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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Company Law
Subject:	Proposal for a Regulation on the 28th Regime – EU Inc. Drafting suggestions from the German delegation

Delegations will find attached drafting suggestions from the German delegation.

Article	
Art. 12 par. 1	An EU Inc. formed *ex nihilo* in accordance with Articles 16 to 19 or created through a domestic conversion, merger or division in accordance with Article 21 shall **mandatorily** be subject to employee participation ~~rules applicable in the~~ **according to the national law of the** Member State in which the company has its registered office.
Art. 12 par. 2	Where an EU Inc. is created through a cross-border conversion, division or merger in accordance with Chapters I, II, and IV of Directive 2017/1132 or where an EU Inc. carries out such a cross-border conversion, merger or division in accordance with Directive 2017/1132 **or a cross-border transfer of its registered office**, the rules on the employee participation shall **mandatorily** be determined in accordance with Articles 86l, 133 and 160l of that Directive.
Art. 12 par. 3	**An EU Inc. must not be misused to deprive employees of rights to employee participation or withhold such rights.**
Art. 36a par. 1	**If the number of employees of one or multiple branches of an EU Inc. exceeds the threshold triggering employee participation in an EU Inc. according to the law of another Member State than the Member State of the EU Inc.'s registration, the company shall mandatorily be divided by separation of its assets and liabilities located in that other Member State as defined in Art. 160b paragraph 4 lit. c) of Directive (EU) 2017/1132. The company resulting from the division by separation shall be an EU Inc. and have its registered office in that Member State.**
Art. 36a par. 2	**Member States shall ensure that employees and their representatives are able to institute proceedings against the company regarding the obligation according to paragraph 1 in the Member State of employment. The courts and authorities of that Member State shall have jurisdiction over this obligation.**
Art. 42 par. 3	The board of directors may exercise all the powers of the company that are not required, by the applicable rules in accordance with Article**s** 4 **and 12**, to be exercised by the general meeting or by another statutory body **such as a supervisory board subject to employee participation**.

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