The European Company in Belgium: An Overview of the Pitfalls and Advantages

ELKE JANSSENS AND DIRK VAN GERVEN*

LT Belgium; European company

Introduction

Council Regulation 2157/2001 of October 8, 2001 (the "Regulation") introduced a new legal entity under Community law, the European company[1] or *Societas Europaea*, abbreviated to SE (Art.1(1) Reg.). The rules governing the SE were developed over the course of many years. In total, it took 30 years for Community lawmakers to develop a complete set of rules. The Regulation regulates the SE only in part and refers to national law (of the Member State where the SE's registered office is located) on many key issues. It was therefore necessary for each of the Members States of the European Communities to set out a separate set of rules for the SE. The Regulation was implemented under Belgian law by a royal decree of September 1, 2004 (the "Royal Decree") pursuant to powers vested in the King by the Act of December 22, 2003.[2] The national rules of Belgian law are mainly to be found in Books XV and VIII of the Belgian Company Code.

Employee involvement is an important aspect of the SE. In the first proposal, dating back to 1970, the initiators intended to establish a European company with a supervisory board in which employees participated. The first ambitious proposals were unacceptable for Member States with a low level of worker participation. Finally, the Members States agreed on a directive containing the general framework of the rules it intends to implement[3] that must be transposed into national law by each Member State. Employee involvement in an SE is governed by Council Directive 2001/86 of October 8, 2001 (the "Directive").[4] As provided by the Directive, Belgium granted the power to transpose the Directive to representatives of employers and employees. The result is Collective Bargaining Agreement ("CBA") No.84 of the National Labour Council ("CBA No.84"), which transposed the Directive only in part. CBA No.84 was supplemented by the Act of August 10, 2005 which created a legal framework with the required protections for employees participating in the negotiating body. The Royal Decree and CBA No.84 entered into force on October 8, 2004.

In Belgium, an SE will be referred to as a *Europese vennootschap* in Dutch or a *Société européenne* in French (Art.1(2) Company Code). The name of an SE shall be preceded or followed by the abbreviation "SE". Only SEs may include this abbreviation in their name (Art.11 Reg.).

Reasons to opt for or not to opt for an SE in Belgium

Before setting out the main rules applicable to an SE in Belgium, it is useful to point out the advantages and disadvantages of an SE in comparison to a Belgium public limited liability company (*naamloze vennootschap* ("NV")/*société anonyme* ("SA")).

The main advantage of an SE is its European character. No other limited-liability legal entity presents the same European dimension. European corporate groups can express their European identity by choosing to take the form of an SE. The SE may thus turn out to be a useful marketing tool, particularly for listed companies.

A second important advantage is that the registered office of an SE can be transferred to another Member State without a loss of legal personality and, as of January 1, 2006, without adverse tax consequences.[5] If a company that is not an SE decides, for whatever reason, 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. Since an SE can transfer its registered office without tax consequences, it is the ideal corporate form to use as a special purpose vehicle ("SPV"). In structured financing transactions, SPVs are often incorporated to carry

* *NautaDutilh Brussels.*

1. [2001] O.J. L294.
2. The Royal Decree was ratified by Parliament by Art.300 of the Act of December 27, 2004.
3. EC Treaty, Art.249, provides that a directive is binding as to the result to be achieved on each Member State to which it is addressed but leaves the choice of form and methods to the national authorities.
4. Council Directive supplementing the statute for a European company with regard to the involvement of employees [2001] O.J. L294/22.
5. Council Directive 2005/19 amending Directive 90/434 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States [2005] O.J. L58/19.

out business related to a specific transaction (e.g. project and real estate finance, acquisition finance, etc.). Currently, SPVs are usually incorporated as limited-liability companies in the form of a *société anonyme* ("SA"). The SE is a valid alternative to an SA in such transactions. If it becomes difficult for the SPV to conduct its business in Belgium or if the financing costs increase owing to a significant change in the tax rules applicable to SPVs, it may wish to relocate abroad. The relocation process will be facilitated if the company takes the form of an SE. In addition, the investors could decide to transfer the SPV's registered office to a more transaction-friendly Member State if a significant change in tax or company law is expected. It should be stressed, however, that the transfer of an SE's registered office will only be tax neutral if the SE's assets and liabilities remain effectively connected with a permanent establishment in the Member State from which the registered office is transferred.

Thirdly, an SE can be formed through a cross-border merger, for which the Regulation provides an autonomous legal basis. The tenth proposal for a Council Directive on cross-border mergers of public limited companies also provides a legal basis for such mergers, but no agreement has yet been reached on this proposal.[6] The SE allows companies to clear this hurdle. Furthermore, a cross-border merger should be tax neutral pursuant to the Merger Directive, which, however, has yet to be transposed into Belgian law in this respect.[7]

An SE also has disadvantages. The first disadvantage is the absence of tax harmonisation. 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. This implies that there is no simplification of the formalities that have to be accomplished by the group of which the SE is the parent or holding company. Most Member States, and also Belgium, are working on a special tax regime for SEs. For the time being, no specific regime has been put in place.

Secondly, the complexity and uncertainty with regard to the procedure for concluding arrangements on employee involvement can be a cause for concern for companies examining the possibility of forming an SE. If well prepared, such procedure should not be an obstacle for the incorporation of an SE. The formation process will usually take 6 to 12 months. If the SE is used as a SPV and/or if the founding parties do not have any employees, the procedure can be accomplished sooner.

6. COM (84) 727 final, January 8, 1985.
7. See n.5 above.

Finally, it should be kept in mind that the incorporation of an SE requires the involvement of companies which are situated in different Member States. The consequence is that it is necessary to wait for the implementation of specific regulations with respect to the SE in each Member State concerned and that the regulation of each of such Member States should be analysed before starting the procedure. In general, such regulation should be similar in the different Member States, but sometimes there are some particularities that should receive appropriate attention.

Formation of a Belgian SE

Introduction

The Regulation introduced a new legal entity into Belgian law. It is a corporate form with a European dimension of which the shareholders are only liable for the amount of their contribution to the capital. Most rules applicable to the Belgian limited liability company (*naamloze vennootschap/société anonyme*) also apply to the SE. Hereafter the authors concentrate on the main differences between a Belgian limited liability company ("SA") and a Belgian SE.

Acts committed on behalf of an SE in formation

As is the case for Belgian companies, acts which are performed in an SE's name prior to registration can be assumed by the SE after acquiring legal personality. If not assumed by the SE (or if the SE is not incorporated) the natural persons or legal entities that committed the acts shall be held jointly and severally liable (together with the SE, as the case may be). Upon ratification, the acts will be considered by operation of law to have been entered into by the SE. Contrary to the provisions of Belgian law, the acts performed in a SE's name prior to registration must not be expressly assumed within two months of registration and the SE should not necessarily be registered within a period of two years following the performance of the act.

Different means of formation

The different means of formation are set out in the Regulation. Belgian law has only provided in some specific wording when explicitly required by the Regulation. An SE can be incorporated by merger, as a holding company, as a subsidiary or

by conversion of an SA into an SE. It is important to note that in the event of formation of an SE by merger or conversion only SAs can participate. In the event of an incorporation of an SE-holding, not only the SA but also the private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid/société privée de responsabilité limitée*, "SPRL") is entitled to participate. Finally, an SE subsidiary can be incorporated by any legal entity having its seat in the European Economic Area and developing economic activities.

Each participating company must prepare draft terms of merger, formation or conversion. Only the board of directors (*conseil d'administration*) or management organ (*conseil de direction*), if any, is authorised to prepare the draft terms (Arts 879, 885 and 890 Company Code). There is no obligation to have the draft terms executed before a notary. Under Belgian law, the draft terms should be prepared in an official language of Belgium, i.e. Dutch, German or French, depending on where the head office of the participating company is situated.

Depending on the method of formation, some specific reports should be prepared. In addition, the Regulation sets out that the draft terms must be examined by an expert. In Belgium the expert is the company's auditor or, if the company does not have an auditor, a certified auditor or chartered accountant appointed by the board of directors or management organ of each Belgian participating company. In the event of a formation by merger, the participating companies may jointly petition the competent commercial court for permission to appoint a single expert (Art.881 Company Code).

The notary preparing the incorporation deed of an SE shall confirm compliance with all formalities set forth by the Regulation and/or the applicable legislation. The participating companies must provide the notary with all relevant documents confirming such compliance with the laws of the relevant Member State.

The minister of economic affairs has the right to object to participation by a Belgian company in the formation of an SE by merger (Art.878 Company Code). If such objection is filed, the company in question cannot take part in the merger. The objection should be made by means of an official notice filed with the clerk of the commercial court of the judicial district where the company's head office is located. A mention of the filing must also be published in the Annexes to the *Belgian State Gazette*. The company must be informed of the ministry's objection within one month following publication of the information set forth in Art.21 of the Regulation in the Annexes to the *Belgian State Gazette*. The procedure to appeal such an objection shall be set forth in a royal decree.

As long as the opposition has not been withdrawn or no final judgment in favour of the company is pronounced, the notary cannot furnish the certificate necessary to proceed with the merger.

Registered office

Belgium applies the head office (*siège réel*) theory to determine whether a legal entity, such as a company, is governed by Belgian law (Art.110 Private International Law ("PIL") Code). Under the Regulation, the registered office of an SE should be located in the same Member State as its head office (Art.7 Reg.). Under Belgian law, the registered office of an SE should be located at the same place as its head office or central administration, and the SE should be registered at the place where its head office is located (Art.67 Company Code; Art.4(3) PIL Code).

If the head office of an SE with its registered office in Belgium is situated outside Belgium, the competent commercial court can declare the SE dissolved at the request of any interested party or the public prosecutor's office. Such a decision is not enforceable unless no ordinary legal remedy, such as appeal, is possible (Art.941 Company Code). The commercial court can grant the SE an extension within which to regularise its situation (Art.64(1) Reg.).

When the head office but not the registered office of an SE is located in Belgium, the public prosecutor's office will inform the competent authorities of the Member State where the SE's registered office is situated of the place of the head office (Art.876 Company Code).

Registration, publication and legal personality

An SE shall be registered in the Member State in which its registered office is situated. In Belgium, the articles of an SE must be filed with the clerk of the commercial court in the judicial district where its registered office is located. Filing is only possible if the rules on employee involvement have been observed (Art.895 Company Code; Art.12(2) Reg.). The clerk's office will publish an extract of the articles in the Annexes to the *Belgian State Gazette*. A notice of the registration of an SE (or of a change to the location of its registered office) must be published in the *Official Journal of the European Communities* (Art.14(1) Reg.).

An SE is also recorded in the registry of legal entities (the "Registry"). All legal entities must be registered with the Registry of the Crossroads Enterprise Bank (*Kruispuntbank van Ondernemingen/Banque-Carrefour des Entreprises*).

Belgian companies acquire legal personality upon the filing of their articles with the clerk of the competent commercial court. This is not the case for an SE. An SE acquires legal personality on its date of recordation with the Registry (Art.2(4) Company Code). In general, this will be the filing date of the articles of association with the clerk of court.

Management and meeting of shareholders

Introduction

The organisation of an SE largely complies with existing Belgian rules applicable to the SA. In Belgium, the decision-making power in an SA is divided between the shareholders' meeting and the board of directors; the latter has residual powers.

Belgium has traditionally only recognised a one-tier management system. Until September 1, 2002, the only model an SA could adopt was thus a one-tier board model. In this model, the board of directors has the most extensive powers to manage the company. However, since the entry into force of the Corporate Governance Act of August 2, 2002, an SA can opt for either the classic one-tier system or a two-tier system with a management organ (*comité de direction*). The Regulation gives the founders of an SE the possibility to opt for either a one-tier or a two-tier management structure.

One-tier v two-tier system

In the one-tier system, management is entrusted to a board of directors (*conseil d'administration* or *raad van bestuur*). In the two-tier system, management is entrusted to a management organ (*conseil de direction* or *directieraad*) overseen by a supervisory board (*conseil de surveillance* or *raad van toezicht*). An SE is bound by the acts of its organs that fall within their scope of authority, even if these acts are outside the SE's corporate purpose, unless it can establish that the third party was or, given the circumstances, should have been aware of the *ultra vires* nature of the act (Art.897 Company Code).

Directors and members of the management organ or supervisory board may be legal entities, in which case they must appoint a representative who shall be liable in the same way as the legal entity they represent (Art.896 Company Code).

In the one-tier system, the board of directors is entrusted with overall management of the company. The rules applicable to an SA shall apply. Daily management may be delegated to a managing director, who is also a member of the board of directors, or to a general manager or several persons, who may be members of the board of directors, acting as a corporate body (Art.898 Company Code; Art.43(1) Reg.). Daily management has been defined by Belgium's Supreme Court (*Cour de cassation*) as the power to manage the daily needs of the company or to take decisions which are of minor importance or that require immediate action.[8]

The board of directors should be composed of at least three directors, unless the SE has only two shareholders (Art.518 Company Code). The articles of an SE can always set a higher number or impose a maximum number (Art.43(2) Reg.).

In the one-tier system, the board of directors represents the SE (Art.522 Company Code).

Members of the board of directors are appointed and can be removed from office at any time by the general meeting of shareholders (Art.910 Company Code). The articles of association shall determine the conditions for appointment and removal. Any restriction on such power is null and void.

In the two-tier system, there are two management organs: the management organ and the supervisory board. The management organ is entrusted with the same powers as the board of directors of an SA (Art.901 Company Code; Art.41(3) Reg.), which implies that the supervisory board can only oversee the work of the management board but cannot engage in actual management of the SE. The management organ has extensive powers to manage the SE and perform all acts necessary or useful to further the company's corporate purpose (Art.903(1) Company Code). The supervisory board may define categories of decisions that require its prior approval (Art.48(1) Reg.). However, the absence of authorisation by the supervisory board cannot be opposed by third parties (Art.903(2) Company Code).

Members of the supervisory board are appointed by the general meeting of shareholders. Members of the management organ are appointed and removed by the supervisory board (Art.905 Company Code). The articles of association shall determine the conditions for appointment and removal. As provided in Art.39(2) of the Regulation, the articles can allow the general meeting to appoint members of the management organ. If no provision is made, the supervisory board shall have the power to do so. Members of the supervisory board can be removed from office at any time by the general meeting (Art.910 Company Code). Any restriction on such power is

8. Cass., 21 February 2000, *Tijdschrift voor rechtspersoon en vennootschap*, 2000, 283; Cass., September 17, 1968, *Revue pratique des sociétés*, 1970, 197.

null and void. In the event of a vacancy, the board of directors or supervisory board may recruit a new member to sit out the remaining term. The articles may provide otherwise (Arts 519 and 911 Company Code).

The management organ of an SE must comprise at least one member (Art.899 Company Code; Art.39(4) Reg.). The supervisory board must have at least three members (Art.900(2) Company Code; Art.40(3) Reg.). The articles of an SE can set a higher number or cap the number of directors (Arts 39(4) and 40(3) Reg.). The management organ may delegate daily management, as is the case in an SA (Art.900(1) Company Code; Art.39(1) Reg.).

No person can sit simultaneously on both the management organ and the supervisory board (Art.904 Company Code). In the event of a vacancy on the management organ, the supervisory board may appoint one of its members to temporarily fill the position. During this period of time, which may not exceed one year, the functions of that person on the supervisory board shall be suspended (Art.39(3) Reg.). Members of the management organ can attend meetings of the supervisory board if asked to do so, in which case they are not entitled to vote (Art.913 Company Code).

If the management organ is composed of more than one member, these members form a corporate body which takes decisions by a majority of votes. The articles may provide that the management organ can take decisions in writing in the event of an emergency and if the corporate interest so requires. In this case, the decision must be approved by a unanimous vote of the management organ. This procedure cannot be applied to approve the annual accounts, an increase of capital within authorised limits or any other decision specifically excluded by a provision in the articles of association (Art.907 Company Code).

The remuneration of members of the management organ can be fixed or variable and is determined by the supervisory board within the limits set forth in the articles of association. The supervisory board cannot alter the remuneration of a member of the management organ without the consent of the latter. The remuneration of members of the supervisory board is set by the general meeting (Art.914 Company Code).

In the two-tier system, the management organ represents the SE. The articles may provide that an SE is represented by one or more members of its management organ. Any other restrictions or provisions with respect to representation are not enforceable against third parties (Arts 908 and 909 Company Code). The supervisory board is entrusted with supervision of the management organ and does not act towards third parties. However, in the event of a conflict between the SE and a member of its management organ, the supervisory board can act on behalf of the SE (Art.914 Company Code).

General meeting and annual accounts

The convening and conduct of shareholders' meetings of an SE with its registered office in Belgium are in general governed by the provisions applicable to the SA, subject to specific rules set forth in the Regulation. At least one general meeting must be held each year in order to adopt the annual accounts (Art. 92 Company Code). The first general meeting can be held at any time during the first 18 months following incorporation of an SE (Art. 925 Company Code).

The general meeting can be convened by the board of directors (in the one-tier system), the management or supervisory board (in the two-tier system) or the company's auditors (Art.922 Company Code). One or more shareholders holding at least 10 per cent of the subscribed capital can request that a general meeting be held. Belgium did not enact the option contained in Art.55(1) to allow a lower threshold. In fact, the threshold applied to the SA equals 20 per cent. If the shareholders request a general meeting, one must be held within two months. If the SE fails to do so, the president of the commercial court in summary proceedings may order the company to convene the general meeting within a specified period of time or authorise the shareholders or their proxy holders to do so (Art.922 Company Code). Once a meeting has been convened, one or more shareholders holding at least 10 per cent of the subscribed capital can request that additional items be placed on the agenda. Once again, Belgium has not enacted the option contained in Art.56 of the Regulation to allow a lower percentage (for the SA a percentage of 20 per cent applies). Such a request must be communicated to the board of directors or the management board within 48 hours of convening, unless the articles provide otherwise. The proposal must be published in the same newspaper as the notice of the meeting no later than eight days in advance or, where applicable, sent by registered mail to the holders of registered securities (Art.923 Company Code).

The annual general meeting examines and approves the annual accounts and releases directors and members of the supervisory board and the management organ from liability (Art.926 Company Code). The board of directors or the management organ is entitled to adjourn the annual meeting for three weeks. Such an adjournment will void any decisions related to the annual accounts; all other decisions shall remain valid unless the general meeting

decides otherwise. Shareholders may request that the annual accounts be approved when the meeting reconvenes; no further adjournment is possible (Art.927 Company Code). Shareholder(s) holding at least 1 per cent of an SE's share capital or a shareholding with a value of €1,250,000 and who did not vote to release the directors from liability are entitled to file, on behalf of the company, a claim against any director or member of the management organ or supervisory board for negligence (Art.930 Company Code).

Resolutions of the general meeting are passed by a majority of votes validly cast (Art.57 Reg.). Amendments to the articles must be approved by a two-thirds majority of votes cast at a meeting where at least half the subscribed capital is present or represented. If the meeting is adjourned and subsequently reconvened, resolutions can be passed regardless of the number of shares present provided they are approved by a two-thirds majority, although the company's articles may provide for a greater majority (Art.558 Company Code).

The articles of association may furthermore provide that amendments to an SE's articles shall be approved by a simple majority of votes cast if at least half the subscribed capital is present or represented (Art.929 Company Code; Art.59(2) Reg.). The foregoing implies that the articles of a Belgian SE can be amended by a simple majority if the articles expressly provide for this possibility. If the aforementioned quorum is not met, a second meeting must be called at which shareholders can take decisions by a two-thirds majority if less than half the subscribed capital is present or represented or, if more than half the subscribed capital is present or represented, by a simple majority of votes cast. Finally, if the articles conflict with the arrangements for employee involvement, the board of directors or the management organ is entitled to amend the articles without the approval of the general meting (Art.877 Company Code).

Employee involvement

The Directive has been transposed into Belgian law by the Collective Bargaining Agreement ("CBA") 84 of October 6, 2004 of the National Labour Council, which is very detailed and adopts most of the provisions of the Directive.

Structures for employee representation in Belgian participating companies which will cease to exist as separate legal entities following the formation of an SE must be maintained in the newly formed SE, provided the criteria for such structures are still valid (Art.13(4) Dir.).

The composition of the special negotiating body ("SNB") is governed by special rules. If the Belgian company has a works council, the latter shall appoint a representative from among its members. If there is a committee for prevention and protection at work but no works council, the committee shall appoint a representative to the SNB. If there is no works council or committee for prevention and protection at work, the relevant joint committee can authorise the company's trade union representatives to appoint members to the SNB. Finally, the employees of the company can themselves appoint representatives (Art.3(2)(b) Dir.). Members of the special negotiating body need not necessarily be employees of the company (Art.9 CBA 84; Art.3(2)(b) Dir.).

All expenses related to the SNB shall be borne by the participating companies. The SNB may enlist the assistance of experts of its choosing. In accordance with Art.3(7) of the Directive, Belgium has limited the number of experts whose expenses shall be borne by the participating companies to one.

Belgian law does not currently recognise participation rights or the right of workers to sit on management bodies. Thus, if formal negotiations fail, the standard rules regarding employee participation as set forth in the Directive and CBA 84 shall apply to the extent such participation exists in the other companies forming the SE (Art.7(2) Dir.).

Pursuant to Art.10 of the Directive, members of the SNB are protected in the same way as works council members under Belgian law. They are entitled to reasonable paid time off to perform their duties and are protected against abusive dismissal or harassment (mobbing) by the employer when acting as employee representatives under the law, standing for election to such a position, seeking to exercise rights conferred by the law, and in certain other circumstances. A claim for wrongful termination or a complaint of harassment may be brought before the labour courts.

Changes must still be made to national law to reinforce these provisions (*inter alia*, regarding Art.8(2) and (3) Dir.).

Transfer of registered office

The rules relating to the transfer of an SE's registered office to another Member State are set forth in Art.8 of the Regulation. The Company Code provides specific rules regarding the transfer of the registered office of an SE within Belgium as well as to another Member State.[9]

9. Some of the rules applicable to the transfer of an SE's registered office to another Member State would also seem to apply to a domestic transfer. The explanatory

To start with, a transfer proposal, prepared in accordance with Art.8(2) of the Regulation, should be filed with the clerk's office of the commercial court of the place where the SE's registered office is situated. A mention of the filing (i.e. a notice of the transfer) must be published in the Annexes to the *Belgian State Gazette* (Art.75 Company Code). The board of directors or the management board must prepare a report in which it explains and justifies the legal and economic aspects of the transfer as well as its implications for shareholders, creditors and employees. This report must be made available to the shareholders pursuant to Art.8(4) of the Regulation.

The general meeting must vote on the transfer. Prior to the meeting, shareholders shall receive a copy of the transfer proposal and the report of the board of directors or management board. The general meeting must approve the transfer by at least 75 per cent of the votes cast. The articles of association may state that a simple majority is acceptable if at least half the share capital is present or represented at the general meeting (Art.929 Company Code).

A Belgian notary shall provide a certificate attesting to the completion of all requisite pre-transfer acts and formalities (Art.934 Company Code). In the event of a transfer to another Member State, the old entry on file with the commercial court must be deleted and a notice thereof published in the Annexes to the *Belgian State Gazette* (Art.936 Company Code).

Any transfer of an SE's registered office to Belgium must be formalised in a notarised document (Art.937 Company Code). Such a document can only be prepared if a certificate from the competent foreign authority is produced confirming that all necessary acts and formalities have been completed. The notarised document and the amended articles of association must be filed with the clerk of the commercial court where the SE's registered office will be situated in Belgium. In addition, an extract of the document and of the articles must be published in the Annexes to the *Belgian State Gazette*.

Within two months following publication of the transfer proposal in the Annexes to the *Belgian State Gazette*, creditors and other right holders can request security or other guarantees from the SE. They must have an outstanding claim against the SE which is not yet due. The SE can avoid the need to grant security by settling the claims at face value less a discount for early payment. If the creditor and the SE cannot reach an agreement in this respect, the competent commercial court shall determine whether security should be granted and, if so, how much and within which time frame. If security or priority has already been granted to a claimant or if the SE is solvent, the court may decide not to require the provision of (additional) security. These are summary proceedings that do not delay the transfer process (Art.933 Company Code).

The Regulation provides that the Member States can object to the transfer of an SE's registered office on grounds of public interest. In Belgium, the Ministry of Economic Affairs has the right to object to a transfer of such grounds during a period of two months following publication in the Annexes to the *Belgian State Gazette* of the transfer proposal (Art.935 Company Code). Any objection should be made by means of an official notice filed with the clerk of the competent commercial court. A mention of the filing must also be published in the Annexes to the *Belgian State Gazette*. The procedure to appeal such opposition will be set forth in a royal decree (which has yet to be published).

As long as the opposition has not been withdrawn or a negative decision taken within the scope of the aforementioned proceedings, the notary cannot furnish the certificate necessary to transfer an SE's registered office to another Member State.

Conclusion

As set out before, the SE has some major advantages, but such advantages do not compensate for the disadvantages which still exist. In particular the complexity of the procedure for concluding arrangements on employee involvement and the absence of tax harmonisation still form a stumbling block for many Belgian multinationals considering the conversion or incorporation of an SE. The fact that the SE and its subsidiaries or branches are subject to corporate tax in each Member State of establishment, without the possibility of consolidation at the parent level, is considered a major drawback. Belgium, as well as all other Member States, should agree on an attractive set of tax rules for the SE in order to attract the headquarters of some international groups.

As the different Member States are taking the appropriate action to implement the Regulation and Directive, it becomes clear which countries are most attractive in which to establish the head offices of an SE. Without doubt, Member States will have the tendency in the near future to set out specific rules for SEs with a head office on their territory. Since the possibility to transfer the registered seat of the SE from one Member State

memorandum to the Royal Decree seems to indicate that it was not the intention of the legislature to apply such stringent rules to purely domestic transfers. However, since there is no explicit exclusion of such transfers from the rules applicable to cross-border transfers, the latter will be deemed applicable to the transfer of an SE's registered office within Belgium.

to another is one of the main advantages of the SE, this will result in "competition" between the Member States.

The first SEs have already been incorporated in Belgium. None of them has any employees and they are mostly special purpose vehicles. Other groups of companies are examining the possibility of a conversion into or incorporation of an SE. It is only a matter of time before the first large group of companies will opt for this new corporate form and a unified common market will be one step closer.