The European Company

The European company (‘SE’) is a new legal entity offering a European perspective for businesses, which became a reality on 8 October 2004. Its purpose is to allow businesses that wish to extend their activities beyond their home Member State to operate throughout the European Union on the basis of a single set of rules and a unified (one-tier or two-tier) management system. This book explains how to set up and organise a European company and sets out the text of the relevant EC instruments (a regulation and a directive) that serve as its legal basis as well as the national implementing legislation.

The Regulation gives Member States 66 different options and contains 31 references to national law. It is therefore essential for businesses and their advisers to understand the implementing legislation of the relevant Member States in deciding where to establish an SE. This book provides comprehensive coverage of such legislation in all Member States of the European Economic Area which have, as at 1 July 2005, implemented the Regulation containing the SE Statutes and the Directive on employee involvement in the SE. A second volume, covering further Member States once they have brought the legislation into force, will follow.

Divided into two sections, the book first offers a critical review of the usefulness of, and the opportunities presented by, this new vehicle, analyses the Regulation and the Directive, and gives an overview of the tax aspects of the SE. The second section contains chapters on the laws of each Member State, each conforming to a common format and contributed by a practitioner from that state.

Dirk van Gerven is a partner at NautaDutilh Brussels and a member of the Brussels and New York Bars. He has extensive experience in all areas of corporate law, including litigation, international arbitration, securities regulation and finance. He is head of continuing legal education for the Dutch-speaking Bar of Brussels, a research fellow at the University of Leuven, and has published widely in the fields of corporate and financial law. Since 2003 he has been a member of the Supervisory Board of Belgium’s Banking, Finance and Insurance Commission.

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Preface

The European company or *Societas Europaea* (‘SE’) has become a reality. Since 8 October 2004, it has been possible in at least some Member States of the European Union and the European Economic Area (i.e., Iceland, Norway and Liechtenstein) to incorporate an SE. Regardless of where it is formed, and keeping in mind that some countries have yet to adapt their national legislation accordingly, the SE can operate throughout the European Union and beyond like any other company.

The SE is not the first legal entity to be introduced under Community law. In 1985, the European economic interest grouping (‘EEIG’) was launched. However, the unlimited and joint liability of its members, the rigidity of its management structure, and its transparency for tax purposes makes the EEIG less attractive. Last but not least, the similarity of the EEIG’s name to that of the relatively unknown economic interest grouping (a specific type of legal entity under French law) has caused some national companies to shy away from this corporate form. The SE differs from the EEIG in these fundamental respects.

The SE is a company and, therefore, is in essence no different from national corporate forms. Several larger corporate groups are currently examining the possibility of creating an SE by merging some of their holding companies. Complicated employee involvement rules may be burdensome but should not prove an obstacle to the creation of an SE, as most European managers are used to dealing with employee representation issues.

Several business leaders have expressed interest in setting up an SE and practice indicates that companies throughout Europe are interested in doing so. An explanatory book is therefore a useful tool. This book provides an overview of the legal rules applicable to the SE. The first part explains the legal framework contained in the SE Regulation and the Directive supplementing the Regulation with regard to employee involvement. The second part focuses on the rules applicable to the incorporation and management of an SE in specific Member States with reports from all countries that have implemented both the Regulation and the Directive thus far (with the exception of Norway and Latvia). Volume two will cover those countries which have yet to adapt their national laws but plan to do so in the near future.
Finally, I wish to thank the contributors to this book from law firms throughout Europe, all of whom are very well positioned to discuss the rules applicable in their countries. I also wish to thank those whose names are not mentioned in the reports but whose work was essential for the success of this project, namely Katherine Raab (who carefully edited most reports), Nele de Wilde, Eva Coudyzer, Bianca Porcelli, Steven Hippe, Reem Fakhreddine Mohamed and Sandra Dixon, all of whom work at NautaDutilh.

Dirk Van Gerven
Brussels, 29 July 2005