

The *Societas Europaea* (SE) in Europe A promising start and an option with good prospects

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A compromise statute

The '*Societas Europaea*' (SE) as a legal entity governed by an EU statute was first proposed as early as the 1950's at the Council of Europe's level. The idea was resumed after the entry into force of the Treaty of Rome, within the scope of the Common Market. However, the first formal proposal of the Commission that aimed to introduce a statute for the SE was made in 1970.¹ 31 years were necessary for this statute to see the light of day! Two statutory texts, dated October 8, 2001, resulted there from: the EC Regulation no. 2157/2001 (hereafter the 'Regulation') in relation to Commercial law and the EC Directive no. 2001/86 (hereafter the 'Directive') in relation to workers involvement in the SE. In order to be completely exhaustive, reference should also be made to the Directive of 17 February 2005, which amended the Directive of 23 July 1990 in relation to the 'joint tax regime applicable to mergers, spin-offs, asset contributions and share exchanges between companies of different Member States'. It refers to all stock corporations, however by establishing the tax neutrality of cross-border transactions in Europe it has authority to apply in particular to the SE, the most prominent feature of which is intra-community mobility.

The combined reading of these three EU legislative acts is not enough to describe the SE statute, which is largely based on national legislation. Indeed, for those aspects not addressed by the Regulation, reference is made to the national laws of the Member State where the SE has its registered office. The SE is treated, in principle, as a public limited-liability company of the relevant state, which may, however, provide for specific derogatory provisions. The SE statute is therefore a hybrid: half EU, half national.

Initially, this statute was both simple and comprehensive. It had a truly federal nature. The SE was to become a new and original type of commercial company governed by autonomous EU Commercial law,² equal in all respects in the entire EU. The companies were to choose between a local law statute (determined by the state of location of their registered office) and a fully European regime (similar to the '28th regime').³ However, the states, fearing that this new type of commercial company would escape their authority, gave up this audacious plan.

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1 Proposal for a Council Regulation Embodying a Statute for the European Company, *OJ C* 124, 10.10.1970, p. 1.

2 Administrative law, industrial and commercial professions' law, competition law (largely EU-based), criminal law, intellectual property law or bankruptcy law, remained separate from the statute of the company.

3 The 28th régime – which never actually entered into force – is defined as a body of EU rules of an optional nature, co-existing with the legal systems of the 27 Member States, and being self-sufficient.

The Netherlands was the first to put its brakes on the approval of the SE Regulation, which was, in their opinion, inspired too much by the German model, and not sufficiently in sync with a more flexible approach, such as the British one. Then, the United Kingdom and Ireland had the tax chapter of the SE deleted. This was not, however, revolutionary, as it provided – what results nowadays from the above-mentioned Tax Directive – that the shareholders of a merger-created SE could not be required to pay taxes on the added value generated by the exchange of shares. A compensation mechanism for the losses of the permanent business locations of the SE, as well as for the subsidiaries held at least at 50%, was also introduced. This system was similar to the system currently promoted by the Commission in view of the implementation of a ‘consolidated balance sheet’ for groups at EU scale.⁴ At the time, many states were not yet ready to accept such a leap forward, which certain states still refuse today. Germany also blocked the process in respect of the labor provisions of the SE. The German government feared that German companies would elect the SE statute to escape from employee participation, the well-known ‘*Mitbestimmung*’.⁵ The labor provisions of the SE, which are set out in a separate directive, have therefore been strengthened based on a ‘before-after’ principle. In accordance with this principle, employee participation rights in a company electing the SE statute cannot be decreased compared to the rights existing prior to the incorporation of the SE.

A statute that deserves improvement

The current statute, which combines various EU and national legislation, is far from the initial objective of an autonomous statute governed by a single law. The business community laments it and with good reason. If the SE – the start of which looks promising⁶ – is to provide an appropriate answer to the need for optimization of the management of European groups, and be thus an instrument to fight against relocations outside of Europe, it is necessary to consider now how best to improve and simplify its statute.⁷ In the wake of the amendment of the Regulation, which is planned as of 2009, the SE statute is already interesting.

The SE has advantages (1) which make it a useful vehicle for optimizing the management of groups operating in the entire EU (2).

1. Why have recourse to the SE statute?

The 27 Member States of the Union, including Bulgaria and Romania, have today incorporated the SE statute into national law. Almost 100 companies have become registered European Companies, or are in the process of registering, which, if the delay in incorporating the SE statute in some Member States is taken into account, is a rather substantial number. Also, and especially, amongst the companies that have become SEs are several high-profile groups such as Allianz SE,

4 On this point, see notably the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Implementing the Community Programme for improved growth and employment and the enhanced competitiveness of EU business: Further Progress during 2006 and next steps towards a proposal on the Common Consolidated Corporate Tax Base (CCCTB), COM(2007) 0223 final.

5 ‘*Mitbestimmung*’ or German employee participation may have three forms: parity employee participation in the sectors of mining and iron and steel, parity employee participation in stock corporations of over 2,000 employees, and the one-third employee participation in stock corporation having between 500 and 2,000 employees.

6 M. Menjuq, ‘Premier pas et premier bilan de la société européenne en France’, 2007 *Revue des Sociétés*, no. 2, p. 253.

7 N. Lenoir, *La Societas Europaea ou SE – Pour une citoyenneté européenne de l’entreprise*, Rapports officiels, Ministère de la justice, Documentation Française, 2007.

the computer services company Elcoteq SE, the reinsurer SCOR SE, the medical company Fresenius SE, and even Porsche SE (registered November 13, 2007).

40% of SEs are of German origin. This can be explained as the SE statute is inspired by German Company law and therefore more easily promoted in Germany. Additionally and most importantly, the adoption of the statute allows groups to soften the rules on collective co-determination by limiting the number of members of the supervisory board, and adding trade union members from both Germany and trade union members from other Member States to the supervisory board. A substantial number of SEs – 25% – are based in the financial and insurance sector, most likely in order to streamline their relationships with national supervisory authorities (see hereafter). Finally, around 15% of SEs are ‘empty shells’. In countries such as Germany and the United Kingdom advisory companies can provide ready-made structures, which avoid administrative red tape, to founders of companies. This practice also exposes the problem of avoiding the establishment of the social facility of the SE which does not come into action when a company has no employees.

1.1. Confirmation of a European identity

The original motives for creating an SE were, above all, operational. The SE is currently the only commercial company that benefits from complete freedom of establishment, at the same time being both secondary (establishment of agencies, branches and subsidiaries)⁸ and primary (transfer of registered office). However, by looking at press releases of the managers of a new SE, it is possible to identify ‘political’ motives in that the group wants to confirm its European identity. In this way the CEO of Allianz SE announced that the company (a registered SE in Munich as of March 13, 2006) was European ‘at heart’. In the same spirit, Arcelor (before its merger with Mittal) had planned in its by-laws its intention to become an SE to highlight the preeminence of its European identity over the national identities (French, Spanish, and Luxembourgian) that make up the group. The same concern is evident in the Shareholders’ Agreement of GDF-Suez which mentions the possibility of adopting the SE statute. To be able to choose such a statute can be favorable for companies, such as EADS or Airbus, where differences between national cultures are a source of tension.

By conferring the monopoly of the use of the acronym SE on European Companies which ‘precede or follow its company name’,⁹ the Regulation reinforces this means of identification. In marketing terms, when the importance of the image and the logo of a company is known the advantage which the acronym SE can bring is measured in order to estimate the value of the transnational character of a European group.

1.2. Benefit from real intra-community mobility

This mobility is the principal advantage of the SE. Despite its national founding and its strict resemblance to a public limited-liability company of the country where it has its registered office, the SE has a Community legal personality. This means that the SE has unequalled freedom of movement.

The jurisprudence of the Court of Justice of the European Communities (ECJ) has considerably stretched this freedom for legal entities, which until now has been more theoretical than real.

⁸ EC Treaty, Art. 43.

⁹ Art. 11 of the Regulation.

Since the *Centros* case in 1999 and until the *Sevic* case in 2005,¹⁰ the Court has admitted the possibility for a company to register in the state of its choice and to then carry out the entirety of its activities through a subsidiary based in another state (*Centros*). The Court judged that a Member State could not deny a company of another state the ability to be a party to legal proceedings in order to defend their rights, in spite of the absence of a European Convention on mutual recognition of legal entities¹¹ (*Überseering*). The Court decided that a Member State could not impose specific obligations, even as ‘a matter of form’,¹² on foreign companies (*Inspire Art*). Finally, the Court found against a Member State that refused to register a company resulting from a cross-border merger, therefore requiring all Member States to acknowledge the validity of cross-border mergers (*Sevic*).

This jurisprudence constitutes real progress by consecrating the freedom of movement of companies, as despite affirmation of the principle in European treaties the companies were, *de facto*, unable to move freely throughout the Community. However, the Court did this within the framework set by the EC Treaty which expressly authorizes legal entities to only create ‘agencies, branches and subsidiaries’ (Article 43 *ibid.*) in the Common Market. As a result of the continuity of its European legal character throughout the Community, the SE can, amongst other things, transfer its registered office from one state to another,¹³ this possibility is virtually prohibited for other types of companies.¹⁴ A current example: on January 1, 2008 Elcoteq SE transferred its registered office from Finland to Luxembourg. The management’s proposal to transfer the registered office must be accompanied by report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of transfer for shareholders, creditors and employees.¹⁵ The decision to transfer requires the qualified majority of the General Assembly.¹⁶ If the Member States allow, the minority shareholders can request the repurchase of their shares in cash¹⁷ (for example, France and Germany both permit this, but the United Kingdom and the Netherlands do not). Finally, the transfer can obviously not take place if the SE is bankrupt.¹⁸

Directive 2005/56/EC on cross-border mergers of limited liability companies of 26 October 2005 allows all limited liability companies to proceed, with conditions analogous to those of the SE, with cross-border mergers on the basis of a decision made by the qualified majority of the General Assembly of Shareholders (instead of the unanimity usually required), and without the company absorbed having to be liquidated. However, without the transposition of this directive,¹⁹ the SE statute is unique in offering these faculties. It is often in order to carry out a cross-border merger that companies choose to adopt the SE statute (for example, Allianz SE and the Scandinavian Bank Nordea that is in the process of becoming an SE).

10 ECJ 9 March 1999, Case C-212/97, *Centros*, [1999] ECR I-1459; ECJ 5 November 2002, Case C-208/00, *Überseering*, [2002] ECR I-9919; ECJ 30 September 2003, Case C-167/01, *Inspire Art*, [2003] ECR I-10155; ECJ 13 December 2005, Case C-411/03, *Sevic Systems*, [2005] ECR I-10805.

11 The Brussels Convention of 29 February 1968 concerning the mutual recognition of companies and legal entities has never entered into force. The text of this convention, drafted by Professor Berthold Goldman, is reproduced with his report at RTD eur. 1968, p. 400.

12 A foreign company of ‘a matter of form’ designates a limited liability company constituted in conformity with the legislation of a Member State but which does not have a real link with the latter and which carries out its activities completely or nearly completely in another Member State.

13 The company would not be fiscally penalized for doing so as a result of the Fiscal Directive of 17 February 2005.

14 The proposition of the 14th Directive on Company Law concerning the cross-border transfer of the registered office currently seems to be shelved.

15 Art. 8 (3) of the Regulation.

16 See Art. 8 (6) in conjunction with Art. 59 of the Regulation.

17 Art. 8 (5) of the Regulation.

18 Art. 8 (15) of the Regulation.

19 The transposition should have taken place on December 15, 2007.

The SE has the opportunity to be able to combine all the techniques of company mobility: cross-border mergers, transfer of registered office, and fiscal neutrality for cross-border transactions. This mobility is only possible when social negotiation procedures set out by Directive 2001/86/EC of 8 October 2001 for the SE, and by Directive 2005/56/EC of 26 October 2005 for all limited liability companies are respected. A lot of people in the business community find these procedures dissuasive. However, they could help the employees of the group accept the restructuring which takes place following the adoption of the SE statute. Employees can decide to not continue negotiations, but they cannot, in principle, block the transformation. In this way, in October 2007, the representatives of 324,000 employees of Volkswagen were not successful in their suit when they contested the decision of Porsche (their reference shareholder) to integrate a holding which had SE status.²⁰

2. The SE, a means of optimizing the management of European groupings

An SE may be listed or unlisted, and have a monist structure (with a board of directors) or a dualist structure (with a supervisory board and management board). It must have a share capital of at least 120,000 euros. The Regulation sets forth the four ways in which an SE may be formed: by merger (between SAs), by the creation of a holding SE (by SAs or limited liability companies), by the creation of a subsidiary SE (by any public or private company) and finally by transformation. Formations by merger and transformation alone represent 85% of the methods of formation of an SE.

Paradoxically, whilst providing the SE with far greater mobility than any other form of commercial company, the Member States have tried to curb the election by companies of SE status in order to prevent them from leaving national territory.

Two factors restrict the SE in this context. The first relates to the conditions for the formation of an SE. Contrary to what is provided for in relation to European Economic Interest Groupings (EEIG)²¹ and European Cooperative Societies (SCE),²² it is not possible to create an SE *ex nihilo*. The SE cannot be formed directly by individuals and the companies at the basis of its formation must also have a trans-European dimension.²³ For example, in the event of the formation of an SE by merger, the companies participating in the operation must be based in at least one of the Member States. The same goes for the possibility of transforming into an SE, where the company involved must have held a subsidiary for at least two years, which is subject to the laws of another Member State.²⁴

Secondly, the SE is governed by the ‘real seat’ principle, which is to say that its registered office (place of registration) and its central administration must be in the same location. Nevertheless, the principle of the ‘registered office’ enables companies to be registered in the Member State of their choice. Companies can thus determine for themselves the laws applicable to them, whilst situating their business management and central administration in another country. The

20 They wanted the preeminence of their rights to be recognized faced with the 120,000 employees from Porsche. However it was admitted that the trade unions present on the Supervisory Board of Volkswagen (10 members out of 20) would still be able to comment on any possible restructuring, closing of the factory or amendment to working conditions or to salaries, in spite of decisions made referring to investment matters made at the level of the SE holding (see ‘VW’s unions gear up for Porsche battle’, *Financial Times*, 25 October 2007).

21 Council Regulation (EEC) no. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG).

22 Council Regulation (EC) no. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Economic Cooperative Grouping with regard to the involvement of employees.

23 Art. 2 of the Regulation.

24 See R. Dammann & M. Fronty, ‘Plaidoyer pour une libéralisation des modes de constitution d’une société européenne’, 2007 *Droit et Patrimoine*, no. 163, p. 97.

‘real seat’ requirement, which did not feature in the original draft drawn up by the Commission,²⁵ is intended to avoid the propensity of companies towards countries in which legal regulations are less strict.²⁶ It remains the case that in the light of economic reality, echoed by European law jurisprudence in respect of the freedom of establishment, the real seat principle is no longer of any real effect. The Netherlands abandoned the principle in 1959, and Germany is preparing to do the same – and with good reason. In France, considerations on this issue have not produced any results.

2.1. The SE, a means of rationalizing internal structures

Mobility (cross-border mergers and transfers of registered office) may serve in the restructuring of a group as a function of a business’s objectives. Three typical models have emerged: creation of ‘branches’, ‘subsidiaries’ or the structural organization around product supply lines.

The quintessential branch model – the transformation of subsidiaries into single branches – is that adopted by Allianz SE. The German insurer set about recentralizing its management by acquiring all of the share capital and voting rights in its subsidiaries as required and transforming them into branches. It was through the repurchase of its Italian subsidiary RAS that Allianz became an SE. The reason behind Allianz’s retention of its French subsidiary AGF, in respect of which it repurchased all shares in the company, is above all due to psychological and technical difficulties. Having a network of branches rather than subsidiaries is a strategic or economic choice (saving on structural costs). In the fields of finance and insurance, the objective is to simplify overall control of the group related to prudential requirements (‘Basel II’ requirements in the banking sector, or ‘Solvency’ requirements in the insurance sector). Effectively, instead of being required to respond to a number of national authorities corresponding with the number of Member States in which the group has subsidiaries, the group, in principle, only has to deal with the national supervisory authority competent to supervise the parent company and its branches. Creation of branches, through SE formation, is therefore a method by which to optimize the allocation of shareholders’ equity by ‘repatriating’ it as needed at the level of the head of the group.²⁷

The second model is that of the creation of subsidiaries. It has the advantage of enabling subsidiaries to acclimatize to the local regulations in the country in which they find themselves, and retaining much particularized levels of accountability whilst maintaining protection of the parent company (a form of ‘Chinese wall’). The creation of subsidiaries is facilitated by the fact that the Regulation imposes virtually no conditions in respect of the creation of an SE subsidiary (other than that the company forming the SE must have at least one subsidiary or one branch in another Member State). This method is not frequently used, but is worth considering, given the possibility of formation of a chain of SE subsidiaries each having a sole shareholder, and whose corporate governance is partially harmonized with that of the parent SE.²⁸

25 This proposal authorized the SE to have several registered offices.

26 Similar to the ‘Delaware effect’, the term used to explain the attraction effect of a state that has the most favorable legislation for newly constituted companies. Such an effect generally occurs in an economic space where the companies’ mobility is assured and where there are competitive laws. The ‘Delaware effect’ is a reference to the large appeal of the state of Delaware in the United States, which won the competitive race which the American States took part in. This legal competitiveness between states is sometimes called ‘race to bottom’, as it is considered as a race to have the most relaxed laws, or alternatively occasionally called ‘race to the top’, the competition can finish with a simplified and flexible company law, whilst allowing for the elimination of useless procedures and non-efficient provisions.

27 See N. Lenoir, P.-P. Bruneau & Michel Menjucq, ‘Les enjeux de la localisation de la SE dans l’espace européen’, 2007 *Droit et Patrimoine*, no. 163, p. 62.

28 Single-member SEs are subject to national provisions on limited companies.

Finally, experience shows that some groups hope to use the SE for the purposes of group reorganization, as a function of their product lines. Such was the situation for the French reinsurer, SCOR. The company formed three SEs, one by transformation and two others through cross-border mergers: the company at the head of the group (SCOR SE) and the two operating (SCOR Global life) and shell (SCOR Global P and C) subsidiaries. This process of structural simplification also enabled a reduction in overall control systems for the group.

2.2. The SE, a means of external growth and promotion of cross-border cooperation

Until the 2005 Directive on cross-border mergers of companies has been implemented in all Member States, SE status provides the sole mechanism by which to carry out such operations. In addition to the cases where the acquired company is a fully-owned subsidiary of the acquiring company, the completion of cross-border mergers in the absence of the harmonization of national laws of Member States has, until now, run into obstacles having a nullifying effect.²⁹

By implementing a legal framework where previously there was none, the 2001 Regulation encourages the undertaking of cross-border mergers (by takeover or by formation of a new company) within the European Community. As a result of the wording of the Regulation, grey areas exist in relation to the opportunities for existing SEs to take advantage of each of the two methods. Opinions on this issue diverge. Some consider that takeovers are only contemplated in the context of the formation of an SE, and that the only method open to existing SEs is merger by formation of a new company. Others (including the author of this article) would suggest that the Regulation sanctions all forms of merger for existing SEs.³⁰ Whichever solution is ultimately adopted *in fine*, SEs will be able to circumvent the potential impossibility of undertaking mergers directly through a merger by new formation. To achieve a similar result to that of a direct merger, one must countenance either the formation of a holding company which receives the assets of the SE and of the other company involved, or otherwise a transaction in two stages, featuring firstly a merger between the company involved and a subsidiary of the SE, followed by the merger of the subsidiary into the SE.

In addition to this characteristic, the SE offers companies other possibilities, which enable the implementation of their policy of external growth or cross-border cooperation, through SE holding companies or common businesses in the form of SE subsidiaries.

The SE holding company has met with limited success, since out of almost 100 registered SEs, apparently only the Austrian company Matmar SE (food sector) has been formed in this manner. This method of formation may, however, be of interest to those undertaking Leveraged Buyouts (LBOs) for example. Notwithstanding the designation of the term which describes it, and which can lead to some confusion, some holding companies have, nevertheless, taken the form of an SE, whether by merger (for example, the German company Conrad Holding SE operating in the field of on-line sales of electronic and technical products) or by transformation (for example the German car manufacturer Porsche Holding SE).³¹

The outline for cross-border cooperation through the creation of common businesses in the form of SE subsidiaries has the advantage, as compared with the competing EEIG method³²

²⁹ See Lenoir 2007, *supra* note 7, p. 42.

³⁰ A teleological interpretation of the 2001 Regulation allows us to think that an SE can get closer to another company (whether an SE or not) of another Member State by means of merger absorption from the moment that this type of operation has the aim of increasing mobility in the Community. To force the SE to carry out a merger by constitution of a new company each time it intends to merge with another company would make the procedure more cumbersome by pointlessly adding to the complexity and costs.

³¹ Source of SE information: website www.worker-participation.eu/european_company

³² The EEIG is presented as a very flexible instrument of cross-border co-operation for European companies which allows them to carry out their activities together. It is regulated by Council Regulation (EEC) no. 2137/85, *supra* note 17.

– used notably to pool resources or to produce infrastructure,³³ of enabling the promoters of the company to produce profits. This is also the reason why the common SE subsidiary lends itself as a suitable means for cooperation in the context of public-private partnerships (PPPs). One particular example catches the attention. It relates to the formation of La Galleria di Base del Brennero (BBT SE), the SE responsible for the 50km-long Brenner tunnel, the largest project of its type in Europe. This SE, registered in Austria, was formed in 2004 and is owned equally by the Austrian state, the principality of Tyrol, and Italy. The use of the SE was recommended by the European Commission, which partially guaranteed its financing under the Trans-European Transport Networks (TEN-T).³⁴ The Commission confirmed its support for this method in its Green Paper on PPPs.³⁵ This gives the impression that the Commission will be more eager to fund cross-border projects if they are placed under the control of common SE subsidiaries.

Finally, the 2001 Regulation, by introducing this method of SE formation to all public and private entities, is opening the way to extremely interesting opportunities in certain areas of research (for example: an SE subsidiary of a pharmaceutical company and of a university medical laboratory).

By way of a conclusion:

The SE is now part of the essential instruments available to European companies which are looking to develop their cross-border strategy. It is of interest either for true European companies or for European subsidiaries of American or Japanese groups, for instance.

Some imperfections do hamper the 2001 Regulation's provisions, but they are perfectible, as the Regulation itself mentions.³⁶ Also, a major review of the tax issue, which was absent from the SE provisions, as well as the issue in relation to the registered office, which was not resolved by the statute, is unavoidable.

In respect to these two aspects, the SE Report, drafted upon the request of the French Ministry of Justice in view of the French presidency of the EU in the second half-year of 2008,³⁷ recommended among other improvements that:

- a) **Tax convergence be promoted**, by supporting, *inter alia*, the works of the European Commission in relation to the implementation of a common consolidated corporate tax base. Notwithstanding the thoughts of Member States which considered playing the tax competition game, the EU would send a positive message to European companies if it succeeded in convincing certain reluctant Member States in that respect. It is not a matter of putting an end to tax competition between the latter as the rates and the regime of collected taxes are not covered by this harmonization project, but only to make life easier for EU-sized companies. Generally, an increase in two-level discussions, *i.e.* between the various national tax authorities, and between the latter on the one hand, and the companies

33 Examples of EEIG: the *Chaîne Arte*, the EEIG Eurodeveloppement (collective cooperation for financial companies), the EEIG for the Mont Blanc Tunnel (GEIE-TMB) (security end traffic management) or even Ecart, the European Consortium on Agricultural Research in the Tropics...

34 See notably, Communication from the Commission – Developing the trans-European transport network: Innovative funding solutions – Interoperability of electronic toll collection systems, COM(2003) 0132 final.

35 Green Paper on Public-private Partnerships and Community Law on Public Contracts and Concessions of 30 April 2004, COM(2004) 327 final.

36 Art. 69 of the Regulation confers on the Commission 'five years at the latest after the entry into force of this Regulation' the duty to present to the Council and the European Parliament a report on the application of the Regulation, and 'proposals for amendments, where appropriate'.

37 See footnote 7.

on the other hand, would be welcome in the context of this tax convergence and of an improved legal security for companies.

- b) **The ‘real seat’ principle be given up**, as it is now outdated given case law, and as it hampers the simplification of the management structures of companies operating in the EU.

As a pioneering European corporate form, the SE has introduced a new dynamism in the harmonization of EU corporate law, which should create a form of recognition from the business community. Indeed, both supporters and opponents of the SE agree on its role in breaking the deadlock over the issue of the 2005/56/EC Directive in relation to cross-border mergers of limited liability companies and the progress made as of today in relation with the planned statute of European Private Company.³⁸

In relation to the necessary adjustments to the SE statute, let us hope that they will be of the level necessary for increasing competitiveness for both the European companies and the global European site.

³⁸ To this effect, see the non-legislative resolution of the European Parliament on the European Private Company Statute of 1 February 2007, INI/2006/2013. In this resolution, the Parliament requested the Commission to submit to the Parliament, during 2007, a legislative proposal on the European Private Company Statute, on the basis of Art. 38 of the EC Treaty.