the same time.

Article 4

1. Where only one representative is to be elected to the European Works Council, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, the seat shall be allocated by lot.

Article 5

1. Where more than one representative is to be elected to the European Works Council and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.

2. Each person entitled to vote may vote for one list of candidates. In addition, he may cast a preference vote for a candidate whose name appears on the list for which he has voted.

3. If an elector votes for a candidate, his vote shall count as a vote for the list on which the candidate appears and as a preference vote for the candidate concerned.

Article 6

1. The seats on the European Works Council which are to be attributed to the lists of candidates in proportion to the numbers of votes cast for the latter shall be allocated as follows. The numbers of valid votes cast for each list shall be successively divided by one, two, three, four, and so on, until the number of quotients computed for each list corresponds to the number of seats for allocation. The number of seats allocated to each list shall be equal to the number of qualifying quotients it obtains when the quotients are taken in descending order.

2. Where more than one list has the last quotient to qualify for a seat, the seat shall be allocated to the list which has so far received none. If all the lists have already received a seat, the last seat shall be allocated by lot.

3. The seats allocated to a list shall be filled by the candidates nominated therein in the order in which they appear on that list, unless the number of preference votes cast for the individual candidates results in a different sequence.

4. If a list does not contain enough candidates to fill all the seats allocated to it, the remaining seats shall be allocated to the other lists on the basis of the number of qualifying quotients obtained pursuant to paragraph 1.

Article 7

Where only one list of candidates is submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes. Each elector has one vote. In the event of a tie, the decision shall be taken by lot.

Article 8

1. Votes shall be cast on ballot papers.

2. Ballot papers not marked in accordance with these election rules shall be null and void.

Section II: Preparation and conduct of elections

(a) : Composition of electoral commissions

Article 9

1. No later than ten days after the formation of the S.E. or after the conditions set out in Article 100 of this statute for the formation of a European Works Council have been met, the Board of Management of the S.E. shall, for the purposes of the election of the European Works Council, publish in each installation of the S.E. in which staff are employed a list of all the establishments in which representatives are to be elected to the European Works Council. Where a European Works Council has already been formed, a list fulfilling the same requirements shall be published at least 100 days before the expiry of the Council's term of office.

2. This list shall be decisive in regard to the composition of the electoral commissions and their areas of responsibility, unless its completeness or accuracy is contested within 15 days pursuant to Article 10. The Board of Management shall draw attention to this provision in the list.

3. If the Board of Management fails to publish the list, electoral commissions may nevertheless be formed pursuant to Article 11 of this annex in order to conduct the elections. The Board of Management shall have eight days from receipt of the notification referred to in Article 13(4) of this annex in which to contest the formation of electoral commissions or their proposed areas of responsibility, pursuant to Article 10.

Article 10

1. The court within whose jurisdiction the establishment is situate shall rule on any contestation of the list referred to in Article 9.
2. Application for such a ruling may be made by:
 - (a) the Board of Management of the S.E.
 - (b) not less than three persons employed in an establishment of the S.E. or a union with members employed therein.
3. Contestation of a list or decision shall not have suspensive effect.
4. If the court rules that the conditions for the proper conduct of an election which has already taken place were not fulfilled, the election shall be null and void. If the election has not yet taken place, it shall be held in those establishments in respect of which a court decision has established that the necessary conditions are met.

Article 11

1. An electoral commission shall be responsible for arranging and conducting the election.
2. An electoral commission shall be set up in every establishment which is to elect representatives to the European Works Council, no later than thirty days after the conditions set out in Article 100 of this statute have been met. Where a European Works Council has already been elected, the electoral commissions shall be formed at least 75 days before the expiry of its term of office.
3. The electoral commission shall be appointed by the bodies representing the employees in the establishments, referred to in Annex I to this Statute.

In Member States in which no such body exists, the electoral commission shall be appointed by the recognized employees' representatives in the establishment, in agreement with the Board of Management of the S.E. In the absence of any representative body referred to in Annex I of this Statute or any recognized employees' representatives in the establishment, the Board of Management of the S.E. shall in good time convene a staff meeting to elect the members of the electoral commission.

4. The electoral commission shall have three members in establishments with fewer than 1,000 employees, five members in those with fewer than 5,000 employees and seven members in those with 5,000 or more employees.

5. Members of the electoral commission must satisfy the conditions for membership of the European Works Council laid down in Article 2. They shall not stand for election to the European Works Council. From their appointment until 30 days after the election results have been announced, they shall enjoy the protection in the matter of dismissal afforded by Article 112 and shall be covered by the provisions of Article 113 of this Statute.

Article 12

1. If, within the period specified in Article 11(2), an electoral commission has not been formed in an establishment which is to elect representatives to the European Works Council, the court within whose jurisdiction the establishment is situate may, upon application, take the necessary action for its formation.

The court may dismiss members of an electoral commission for breach of their obligations and, in urgent cases, appoint new members.

The court may also appoint persons not employed by the S.E. to serve on an electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishment, by three persons entitled to vote or by the Board of Management of the S.E. The court shall hear the Board of Management of the S.E. and the trade unions represented in the establishment before reaching its decision.

Article 13

1. The members of the electoral commission shall appoint a chairman from their midst. If no chairman is appointed, the oldest member shall take the chair.

2. The chairman shall convene the electoral commission on his own initiative or at the request of one of its members and shall preside over its meetings.

3. Decisions of the electoral commission shall be taken by majority vote of the members present. Its acts shall be valid if all its members have been convened and more than half are present.

4. The electoral commission shall immediately notify the Board of Management of the S.E. and the chairman of the European Works Council, if one has already been set up, of its formation and membership.

(b) : Preparation of elections

Article 14

1. The electoral commission shall fix, in agreement with the Board of Management, the date and duration of the election, which shall be held during the establishment's normal working hours, and the place within the establishment where polling shall take place. The election shall take place within 75 days of the formation of the S.E. or of the date on which the conditions of Article 100 are met. Where a European Works Council has already been elected, the new election shall take place at least thirty days before the expiry of its term of office.

2. The electoral commission shall, in accordance with the provisions of this Statute, make arrangements for conducting the election and shall announce the number of representatives to be elected to the European Works Council from the establishment. Employees entitled to vote who are absent on the day of the election shall be granted a postal vote under arrangements to be established by the electoral commission.

3. At least 30 days before the election, the electoral commission shall publish an election notice stating the date and place of the election. This notice shall include the following information :

- (a) the names of the chairman and other members of the electoral commission,
- (b) the address in the establishment to which communications to the commission should be sent,
- (c) the number of representatives which the establishment is to elect to the European Works Council,
- (d) the place at which the electoral roll referred to in Article 15 will be displayed and the period during which it may be inspected,
- (e) the closing date for the submission of lists of candidates, pursuant to Article 16.

4. The election notice shall also set out in full the provisions of this Statute which are applicable to the election and the rules for conducting the poll laid down by the electoral commission, particularly the arrangements concerning postal votes

5. The electoral commission shall take steps to enable employees not familiar with the language or languages in which the election notice appears to acquaint themselves with its contents.

Article 15

1. The electoral commission shall draw up an electoral roll and display it in the establishment together with the election notice until the date of the election, so that it can be seen by persons entitled to vote. The Board of Management of the S.E. shall make available the documents required for drawing up the electoral roll.

2. Any objections concerning the accuracy or completeness of the roll shall be lodged with the electoral commission within ten days of its display. The electoral commission shall rule on such objections within five days. If the electoral commission fails to make a ruling within this period, the objection shall be deemed to be overruled.

If the electoral commission does not grant the objection, an appeal may be made within five days to the court within whose jurisdiction the establishment is situate. The court shall give a final ruling within three days.

An appeal to the court shall not have the effect of suspending the election proceedings.

3. Only persons registered on the electoral roll at least one day before the election shall be entitled to vote.

Article 16

1. The lists of candidates shall be submitted to the electoral commission within ten days of the publication of the election notice. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.

2. The electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the trade unions or persons who have submitted lists of candidates to amend them so that they conform to the rules.

3. If no lists of candidates are received within the period stipulated in paragraph 1, the electoral commission shall immediately announce the fact in the same manner as that followed in announcing the election and shall call for the submission of lists of candidates within a stipulated period of at least five days.

4. A notice showing the lists of candidates which comply with the rules, in the order in which they were received, shall be put on display at least ten days before the election. Any objections to the lists on legal grounds shall be lodged with the electoral commission within three days of their publication. The right to lodge objections shall be mentioned in the notice.

5. At least three days before the election, the electoral commission shall notify the electors of the lists finally approved and of the manner in which they may exercise their voting rights. Article 14(5) of this annex shall apply.

(c) : Conduct of elections

Article 17

1. The electoral commission may appoint election officials, under its own responsibility, to assist in conducting the election.
2. Throughout the period fixed for the election at least one member of the electoral commission shall be in constant attendance at the polling station and, with the aid of the electoral roll, ensure that voting is properly conducted.
3. The electoral commission shall be responsible for counting votes and allocating seats, and shall notify candidates, the Board of Management of the S.E. and the chairman of the European Works Council, if it has already been set up, of the results of the election. It shall also announce the results to the electors.
4. Each trade union and group of employees who have submitted lists of candidates may appoint up to three observers to be present during the election procedures and the counting of the votes.

Article 18

1. All decisions of the electoral commission, the result of the ballot and the allocation of seats shall be recorded in an election report signed by the chairman of the electoral commission.

2. The electoral commission shall answer any objections immediately in writing.

3. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period for contesting the validity of the election.

4. A copy of the election report shall be forwarded to the Board of Management of the S.E. or, if a European Works Council already exists, to its chairman. The report shall be handed over to the chairman of the newly elected European Works Council.

Article 19

1. The court within whose jurisdiction the establishment is situated may, upon application or at its own initiative, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court pursuant to paragraph 1 may be made by the electoral commission, a trade union represented in the establishment, a group of employees entitled to submit lists of candidates under Article 3, or the Board of Management of the S.E.

3. The period originally set for the election shall remain valid for the purposes of determining employees' voting rights and the eligibility of candidates.

Section III : Contestation of validity of elections -

Article 20

1. The validity of the election of representatives to the European Works Council may be contested in the court within whose jurisdiction the establishment is situate if the election regulations have been infringed altered or influenced the results of the election.
2. The validity of the election may be contested by a trade union represented in the establishment, by the Board of Management of the S.E., by or tenth of the persons entitled to vote in the establishment or 100 such persons.
3. Any such contestation must be made within 15 days of the announcement of the results.
4. The elected members of the European Works Council shall remain in office until and unless the court declares the election null and void.

RULES FOR THE ELECTION OF EMPLOYEES'
REPRESENTATIVES TO THE SUPERVISORY BOARD

Section I

General provisions

Article 1

1. The employees' representatives on the Supervisory Board of the S.E. shall be elected by electoral delegates where an S.E. and its dependent group undertakings situated within the Member States comprise more than one establishment.

2. In each establishment of the S.E. and its dependent/^{group}undertakings situated within the Member States the employees entitled to vote shall elect two electoral delegates. Where the number of employees entitled to vote in an establishment exceeds 100, one further delegate shall be elected for each 100 employees or fraction thereof.

3. Where an S.E. comprises only one establishment, the employees' representatives on the Supervisory Board shall be elected directly by the employees entitled to vote in that establishment.

Article 2

Employees of the S.E. and its dependent group undertakings having their registered offices within the Member States who have reached the age of 16 years on the date of the election and have been employed in or assigned to the establishment concerned for at least four months shall be entitled to vote pursuant to Article 1(2) and (3).

~~Section II: Election of employees' representatives by electoral delegates~~

(A) Election of delegates

Article 3

1. The delegates charged with electing the employees' representatives to the Supervisory Board of the S.E. shall be elected in the establishments of the S.E. and its dependent/^{group}undertakings situated in the Member States by secret direct ballot in accordance with the provisions of Articles 3, 4, 5, 6, 7 and 8 of Annex II to this Statute.

2. They must satisfy the conditions of eligibility laid down in Article 2 of the abovementioned annex.

3. Electoral delegates and their alternates shall enjoy the protection in the matter of dismissal afforded by Article 112 of this Statute until the conclusion of the procedure for the election of employees' representatives to the Supervisory Board of the S.E. The provisions of Article 113 shall apply mutatis mutandis.

Article 4

1. No later than ten days after the formation of the S.E. or, if employees' representatives have already been elected to the Supervisory Board of the S.E., at least 100 days before the expiry of their term of office, the Board of Management shall, for the purposes of the election of delegates charged with the election of employees' representatives to the Supervisory Board of the S.E., publish in each installation of the S.E. a list of all the S.E. establishments for which delegates are to be elected.

2. The Board of Management shall publish a list of all undertakings controlled by the S.E. in whose establishments delegates charged with the election of employees' representatives to the Supervisory Board are to be elected.

3. The management bodies of group undertakings shall compile the list referred to in paragraph 1 for their establishments and shall publish it by the date fixed in paragraph 1. For this purpose the Board of Management of the S.E. shall notify the management bodies of its dependent group undertakings of the forthcoming election at least seven days before that date.

4. Articles 9(2) and (3) and 10 of Annex II to this Statute shall apply to the lists referred to in paragraphs 1 and 3.

5. Where there is disagreement as to whether an undertaking is controlled by an S.E., the undertaking in question shall take part in elections to the Supervisory Board of the S.E. only after the Court of Justice of the European Communities has ruled according to Article 225 that it is a member of the group within the meaning of this Statute.

Article 5

1. Electoral commissions shall be set up in every establishment of the S.E. and its dependent/^{group}undertakings no later than 30 days after the formation of the S.E., to arrange and conduct the election of electoral delegates. Where employees' representatives have already been elected to the Supervisory Board of the S.E., an electoral commission shall be formed no later than 75 days before the expiry of their term of office.

2. The electoral commission shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute.

In the case of dependent/^{group}undertakings, the management body shall take the place of the Board of Management of the S.E., provided that the relevant provisions so permit.

Articles 12 and 13 of Annex II shall apply mutatis mutandis to the electoral commissions.

Article 6

1. The electoral commissions shall fix, in agreement with the Board of Management of the S.E. or the management bodies of its dependent group undertakings, the date and duration of the elections to be held in their establishments. Elections shall take place within 75 days of the formation of the S.E. or, where employees' representatives have already been elected to the Supervisory Board of the S.E., at least 30 days before the expiry of their term of office.
2. Articles 14, 15, 16, 17 and 18 of Annex II to this Statute shall also apply to the arrangement and conduct of these elections.
3. Notwithstanding Article 18(4) of Annex II, the report shall be forwarded to the central electoral commission referred to in Article 14 below after the election results have been announced.

(B) Election of employees' representatives

Article 7

1. The electoral delegates shall elect employees' representatives to the Supervisory Board of the S.E. jointly, by means of a secret ballot. They shall exercise their voting rights freely and shall not be bound by any instructions.
2. Lists of candidates for election as employees' representatives may be submitted by the European Works Council, by trade unions represented in the establishments of the S.E., by one twentieth of the electoral delegates or by at least one tenth of the employees of the S.E. who are entitled to vote.
3. The Group Works Council, trade unions represented in the establishments of dependent/^{group} undertakings having their registered offices within the Member States, or at least one tenth of the employees of a group undertaking who are entitled to vote, may submit lists of candidates for election to the Supervisory Board of an S.E. which is the controlling company of a group.
4. Lists of candidates submitted by employees or electoral delegates shall be signed by all persons supporting them. No person shall sign more than one list of candidates.

Article 8

1. The number of candidates on each list shall not exceed twice the number of seats for employees' representatives on the Supervisory Board. An alternate shall be named for each candidate.

2. The list of candidates may include a number of persons not employed in an establishment of the S.E. not exceeding twice the number of employees' representatives not belonging to the S.E. permitted under Article 137(2). Such candidates shall be specially indicated on the lists.

3. The name of a candidate or alternate shall not appear on more than one list of candidates at the same time.

Article 9

1. Where only one employees' representative is to be elected to the Supervisory Board, the candidate elected shall be the one who receives the most votes.

2. If two or more candidates receive the same number of votes, there shall be a second ballot between these candidates. If no candidate receives a majority in the second ballot, the seat shall be allocated by lot.

Article 10

1. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates is submitted, the election shall be subject to the principle of proportional representation.
2. Each electoral delegate participating in the election may vote for one list only.
3. In addition, each delegate may cast a preference vote for a candidate whose name appears on the list that he has chosen.
4. If an elector votes for a candidate, his vote shall count as a vote for the list on which the said candidate appears and as a preference vote for the candidate concerned.

Article 11

1. Where an election is subject to the principle of proportional representation, the seats on the Supervisory Board shall be allocated to the lists of candidates in accordance with the procedure laid down in Article 6(1) of Annex II to this Statute.
2. Where more than one list has the last quotient to qualify for a seat, Article 6(2) of Annex II shall apply.
3. The seats allocated to a list shall be filled by the candidates nominated therein in the order in which they appear on the list, unless the number of preference votes cast for the individual candidates results in a different sequence.

However, if a seat should be allotted to a candidate not employed in an establishment of the S.E. or of a group undertaking controlled by it, and if the seats already allocated to the individual lists of candidates have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, to the candidate so employed who is next upon the same list.

4. If a list does not contain enough candidates to fill all the seats allocated to it, the remaining seats shall be allocated to the other lists on the basis of the number of qualifying quotients obtained pursuant to paragraph 1.

Article 12

1. Where only one list of candidates has been submitted, the candidates elected shall be those who receive the most votes, whether by virtue of their position on the list or as preference votes.

However, if a seat should be allotted in this case to a candidate not employed in an establishment of the S.E. or of a group undertaking controlled by it, and if seats have already been allocated to persons not so employed up to the number permitted under Article 137(2), that candidate shall give precedence, upon the allotting of the seat, to the candidate who has obtained the highest number of votes.

2. In the event of a tie between one or more candidates when there are more candidates than seats available, the allocation of the seat or seats concerned shall be decided by a second ballot. If no majority is obtained at the second ballot, the seat or seats shall be allocated by lot.

Article 13

1. Votes shall be cast on ballot papers.

2. A ballot paper not marked in accordance with these election rules shall be null and void.

Article 14

1. A central electoral commission shall be responsible for arranging and conducting the election of employees' representatives to the Supervisory Board of the S.E. by the electoral college.

2. The central electoral commission shall consist of the chairmen of the electoral commissions responsible for conducting the election of electoral delegates in the three establishments with the largest number of employees. Where delegates are elected in only two establishments, the central electoral commission shall consist of the chairmen of the electoral commissions of these two establishments and the oldest member of the electoral commission of the establishment with the largest number of employees.

3. The central electoral commission shall hold its first meeting within 80 days of the formation of the S.E. or, where employees' representatives have already been elected to the Supervisory Board of the S.E., at least 25 days before the expiry of their term of office, at the place at which the S.E. has its effective seat of management. It may decide to hold its meeting elsewhere if this is more convenient for the conduct of the election.

4. In all other respects, Article 13 of Annex II to this Statute shall apply.

Article 15

1. If the central electoral commission is not formed within the period laid down in Article 14(3) above, the court of jurisdiction may, upon application, take the necessary action for its formation. The court may dismiss members of an electoral commission for breach of their obligations and, in urgent cases, appoint new members. It may appoint persons not employed by the S.E. to serve on the electoral commission.

2. Application to the court pursuant to paragraph 1 may be made by a trade union represented in the establishments of the S.E. or its dependent undertakings, having their registered offices within the Member States, by three electoral delegates or by the Board of Management of the S.E.

3. The court competent to take the action referred to in paragraph 1 shall be the court within whose jurisdiction the central electoral commission meets.

Article 16

1. In agreement with the Board of Management, the central electoral commission shall fix the date and place of the meeting of the electoral college. The electoral college shall meet to elect the employees' representatives to the Supervisory Board within 100 days of the formation of the S.E. Where employees' representatives have already been elected to the Supervisory Board of the S.E., the electoral college shall meet at least 10 days before expiry of their term of office.

2. The central electoral commission shall summon the electors in writing to the meeting of the electoral college at least 10 days before the date set for the meeting pursuant to paragraph 1.

The summons shall contain the following information :

- (a) the date and place of the meeting of the electoral college determined in accordance with paragraph 1 above;
- (b) the names of the chairman and other members of the central electoral commission and their addresses at their place of meeting;

(c) the number of employees' representatives to be elected and the number of representatives who, pursuant to Article 137(2), may be

persons not employed by the S.E or its controlled group undertaking.

A copy of the list of electoral delegates, drawn up in accordance with Article 17 below, shall also be attached to the summons.

3. The information specified in paragraphs 1 and 2 above, together with copies of the list of electoral delegates, shall at the same time be forwarded to the electoral commissions formed in the different establishments, which shall publish them in those establishments together with an invitation for the submission of lists of candidates. The said invitation shall contain the statutory provisions which apply to the submission of candidates. Article 14(5) of Annex II to this statute shall apply to the electoral commissions formed in the establishments.

Article 17

1. The central electoral commission shall compile a list of all electoral delegates and their alternates, giving their addresses in the establishments at which they were elected.
2. Any objection to this list on the grounds of inaccuracy or incompleteness shall be lodged with the central electoral commission no later than at the beginning of the meeting of the electoral college. The central electoral commission shall rule on the objection immediately.
3. Only persons whose names appear on the list of electoral delegates shall be entitled to vote at the meeting of the electoral college.

Article 18

1. Lists of candidates nominated by the electoral delegates shall be submitted to the central electoral commission by a deadline which the commission shall announce at the beginning of the meeting of the electoral college. The deadline shall allow at least three hours for the submission of lists of candidates. The delegates may, by a unanimous decision, agree to ignore this deadline.

2. Any other lists of candidates must reach the central electoral commission no later than the day before the meeting of the electoral college.

3. A written statement by all candidates and alternates named in the list to the effect that they agree to their nomination shall be attached to each list of candidates.

4. A list of candidates not submitted by electoral delegates shall also state the name of the person authorized to submit it to the electoral college and, in particular, to alter it, combine it with other lists or withdraw it.

5. If a list of candidates does not name the person authorized to submit it to the electoral college, or if the person so named fails to attend the meeting of the electoral college, the said list shall be null and void, unless an electoral delegate undertakes to sponsor it.

6. The central electoral commission shall ascertain whether the lists of candidates comply with the election rules. If necessary, it shall request the electoral delegates or the persons so authorized by the trade unions or persons who have submitted lists of candidates to amend them.

Article 19

1. The central electoral commission shall direct the proceedings of the meeting of the electoral college.
2. Acts of the electoral college shall be valid if all the electoral delegates have been summoned and half of them are present or represented by alternates.
3. After expiry of the deadline referred to in Article 18, the central electoral commission shall put the lists of candidates complying with the election rules to the vote and inform the delegates of the manner in which they may exercise their voting rights.
4. The central electoral commission shall make the necessary arrangements to ensure that the voting proceeds in accordance with the rules.
5. The electoral commission shall count the votes cast, allocate the seats for employees' representatives on the Supervisory Board of the S.E. and notify the electoral college, the candidates, the Supervisory Board, the Board of Management of the S.E. and the employees entitled to vote of the results of the election.

Article 20

1. All decisions of the central electoral commission, the result of the ballot, the allocation of seats and the proceedings of the electoral college shall be recorded in an election report signed by the chairman of the central electoral commission. The list of electoral delegates shall be attached to the report as an integral part thereof.
2. Following the announcement of the results of the election, the ballot papers shall be placed in a sealed container and deposited, together with a copy of the election report, with a court or administrative authority until expiry of the period within which the validity of the election may be contested.
3. A copy of the election report shall be forwarded to the chairman of the Supervisory Board of the S.E.

Article 21

1. The court of jurisdiction may, upon application, extend the time-limit set for the election, if there are compelling reasons for doing so.

2. Application to the court of jurisdiction pursuant to paragraph 1 may be made by the central electoral commission, a trade union or group of electoral delegates or of employees entitled to submit lists of candidates under Article 7, or the Board of Management of the S.E.

3. The court of jurisdiction shall be the court within whose jurisdiction the central electoral commission meets.

(C) Contestation of validity of elections

Article 22

1. The validity of an election of employees' representatives to the Supervisory Board of the S.E. may be contested in the court within whose jurisdiction the electoral commission meets if the election rules have been infringed and if such infringement may have altered or influenced the results of the election.

2. The validity of an election may be contested by trade unions, groups of electoral delegates or of employees entitled to submit lists of candidates, or the Board of Management of the S.E.

3. Any such contestation shall be made within 15 days of the announcement of the election results.

4. The elected employees' representatives shall remain in office unless and until the court pronounces the election null and void.

Section III : Direct election of employees' representatives

Article 23

1. Where a direct election is held pursuant to Article 1 (3) of this Annex, the employees' representatives on the Supervisory Board of the S.E. shall be elected in their respective establishments by secret ballot of all employees entitled to vote.

2. Lists of candidates may be submitted by trade unions represented in the establishment and by employees entitled to vote.

3. Lists of candidates submitted by employees shall be signed by at least one tenth of the persons entitled to vote in the establishment or by 100 such persons. A person entitled to vote shall not be a signatory to more than one list of candidates at the same time.

4. Lists of candidates shall comply with the provisions of Article 8 of this Annex.

Article 24

1. Where only one employees' representative is to be elected to the Supervisory Board, Article 9 of this annex shall apply.
2. Where more than one representative is to be elected to the Supervisory Board and more than one list of candidates has been submitted, Articles 10 and 11 shall apply.
3. Where only one list of candidates is submitted for election, Article 12(1) and (2) shall apply. If two or more candidates receive the same number of votes and seats are not available for all candidates, the seat or seats in question shall be allocated by lot.
4. Article 13 shall apply to the voting procedure.

Article 25

1. No later than 30 days after the formation of the S.E., an electoral commission shall be formed in the establishment in which employees' representatives are to be elected to the Supervisory Board of the S.E., in order to arrange and conduct the election. Where employees' representatives have already been elected to the Supervisory Board of the S.E., the electoral commission shall be formed at least 75 days before expiry of their term of office.

2. The electoral commission shall be constituted in accordance with the provisions of Article 11 of Annex II to this Statute. Articles 12 and 13 of Annex II shall apply mutatis mutandis to the electoral commission.

Article 26

1. In agreement with the Board of Management of the S.E.

, the electoral commission shall fix the date and duration of the election to be held in its establishment. The election shall be held within 75 days of the formation of the S.E. or, where employees' representatives have already been elected to the Supervisory Board of the S.E., at least 30 days before expiry of their term of office.

2. In all other respects the arrangement and conduct of elections shall be governed by Articles 14, 15, 16, 17, 18 and 19 of Annex II to this Statute.

3. Contestation of the validity of elections shall be governed by Article 22 of the present Annex.

ANNEX TO COUNCIL REGULATION No.
EMBODYING A STATUTE FOR EUROPEAN COMPANIES

PENALTIES FOR INFRINGEMENTS
OF THE STATUTE

The following persons shall be guilty of an offence and liable to punishment accordingly:

The following persons shall be liable to payment of fines or other penalty :

I. Any member, as such, of the Board of Management, of the Supervisory Board or of any other organ of management of a founder company who wilfully makes any false statement in or omits material facts from the report on formation, or the annexes thereto, in respect of:

I. Any member, as such, of the Board of Management, of the Supervisory Board or of any other governing body of a founder company who wilfully makes any false statement in or omits material facts from the report on formation, or the annexes thereto, in respect of (*) :

- a) the amount of the share capital or the nominal value and number of the shares,
- b) the valuation of capital subscribed in kind or the source of such capital,
- c) the expenses incurred in connection with formation,
- d) the privileges and benefits granted to persons who took part in the formation of the company.

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II. Any member, as such, of the Board of Management or of the Supervisory Board of an S.E. who wilfully makes any false statement or omits material facts with a view to registration of an increase or reduction in the share capital of an S.E.

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III. Any person who wilfully issues any share before the nominal amount thereof has been fully paid up.

unchanged

(*) This modification concerns only the english text.

IV. Any person who, in order to exercise a right of vote at a General Meeting, wilfully makes use of shares of another person which he has obtained for that purpose by granting or promising special benefits or who, for that same purpose, transfers shares to another person in return for or in consideration of the promise of special benefits.

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V. Any member of the Board of Management or of the Supervisory Board who wilfully makes any false statement in or omits material facts from the annual accounts, consolidated annual accounts, part-consolidated annual accounts or in the report, consolidated report or part-consolidated report.

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VI. A member, as such, of the Board of Management or of the Supervisory Board who, by deliberate act or omission, causes false or incomplete information to be used in the preparation of the auditor's report.

VI. Any member of the Board of Management or of the Supervisory Board who, by deliberate act or omission, causes false or incomplete information to be used in the preparation of the auditor's report (*).

VII. Any auditor who, as such auditor, wilfully prepares a false or incomplete auditor's report.

unchanged

VIII. Any person to whom Article 82 applies and who in respect of the matters therein specified wilfully fails to carry out the formalities, apply for alteration or give notice as thereby required.

VIII. Any person who wilfully fails to fulfil the obligations imposed upon him under Articles 46 a or 82.

(*) This modification concerns only the english text.

IX. Any person who wilfully fails to observe the obligation of secrecy laid upon him by the Statute.

X. Any person who wilfully obstructs or falsifies the election of employees' representatives to the Supervisory Board of the S.E., or of members of the European Works Council or of the Group Works Council and any person who, by causing or by threatening disadvantages or by granting or by promising benefits, influences such elections.

XI. Any person who unlawfully uses the term "European Company" or the abbreviation "S.E." or any other term or abbreviation that might be confused with this term or abbreviation.

XII. Any person who, on behalf of the S.E., issues written matter not conforming with the conditions laid down in Article 10 of the Statute.

