European Company Statute: Commission welcomes formal adoption

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The European Commission has welcomed the formal adoption by the EU's Council of Ministers on 8th October on the Regulation to establish a European Company Statute (ECS) and on the related Directive concerning worker involvement in European Companies. The European Company (known by its Latin name of 'Societas Europaea' or SE) will now become a reality some 30 years after it was first proposed. The SE will give companies operating in more than one Member State the option of being established as a single company under Community law and so able to operate throughout the EU with one set of rules and a unified management and reporting system rather than all the different national laws of each Member State where they have subsidiaries. For companies active across the Internal Market, the European Company therefore offers the prospect of reduced administrative costs and a legal structure adapted to the Internal Market as a whole (see also MEMO/01/314).

Internal Market Commissioner Frits Bolkestein said: "Adoption of the European Company Statute will give companies the option of using this efficient structure for their pan-European operations. The European Company will enable companies to expand and restructure their cross-border operations without the costly and time-consuming red tape of having to set up a network of subsidiaries. This is a practical step to encourage more companies to exploit cross-border opportunities and so to boost Europe's competitiveness in accordance with the objectives of the Lisbon Summit."

Anna Diamantopoulou, Commissioner for Employment and Social Affairs, commented: "This tool is a fair wind for pan-European businesses. At the same time, it ensures that employees do not suffer any slippage in their existing rights to consultation and participation. Today's final adoption thus marks a clear staging post in the Lisbon strategy: to make the EU into the world's most competitive and cohesive place to live and do business. We must concede that the European company statute is not yet perfect: much work remains to be done on taxation matters. But, in the Commission's view, the glass is half full, not half empty".

The formal adoption follows the opinion given by the European Parliament in September 2001 on the two amended texts, on which the Council reached political agreement in December 2000. The legislation is due to enter into force in 2004.

Under the European Company Statute, a European Company can be set up by the creation of a holding company or a joint subsidiary or by the merger of companies located in at least two Member States or by the conversion of an existing company set up under national law.

Worker involvement

Under the Directive on worker involvement, the creation of a European Company would require negotiations on the involvement of employees with a body representing all employees of the companies concerned. If it proved impossible to negotiate a mutually-satisfactory arrangement then a set of standard principles, laid down in an annexe to the Directive would apply. Essentially these principles oblige SE managers to provide regular reports on the basis of which there must be regular consultation of and information to a body representing the companies' employees. These reports must detail the companies' current and future business plans, production and sales levels, implications of these for the workforce, management changes, mergers, divestments, potential closures and layoffs.
In certain circumstances, where managers and employee representatives were unable to negotiate a mutually-satisfactory agreement and where the companies involved in the creation of an SE were previously covered by participation rules, a European Company would be obliged to apply standard principles on participation of its workers. This would be the case of a European Company created as a holding company or joint-venture when a majority of the employees had the right, prior to the creation of the SE, to participate in company decisions.

In the case of a European Company created by a merger, the standard principles on participation of its workers would have to be applied when at least 25% of employees had the right to participate before the merger. It is on this element that agreement on the Directive had, until the Nice Summit in December 2000, not proved possible. The compromise struck by Heads of State and Government was to authorise a Member State not to implement the Directive on participation in the case of SEs created by merger, but in that case the SE could be registered in that Member State only if an agreement was concluded or when no employees were covered by participation rules before the SE was created. This compromise was endorsed by the Council on 20 December.

In the case of a transformation of a national company into an SE, the arrangements for worker participation applied by this national company prior to its transformation as a European Company would have to continue to apply.