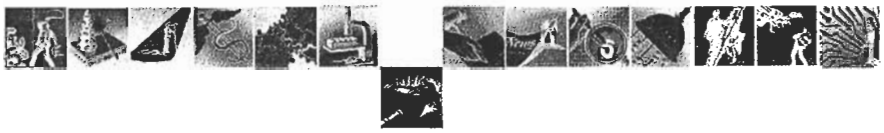

THE EUROPEAN COMPANY FORM IS PARTICULARLY USEFUL FOR U.S. COMPANIES LOOKING TO INVEST IN THE EU

SE CROSSING

For decades, companies established both in and outside the European Union have had to face the consequences of the lack of harmonization among the national laws of the EU member states when transferring a company's registered office from one member state to another. Many U.S. companies had difficulties choosing a corporate form linked to a specific EU member state when investing in the EU.

For some years now, the liberalization of transnational investments has permitted partnerships, mergers and the integration of firms to be carried out across national borders by the acquisition of shareholdings or controlling interests.

Along with such global transactions, some U.S. companies have opted for cooperation and partial or progressive integration.

Such cooperation is certainly not the prerogative of large companies, however. Many small or medium-sized enterprises are also interested in the opportunities afforded by integration of the European common market.

In October 2001, the EC Council introduced Regulation 2157, creating the European company, or Societas Europaea, and Directive 86, governing employee involvement throughout the European Economic Area.

The main purpose of the regulation is to introduce a legal entity governed by a single set of rules throughout the EEA. There are some differences between the various member states, but the framework is similar for all EEA countries.

A IMPORTANT ADVANTAGE OF THE SOCIETAS EUROPAEA IS THAT ITS REGISTERED OFFICE CAN BE TRANSFERRED TO ANOTHER MEMBER STATE WITHOUT LOSS OF LEGAL PERSONALITY

European companies are not the exclusive beneficiaries. A U.S. company that wishes to establish a company in the EEA will not have to analyze the corporate laws of each member state to choose the most appropriate corporate form.

The choice of where to establish an SE will be governed by tax considerations. An SE shall be treated as a national company, and each of its subsidiaries or branches shall be subject to the tax law of the country in which it is situated.

The foregoing implies that there is no simplification of the formalities that must be accomplished by the group to which the SE belongs. However, most member states are working on special tax rules for SEs.

In addition, the choice made by such a U.S. company need not be final. An important advantage of the SE is that its registered office can be transferred to another member state without a loss of legal personality and, as of Jan. 1 (if all conditions are met and to the extent the member states have transposed the directive), without adverse tax consequences.

If a company that is not an SE wishes to transfer its headquarters from one member state to another, in most cases it will have to face the burdensome procedure of dissolution and reincorporation.

If a decision is made to transfer the registered office of an SE from one member state to another, the transfer can be performed at short notice and without dissolution. This implies that the SE is the ideal corporate form for foreign special-purpose vehicles in structured finance transactions (for example, project and real estate finance, acquisition finance and so forth).

A U.S. company with EEA subsidiaries can form an SE through a cross-border merger. For the time being, cross-border mergers for public limited companies are not yet feasible in the EU. The SE allows companies to clear this hurdle. Such a merger should be tax neutral.

Of course, an SE also has disadvantages. As mentioned above, there is a lack of tax harmonization, although this can also be viewed as an advantage. Without a doubt, the member states will shortly set out specific rules for SEs having a head office on their territory. Since the registered office of an SE can be transferred with relative ease from one member state to another, this will result in competition among the member states to attract SEs.

Another obstacle is the complexity and uncertainty of the procedure for agreeing on rules for employee involvement. If well prepared, this procedure need not be an obstacle.

The formation process usually takes six to 12 months. If the SE is used as a special-purpose vehicle or if the founding parties do not have any employees, however, the procedure can be finalized much sooner.

The introduction of the SE has been greeted with enthusiasm by U.S. companies that had been eagerly awaiting an initiative at the Community level to permit the cross-border transfer of a company's head or registered office resulting in a change in applicable law or a cross-border merger without liquidation. Without a doubt, the SE offers new opportunities to large U.S. groups, but also to small or medium-sized U.S. companies that wish to develop their activities in the EEA. ■

Dirk Van Gerven and Elke Janssens are corporate attorneys in the Brussels office of the Benelux law firm NautaDutilh. Dirk's book on the SE and its European-wide application will be published this winter by Cambridge University Press.