Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 71
24 September 1952

Bringing to the notice of the Governmentsof Member States a preliminary draft Statute for European Companies

Report
Committee on Economic Affairs and Development
Rapporteur: Mr Roger MOTZ, Belgium

A. Explanatory Memorandum

1.

Having taken note of the second memorandum of the Secretariat-General on the subject of European Companies, your Committee on Economic Questions considered that it would be of advantage, at this stage in its examination of the question, to take the necessary steps in order, in the first place, to communicate to the Governments of Member States the preliminary draft statute of the said companies elaborated by the Committee on Legal Administrative Questions, and, secondly, to provide the Secretariat-General with the means of pursuing its studies, in particular through the creation of a provisional Research Bureau.

In order to make clear to the Assembly the purpose of the proposals attached to the draft Recommendation, the Committee has decided to issue the following commentary by the Committee on Legal and Administrative Questions.

1.1. Section 1 - Conditions governing the grant of European Status

1.1.1. PARAGRAPH 1.

Four principles are laid down in this paragraph

a. Obtaining of the status : European status is not automatically acquired in virtue of the General Convention. The acquisition of European status results from the decision of the States concerned, from the special agreement concluded between them to this effect;

b. Undertakings qualifying for status. — The benefit of European status is granted only to undertakings responsible for a public utility service or carrying out public work. A certain amount of latitude is suggested as regards the time at which the European status is granted. In some cases, it might be easier to create the company and to find a concessionnaire, were European status already assured. Thus, it is thought desirable to mention that it will be possible for an inter-governmental Agreement to be concluded before the concessionnaire is appointed..

c. Competence of States. — The granting of a concession or the choice of a concessionnaire is a matter solely for the State of States territorially concerned.

d. Undertakings excluded. — Only the performance of public work or the operation of a public utility service entitles an undertaking to European status under the system of European Companies to be determined in the proposed General Convention. States remain, however, free to provide any international statute they think fit for public companies established by them jointly. With regard to private companies not carrying out any public work or operating a public utility service, the only question which arises is that of how they should be treated, a matter contingent upon bilateral agreements on establishment or upon general agreements, such as the agreement adopted at the 1951 Conference of the Hague and that on the status of foreign companies proposed in June, 1947 by the International Chamber of Commerce.

There remain, of course, marginal cases, for example public undertakings of a commercial or industrial character like public corporations or public undertakings with the participation of private capital. Such undertakings are often responsible for the performance of public works or the operation of a public utility service, but do not operate as public undertakings in the strict sense of the word. Their position must, therefore, be determined according to their special characteristics.

1.1.2. PARAGRAPH 2. — SPECIFIC CHARACTERISTICS OF THE UNDERTAKINGS.

This paragraph enumerates the three instances in which the granting of European status is warranted, namely :

(a) Where there is considerable participation by private persons or Governments of other Member States. Such participation must concern the undertaking itself, that is to say, its risks and profits. If the aliens are, for instance, simply debenture-holders or suppliers of raw materials or equipment, the requirement laid down is not fulfilled. In a word, contribution must be in the form of cash or kind. Participation in kind may take the form of patents, equipment, buildings, land, etc.

So far as contribution in services is concerned, the position is somewhat involved, in that, on the one hand, staff may share the profits without sharing the risks, and, on the other, any large-scale importing of manpower may affect the operation of the undertaking. Each case should therefore be considered on its merits, in order to ascertain the extent to which contribution in services represents an essential contribution to the undertaking and participation in its risks and profits.

It is also necessary that the participation of foreign capital should be on a considerable scale, which again raises the question of funds. The Committee had contemplated laying down a minimum of 30 per cent. It should be said that both public bodies and private persons may participate. In the case of the latter, certain difficulties may arise where the parties concerned arc established in the country in which the undertaking is to operate and their capital has not been imported from abroad. In this event, it would be necessary to determine for the purposes of the draft Recommendation whether such investment might be deemed to be of foreign origin.

((b) The hypothesis envisaged here is that of the undertaking spread over two or more States. As a single entity, the undertaking is entitled to European status. A typical example is that of the Moselle Canal scheme. In this case, European status is all the more necessary, because the concession must be granted and maintained jointly to a single undertaking governed by the same regulations in both territories; such legal status can, however only be attained by placing the undertaking under a common jurisdictional system.

(c) In this case, the question of foreign investment or location in more than one country does not arise. The material unity of the undertaking is assured from both a national and a territorial point of view. However, its activities are of interest to one or more other European States. A typical case is that of the supply to one country of electric power produced in another ; in the same way, the construction of the Mont Blanc tunnel accross the Franco-Italian frontier will be of interest to road traffic not necessarily confined to Franco-Italian traffic.

1.1.3. PARAGRAPH 3. — PROCEDURE FOR THE GRANTING OF THE EUROPEAN STATUS.

This paragraph lays down a number of principles and determines the procedure for obtaining European status. As regards the procedure, it is intended that, in the first place, the State concerned shall make formal application to the European Office of the Companies, and that, secondly, the Office shall then endorse the granting of European status. It is true that States, sovereign as they are, may dispense with the opinion of the opinion of the Office and the procedure connected with it. Should they, however, ignore this procedure, European status could not be granted. However, once the required procedure has been initiated through the Office, the latter will be competent to watch over the progress made by the undertaking.

It is necessary for the Office to follow up the progress made, in order to ensure that the conditions under which European status has been granted (stated in paragraph 2) have not ceased to exist (as, for example, in the event of the disappearance of foreign capital where the whole of the shares have been acquired by nationals of the country). Such super-A'ision does not, of course, embrace any of the authoritative powers granted for the conduct of judicial or administrative investigations and precludes the assumption of any executive powers.

The States concerned, referred to in this paragraph, are those whose territory is the place of operation of the company, or whose nationals or governments are partners in the undertaking, or whose interest therein warrants its accession to the Convention. The private persons referred to are the shareholders, debenture-holders, managers, co-partners or other creditors of the undertaking by virtue of technical offences or quasi-delicts (users of the service, suppliers, third party victims of an accident, etc.).

The Office shall examine the terms of the concession contract and articles and conditions governing contracts, as well as the Articles of Association, in order to ensure that provision has been made to safeguard private interests in connection with re-purchase, nationalisation, duration of the concession, etc. Constant care must be exercised to ensure that the company operates efficiently (and in a manner satisfactory to the State concerned), that its profits are fair and, eventually, that its liquidation is carried out equitably.

It is felt that the findings of the Office are likely to strengthen the credit of an undertaking and secure for it financial support.

1.1.4. PARAGRAPH 4. •—• THE DECISION WHEREBY EUROPEAN STATUS IS GRANTED.

This provision is an essential feature of the system of European companies. European status is granted under an agreement signed by the States concerned and not as a result of a decision of the Office. Similarly, the conditions governing it are determined, in the last resort, by the provisions of the said agreement. The last sentence of this paragraph envisages the case where the articles of association are annexed to the agreement. In some cases, however, such deeds will not be so annexed, for example when a company is constituted under the law of a specific state (by the choice of a seat or by " incorporation " as in England); the company law of the State will then apply automatically.

1.2. Section II - European Office of the Companies

1.2.1. PARAGRAPH 5. — STRUCTURE OP THE OFFICE.

These provisions merely define the nature and position of the steering organ of the European Office. The members, very few in number, of the steering organ, who will be responsible for running the Office, will be the servants of the European community. Their small number is due to a desire to take into account criticisms addressed to international organs which consist of a many members as there are participating States. In this case, the principle of equality is sacrificed for the sake of efficiency, and the reason is that members of the Governing Body will not be representatives of States but international officials. There will, therefore, be no need to take into consideration the question of equal representation.

Furthermore, it should be noted that the number of persons qualified to fill these appointments is limited. They are not often available and, for this reason, it has been thought fitting that the Governing Body of the European Office should consist of only three members.

For the time being, the questions of how the Office should operate (particularly as regards voting) and how it should be organised (parliamentary and governmental control), have been left in abeyance. They will be clarified in the General Convention. In any event, the authors of the proposals of the Committee on Legal and Administrative Questions contemplate that the Office shall constitute an independent public body attached to or integrated into the Secretariat-General of the Council of Europe. It will have no power to make binding rulings. Its responsibilities will be mediation, negotiation and conciliation ; it will of also provide information and make recommendations. Its powers will be of an executive nature in the international legal sense and not as understood in municipal legal systems. The value of its action will reside in that its findings on questions of fact will doubtless be taken into consideration by the Court in the event of a dispute being brought before the latter.

1.2.2. PARAGRAPH 6. — ROLE OF THE OFFICE.

(a) Initiation of negotiations. — This provision governs the right of the Office to take steps to initiate, with parties concerned, negotiations for the establishment of European Companies. The Office may take such initiative upon its own responsibility, according to prevailing circumstances or the economic position of a given country. It may initiate enqui-ries as a result of a Recommendation of the Assembly or Committee of Ministers. The expression " parties concerned " applies to both Governments and private persons (investors, economic and labour organisations, concessionnaires, if any, etc.).

(b) Participation in negotiations. — The participation of the Office in negotiations is intended to facilitate and simplify its task as defined in paragraph 6 of the Recommendation and to ensure that the competence of the Office in regard to the Company is laid down as precisely as possible. This provision entitles the Office to take part in negotiations, but does not place the parties concerned under any obligation to allow it to do so (cf. also the last part of Paragraph 3 in this connection).

(c) Enquiries on request. •—• The control envisaged is not really a control; it has no jurisdictional character. It is, in fact, an enquiry, or verification of facts, with a view to making recommendations to the parties concerned. This provision differs from that contained in sub-paragraph (b), under which the Office intervenes after the States concerned have found themselves unable to reach a satisfactory settlement. The words " where necessary " have been inserted in order to differentiate between two quite different sets of circumstances, namely, that in which the company has been formed under a specific law and that in which the articles of association have been annexed to the Convention. In the first case, the safeguard of the rights of private persons is a matter solely for the national State, except in the event of recourse to the European Court as provided in paragraph 9 (/). The same does not, however, apply if the articles of association of the Company

are annexed to the Convention. In the latter case, the parties concerned may, after having exhausted local remedies, request the Office to hold an enquiry or make recommendations, with a view to safeguarding their legitimate rights and interests.

(d) Supervisory activities. — The Office will exercise direct supervision in cases in which it is necessary to ensure that such control is uniform or when the States or States concerned request the Office to do so. In the latter contingency, the States may not wish to be responsible for supervision, or several States may decide to have recourse to the Office in order to preclude any.dispute. In the first hypothesis, supervision by the Office will be directed towards establishing a common standard to which two or more States territorially competent to exercise supervision may conform.

(e) Mediation to ensure uniformity of treatment. — The establishment and operation of companies in more than one territory are always likely to give rise to conflict of laws and jurisdictions with all their attendant uncertainties. The Office will accordingly be authorised to propose to States, in the light of experience and needs, the practical terms of an arrangement likely to obviate such disputes. Similarly, administrative and financial regulations may vary in strictness and flexibility from one country to another and thereby militate against the smooth working of the undertaking. In that event, the Office would propose that the States consider concluding an agreement with a view to reducing or eliminating as far as possible such contingencies.

((f) Safeguard of the financial stability of the companies. — The purpose of this provision is to safeguard the interests of the public service or work and those of the public at large by providing for constant adjustment. All kinds of new conditions and restrictions may be placed upon a company in such a way as to jeopardise not only the operation of its service or the execution of the work, but the very existence of the undertaking. There exists in the.French droit administratif a system providing protection for public undertakings (théorie de l'imprécision or fait du Prince) and it is this system which is applied in the texts relating to European companies. All new conditions imposed by legislative or administrative measures are deemed to be new conditions.

(g) Double Taxation. — This paragraph concerns measures of a legislative or conventional nature which States are requested to take in order to obviate taxation and tax evasion, should legislative measures or bilateral agreements prove inadequate for this purpose..

(h) Privileges. — This provision is intended to protect the States against the automatic implementation of privileges and advantages granted to European companies, since the circumstances under which privileges are exercised may change and become quite different from those prevailing at the time the privileges in question were granted. States are likely to be very circumspect in granting special facilities which they may later regret, in the light of all the consequences. Here provision is made for machinery enabling advantages and privileges to be continuously adapted and modified to meet the needs of the State, concessionnaire and users. Let us take a specific example, namely that contained in paragraph 9 (c), in which provision is made for the free entry of foreign workers into the territory of a State in which the European company is carrying out a public work or operating a public service. The facilities mentioned would enable the company to obtain more highly skilled and cheaper labour than that available on the local labour market at the time of the formation of the company. Should conditions on the labour market in question undergo a change, however, it would be economically, socially and politically difficult for the State on whose territory the company operates to continue to allow aliens to be employed—with a consequent risk of increased domestic unemployment—since that State would be able to supply equally skilled workers at the same cost. Machinery has therefore been devised to control the exercise of privileges granted and to take into account the legitimate interests of all concerned. Hence the item included at the end of paragraph 6 relating to this aspect of the scope of the European Office.

1.3. Section III - Advantages appertaining to European status

1.3.1. PARAGRAPH 7. — Two JURIDICAL RÉGIMES FOR COMPANIES.

One is faced, in respect of national legislation, with two completely contradictory considerations—on the one hand, the need to keep the European Companies outside the range of the national laws, since the requirements of these Companies may not be identical with those of national companies ; that, indeed, is precisely why the need has been felt to establish European Companies. On the other hand, these companies need to be linked to a notional legislation in order to settle certain matters which are the subject of detailed regulations. The European Community lacks an international or a European Company legislation to govern the operation of those Companies—that is, governing the whole body of regulations established in each country regarding the rights of shareholders, debenture-holders and the board of Directors of Companies.

However, the International Institute for the Unification of Private Law, Rome, has been requested to study the legal position of Companies established in the United States by the Federal Government, which are, to some extent, exempt from the requirements of local State legislation. In this connection, it is felt that American experience may be of assistance to Members of the Council of Europe.

States are faced with the choice of two systems of European companies so far as the application of national laws is concerned. Under the one system, national legislation is regarded as a suppletory source of law, The special intergovernmental agreement and its annexes will constitute the main source of law applicable, when such agreement has been signed by the States concerned to establish the company. The national legislation will serve only as an ancillary source. This will particularly apply in the case of what is known as company law and contract law, as well as of that relating to implied contracts and responsibility in the case of quasi-delicts against third parties. The question arises as to whether such reference shall be formal and express or whether it may be tacit, since the Agreement and its annexes may not cover specific points and may fail to provide appropriate regulations for dealing with certain legal aspects (for example, there may be no mention of which jurisdiction shall apply ; and there may be no guidance in the event of proceedings being taken against a company or in the case of the dissolution or liquidation of a company). The solution adopted will vary according to the nature of the problem posed. If recourse to national law were likely to compromise the international status and special advantages enjoyed by the company, the inadequacy of the provisions of the Agreement would have to be remedied by analogy and/or by a judicial construction; the alternative would be tacit recourse, in the absence of any provisions to the contrary, in the Agreement

The position is quite different where the company is mainly governed by the national law under which it was formed. In such cases, whenever the Agreement does not expressly apply, the national law is applicable, with theresult that tacit recourse will seldom he made to the international Convention, since national legislation rarely fails to meet the needs of the various situations which may arise.

Another question raised by recourse to the relevant national law is that of nationality. When a company is established under a specific national law, there is no doubt as to its nationality, which is that of the governing law. From the point of view of allegiance, of the statutory seat and of diplomatic protection, the company comes under the State under whose law it is constituted. This does not, however, apply in cases where the specific national law is merely a suppletory source of law. Allegiance is then of a dual or manifold nature and diplomatic protection, common or collective, and the seat of the company conventional, that is to say, laid down by inter-State agreement. Conditions goA'erning the corporate body vary according to whether or not the company was established under a specific law. In the first case, the corporate body exists as soon as the deed establishing the company is signed, published or registered; in the second case, it comes into being as soon as the intergovernmental agreement is put into effect.

A company acquires the status of a corporate body in the countries whoso governments have acceded to the Convention under which it was formed. So far as other States are concerned, a distinction must be drawn between States acceding to the future general Convention on European Companies and those not doing so. In relation to the first category of states, the company will be a corporate body, save where provisions to the contrary or reservations are made; in the case of the other States, the general rules of law will apply, viz. special treaties, if any or the Hague Convention of 1951 (II), is signed and ratified, at least so far as companies established under a specified law are concerned.

1.3.2. PARAGRAPH 8. •—• CAPACITY AND TREATMENT.

This provision is the outcome of that contained in the preceding paragraph, since companies not established under a specific law have a dual or manifold allegiance. As a result, there might exist some doubt, under the legislation of each contracting party, concerning the company's capacity to operate a public service or carry out public work, for which in both cases, only nationals are eligible. It was in order to obviate any difficulty in this connection that this provision was inserted. It should be noted that it does not concern treatment but rights and powers. This does not, however, apply to the provision at the end of the same paragraph, under which the Office is entitled to ensure that companies are treated as favourably as possible in the territories of the other Member States of the Council.

There is no obligation to grant any advantage, and the question of favourable treatment remains in any event subject, mutatis mutandis, to the usual operation of similar clauses (such as those of reciprocity, etc.) encountered in the normal course of law.

1.3.3. PARAGRAPH 9. —-ADVANTAGES AND PRIVILEGES.

It must be pointed out that the rule laid down in this paragraph is not intended to render the granting of advantages or privileges obligatory, general or automatic.

The granting of privileges is not obligatory, since the consent of the States concerned has first of all to be obtained; nor is it to be taken for granted or considered, to follow automatically, since such advantages must be assessed according to needs; any one or more, or even all, of the privileges may be granted or denied. Furthermore, the conditions enumerated are not exhaustive, but merely illustrative. Their number may be increased. They have been culled from four documentary sources :

1. Recommendation No. 2 (of 3rd October, 1951) of the Committee on Electric Power of the Economic Commission for Europe, for the purpose of facilitating the erection of hydro-electric power stations on rivers and contiguous lakes.
2. The Franco-Swiss Convention of 4th July, 1949, on the construction of the Basle—Mulhouse Airport.
3. The Preliminary Report, dated 15th June, 1951, on International Companies, submitted by Professor Jean Niboyet to the International Law Association, and which will be considered at the meeting to be held at Lucerne from 31st August to 6th September, 1952.
4. The Draft Preliminary Convention on European Companies (Article 5) prepared by the Secretariat-General of the Council of Europe (16th December, 1949).

a. Exchange Facilities. —• It is pointed out that foreign personnel will not be allowed to transfer abroad the whole of the remuneration received by them, but only such portion thereof as shall be deemed reasonable..

b. Customs Facilities. — This provision applies not only to the original construction work, but also to subsequent repair and maintenance. Currency permits will be granted in accordance with the exchange control restrictions in force at the time. Exemption from customs duty is justified by the comparatively high risks and great difficulties with which the undertaking will have to contend. Export facilities will be arranged in the event of export restrictions being imposed by a State other than one of those " concerned ", in which case the Office may merely apply for the necessary facilities to be granted—as an act of courtesy inasmuch as the State in question will not be bound by the Convention.

c. Immigration. — The reason for the reservation accompanying this provision is that some States, such as the United Kingdom of Great Britain and Northern Ireland, tontrol the employment of aliens only upon their entry into the country and not at the time chcy change their occupation.

d. Protection against seizure of assets. — This is a guarantee, provided for under the administrative law of some countries in respect of the properly and funds of concessionnaires, that the public service will operate. The Rome Institute has been asked to give this matter careful consideration, in order that the necessary precise provisions may be incorporated in the proposed General Convention. Certain attenuations will, of course, have to be made in regard to judicial decisions which do not jeopardise the existence of the undertaking.

e. Autonomy of contract. — Provision has been made for the undertaking to be allowed to float loans or to assume any other contractual obligations for which the kind of currency used may be agreed upon, without regard to existing restrictions or future changes in local legislation. Similarly, States may agree not to change the terms of contracts placed by such undertakings by the application of local legislative measures automatically affecting the terms of contracts between private persons.

f. Autonomy of jurisdiction. — The first part of the provision provides that any disputes in connection with the concession shall be submitted to a single jurisdiction with a view to preserving the uniform nature of the Articles of Association of the undertaking by means of uniform regulations. Disputes between principals and concessionnaires and between the States concerned represent different things.

It is to be expected that disputes between grantors and concessionnaires will give rise to a kind of European administrative law and those between partners and company to intra-European commercial law. All disputes with private third parties in connection with contracts or claims have been placed outside the scope of European jurisdiction, since they do not jeopardise the existence of the undertaking as laid down in Article 9 (d). Moreover, the private persons in question will not infrequently be remote from the seat of the undertaking and possess only limited financial resources. It has therefore been deemed desirable not to submit their

claims to a European judicial authority, but to resort to the general rule of law. The question of jurisdiction will, of course, have to be dealt with in the case of a company whose Articles are appended to the convention of foundation. The last part of this provision has been taken from the Treaty on the Coal and Steel Community (Article 92).

1.3.4. Section IV - Transition Period

1.3.4.1. PARAGRAPH 10. •—• THE FUTURE GENERAL CONVENTION.

Pending the conclusion of the General Convention, Governments will be invited, to incorporate in their agreements establishing European companies the general rules mentioned in Sections I, II and III above. Similarly the Research Bureau of the Secretariat-General will act in accordance with the rules contained in those Sections..

1.3.4.2. PARAGRAPH 11. — PROVISIONAL RESEARCH BUREAU.

The Research Bureau will consist of a number of experts forming a kind of provisional Executive Secretariat responsible to the Secretary General of the Council of Europe. It will fulfil as many of the functions of the Office as lie within its power pending the conclusion of the general Convention. It will undertake careful research and initiate and foster negotiations and endeavour to bring them to successful conclusions. It will submit its reports to the Committee of Ministers and the Consultative Assembly and receive instructions from them in accordance with the statutory regulations of the Council of Europe..

1.3.4.3. PARAGRAPH 12. — PROVISIONAL REGIME FOR PUBLIC COMPANIES (INTRA EUROPEAN PUBLIC UNDERTAKINGS).

In order to render links with public companies as flexible as possible, it is proposed that they shall be placed outside the scope of the General Convention. The Research Bureau, and, later the Office shall maintain liaison and co-ordination with these public companies; disputes will be laid before the European Court of Justice. The general rules contained in the special agreements establishing public companies will be embodied in a General Agreement to be drawn up later. For the timebeing, it will be sufficient to be guided by practice. The matter is of no particular urgency, since there is no difficulty likely to arise in the meantime which cannot be overcome by States under the terms of the special agreements concluded by them for the purpose of establishing public companies.

The draft Recommendation which the Committee submits to the Assembly in this report was adopted unanimously in committee.

B. Draft Recommendation

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,

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;

Invites the Committee on Legal 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;

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,

And instructs the Secretary-General to submit to the Committee on Economic Questions at its next meeting a plan for the organisation and activities of the Research Bureau provided for in paragraph 11 of the said proposals.

Appendix APPENDIX

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. The 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 of the Companies, 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 as regards both 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 executions of the deeds mentioned in this paragraph.

Section II - The European Companies Office

1. 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.

2. 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 he 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 perform 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 in the territory of more than one State;

e. to indicate to the States concerned regulations susceptible of ensuring uniforme 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

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

2. European companies not constituted under a specific law shall be entitled to the sam 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.

3. With the consent of States concerned and according to individual cases, European companies may be conceded 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 importation of equipment and fittings, as well as licences, where required, for the free exportation of such material;

c. unrestricted entry of workmen, 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 or operating public services ;

e. lpower to sign contracts with clauses guaranteeing rates of exchange or prices, and the assurance that no change will be made in certain clauses as a result of new legislation which may modify the provisions of contacts 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. The 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

1. 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.

2. 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 Research Bureau, this Section will initiate between parties concerned negotiations for the establishment of the first European companies.

3. In the course 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.