



Recommendation 38 (1952)¹

Bringing to the notice of the Governments of Member States preliminary proposals with regard to the constitution of European Companies

Parliamentary Assembly

The Assembly,

Having taken note of the preliminary conclusions reached by the Committee on Legal and Administrative Questions after consideration of the legal aspects of the question of European Companies ;

Bearing in mind the opinion of the Committee on Economic Questions, which endorsed the contents of the memoranda dealing with the same question,

1. Invites the Committee on Economic Questions to proceed with the collection of information from the appropriate economic sources, and of such opinions and suggestions as may be advanced with regard to this admittedly complex problem,
2. Invites the Committee on Legal and Administrative Questions to undertake a more intensive study, in collaboration with the International Institute for the Unification of Private Law in Rome, of the technical points concerned with the status of European Companies,
3. Recommends to the Committee of Ministers that the proposals drawn up by the Committee on Legal and Administrative Questions, attached hereto, be brought to the notice of the Governments of Member States.

1. This Recommendation was adopted by the Assembly at its Twenty-fourth Sitting, 27th September, 1962 (see [Doc. 71](#), Report of Committee on Economic Questions).



Appendix APPENDIX

Proposal drawn up by the Committee on Legal and Administrative Questions after examination of the legal aspects of the question of European Companies - SECTION I.

Conditions governing the grant of European status.

1. European status may be granted to private companies holding a concession to operate a public service or to carry out a public work. Such European status may be conceded prior to the obtaining of the concession, in which case the status shall be suspensive. The concession shall be granted by the State or States territorially concerned.
2. European status may be granted to companies mentioned in the previous paragraph :
 - a. if they involve an important contribution, in cash or in kind, on the part of nationals or Governments of Member States other than the State on the territory of which the work is to be performed or the service operated ;
 - b. if the work is to be performed or the service operated on the territory of more than one Member State ;
or
 - c. if the carrying out of the work or the operation of the service is of interest to one or more Member States other than that on the territory of which such works or services take place.
3. European status shall be granted, after formal endorsement by the European Office, at the request of the States concerned, and when compliance with the conditions of paragraph 2 above has been verified. On receipt of the request, the Office shall assure itself of the fairness of the clauses of the concession contract and of the articles of association. The granting of this status shall imply acceptance of the competence of the European Office in respect of both the individuals and the States concerned.
4. The grant of European status shall result from the convention concluded between the states concerned, a convention to which shall be attached, where required, the statute of the company, as well as the articles of association. The choice of the concessionnaire may be made after execution of the deeds mentioned in this paragraph.

SECTION II -

The European Companies Office.

5. The European Companies Office shall be directed by a Board of Directors, composed of a limited number of qualified persons of high moral integrity, acting exclusively in the interests of the European Community.
6. In addition to the functions for which provision is made in the previous Section the tasks of the Office shall be :
 - a. to initiate negotiations between the parties concerned for the foundation of European companies whenever the need may be felt ;
 - b. to take part in negotiations for the setting up of European companies ;
 - c. on appeal, to ensure that companies respect, where necessary, the rights of individuals arising from the statute or the articles of association attached to the convention ;
 - d. to carry out direct supervision, if required by the State or States concerned, or if need be, to see that this supervision is uniform when it is exercised on the territory of more than one State ;
 - e. to indicate to the States concerned regulations likely to ensure uniform treatment of companies on their respective territories ;
 - f. to ensure that the financial stability of the contract of concession is maintained, should additional burdens result from legislative or administrative measures taken by the States ;
 - g. to recommend that the States concerned should take the necessary measures to avoid double taxation or tax evasion ;
 - h. to propose suitable measures with a view to ensuring that all interested parties enjoy the advantages provided for European companies in Section III.

SECTION III

Advantages appertaining to European status.

7. Unless it is decided that the company shall come under a specific national law and shall have a specific nationality, the European company shall be governed, principally, by the regulations laid down in the inter-State Convention by which it is created and the deeds thereto attached, and to a subsidiary extent, by a specific national legislation to which it shall be referred.

8. European companies not constituted under a specific law shall be entitled to the same standing and the same rights as those enjoyed by companies holding concessions for public services or public works on the territory of Member States concerned. The Office shall take steps to obtain for them the most favourable treatment on the territory of third-party States, which are Members of the Council of Europe.

9. With the consent of States concerned and according to individual cases, European companies may be accorded any or all of the following advantages :

- a. freedom to transfer capital, interest, dividends and remuneration of foreign personnel ;
- b. exemption from Customs duties and currency facilities for the importing of equipment and fittings, as well as licences, where required, for the free exporting of such material ;
- c. unrestricted entry of employees, technicians or officials of European companies, provided that measures may be taken to prevent their employment or re-employment in occupations other than those for which they were granted entry permits to the national territory ;
- d. certain guarantees against seizure of their assets required for performing public works
- e. power to sign contracts with clauses guaranteeing rates of exchange or prices and tnce assurance that no change will be made in certain clauses as a result of new legislation which may modify the provisions of contracts entered into between individuals ;
- f. the competence of the single European court to hear disputes between the grantor and the concessionnaire, between partners and the company, and between the States concerned. Ine decisions of the European Court shall be put into effect by means of an order of enforcement delivered by the State concerned, without formality other than authentication

SECTION IV

Interim administration

10. A General Convention including the provisions of Sections I, II and III above shall be concluded by Members of the Council of Europe after the establishment of the first European company by individual agreement between States on the basis of these provisions.

11. Pending the signature of the general convention, and upon adoption of this Recommendation by the Committee of Ministers, there shall be set up within the Secretariat-General of the Council of Europe a Section which shall fulfil, mutatis mutandis, the functions to be assigned to the European Companies Office. Acting in the capacity of a Research Bureau, this Section will initiate between parties concerned negotiations for the establishment of the first European companies.

12. In the coarce of an initial period, commencing with the conclusion of the general convention, it will be possible for European public companies ("établissements publics communs" or "intra-European public undertakings") to have certain links with the Research Bureau and in particular to have recourse to the jurisdiction of the single European Court for the settlement of their disputes.